

EXHIBIT A

CIVIL BUSINESS OFFICE 12
CENTRAL DIVISION

2013 JAN 25 P 4: 13

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA
JAN 25 13PM 18

F I L E D
Clerk of the Superior Court

JAN 25 2013

CLARK LAW FIRM

R. Craig Clark (State Bar No. 129219)
James M. Treglio (State Bar No. 228077)
Laura M. Cotter (SBN 259445)
600 B Street, Suite 2130
San Diego, CA 92101
Telephone: (619) 239-1321
Facsimile: (619) 239-5888

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

ROSALINDA M. GANDARA, an individual, on)
behalf of herself, and all persons similarly)
situated,)

Plaintiff,

v.

NESTLÉ PURINA PETCARE COMPANY, a)
Missouri Corporation with its principal place of)
business in the State of Missouri, WAGGIN')
TRAIN LLC, a Delaware Limited Liability)
Company, with its principal place of business in)
the State of Missouri , and DOES 1 through 100,)
Inclusive.)

Defendants.)

Case No. 37-2013-00032149-CU-NP-CTL

CLASS ACTION

**COMPLAINT FOR INJUNCTIVE RELIEF
AND RESTITUTION FOR VIOLATION
OF:**

- (1) **THE CONSUMERS LEGAL
REMEDIES ACT (CIVIL CODE §
1750, *et seq.*);**
- (2) **THE UNFAIR COMPETITION
LAW (BUSINESS AND
PROFESSIONS CODE § 17200, *et
seq.*);**

Plaintiff Rosalinda M. Gandara (collectively "Plaintiff"), individually, on behalf of all
others similarly situated, and on behalf of the general public, allege:

INTRODUCTION

1. This is a consumer class action arising from Defendants' unlawful over-the-counter
sale of Waggin Train® and Canyon Creek Ranch® brand chicken jerky dog treats (hereinafter

1 "Chicken Jerky Products") which unlawfully contain antibiotics not approved for use in the United
2 States.

3 2. Defendants Nestlé Purina PetCare Company (hereinafter "Purina"), its wholly
4 owned subsidiary Waggin' Train LLC, and DOES 1 to 100 (collectively, "Defendants"),
5 collectively conspired to sell these products to the public despite the presence of unlawful
6 antibiotics.

7
8 **THE PARTIES**

9 3. Plaintiff Rosalinda M. Gandara is an individual citizen and resident of the State of
10 California who, at all relevant times herein, maintained his permanent place of residence in San
11 Diego County, California. Plaintiff Rosalinda M. Gandara has suffered injury in fact by losing
12 money as the result of her purchase of Waggin' Train® brand Chicken Jerky Products, which she
13 would have not purchased had she known that they contained illegal antibiotics.

14 4. Defendant Purina is a corporation organized and existing under the laws of the state
15 of Missouri with its principal place of business at Checkerboard Square, St. Louis, Mo 63164-
16 0001.

17 5. Defendant Waggin' Train LLC is a limited liability company organized and existing
18 under the laws of the state of Delaware, with its principal place of business at Checkerboard
19 Square, St. Louis, Mo 63164-0001. Defendant Waggin' Train LLC is a wholly owned subsidiary
20 of Purina.

21 6. At all relevant times, Defendants Purina and Waggin' Train LLC were engaged in
22 substantial and not isolated activities within the state of California. At all relevant times,
23 Defendants Purina and Waggin' Train LLC committed tortious acts within the state of California.
24 Defendants Purina and Waggin' Train LLC also, at all relevant times, caused injury to persons or
25 property within the state of California arising out of an act or omission outside of California while
26 engaged in solicitation activities within California or while it processed, serviced or manufactured
27 products used or consumed in California in the ordinary course of commerce, trade or use.
28

1 7. Plaintiff alleges, based on information and belief, that at all relevant times Does 1
2 through 100 were agents, employee, suppliers, distributors, designers, engineers, retailers, sellers,
3 franchisees, representatives, partners, and related or affiliated entities or providers of services to or
4 on behalf of Defendants Purina and Waggin' Train LLC. Plaintiff does not know the true names
5 and capacities of Defendants Does 1 through 100, and Plaintiff will seek leave to amend this
6 Complaint to allege such names and capacities as soon as they are ascertained.

7
8 **JURISDICTION AND VENUE**

9 8. The jurisdiction of this Court arises under Code of Civil Procedure section 410.10
10 because Defendants Purina and Waggin' Train LLC conducts business in and sells a substantial
11 number of Chicken Jerky Products containing illegal antibiotics in the State of California.
12 Although Plaintiff and each member of the putative Class have suffered monetary damages as a
13 result of Defendants' unlawful conduct, no individual member of the Class has suffered damages
14 greater than or equal to \$75,000, exclusive of interest and costs.

15 9. Venue is proper in this Court because at all relevant times, Defendants were
16 engaged in substantial and not isolated activities within this county. At all relevant times,
17 Defendants committed tortious acts within this county. Defendants also, at all relevant times,
18 caused injury to persons or property within this county arising out of an act or omission outside of
19 California while engaged in solicitation activities within this county or while it processed, serviced
20 or manufactured products used or consumed in this county in the ordinary course of commerce,
21 trade or use.

22 **FACTUAL ALLEGATIONS**

23 10. On several occasions over the past four years, Plaintiff Rosalinda M. Gandara
24 purchased several bags of Chicken Jerky Products under the brand names Waggin Train® and
25 Canyon Creek Ranch®. She purchased these Chicken Jerky Products at WalMart stores located in
26 the cities of San Diego and La Mesa, both of which are located in the County of San Diego.

27 11. Defendants sell Chicken Jerky Products under the brand names Waggin Train® and
28 Canyon Creek Ranch®. From the beginning of 2010, and continuing through 2012, the United

1 States Federal Drug Administration (hereinafter "FDA") received reports of dogs suffering from
2 renal failure, among other maladies, after consuming these Chicken Jerky Products.

3 12. After investigation by the FDA, and by the New York State Department of
4 Agriculture & Markets (NYSDAM), NYSDAM found the Chicken Jerky Products produced,
5 distributed and sold by the Defendants contained significant residue of antibiotics, including
6 sulfaclozine, tilmicosin, trimethoprim, enrofloxacin and sulfaquinoxaline. Plaintiff is informed and
7 believes that none of these antibiotics are approved for use on dogs, and even if they were, these
8 antibiotics may not be sold without a prescription from a veterinarian. Moreover, trimethoprim,
9 enrofloxacin and sulfaquinoxaline are not approved by the Federal Drug Administration for use in
10 food animals, such as chickens.

11 13. The sale by Defendants of the Chicken Jerky Products containing illegal antibiotics
12 over the counter directly to consumers without a prescription from a medical doctor implies that
13 the products are approved for sale under law and legally sold over the counter. At all relevant
14 times herein, Plaintiff believed the Chicken Jerky Products purchased from the Defendants were
15 legal.

16 14. On January 9, 2013, the Defendants, noting the illegality of the antibiotics found in
17 the Chicken Jerky Products, recalled all nonsold Chicken Jerky Products from store shelves
18 nationwide. Attached herein at Exhibit 1 is a true and correct copy of the press release written and
19 released by the Defendants regarding the recall of all Chicken Jerky Products sold under the brand
20 names of Waggin Train® and Canyon Creek Ranch®.

21 CLASS ACTION ALLEGATIONS

22 15. Plaintiff brings this action on behalf of themselves, the general public, and all others
23 similarly situated. Plaintiff seeks to represent the following class:

24 All persons who purchased from Defendants in the State of California
25 Waggin' Train and Canyon Creek Ranch brand Chicken Jerky Products.

26 All Class members are hereinafter referred to as the "Class." Subject to additional information
27 obtained through further investigation and discovery, the foregoing definition of the Class may be
28 expanded or narrowed by amendment or amended complaint. Specifically excluded from the

1 proposed Class are Defendants, their officers, directors, agents, trustees, parents, children,
2 corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or
3 entities controlled by Defendants, and their heirs, successors, assigns, or other persons or entities
4 related to or affiliated with Defendants and/or their officers and/or directors, or any of them; the
5 Judge assigned to this action, any member of the Judge's immediate family.

6 16. This action has been brought and may be properly maintained as a class action,
7 pursuant to the provisions of the California Code of Civil Procedure Section 382 and California
8 Civil Code Section 1781.

9 17. Numerosity – Code Civ. Proc. § 382; Civ. Code § 1781(b)(1): Members of the
10 Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and
11 believes, and on that basis allege, that the proposed class contains thousands of members. The
12 precise number of Class members is unknown to Plaintiff. Class members are likely to be known
13 by Defendants, however, and thus, may be notified of the pendency of this action by mail,
14 supplemented (if deemed necessary and appropriate by the Court) by published notice.

15 18. Existence and Predominance of Commons Questions of Fact and Law – Code of
16 Civ. Proc. § 382; Civ. Code § 1781(b)(2): Common questions of law and fact exist as to all
17 members of the Class. These questions predominate over the questions affecting individual Class
18 members. These common legal and factual questions include: (1) Whether Defendants' practices
19 of selling the antibiotics not approved for use with dogs in the Chicken Jerky Products as described
20 above violate the Consumer Legal Remedies Act and/or the Unfair Competition Law; (2) Whether
21 Defendants have been unjustly enriched by their sale of the Chicken Jerky Products to Plaintiff and
22 the members of the Class; and, (3) Whether Plaintiff and the Class members are entitled to
23 injunctive relief prohibiting the challenged practices and enjoining such practices in the future.

24 19. Typicality – Code Civ. Proc. § 382; Civ. Code § 1781(b)(3): Plaintiff's claims are
25 typical of the claims of the Class since Plaintiff purchased Chicken Jerky Products from
26 Defendants as did members of the Class. Furthermore, Plaintiff and all members of the Class
27 sustained injury in fact by losing money as a result of Defendants' wrongful conduct.
28

1 20. Adequacy – Code Civ. Proc. § 382; Civ. Code § 1781(b)(4): Plaintiff is an adequate
2 representative of the Class because her interests do not conflict with the interests of the Class she
3 seeks to represent; she has retained counsel competent and experienced in complex class action
4 litigation; and she intends to prosecute this action vigorously. The interests of the Class will be
5 fairly and adequately protected by Plaintiff and her counsel.

6 21. Superiority – Code Civ. Proc. § 382: The class action is superior to other available
7 means for the fair and efficient adjudication of the claims of Plaintiff and members of the Class.
8 Although the monetary injury suffered by each individual Class member may total several hundred
9 dollars, injury of such magnitude is nonetheless relatively small given the burden and expense of
10 individual prosecution of the complex and extensive litigation necessitated by Defendants'
11 conduct. It would be virtually impossible for members of the Class individually to redress
12 effectively the wrongs done to them. Even if the members of the Class could afford such
13 individual litigation, the court system could not. Individualized litigation presents a potential for
14 inconsistent or contradictory judgments. Individualized litigation increases the delay and expense
15 to all parties, and to the court system, presented by the complex legal and factual issues of the case.
16 By contrast, the class action device presents far fewer management difficulties, and provides the
17 benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

18 **FIRST CAUSE OF ACTION**
19 **[Violation of the Consumers Legal Remedies Act**
20 **Civil Code § 1750 *et seq.*]**

21 22. The allegations of the preceding paragraphs are incorporated by reference as if fully
22 set forth herein.

23 23. The Chicken Jerky Products are “goods” within the meaning of the Consumer Legal
24 Remedies Act, Civil Code sections 1761(a) and 1770 (the “CLRA”).

25 24. Each Defendant is a “person” within the meaning of the CLRA, Civil Code sections
26 1761(c) and 1770.

27 25. Purchasers of the Chicken Jerky Products, including Plaintiff Gandara, and the
28 Class, are “consumers” within the meaning of the CLRA, Civil Code sections 1761(d) and 1770.

1 26. Plaintiff Gandara and each and every Class member's purchases of the Chicken
2 Jerky Products constitute "transactions" within the meaning of the CLRA, Civil Code sections
3 1761(e) and 1770.

4 27. Defendants' unfair or deceptive acts or practices as described herein, were
5 undertaken by Defendants in transactions intended to result or which resulted in the sale of goods
6 to consumers, and were intended to induce, and did in fact induce, Plaintiff Gandara and the Class
7 to purchase for personal use such products, which they would not have otherwise purchased.

8 28. Defendants' practices, acts and course of conduct with respect to their distribution
9 and sale of the Chicken Jerky Products violate the CLRA in that Defendants' sale of the Chicken
10 Jerky Products over the counter as a legal nutritional supplement constitutes: (1) a
11 misrepresentation as to the Chicken Jerky Products' source, sponsorship, approval, or certification
12 in violation of Civil Code § 1770(a)(2); (2) a representation, whether express or implied, that the
13 Chicken Jerky Products have sponsorship, approval, characteristics, ingredients, uses or benefits
14 which they do not have in violation of Civil Code § 1770(a)(5); and (3) a representation that the
15 Chicken Jerky Products are of a particular standard, quality, or grade, or of a particular style or
16 model, when they are of another in violation of Civil Code § 1770(a)(7).

17 29. Defendants' practices, acts and course of conduct in connection with its sale of the
18 Chicken Jerky Products are likely to mislead a reasonable consumer acting reasonably under the
19 circumstances to his or her detriment;

20 30. As a direct and proximate result of Defendants' violations of law, Plaintiff Gandara
21 and the Class have suffered damages by not receiving what was promised to them in exchange for
22 the purchase of the Chicken Jerky Product, and in fact receiving a product that unlawfully included
23 the illegal controlled substances sulfaclozine, tilmicosin, trimethoprim, enrofloxacin and
24 sulfaquinoxaline.

25 31. Per the Court of Appeal in *Steroid Hormone Product Cases* (2010) 181 Cal. App.
26 4th 145, such a representation of legality as made by Defendants here, is a material
27 misrepresentation.
28

1 The "damage" Martinez alleged in this case is that, in reliance on GNC's deceptive
2 conduct, he bought an illegal product he would not have bought had he known it
3 was illegal. He does not seek actual damages, but instead seeks restitution. He
4 correctly argues that he is entitled to show that GNC's alleged deceptive conduct
5 caused the same damage to the class by showing that the alleged misrepresentation
6 was material, even if GNC might be able to show that some class members would
7 have bought the products even if they had known they were unlawful to sell or
8 possess without a prescription.

9 *Steroid Hormone Product Cases* (2010) 181 Cal. App. 4th 145, 156-57

10 32. By filing this Complaint, Plaintiff seek an order enjoining Defendants from the
11 continued sale of Chicken Jerky Products; an Order enjoining Defendants from collecting money
12 from the Class from the sale of such products; and an Order requiring Defendants to notify the
13 class of its violations of the CLRA and the remedy it will provide to them. Plaintiff and the Class
14 are entitled to equitable relief in the form of restitutionary disgorgement of all earnings, profits,
15 compensation and benefits obtained by Defendants as a result of its violations of the CLRA, along
16 with other appropriate relief including reasonable attorneys' fees and expenses.

17 **SECOND CAUSE OF ACTION**

18 **[Violation of the Unfair Competition Law,
19 Business and Professions Code § 17200, *et seq.*]**

20 33. The allegations of the preceding paragraphs are incorporated by reference as if fully
21 set forth herein.

22 34. Defendants' illegal sale of the antibiotics sulfaclozine, tilmicosin, trimethoprim,
23 enrofloxacin and sulfaquinoxaline in their Chicken Jerky Products in the State of California
24 constitutes unfair, unlawful and fraudulent acts and practices in violation of the Unfair Competition
25 Law, Business & Professions Code Sections 17200 *et seq.* (the "UCL"). The UCL prohibits
26 "[A]ny unlawful, unfair or fraudulent business act or practice . . ." Cal. Bus. & Prof. Code §
27 17200.

28 35. Specifically, Defendants committed unlawful acts and practices in the course of
conducting business by violating state and federal statutes by selling sulfaclozine, tilmicosin,
trimethoprim, enrofloxacin and sulfaquinoxaline without a prescription, and when such products
are not approved for use by dogs.

1 36. In so doing, Defendants, each of them, violated the Food, Drug and Cosmetic Act,
2 21 U.S.C. §301, *et seq.*, related amendments and codes, federal regulations thereunder; the
3 Sherman Food, Drug and Cosmetic law, and California Health & Safety Code §§110545, 110550,
4 110555, 110560, 110575, 110620, 110625 and 110630, for the unlawful sale of adulterated food.

5 37. Besides violating the Health & Safety Code, Defendants' practices, acts and course
6 of conduct with respect to their distribution and sale of the Chicken Jerky Products also violate the
7 CLRA in that Defendants' sale of the Chicken Jerky Products over the counter as a legal nutritional
8 supplement (or treat) constitute: (1) a misrepresentation as to the Chicken Jerky Products' source,
9 sponsorship, approval, or certification in violation of Civil Code § 1770(a)(2); (2) a representation,
10 whether express or implied, that the Chicken Jerky Products have sponsorship, approval,
11 characteristics, ingredients, uses or benefits which they do not have in violation of Civil Code §
12 1770(a)(5); and (3) a representation that the Chicken Jerky Products are of a particular standard,
13 quality, or grade, or of a particular style or model, when they are of another in violation of Civil
14 Code § 1770(a)(7).

15 38. Plaintiff reserves the right to allege other violations of law that constitute unlawful
16 acts or practices.

17 39. Plaintiff has standing to bring this cause of action under § 17200 because Plaintiff
18 suffered injury in fact by losing money as a result of Defendants' unlawful sale of an illegal
19 substance.

20 40. The above-described unfair, unlawful and fraudulent business practices conducted
21 by Defendants present a threat and likelihood of harm and deception to members of the Class and
22 the general public in that Defendants have systematically perpetrated and continue to perpetrate the
23 unfair, unlawful and fraudulent conduct upon members of the public by selling the Chicken Jerky
24 Products over the counter as legal nutritional supplements.

25 41. Pursuant to Business and Professions Code Sections 17200 and 17203, Plaintiff, on
26 behalf of herself, the Class and the general public, seek an order of this Court compelling
27 Defendants to provide public notice of the illegality of the Chicken Jerky Products. Plaintiff
28

1 additionally requests an order awarding Plaintiff and members of the Class restitutionary
2 disgorgement of all monies wrongfully acquired by Defendants by means of such unlawful acts and
3 practices as permitted under California law, so as to deter Defendants and to rectify Defendants'
4 unfair and unlawful practices and to restore any and all monies to Plaintiff and members of the
5 Class and to the general public, which are still retained by Defendants, plus interest and attorneys'
6 fees and costs pursuant to, *inter alia*, Code of Civil Procedure § 1021.5.

7
8 **PRAYER**

9 WHEREFORE, Plaintiff pray for the following relief:

- 10 1. For an order certifying that this action may be maintained as a class action against
11 Defendants, appointing Plaintiff and her counsel to represent the Class, as alleged
12 herein, and directing that reasonable notice of this action be given by Defendants to the
13 members of the Class;
- 14 2. For restitutionary disgorgement and damages, according to proof, including
15 prejudgment interest thereon as allowed by law;
- 16 3. That pursuant to sections 17203 and 17204 of the Business and Professions Code,
17 Defendants be permanently enjoined from performing or proposing to perform any of
18 the aforementioned acts of unfair and deceptive business practices;
- 19 4. For an order providing equitable and injunctive relief permanently enjoining Defendants
20 from distributing or selling the Chicken Jerky Products and any other product
21 containing the antibiotics sulfaclozine, tilmicosin, trimethoprim, enrofloxacin and
22 sulfaquinoxaline in the State of California;
- 23 5. For an order providing equitable and injunctive relief requiring Defendants to provide
24 public notice of the illegality of the Chicken Jerky Products;
- 25 6. That pursuant to section 17203 of the Business and Professions Code and the Court's
26 inherent equitable power, Defendants be ordered to provide restitutionary disgorgement
27 of all monies received by Defendants as a result of its sales of the Chicken Jerky
28 Products in the State of California;

- 1 7. That pursuant to section 17206 of the Business & Professions Code, section 1021.5 of
2 the Code of Civil Procedure, and the Court's inherent equitable power, Plaintiff
3 recovers her costs, including costs of suit, and reasonable attorneys' fees; and
4 8. That Plaintiff be entitled to such other and further relief as this Court may deem just and
5 proper.
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7 DATED: January 25, 2013

CLARK LAW FIRM

8
9 By: _____


R. Craig Clark

James M. Treglio

Laura M. Cotter

Attorneys for the Plaintiff, Rosalinda M. Gandara
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Voluntary Withdrawal FAQ's »

A Message from the President of Waggin' Train »

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Nestlé Purina PetCare Company to voluntarily withdraw Waggin' Train® and Canyon Creek Ranch® brand dog treat products

St. Louis, Missouri, January 9, 2013 . . . Nestlé Purina PetCare Company and its wholly owned subsidiary Waggin' Train, LLC today announced it is voluntarily withdrawing its Waggin' Train and Canyon Creek Ranch brand dog treats sold in the United States until further notice.

The Company is taking this action after learning this week that the New York State Department of Agriculture & Markets (NYSDAM) found trace amounts of antibiotic residue in samples of Waggin' Train and Canyon Creek Ranch chicken jerky products. These antibiotics are approved for use in poultry in China and other major countries, including European Union member states, but are not among those approved in the U.S. Antibiotics are commonly used globally, including in the United States, when raising animals fit for human consumption. Waggin' Train and Canyon Creek Ranch products are safe to feed as directed. However, due to regulatory inconsistencies among countries, the presence of antibiotic residue is technically considered an adulteration in the United States. This finding does not pose a safety risk to pets.

New York State authorities initially requested that the Company remove Waggin' Train and Canyon Creek Ranch chicken jerky treats from retail locations in the state of New York, which we have agreed to do. In addition, because of the differences in U.S. and Chinese regulations, Nestlé Purina decided to conduct a nationwide voluntary withdrawal.

"All of us at Waggin' Train care deeply about pets and their owners, and the quality of our products is of the utmost importance," said Nina Leigh Krueger, President, Waggin' Train LLC. "Waggin' Train has served millions of pets and their owners very well. In the final analysis, our Company and our loyal consumers must have total confidence in the products we sell and feed our pets. Once we understand and determine how to comply with the technicalities of different regulatory frameworks, we will work with all appropriate parties to define the best way to supply the market."

Nestlé Purina contacted the U.S. Food and Drug Administration (FDA) regarding NYSDAM's findings. There is no indication that the trace amounts of antibiotic residue are linked to the FDA's ongoing investigation of chicken jerky products. The trace amounts of antibiotic residue (in the parts-per-billion range) do not pose a health or pet safety risk.

No other Purina treats or pet food products are affected by this withdrawal. In addition, Canyon Creek Ranch dog and cat foods, which are manufactured in the United States, are not included in this withdrawal.

For product refund or more information call our Office of Consumer Affairs at 1-800-982-0704 or go to www.waggintrainbrand.com.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROSALINDA M. GANDARA,

Plaintiff,

v.

NESTLE PURINA PETCARE
COMPANY, *et al.*,

Defendants.

Case No. 13-cv-487-L(WMC)

**ORDER GRANTING MOTION TO
TRANSFER VENUE TO THE
NORTHERN DISTRICT OF
ILLINOIS [DOC. 9]**

On March 4, 2013, Defendants Nestle Purina PetCare Company (“Purina”) and Waggin’ Train, LLC filed a motion to transfer this action to the Northern District of Illinois under to 28 U.S.C. § 1404(a). Plaintiff Rosalinda M. Gandara opposes.

The Court found this motion suitable for determination on the papers submitted and without oral argument in accordance with Civil Local Rule 7.1(d.1). (Doc. 16.) For the following reasons, the Court **GRANTS** Defendants’ motion to transfer this action to the Northern District of Illinois.

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1 **I. BACKGROUND**

2 This is a consumer class action. (Compl. ¶ 1.) Plaintiff is a resident of California. (*Id.* ¶
3 3.) Purina is a Missouri corporation with its principle place of business in St. Louis, Missouri.
4 (*Id.* ¶ 4.) Waggin' Train is a Delaware limited liability company with its principle place of
5 business in St. Louis, Missouri, and a wholly owned subsidiary of Purina. (*Id.* ¶ 5.) Defendants
6 market and sell Waggin' Train® brand chicken jerky dog treats (hereinafter, "Chicken Jerky
7 Treats") allegedly containing illegal antibiotics in the State of California. (*Id.* ¶ 8.)

8 Plaintiff had been purchasing the Chicken Jerky Treats for the past four years in Wal-
9 Mart stores located in San Diego County. (Compl. ¶ 10.) The United States Federal Drug
10 Administration ("FDA") investigated reports of dogs suffering from several maladies after
11 consuming Chicken Jerky Treats and found that the products contained residue from antibiotics
12 that Plaintiff believes cannot be sold without a prescription from a veterinarian. (*Id.* ¶ 12.)
13 Additionally, Plaintiff alleges that some of these antibiotics are "not approved by the Federal
14 Drug Administration for use in food animals[.]" (*Id.*) According to Plaintiff, she "suffered injury
15 in fact by losing money as the result of her purchase of Waggin' Train® brand Chicken Jerky
16 Products, which she would have not purchased had she known that they contained illegal
17 antibiotics." (*Id.* ¶ 3.)

18 On January 25, 2013, Plaintiff initiated this action in the San Diego Superior Court. In her
19 complaint, she alleges two causes of action: (1) Violation of the Consumers Legal Remedies Act
20 ("CLRA"), California Civil Code § 1750; and (2) Violation of California's Unfair Competition
21 Law ("UCL"), California Business and Professions Code § 17200. On February 28, 2013,
22 Defendants removed the action to this Court.

23 Defendants move to transfer this action to the United States District Court for Northern
24 District of Illinois under 28 U.S.C. § 1404(a) where a consolidated, earlier-filed putative class
25 litigation is pending. Plaintiff opposes.

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II. LEGAL STANDARD

Section 1404(a) of Title 28 of the United States Code provides that even when venue is proper, the court has discretion to transfer an action “[f]or the convenience of parties and witnesses, in the interest of justice, . . . to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The purpose of this section is to “prevent the waste ‘of time, energy and money’ and to ‘protect litigants, witnesses and the public against unnecessary inconvenience and expense.’” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (quoting *Cont’l Grain Co. v. Barge F.B.L.-585*, 364 U.S. 19, 26-27 (1960)). The party requesting the transfer bears the burden of showing that the balance of conveniences weighs heavily in favor of the transfer in order to overcome the strong presumption in favor of the plaintiff’s choice of forum. *Piper Aircraft v. Reyno*, 454 U.S. 235, 255-56 (1981); *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

To support a motion to transfer under § 1404(a), the moving party must first show the proposed transferee court possesses subject matter jurisdiction over the action, the parties would be subject to personal jurisdiction in the transferee court, and venue would have been proper in the transferee court. *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960); *A.J. Indus., Inc. v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 503 F.2d 384, 386 (9th Cir. 1974). Once this threshold requirement has been established, the Court next looks at whether the convenience of parties and witnesses, and the interests of justice favor transfer. 28 U.S.C. § 1404(a). In the Ninth Circuit, courts weigh several considerations when determining whether transfer is appropriate: (1) plaintiff’s choice of forum; (2) convenience of the parties; (3) convenience of the witnesses and availability of compulsory process; (4) ease of access to the evidence; (5) feasibility of consolidation of other claims; (6) familiarity of each forum with the applicable law; (7) any local interest in the controversy; and (8) the relative court congestion and time to trial in each forum. *Decker Coal*, 805 F.2d at 843; see *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000), *cert. denied*, 531 U.S. 928 (2000).

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III. DISCUSSION

Plaintiff does not contest whether this action could have initially been brought in the Northern District of Illinois, nor is there a dispute over subject matter jurisdiction and whether the parties would be subject to personal jurisdiction in the transferee court. Thus, Defendants readily satisfy the threshold requirement of showing that the action could have been originally brought in the Northern District of Illinois. *See Hoffman*, 363 U.S. at 344; *A.J. Indus.*, 503 F.2d at 386.

Defendants instead begin by arguing that the transfer should be granted in the interest of justice and for the convenience of the parties and witnesses. (Defs.' Mot. 11:19–19:8.) Plaintiff challenges these arguments. (Pl.'s Opp'n 4:22–9:4.) The Court addresses these issues below.

A. Possibility of Consolidation with Other Claims

“The pendency of related actions in the transferee forum is a significant factor in considering the interest of justice factor.” *Jolly v. Purdue Pharma L.P.*, No. 05-CV-1452H, 2005 WL 2439197, at *5 (N.D. Cal. Oct. 19, 2010). Additionally, “[c]oncerns over judicial efficiency are paramount” when related actions are overlapping putative class actions. *Hawkins v. Gerber Prods. Co.*, No. 12-cv-465-MMA(JMA), 2013 WL 627066, at *3 (S.D. Cal. Feb. 20, 2013) (quoting *Johansson v. Cent. Garden & Pet Co.*, No. C 10-03771 MEJ, 2010 WL 4977725, at *2 (N.D. Cal. Dec. 2, 2010)).

The claims in the pending consolidated Northern District of Illinois class action seek to recover the price of the product. *See Adkins et al. v. Nestle Purina PetCare Company et al.*, No. 12-cv-2871 (N.D. Ill.). The *Adkins* plaintiffs argue that by offering the treats for sale as wholesome and safe for consumption, Purina falsely marketed the products to consumers. But here, Plaintiff seeks refunds for the Chicken Jerky Treat that she purchased based on Defendants' alleged unlawful business practices under California law, which she contends is substantially different from the fraudulent-sale claim made in the *Adkins* complaint and thus cannot be combined. At the core, these allegations are strikingly similar and will require much of the same discovery. Pet owners will not buy treats that contain prohibited substances just as they

1 would not buy treats that are marketed as safe, when they are in fact not fit for consumption.

2 Furthermore, the Northern District of California recently transferred a putative class
3 action to the Northern District of Illinois that contains the same claims asserted in this action.
4 *See Matin v. Nestle Purina PetCare Company, et al.* No. 12-cv-6465-THE (N.D. Cal.).
5 Specifically, the *Matin* plaintiffs assert claims under California's CLRA and UCL, the same
6 claims asserted by Plaintiff here, which Plaintiff conveniently overlooks in her attempt to
7 distinguish the cases. The *Matin* plaintiffs' complaint also involves the same product for these
8 violations. As a result of the overlap between this action and the Northern District of Illinois'
9 consolidated action, which now includes claims for violations of California's CLRA and UCL, a
10 transfer to the Northern District of Illinois would greatly reduce the cost of discovery and
11 prevent inconsistent judgments. *See generally Van Dusen*, 376 U.S. at 616 (stating the purpose
12 of § 1404(a) is to "prevent the waste of time, energy and money"); *see also Jolly*, 2005 WL
13 2439197, at *2.

14 Three similar cases against Defendants have already been consolidated and
15 transferred—including two cases from the Northern District of California—and are currently
16 pending in the Northern District of Illinois. This action similarly overlaps with the first-filed
17 *Adkins* action. The products, core facts, and parties involved substantially overlap. Therefore, the
18 Court finds that the transfer of this action to the Northern District of Illinois would serve the
19 interest of justice by promoting judicial efficiency through consolidating pre-trial proceedings.
20 *See Hawkins*, 2013 WL 627066, at *2.

21 22 **B. Feasibility of Prejudicial Application of California Law**

23 Plaintiff contends that the Northern District of Illinois is ill-suited to interpret California
24 law and that their attempt to do so will result in a prejudicial application. She is especially
25 concerned with the "unique" nature of California's UCL. While "it seems logical that '[a]
26 California district court is more familiar with California law than district courts in other states'. .
27 . 'courts in [one state] are fully capable of applying [another state's] substantive law.'" *Hawkins*,
28 2013 WL 627066, at *5 (quoting *In re Ferrero Litig.*, 768 F. Supp. 2d 1074, 1081 (S.D. Cal.

2011); *Metz v. U.S. Life Ins. Co. in City of New York*, 674 F. Supp. 2d 1141, 1148 (C.D. Cal. 2009)). The Court does not find that this concern outweighs the benefits that would be gained by having similar issues adjudicated by the same court.

Consequently, Plaintiff's argument neglects the fact that several California actions have already been transferred to the Northern District of Illinois, so the court has already been familiarized with California law. The Northern District of California transferred the *Matin* action to the Northern District of Illinois, finding it capable of applying California law. This Court will follow the Northern District of California's decision and defer to the Northern District of Illinois.

C. Convenience for the Parties and Witnesses

"The question of which forum will better serve the interest of justice is of predominant importance on the question of transfer, and the factors involving convenience of parties and witnesses are in fact subordinate." *Madani v. Shell Oil Co.*, No. C07-04296 MJJ, 2008 WL 268986, at *2 (N.D. Cal. Jan. 30, 2008) (quotation marks omitted); *see also Mussetter Distrib., Inc. v. DBI Beverage Inc.*, No. CIV 09-1442 WBS EFB, 2009 WL 1992356, at *6 (E.D. Cal. July 8, 2009). "[T]he court should consider private and public interest factors affecting convenience of the forum." *Decker Coal*, 805 F.2d at 843 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981)). Private factors include the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). Public factors include "the administrative difficulties flowing from court congestion; the 'local interest in having localized controversies decided at home'; the interest of having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty." *Piper Aircraft*, 454 U.S. at 251 n.6 (quoting *Gulf Oil Corp.*,

330 U.S. at 509).

It is highly unlikely that the alleged thousands of members of the putative class will provide witness testimony in Illinois or anywhere else as Plaintiff suggests. (*See* Pl.'s Opp'n 6:18–21.) Plaintiff's contention that Defendants will be inconvenienced also strains credulity. Defendants chose the Northern District of Illinois because they already face an action there and it is where many of the same required witnesses and documents for this case are currently located. (*Id.* at 6:21–7:4.) Defendants would not have chosen to request a transfer to the Northern District of Illinois if it would be a great inconvenience to them.

Moreover, any deference that Plaintiff is given for her choice of forum is substantially depleted since she brought her suit on behalf of a putative class. *See, e.g., Hawkins*, 2013 WL 627066, at *4. There are no other substantial ties to California that warrant denying the motion other than Plaintiff's initial purchase of the Chicken Jerky Treats, since discovery will be largely conducted outside of the state. Accordingly, the Court finds that the perceived inconvenience of the parties is insufficient to justify denying the transfer of venue. *See Van Dusen*, 376 U.S. at 622 (noting that it is the role of a court to balance § 1404(a) factors in a case-by-case basis to promote convenience and fairness).

IV. CONCLUSION AND ORDER

For the reasons set forth above, the Court **GRANTS** Defendants' motion to transfer venue. (Doc. 9.) The Clerk of the Court shall transfer this case to the Northern District of Illinois.

IT IS SO ORDERED.

DATED: June 3, 2013


M. James Lorenz
United States District Court Judge

COPY TO:
HON. WILLIAM MCCURINE, JR.
UNITED STATES MAGISTRATE JUDGE
ALL PARTIES/COUNSEL