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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
12 **SACRAMENTO DIVISION**
13

14 SUSAN FITZPATRICK, on behalf)
15 of herself and all others)
16 similarly situated,)

Case No. _____

17)
18 Plaintiff,)

19)
20 v.)

Class Action Complaint
Amount demanded exceeds
\$10,000.

21)
22 BIG HEART PET BRANDS, and)
23 THE J.M. SMUCKER CO.,)

24)
25 Defendant.)

26
27 **CLASS ACTION COMPLAINT**
28

29 This is a California statewide class action seeking redress for the mislabeling
30 of pet food and pet treats. Defendant Big Heart Pet Brands (“Big Heart”), which, as
31 of March 23, 2015 is owned by Defendant The J.M. Smucker Company
32 (“Smuckers”), labeled its “Milo’s Kitchen” brand of dog and cat treats as made in
33 America, when in fact they contained ingredients sourced from foreign countries.
34 This is a violation of the California Unfair Competition Law as well as the California

1 Consumer Legal Remedies Act. Plaintiff seeks, on her own behalf as well as on
2 behalf of a statewide class of similarly situated consumers, injunctive relief to stop
3 Defendants' use of false country-of-origin labels, as well as restitution under the
4 UCL. Plaintiff also seeks injunctive relief under the CLRA, and subject to the
5 \$1,000 statutory minimum for class action damages, restitution, and punitive
6 damages under the CLRA. The notice requirements of the CLRA have been met. In
7 support of this complaint, 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. Defendant Big Heart Pet Brands is a corporation formed under and
14 existing pursuant to the laws of the state of California. This Defendant's principal
15 place of business, prior to purchase by Defendant Smuckers was in San Francisco,
16 California.

17 3. Defendant The J.M. Smucker Co. is a corporation formed under and
18 existing pursuant to the laws of the state of Ohio. This Defendant's principal place
19 of business is in Orrville, Ohio.

1 4. This Court has diversity jurisdiction over this case under 28 U.S.C. §
2 1332, as modified by the Class Action Fairness Act of 2005, because plaintiff and at
3 least one defendant are citizens of different states, and in this class action the
4 aggregate amount in controversy is greater than \$5,000,000.00 (five million dollars),
5 exclusive of interest and costs.

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

8 **FACTS RELATING TO THE SPECIFIC PLAINTIFF**

9 6. On multiple occasions prior to January 1, 2016, Plaintiff Susan
10 Fitzpatrick purchased Milo’s Kitchen dog treats of various flavors, including
11 “Chicken Grillers” at Wal-Mart in Roseville, California.

12 7. The dog treats that Plaintiff purchased was labeled “Made in the USA.”
13 Plaintiff made these purchases relying on the labels on Defendants’ products stating
14 that they were “Made in the USA.”

15 8. The value of the product received by Plaintiff was less than the value
16 she paid, because the “Made in the USA” labeling was untrue.

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

18 9. Defendants manufacture and sell many forms of pet food in stores all
19 over the United States, including California. Among other places, these companies

1 sell their products in large retail and pet store chains including WalMart and
2 Petsmart.

3 10. Many of Defendants' products, including those marketed under the
4 "Milo's Kitchen" brand, are labeled as being made in the United States.

5 11. The labels stating that Defendants' pet treats are made in the United
6 States are false because Defendants' pet food contains ingredients sourced from
7 foreign countries. For example, some of these products contain tapioca, as well as
8 vitamin, mineral, and amino acid packs sourced outside the United States.

9 12. Defendants continue to sell pet food labeled as being made in the
10 United States.

11 13. The buying public's preference for pet foods and treats that are made
12 exclusively in the United States stems in part from the widely-publicized and
13 widespread recall of pet foods in 2007, when hundreds, and perhaps thousands, of
14 dogs died of renal failure after being fed pet foods containing gluten sourced from
15 China that turned out to be adulterated with toxic chemicals.

16 14. For this and other reasons, the buying public generally believes that
17 "Made in the U.S.A." products are safer to feed their animals than foreign-sourced
18 ingredients.

19 15. The Plaintiff and the Class received products from Defendants that
20 were worth less than what the Plaintiff and the Class paid for the products.

CLASS ACTION REQUIREMENTS

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16. Plaintiff brings this case on his own behalf, and on behalf of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class consists of all residents of the state of California who, within the applicable statute of limitations period, bought cat food products from defendants that contain ingredients sourced from other countries and that were marketed and sold as “Made in the U.S.A.,” “Made in America,” or any other labels indicating domestic origin. Excluded from the Class are plaintiff’s counsel and any employee of the court.

17. Pursuant to Rule 23(a)(1), numerosity is satisfied because the members of the Class are so numerous and geographically dispersed that joinder of all Class members is impracticable. There are thousands of class members in the state of California.

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

- a. whether Defendant participated in or committed the wrongful conduct alleged herein;
- b. whether Defendant’s acts, transactions, or course of conduct constitute the violations of law alleged herein;

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

4 d. whether the members of the Class are entitled to injunctive or other
5 equitable relief.

6 19. Plaintiff's claims are typical of the claims of all other members of the
7 Class and involve the same violations of law by Defendant as other Class members'
8 claims. Plaintiffs and members of the Class also sustained injury and damages
9 arising out of Defendant's common course of conduct complained of herein.
10 Accordingly, Plaintiffs satisfy the "typicality" requirements of Fed. R. Civ. P.
11 23(a)(3) with respect to the Class.

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

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

1 22. Pursuant to Rule 23(b)(2), Defendant has “acted or refused to act on
2 grounds that apply generally to the class, so that final injunctive relief or
3 corresponding declaratory relief is appropriate respecting the class as a whole.”

4 23. Pursuant to Rule 23(b)(3), questions of law or fact common to class
5 members predominate over any questions affecting only individual members, and a
6 class action is superior to other available methods for fairly and efficiently
7 adjudicating the controversy. Given the relatively small amount of damages suffered
8 by each class member, it is unlikely that any of the class members are interested in
9 individually controlling the prosecution or defense of separate actions. Plaintiff is
10 not aware of any other litigation against defendant asserting these claims, and doubts
11 any other litigation outside of the class action device will be initiated against
12 Defendant. It is desirable to hear all of these claims in one forum so that the class
13 members can receive a full recovery, which they would not outside of a class action
14 because of the relatively small amount of damages suffered by each class member,
15 such that it would make no economic sense for individual class members to pursue
16 individual claims in different forums. Plaintiff does not anticipate that there will be
17 significant difficulties in managing this class action that are any more serious than
18 other consumer class actions.

1 **CLAIMS FOR RELIEF**

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

3 24. All preceding paragraphs are incorporated by reference.

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

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

9 27. The named Plaintiff and the class members suffered injury as a result
10 of Defendants’ violation of the law because they paid more for the product than its
11 actual value.

12 28. As a result, Plaintiff and the class are entitled to an injunction against
13 continuing violations of the UCL and restitution of monies obtained.

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

15 29. All preceding paragraphs are incorporated by reference.

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

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

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

3 33. Each of Plaintiff’s and Class members’ purchases of Defendants’
4 products constituted a “transaction” as defined in Civil Code Section 1761(e).

5 34. Plaintiff and each class member suffered an injury in fact because they
6 received a product from Defendants that had less value than the paid for it, due to
7 the false labeling.

8 35. Defendants’ violations of the Consumer’s Legal Remedies Act set forth
9 herein were done with awareness of the fact that the conduct alleged was wrongful
10 and were motivated solely for increased profit. Defendants did these acts knowing
11 the harm that would result to Plaintiff and similarly situated persons, and Defendants
12 continue to commit these acts notwithstanding that knowledge.

13 36. Under the CLRA, Plaintiff and the class members are entitled to their
14 actual damages, subject to a minimum of \$1000, as well as an order enjoining the
15 unfair methods, acts, or practices, restitution of property, punitive damages and any
16 other relief that the court deems proper. Cal. Civ. Code § 1780(a).

17 37. The notice requirements to seek damages under the CLRA were met by
18 Plaintiffs through the certified mailing of the requisite notice, which was received
19 by the Defendants more than thirty days ago.

20 **PRAYER FOR RELIEF**

1 Based on the foregoing, plaintiff prays for the following relief:

2 A. An order certifying this as a California statewide class action pursuant
3 to Rule 23 of the Federal Rules of Civil Procedure;

4 B. An order appointing Plaintiff's counsel as Class Counsel to represent
5 the interests of the class;

6 C. After trial, an injunction ordering Defendant to stop its violations of
7 California law as alleged herein;

8 D. An award of monetary relief for the Class in the amount by which
9 Defendants have been unjustly enriched by its illegal conduct as alleged herein;

10 E. An award of actual and punitive damages under the CLRA;

11 F. An award of costs, including interest and reasonable attorneys' fees;

12 and

13 G. Such further or different relief as the Court may deem appropriate.

14 **JURY DEMAND**

15 Plaintiffs demand trial by struck jury of all issues herein.

16

17 Respectfully submitted,

18

19 /s/ John. E. Norris

20 John E. Norris

21 D. Frank Davis

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