

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COLONY INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	No.
)	
EVANGER’S DOG AND CAT FOOD COMPANY, INC., NUTRIPACK, LLC, PARTY ANIMAL, INC., WENDY BLACK, and NICOLE and GUY MAEL,)	
)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY JUDGMENT AND RESCISSION

NOW COMES the Plaintiff, COLONY INSURANCE COMPANY, by and through its attorneys, Cray Huber Horstman Heil and VanAusdal LLC, pursuant to 28 U.S.C. Section 2201, et seq., and for its complaint for declaratory judgment against the Defendants EVANGER’S DOG AND CAT FOOD COMPANY, INC., NUTRIPACK, LLC, PARTY ANIMAL, INC., WENDY BLACK, and NICOLE AND GUY MAEL, states as follows:

I. PARTIES

1. COLONY is a Virginia corporation with its principal place of business located in Richmond, Virginia. At all relevant times, COLONY was authorized to do business and was doing business as an insurance company in the state of Illinois, and issued policies of insurance as set forth more fully below.

2. Defendant EVANGER’S DOG AND CAT FOOD COMPANY, INC. is an Illinois corporation with its principal place of business located in Wheeling, Cook County,

Illinois. EVANGER'S is the named insured under certain policies of commercial general liability insurance issued by COLONY.

3. Defendant NUTRIPACK, LLC is an Illinois limited liability company with its principal place of business located in Markham, Cook County, Illinois. NUTRIPACK has been named along with EVANGER'S in certain lawsuits, as more fully set forth below.

4. COLONY'S investigation indicates the members of NUTRIPACK, LLC are citizens of the state of Illinois. Holly Sher and Joel Sher appear to be members of NUTRIPACK, LLC and/or Sher Services Company, Incorporated, the entity listed by the Illinois Secretary of State as the manager of NUTRIPACK, LLC. The Illinois Secretary of State lists Joel A. Sher as the President of Sher Services Company, Incorporated and Holly Sher as its secretary, with both having addresses in Lincolnwood, Cook County, Illinois.

5. Defendant PARTY ANIMAL, INC. is a California corporation with its principal place of business located in West Hollywood, California. PARTY ANIMAL has sued EVANGER'S in one of the underlying lawsuits, and is named as a defendant in another of the underlying lawsuits.

6. Defendant WENDY BLACK is a citizen of the state of Texas and is the named class representative in one of the underlying lawsuits. WENDY BLACK is joined herein as a nominal defendant. In the event WENDY BLACK agrees in writing to be bound by the outcome of this case, COLONY will voluntarily dismiss her.

7. Defendants NICOLE and GUY MAEL are citizens of the state of Washington and are named as the class representatives in one of the underlying lawsuits. NICOLE and GUY MAEL are joined herein as nominal defendants. In the event NICOLE and GUY MAEL agree in writing to be bound by the outcome of this case, COLONY will voluntarily dismiss them.

II. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. Section 1332 (a)(1) because plaintiff and defendants are citizens of different states and the matter in controversy exceeds the sum or amount of \$75,000, exclusive of interest and costs.

9. Venue is proper under 28 U.S.C. Section 1391(b)(2) and (b)(3) because a substantial part of the events or omissions giving rise to the claim occurred in this District, and because one or more Defendants are subject to this Court's personal jurisdiction in this District.

III. THE UNDERLYING LAWSUITS

10. On May 15, 2017, PARTY ANIMAL filed suit in the United States District Court for the Central District of California against EVANGER'S and NUTRIPACK (the Party Animal Lawsuit). A true and accurate copy of the complaint in the Party Animal Lawsuit, without exhibits, is attached to this Complaint and incorporated by reference as Exhibit A.

11. In general terms, the Party Animal Lawsuit alleges PARTY ANIMAL had an ongoing business relationship with EVANGER'S over the last ten years, and that EVANGER'S manufactured and labeled pet food products to specification for PARTY ANIMAL, which pet food products were in turn sold to PARTY ANIMAL's customers.

12. PARTY ANIMAL further alleges it was informed by a Texas retailer in April 2017 that samples of certain dog food sold by PARTY ANIMAL had tested positive for pentobarbital, a barbiturate commonly used for medical purposes. In large doses, it is commonly used to euthanize animals. PARTY ANIMAL alleges that EVANGER'S and/or NUTRIPACK were responsible for the presence of pentobarbital in pet food products which PARTY ANIMAL received from EVANGER'S and then sold or distributed to its customers unknowingly. As a result of the above, PARTY ANIMAL alleges it was forced to initiate a recall.

13. On June 6, 2017, WENDY BLACK filed a class action suit in the Superior Court of Los Angeles County, California against EVANGER'S and NUTRIPACK (the Black Lawsuit). A true and accurate copy of the Black Lawsuit, without exhibits, is attached to this Complaint and incorporated by reference as Exhibit B.

14. In general terms, WENDY BLACK alleges that EVANGER'S provided private label services to PARTY ANIMAL and that EVANGER'S manufactured, canned, and labeled the PARTY ANIMAL branded pet food under a written contract with PARTY ANIMAL. WENDY BLACK alleges she bought PARTY ANIMAL brand pet food produced by EVANGER'S for her dog in January 2017. On February 1, 2017, BLACK'S dog fell ill. BLACK continued to feed her dog the pet food produced by EVANGER'S in the following weeks and the dog remained ill. It is further alleged that the dog developed diabetes as a result.

15. The Black Lawsuit further alleges generally that testing has shown the PARTY ANIMAL pet food produced by EVANGER'S did not contain at least one ingredient advertised to be present in the food. In addition, the Black lawsuit alleges a systematic campaign of false advertising wherein EVANGER'S and PARTY ANIMAL sold low quality, inorganic food stuff and produced pet food products which were falsely represented to be healthy, organic, and free from contamination.

16. On June 16, 2017, NICOLE and GUY MAEL filed a class action suit in the United States District Court for the Western District of Washington (the Mael Lawsuit). A true and accurate copy of the Mael Lawsuit, without exhibits, is attached to this Complaint and incorporated by reference as Exhibit C.

17. In general terms the Mael Lawsuit alleges NICOLE and GUY MAEL owned several pets that consumed pet food products manufactured by EVANGER'S. Some of these pets

allegedly became sick and one died. NICOLE and GUY MAEL allege EVANGER'S promoted its pet foods as "human grade" despite knowingly purchasing and utilizing meat marked unsafe for human consumption.

IV. THE COLONY POLICIES

18. COLONY issued Policy NO. 103 GL 0010808-00 to EVANGER'S as named insured for the period August 15, 2015, to August 15, 2016 (the 2015-16 Policy). The 2015-16 Policy provided commercial general liability coverage subject to certain terms and provisions. A true and correct copy of the 2015-16 Policy is attached as Exhibit D.

19. COLONY issued Policy No. 103 GL 0010808-01 to EVANGER'S as named insured for the period August 15, 2016, to August 15, 2017 (the 2016-17 Policy). The 2016-17 Policy provided commercial general liability coverage subject to certain terms and provisions. A true and correct copy of the 2016-17 policy is attached as Exhibit E.

20. The Policies contain the following insuring agreement for Coverage A – Bodily Injury and Property Damage Liability:

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result...

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

21. The Policies contain the following exclusions under Coverage A – Bodily Injury and Property Damage Liability:

Exclusions:

[This insurance does not apply to:]

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement . . .

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

22. In Section II – Who Is An Insured, the Policies state as follows:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

23. The Policies contain the following relevant definitions:

- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or

disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession . . .

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions...

24. The Policies contain an endorsement titled, "Exclusion - Personal and Advertising Injury." This endorsement states as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - PERSONAL AND ADVERTISING INJURY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

COVERAGE B (Section I) does not apply and none of the references to it in the Coverage Part apply.

25. The Policies contain an endorsement titled, "Exclusion – Products-Completed Operations Hazard." This endorsement states as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - PRODUCTS - COMPLETED OPERATIONS HAZARD

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to "bodily injury" or "property damage" included within the "products – completed operations hazard".

26. On or about August 17, 2015, in applying for coverage to COLONY, EVANGER'S, through its vice president, Joel Sher, answered "no" to the following questions in the application:

DURING THE LAST FIVE YEARS (TEN IN R.I.), HAS ANY APPLICANT BEEN INDICTED FOR OR CONVICTED OF ANY DEGREE OF THE CRIME OF FRAUD, BRIBERY, ARSON OR ANY OTHER ARSON-RELATED CRIME IN CONNECTION WITH THIS OR ANY OTHER PROPERTY?

PRODUCTS UNDER LABEL OF OTHERS?

27. The representations made by EVANGER'S, as reflected in its answers to the questions quoted in the preceding paragraph, were false and were made with intent to deceive COLONY.

28. Alternatively, EVANGER'S misrepresentations, as reflected in its answers to the questions quoted in paragraph 26, materially affected the acceptance of the risk by COLONY, in that COLONY would not have issued the Policies had it known the truth of the representations made by EVANGER'S.

29. Pursuant to 215 ILCS Section 5/154 (West 2017) and principles of common law and equity, the Policies should be ordered rescinded by the Court.

30. COLONY warrants that, upon rescission of the Policies, COLONY is prepared to refund the premiums paid by EVANGER'S for the Policies.

V. BASIS FOR RELIEF

31. COLONY owes no duty to defend or indemnify EVANGER'S or NUTRIPACK against the Party Animal Lawsuit, the Black Lawsuit or the Mael Lawsuit (the Underlying Lawsuits) under the Policies for one or more of the following reasons:

- a. There is no coverage to the extent the Underlying Lawsuits seek equitable relief or other non-monetary damages, including but not limited to restitution, declaratory, and injunctive relief;
- b. There is no coverage for the attorney's fees sought in the Underlying Lawsuits as they do not constitute "damages because of 'bodily injury' or 'property damage'" within the meaning of the Policies;
- c. There is no coverage to the extent the Underlying Lawsuits do not seek recovery of "bodily injury" or "property damage" as defined in the Policies;
- d. The claims alleged in the Underlying Lawsuits do not constitute an accidental "occurrence" as that term is defined and used in the Policies;
- e. There is no coverage for the Underlying Lawsuits to the extent "bodily injury" or "property damage," if any, did not take place during the Policy period of one or both of the Policies;
- f. There is no coverage to the extent one or more employees of EVANGER'S and/or NUTRIPACK who were authorized to give or receive notice of an occurrence or claim, knew prior to the inception of one or both of the Policies that "bodily injury" or "property damage," if any, had occurred;
- g. There is no coverage to the extent there was a known loss or loss-in-progress at the inception date of one or more of the Policies;
- h. One or more of the exclusions contained in the Policies apply to bar coverage, if any were otherwise present, for the Underlying Lawsuits including without limitation the following exclusions:

exclusion (a) (Expected Or Intended Injury);

exclusion (b) (Contractual Liability); and

exclusion (n) (Recall Of Products, Work Or Impaired Property);

- i. There is no coverage for the Underlying Lawsuits to the extent they allege “personal and advertising injury” as defined in the Policies, because any such coverage is expressly excluded by the “Exclusion – Personal and Advertising Injury” endorsement contained in the Policies;
- j. There is no coverage for the Underlying Lawsuits to the extent they allege “bodily injury” or “property damage” falling within the “products-completed operations hazard” as defined in the Policies, because any such coverage is expressly excluded by the “Exclusion – Products-Completed Operations Hazard” endorsement contained in the Policies, and because EVANGER’S specifically requested and received a quotation for products coverage for the Policy period August 15, 2016, to August 15, 2017, and expressly declined such coverage in a letter dated August 15, 2016, signed by Joel Sher;
- k. There is no coverage for NUTRIPACK, LLC because it is not shown as a Named Insured in the Declarations of the Policies;
- l. There is no coverage to the extent the Underlying Lawsuits seek punitive damages which are not covered as a matter of law and/or public policy;
- m. EVANGER’S made one more material misrepresentations in its August, 2015, application for insurance, including but not limited to answering “no” to the question: “Products under label of others?” and the question “During the last five years...has any applicant been indicted for or convicted of any degree of the crime of fraud, bribery, arson or any other arson related crime in connection with this or any other property?”

32. The above contentions of COLONY are, on information and belief, denied by the Defendants.

33. An actual controversy exists between the parties, and pursuant to 28 U.S.C. Section 2201, et seq., this Court is empowered to declare the rights and obligations of the parties.

WHEREFORE, Plaintiff COLONY INSURANCE COMPANY prays that this Court grant judgment in its favor, finding and declaring as follows:

- a. That COLONY has no duty to defend EVANGER’S DOG AND CAT FOOD COMPANY, INC. or NUTRIPACK, LLC against the Party Animal lawsuit, the Black lawsuit, or the Mael lawsuit;

- b. That COLONY has no duty to indemnify EVANGER'S DOG AND CAT FOOD COMPANY, INC. or NUTRIPACK, LLC against the Party Animal lawsuit, the Black lawsuit, or the Mael lawsuit;
- c. That COLONY has no obligations whatsoever to PARTY ANIMAL, INC., WENDY BLACK, or NICOLE and GUY MAEL;
- d. That the COLONY Policies are rescinded, void *ab initio*, and of no further force and effect; and
- f. That this Honorable Court grant COLONY such other and further relief as the Court deems just and proper under all the facts and circumstances.

CRAY HUBER HORSTMAN HEIL
& VanAUSDAL LLC

By: /s/ Jeffrey A. Siderius
Jeffrey A. Siderius

Jeffrey A. Siderius – jas@crayhuber.com
Nicholas S. Graber – nsg@crayhuber.com
CRAY HUBER HORSTMAN HEIL
& VanAUSDAL LLC
303 West Madison, Suite 2200
Chicago, Illinois 60606
312/332-8450
312/332-8451 (Fax)

EXHIBIT A

BORDIN MARTORELL LLP
Eduardo Martorell, State Bar No. 240027
EMartorell@BordinMartorell.com
Megan Atkinson, State Bar No. 282648
MATkinson@BordinMartorell.com
Howard Hughes Center
6100 Center Drive, Suite 1130
Los Angeles, California 90045
Telephone: (323) 457-2110
Facsimile: (323) 457-2120

Attorneys for Plaintiff,
PARTY ANIMAL, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PARTY ANIMAL, INC.,
Plaintiff,

v.

EVANGER'S DOG AND CAT FOOD
CO., INC., an Illinois Corporation;
NUTRIPACK, LLC, an Illinois
Limited Liability Company; and DOES
1 through 100, inclusive,

Defendants.

Case No.

COMPLAINT FOR:

1. Breach of Written Contract
2. Breach of Oral Contract
3. Breach of the Implied
Covenant of Good Faith and
Fair Dealing
4. Fraud
5. Negligent Misrepresentation
6. Breach of Implied Warranty
of Merchantability and Fitness
for a Particular Purpose
7. Breach of Express Warranties
8. Implied Indemnity

DEMAND FOR JURY TRIAL

COMPLAINT

Party Animal Inc. ("Plaintiff") complains and alleges as follows:

PARTIES

1. Plaintiff is incorporated under the laws of the State of California, with its principal place of business in West Hollywood, California. Plaintiff supplies pet food to retailers throughout the United States.

1 2. Defendant Evanger's Dog and Cat Food Co., Inc. ("Evanger's") is
2 incorporated under the laws of the State of Illinois, with its principal place of
3 business in Wheeling, Illinois. Evanger's is engaged in the business of
4 manufacturing and selling pet food under its own brand names, as well as
5 manufacturing pet food to specification for other companies, including Plaintiff.

6 3. Defendant Nutripack, LLC ("Nutripack") is a limited liability company
7 organized and operating under the laws of the State of Illinois, with its principal
8 place of business in Markham, Illinois. Nutripack is engaged in the business of
9 manufacturing and selling pet food under its own brand names, as well as
10 manufacturing pet food to specification for other companies, including Plaintiff.

11 4. Plaintiff has had an ongoing business relationship with Evanger's for
12 approximately ten (10) years. In February 2017, Plaintiff started receiving invoices
13 from Nutripack instead of Evanger's. Plaintiff's representative spoke to Holly Sher
14 (a representative of both Evanger's and Nutripack) by phone in early April 2017 and
15 asked why the invoices recently changed to reflect Nutripack and to whom payment
16 should be made. Ms. Sher stated that they were afraid of getting sued because of the
17 recent recalls, and they were taking money out of Evanger's. She also stated that
18 they did not want to receive any money into Evanger's and would instead run all
19 operations under Nutripack.

20 5. Evanger's and Nutripack are collectively referred to herein as
21 "Defendants." At all times mentioned herein, each of the Defendants were the
22 agents, servants, alter egos, employees, employers, masters, principals and/or
23 associates of each other, and, as such, were acting within the time, place, purpose,
24 and scope of said agency, service, employment, partnership and/or association. In
25 addition, Defendants worked together to defund Evanger's and move its assets into
26 Nutripack in an effort to avoid liability, as stated by Ms. Sher in April 2017.

27 6. The true names, identities, or capacities, whether individual, associate,
28 corporate, or otherwise, of defendants DOES 1 through 100, inclusive, and each

1 DOE in between, are unknown to Plaintiff at this time, and Plaintiff therefore sues
2 said defendants by such fictitious names. When the true names, identities, capacities,
3 or participation of such fictitiously designated defendants are ascertained, Plaintiff
4 will ask leave of Court to amend the Complaint to insert said names, identities, or
5 capacities, together with the proper charging allegations. Plaintiff is informed and
6 believes and thereon alleges that each of the defendants sued herein as a DOE is
7 responsible in some manner for the events and happenings herein referred to, thereby
8 legally causing the damages to Plaintiff as hereinafter set forth.

9 7. At all times mentioned herein, each of the defendants sued herein was
10 the agent, servant, alter ego, employee, employer, master, principal and/or associate
11 of each other and of his/her/its co-defendants, and, as such, was acting within the
12 time, place, purpose, and scope of said agency, service, employment, partnership
13 and/or association.

14 JURISDICTION AND VENUE

15 8. This Court has jurisdiction over the subject matter of all claims asserted
16 herein pursuant to 28 U.S.C. § 1332(a)(1) in that it is a civil action between citizens
17 of different states in which the amount in controversy exceeds the sum of \$75,000,
18 exclusive of interest and costs.

19 9. Venue for this civil action is properly laid in this judicial district
20 pursuant to, *inter alia*, 28 U.S.C. 1391(b)(2), in that a substantial part of the events or
21 omissions giving rise to the claims for relief asserted herein occurred in this judicial
22 district.

23 COMMON ALLEGATIONS

24 10. Over the last ten (10) years Plaintiff had an ongoing business
25 relationship with Defendants under which Plaintiff purchased pet food from
26 Defendants and distributed it to various customers throughout the United States.

27 11. At all times Defendants represented and warranted that the pet food
28 products sold to Plaintiff were fit for animal consumption.

1 12. Plaintiff paid Defendants an agreed upon price for all of the pet food
2 products provided.

3 13. On or about April 13, 2017, a retailer in Texas notified Plaintiff that
4 their customer had presented samples of Plaintiff's 13-ounce-can of Cocolicious
5 Beef & Turkey dog food (Lot #0136E15204 04, best by July 2019) and 13-ounce-can
6 of Cocolicious Chicken & Beef dog food (Lot #0134E15 237 13, best by August
7 2019) to a testing lab, and that the results had tested positive for pentobarbital, a
8 barbiturate used for a variety of medical purposes, including in larger doses for
9 euthanizing of animals.

10 14. Plaintiff first saw the formal report from the lab regarding the
11 customer's samples on April 17, 2017.

12 15. Just over a month earlier, Plaintiff learned that Evanger's voluntarily
13 recalled certain pet food due to potential adulteration with pentobarbital. A true and
14 correct copy of the announcement from the website of the Food and Drug
15 Administration ("FDA") is attached hereto as **Exhibit A**.

16 16. Earlier in 2017, the FDA inspected Nutripack and found that its dog
17 food contained pentobarbital. A true and correct copy of the FDA's finding is
18 attached hereto as **Exhibit B**.

19 17. Contaminated pet food products from Defendants had already been
20 distributed to Plaintiff, which had in turn sold and distributed the contaminated pet
21 food products to Plaintiff's customers.

22 18. As a result of Defendants' delivery of adulterated pet food not fit for
23 pet/animal consumption, Plaintiff was forced to issue a recall, which was reported
24 widely by various news outlets:

25 <http://www.cnn.com/2017/04/28/health/dog-food-recall-trnd/>

26 <http://fortune.com/2017/04/26/dog-food-euthanasia-recall/>

27 [http://www.cbsnews.com/news/dog-food-recall-euthanasia-drug-](http://www.cbsnews.com/news/dog-food-recall-euthanasia-drug-contamination-party-animal/)
28 [contamination-party-animal/](http://www.cbsnews.com/news/dog-food-recall-euthanasia-drug-contamination-party-animal/)

1 [http://ktla.com/2017/04/28/california-based-company-recalls-dog-food-that-](http://ktla.com/2017/04/28/california-based-company-recalls-dog-food-that-may-contain-euthanasia-drug/)
2 [may-contain-euthanasia-drug/](http://ktla.com/2017/04/28/california-based-company-recalls-dog-food-that-may-contain-euthanasia-drug/)
3 [http://pets.webmd.com/dogs/news/20170428/dog-food-recalled-euthanasia-](http://pets.webmd.com/dogs/news/20170428/dog-food-recalled-euthanasia-drug)
4 [drug](http://pets.webmd.com/dogs/news/20170428/dog-food-recalled-euthanasia-drug)

5 **FIRST CAUSE OF ACTION**

6 **(Breach of Written Contract – Against Defendants and**
7 **DOES 1 through 100, inclusive)**

8 19. Plaintiff incorporates the foregoing paragraphs as if fully set forth
9 herein.

10 20. On or about July 27, 2015, Plaintiff entered into a written contract with
11 Defendants to purchase 394 cases of 13-ounce-cans of Cocolicious Beef & Turkey
12 dog food (Lot #0136E15204 04, best by July 2019). The cans were to be fit for
13 pet/animal consumption and unadulterated.

14 21. On or about August 27, 2015, Plaintiff entered into a written contract
15 with Defendants to purchase 389 cases of 13-ounce-cans of Cocolicious Chicken &
16 Beef dog food (Lot #0134E15 237 13, best by August 2019). The cans were to be fit
17 for pet/animal consumption and unadulterated.

18 22. On or about April 13, 2017, Plaintiff was informed that samples of these
19 products were sent to a lab, and that they tested positive for pentobarbital.

20 23. Plaintiff performed its part of the agreement by paying for the products.

21 24. Defendants breached their part of the agreement by supplying cans that
22 contained pentobarbital, which is neither fit for pet/animal consumption nor
23 unadulterated.

24 25. Plaintiff has suffered damage from Defendants' breach. Given that
25 Defendants shipped pet food that was contaminated with pentobarbital, Plaintiff has
26 been required to recall products manufactured by Defendants. In addition to the loss
27 relating to the products it cannot sell and costs associated with the recall, Plaintiff has
28 suffered extensive damage to its commercial reputation. This damage to its

1 reputation has led to a significant loss of retailers and consumers. Plaintiff's
2 monetary damages exceed \$20,000,000.

3 **SECOND CAUSE OF ACTION**

4 **(Breach of Oral Contract – Against Defendants and**
5 **DOES 1 through 100, inclusive)**

6 26. Plaintiff incorporates the foregoing paragraphs as if fully set forth
7 herein.

8 27. On or about July 27, 2015, Plaintiff entered into an oral contract with
9 Defendants to purchase unadulterated pet food fit for pet/animal consumption.

10 28. On or about August 27, 2015, Plaintiff entered into an oral contract with
11 Defendants to purchase unadulterated pet food fit for pet/animal consumption.

12 29. On or about April 13, 2017, Plaintiff was informed that samples of these
13 products were sent to a lab, and that they tested positive for pentobarbital.

14 30. Plaintiff performed its part of the agreement by paying for the products.

15 31. Defendants breached their part of the agreement by supplying cans that
16 contained pentobarbital, which is neither fit for pet/animal consumption nor
17 unadulterated.

18 32. Plaintiff has suffered damage from Defendants' breach. Given that
19 Defendants shipped pet food that was contaminated with pentobarbital, Plaintiff has
20 been required to recall products manufactured by Defendants. In addition to the loss
21 relating to the products it cannot sell and costs associated with the recall, Plaintiff has
22 suffered extensive damage to its commercial reputation. This damage to its
23 reputation has led to a significant loss of retailers and consumers. Plaintiff's
24 monetary damages exceed \$20,000,000.

THIRD CAUSE OF ACTION

**(Breach of the Implied Covenant of Good Faith and Fair Dealing – Against
Defendants and DOES 1 through 100, inclusive)**

33. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

34. Plaintiff and Defendants have had an ongoing business relationship for approximately ten (10) years.

35. On or about July 27, 2015, Plaintiff entered into a written contract with Defendants to purchase 394 cases of 13-ounce-cans of Cocolicious Beef & Turkey dog food (Lot #0136E15204 04, best by July 2019). The cans were to be fit for pet/animal consumption and unadulterated.

36. On or about August 27, 2015, Plaintiff entered into a written contract with Defendants to purchase 389 cases of 13-ounce-cans of Cocolicious Chicken & Beef dog food (Lot #0134E15 237 13, best by August 2019). The cans were to be fit for pet/animal consumption and unadulterated.

37. On or about April 13, 2017, Plaintiff was informed that samples of these products were sent to a lab, and that they tested positive for pentobarbital.

38. In every contract, there is an implied covenant of good faith and fair dealing. Defendants breached this covenant by producing products which were not fit for pet/animal consumption and adulterated.

39. Plaintiff has suffered damage from Defendants' breach. Given that Defendants shipped pet food that was contaminated with pentobarbital, Plaintiff has been required to recall products manufactured by Defendants. In addition to the loss relating to the products it cannot sell and costs associated with the recall, Plaintiff has suffered extensive damage to its commercial reputation. This damage to its reputation has led to a significant loss of retailers and consumers. Plaintiff's monetary damages exceed \$20,000,000.

FOURTH CAUSE OF ACTION

(Fraud – Against Defendants and

DOES 1 through 100, inclusive)

40. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

41. In July and August 2015, Defendants' Office Manager, Cynthia Stoner, represented that the cases of 13-ounce-cans of Cocolicious Beef & Turkey dog food (Lot #0136E15204 04, best by July 2019) sold on or about July 27, 2015 and the cases of 13-ounce-cans of Cocolicious Chicken & Beef dog food (Lot #0134E15 237 13, best by August 2019) sold on or about August 27, 2015 were fit for pet/animal consumption and USDA certified organic by Oregon Tilth.

42. Since these products tested positive for pentobarbital, they were not fit for pet/animal consumption and the representation was false. Defendants knew the representation was false and intended to deceive Plaintiff. Plaintiff justifiably relied on the representation and purchased these products, believing them to be fit for pet/animal consumption.

43. Plaintiff has suffered damage from Defendants' fraud. Given that Defendants shipped pet food that was contaminated with pentobarbital, Plaintiff has been required to recall products manufactured by Defendants. In addition to the loss relating to the products it cannot sell and costs associated with the recall, Plaintiff has suffered extensive damage to its commercial reputation. This damage to its reputation has led to a significant loss of retailers and consumers. Plaintiff's monetary damages exceed \$20,000,000.

FIFTH CAUSE OF ACTION

(Negligent Misrepresentation – Against Defendants and

DOES 1 through 100, inclusive)

44. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

1 45. In July and August 2015, Defendants' Office Manager, Cynthia Stoner,
2 represented that the cases of 13-ounce-cans of Cocolicious Beef & Turkey dog food
3 (Lot #0136E15204 04, best by July 2019) sold on or about July 27, 2015 and the
4 cases of 13-ounce-cans of Cocolicious Chicken & Beef dog food (Lot #0134E15 237
5 13, best by August 2019) sold on or about August 27, 2015 were fit for pet/animal
6 consumption and USDA certified organic by Oregon Tilth.

7 46. Defendants made such representations without reasonable grounds for
8 believing them to be true and with the intent to induce Plaintiff to purchase the
9 products. In reliance on Defendants' representation, Plaintiff purchased these
10 products. Since these products tested positive for pentobarbital, they were not fit for
11 pet/animal consumption and the representation was false.

12 47. Plaintiff has suffered damage from Defendants' misrepresentation.
13 Given that Defendants shipped pet food that was contaminated with pentobarbital,
14 Plaintiff has been required to recall products manufactured by Defendants. In
15 addition to the loss relating to the products it cannot sell and costs associated with the
16 recall, Plaintiff has suffered extensive damage to its commercial reputation. This
17 damage to its reputation has led to a significant loss of retailers and consumers.
18 Plaintiff's monetary damages exceed \$20,000,000.

19 **SIXTH CAUSE OF ACTION**

20 **(Breach of Implied Warranty of Merchantability and Fitness for a Particular**
21 **Purpose – Against Defendants and DOES 1 through 100, inclusive)**

22 48. Plaintiff incorporates the foregoing paragraphs as if fully set forth
23 herein.

24 49. Plaintiff has done business with Defendants for approximately ten (10)
25 years. Defendants know that Plaintiff is in the business of selling pet food.

26 50. Defendants were aware that the products they manufactured for Plaintiff
27 must be fit for Plaintiff's purpose of supplying them for ultimate consumption by
28 pets/animals.

1 51. Defendants breached the implied warranties of merchantability and
2 fitness for a particular purpose. Because the pet food products that were supplied to
3 Plaintiffs in approximately July and August 2015 were contaminated with
4 pentobarbital, they were neither merchantable nor fit for the known and intended
5 purpose of being consumed by pets/animals. The pet food was not suitable for
6 animal consumption.

7 52. Plaintiff has suffered damage from Defendants' breach. Given that
8 Defendants shipped pet food that was contaminated with pentobarbital, Plaintiff has
9 been required to recall products manufactured by Defendants. In addition to the loss
10 relating to the products it cannot sell and costs associated with the recall, Plaintiff has
11 suffered extensive damage to its commercial reputation. This damage to its
12 reputation has led to a significant loss of retailers and consumers. Plaintiff's
13 monetary damages exceed \$20,000,000.

14 **SEVENTH CAUSE OF ACTION**

15 (Breach of Express Warranties – Against Defendants and
16 **DOES 1 through 100, inclusive)**

17 53. Plaintiff incorporates the foregoing paragraphs as if fully set forth
18 herein.

19 54. Defendants expressly warranted that the cases of 13-ounce-cans of
20 Cocolicious Beef & Turkey dog food (Lot #0136E15204 04, best by July 2019) sold
21 on or about July 27, 2015 were fit for pet/animal consumption.

22 55. Defendants expressly warranted that the cases of 13-ounce-cans of
23 Cocolicious Chicken & Beef dog food (Lot #0134E15 237 13, best by August 2019)
24 sold on or about August 27, 2015 were fit for pet/animal consumption.

25 56. Plaintiff purchased these products from Defendants because they were
26 represented to be fit for pet/animal consumption.

1 57. The express warranties were breached. Since these products tested
2 positive for pentobarbital, they were not fit for pet/animal consumption and the
3 description was false.

4 58. Plaintiff has suffered damage from Defendants' breach. Given that
5 Defendants shipped pet food that was contaminated with pentobarbital, Plaintiff has
6 been required to recall products manufactured by Defendants. In addition to the loss
7 relating to the products it cannot sell and costs associated with the recall, Plaintiff has
8 suffered extensive damage to its commercial reputation. This damage to its
9 reputation has led to a significant loss of retailers and consumers. Plaintiff's
10 monetary damages exceed \$20,000,000.

11 **EIGHTH CAUSE OF ACTION**

12 **(Implied Indemnity – Against Defendants and**

13 **DOES 1 through 100, inclusive)**

14 59. Plaintiff incorporates the foregoing paragraphs as if fully set forth
15 herein.

16 60. On or about April 13, 2017, a retailer in Texas notified Plaintiff that
17 their customer had presented samples of Plaintiff's 13-ounce-can of Cocolicious
18 Beef & Turkey dog food (Lot #0136E15204 04, best by July 2019) and 13-ounce-can
19 of Cocolicious Chicken & Beef dog food (Lot #0134E15 237 13, best by August
20 2019) to a testing lab, and that the results had tested positive for pentobarbital.

21 61. Given that Defendants shipped pet food that was contaminated with
22 pentobarbital, Plaintiff has been required to recall products received from
23 Defendants. Plaintiff has been notified by retailers that they want refunds for both
24 recalled and non-recalled products. Plaintiff has also been notified by consumers
25 that they want Plaintiff to pay for their veterinarian bills.

26 62. Plaintiff is entitled to be indemnified by Defendants, and each of them,
27 for any liability that Plaintiff incurs as a result of the contamination, including, but
28 not limited to, the costs associated with the recall, any settlement amounts,

1 judgments, attorneys' fees, costs of suits, and such other and further relief as this
2 Court may deem appropriate.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of
5 them, as follows:

- 6 1. For damages according to proof;
- 7 2. For punitive damages in an amount to be determined at trial;
- 8 3. For pre- and post-judgment interest;
- 9 4. For costs of suit herein incurred;
- 10 5. For reasonable attorneys' fees; and,
- 11 6. For such other and further relief as the Court deems just and proper.

12
13 Dated: May 5, 2017

BORDIN MARTORELL LLP

14
15 By: /s/ Eduardo Martorell

16 Eduardo Martorell
17 Megan Atkinson
18 Attorneys for Plaintiff
19 PARTY ANIMAL, INC.
20
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28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues triable of right by jury.

Dated: May 5, 2017

BORDIN MARTORELL LLP

By: /s/ Eduardo Martorell

Eduardo Martorell
Megan Atkinson
Attorneys for Plaintiff
PARTY ANIMAL, INC.

EXHIBIT B

FILED
Superior Court Of California
County Of Los Angeles

JUN 06 2017

Sherri R. Carter, Executive Officer/Clerk
By Charles L. Coleman Deputy

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

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

Attorneys for Plaintiffs

IN THE SUPERIOR COURT

LOS ANGELES COUNTY CALIFORNIA, CENTRAL DISTRICT

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

Plaintiffs,

vs.

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

Defendants.

Case No.

BC 6 6 4 1 8 8

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.

RECEIPT #: CCH243111065
DATE PAID: 06/06/17 12:
PAYMENT \$1,435.00

CIT/CASE: BC664138
LEAD: 06/06/17

\$1,435.00
\$0.00
\$0.00
\$0.00

EXHIBIT

B

CLASS ACTION COMPLAINT

) 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.

06/06/2017

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

CLASS ACTION COMPLAINT

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.

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.

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.

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
 26

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 225 South Lake Avenue, Suite 300
 Pasadena, California 91104
 (626) 432-5476

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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.
22
23
24
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26

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(626) 432-5476

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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

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(626) 432-5478

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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

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Pasadena, California 91104
(626) 432-5476

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

18
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
25
26

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 fall 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

25
26

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 NPI¹ 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 WPI² 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
to illness, injury or death of an animal resulting from the ingestion of
Party Animal brand products.

10 (c) The California NPI Subclass: All persons residing in the State of
11 California who purchased Party Animal dog food for personal or
12 household use and not for resale within four years from the date of
the original complaint.

13 (d) The California WPI Subclass: All persons residing in the State of
14 California who purchased Party Animal dog food for personal or
15 household use and not for resale within four years from the date of
16 the original complaint and who incurred any out of pocket costs due
to illness, injury or death of an animal resulting from the ingestion of
Party Animal brand products.

17 5.2 Upon information and belief, the scope of this Class definition, including its
18 temporal scope, may be further refined after discovery of Defendants' and/or third party
19 records.

20 5.3 Excluded from the Class are governmental entities, Defendants, any entity
21 in which Defendants have a controlling interest, and Defendants' officers, directors,
22 affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also
23

24
25
26 ¹ "NPI" refers to "no pet injury."

² "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

25

26

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

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

14 5.13 The persons in the Class are so numerous that the joinder of all such
15 persons individually in this case is impracticable, and the disposition of their claims in
16 this case and as part of a single class action lawsuit, rather than thousands of individual
17 lawsuits, will benefit the parties and greatly reduce the aggregate judicial resources that
18 would be spent if this matter were handled as thousands of separate lawsuits.

19 5.14 Plaintiff knows of no difficulty that will be encountered in the management
20 of this litigation, which would preclude its maintenance of a class action.

21 5.15 Defendants have acted on grounds generally applicable to the entire
22 Class, thereby making final injunctive relief or corresponding declaratory relief
23
24
25
26

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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.

17 VI. FIRST CAUSE OF ACTION

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

20
 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.

21 IX. FOURTH CAUSE OF ACTION

22 Negligent Misrepresentation

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

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 **X. FIFTH CAUSE OF ACTION**

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

19 10.1 Ms. Black and Class members reallege all prior allegations as though fully
20 set forth herein.

21
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 XI. SIXTH CAUSE OF ACTION

14 Violation of the Consumers Legal Remedies Act (Cal. Civ. Code §1750 *et seq.*) 15 On Behalf of the California Subclass Against All Defendants and Does 1-500

16 11.1 Ms. Black and Class members reallege all prior allegations as though fully
17 set forth herein.

18 11.2 Defendants' and Does 1-500 sale of dangerous and defective pet food
19 constitutes an unlawful, deceptive and unfair business act within the meaning of the
20 Consumers Legal Remedies Act, *California Civil Code* section 1750 *et seq.*

21 11.3 Defendants and Does 1-500 are a "person" as defined under *California*
22 *Civil Code* section 1761(c).

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

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

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.
25
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1 11.9 Ms. Black and the California Subclass are providing Defendants and Does
 2 1-500 with the notice required by the Consumers Legal Remedies Act by giving notice of
 3 Defendants and Does 1-500 violation of the Act by certified mail. Ms. Black and the
 4 California Subclass at this time request only injunctive relief, until the expiration of the
 5 thirty-day period in which Defendants and Does 1-500 may respond to the notice. Such
 6 injunctive relief may include recall, among other things. Ms. Black and the California
 7 Subclass will amend the Complaint to add claims for damages in the event Defendants
 8 and Does 1-500 do not respond to the notice in the specified time. As such, Ms. Black
 9 has complied with *California Civil Code* section 1782(a).

10 XII. SEVENTH CAUSE OF ACTION

11 Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §17200 *et seq.*) 12 On Behalf of the California Subclass Against All Defendants and Does 1-500

13 12.1 Ms. Black realleges all prior allegations as though fully set forth herein.

14 12.2 Defendants' and Does 1-500 practices as alleged in this Complaint
 15 constitute unlawful, unfair and fraudulent business acts and practices under the UCL,
 16 *Bus. & Prof. Code* §§ 17200, *et seq.* 67. The UCL prohibits acts of "unfair competition,"
 17 including any unlawful, unfair, or fraudulent business act or practice.
 18

19 12.3 A violation of another law is treated as "unlawful competition" that is
 20 independently actionable. A business practice is "unfair" if: a) the utility of Defendant's
 21 conduct is substantially outweighed by the gravity of the harm to the alleged victim; b)
 22 Defendant's practice violates public policy as declared by specific constitutional,
 23 statutory, or regulatory provisions or is immoral, unethical, oppressive, unscrupulous, or
 24
 25
 26

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

13 12.7 Defendants and Does 1-500 committed unfair, unlawful or fraudulent
14 practices by: (a) representing that Party Animal was safe for dogs to consume when it
15 was not; (b) continuing to represent the health benefits of Party Animal despite being
16 aware of numerous complaints from users of Party Animal that their dogs had become ill
17 or died after consuming it; and (c) by falsely representing the ingredients of the food.

18 12.8 Ms. Black and the California Subclass members relied on such statements
19 and omissions. Had Ms. Black and the California Subclass members known that Party
20 Animal presented a health hazard to their dogs, they never would have purchased it.
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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

19 13.4 When Defendants and Does 1-500 disseminated the advertising described
20 here, it knew, or by the exercise of reasonable care should have known, that the
21 statements concerning Party Animal's were untrue or misleading, or omitted to state the
22 truth about the Party Animal, in violation of the False Advertising Law, *Cal. Bus. & Prof.*
23 *Code §17500, et seq.*
24
25
26

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(826) 432-5476

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1 13.5 Ms. Black, on behalf of herself and the California Subclass, seeks
2 restitution, disgorgement, injunctive relief, and all other relief allowable under §17500, et
3 seq.

4 **PRAYER FOR RELIEF**

5 WHEREFORE Plaintiff, individually and on behalf of all others similarly situated,
6 and on behalf of the general public, pray for judgment against Defendants and Does 1-
7 500 as follows:

8
9 1. For an order certifying this case as a class action, and appointing Plaintiff
10 and her counsel to represent the Class;

11 2. For a declaratory judgment that Defendants and Does 1-500 inclusion of
12 harmful and dangerous compounds to consumers' pet foods is unlawful;

13 3. For a declaratory judgment that Defendants and Does 1-500 omission of
14 various advertised healthful components to consumers' pet foods is unlawful;

15 4. For an order requiring Defendants and Does 1-500, at their own cost, to
16 notify all Class members of the unlawful and deceptive conduct herein;

17 5. For an order requiring Defendants and Does 1-500 to make full disclosure
18 of the actual ingredients in their pet foods on the label such that it complies with all
19 applicable food labeling rules and regulations;

20 6. For an order requiring Defendants and Does 1-500 to engage in corrective
21 advertising regarding the conduct discussed above;

22 7. For an order prohibiting defendants from selling pet foods contaminated
23 with euthanasia drugs;

24
25
26

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

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

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

8 11. For all remedies available pursuant to the *Civil Code*;

9 12. For an order awarding attorneys' fees and costs;

10 13. For an order awarding punitive damages;

11 14. For an order awarding pre- and post-judgment interest; and

12 15. For an order providing such further relief as this Court deems proper.

13 DATE: June 6, 2017

14 SICO HOELSCHER HARRIS & BRAUGH LLP

15 BY: 
16

17 Jane M. Braugh, Esq.
18 Attorneys for Plaintiffs
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Sico, Hoelscher, Harris & Braugh, LLP.
225 South Lake Avenue, Suite 300
Pasadena, California 91104
(826) 432-5475

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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, LLP,
225 South Lake Avenue, Suite 300
Pasadena, California 91104
(626) 432-5475

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EXHIBIT C

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5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON

8 NICOLE and GUY MAEL, on behalf of
9 themselves and all others similarly situated,

10 Plaintiffs,

11 v.

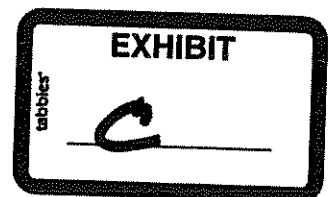
12
13 EVANGER'S DOG AND CAT FOOD
14 CO., INC., and NUTRIPACK, LLC,

15 Defendants.
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) Case No.

) COMPLAINT – CLASS ACTION

) JURY TRIAL DEMANDED



1 Plaintiffs Nicole and Guy Mael ("Plaintiffs"), by and through their
2 undersigned attorneys, bring this action on behalf of themselves and all others
3 similarly situated, and the general public, based upon personal knowledge as to
4 themselves and their activities, and on information and belief as to all other matters,
5 against Defendants, Evanger's Dog and Cat Food Co. and Nutripack, LLC
6 ("Nutripack") (collectively referred to as "Evanger's" or "Defendantss"). Evanger's
7 produces high-end pet foods that are specifically marketed to label-conscious
8 consumers but that, contrary to their labels, contain harmful ingredients that caused
9 several of Plaintiffs' pets to become sick and caused one to die.

10 JURISDICTION AND VENUE

11 1. Diversity subject matter jurisdiction exists over this class action
12 pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4
13 (2005), amending 28 U.S.C. § 1332, at new subsection (d), conferring federal
14 jurisdiction over class actions involving: (a) 100 or more members in the proposed
15 class; (b) where at least some members of the proposed class have different
16 citizenship from Defendants; and (c) where the claims of the proposed class
17 members exceed the sum or value of five million dollars (\$5,000,000) in the
18 aggregate. 28 U.S.C. §§ 1332(d)(2) and (6).

19 2. This District Court also has jurisdiction under 28 U.S. Code § 1331
20 because the action arises out of a federal law of the United States, 15 U.S.C. § 2301,
21 *et seq.*

22 3. While the exact number of members in each of the proposed classes is
23 unknown at this time, Plaintiffs have reason to believe that thousands of consumers
24 purchased Defendants' pet food throughout the United States, including in
25 Washington, during the relevant period. The number of class members could be
26 discerned from the records maintained by Defendants.

1 4. While the exact damages to Plaintiffs and the members of the classes
2 are unknown at this time, Plaintiffs reasonably believe that their claims exceed five
3 million dollars (\$5,000,000) in the aggregate.

4 5. Jurisdiction is also proper pursuant to 28 U.S.C. § 1367, which
5 provides, in relevant part, that: (a) “in any action of which the district courts have
6 original jurisdiction, the district courts shall have supplemental jurisdiction over all
7 other claims that are so related to claims in the action within such original
8 jurisdiction that they form part of the same case or controversy under Article III of
9 the United States Constitution . . . includ[ing] claims that involve the joinder . . . of
10 additional parties.”

11 6. This Court has personal jurisdiction over Defendants because it has
12 purposefully availed itself of the privilege of conducting business in the State of
13 Washington by selling its products to persons in Washington online and through
14 retailers, and a substantial number of the events giving rise to the claims alleged
15 herein took place in this District.

16 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
17 many of the acts and transactions giving rise to this action occurred in this District
18 and because Defendants:

- 19 a. has intentionally availed itself of the laws and markets within this
20 District through the promotion, marketing, distribution and sale
21 of their products in this District;
22 b. does substantial business in this District, including selling its
23 products in this District; and
24 c. is subject to personal jurisdiction in this District.

25 8. Venue is proper in this Court as to the Plaintiffs and claims under the
26 doctrine of pendant venue.

NATURE OF THE ACTION

9. Plaintiffs bring this class action to obtain damages and equitable relief for themselves and all others similarly situated, both in Washington and nationwide, who purchased Defendants' Pet Foods¹, which were advertised as premium, "100% beef," and "human grade, USDA inspected meat," but instead were composed of low quality, non-human grade ingredients and were produced at an unsanitary, non-USDA facility. Many of the Pet Foods were unsafe, adulterated meats, not from animals that were identified on the labels, and contained *pentobarbital, a barbiturate used in the euthanizing of animals, the execution of humans and in physician-assisted deaths* Plaintiffs' use of these products led to the sickness of several of Plaintiffs' pets, and the death of one.

10. Defendant Evanger's produces dog and cat food products in the United States that it sells online, and through a network of distributors to retailers. Evanger's Pet Foods are aimed specifically at customers, like Plaintiffs, who want premium, safe and healthy meals for their pets, and are willing to pay a hefty price for them compared to other brands.

11. Evanger's touts its "premium," "human grade," "USDA inspected meats" that are "100% natural, raw meats" and do not contain "soy, corn, wheat, artificial ingredients, preservatives, harmful additives or by-products" to customers. It claims to be a "5-star" rated Pet Food.

12. Evanger's has one of the few canneries in the country for pet foods, and produces and packages both its own brand-named products as well as its Against the Grain brand products. Evanger's also produces and packages pet foods for other companies' brands, including Party Animal Pet Foods ("Party Animal").

¹ As used herein, the term "Pet Foods" refers collectively to Evanger's brand-named products and its Against the Grain brand pet foods.

1 13. Evanger's Against the Grain brand, produced at its manufacturing
2 facility, also targets customers, like Plaintiffs, who seek to purchase products with
3 high quality ingredients for their pets and are willing to pay a premium price
4 compared to other brands. Against the Grain states that it uses "safe," "human
5 grade," "highest quality," "fresh" ingredients. It also boasts that its products
6 are gluten-free and grain-free "sourced from human grade facilities" and composed
7 of 100% specific meat.

8 14. On December 31, 2016, relying on Defendants' representations about the
9 Pet Foods, Plaintiffs purchased Evanger's Hunk of Beef Au Jus ("Hunk of Beef")
10 and Against the Grain's Grain Free Pulled Beef with Gravy canned dog food
11 ("Pulled Beef") for their five dogs. Immediately, after consuming the Hunk of Beef
12 all of the dogs became ill - acting listless and non-responsive. Plaintiffs rushed them
13 to an emergency veterinarian. The next day, one of Plaintiffs' dogs, Talula, died after
14 being poisoned by the Hunk of Beef. As a result of consuming the Pet Foods,
15 Plaintiffs' four other dogs have had to undergo ongoing veterinarian treatments and
16 monitoring, including Tito, who is now being treated for seizures.

17 15. After Talula's death, the Federal Food and Drug Administration (the
18 "FDA"), began working with Plaintiffs and the retailer who had sold the Pet Foods
19 to Plaintiffs, and arranged for a necropsy and toxicology testing to be performed on
20 Talula's body and the Pet Foods. The FDA conducted the testing and found a large
21 amount of pentobarbital in the animal's stomach and in the undigested Pet Food. The
22 FDA then directed testing of the remaining Hunk of Beef product and the unopened
23 Hunk of Beef and Pulled Beef products purchased by Plaintiffs. The testing further
24 confirmed the contamination of pentobarbital in the Pet Foods.

25 16. The FDA determined that Evanger's meat supplier, with which it had a
26 forty year relationship, had in fact provided a label on its meat informing Evanger's
27 that the meat was "*Inedible* Hand Deboned Beef" "For Pet Food Use Only. *Not Fit*

1 *for Human Consumption.*” The FDA also found that *none* of Evanger’s beef
2 suppliers are inspected by the United States Department of Agriculture Food Safety
3 and Inspection Services (“USDA-FSIS”), and that *none* of its meat was human
4 grade. The FDA also noted unsanitary conditions at Evanger’s manufacturing
5 facilities at both its Wheeling, Illinois and Markham, Illinois locations that further
6 contaminated its Pet Foods. The FDA and Evanger’s own testing also found trace
7 amounts of pork and horse in its products that were labeled as “100% beef.”

8 17. Under the Federal Food, Drug, and Cosmetic Act (“FDCA”), the FDA is
9 primarily responsible for making sure that food for both people and animals is safe,
10 properly manufactured, and properly labeled. The FDCA, 21 U.S.C. § 342(a)(1),
11 prohibits foods that are adulterated due to poisonous substances; preparation,
12 packaging or holding under insanitary conditions causing contamination; or products
13 of a diseased animal or of an animal, which has died otherwise than by slaughter.
14 The FDA determined that Defendants’ Pet Foods were adulterated.

15 18. Defendants has misrepresented the quality of its Pet Foods’ ingredients
16 and manufacturing. It falsely stated that the Pet Foods are safe and sourced from
17 human-grade, USDA inspected meats when in fact they are not. These
18 misrepresentations and omissions relating to the quality of the meat and health risks
19 ultimately led to a recall of certain products beginning on February 3, 2017 (for
20 certain Hunk of Beef lots); on February 13, 2017 (for certain Pulled Beef lots); and
21 on March 3, 2017 for all lots of Evanger’s Hunk of Beef, Pulled Beef and Braised
22 Beef products.

23 19. Despite insisting that no other products were impacted by the recalls, on
24 April 13, 2017, three and a half months after Talula died, another dog became ill
25 after eating Party Animal pet food - manufactured by Evanger’s. The Party Animal
26 products also tested positive for pentobarbital, and on April 17, 2017, Party Animal
27

1 publicly recalled its Cocolicious Beef & Turkey dog food and Cocolicious Chicken
2 & Beef dog food.

3 20. Following the recall of Party Animal's products, Party Animal sued
4 Defendants for damages based on the misrepresented meat that Evanger's sold to it.
5 Party Animal seeks damages relating, but not limited to, retailers that are seeking
6 refunds for its recalled and non-recalled products and consumers, who are seeking
7 payment of veterinarian bills for treatment of their pets caused by their consumption
8 of its products. The lawsuit also alleges that in February 2017, Party Animal began
9 receiving invoices from Nutripack instead of Evanger's. When it inquired about this,
10 an owner of Evanger's, Holly Sher, stated that they were afraid of getting sued
11 because of the recent recalls, and they were taking money out of Evanger's. She also
12 stated that they did not want to receive any money into Evanger's and would instead
13 run all operations under Nutripack.

14 21. Plaintiffs and the other members of the proposed classes have purchased
15 Defendants' Pet Foods, and relied on Defendants' misrepresentations about their
16 products' high quality, human-grade ingredients and sources of USDA inspected
17 meat. Defendants also omitted material facts about the quality of the meat in the Pet
18 Foods and the health risks they carried, including but not limited to the fact that they
19 may be contain poisonous pentobarbital, were contaminated from the unsanitary
20 manufacturing facilities and were from animals that did not die from slaughter.

21 22. The Pet Foods were unsafe for animals to consume and should not have
22 been sold under the law. Had Defendants disclosed the true facts concerning these
23 products, Plaintiffs would have been aware of them, the potential harm and would
24 not have purchased Defendants' Pet Foods or not paid as much money for them.
25 Defendants' false and misleading labels touting the purity and quality of their
26 products allowed Defendants to charge a higher price than it could have without
27 these representations.

1 Tank, Pedro, Tinkerbelle and Tito, until January 1, 2017, when Talula passed away
2 after eating Evanger's Hunk of Beef that was contaminated with pentobarbital.

3 27. Members of the putative classes reside in Washington and throughout
4 other states in the United States.

5 28. During the relevant period, Plaintiffs, while in the state of Washington,
6 were exposed to and saw Defendants' material, deceptive marketing claims and
7 packaging that misrepresented the quality and ingredients of their Pet Foods and
8 omissions that failed to disclose material facts about the meat used and the health
9 risks it carried to animals that consumed it. Before purchasing Defendants' Pet
10 Foods, Plaintiffs reviewed the product labels and Defendants' websites and relied
11 on these in making their decision to purchase the Pet Foods. Plaintiffs, relying on
12 Defendants' omissions and misleading marketing and labeling of their Pet Foods,
13 believed that Defendants' Pet Foods were premium, "human grade," "USDA
14 inspected meats" and did not carry any health risks to their pets. While in the state
15 of Washington, Plaintiffs purchased Defendants' Pet Foods intermittently at a local
16 retailer, Healthier Choices, in Washougal, Washington, over a four year period,
17 including on December 31, 2016, when they purchased five cans of Evanger's Grain
18 Free Rabbit for dogs and cats at \$1.65 per can, three cans of Hunk of Beef at \$3.20
19 per can and three cans of Pulled Beef at \$3.60 per can. Exhibit A receipt from
20 purchase.

21 29. Had Defendants disclosed the truth about their Pet Foods - that the
22 products were *not* premium, human grade nor sourced from USDA inspected meats,
23 and their health risks to animals that ate them, as was known to or should have been
24 known to Defendants - then Plaintiffs would have been aware of the true nature of
25 these products, and would not have paid the price that they paid for the Pet Foods,
26 or would not have purchased them at all. In the future, if Defendants were to disclose
27 that its Pet Foods are not high quality, not human grade and not from USDA
28

1 inspected meats, Plaintiffs would be in a position to make an informed decision as
2 to whether to purchase Defendants' products at the prices offered. Thus, as a result
3 of Defendants' material unfair and deceptive misrepresentations and omissions,
4 Plaintiffs suffered injury in fact and lost money, and most importantly, lost their
5 beloved companion animal.

6 *Defendants*

7 30. Evanger's is incorporated in Illinois, and has its corporate headquarters
8 at 211 Wheeling Road, Wheeling, Illinois 60090. It was started in 1935 by Fred
9 Evanger. It is currently owned by Joel, Holly, Chelsea and Brett Sher, who acquired
10 it in 2002, when they developed the "human-grade" ingredients, and hand-packed
11 products line, including Hunk of Beef, Braised Beef and Pulled Beef. It has two
12 facilities, one in Wheeling, Illinois, and one it opened in 2014 in Markham, Illinois.²

13 31. Nutripack located in Markham, Illinois, is an Illinois limited liability
14 company, owned and operated by the Sher family. Nutripack manufactures
15 Evanger's Pet Foods. According to the lawsuit filed by Party Animal, Evanger's
16 began invoicing Party Animal through Nutripack in February 2017, following the
17 recall of the Pet Foods. Holly Sher, an owner of Evanger's and Nutripack, indicated
18 that it was defunding Evanger's and running its funds through Nutripack to avoid
19 liability relating to the recalls.

20 32. Evanger's produces many different lines of pet food under its own name
21 and under the brand name Against the Grain. Evanger's sells its products online and
22 through retailers across the country. Evanger's also produces other companies'
23 brands, including but not limited to Party Animal. Evanger's publicly stated on its
24 website on January 4, 2017, that "Hunk of Beef is our #1 seller. Pets consume over
25

26 ² Evanger's Fact, Our Story, <http://www.evangersfacts.com/evangers-history/> (last
27 visited May 15, 2017).

1 one million cans of Hunk of Beef per year.”³ Evanger’s, Voluntary Recall, January
2 4, 2017, <http://evangersdogfood.com/news-events/pug-family-updates/> (last visited
3 February 17, 2017) (since removed).

4 33. Plaintiffs allege, on information and belief, that at all times relevant
5 herein, Defendants’ agents, employees, representatives, executives, directors,
6 partners, and/or subsidiaries were acting within the course and scope of such agency,
7 employment, and representation, on behalf of Defendants.

8 **FACTUAL ALLEGATIONS**

9 **I. BACKGROUND ON REGULATION AND LAWS GOVERNING THE** 10 **PET FOOD INDUSTRY**

11
12 34. The FDA and USDA are tasked with regulating pet foods, labels and
13 manufacturing to keep humans and animals safe. The FDA regulates animal protein
14 ingredient suppliers, which may also be subject to state jurisdiction. The USDA-
15 FSIS regulates the slaughter of animals for human consumption and provides
16 grading and definition of various products including testing for speciation. The
17 USDA- Animal and Plant Health Inspection Service (“APHIS”) provides a voluntary
18 service to inspect and provide certification status to facilities according to standards
19 established by the country where the facilities wish to export their products. APHIS
20 does not have direct regulatory responsibility over pet food.⁴

21 35. The Association of American Feed Control Officials (“AAFCO”) is a
22 voluntary membership association of local, state and federal agencies charged by
23

24 ³ Evanger’s, Voluntary Recall, January 4, 2017, [http://evangersdogfood.com/news-](http://evangersdogfood.com/news-events/pug-family-updates/)
25 [events/pug-family-updates/](http://evangersdogfood.com/news-events/pug-family-updates/) (last visited February 17, 2017) (since removed).

26 ⁴ FDA, Questions and Answers: Evanger’s Dog and Cat Food (“FDA Q&A”),
27 [https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/uc](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm)
28 [m544348.htm](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm) (last visited April 27, 2017).

1 law to regulate the sale and distribution of animal feeds and animal drug remedies.
2 AAFCO has no regulatory authority, but provides a forum for the membership and
3 industry representation to create model guidelines for pet food to safeguard the
4 health of animals and humans; ensure consumer protection; and provide a level
5 playing field of orderly commerce for the animal feed industry.⁵

6 36. Under the FDCA, 21 U.S.C. § 342(a)(1), a “food,” which includes human
7 and pet food, is considered adulterated if it contains a poisonous or deleterious
8 substance; is contaminated by insanitary conditions; or is sourced from an animal
9 that did not die by slaughter. Food may also be deemed adulterated if under § 342(b)
10 it is substituted. This law is in place to protect people and their pets from the risk
11 from consuming poisonous, contaminated, euthanized, diseased or decomposing
12 animal tissues. Specifically, the law states, in pertinent part:

13 A food shall be deemed to be adulterated-

14 (a) Poisonous, insanitary, etc., ingredients

15 (1) If it bears or contains *any poisonous or deleterious substance* which
16 may render it injurious to health . . . (2)(A) if it bears or contains any
17 added poisonous or added deleterious substance . . . that is unsafe within
18 the meaning of section 346 of this title . . . (3) if it consists in whole or
19 in part of any filthy, putrid, or decomposed substance, or if it is
20 otherwise unfit for food; or (4) if it has been *prepared, packed, or held*
21 *under insanitary conditions whereby it may have become*
22 *contaminated with filth*, or whereby it may have been rendered
23 injurious to health; or (5) if it is, in whole or in part, the product of a
24 diseased animal or of an *animal which has died otherwise than by*
25

26 ⁵ AAFCO, Home and Regulatory, <http://www.aafo.org/> (last visited April 27,
27 2017).

1 (misbranding); 505 Ill. Comp. Stat. 30/3(s) (pet food), 30/7 (adulteration) and 30/8
2 (misbranding); WI Stat. § 94.72 (8) (adulteration and misbranding).

3 40. Pet food manufacturers may fail to comply with state and federal laws
4 governing adulteration and misbranding in some of the following ways: (1)
5 producing pet foods that contain poisonous substances like pentobarbital used to
6 euthanize animals; (2) preparing, packaging and holding pet foods in unsanitary
7 facilities that contaminate them; (3) using non-slaughtered animals that may be
8 diseased, decomposed or euthanized; and (4) substituting other ingredients like beef,
9 horse or pig and selling them under a different name.

10 41. Many manufacturers, including Evanger's, use meat from animals that
11 are not USDA-inspected, human-grade and have died by means other than slaughter
12 in their pet foods, including animals that were euthanized using pentobarbital. This
13 practice has killed and sickened companion animals and put other animals and
14 humans' health and safety at risk.

15 **II. RECENT PET FOOD SCANDALS HAVE CAUSED CUSTOMERS**
16 **TO BECOME MORE INFORMED ABOUT THE PRODUCTS THEY**
17 **PURCHASE**

18 42. The lack of compliance with regulations has caused the industry to come
19 under fire in recent years following scandals that have had the result of killing and
20 sickening pets across the country and world.

21 43. In 2002, the FDA reported on its investigation into the presence of
22 pentobarbital in pet foods following reports from veterinarians that pentobarbital,
23 used as an anesthetizing agent for dogs and other animals seemed to be losing its
24 effectiveness in dogs. The FDA stated that because pentobarbital is routinely used
25 to euthanize animals, the most likely way it could get into dog food would be in
26 rendered animal products. Rendered products come from a process that converts
27 animal tissues to feed ingredients, including tissues from animals that have been

1 euthanized, decomposed or were diseased. The FDA found that pentobarbital from
2 euthanized animals survives the rendering process and could be present in the
3 rendered feed ingredients used in pet food. The FDA's testing of dry dog food
4 confirmed some samples contained pentobarbital. The FDA concluded that
5 pentobarbital was entering pet foods from euthanized, rendered cattle or horses
6 because of the lack of dog and cat DNA.⁸

7 44. Despite its findings, the FDA has not aggressively taken action under
8 FDCA, § 342 (a)(1) or (5), against the pet food companies that it found to have used
9 non-slaughtered animals and contain pentobarbital in their pet foods. Therefore,
10 manufacturers in the pet food industry, including Defendants, have continued their
11 illegal practice of using non-slaughtered animals that may contain poisonous
12 substances, like pentobarbital, in their pet foods.

13 45. In March 2007, another pet food scandal rattled consumers, when pet
14 food manufacturer Menu Foods alerted the FDA to animal deaths from its routine
15 taste trials, which was followed by numerous consumer and veterinarian reports of
16 many more pet deaths and sickness related to Menu Foods. These animals were
17 reported to have developed kidney failure after eating certain pet food produced at
18 Menu Foods' facilities.⁹

19 46. FDA laboratories found melamine and melamine-related compounds
20 labeled as wheat gluten and rice protein concentrate imported from China and used
21 as ingredients in Menu Food's products. Cornell University scientists also found

22 ⁸ FDA, Food and Drug Administration/Center for Veterinary Medicine Report on
23 the Risk from Pentobarbital in Dog Food, February 28, 2002,
24 <https://www.fda.gov/aboutfda/centersoffices/officeoffoods/cvm/cvmfoiaelectronicreadingroom/ucm129131.htm> (last visited April 26, 2017).

25 ⁹ FDA, Melamine Pet Food Recall-Frequently Asked Questions,
26 <https://www.fda.gov/animalveterinary/safetyhealth/recallswithdrawals/ucm129932.htm> (last visited April 20, 2017).
27

1 melamine in the urine and kidneys of deceased cats that were part of a taste-testing
2 study conducted for Menu Foods. The combination of melamine and cyanuric acid
3 in pet foods form crystals in urine and kidney tissue, which can lead to kidney failure
4 and cause animal sickness and death. Over 150 brands of pet foods manufactured by
5 Menu Foods were recalled and numerous lawsuits were filed, including a class
6 action that settled for tens of millions to compensate pet owners for their veterinarian
7 costs, pet loss and purchases. *Id.*

8 47. After being indicted on criminal charges for importing the contaminated
9 pet-food ingredients used by Menu Foods that sickened and killed thousands of
10 family pets in 2007, the company responsible, ChemNutra, Inc. and its owners pled
11 guilty and were sentenced to probation and a company fine of \$25,000, after also
12 agreeing to pay part of the class action settlement.¹⁰

13 48. Again, beginning in 2007, the FDA began repeatedly issuing alerts to
14 consumers about reports it had received concerning jerky treats that were made in
15 China causing illnesses involving 3,600 dogs and 10 cats in the U.S. and resulting
16 in approximately 580 deaths. However, after conducting more than 1,200 tests,
17 visiting jerky pet treat manufacturers in China, and collaborating with colleagues in
18 academia, industry, state labs and foreign governments, the FDA was unable to
19 determine the cause of the illnesses.¹¹

20 49. In 2013, after a New York State lab reported finding evidence of up to
21 six drugs in certain jerky pet treats made in China, a number of jerky pet treat

22 ¹⁰ The VIN News Service, Sentences Handed Down in Pet Food Poisoning
23 Criminal Case, Feb. 9, 2010,
24 <http://news.vin.com/vinnews.aspx?articleId=14984> (last visited
25 April 21, 2017).

26 ¹¹ FDA, Why Are Jerky Treats Making Pets Sick?
27 <https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm371413.htm> (last
28 visited April 20, 2017).

1 products were removed from the market, and there was a corresponding decrease in
2 reports of jerky-suspected illnesses. *Id.*

3 50. In 2014, The Blue Buffalo Company Ltd. was sued by Nestle Purina
4 Petcare Company ("Nestle") (*Nestle Purina Petcare Company v. The Blue Buffalo*
5 *Company Ltd.*, 4:14-cv-00859-RWS (E.D. Mo.)), for falsely stating that it did not
6 have any animal by-products in its pet food. When it was uncovered that Nestle was
7 correct and a supplier was providing meat by-product used in Blue Buffalo's pet
8 food that was falsely labeled as otherwise, customers also sued in a class action, (*In*
9 *re Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation*, No. 14-
10 md-02562-RWS (E.D. Mo. Dec. 21, 2015)), resulting in tens of millions in a
11 settlement for customers misled by the false advertising.

12 51. Blue Buffalo's supplier, Wilbur-Ellis and its employee, now face
13 criminal charges in federal court and accusations of introducing adulterated food
14 into interstate commerce, and misbranding its products by using too many lower-
15 quality ingredients, such as chicken feathers, and not enough real chicken and other
16 meat.¹²

17 **III. EVANGER'S MARKETS ITS PET FOODS TO INGREDIENT-** 18 **CONSCIOUS CUSTOMERS**

19 52. In the wake of uncertainty about the safety and labeling of pet food,
20 consumers have increasingly become more aware and cautious about the products
21 they purchase.

22 53. Recognizing the market for informed customers, who want to purchase
23 products that come from the United States and are safe and contain high quality

24 ¹² St. Louis Post Dispatch, Pet Food Supplier Accused of Too Many Chicken
25 Feathers, Not Enough Chicken, March 7, 2017,
26 [http://www.stltoday.com/business/local/pet-food-supplier-accused-of-too-many-](http://www.stltoday.com/business/local/pet-food-supplier-accused-of-too-many-chicken-feathers-not/article_b88af797-c3fe-56d1-a682-2c870a5669fb.html)
27 [chicken-feathers-not/article_b88af797-c3fe-56d1-a682-2c870a5669fb.html](http://www.stltoday.com/business/local/pet-food-supplier-accused-of-too-many-chicken-feathers-not/article_b88af797-c3fe-56d1-a682-2c870a5669fb.html) (last
visited April 20, 2017).

1 ingredients, Defendants advertises and labels its products in this way in order to
2 entice these customers, including Plaintiffs, to purchase its Pet Food for their pets.
3 Exhibit B, listing of Defendants's Pet Foods.

4 54. Evanger's has been an independent business for over 80 years, owned by
5 the Sher family since 2002, with a self-proclaimed mission to develop "quality"
6 products for companion pets. It specifically says that it "sell[s] *our products*
7 *exclusively through independent neighborhood pet shops where quality and*
8 *customer service are of the utmost importance.*"¹³ Plaintiffs purchased
9 Defendants's Pet Foods at an independent, local pet store, called Healthier Choices.

10 55. The publicity surrounding Menu Foods and similar scandals allowed
11 Defendants to capitalize on the opportunity to promote itself as a producer of
12 healthier, safe, alternative pet foods. Some small, independent pet food companies,
13 including Party Animal, in the wake of recalls, decided to partner with Evanger's to
14 make their organic pet food. Shawna Abrams, one of the co-owners of Party Animal,
15 said at the time that "marketing our new food to retailers would have been a tougher
16 sell, but *with news of the recall [of Menu Foods' pet food], suddenly everyone*
17 *wanted untainted, natural food like ours.*"¹⁴

18 56. On the home page of its website, as recently as February 17, 2017,
19 Evanger's prominently stated that "Healthy Food Makes Happy Pets," "No
20 additives, artificial ingredients, or preservative," "The Evanger's Difference" is:

21 The image is a screenshot of a website banner for Evanger's. It has a dark, textured background. On the left, the text "People Food for Pets!" is written in a white, bold, sans-serif font. Below this, in a smaller white font, is the text "Voted editors choice two years running by Pet Product News International." On the right side of the banner, there is a white rectangular button with the text "Shop Our Store" in a dark font.

People Food for Pets!

Voted editors choice two years running by Pet Product News International.

Shop Our Store

22
23
24 ¹³ Evanger's, About Us, <https://evangersdogfood.com/about-us/> (last visited April
25 27, 2017).

26 ¹⁴ Pet Product News, Business Builder: Private Labels Profit Potential, April 17,
27 2015 [http://www.petproductnews.com/April-2015/Business-BUILDER-Private-
Labels-Profit-Potential/](http://www.petproductnews.com/April-2015/Business-BUILDER-Private-Labels-Profit-Potential/) (last visited April 25, 2017) (emphasis added).

1 Evanger's, Home, <https://evangersdogfood.com/> (last visited February 17, 2017)
2 (emphasis added). As of the filing of this complaint this language has been removed.

3 57. In describing its products, Evanger's stated as recently as February 17,
4 2017, that it only uses quality, all-natural, "*human-grade USDA inspected meats*,"
5 stating, in pertinent part:

6 Evanger's utilizes *human-grade USDA inspected meats* to make
7 highly palatable and nutritious foods that will satisfy even the most
8 finicky eater. With no soy, corn, wheat, artificial ingredients, *harmful*
9 *additives*, preservatives or by-products, Evanger's canned meals make
10 an excellent mixer to our dry foods. Not only do they offer your pet a
11 variety in taste, our *gourmet dinners* offer the additional nutritional
12 benefits your pet needs. Natural Vitamins and minerals are blended
13 with the all-natural meats for ultimate nutrition that are completely
14 balanced meals for all life stages, ages, and breeds.

15 Our *Hand Packed Edition is a monumental improvement in canned*
16 *dog and cat foods*. We have taken our *extraordinary product and made*
17 *it even better* by filling each can individually with one pair of hands,
18 instead of machines. The benefit of this process is that you, the
19 consumer, can actually *see the quality ingredients in its original form;*
20 *whole, pure meats* and fresh vegetables without any additives or by
21 products. Your pets will think they are being treated like kings and
22 queens!

23 Since the 2003 addition of the Hand Packed foods, Evanger's family of
24 foods has expanded to include the following groups of *exceptional*
25 *foods and treats* . . .

26 Manufacturing Process

27 Evanger's cans are packed with *natural, raw ingredients in their own*
28

1 *natural juices*. The ingredients are then cooked entirely inside the
 2 sealed can to lock in the nutrients and flavor of each variety. This
 3 process assures both *wholesome nutrition for long life and good*
 4 *health*, plus the great taste your dog and cat will love. Naturally the
 5 best!¹⁵

6 58. In order to attract other companies' brands to its manufacturing,
 7 Evanger's touts its use of "the highest quality of pet food available," and that "[b]y
 8 *working closely with local suppliers, we are able to keep raw material prices steady*
 9 *while delivering top quality products*."¹⁶

10 59. Evanger's co-owner, Chelsea Sher, responded about six months to a
 11 customer's question posted on the Hunk of Beef page that Evanger's quality is
 12 assured by its hand-selection of meats and suppliers and inspections for freshness
 13 and quality:



Rixxon · 7 months ago

My dogs love your hunk of beef dog food, it is rather costly what can you do to assure me your using
 quality meat, it looks great, but it scares me all the stuff you hear about dog foods. only dogfood of it's
 kind.

1
 answer

Answer this Question



Chelsea S · 6 months ago

Dear Rixxon, The wonderful thing about the Hunk of Beef product is that it's a very visual product where you can see the
 wholesomeness and integrity of the meat itself. Our meat is sourced locally and goes into the can fresh. We do hand-
 select our meat and ingredient suppliers based on our own quality standards, and inspect all product that arrives in our
 facility for freshness and quality.

Helpful? Yes · 0 No · 0 Report

15 Evanger's, About Our Products, <https://evangersdogfood.com/about-us/about-our-products/> (last visited February 17, 2017) (emphasis added). As of the filing of
 this complaint, the words "human grade" have been removed from this page
 although Evanger's continues to maintain that its products are "**USDA inspected**."

16 Evanger's, Private Label Services, <https://evangersdogfood.com/about-us/private-label-services/> (last visited April 27, 2017) (emphasis added).

1 Evanger's, Hunk of Beef, <https://evangersdogfood.com/product/20109/> (last visited
2 April 27, 2017).

3 60. Evanger's has close, long standing relationships with its suppliers, some
4 for over forty years, including the supplier of its Hunk of Beef and Pulled Pork.¹⁷

5 61. As recently as February 9, 2017, Evanger's touted that its "Grain Free
6 Hand Packed" specialties, including Hunk of Beef and Braised Beef, with "fresh,
7 natural and superior ingredients (no by-products) ensure *quality on a human-grade*
8 *level*." It states that its cooking process softens its recipes with bones making them
9 "*edible, safe, wholesome* and highly digestible."¹⁸

10 62. Evanger's touts that Hunk of Beef is its best seller, and that it sells more
11 than one million cans of a year. It labels Hunk of Beef as "100% beef," "cRc Kosher
12 for Passover," with a picture of a human steak dinner, and the statement "Foodies
13 Choice" typically used to describe picky people, who only eat what they consider
14 the best quality and tasting foods,¹⁹

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20 ¹⁷ Evanger's, Voluntary Recall, posted February 3, 2017,
21 <https://evangersdogfood.com/news-events/pug-family-updates/> (last visited
22 February 17, 2017) (since removed).

23 ¹⁸ Evanger's, Dog Food, Grain Free Hand Packed,
24 <https://evangersdogfood.com/dog-food/grain-free-hand-packed/> (last visited
25 February 9, 2017) (emphasis added). As of the date of this complaint, the words
26 "human grade level" have been removed.

27 ¹⁹ Evanger's, Voluntary Recall, posted January 4, 2017,
28 <http://evangersdogfood.com/news-events/pug-family-updates/> (last visited
February 17, 2017) (since removed).



**HUNK OF BEEF – PACKED BY
HAND!**

Premium tender 100% beef roast cooked
in its own juices serves up a meaty
supplement.

\$ 36.91

63. Evanger's also offered its Braised Beef as uncut pieces of meat in gravy,
with a label that says "100% Beef Meat" and a picture of a human steak meal:



**BRAISED BEEF CHUNKS
WITH GRAVY PACKED BY
HAND!**

A hearty dinner of tender chunks of beef
with market fresh vegetables of peas and
carrots together with nutritious gravy
Grain Free!

\$ 36.91

1 64. On its website, Evanger's posted a video of Defendants's co-owner,
2 Chelsea Sher, touting its "people food for pets," in which she eats some Hunk of
3 Beef to show that it is edible by people²⁰:

4 Chelsea Sher Eats Evanger's Dog Food



12 65. In addition to its Hand Packed lines, Evanger's also carries an "*Organic*
13 *People Food for Pets*" line certified by Oregon Tilth for its "handling" process.
14 Oregon Tilth permits non-organic products on the same line as organic products if
15 there are sufficient measures and procedures in place, including cleaning and
16 sanitation, to protect organic product from contamination or commingling of any
17 non-organic material²¹:

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19

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22

23 ²⁰ Evanger's, News & Events, Chelsea Sher Eats Evanger's Dog Food, Published
24 on You Tube August 25, 2015, [https://evangersdogfood.com/news-events/recent-](https://evangersdogfood.com/news-events/recent-press/)
25 [press/](https://youtu.be/RQekr7QtSiI) and <https://youtu.be/RQekr7QtSiI> (last visited May 15, 2017).

26 ²¹ Oregon Tilth, Processing and Handling FAQ,
27 <https://tilth.org/app/uploads/2014/12/BrandsMarketersManufacturersFAQ.pdf> (last
visited May 2, 2017).

Organic People Food for Pets!



100% ORGANIC COOKED CHICKEN

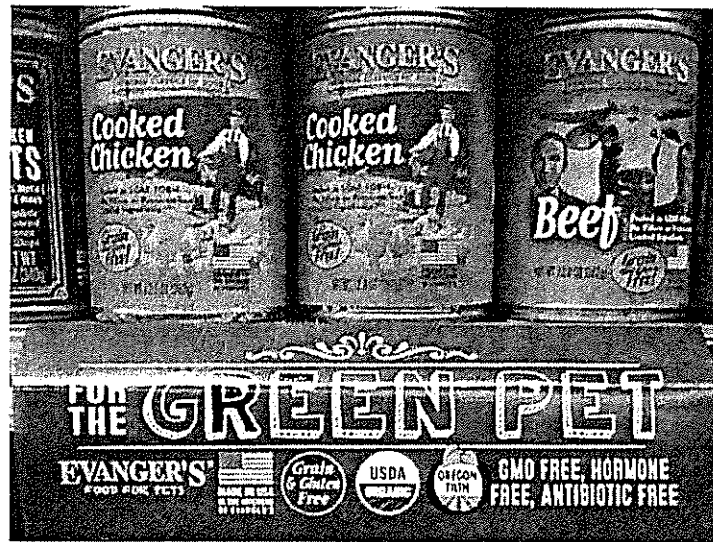
A whole dressed organic chicken simmered in natural well water is a wonderful healthy meal.



ORGANIC TURKEY WITH POTATO & CARROTS DINNER

Organic turkey with organic market-fresh vegetables create a wholesome dinner.

66. Evanger's provides display materials to retailers to place in their stores next to Defendants's products, without specifying the precise products to which they apply, which advertise Evanger's as "Green," "USDA Organic" - subject to the same requirements as human food, "Oregon Tilth" certified, and similar to organic standards, in order to entice customers to purchase them:



1 67. Evanger's offers other "all-natural, meat-based" pet foods for dogs, cats
2 and ferrets with "no by-products, additives or preservatives." In addition to its Grain
3 Free Hand Packed and Organics lines, Evanger's offers Classic Line, Dry Foods,
4 Grain Free Game Meats, Nothing but Natural – "made of 100% whole muscle meat,"
5 Signature Series, Super Premium – that are "completely balanced, highly nutritious,
6 great tasting, innovative meals" and "holistic," Jerky Treats, Freeze Dried Treats and
7 Ferret food.²²

8 68. Evanger's states that is "100% committed to the safety of its products."²³

9 69. Similar to Evanger's brand name, its Against the Grain brand also touts
10 its "carefully selected," "highest quality," "human grade," "meat-based" Pet Foods:
11 85% Meat. 0% Grain.

12 Because dogs and cats are primarily carnivores, we have designed all of our
13 formulations to include at least 85% meat. But not only do we make *meat-*
14 *dominant foods, but our proteins are all of high quality, and only sourced*
15 *from human grade facilities*. They never contain growth hormones and are
16 anti-biotic free. To show you how proud we are of *our carefully selected*
17 *ingredients*, we do not make a traditional, loaf-style food. Instead, we hand
18 fill all of our canned foods so that *you can see the quality of our hand pulled*
19 *meats* and fresh caught fish right when you open a can of Against the Grain
20 pet foods, *instead of "mystery meat."*

21 Our Mission.

22 Our mission is to *improve the health and quality of life of our companion*
23 *pets* through the development of the *safest*, most nutritious, and palatable pet

24 _____
25 ²² Evanger's, About Us, Product Guide, [https://evangersdogfood.com/about-](https://evangersdogfood.com/about-us/product-guide/)
26 [us/product-guide/](https://evangersdogfood.com/about-us/product-guide/) (last visited May 2, 2017).

27 ²³ Evanger's, News, Voluntary Recall, [https://evangersdogfood.com/news-](https://evangersdogfood.com/news-events/updates/)
28 [events/updates/](https://evangersdogfood.com/news-events/updates/) (last visited April 27, 2017).

1 products available. We believe that our *high quality products* should not only
2 sustain our companion pets, but our emphasis on palatability also increases
3 their enjoyment of life—like you and I.

4 All That.

5 Instead of conforming to all other pet food companies' traditions of making
6 foods, who use a top-down approach when creating pet food, Against the
7 Grain started with a bottom-up approach. We first asked, "What is the best pet
8 food that can be made, then how do we make it." The end result offers the
9 smartest choice for a *healthy* and happy pet. All of foods are *minimally*
10 *processed at our own factories*, and all processing methods are designed to
11 ensure that the integrity of the proteins, vitamins, and natural enzymes are
12 maintained.

13 Against the Grain *uses all fresh ingredients*, and has designed all foods to be
14 grain-free and gluten-free. We NEVER use corn, wheat, or soy. We have
15 taken steps to use sustainable and green resources; our fresh-caught fish-based
16 cat canned foods are dolphin-safe and turtle-safe. Our meat products are all
17 GMO and anti-biotic free. Finally, we use the maximum amount of recyclable
18 materials in our retail packaging, and use strictly skylights in our
19 manufacturing plant.²⁴

20 70. In describing why it started Against the Grain, Evanger's states that it
21 wanted to make Pet Foods that were "second to none" with its number one criteria
22 being "SAFETY." It boasts that unlike other brands, it owns its manufacturing
23

24
25
26 ²⁴ Against the Grain, About the Food,
27 <http://www.againstthegrainpetfood.com/about-the-food/> (last visited May 2, 2017)
(emphasis added).

1 facility and produces its own products that gives it accessibility and the ability to
2 create unique and innovative products.²⁵

3 71. Against the Grain brand has three lines of Pet Foods, Super Food, Pulled
4 Meat Dog Food and Canned Cat Food. It *continues* to state that its Canned Cat Food
5 is:

6 **human quality**
7 **CAT FOODS**

8 Against the Grain, Canned Cat Food, [http://www.againstthegrainpet_food.com](http://www.againstthegrainpet_food.com/human-quality-cat-food/)
9 /human-quality-cat-food/ (last visited May 2, 2017).

10 72. As recently as February 17, 2017, Against the Grain stated that its Pulled
11 Meat Dog Foods, including Pulled Beef, were “human grade”:

12 **Pulled Chicken with Gravy**

13 Human grade hand pulled chicken with hand cut
14 carrots, apples, sweet potatoes, and peas are
15 slow cooked in gravy for a delicious and
16 nutritionally complete dinner for dogs. > More

Buy Now!



17 **Pulled Beef with Gravy**

18 Human grade hand pulled beef with
19 hand cut carrots, apples, sweet
20 potatoes, and peas are slow cooked in
21 gravy for a delicious and nutritionally
22 complete dinner for dogs. > More

Buy Now!



23 Against the Grain, Pulled Meat Dog Foods,
24 <http://www.againstthegrainpetfood.com/pulled-meat-dog-food/> (last visited Feb. 17,
25 2017). As of the filing of this complaint the words “human grade” have been
26 removed.

27 73. Evanger’s also manufactures pet foods for Party Animal, which makes
28 similar representations about its organic pet food, including that it uses the “best”
and “healthiest” ingredients in its products.²⁶

²⁵ Against the Grain, About Us, <http://www.againstthegrainpetfood.com/about-us/>
(last May 2, 2017) (capitalization in original).

²⁶ Party Animal, Our Story and FAQ, <http://partyanimalpetfood.com/> (last visited
May 3, 2017).

1 74. On its website, Party Animal details the USDA's National Organic
2 Program which requires that, in pertinent part:

3 organic ingredients are free of pesticides, synthetic fertilizers, antibiotics,
4 growth hormones, GMO's (genetically modified organisms), by-products,
5 artificial colors, flavors and preservatives. Organic livestock may not be given
6 antibiotics, growth hormones or any animal-byproducts. They can only be fed
7 organic feed and must have access to the outdoors. All certified USDA
8 organic pet products must *meet the same USDA requirements as human*
9 *food.*

10 * * * *

11 A complete breakdown of our formula, including *sources of each ingredient*
12 is required as part of the organic certifying agency's review and approval
13 process. This independent third-party review and approval process is unique
14 in pet food/treats.

15 *Id.* (emphasis added).

16 75. Party Animal also states that some of its products are labeled certified by
17 Oregon Tilth, which "inspects [its] production facility and reviews each ingredient
18 used in our organic formulas . . . including sources of each ingredient is required as
19 part of the agency's review and approval process to certify that the federal organic
20 standards are met." *Id.*

OUR NO LIST:

Page 10 of 10

1. *University of California Press*

[illegible][illegible][illegible]

COCOLICHOU'S™
L'ART DE LA CUISINE

Grain Free Canned Dog Food Made with Organic Chicken, Organic Beef,
Organic Coconut Oil, Vegetables & Fruits • Vitamins & Minerals

OUR NO LIST:

Import-Export

Program 44561

[illegible]

Calcium Content

[illegible]

77. Since 2002, when the Shers purchased Evanger's, the company has been plagued by issues with regulators, law enforcement and lawsuits. After numerous complaints from residents about its putrid odor, in 2006, the Village of Wheeling, Illinois, filed a lawsuit against Evanger's for violation of several ordinances relating

1 to sanitation, rotting meat, sewage and insects. After many years of litigation and
2 continued problems at Evanger's facility, which even forced the relocation of a
3 children's summer camp, the state appellate court affirmed a trial court's granting of
4 summary judgment in favor of the Village of Wheeling, and ordered Evanger's to
5 pay \$316,500 in restitution. *The Village of Wheeling v. Evanger's Dog and Cat Food*
6 *Co., Inc.*, No. 06 MC3 013933-01, 2012 IL App (1st) 113100-U (Nov. 28, 2012).

7 78. Evanger's is also no stranger to the FDA. On April 24, 2008, the FDA
8 issued an order requiring Evanger's to obtain an emergency permit from the agency
9 before its canned pet food products could enter interstate commerce, after an
10 inspection found "significant deviations from prescribed documentation of
11 processes, equipment, and recordkeeping" in its canned food production. The FDA
12 indicated that these problems "could result in under-processed pet foods, which can
13 allow the survival and growth of *Clostridium botulinum* (*C. botulinum*), a bacterium
14 that causes botulism in some animals as well as in humans."²⁷

15 79. The FDA initially approved a temporary emergency permit, based on a
16 finding that Evanger's had taken corrective actions to address these issues.
17 However, shortly thereafter, in June 2009, the FDA revoked the permit after FDA
18 inspections determined that Evanger's was not operating in compliance with the
19 permit's mandatory requirements and conditions.²⁸

20 80. In May 2011, the FDA revisited Evanger's. This time the FDA issued a
21 warning letter to Evanger's, finding that its Lamb and Rice and Grain Free Duck Pet

22 ²⁷ FDA, FDA Orders Pet Food Maker to Obtain Emergency Operating Permit,
23 dated April 24, 2008, [https://wayback.archive-](https://wayback.archive-it.org/7993/20170114031812/http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucml16886.htm)
24 [it.org/7993/20170114031812/http://www.fda.gov/NewsEvents/Newsroom/PressAn-](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucml16886.htm)
25 [nouncements/2008/ucml16886.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucml16886.htm) (last visited May 15, 2017).

26 ²⁸ North Carolina Academy of Small Animal Medicine, Recalls, FDA Suspends
27 Temporary Emergency Permit of Pet Food Maker, dated June 12, 2009,
<http://www.ncasam.org/educator/article/349/> (last visited May 15, 2017).

1 Foods were adulterated and misbranded in violation of federal law because they did
2 not contain any lamb or duck, respectively. The FDA also stated that Evanger's
3 failed to provide processing and production records upon written demand as
4 required.²⁹

5 81. Evanger's problems do not stop with its Pet Food; it has also been
6 accused of failing to properly pay its employees pursuant to federal law. In January
7 2009, several employees filed a class action lawsuit against the company, *Barragan*
8 *et al. v. Evanger's Dog and Cat Food Co., Inc.*, 1:09-cv-00227 (N.D. Ill. Jan. 13,
9 2009), alleging that they were not paid overtime in violation of the federal Fair Labor
10 Standards Act. After the court granted certification to the class, the parties agreed to
11 settle, and the court granted final approval of the settlement in September 15, 2010.
12 *Barragan*, Docket 87 (entered Sept. 17, 2017).

13 82. Aside from their entanglements with regulators and civil lawsuits,
14 Evanger's owners, Holly and Joel Sher, have been convicted of criminal activity. In
15 May 2010, they were arrested and charged with felony theft and money laundering
16 for stealing almost \$2 million in utilities for Evanger's pet food manufacturing plant.
17 The prosecutor commented that the Shers showed a callous disregard for their
18 employees' safety by exposing them to dangerous situations over many years in the
19 course of orchestrating their utility theft scheme.³⁰

20
21
22
23 ²⁹ FDA, Evanger's Dog & Cat Food Company, Inc. 5/5/11, dated May 5, 2011,
24 <https://wayback.archive-it.org/7993/20170112193647/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2011/ucm255000.htm> (last visited May 15,
25 2017).

26 ³⁰ Chicago Tribune, Lincolnwood couple charged in utility theft scheme, March 25,
27 2010, http://articles.chicagotribune.com/2010-03-25/news/ct-met-electricity-theft-0325-20100325_1_nicor-gas-gas-meters-joel-sher (last visited May 15, 2017).

1 83. During the utility theft litigation, in 2013, Joel Sher was charged with
2 subornation of perjury, bribery and communicating with a witness when he tried to
3 bribe a witness to change his testimony for \$5,000.³¹

4 **IV. DEFENDANTS'S PET FOOD POISONS PLAINTIFFS' PETS AND**
5 **ONE PET DIES**

6 84. Relying on Defendants's marketing and advertising of its products,
7 Plaintiffs purchased Defendants's Pet Foods for four years as a treat for their five
8 dogs. On New Year's Eve, December 31, 2016, Plaintiff Nicole Mael purchased
9 several of Evanger's products at her local pet food store, Healthier Choices,
10 including cans of Hunk of Beef and Pulled Beef.

11 85. Immediately after her five dogs consumed the Hunk of Beef, they began
12 acting intoxicated and non-responsive - suffering from acute neurological
13 symptoms. Plaintiffs rushed them to an emergency vet. One of their dogs, Talula
14 died from the poisoning from the Hunk of Beef the next day, January 1, 2017. The
15 other four have undergone continued veterinary care, including Tito, who remains
16 on seizure medication.³²

17 86. After Talula's death, Plaintiffs, working with the FDA, requested that a
18 necropsy be performed on the animal's body to determine the cause of death. The
19 necropsy was performed at Oregon State University Veterinary Diagnostic
20

21 ³¹ Chicago Tribune, Man accused of trying to bribe witness, Feb. 9, 2013,
22 [http://articles.chicagotribune.com/2013-02-09/news/chi-man-accused-of-trying-to-](http://articles.chicagotribune.com/2013-02-09/news/chi-man-accused-of-trying-to-bribe-witness-20130209_1_bribe-witness-power-lines-gas-flow)
23 [bribe-witness-20130209_1_bribe-witness-power-lines-gas-flow](http://articles.chicagotribune.com/2013-02-09/news/chi-man-accused-of-trying-to-bribe-witness-20130209_1_bribe-witness-power-lines-gas-flow) (last visited May
15, 2017).

24 ³² FDA, CVM Updates, FDA Cautions Pet Owners and Caretakers Not to Feed
25 Certain Evanger's or Against the Grain Canned Pet Foods Due to Adulteration
26 with Pentobarbital ("FDA Caution"), posted February 17, 2017
27 [https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm)
542265.htm (last visited May 9, 2017).

1 Laboratory ("OSU"), on January 3, 2017. The necropsy found "partially digested
2 kibble," and it could not rule out neurotoxicosis until the stomach contents and
3 remaining can of Hunk of Beef were tested. Exhibit C, OSU, Case Summary at 1.

4 87. On January 3, 2017, after Talula's death and neurotoxicosis not being
5 ruled out in the necropsy, while awaiting further testing results of Talula's stomach
6 and the Pet Foods, Plaintiff Nicole Mael emailed Brett Sher at Evanger's, and
7 included the FDA in the communication, to provide notice of the issue as follows:

8 I wanted to contact you and let you know my 5 dogs became ill after eating
9 Evangers hunk of Beef with A Jus. The lot number is 181 6E O6HB 13 exp
10 June 2020. Please, please recall this food so no other person goes through
11 what I am going through. Nikki Mael

12 88. The FDA directed that further testing of the animal's stomach contents
13 and the remaining un-opened cans of Hunk of Beef be performed at Michigan State
14 University, Diagnostic Center for Population and Animal Health ("MSU"). On
15 January 17, 2017, MSU clinical toxicologist John P. Buchweitz performed the
16 testing, and confirmed that both the Hunk of Beef dog food and Talula's stomach
17 contents tested positive for "large quantity chromatographically" of pentobarbital.
18 On January 23, 2017, Dr. Buchweitz notified OSU and Plaintiffs of the results. He
19 requested that Plaintiffs send the opened can of the Hunk of Beef for testing. Exhibit
20 C, MSU, Toxicology at 1-2.

21 89. On January 26, 2017, the FDA notified Plaintiffs that the un-opened
22 Hunk of Beef dog food also tested positive for an "abundant amount" of
23 pentobarbital. *See* Exhibit C, OSU, Case Summary at 2 and MSU, Toxicology at 1.

24 90. The FDA testing confirmed that Talula's stomach contents, an open can
25 of Hunk of Beef fed to Plaintiffs' pets, and unopened cans of Against the Grain
26
27
28

1 and Hunk of Beef purchased by Plaintiffs and from the retailer, Healthier Choices,
2 where Plaintiffs purchased their pet food, *all* contained pentobarbital.³³

3 91. As of the filing of this complaint, Plaintiffs have expended over
4 \$6,000.00 on veterinary care relating to their pets eating Hunk of Beef, including but
5 not limited to emergency hospitalization in attempts to save their pets' lives, ongoing
6 monitoring and medications.

7 92. In addition to the estimated thousands of dollars that Plaintiffs have spent
8 purchasing Evanger's Pet Foods over the last four years, Plaintiffs have spent an
9 average of \$100 a week on making their own food for their pets to ensure that it is
10 healthy and safe.

11 **V. FDA'S INVESTIGATION CONFIRMS PENTOBARBITAL IN**
12 **EVANGER'S PET FOODS AND LEADS TO PRODUCT RECALLS**

13 93. In addition to the aforementioned testing involving Talula and Plaintiffs'
14 can of Hunk of Beef, the FDA performed additional testing of Defendants' Pet Foods
15 and investigated Defendants' facilities. The testing and investigations further
16 confirmed the adulteration of Evanger's Pet Foods and misrepresentations to
17 customers.

18 94. On January 10, 2017, the FDA began inspections of Evanger's
19 production facilities. During this inspection, it collected and tested two cans of
20 Against the Grain's Pulled Beef that also tested positive for pentobarbital.³⁴
21

22 ³³ FDA Caution, <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVM>
23 Updates/ucm542265.htm (last visited April 25, 2017); Exhibit C, OSU report at 2
24 (Addendum 1/23/17 "Testing of the feed and stomach contents has found
25 pentobarbital") and MSU report at 1 (feed and stomach contents "positive" for
26 "pentobarbital (euthanasia agent—large quantity chromatographically) "If this
sample came directly from a can, this is an urgent matter and needs to be reported
to the FDA Feed Safety Portal.")

27 ³⁴ FDA Q&A, <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafety>
28

1 95. In its review of Defendants' records, the FDA found the bill of lading of
2 Evanger's meat supplier stating it was "Inedible Hand Deboned Beef" "FOR PET
3 FOOD USE ONLY. NOT FIT FOR HUMAN CONSUMPTION." The FDA
4 determined that the supplier "does *not* have a grant of inspection [or inspection
5 mark] from the United States Department of Agriculture's Food Safety Inspection
6 Service" and "would *not* be considered human grade." The FDA also indicated that
7 the supplier's export certification under APHIS was not active or valid. "The FDA's
8 preliminary assessment indicates that *none* of [Evanger's] suppliers are USDA-FSIS
9 registered facilities."³⁵

10 96. The FDA published its observations in a "Form 483", which "noted
11 numerous significant concerns with conditions" from its inspection of Evanger's
12 facilities in Wheeling, Illinois, and Nutripack, LLC in Markham, Illinois, where Joel
13 Sher is listed as the President and Manager, respectively.³⁶

14 97. The inspection report for Defendants' Wheeling facility revealed that
15 cans of Hunk of Beef and Pulled Beef from that facility tested positive for
16 pentobarbital. It also noted condensation dripping into its cans of Pet Foods,
17 including Hunk of Beef. It described pools of water, peeling paint, mold, and live
18 fly-like insect where Pet Food was exposed. It also noted an open sanitary sewer
19 within 25 feet of food storage and processing. The FDA noted a lack of refrigerated
20 storage facilities or other means of controlling the temperature of exposed raw meat
21 that were instead stored at ambient temperature. The FDA also noted "frozen ice
22 containing a blood-like substance across the floors of the three trailers, and also on
23

24 [Informaton/ucm544348.htm](http://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm544348.htm) (last visited May 9, 2017).

25 ³⁵ *Id.* (emphasis added).

26 ³⁶ FDA Cautions, [https://www.fda.gov/AnimalVeterinary/NewsEvents/CVM](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm)
27 [Updates/ucm542265.htm](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm); Exhibit D, Form 483 FDA Inspections of Evanger's
28 facilities.

1 the ground immediately outside of two of the trailer doors.” Exhibit D, Wheeling
2 facility Form 483.

3 98. The inspection report for Evanger’s Markham facility likewise indicated
4 that Pulled Beef tested positive for pentobarbital. It also stated that this facility’s Pet
5 Foods are adulterated where they were prepared, packed, or held under insanitary
6 conditions that may have contaminated them or made them unhealthy. The FDA
7 noted that, on four different dates, condensation was dripping throughout the
8 processing and storage facility and into open cans of Pet Food, and that the floor was
9 damaged in a manner that caused pools of water to form. The report stated that frozen
10 and raw meats were prepared for processing while having direct contact with
11 insanitary, bare, paint peeling and unprotected concrete flooring. The report noted
12 that employees were cutting raw chicken parts on untreated wooden building
13 construction lumber. The report observed birds feeding on spilled pet food, resting
14 in rafters and flying throughout the warehouse. Exhibit D, Markham facility Form
15 483.

16 99. The FDA confirmed at the time that it had received ten complaints, which
17 it was continuing to follow up on, regarding Evanger’s products, including five
18 suggesting pentobarbital poisoning involving Hunk of Beef *and Braised Beef*.³⁷

19 100. USDA-FSIS also tested Hunk of Beef products, and found the meat was
20 bovine (beef) with “trace amounts” of pork and equine.³⁸

21 101. The FDA encourages facilities to initiate a voluntary recall and to update
22 the product involved in the recall as more information becomes available. It also
23 states that “it is *not* acceptable to use animals euthanized with a chemical substance

24
25 ³⁷ FDA Q&A, <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm>.

26 ³⁸ FDA Caution, <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm>.
27

1 in pet or other animal foods” and that there is *no* acceptable level of pentobarbital in
2 pet food. It also noted that due to the irregular distribution of meat from various
3 animals in the “chunk of beef” products, that “if even one can tests positive for
4 pentobarbital, we have to consider the possibility that some, but not necessarily all
5 other cans in that lot will also test positive.”³⁹

6 102. On February 3, 2017, following discussion with the FDA, Evanger’s
7 initiated a voluntary recall of certain lots of Hunk of Beef: 1816E03HB,
8 1816E04HB, 1816E06HB, 1816E07HB and 1816E13HB with an expiration date of
9 June 2020. The lots were distributed to fifteen states, Washington, California,
10 Minnesota, Illinois, Indiana, Michigan, Wisconsin, Ohio, Pennsylvania, New York,
11 Massachusetts, Maryland, South Carolina, Georgia and Florida.⁴⁰

12 103. On February 9, 2017, after the FDA’s test of two cans of Against the
13 Grain’s Pulled Beef were positive for pentobarbital from the same Evanger’s facility,
14 and after discussions with the FDA, Evanger’s initiated a voluntary recall of Pulled
15 Beef lot 2415E01ATB12, with an expiration date of December 2019, manufactured
16 and distributed in December 2015 to Washington and Maryland, which it announced
17 publicly on February 13, 2017.⁴¹

18
19 ³⁹ FDA Q&A, <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm> (emphasis added).

20 ⁴⁰ FDA, Recalls, Market Withdrawals, & Safety Alerts, Evanger’s Voluntarily
21 Recalls Hunk of Beef Because of Pentobarbital Exposure in one Batch of Food,
22 February 3, 2017 (“Hunk of Beef Recall Feb. 3, 2017”), <https://www.fda.gov/Safety/Recalls/ucm539900.htm> (last visited May 11, 2017); FDA Caution,
23 <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm>.

24 ⁴¹ FDA Caution, posted February 17, 2017, <https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm>; FDA, Recalls, Market
25 Withdrawals, & Safety Alerts, Against the Grain Pet Food Voluntarily Recalls One
26 Lot of Pulled Beef Due to Potential Adulteration with Pentobarbital, February 14,
27 2017 (“Pulled Beef Recall Feb. 14, 2017”), <https://www.fda.gov/Safety/Recalls/>

1 poisoned by Evanger's Pet Foods, another company's brand made my Evanger's in
2 2015 was recalled. After a dog became sick from eating Party Animal's products,
3 and testing from Texas A&M confirmed that Cocolicious Beef & Turkey dog food
4 (Lot #0134E15204 04, best by July 2019) and Cocolicious Chicken & Beef dog food
5 (Lot #0134E15237 13, best by August 2019) ("Cocolicious Beef Products")
6 contained pentobarbital, Party Animal initiated a recall. Party Animal indicated that
7 it is working with distributors and retailers to determine if any additional beef-
8 flavored products remain on shelves. It also stated that it is having "extensive
9 discussions" with Evanger's regarding the cause of the contamination of its pet food
10 and re-examining its manufacturing processes.⁴⁴

11 **VI. EVANGER'S PET FOODS ARE DECEPTIVELY AND FALSELY**
12 **LABELED**

13 **A. Evanger's Denials Further Misrepresent Its Pet Foods**

14 110. On January 4, 2017, while Plaintiffs were working with the FDA to test
15 the Pet Foods and Talula's stomach contents, Evanger's posted on its website that
16 the lot #1816E06HB13 went to only one distributor in Washington. Even though it
17 later recalled all its lots of Hunk of Beef as well as Braised Beef and Pulled Beef,
18 Evanger's stated that no other flavors of its Pet Foods were affected, and that all
19 other products "are entirely safe to feed your and our own pets." Evanger's also
20 maintained that every batch of its Pet Foods "is reviewed by a graduate from the
21 FDA Better Processing School" and is cooked in compliance with "Evanger's FDA
22 Scheduled File Process." Evanger's was also quick to cast blame on Plaintiffs
23 without explanation or evidence stating "we have nothing to show that there is any
24 issue with the food such as a veterinary report. We believe that *other factors are*

25 ⁴⁴ FDA, Recalls, Market Withdrawals, & Safety Alerts, Party Animal Recalls Dog
26 Food Due to Potential Presence of Pentobarbital, Posted April 25, 2017 ("Party
27 Animal Recall"), <https://www.fda.gov/Safety/Recalls/ucm554771.htm> (last visited
28 May 11, 2017).

1 *involved* that we are not aware of at this time, but will come to light when we are
2 able to have a dialogue with [Plaintiffs]. . . . we anticipate at the conclusion of our
3 investigation the test results will come back negative for any pathogens or toxins.”⁴⁵

4 111. On January 16, 2017, six days after the FDA began inspecting Evanger’s
5 facilities and testing unopened cans of Pet Foods that it found adulterated, Evanger’s
6 posted on its website that its four preliminary tests all came back negative, and it
7 expected its final results to be the same. Again, without explanation, Evanger’s
8 pointed fingers at Plaintiffs stating that it has been “unable to find any connection
9 between the alleged incident and our foods, nor is there any veterinary or medical
10 evidence to support the claims of responsibility.”⁴⁶

11 112. On January 23, 2017, at the same time that the FDA tests confirmed that
12 Talula’s stomach contents and Hunk of Beef had tested positive for pentobarbital
13 (see Exhibit C), Evanger’s again stated that its testing for commercial sterility came
14 back “sterile,” meaning it contained no pathogens or harmful bacteria. It thanked
15 “everyone who waited for all the test results before drawing any conclusions.” It
16 again falsely claimed that it is a “5-star pet food that not only improves your pet’s
17 health, but overall well-being and longevity through clean, healthy food.”⁴⁷

18 113. On January 30, 2017, despite the FDA’s ongoing testing that confirmed
19 pentobarbital in its Pet Foods and investigation of Evanger’s facilities at this time,
20 Evanger’s stated that it will not “respond to any *unverifiable reports or*
21 *unsubstantiated rumors that are intended to deceive the public*” relating to the FDA
22 and Evanger’s Pet Foods. It falsely stated that the FDA has not completed any
23

24 ⁴⁵ Evanger’s, News-Events, Voluntary Recall (“Voluntary Recall on Website”),
25 posted Jan. 4, 2017, [https://evangersdogfood.com/news-events/pug-family-](https://evangersdogfood.com/news-events/pug-family-updates/)
updates/ (last visited Feb. 17, 2017) (emphasis added) (since removed).

26 ⁴⁶ *Id.*, posted Jan. 16, 2017.

27 ⁴⁷ *Id.*, posted Jan. 23, 2017.

1 additional tests and “as far as Evanger’s is aware and, we believe, the FDA is aware,
2 *none of our foods have been reported to contain pentobarbital* or any other
3 contaminant.”⁴⁸

4 114. In its February 3, 2017 recall notice, a month after Plaintiffs notified it of
5 the issue, Evanger’s stated that the recall only affects 5 lots of food, “which [are]
6 specifically used for the Hunk of Beef product and *no other products*.” The recall
7 notice also stated, in pertinent part:

8 All Evanger’s suppliers of meat products are *USDA approved*. The beef
9 supplier provides us with beef chunks from cows that are slaughtered in a
10 *USDA facility*. . . Because we source from suppliers of meat products that are
11 *USDA approved*, and no other products have had any reported problems, we
12 are not extending the recall to other supplier lots.⁴⁹

13 115. On February 3, 2017, Evanger’s stated on its website that it had
14 terminated its relationship with its meat supplier of over forty years, and that the
15 supplier’s meat was *not used in any other products*. Evanger’s stated that it did not
16 know about pentobarbital in its products, or test for it previously, because Evanger’s
17 does not have any rendered materials in its supply chain, which includes products
18 from animals that have died by means other than slaughter, and further stated that
19 “[a]ll of our raw materials are sourced from *USDA-inspected facilities*, and many of
20 them are suppliers with whom we have had long-standing relationships.”⁵⁰

21 116. On February 13, 2017, however, Evanger’s recalled yet another product,
22 one lot of Against the Grain Pulled Beef. Evanger’s again stated that the recall

23
24 ⁴⁸ *Id.*, posted Jan. 30, 2017 (emphasis added).

25 ⁴⁹ Hunk of Beef Recall Feb. 3, 2017, [https://www.fda/Safety/Recalls/ucm539900](https://www.fda/Safety/Recalls/ucm539900.htm).
htm (emphasis added).

26 ⁵⁰ Voluntary Recall on Website, posted Feb. 3, 2017, [https://evangersdogfood.com/](https://evangersdogfood.com/news-events/pug-family-updates/)
27 news-events/pug-family-updates/ (emphasis added).

1 “affects *no other lot numbers*, and no other flavors” and reiterated that it makes
2 “products that are of the best quality available for pets.”⁵¹

3 117. On February 17, 2017, the FDA publicly corrected Evanger’s
4 misrepresentations that its beef comes from a “USDA approved” supplier. The FDA
5 confirmed that the bill of lading *that the meat supplier provided to Evanger’s*
6 indicated that its beef was “*inedible hand deboned beef*” and “*not fit for human*
7 *consumption.*” The FDA stated that the supplier does not have a USDA grant of
8 inspection nor a USDA inspection mark, and that the meat is not human grade. The
9 FDA again stated that only USDA-FSIS regulates the slaughter of animals for human
10 consumption, and USDA-FSIS did not inspect Evanger’s meat supplier. It also stated
11 that testing by USDA-FSIS found that Evanger’s Hunk of Beef, labeled as “100%
12 beef,” contained trace amounts of pork and equine as well as beef.⁵²

13 118. The FDA also reiterated in a “Q&A” about Evanger’s that *none* of
14 Evanger’s suppliers are USDA-FSIS registered facilities.⁵³

15 119. Despite the FDA’s findings and public statements, as of the date of this
16 complaint, Evanger’s continues to make false representations on its website
17 including, in the first sentence about its Pet Foods, that “Evanger’s utilizes *USDA*
18 *inspected meats* to make highly palatable and nutritious foods that will satisfy even
19 the most finicky eater.”⁵⁴

20 120. The Against the Grain website also continues to mislead customers that

21 ⁵¹ Against the Grain, Voluntary Recall, [http://www.againstthegrainpetfood.com/](http://www.againstthegrainpetfood.com/about_us/voluntary-recall/)
22 [about_us/voluntary-recall/](http://www.againstthegrainpetfood.com/about_us/voluntary-recall/) (emphasis added).

23 ⁵² FDA Caution, [https://www.fda.gov/AnimalVeterinary/NewsEvents/CVM](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm)
24 [Updates/ucm542265.htm](https://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm542265.htm).

25 ⁵³ FDA Q&A, [https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafety](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm)
26 [Information/ucm544348.htm](https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm544348.htm).

27 ⁵⁴ Evanger’s. About Our Products, [https://evangersdogfood.com/about-us/about-](https://evangersdogfood.com/about-us/about-our-products/)
28 [our-products/](https://evangersdogfood.com/about-us/about-our-products/) (emphasis added).

1 its Pet Foods are “only sourced from *human grade facilities*” and that its cat food is
2 “human quality.”⁵⁵

3 121. On March 3, 2017, after insisting that no other lots or products were
4 affected by its recalls, and two months after Plaintiffs first notified Evanger’s of the
5 facts described above, Evanger’s announced that it was expanding its recall to *all*
6 lots of Hunk of Beef and Pulled Beef, and also including a new recall of all Evanger’s
7 Braised Beef pet food, without explanation, manufactured between December 2015
8 and January 2017, with expiration dates of December 2019 through January 2021.
9 Evanger’s stated that the “recall affects only Hand Packed Beef Products.”⁵⁶

10 122. Even after the expanded recall that Defendants stated did not affect any
11 other products, on April 17, 2017, another pet food manufactured by Evanger’s,
12 Party Animal’s Cocolicious Beef Products, sickened a dog and tested positive for
13 pentobarbital. Party Animal recalled its Cocolicious Beef Products.

14 123. On May 5, 2017, Party Animal sued Evanger’s and Nutripack for
15 damages relating to the recall of its products. (*Party Animal, Inc. v. Evanger’s Dog*
16 *and Cat Food Co., Inc., Nutripack, LLC, Does 1-100*, No. 2:17-cv-03422-PSG-FFM
17 (C.D. Cal.)) (“Party Animal Lawsuit”). In the lawsuit, Party Animal alleges that its
18 damages include but are not limited to retailers demanding refunds for recalled and
19 non-recalled products and consumers seeking payment of veterinarian bills for
20 treatment after their pets ate Party Animal’s products.

21 124. The Party Animal Lawsuit also alleges that, in order to avoid liability
22 relating to the recalls, Defendants defunded Evanger’s corporation and moved their
23

24 ⁵⁵ Against the Grain, About the Food, <http://www.againstthegrainpetfood.com/about-the-food/> and Cat Food, [http://www.againstthegrainpetfood.com/human-](http://www.againstthegrainpetfood.com/human-quality-cat-food/)
25 [quality-cat-food/](http://www.againstthegrainpetfood.com/human-quality-cat-food/) (emphasis added).

26 ⁵⁶ Expanded Recall Mar. 3, 2017, [https://www.fda.gov/Safety/Recalls/ucm544972.](https://www.fda.gov/Safety/Recalls/ucm544972.htm)
27 [htm](https://www.fda.gov/Safety/Recalls/ucm544972.htm).

1 assets to Nutripack. Defendants invoiced Party Animal through Nutripack, instead
2 of Evanger's as they had done for the last decade, beginning in February 2017. In a
3 phone call between Party Animal and Holly Sher, an owner of Evanger's and
4 Nutripack, in April 2017, Sher stated that "they were afraid of getting sued because
5 of the recent recalls, and they were taking money out of Evanger's. She also stated
6 that they did not want to receive any money into Evanger's and would instead run
7 all operations under Nutripack."

8 125. Evanger's has not made any public comment about Party Animal, and it
9 is unknown if other Evanger's and Against the Grain products or other companies'
10 products that Evanger's makes might also be adulterated, misbranded and unsafe for
11 pets and customers handling them.

12 **B. Evanger's Admits to Misrepresentations of its Pet Foods in Lawsuit**
13 **Against Its Meat Supplier**

14 126. Despite its history of run-ins with FDA and other lawsuits, instead of
15 owning up to its misleading advertising of its Pet Foods that poisoned and put at risk
16 animals that consumed its products, Evanger's continues to deflect its responsibility
17 by blaming others for its recalls.
18

19 127. On April 25, 2017, Evanger's filed a lawsuit seeking multi-millions in
20 damages against Bailey Farms, LLC ("Bailey"), its hand-selected, meat supplier for
21 *over 40 years*, located at 549 Kareem Drive, Marshall, Wisconsin, in the Circuit Court
22 of Cook County, Illinois (Case No. 2017-L-004153). Evanger's alleges that Bailey
23 sold it meat that tested positive for pentobarbital including the shipments that were
24 used in cans of the Pet Foods that Plaintiffs purchased on December 31, 2016 that
25 poisoned Plaintiffs' dogs, including Talula, who died as a result.⁵⁷

26 ⁵⁷ The lawsuit is referred to herein as the "Bailey Lawsuit" and the paragraphs in
27 the complaint are cited to herein as "Compl. ¶.".

1 128. In the lawsuit, Evanger's admits that on June 2, 2016, it received 42,340
2 pounds of "Inedible Hand Deboned Beef" "For Pet Food Use Only. Not Fit for
3 Human Consumption" from Bailey for an invoice price of \$15,789.30. Evanger's
4 used this meat that was not certified or inspected for human food by the USDA to
5 make 50,000 cans of Hunk of Beef, including lot #1816EO6HB13 from which
6 Plaintiffs purchased three cans that were fed to their dogs and caused the dogs'
7 illnesses. Exhibit E, Bailey's Bill of Lading and Invoice to Evanger's for meat used
8 in Hunk of Beef (Compl. ¶¶ 7-12 submitted as Exhibits 1 and 2).

9 129. Evanger's included in its complaint against Bailey the FDA testing
10 results for Hunk of Beef cans from lot #1816EO6HB13, showing that the products
11 tested positive for pentobarbital and phenytoin, an anti-seizure medication. Exhibit
12 F, FDA testing results Hunk of Beef (Compl. ¶ 15, submitted as Exhibit 3).

13 130. Evanger's also admits in the lawsuit that on November 16, 2015, it
14 received 43,120 pounds of "Inedible Hand Deboned Beef" "For Pet Food Use Only.
15 Not Fit for Human Consumption" from Bailey for an invoice price of \$15,653.20.
16 Evanger's used this meat, that was not certified or inspected for human food by the
17 USDA, to produce cans of Against the Grain Hand Pulled Beef, including lot
18 #2415E01ATB12 from which Plaintiffs purchased three cans. Exhibit G, Bailey's
19 Bill of Lading and Invoice to Evanger's for meat used in Pulled Beef (Compl. ¶¶ 43-
20 45, submitted as Exhibit 5 and 6).

21 131. Evanger's also included in its complaint the FDA testing results for
22 Pulled Beef cans from lot #2415E01ATB12, showing that these products also tested
23 positive for pentobarbital and phenytoin. Exhibit H, FDA testing results Pulled Beef
24 (Compl. ¶ 45, submitted as Exhibit 7).

25 132. Evanger's further states in its complaint that "it would be highly unlikely
26 that pentobarbital would be administered to a cow; cows are not generally
27 euthanized." Evanger's also alleges that its own testing found that Hunk of Beef

1 from lot #1816EO6HB13, which it labels “100% beef,” was not entirely beef, and
2 instead also found the presence of *horse* DNA. Exhibit I, DNA testing of Hunk of
3 Beef (Compl. ¶ 17, submitted as Exhibit 4).

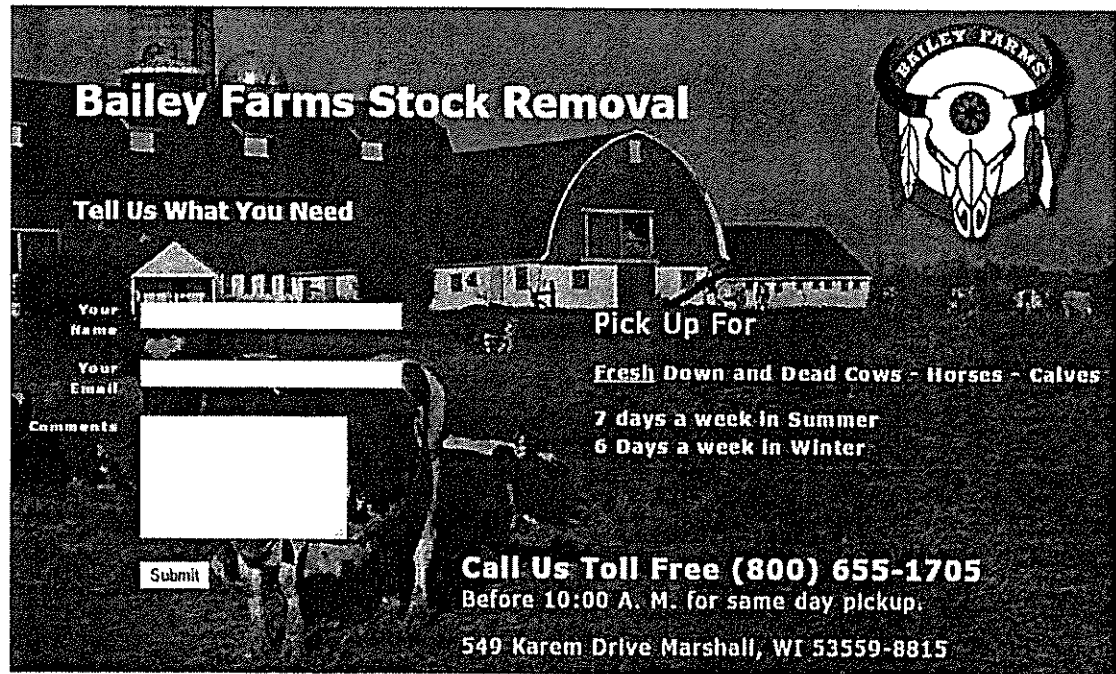
4 133. In its claims of fraud relating to Bailey’s APHIS certification, Evanger’s
5 alleges that each bill of lading, invoice and pallet of beef that Bailey shipped to
6 Evanger’s contained a tag with Bailey’s “APHIS certificate number ‘WI-BLO-
7 0004’” that had been expired for years. Evanger’s stated that it relied upon these
8 representations when Evanger’s stated to customers that its products came from
9 USDA inspected facilities, even though Evanger’s *continues to make these*
10 *statements on its website now*. Compl. ¶ 58-62, 66-68.

11 134. As the FDA confirmed and stated in its press releases, however, none of
12 Evanger’s suppliers were inspected by USDA-*FSIS*, which is the only entity that
13 regulates the slaughter of animals for human consumption and speciation. Only
14 meat from a USDA-FSIS facility would be appropriate for Evanger’s to represent as
15 “human grade, USDA inspected” meats, and Evanger’s products were never
16 certified as such. Further, APHIS only provides a certifications for exporting.⁵⁸

17 135. In addition to Bailey’s pet food company that provides both commercial
18 and retail pet food,⁵⁹ Bailey also operates, at the same location, a stock removal
19 company that “picks up *fresh, down and dead cows, horses and calves*” for use in
20 pet food:

21
22
23
24
25 ⁵⁸ FDA, Q&A, (last visited May 2, 2017).

26 ⁵⁹ Bailey Farms, LLC, <http://www.baileyfarmspets.com/index.php> (last visited
27 May 2, 2017).



Bailey Farms Stock Removal, <http://baileyfarmsstockremoval.com/> (last visited May 2, 2017).

136. Evanger's misrepresents to customers that its Pet Foods are "premium," "100% beef" from "USDA-inspected, human grade facilities," when in fact they are not. Evanger's even uses terminology reserved for top human cuisine, like "foodie's choice," to describe its Pet Foods and convince customers that their products are top human grade. Customers, including Plaintiffs, relied on these false representations that the Pet Foods were healthy, high quality and safe, when they purchased Evanger's products and paid a price significantly higher than competing products. In reality, Evanger's Pet Foods were not fit for sale and put consumers' pets at risk of being poisoned. The Pet Foods are misbranded and adulterated, in violation of state and federal law, because they are not from USDA-inspected, human-grade facilities; are made up of animals – cows, horses and pigs – that died by means other

1 than slaughter; contain poisonous pentobarbital; and were made at Defendants'
2 unsanitary facility that further contaminated them.

3 137. Evanger's Pet Foods labeled as "USDA-Organic" and "Oregon Tilth
4 certified" mislead customers by indicating that the products are made of high quality,
5 USDA-inspected, human grade ingredients and are made in clean and sanitary
6 facilities. However, the FDA's inspections confirmed that Defendants' facilities are
7 unsanitary exposing its Pet Foods to contamination and health risks, and that the Pet
8 Foods are not sourced from USDA-inspected suppliers and are not human grade.
9 Evanger's meat supplier uses animals that have died by means other than slaughter,
10 rendering those products unsafe, unhealthy, adulterated and misbranded in violation
11 of state and federal law and not compliant with organic or Oregon Tilth standards.

12 138. Evanger's Pet Foods that are labeled as kosher similarly mislead
13 customers into purchasing these products because customers reasonably believe that
14 the products do not contain certain ingredients, including non-kosher pork, and are
15 otherwise not adulterated. Contrary to the representation of being kosher, the FDA
16 found that Evanger's Pet Foods are made in unsanitary facilities that cause
17 contamination, are not USDA-inspected nor human grade, and are adulterated with
18 pentobarbital and made of animals that did not die by slaughter. The USDA-FSIS's
19 speciation testing also found trace amounts of non-kosher pork and equine, as well
20 as beef, in its Pet Foods.

21 139. Evanger's has carried out a consistent and widespread campaign of
22 deceptively promoting its Pet Foods as "100% beef," "human grade," "USDA
23 inspected," "safe," "premium, high quality" and even consisting of organic and
24 kosher meat ingredients. Evanger's core marketing statements indicate that its Pet
25 Foods contain 100% beef, contain quality ingredients, are human grade and USDA
26 inspected, despite recalls and FDA inspections and public statements that prove
27

1 otherwise. Because the Pet Foods are illegally misbranded and adulterated, they
2 were unfit and unsafe for sale.

3 140. Defendants' misrepresentations have occurred in at least three forms, all
4 of which constitute "advertising." These include: (i) product packaging, (ii)
5 materials provided to stores that carry Evanger's Pet Foods, and (iii) Evanger's
6 social media and website, through which it directly sells its Pet Foods to the public.

7 141. Defendants' pervasive advertising message misrepresents the quality of
8 its Pet Foods and the health risks associated with their consumption. FDA testing
9 confirms that the Pet Foods were not human quality, USDA inspected meats, or even
10 beef. Instead, the Pet Foods were manufactured from meat provided by a non-USDA
11 meat supplier that hauls dead cows, horses and calves that did not die by slaughter;
12 contained poisonous pentobarbital from euthanized animals; and were produced at
13 Defendants' unsanitary facilities that contaminated the Pet Foods, making them
14 adulterated under the law, unfit for sale and unsafe for pets to eat and people to
15 handle.

16 142. Defendants' pattern of deceptive marketing continues today, including
17 false, misleading and deceptive statements relating to "human grade" ingredients
18 from "USDA inspected facilities." Defendants' current advertising conveys the
19 impression that the products are of high quality and safe for companion animals to
20 consume when they are not.

21 CLASS ACTION ALLEGATIONS

22 143. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and
23 (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure ("Rule") for the purpose
24 of asserting the claims alleged in this Complaint on a common basis. Plaintiffs bring
25 this action on behalf of themselves and all members of the following class comprised
26 of:

1 All persons, exclusive of Defendants and its employees, who purchased
2 in the United States, one or more of Defendants' Pet Foods from June
3 16, 2013 to the present (the "Nationwide Class").

4 144. Plaintiffs bring this action on behalf of themselves and all members of
5 the following subclasses comprised of:

6 All persons, exclusive of Defendants and its employees, who purchased
7 in the State of Washington one or more of Defendants' Pet Foods from
8 June 16, 2013 to the present (the "Washington Subclass").

9 145. The Nationwide Class and the Washington Subclass are collectively
10 referred to herein as the "Classes."

11 146. Plaintiffs reserve the right to modify or amend the definitions of the
12 Classes after they have had an opportunity to conduct discovery.

13 147. Claims I, VIII-XII are brought by Plaintiffs on behalf of themselves and
14 the Nationwide Class. Claims II-VII are brought by Plaintiffs on behalf of
15 themselves and the Washington Subclass.

16 148. *Numerosity. Rule 23(a)(1).* The members of the Classes are so
17 numerous that their individual joinder is impracticable. Plaintiffs are informed and
18 believe that the proposed Classes contain at least thousands of purchasers of
19 Defendants's Pet Foods who have been damaged by Defendants's conduct as alleged
20 herein. The number of Class members is unknown to Plaintiffs but could be
21 discerned from the records maintained by Defendants.

22 149. *Existence of Common Questions of Law and Fact. Rule 23(a)(2).*
23 This action involves common questions of law and fact, which include, but are not
24 limited to, the following:

- 25 a. Whether the statements made by Defendants as part of its
26 advertising for its Pet Foods discussed herein are true, or are
27

- 1 reasonably likely to deceive, given the misrepresentation of
2 material fact described above;
- 3 b. Whether Defendants has violated its implied warranties relating
4 to the Pet Foods under the Magnuson-Moss Warranty Act, 15
5 U.S.C. § 2301, *et seq.*;
- 6 c. Whether Defendants has breached its express warranties to
7 customers relating to the Pet Foods under Wash. Rev. Code §
8 62A.2-313;
- 9 d. Whether Defendants breach its implied warranties of
10 merchantability regarding the Pet Foods to customers under
11 Wash. Rev. Code § 62A.2-314;
- 12 e. Whether Defendants' conduct described herein constitutes an
13 unfair and/or deceptive act or practice in violation of the
14 Washington Consumer Protection Act, § 19.86.010, *et seq.*;
- 15 f. Whether Defendants was negligent in its actions under Wash.
16 Rev. Code § 7.72.030(1);
- 17 g. Whether Defendants is subject to strict products liability under
18 Wash. Rev. Code § 7.727.030(2);
- 19 h. Whether Defendants was unjustly enriched under Washington
20 law;
- 21 i. Whether Defendants' conduct described herein constitutes a
22 unfair and/or deceptive act or practice in violation of the Illinois
23 Consumer Fraud and Deceptive Business Practices Act, 815 Ill.
24 Comp. Stat. 505/1, *et seq.*
- 25 j. Whether Defendants breached its express warranties relating to
26 the Pet Foods to customers under Illinois law;
- 27 k. Whether Defendants was negligent under Illinois law;

- 1 l. Whether Defendants is liable under Illinois product liability;
- 2 m. Whether Defendants was unjustly enriched under Illinois law;
- 3 n. Whether Plaintiffs and the other members of Classes are entitled
- 4 to damages; and
- 5 o. Whether Plaintiffs and the Classes are entitled to injunctive
- 6 relief, restitution or other equitable relief and/or other relief as
- 7 may be proper.

8 150. *Typicality. Rule 23(a)(3).* All members of the Classes have been
9 subject to and affected by the same conduct and omissions by Defendants. The
10 claims alleged herein are based on the same violations by Defendants that harmed
11 Plaintiffs and members of the Classes. By purchasing Evanger's Pet Foods during
12 the relevant time period, all members of the Classes were subjected to the same
13 wrongful conduct. Plaintiffs' claims are typical of the Classes' claims and do not
14 conflict with the interests of any other members of the Classes. Defendants'
15 unlawful, unfair, deceptive, and/or fraudulent actions concern the same business
16 practices described herein irrespective of where they occurred or were experienced.

17 151. *Adequacy. Rule 23(a)(4).* Plaintiffs will fairly and adequately protect
18 the interests of the members of the Classes. Plaintiffs have retained counsel
19 experienced in complex consumer class action litigation, and Plaintiffs intend to
20 prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests
21 to those of the Classes.

22 152. *Injunctive and Declaratory Relief. Rule 23(b)(2).* Defendants'
23 actions regarding the deceptions and misrepresentations regarding Evanger's Pet
24 Foods are uniform as to members of the Classes. Defendants has acted or refused to
25 act on grounds that apply generally to the Classes, so that final injunctive relief as
26 requested herein is appropriate respecting the Classes as a whole.

1 153. *Predominance and Superiority of Class Action. Rule 23(b)(3).*

2 Questions of law or fact common to the Classes predominate over any questions
3 affecting only individual members, and a class action is superior to other methods
4 for the fast and efficient adjudication of this controversy, for at least the following
5 reasons:

- 6 a. Absent a class action, members of the Classes as a practical
7 matter will be unable to obtain redress, Defendants' violations of
8 their legal obligations will continue without remedy, additional
9 consumers will be harmed, and Defendants will continue to
10 retain its ill-gotten gains;
- 11 b. It would be a substantial hardship for most individual members
12 of the Classes if they were forced to prosecute individual actions;
- 13 c. When the liability of Defendants has been adjudicated, the Court
14 will be able to determine the claims of all members of the Class;
- 15 d. A class action will permit an orderly and expeditious
16 administration of the claims of each member of the Classes and
17 foster economies of time, effort, and expense;
- 18 e. A class action regarding the issues in this case does not create
19 any problems of manageability; and
- 20 f. Defendants has acted on grounds generally applicable to the
21 members of the Classes, making class-wide monetary relief
22 appropriate.

23 154. Plaintiffs do not contemplate class notice if the Classes are certified
24 under Rule 23(b)(2), which does not require notice, and notice to the putative Classes
25 may be accomplished through publication, signs or placards at the point-of-sale, or
26 other forms of distribution, if necessary; if the Classes are certified under Rule
27 23(b)(3); or if the Court otherwise determines class notice is required. Plaintiffs

1 will, if notice is so required, confer with Defendants and seek to present the Court
2 with a stipulation and proposed order on the details of a class notice program.

3
4 **COUNT I**

5 **Violation of the Magnuson-Moss Warranty Act,**
6 **15 U.S.C. § 2301, *et seq.***
7 **(on behalf of Plaintiffs and the Nationwide Class)**

8 155. Plaintiffs repeat and reallege the allegations contained in the paragraphs
9 above, as if fully set forth herein.

10 156. Plaintiffs bring this claim on behalf of themselves and the Nationwide
11 Class.

12 157. At all times relevant hereto, there was in full force and effect the
13 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* (the “MMWA”).

14 158. Evanger’s Pet Foods are consumer products as defined in 15 U.S.C. §
15 2301(1).

16 159. Evanger’s is a supplier and a warrantor as defined in 15 U.S.C. §
17 2301(4) and (5).

18 160. Plaintiffs and the Class are “consumers” as defined in 15 U.S.C. §
19 2301(3). They are consumers because they are persons who bought the Pet Foods
20 and are entitled under applicable state law to enforce against the warrantor the
21 obligations of its implied warranty.

22 161. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs and the members of the
23 Nationwide Class are entitled to bring this class action and are not required to give
24 Evanger’s notice and an opportunity to cure until such time as the Court determines
25 the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of
26 Civil Procedure. However, Plaintiffs already gave the required notice on behalf of
27 themselves and the Classes by email dated January 3, 2017.

1 162. In connection with its sale of the Pet Foods, Evanger's gave an implied
2 warranty as defined in 15 U.S.C. § 2301(7); namely, the implied warranty of
3 merchantability. As a part of the implied warranty of merchantability, Evanger's
4 warranted that the Pet Foods: (a) were fit for its ordinary purpose as safe dog food,
5 (b) would pass without objection in the trade under its contract description as dog
6 food, (c) were adequately contained, packaged and labeled as the agreements
7 required, and (d) conformed to the promises and affirmations of fact set forth on its
8 container and label. Wash. Rev. Code § 62A.2-314.

9 163. Evanger's is liable to Plaintiffs and the Nationwide Class pursuant to
10 15 U.S.C. § 2310(d)(1), because it breached the implied warranty of merchantability.

11 164. Evanger's initially breached the implied warranty of merchantability as
12 to Plaintiffs and the members of the Nationwide Class because the Pet Foods were
13 not fit for the ordinary purposes for which they are used—a safe, healthy, kosher
14 dog food specifically represented as containing USDA inspected, human grade and
15 kosher ingredients. Specifically, Evanger's Pet Foods contained non-USDA
16 inspected and non-human grade ingredients, were adulterated and not 100% beef as
17 labeled, which made them unfit for their ordinary purpose of providing safe, healthy
18 dog food. In fact, Evanger's has caused injury and death to animals, who have
19 consumed the Pet Foods.

20 165. Evanger's further breached its implied warranty of merchantability to
21 Plaintiffs and members of the Nationwide Class because the Pet Foods were
22 adulterated in violation of federal and state law, because they contained poisonous
23 pentobarbital, were made in unsanitary conditions that contaminated them, and
24 contained animals that did not die by slaughter.

25 166. Evanger's further breached its implied warranty of merchantability to
26 Plaintiffs and members of the Nationwide Class because the Pet Foods were
27 misbranded in violations of federal and state law, because instead of containing
28

1 100% kosher beef and USDA inspected, human grade meat, they contained meat
2 from horses and pigs that were not USDA inspected, human grade nor kosher.

3 167. Evanger's further breached its implied warranty of merchantability to
4 Plaintiffs and members of the Nationwide Class because the Pet Foods were not
5 adequately contained, packaged, and labeled. The directions and labeling that
6 accompanied the Pet Foods did not warn Plaintiffs and the Nationwide Class of the
7 dangers of feeding the Pet Foods to their pets, and that the Pet Foods were not
8 comprised and produced as described.

9 168. Evanger's finally breached its implied warranty of merchantability to
10 Plaintiffs and members of the Nationwide Class because the Pet Foods did not
11 conform to the promises and affirmations of fact set forth on its container and label,
12 as described above. Specifically, the Pet Foods did not constitute safe, healthy food
13 with 100% beef and USDA inspected, human grade ingredients.

14 169. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs and members of the
15 Nationwide Class are entitled to recover the following damages proximately caused
16 to them by Evanger's breach of the implied warranty of merchantability: (1) the
17 difference in value between the Pet Foods as warranted (the full purchase price) and
18 the Pet Foods as actually delivered (\$0.00) because the Pet Food should not have
19 been sold since they were adulterated and misbranded, and consumers would not
20 have purchased them; (2) the veterinarian bills caused by consumption of the Pet
21 Foods; (3) for those whose pets died from eating the Pet Foods, the market value of
22 the animals; and (4) for those whose pets died from eating the Pet Foods, the cost of
23 disposing of the remains.

24 170. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and members
25 of the Nationwide Class are entitled to recover a sum equal to the aggregate amount
26 of costs and expenses (including attorneys' fees based on actual time expended)
27 determined by the Court to have been reasonably incurred by Plaintiffs and the
28

1 members of the Nationwide Class in connection with the commencement and
2 prosecution of this action.

3 **COUNT II**

4 **Breach of Express Warranty**

5 **Wash. Rev. Code § 62A.2-313**

6 **(on behalf of Plaintiffs and the Washington Subclass)**

7 171. Plaintiffs repeat and reallege the allegations contained in the paragraphs
8 above, as if fully set forth herein.

9 172. Plaintiffs bring this claim on behalf of themselves and the Washington
10 Subclass.

11 173. Evanger's constitutes both a "merchant" and a "seller," as those terms
12 are defined in Wash. Rev. Code §§ 62A.2-104 and 62A.2-103, in connection with
13 sale of its Pet Foods to Plaintiffs and the Washington Subclass.

14 174. Plaintiffs and the members of the Washington Subclass constitute
15 "buyers," as that term is defined in Wash. Rev. Code § 62A.2-103.

16 175. The Pet Foods, themselves, constitute "goods," as that term is defined
17 in Wash. Rev. Code § 62A.2-105.

18 176. The statements on Evanger's advertising of its Pet Foods created
19 express warranties, including that Evanger's was 100% kosher beef, USDA
20 inspected, human grade ingredients, and was healthy and safe for consumption by
21 pets, under both common law and Wash. Rev. Code § 62A.2-313. Said statements
22 include, but are not limited to, Pet Foods being "100% beef" "gourmet" labeling;
23 advertising it as "USDA Inspected" and "human grade" meat.

24 177. The statements regarding Evanger's described in detail above
25 constituted descriptions, affirmations of fact and promises relating to the Pet Foods
26 that became part of the basis for the bargain between customers and Evanger's for
27 the purchase of the Pet Foods. They created an express warranties that the Pet Foods
28 would conform to Evanger's descriptions, affirmations of fact and promises.

1 182. Plaintiffs bring this claim on behalf of themselves and the Washington
2 Subclass.

3 183. Evanger's is a "seller" and "merchant" as to the Pet Foods within the
4 meaning of Wash. Rev. Code §§ 62A.2-103 and 62A.2-104.

5 184. Evanger's designed, manufactured and sold the Pet Foods, which
6 constitute "goods" within the meaning of Wash. Rev. Code § 62A.2-105.

7 185. Plaintiffs and members of the Washington Subclass constitute "buyers"
8 within the meaning of Wash. Rev. Code § 62A.2-103.

9 186. Under Wash. Rev. Code § 62A.2-314, Evanger's impliedly warranted
10 that the Pet Foods were merchantable, including that they: (a) were fit for their
11 ordinary purposes as "100% kosher beef," "USDA inspected, human grade" meat,
12 safe and healthy dog food, (b) could pass without objection in the trade under its
13 contract description as pet food, (c) were adequately contained, packaged, and
14 labeled as the agreements required, and (d) conformed to the descriptions, promises
15 and affirmations of fact set forth on its advertising, container and labels.

16 187. The Pet Foods were sold in sealed packaging, and the identified issues
17 existed when they left Evanger's control, including Evanger's knowledge that the
18 Pet Foods were not fit for human consumption, were not USDA-FSIS inspected and
19 were made in an unsanitary facility that contaminated them.

20 188. When Evanger's designed, manufactured, distributed and sold the Pet
21 Foods, it knew the purpose for which they were intended; i.e., that they would be
22 consumed by pets.

23 189. Evanger's initially breached the implied warranty of merchantability as
24 to Plaintiffs and members of the Washington Subclass because the Pet Foods were
25 not fit for the ordinary purposes for which they were used—a safe, healthy pet food.
26 Specifically, Evanger's Pet Foods were adulterated because they contained
27 poisonous pentobarbital, were made in an unsanitary facility that contaminated them,
28

1 and were made up of animals that did not die by slaughter, all of which are not
2 approved for use in food and made them unfit for their ordinary purpose of providing
3 safe, healthy pet food. The Pet Foods were also misbranded, which is prohibited
4 under the law because instead of being made with 100% kosher beef that is USDA
5 inspected and human grade as Evanger's advertised, they were made up of non-
6 USDA, non-human grade, non-kosher meat that was not 100% beef. The Pet Foods
7 have caused injury and death to animals, who have consumed the Pet Foods.

8 190. Evanger's further breached its implied warranty of merchantability to
9 Plaintiffs and members of the Washington Subclass because the Pet Foods would
10 not pass without objection in the trade under its contract description as pet food
11 because they were adulterated and misbranded, which is prohibited under state and
12 federal law.

13 191. Evanger's further breached its implied warranty of merchantability to
14 Plaintiffs and members of the Washington Subclass because the Pet Foods were not
15 adequately contained, packaged, and labeled. The directions and labeling that
16 accompanied the Pet Foods did not warn or disclose to Plaintiffs and members of the
17 Washington Subclass of the dangers of feeding Pet Foods to their pets, and that the
18 Pet Foods were not as described.

19 192. Evanger's finally breached its implied warranty of merchantability to
20 Plaintiffs and members of the Washington Subclass because the Pet Foods did not
21 conform to the descriptions, promises and affirmations of fact set forth on their
22 container and label, as described above. Specifically, they did not constitute "100%
23 kosher beef," "USDA-inspected, human grade" ingredients, healthy and safe food
24 for pets.

25 193. Plaintiffs and members of the Washington Subclass were injured as a
26 proximate result of Evanger's aforementioned breaches as follows: (a) in the amount
27 of the difference in value between the value of the Pet Foods as warranted (its full
28

1 purchase prices) and the Pet Foods as actually delivered (\$0) since they should not
2 have been sold because of their adulteration and misbranding, and consumers would
3 not have paid anything for them had they known; (b) the veterinarian bills incurred
4 as a result of their pets consuming the Pet Foods; (c) for those whose pets died from
5 consuming the Pet Foods, the market value of those animals; (d) for those whose
6 animals died from consuming the Pet Foods, the cost of disposing of their remains;
7 and (e) other economic losses, including the increased risk of health problems in
8 their pets.

9 194. Within a reasonable time after their discovery of Evanger's breaches,
10 Plaintiffs gave notice of the breaches of the implied warranty of merchantability on
11 behalf of themselves and the Washington Subclass. Alternatively, this pleading
12 constitutes a sufficient notice of Evanger's breaches of the implied warranty of
13 merchantability. Alternatively, it was not necessary for Plaintiffs to give Evanger's
14 notice of its breaches of the implied warranty of merchantability as to them and the
15 Washington Subclass because Evanger's had actual notice of such breaches.

16 **COUNT IV**

17 **Violation of the Washington Consumer Protection Act**
18 **Wash. Rev. Code § 19.86.010, et seq.**
19 **Non-Per Se Unfair Business Practices**
(on behalf of Plaintiffs and the Washington Subclass)

20 195. Plaintiffs repeat and reallege the allegations contained in the paragraphs
21 above, as if fully set forth herein.

22 196. Plaintiffs bring this claim on behalf of themselves and the Washington
23 Subclass.

24 197. The Washington Consumer Protection Act ("WCPA") declares
25 unlawful (i) an unfair or deceptive act or practice, (ii) occurring in trade or
26

1 commerce, (iii) with a public interest impact, and (iv) which causes injury to
2 Plaintiffs.

3 198. Evanger's is a "person" within the meaning of the WCPA, Wash. Rev.
4 Code § 19.86.010(1), and conducts "trade" and "commerce" within the meaning of
5 the Washington Consumer Protection Act, Wash. Rev. Code § 19.86.010(2).

6 199. Plaintiffs and the Washington Subclass members are "persons" within
7 the meaning of the WCPA, Wash. Rev. Code § 19.86.010(1).

8 200. As the purpose of the WCPA is "to protect the public and foster fair
9 and honest competition," the act should be "liberally construed" to serve its
10 beneficial purposes. Wash. Rev. Code § 19.86.920.

11 201. In the context of the WCPA, pleading and proof of an unfair act or
12 practice under Wash. Rev. Code § 19.86.020 bears little resemblance to pleading and
13 proof of common law fraud. It can be predicated on an act or practice so designated
14 by statute; an act or practice that has the capacity to deceive substantial portions of
15 the public; or an unfair act or practice not regulated by statute but in violation of the
16 public interest. An act or practice can be unfair without being deceptive and still
17 violate the WCPA.

18 202. At all relevant times, Evanger's engaged in unfair acts or practices in
19 the conduct of its business by describing, promising and affirming on its container
20 and label that its Pet Foods are "100% kosher beef," "USDA inspected, human
21 grade," healthy and safe when they were not as found and publicly denounced by
22 the FDA. In fact, they were adulterated and misbranded as prohibited under the law,
23 and were unsafe for animals to eat because they contained poisonous pentobarbital,
24 were contaminated by unsanitary facilities and were made up of animals that did not
25 die from slaughter. Evanger's further engaged in unfair acts or practices in the
26 conduct of its business when it did not provide a refund to customers, who purchased
27 the Pet Foods based on Evanger's false representations and did not return them.

1 203. At all relevant times, Evanger's further engaged in unfair acts and
2 practices when it failed to disclose material information about the Pet Foods
3 including their quality, related health risks, adulteration and misbranding. Evanger's
4 has failed to provide adequate warnings or notices of health risks from the Pet Food
5 and does not disclose that they are unfit to be sold and to be consumed by animals.

6 204. Evanger's admitted in its own lawsuit against its supplier that the bill
7 of lading on the meat it purchased and received, and used in its Pet Food, stated that
8 the meat was "inedible" and "not fit for human consumption," and was not USDA-
9 FSIS inspected. Instead, the Pet Foods were adulterated and misbranded, should
10 have not been sold, and were unsafe for animals to consume.

11 205. Evanger's stated in its recall in February and March 2017 that no other
12 pet foods were impacted, however, a month later, another pet food that it
13 manufacturers for Party Animal also tested positive for pentobarbital and sickened
14 another animal leading to another recall. Evanger's was also aware that its facilities
15 were unsanitary and could contaminate its Pet Foods as the FDA found.

16 206. Evanger's concealed and misrepresented this information about its Pet
17 Foods to Plaintiffs and the Washington Subclass members, which is material in that
18 a reasonable consumer would not have purchased the Pet Foods and subjected
19 himself, herself or their pets to injury had he or she known these facts.

20 207. Evanger's conducted its acts and practices described herein in the
21 course of trade or commerce.

22 208. Defendants' unfair acts and practices impact the public interest.
23 Defendants committed the acts and practices in the course of its everyday business;
24 the acts and practices are part of a pattern or generalized course of business;
25 Defendants committed the acts and practices repeatedly and continually both before
26 and after Plaintiffs' purchase of the Pet Foods; there is a real and substantial potential
27

1 for repetition of Defendants' conduct; and many customers are affected or likely to
2 be affected.

3 209. The acts and practices described above are unfair because these acts or
4 practices (1) have caused substantial financial injury to Plaintiffs and the
5 Washington Subclass members; (2) are not outweighed by any countervailing
6 benefits to consumers or competitors; and (3) are not reasonably avoidable by
7 consumers.

8 210. Evanger's unfair practices have occurred in its trade or business and
9 were and are capable of injuring a substantial portion of the public. As such,
10 Evanger's general course of conduct as alleged herein is injurious to the public
11 interest, and the acts complained of herein are ongoing and/or have a substantial
12 likelihood of being repeated.

13 211. As a direct and proximate result of Evanger's unfair acts or practices,
14 Plaintiffs and the Washington Subclass members suffered injury in fact and lost
15 money.

16 212. Plaintiffs and the Washington Subclass are therefore entitled to:

17 1) an order enjoining the conduct complained herein;

18 2) actual damages to Plaintiffs and the Washington Subclass equal to: (a) the
19 amount the Plaintiffs and the Washington Subclass paid for the worthless Pet Foods;
20 the difference in value between the value of the Pet Foods as represented (the full
21 purchase prices) and the value of the Pet Foods as actually accepted and delivered
22 (\$0) since it should not have been sold because of its adulteration and misbranding,
23 and consumers would not have paid anything for it had they known; (b) their
24 veterinarian bills incurred as a result of their pets consuming the Pet Foods; (c) for
25 those whose pets died from eating the Pet Foods, the market value of their animals;
26 and (d) for those whose animals died from eating the Pet Foods, the cost of disposing
27 of their remains;

213. Plaintiffs and the Washington Subclass are also entitled to equitable relief as the Court deems appropriate, including, but not limited to, disgorgement, for the benefit of the Subclass members, or all or part of the ill-gotten profits Evanger's received from the sale of its Pet Food.

(on behalf of Plaintiffs and the Washington Subclass)

219. As the purpose of the WCPA is “to protect the public and foster fair and honest competition,” the act should be “liberally construed” to serve its beneficial purposes. Wash. Rev. Code § 19.86.920.

1 220. At all relevant times, Evanger's engaged in deceptive acts or practices
2 in the conduct of its business by describing, promising and affirming on its container
3 and label that its Pet Foods are "100% kosher beef," "USDA inspected, human
4 grade," healthy and safe when they were not. In fact, they were adulterated and
5 misbranded as prohibited under the law, and were unsafe for animals to eat because
6 they contained poisonous pentobarbital.

7 221. At all relevant times, Evanger's engaged in deceptive acts or practices
8 by failing to disclose the quality of its Pet Foods and without providing adequate
9 warning or notice of their related health risks.

10 222. Evanger's further engaged in deceptive acts or practices in the conduct
11 of its business when it did not provide a refund to customers, who purchased the Pet
12 Foods and did not return them based on Evanger's omissions and false
13 representations.

14 223. Evanger's has also continued to misrepresent that its Pet Foods are from
15 USDA inspected suppliers and human grade when they are not, as determined and
16 publicly stated by the FDA.

17 224. At all relevant times, Evanger's engaged in deceptive acts or practices
18 in the conduct of its business by describing, promising and affirming on its container
19 and label that the Pet Foods were "100% kosher beef," "USDA inspected, human
20 grade," healthy and safe for pets to consume, when in fact it knew or had reason to
21 know that they were not. In fact, Evanger's admitted in its own lawsuit against its
22 supplier that the bill of lading on the meat it purchased and received, and which
23 Evanger's used in its Pet Food, stated that the meat was "inedible" and "not fit for
24 human consumption," and was not USDA-FSIS inspected. Instead, the Pet Foods
25 were adulterated and misbranded, should have not been sold, and were unsafe for
26 animals to consume.

1 225. Evanger's further engages in deceptive acts or practices in the conduct
2 of its business as it continues to misrepresent that its Pet Foods are "100% kosher
3 beef," "USDA inspected" and "human grade" after the FDA found and publicly
4 stated that none of its suppliers are USDA inspected and are not human grade and
5 its Pet Foods are not 100% beef.

6 226. Evanger's stated in its recall in February and March 2017 that no other
7 pet foods were impacted, however, a month later, another pet food that it
8 manufacturers for Party Animal also tested positive for pentobarbital and sickened
9 another animal leading to another recall.

10 227. Evanger's was also aware that its facilities were unsanitary and could
11 contaminate its Pet Foods as the FDA found.

12 228. Evanger's concealed and misrepresented this information about its Pet
13 Foods to Plaintiffs and the Washington Subclass members, which is material in that
14 a reasonable consumer would not have purchased the Pet Foods and subjected
15 himself or herself to injury had he or she known these facts.

16 229. Evanger's conducted its acts and practices described herein in the
17 course of trade or commerce.

18 230. Defendants' deceptive acts and practices impact the public interest.
19 Defendants committed the acts and practices in the course of its everyday business;
20 the acts and practices are part of a pattern or generalized course of business;
21 Defendants committed the acts and practices repeatedly and continually both before
22 and after Plaintiffs' purchase of the Pet Foods; there is a real and substantial potential
23 for repetition of Defendants' conduct; and many customers are affected or likely to
24 be affected.

25 231. The acts and practices described above are deceptive because these acts
26 or practices (1) have caused substantial financial injury to Plaintiffs and the
27 Washington Subclass members; (2) are not outweighed by any countervailing
28

1 benefits to consumers or competitors; and (3) are not reasonably avoidable by
2 consumers.

3 232. Evanger's deceptive practices have occurred in its trade or business and
4 were and are capable of injuring a substantial portion of the public. As such,
5 Evanger's general course of conduct as alleged herein is injurious to the public
6 interest, and the acts complained of herein are ongoing and/or have a substantial
7 likelihood of being repeated.

8 233. As a direct and proximate result of Evanger's deceptive acts or
9 practices, Plaintiffs and the Washington Subclass members suffered injury in fact
10 and lost money.

11 234. Plaintiffs and the Washington Subclass are therefore entitled to:

- 12 1) an order enjoining the conduct complained herein;
13 2) actual damages to Plaintiffs and the Washington Subclass equal to: (a) the
14 amount the Plaintiffs and the Washington Subclass paid for the worthless Pet
15 Foods: the difference in value between the value of the Pet Foods as
16 represented (the full purchase prices) and the value of the Pet Foods as
17 actually accepted and delivered (\$0) since it should not have been sold
18 because of its adulteration and misbranding, and consumers would not have
19 paid anything for it had they known; (b) their veterinarian bills incurred as a
20 result of their pets consuming the Pet Foods; (c) for those whose pets died
21 from eating the Pet Foods, the market value of their animals; and (d) for those
22 whose animals died from eating the Pet Foods, the cost of disposing of their
23 remains;
24 3) treble damages pursuant to Wash. Rev. Code § 19.86.090;
25 4) costs of suit, including a reasonable attorney's fee; and
26 such further relief as the Court may deem proper.

27 235. Plaintiffs and the Washington Subclass are also entitled to equitable
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1 relief as the Court deems appropriate, including, but not limited to, disgorgement,
2 for the benefit of the Subclass members, or all or part of the ill-gotten profits
3 Evanger's received from the sale of its Pet Food.

4 **COUNT VI**

5 **Negligence - Washington Product Liability Act**

6 **Wash. Rev. Code § 7.72.030(1)**

7 **(on behalf of Plaintiffs and the Washington Subclass)**

8 236. Plaintiffs repeat and reallege the allegations contained in the paragraphs
9 above, as if fully set forth herein.

10 237. Plaintiffs bring this claim on behalf of themselves and the Washington
11 Subclass.

12 238. Evanger's owed a duty of reasonable care to Plaintiffs and the members
13 of the Washington Subclass to provide Pet Foods that were safe for consumption by
14 animals.

15 239. Evanger's breached this duty by selling Pet Foods that were adulterated
16 because they contained poisonous pentobarbital; were made in an unsanitary facility
17 that contaminated them; were made up of animals that did not die by slaughter; were
18 misbranded because they did not contain USDA inspected, human grade meat and
19 were not 100% kosher beef; and did not adequately warn Plaintiffs and the members
20 of the Washington Subclass of the Pet Foods' dangers on its packaging.

21 240. Such conduct by Evanger's was negligent because it did not reflect the
22 level of care that an ordinarily prudent and reasonable person in Evanger's place
23 would have given under the same or similar circumstances.

24 241. Evanger's should have known that the Pet Foods posed a risk of harm
25 to dogs; that purchasers of the Pet Foods, including Plaintiffs and the members of
26 the Washington Subclass, would not recognize the risk and that the risk was
27 misrepresented to them; and that consumption of the Pet Foods by pets would
28 foreseeably result in their injury and death. Such injury and death to the animals

1 constituted property damage to Plaintiffs and the members of the Washington
2 Subclass beyond, and in addition to, their damage from purchasing the worthless Pet
3 Foods.

4 242. As a proximate result of Evanger's negligent acts alleged herein,
5 Plaintiffs and the members of the Washington Subclass suffered injury to property,
6 specifically the illness and deaths of their pets, and the expenses incurred therewith.

7
8 **COUNT VII**

9 **Strict Products Liability**

10 **Wash. Rev. Code § 7.72.030(2)**

11 **(on behalf of Plaintiffs and the Washington Subclass)**

12 243. Plaintiffs repeat and reallege the allegations contained in the paragraphs
13 above, as if fully set forth herein.

14 244. Plaintiffs bring this claim on behalf of themselves and the Washington
15 Subclass.

16 245. Evanger's designed, manufactured, distributed and sold the Pet Foods,
17 which were adulterated because they contained poisonous pentobarbital, were made
18 in unsanitary facilities that contaminated them, and were made of animals that did
19 not die from slaughter. The Pet Foods were misbranded because they were not made
20 of 100% kosher beef and USDA inspected, human grade meat. The adulterated and
21 misbranded Pet Foods and their potential health risks, at all times material hereto,
22 would not reasonably have been expected by consumers, and constituted an
23 unreasonably dangerous defect and/or condition.

24 246. The Pet Foods were unreasonably dangerous because of defects in
25 marketing, design and manufacturing, which reasonable consumers would not have
26 expected.

27 247. There was a defect in the marketing of the Pet Foods, which made the
28 Pet Foods unreasonably dangerous, because Evanger's failed to warn Plaintiffs and

1 the members of the Washington Subclass, on its advertising, packaging or otherwise,
2 of the potential harm to their pets from consuming the Pet Foods, which warning
3 reasonable consumers would have expected.

4 248. The Pet Foods were defectively designed because they were adulterated
5 and misbranded in a manner that made them unsafe. The Pet Foods contained
6 substitute ingredients – ingredients other than those that Evanger’s advertised as in
7 its Pet Foods – and failed to include ingredients that could have been used to meet
8 the same needs and not be unsafe or unreasonably expensive. Evanger’s had the
9 ability to eliminate the unsafe character of the Pet Foods without seriously impairing
10 their usefulness or significantly increasing their costs. It was not anticipated that
11 purchasers of the Pet Foods would be aware of the dangers inherent in the use of the
12 products, and the expectation of ordinary consumers was that the Pet Foods
13 manufactured by Evanger’s would be safe for dogs.

14 249. Alternatively, the Pet Foods were defectively manufactured because
15 they were adulterated and misbranded in a manner that caused them to be harmful
16 and deadly to animals, and that deviated in terms of quality from the specifications
17 in a manner that rendered them unreasonably dangerous and not within the
18 expectations of reasonable consumers.

19 250. These unreasonably dangerous defects in the marketing, design and
20 manufacture of the Pet Foods existed at the time the Pet Foods left Evanger’s control.

21 251. The Pet Foods came in sealed packages, and did not change from the
22 time they left Evanger’s possession, through the time they arrived in stores to be sold
23 to consumers, and the time when consumers bought and took possession of them.

24 252. The unreasonably dangerous defects and/or conditions of the Pet Foods
25 proximately caused injury and death to dogs, and related expenses, constituting
26 property damage to Plaintiffs and the members of the Washington Subclass beyond,
27 and in addition to, their damages from purchasing the harmful Pet Foods.

1 253. Accordingly, Evanger's is strictly liable for these damages caused to
2 Plaintiffs and the members of the Washington Subclass by its unreasonably
3 dangerous product.

4 **COUNT VIII**
5 **Washington Unjust Enrichment**
6 **(on behalf of Plaintiffs and the Washington Subclass)**

7 254. Plaintiffs repeat and reallege the allegations contained in the paragraphs
8 above, as if fully set forth herein.

9 255. Plaintiffs bring this claim on behalf of themselves and the Washington
10 Subclass.

11 256. Plaintiffs and the members of the Washington Subclass, at their
12 expense, purchased the Pet Foods, which was defective, not merchantable, and
13 unreasonably dangerous and therefore had no value to them.

14 257. Plaintiffs and the members of the Washington Subclass purchased the
15 Pet Foods designed, manufactured and marketed by Evanger's in various retail
16 stores. Evanger's knowingly received and retained a benefit from Plaintiffs and the
17 Washington Subclass members, namely the gross revenues resulting from their
18 purchases. Evanger's is not justified in retaining these revenues because of the
19 diminished value, inherent defects, adulterated state, misbranded content and general
20 lack of merchantability of the Pet Foods.

21 258. Principles of fairness and equity demand that Evanger's disgorge the
22 above-referenced revenues to Plaintiffs and the Washington Subclass members.
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COUNT IX
Violation of the Illinois Consumer Fraud and Deceptive Business
Practices Act
815 Ill. Comp. Stat. 505/1, *et seq.*
(on behalf of Plaintiffs and the Nationwide Class)

259. Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

260. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

261. This cause of action is brought pursuant the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.* ("ICFA").

262. The acts and omissions, specifically including Evanger's misrepresentations that the Pet Foods were USDA inspected and of human grade quality including 100% kosher beef, and Evanger's omitting that the Pet Foods were adulterated and misbranded and contained poisonous pentobarbital and failing to provide adequate warning or notice of their health risks, occurred in the conduct of trade or commerce as that term is used therein.

263. Section 2 of ICFA prohibits unfair or deceptive acts or practices used or employed in the conduct of any trade or commerce, as well as deceptive acts or practices which are committed in the course of trade or commerce and with the intent that others rely upon them. 815 ILCS 505/2.

264. Section 2 of the ICFA provides, in full:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive

1 Trade Practices Act", approved August 5, 1965, in the conduct of any trade or
2 commerce are hereby declared unlawful whether any person has in fact been
3 misled, deceived or damaged thereby. In construing this section, consideration
4 shall be given to the interpretations of the Federal Trade Commission and the
5 federal courts relating to Section 5(a) of the Federal Trade Commission Act."
6 815 ILCS 505/2.

7 265. Evanger's acts, misrepresentations and omissions are by their very
8 nature unfair, deceptive and unlawful within the meaning of the ICFA.

9 266. Evanger's has disseminated, or caused to be disseminated, advertising,
10 labeling, packaging, marketing, and promotion of the Pet Foods that is deceptive and
11 otherwise violates the ICFA, because at all times material hereto, the advertising,
12 labeling, packaging, marketing and promotion of the Pet Foods included false and/or
13 misleading statements or misrepresentations concerning the quality of the Pet Foods,
14 including that they were USDA inspected and contained human grade ingredients
15 including 100% kosher beef, and/or because Evanger's failed to disclose and/or
16 concealed or omitted material facts, including without limitation, known defects and
17 risks concerning the quality of the Pet Foods and the healthiness of the Pet Foods,
18 including that they were adulterated and misbranded and unsafe for pets to consume.

19 267. In making and disseminating the misrepresentations and omissions
20 alleged herein, Evanger's intended to deceive reasonable consumers, including
21 Plaintiffs and the Nationwide Class.

22 268. Evanger's made and disseminated the representations and omissions
23 alleged herein in the course of conduct involving trade and commerce.

24 269. The utility, if any, of Evanger's practices related to the advertising,
25 labeling, packaging, marketing, promotion and selling of Pet Foods, while making
26 affirmative misrepresentations and without properly disclosing the Pet Foods' true
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1 nature and/or characteristics, is negligible, when weighed against the harm to the
2 general public, Plaintiffs and the Nationwide Class.

3 270. The harmful impact upon members of the general public targeted by
4 such practices, including Plaintiffs and the members of the Nationwide Class, who
5 purchased and used the Pet Foods, outweighs any reasons or justifications by
6 Evanger's for the unfair and deceptive business practices Evanger's employed to sell
7 the Pet Foods described herein.

8 271. Evanger's had an improper motive (to place profit ahead of accurate
9 marketing) in its practices related to the advertising, labeling, packaging, marketing,
10 promotion and selling of the Pet Foods.

11 272. The use of such unfair and deceptive business acts and practices was
12 and is under the sole control of Evanger's, and was deceptively hidden from
13 Plaintiffs and the members of the Nationwide Class, and the general public, in
14 Evanger's advertising, labeling, packaging, marketing, promotion and selling of the
15 Pet Foods in a deceptive effort to put profit over accurate marketing. These deceptive
16 acts and practices had a capacity, tendency, and/or likelihood to deceive or confuse
17 reasonable consumers into believing that the Pet Foods were USDA inspected,
18 human grade, 100% kosher beef, healthy, free of harmful toxic substances, and were
19 otherwise safe.

20 273. As a direct and proximate result of Evanger's deceptive and unfair
21 conduct and/or violations of the ICFA, Plaintiffs and the members of the Nationwide
22 Class have suffered and continue to suffer damages, including without limitation the
23 following:

- 24 a) The difference in value between the full purchase price of the Pet Foods
25 and the actual value of the Pet Foods (which actual value is \$0 because the
26 Pet Foods should not have been sold since they were adulterated and
27 misbranded, and consumers would not have paid anything for them had they

1 known) - *i.e.*, the full purchase prices of the Pet Foods;

2 b) All veterinary bills incurred as a result of illness, injury or death caused by
3 consuming the Pet Foods;

4 c) All bills incurred for the disposition of the remains of dogs killed by the Pet
5 Foods; and

6 d) The market value of the dogs killed as a result of ingesting the Pet Foods.

7 274. Illinois also provides protection to purchasers of animal food from
8 unfair and deceptive practices. 505 ILCS 30/7 (Adulteration), 505 ILCS 30/8
9 (Misbranding), and 505 ILCS 30/11.1 (Prohibited Acts).

10 275. A commercial feed is adulterated if it “bears or contains any poisonous
11 or deleterious substance which may render it injurious to health;” 505 ILCS 30/7,
12 and a commercial feed is misbranded if its “labeling is false or misleading in any
13 particular.” 505 ILCS 30/8. Illinois law also prohibits the “manufacture or
14 distribution of any commercial feed that is adulterated or misbranded.” 505 ILCS
15 30/11.1.

16 276. The Pet Foods are misrepresented to be 100% beef, USDA inspected
17 and human grade meat, which they are not. Instead they contain poisonous
18 pentobarbital, are made in an unsanitary facility that causes contamination, and
19 contain the remains of animals that did not die by slaughter and were not kosher or
20 all beef. Because of this, the Pet Foods injured Plaintiffs’ pets and those of the
21 members of Nationwide Class, and the composition or quality of the Pet Foods falls
22 below what is purported or represented by its label.

23 277. Plaintiffs and the other members of Nationwide Class further seek to
24 enjoin such unlawful deceptive acts and practices as described above. Each of the
25 Nationwide Class members will be irreparably harmed unless the unlawful actions
26 of Evanger’s are enjoined, in that Evanger’s will continue to falsely and
27

1 misleadingly market and advertise and represent on its packaging the healthy nature
2 of the Pet Foods and that they are USDA inspected when they are not.

3 278. Towards that end, Plaintiffs and Nationwide Class request an order
4 granting them injunctive relief requiring removal of the unsafe products from retail
5 outlets, prohibiting false statements, requiring corrective disclosures and/or
6 disclaimers on the labeling and advertising of the Pet Foods, and/or the removal of
7 the harmful ingredients.

8 279. Absent injunctive relief, Evanger's will continue to manufacture and
9 sell misrepresented, deceptive and unsafe Pet Foods without disclosing to consumers
10 their true quality and risk of harmful effects.

11 280. In this regard, Evanger's has violated, and continues to violate, the
12 Illinois Consumer Fraud and Deceptive Business Practices Act, which makes unfair
13 or deceptive acts or practices used or employed in the conduct of any trade or
14 commerce unlawful. As a direct and proximate result of Evanger's violation of the
15 Illinois Consumer Fraud and Deceptive Business Practices Act as described above,
16 Plaintiffs and the members of the Nationwide Class have suffered damages, as set
17 forth above.

18 281. Evanger's affirmative misrepresentations, as well as its wrongful
19 warranty practices, were disseminated and directed from its headquarters in
20 Wheeling, Illinois. Evanger's manufactures its Pet Foods at its facilities in Wheeling
21 and Markham, Illinois. Therefore, based upon the choice-of-law rules applied in this
22 District, Plaintiffs preliminarily identify the substantive laws of Illinois as the most
23 likely to apply to Nationwide Class as alleged in this claim.

COUNT X
Breach of Express Warranty
(on behalf of Plaintiff and the Nationwide Class)

282. Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

283. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

284. Evanger's constitutes a "merchant" and a "seller" in connection with its sales of the Pet Foods, as those terms are defined in the Illinois Uniform Commercial Code.

285. Plaintiffs and the members of the Nationwide Class constitute "buyers" in connection with their purchases of the Pet Food from Evanger's, as that term is defined in the Illinois Uniform Commercial Code.

286. The Pet Food constitutes "goods," as that term is defined in the Illinois Uniform Commercial Code.

287. By affirmations of fact, promises and descriptions made on the Pet Foods' packaging, Evanger's provided Plaintiffs and the other members of the Nationwide Class with written express warranties before or at the time of purchase, including the following:

- a) The Pet Foods were made of 100% kosher beef;
- b) The Pet Foods were made of USDA-inspected meats;
- c) The Pet Foods were human grade quality meats;
- d) The Pet Foods were safe and healthy for pets to eat.

288. These affirmations of facts and promises made by Evanger's to Plaintiffs and the Nationwide Class related to Pet Foods and became part of the bases of the bargains between them and Evanger's, and thereby created express warranties that the Pet Foods would conform to those affirmations and promises. Furthermore,

1 the aforementioned descriptions of the Pet Foods were part of the bases of the
2 bargains for the purchases of Pet Foods between Evanger's on the one hand and
3 Plaintiffs and other Nationwide Class members on the other. The descriptions
4 created an express warranty that the goods would conform to those descriptions. As
5 previously noted, Evanger's misrepresented the nature of the Pet Foods, since the
6 Pet Foods were not 100% kosher beef and were not USDA-inspected, human quality
7 meats. Instead, the Pet Foods were adulterated because they contained poisonous
8 pentobarbital, were made in an unsanitary facility that contaminated them, were not
9 made from animals that died by slaughter, and were misbranded. The Pet Foods did
10 not conform to the affirmations, promises and descriptions previously mentioned,
11 resulting in breaches of the Pet Foods' express warranties.

12 289. The Pet Foods were marketed directly to consumers by Evanger's,
13 came in sealed packages, and did not change from the time they left Evanger's
14 possession until they were purchased by consumers in stores.

15 290. Plaintiffs have complied with all conditions precedent to filing this
16 breach of warranty claim, including providing notice of the breach of warranty to
17 Evanger's on behalf of themselves and the Nationwide Class, prior to filing this
18 action.

19 291. Alternatively, the filing of this Complaint provides sufficient notice of
20 breach to Evanger's on behalf of Plaintiffs and the Nationwide Class.

21 292. Alternatively, notice need not have been given to Evanger's because
22 Evanger's had actual notice of its breaches of warranty as to Plaintiffs and the
23 Nationwide Class.

24 293. As a proximate result of Evanger's breach of express warranties,
25 Plaintiffs and the members of the Nationwide Class have suffered actual damages
26 as follows:

1 (a) The difference in value between the full purchase price of the Pet Foods
2 and the actual value of the Pet Foods (which actual value is \$0 because the
3 Pet Foods should not have been sold since they were adulterated and
4 misbranded, and consumers would not have paid anything for them had they
5 known) - *i.e.*, the full purchase prices of the Pet Foods;

6 (b) the veterinarian bills incurred as a result of consumption of the Pet Foods;

7 (c) the market value of the animals killed by consumption of Pet Foods; and

8 (d) the cost of disposing of the remains of the animals killed by consumption
9 of Pet Foods.

10 294. Plaintiffs and members of the Nationwide Class cannot return Pet
11 Foods to Evanger's for repair as the subject defect is irreparable.

12 295. Evanger's affirmative misrepresentations, as well as its wrongful
13 warranty practices, were disseminated and directed from its headquarters in
14 Wheeling, Illinois. Evanger's manufactures its Pet Foods at its own facilities in
15 Wheeling and Markham, Illinois. Therefore, based upon the choice-of-law rules
16 applied in this District, Plaintiffs preliminarily identify the substantive laws of
17 Illinois as the most likely to apply to Nationwide Class as alleged in this claim.

18 **COUNT XI**

19 **Illinois Negligence**

20 **(on Behalf of Plaintiffs and the Nationwide Class)**

21 296. Plaintiffs repeat and reallege the allegations contained in the paragraphs
22 above, as if fully set forth herein.

23 297. Plaintiffs bring this claim on behalf of themselves and the Nationwide
24 Class.

25 298. Evanger's owed a duty of care to Plaintiffs and the Nationwide Class
26 to provide pet food that was unadulterated, not misbranded, safe for consumption by
27 dogs, and free from toxins with harmful effects.

1 299. Evanger's breached this duty by selling Pet Foods, which were
2 misbranded, adulterated, and not safe, because they contained pentobarbital, were
3 made in an unsanitary facility that contaminated them, and were composed of
4 animals that did not die from slaughter.

5 300. The Pet Foods were sold without adequate quality control and testing;
6 without using proper manufacturing and production practices; without properly
7 investigating reports of pet deaths and illnesses following consumption of the Pet
8 Foods; and without adequately warning Plaintiffs and the Nationwide Class of the
9 dangers as part of the Pet Foods's packaging or disclosing that the Pet foods were
10 not USDA-inspected, were composed of animals that did not die from slaughter, and
11 were not human quality.

12 301. Such conduct by Evanger's was negligent in that Evanger's failed to
13 act as an ordinarily prudent and reasonable person would have acted under the same
14 or similar circumstances.

15 302. Evanger's should have known that Pet Foods posed a risk of harm to
16 animals; that purchasers of Pet Foods, including Plaintiffs and the Nationwide Class,
17 would not recognize the risk and were instead purchasing this product based on
18 Defendants's misrepresentations that the Pet Foods were of a certain quality and
19 would not carry these risks; and that consumption of Pet Foods by animals would
20 foreseeably result in injury and death to those dogs, constituting property damage to
21 Plaintiffs and the Nationwide Class beyond and in addition to the damages from
22 purchasing the harmful Pet Foods.

23 303. As a proximate result of Evanger's negligent acts alleged herein,
24 Plaintiffs and the Nationwide Class suffered injury to property, specifically in the
25 illness and deaths of their animals and the expenses incurred therewith.

26 304. Evanger's affirmative misrepresentations, as well as its wrongful
27 warranty practices, were disseminated and directed from its headquarters in
28

1 Wheeling, Illinois. Evanger's manufactures its Pet Foods at its facilities in Wheeling
2 and Markham, Illinois. Therefore, based upon the choice-of-law rules applied in this
3 District, Plaintiffs preliminarily identify the substantive laws of Illinois as the most
4 likely to apply to Nationwide Class as alleged in this claim.

5
6 **COUNT XII**
7 **Illinois Products Liability**
8 **(on Behalf of Plaintiffs and the Nationwide Class)**

9 305. Plaintiffs repeat and reallege the allegations contained in the paragraphs
10 above, as if fully set forth herein.

11 306. Plaintiffs bring this claim on behalf of themselves and the Nationwide
12 Class.

13 307. Evanger's designed, manufactured and sold Pet Foods, which were
14 unsafe because they were misbranded and adulterated, and this misbranding and
15 adulteration caused the Pet Foods to contain poisonous pentobarbital, to be
16 contaminated by the unsanitary facility where they were made, and to be
17 manufactured from animals that did not die from slaughter.

18 308. The adulteration and misbranding that made the consumption of the Pet
19 Foods risky to the health of animals was, at all times material hereto, an
20 unreasonably dangerous defect and/or condition. The failure of Evanger's to warn
21 on its package of the dangerousness of the Pet Foods also constituted an
22 unreasonably dangerous defect and/or condition.

23 309. These unreasonably dangerous defects and/or conditions existed at the
24 time the Pet Foods left Evanger's control.

25 310. The Pet Foods came in sealed packages, and they and their packaging
26 did not change from the time they left Evanger's possession through the time they
27 arrived in stores to be sold to consumers and consumers purchased and took
28 possession of them.

- f. Awarding damages for the value of the Pet Foods based on what was paid versus what they are worth, including treble and punitive damages, to prevent and deter Defendants from future unlawful conduct;
- g. Awarding all equitable remedies available and other applicable law;
- h. Awarding attorneys' fees and costs;
- i. Awarding pre-judgment and post-judgment interest at the legal rate; and
- j. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED AND DATED this 16th day of June,
2017.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Beth E. Terrell, WSBA #26759
Beth E. Terrell, WSBA #26759
Email: bterrell@terrellmarshall.com

By: /s/ Jennifer Rust Murray, WSBA #36983
Jennifer Rust Murray, WSBA #36983
Email: bterrell@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

Jessica J. Sleater
Email: jessica@andersensleater.com
ANDERSEN SLEATER SIANNI LLC
1250 Broadway, 27th Floor
New York, New York 10001
Telephone: (646) 599-9848

Counsel for Plaintiffs

EXHIBIT D

Policy Issued - 103 GL 0010808-00Evangers Dog and Cat Food Comp

From: Smith, Michelle N <mnsmith@colonyspecialty.com>

Received: 8/26/2015 3:50:48 PM

To: 'Cocklin, Brad C' <BCCocklin@Burns-Wilcox.Com>

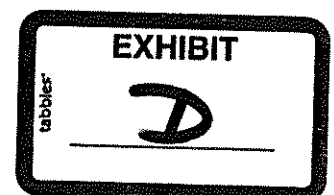
Attachments: image001.gif; Attachment.pdf

Hi

Please see the attached copy of the policy.

For any questions or concerns, please do not hesitate to contact us.

Thank you!



IL P 001 01 04

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.



Privacy Policy

Argo Group US, Inc. ("Argo Group") recognizes the importance of maintaining the privacy of our customers and the confidentiality of each individual's nonpublic personal information, including Social Security numbers. We take seriously the responsibility that accompanies our collection of nonpublic personal information, including Social Security numbers. Accordingly, Argo's corporate policy is to protect the privacy and confidentiality of our consumers and their nonpublic personal information as required by law.

Information Collection and Use

In order to conveniently and effectively provide and service the insurance products we sell, we may collect and use Social Security numbers and other nonpublic personal information. As such, this policy does not prohibit the collection or use of Social Security numbers and nonpublic personal information where legally authorized and/or required. This policy complies with the requirements of the Gramm-Leach-Bliley Act (GLBA) and applicable federal and state laws and regulations implementing the act. Such laws impose certain obligations upon third persons and organizations with which we share nonpublic personal information of our consumers, customers, former customers, or claimants. Accordingly, we prohibit the unauthorized disclosure of Social Security numbers and other protected nonpublic personal information, except as legally required or authorized.

Information Sharing and Disclosure

Argo Group does not rent, sell or share your personally identifiable information with nonaffiliated third parties. Argo Group may, however, share personally identifiable information with third-party contractors. These third-party contractors are prohibited from using the information for purposes other than performing services for Argo Group. Argo Group may disclose your information to third parties when obligated to do so by law and to investigate, prevent, or take action regarding suspected or actual prohibited activities, including but not limited to fraud and situations involving the security of our operations and employees.

Finally, Argo Group may transfer information, including any personally identifiable information, to a successor entity in connection with a corporate merger, consolidation, sale of all or a portion of its assets, bankruptcy, or other corporate change.

Security

In order to protect your nonpublic personal information, we limit access to nonpublic personal information by only allowing authorized personnel to have access to such information. Furthermore, we maintain physical, electronic and procedural security protections to safeguard the nonpublic personal information in our records. Documents that contain an individual's protected information are destroyed before disposal; this destruction process includes the shredding of print and disposable media and deletion of electronic media. Argo Group has security measures in place to protect the loss, misuse and alteration of the information under our control. Our hardware infrastructure is housed in a controlled access facility that restricts access to authorized individuals. The network infrastructure is protected by a firewall and traffic is monitored and logged both on the firewall and servers. Sensitive administrative activities are carried out over secure, encrypted links between our offices and hosting facility. Administrative

access is limited not only to authorized employees but also to specific remote administration protocols and IP addresses. All employees with access to personally identifiable information have been advised of Argo Group's security policies and practices. Argo Group will continue to conduct internal audits of its security systems and make all necessary enhancements to ensure the safety of the website and its users. No method of transmission over the Internet or method of electronic storage is 100% secure; therefore, while Argo Group uses commercially acceptable means to protect your information, we cannot guarantee absolute security.

Any Argo Group employee who becomes aware of the inappropriate use or disclosure of Social Security numbers and other protected nonpublic personal information is expected to immediately report such behavior to the General Counsel for further action.

Corrected/Updated Information

This policy applies to certain insureds of Argo Group, including but not limited to worker's compensation claimants. If you have any questions about this Privacy Policy, please contact:

General Counsel
Argo Group US, Inc.
P.O. Box 469011
San Antonio, Texas 78246
(210) 321-8400

*Note: Argo Group is the parent of Argonaut Insurance Company; Argonaut-Southwest Insurance Company; Argonaut-Midwest Insurance Company; Argonaut Great Central Insurance Company; Argonaut Limited Risk Insurance Company; ARIS Title Insurance Corporation; Select Markets Insurance Company; Colony Insurance Company; Colony Specialty Insurance Company; Peleus Insurance Company (fka Colony National Insurance Company); Rockwood Casualty Insurance Company; Somerset Casualty Insurance Company; Grocers Insurance Agency, Inc.; Central Insurance Management, Inc.; Alteris Insurance Services, Inc.; Trident Insurance Services, LLC; Commercial Deposit Insurance Agency, Inc.; Sonoma Risk Management, LLC; John Sutak Insurance Brokers, Inc.; Colony Management Services, Inc.; Argonaut Management Services, Inc.; and Argonaut Claims Management, LLC. This Privacy Policy applies to all companies and business produced or underwritten within Argo Group.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT

If service of process is to be made upon the Company by way of hand delivery or courier service, delivery should be made to the Company's principal place of business:

Claims Manager

Colony Insurance Company,
Colony Specialty Insurance Company, or
Peleus Insurance Company
8720 Stony Point Parkway, Suite 400
Richmond, Virginia 23235

If service of process is to be made upon the Company by way of the U.S. Postal Service, the following mailing address should be used:

General Counsel

Colony Insurance Company,
Colony Specialty Insurance Company, or
Peleus Insurance Company
P.O. Box 469011
San Antonio, Texas 78246

Where required by statute, regulation, or other regulatory directive, the Company appoints the Commissioner of Insurance, or other designee specified for that purpose, as its attorney for acceptance of service of all legal process in the state in any action or proceeding arising out of this insurance.

The Commissioner or other designee is requested to forward process to the Company as shown above, or if required in his/her particular state, to a designated resident agent for service of process.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

SIGNATURE PAGE

IN WITNESS WHEREOF, the company issuing this policy has caused this policy to be signed by its President and its Secretary and countersigned (if required) on the Declarations page by a duly authorized representative of the company. This endorsement is executed by the company stated in the Declarations.

Colony Insurance Company



President



Secretary

COMMON POLICY DECLARATIONS

Colony Insurance Company
8720 STONY POINT PARKWAY, SUITE 400
RICHMOND, VA 23235

POLICY NUMBER: 103 GL 0010808-00

RENEWAL OF: NEW

Issued 08/26/2015

1. NAMED INSURED AND MAILING ADDRESS:

Evangers Dog and Cat Food Company, Inc.
 221 Wheeling Road
 Wheeling, IL 60090

PRODUCER: 0010164

Burns & Wilcox, Ltd. (Chicago)
 155 N Wacker
 Chicago, IL 60606

2. POLICY PERIOD: From 08/15/2015 to 08/15/2016 12:01 A.M. Standard Time at your Mailing Address above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL OF THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

3. THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

COVERAGE PARTS	PREMIUM
Commercial General Liability Coverage Form	\$5,500.00
Premium charge for coverage of certified acts of terrorism: (Per Terrorism Policyholder Disclosure attached.)	
or	
Coverage for certified acts of terrorism has been rejected; exclusion attached. (Per Terrorism Policyholder Disclosure attached.)	<input checked="" type="checkbox"/>
Premium shown is payable at inception	Total Policy Premium: \$5,500.00

Inspection Fee: \$200.00

4. FORMS APPLICABLE TO ALL COVERAGES:

See Form U001 – Schedule of Forms and Endorsements

5. BUSINESS DESCRIPTION: Pet Food Manufacturing

Countersigned: _____
 Date

By: _____
 Authorized representative

Insured: Evangers Dog and Cat Food Company, Inc. U001 (10/04)
 Policy Number: 103 GL 0010808-00

SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and Endorsements applying to and made part of this policy at the time of issuance:

NUMBER	TITLE
ILP001-0104	U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS
PRIVACYNOTICE-0415	PRIVACY NOTICE
U094-0415	SERVICE OF SUIT
SIGCIC-1013	SIGNATURE PAGE
DCJ6550-0702	COMMON POLICY DECLARATIONS
U001-1004	SCHEDULE OF FORMS & ENDORSEMENTS
DCJ6553-0702	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
CG0001-1207	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
IL0017-1198	COMMON POLICY CONDITIONS
IL0162-0908	ILLINOIS CHANGES - DEFENSE COSTS
UCG2175-0115	CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM EXCLUSION
CG0068-0509	RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW EXCLUSION
CG2015-0704	ADDITIONAL INSURED - VENDORS
CG2104-1185	EXCLUSION - PRODUCTS/COMPLETED OPERATIONS HAZARD
CG2138-1185	EXCLUSION - PERSONAL AND ADVERTISING INJURY
CG2149-0999	TOTAL POLLUTION EXCLUSION ENDORSEMENT
CG2167-1204	FUNGI OR BACTERIA EXCLUSION
CG2196-0305	SILICA OR SILICA-RELATED DUST EXCLUSION
CG2426-0704	AMENDMENT OF INSURED CONTRACT DEFINITION
IL0021-0908	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
U002A-0212	MINIMUM POLICY PREMIUM
U009-0310	AIRCRAFT PRODUCTS AND GROUNDING EXCLUSION
U048-0310	EMPLOYMENT RELATED PRACTICES EXCLUSION
U173AS-0708	CANCELLATION
U184-0702	INSPECTION
U265-0310	PROFESSIONAL SERVICES EXCLUSION
U266-0510	EXCLUSION - USL&H, JONES ACT OR OTHER MARITIME LAWS
U267A-0813	CROSS SUITS EXCLUSION
U276-0310	EXCLUSION - BREACH OF CONTRACT
U466-0212	EXCLUSION - LEAD
U467-0212	EXCLUSION - ASBESTOS
U582-0708	EXCLUSION - LATEX
U640-0410	EXCLUSION - UREA FORMALDEHYDE
U730-0212	EXCLUSION - BENZENE

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

This coverage part consists of this Declarations form, the Common Policy Conditions, the Commercial General Liability Coverage Form and the endorsements indicated as applicable.

POLICY NO. 103 GL 0010808-00

NAMED INSURED: Evangers Dog and Cat Food Company, Inc.

LIMITS OF INSURANCE

General Aggregate Limit (Other Than Products – Completed Operations)	\$2,000,000	
Products Completed Operations Aggregate Limit	Excluded	
Personal & Advertising Injury Limit	Excluded	
Each Occurrence Limit	\$1,000,000	
Damage To Premises Rented To You Limit	\$100,000	Any One Premises
Medical Expense Limit	\$5,000	Any One Person

RETROACTIVE DATE (CG 00 02 only) – Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before Retroactive Date, if any, shown below.

Retroactive Date: (Enter Date or "None" if no Retroactive Date Applies)

Location of All Premises You Own, Rent or Occupy (Same as Item 1 unless shown below):

211 Wheeling Road, Wheeling, IL 60090

CLASSIFICATION	CODE NO.	PREMIUM BASIS	RATE	ADVANCE PREMIUM	
				PR / CO	ALL OTHER
Pet Food Mfg.	57913	Gross Sales \$10,000,000	\$0.54	Excluded	\$5,500.00 - MP

FORMS / ENDORSEMENTS APPLICABLE:

SEE FORM U001 - SCHEDULE OF FORMS AND ENDORSEMENTS

**TOTAL PREMIUM
FOR THIS
COVERAGE PART**

\$5,500.00

FORM OF BUSINESS: Corporation

Audit Period: Annual unless otherwise stated:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of websites for others; or

- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and

(b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
- 2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.

- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
- 6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
- 7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and

- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

- 5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ILLINOIS CHANGES – DEFENSE COSTS

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART – LEGAL LIABILITY COVERAGE FORM
COMMERCIAL PROPERTY COVERAGE PART – MORTGAGEHOLDERS ERRORS AND OMISSIONS COVERAGE FORM
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA LIABILITY POLICY
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK COVERAGE PART

A. The provisions of Paragraph B. are added to all Insuring Agreements that set forth a duty to defend under:

1. Section I of the Commercial General Liability, Commercial Liability Umbrella, Employment-Related Practices Liability, Farm, Liquor Liability, Owners And Contractors Protective Liability, Pollution Liability, Products/Completed Operations Liability, Product Withdrawal, Medical Professional Liability, Railroad Protective Liability, Underground Storage Tank Coverage Parts and the Farm Umbrella Liability Policy;
2. Section II – Liability Coverage in Paragraph A. Coverage under the Business Auto, Garage, Motor Carrier and Truckers Coverage Forms;
3. Section A. Coverage under the Legal Liability Coverage Form; and
4. Coverage C – Mortgageholder's Liability under the Mortgageholders Errors And Omissions Coverage Form.

B. If we initially defend an insured ("insured") or pay for an insured's ("insured's") defense but later determine that the claim(s) is (are) not covered under this insurance, we will have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement for the defense costs under this provision will only apply to defense costs we have incurred after we notify you in writing that there may not be coverage, and that we are reserving our rights to terminate the defense and seek reimbursement for defense costs.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

A. The following exclusion is added:

TERRORISM AND PUNITIVE DAMAGES

This insurance does not apply to "any injury or damage" arising, directly or indirectly, out of:

- (1) A "certified act of terrorism" or an "other act of terrorism", including any action taken in hindering or defending against an actual or expected incident of a "certified act of terrorism" or an "other act of terrorism"; or
- (2) Any act of terrorism:
 - (a) that involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
 - (b) that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - (c) in which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials;regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage in (1) or (2) above; including
- (3) Damages arising, directly or indirectly, out of (1) or (2) above that are awarded as punitive damages.

B. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

C. The following definitions are added to the **DEFINITIONS** Section:

For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to any damage, "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

- b.** The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a "certified act of terrorism". Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion q. of Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

B. Exclusion p. of Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

COMMERCIAL GENERAL LIABILITY
CG 20 15 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – VENDORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s) (Vendor)	Your Products
All persons or organizations as required by written contract with the Named Insured	All products manufactured by the Named Insured.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) (referred to below as vendor) shown in the Schedule, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
 - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;

- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- g.** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - h.** "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

 - (1)** The exceptions contained in Sub-paragraphs **d.** or **f.**; or
 - (2)** Such inspections, adjustments, tests or Servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- 2.** This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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EXCLUSION - PRODUCTS - COMPLETED OPERATIONS HAZARD

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to "bodily injury" or "property damage" included within the "products - completed operations hazard".

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – PERSONAL AND ADVERTISING INJURY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

COVERAGE B (Section I) does not apply and none of the references to it in the Coverage Part apply.

COMMERCIAL GENERAL LIABILITY
CG 21 49 09 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

f. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

COMMERCIAL GENERAL LIABILITY
CG 21 67 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

- a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

- a. "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.
- b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

C. The following definition is added to the Definitions Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

COMMERCIAL GENERAL LIABILITY
CG 21 96 03 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SILICA OR SILICA-RELATED DUST EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

Silica Or Silica-Related Dust

- a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silica-related dust".
- b. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- c. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Silica Or Silica-Related Dust

- a. "Personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

C. The following definitions are added to the Definitions Section:

1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

COMMERCIAL GENERAL LIABILITY
CG 24 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph 9. of the **Definitions** Section is replaced by the following:

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

IL 00 21 09 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

- (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM PREMIUM

The following additional policy Conditions supersede any other policy conditions regarding a minimum premium for this policy:

Policy Premium

Policy premium means the premium that is calculated as follows:

1. The total policy premium as shown in the Policy Declarations, plus
2. Any premium adjustment by endorsements, plus
3. Any additional premium developed by audit.

Audits

Audits will not reduce the policy premium. The due date for audit premium is the date shown as the due date on the bill.

Cancellation and Minimum Earned Premium

1. If you cancel this policy, the return premium will be 90% of the unearned premium. However, as a minimum earned premium, we will retain no less than 25 % of the policy premium.
2. If we cancel the policy:
 - a. for non-payment of premium, for any of the reasons stated in the U173-Cancellation Endorsement that provide a 10 day notice or for the reasons stated in an amendatory state specific cancellation endorsement (up to and including a 30 day notice), the earned premium will be computed pro rata based on the length of the cancelled policy term; however, as a minimum earned premium, we will retain no less than 25 % of the policy premium; or
 - b. for any reason other than those identified in subparagraph 2.a. above, the earned premium will be computed pro rata based on the length of the cancelled policy term and the minimum earned premium as stated in 2.a. shall not apply.

Any unearned premium will be returned as soon as practicable.

3. However, if the policy is a project specific policy where specified locations are designated for coverage and the policy period is in excess of one year, regardless of who initiates cancellation of the policy, the policy premium will be deemed fully earned after 75% of the policy period has passed. For a project specific policy, the policy premium will be deemed fully earned with no return premium to be provided upon cancellation once the project has reached a level of substantial completion following construction or renovation. Substantial completion means the earliest of the following:
 - a. The date of use or occupancy of one or more of the locations of the specified project occurs;
 - b. A temporary or permanent certificate of occupancy has been issued;
 - c. The date of the final inspection of the construction project by the applicable public agency occurs; or
 - d. The final cost of construction is at least 90% of the estimated construction cost upon which this policy premium was based.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AIRCRAFT PRODUCTS AND GROUNDING EXCLUSION

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS COMPLETED OPERATIONS LIABILITY COVERAGE PART**

- A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and SECTION I – PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions are amended and the following added:**

Aircraft or Grounding

This insurance does not apply to “bodily injury” or “property damage” arising directly or indirectly out of:

1. any “aircraft product” or the “grounding” of any aircraft; or
2. “your work” on aircraft (including missile or spacecraft, and any ground support or control equipment).

- B. SECTION V – DEFINITIONS is amended and the following added:**

“Aircraft product” means:

- a. Aircraft (including missile or spacecraft, and any ground support or control equipment used therewith);
- b. Any article furnished by you or on your behalf and installed in an aircraft or used in connection with an aircraft or for spare parts for an aircraft including ground handling tools and equipment;
- c. Any of “your products” used at an airport for the purpose of guidance, navigation or direction of aircraft;
- d. training aids, instructions, manuals, blueprints, engineering or other data or advice and services and labor relating to such aircraft, articles or products that you or any other person or organization on your behalf:
 - (1) sold, handled or distributed; or
 - (2) manufactured, assembled or processed:
 - (a) according to specifications, plans, suggestions, orders, or drawings provided by you or on your behalf; or
 - (b) with tools, machinery or equipment furnished to such persons or drawings provided by you or on your behalf.

“Grounding” means:

- a. the withdrawal of one or more aircraft from flight operations; or
 - b. the imposition of speed, passenger or load restrictions on such aircraft
- by reason of the existence of or alleged or suspected existence of any defect, fault or condition in such aircraft or any part thereof whether such aircraft so withdrawn are owned or operated by the same or different persons, organizations or corporations.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

Employment-Related Practices

This insurance does not apply to “bodily injury” or “personal and advertising injury” to:

- (1) a person arising directly or indirectly out of any:
 - (a) refusal to employ that person;
 - (b) termination of that person’s employment; or
 - (c) employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, assault, battery, discrimination, malicious prosecution or abuse including sexual abuse directed at any person; or
- (2) the spouse, child, parent, brother or sister of that person as a consequence of “bodily injury” or “personal and advertising injury” to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) whether the injury-causing event described in paragraphs (1) (a), (b), or (c) above occurs before employment, during employment or after employment of that person;
- (2) whether the insured may be liable as an employer or in any other capacity; and
- (3) to any obligation to share damages with or repay someone else who must pay damages because of the injury.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

CANCELLATION

This endorsement modifies insurance provided under the following:

OUTPUT POLICY COVERAGE PART
COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
EXCESS LIABILITY POLICY
FARM COVERAGE PART
FARM UMBRELLA LIABILITY POLICY
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART

Paragraph **A. 2. Cancellation** of the COMMON POLICY CONDITIONS is deleted and replaced by the following:

2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for one or more of the following reasons:
 - (1) nonpayment of premium or failure to pay a premium when due;
 - (2) conviction of an insured of a crime arising out of acts increasing the hazard insured against;
 - (3) violation of any local fire, health, safety, building or construction regulation or ordinance which increases the hazard insured against under the policy;
 - (4) any willful or reckless act or omission by an insured increasing the hazard insured against;
 - (5) omission or concealment of fact relating to an insurance application, rating, claim or coverage under this policy;
 - (6) failure or refusal of an insured to:
 - (a) provide information necessary to confirm exposure or determine the policy premium;
or
 - (b) comply with underwriting requirements;
 - (7) a substantial change in the risk covered by the policy;
 - (8) loss of reinsurance or substantial decrease in reinsurance;
 - (9) the cancellation is for all insureds under such policies for a given class of insureds; or
 - (10) any reason determined by the insurance commissioner.
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INSPECTION

This endorsement modifies the policy as follows:

\$200.00 is added to this policy for an inspection and is not refundable.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROFESSIONAL SERVICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following is added:

Professional Services

This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” arising directly or indirectly out of the rendering or failure to render any “professional service” except by endorsement to this policy and then only to the extent of such endorsement.

“Professional service” means:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- (3) Engineering services, including related supervisory or inspection services;
- (4) Medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction;
- (5) Any health or therapeutic service, treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming;
- (7) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (8) Body piercing or tattooing services including but not limited to the insertion of pigment, collagen or any other foreign substance into or under the skin;
- (9) Services in the practice of pharmacy;
- (10) Law enforcement or firefighting services; and
- (11) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – USL&H, JONES ACT OR OTHER MARITIME LAWS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following is added:

USL&H, Jones Act or Other Maritime Laws Exclusion

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising directly or indirectly out of:

- (1) operations over navigable waters or offshore including but not limited to drilling and production platforms, pipelines, and vessels where coverage is provided by the U.S. Longshore & Harbor Workers Compensation Act (USL&H), Merchant Marine Act ("Jones Act") or other maritime laws and any amendments to those laws;
- (2) actions including but not limited to subrogation involving U.S. Longshore & Harbor Workers Compensation Act (USL&H), Merchant Marine Act ("Jones Act") or other maritime laws and any amendments to those laws; or
- (3) any obligation of the insured resulting from actions under the U.S. Longshore & Harbor Workers Compensation Act (USL&H), Merchant Marine Act ("Jones Act") or other maritime laws and any amendments to those laws.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CROSS SUITS EXCLUSION

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions in the Commercial General Liability Coverage Part; and SECTION I – COVERAGES, PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions in the Products/Completed Operations Liability Coverage Part are amended and the following added:

CROSS SUITS EXCLUSION

This insurance does not apply to any claim or “suit” for “bodily injury”, “property damage” or “personal and advertising injury” brought by any Named Insured against any other Named Insured.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BREACH OF CONTRACT EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions, f. Breach Of Contract is deleted and replaced by the following:

This insurance does not apply to damages directly or indirectly arising out of:

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, including an implied contract to use another's advertising idea in your "advertisement".

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – LEAD

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

This insurance does not apply to:

Lead

- (1) “bodily injury” or “personal and advertising injury” arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, lead in any form.
- (2) “property damage” arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, lead in any form.
- (3) any damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, lead in any form, by any insured or by any other person or entity.
- (4) any claim or “suit” by or on behalf of a governmental authority for damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, lead in any form, by any insured or by any other person or entity.

This exclusion shall apply without regard to the source or sources of lead, or the basis of the insured's liability. This exclusion includes defects or negligence in design, construction or materials, or any other event, conduct or misconduct, which may have or is claimed to have precipitated, caused or acted jointly, concurrently or in any sequence with lead in any form in causing injury or damage.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ASBESTOS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION 1 – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

This insurance does not apply to:

Asbestos

- (1) "bodily injury" or "personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, asbestos in any form.
- (2) "property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, asbestos in any form.
- (3) any damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, asbestos in any form, by any insured or by any other person or entity.
- (4) any claim or "suit" by or on behalf of a governmental authority for damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, asbestos in any form, by any insured or by any other person or entity.

This exclusion shall apply without regard to the source or sources of asbestos, or the basis of the insured's liability. This exclusion includes defects or negligence in design, construction or materials, or any other event, conduct or misconduct, which may have or is claimed to have precipitated, caused or acted jointly, concurrently or in any sequence with asbestos in any form in causing injury or damage.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – LATEX

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The policy is hereby amended to include the following additional exclusion:

LATEX EXCLUSION

This insurance does not apply to liability, arising directly or indirectly out of:

- a. The actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of latex or products or materials containing latex, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to any injury or damage;
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of latex by any insured or by any other person or entity;
- c. Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with a. and b. above;
- d. Any obligation to share damages with or repay someone else who must pay damages because of latex or products or materials containing latex;
- e. Any injury or damage arising out of the loss of use of, or other unavailability of, any product or material actually, potentially, or allegedly containing latex; or
- f. Any injury or damage arising out of the loss of use of, or other unavailability of, "your product" or "your work", arising out of the loss of use of, or other unavailability of, any product or material actually, potentially, or allegedly containing latex.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – UREA FORMALDEHYDE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The policy is hereby amended to include the following additional exclusion:

Urea Formaldehyde Exclusion

This insurance does not apply to, and we shall have no duty to defend any claims for, "bodily injury", "property damage" or "personal and advertising injury" arising directly or indirectly out of:

- (1) the design, manufacture, construction, fabrication, preparation, distribution, sale, installation, application, maintenance, repair, remodeling, servicing, correction or replacement of any urea formaldehyde;
- (2) the actual, alleged or threatened inhalation of, ingestion of, contact with, handling of, exposure to, existence of, or presence of urea formaldehyde or products or materials containing urea formaldehyde, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to any injury or damage;
- (3) any loss, cost or expenses arising directly or indirectly out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of urea formaldehyde by any insured or by any other person or entity;
- (4) any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with (2) and (3) above;
- (5) any obligation to share damages with or repay someone else who must pay damages because of urea formaldehyde or products or materials containing urea formaldehyde;
- (6) the loss of use of, or other unavailability of, any product or material actually, potentially, or allegedly containing urea formaldehyde; or
- (7) the loss of use of, or other unavailability of, "your product" or "your work", arising directly or indirectly out of the loss of use of, or other unavailability of, any product or material actually, potentially or allegedly containing urea formaldehyde.

This exclusion does not apply to claims resulting from products manufactured by the Named Insured after April 1, 2009, meeting or exceeding the Recreation Vehicle Industry Association's adopted standards regarding urea formaldehyde, in effect at the time of manufacture of the product giving rise to the claim.

The Named Insured represents and warrants that it will meet or exceed the Recreation Vehicle Industry Association's newest adopted standards regarding urea formaldehyde in all products that it manufactures containing urea formaldehyde. This exclusion will apply in its entirety and in every aspect for claims determined, in our sole discretion, to have resulted from failure of the Named Insured to comply with this representation and warranty.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – BENZENE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

This insurance does not apply to:

Benzene

- (1) "bodily injury" or "personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, benzene in any form.
- (2) "property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, benzene in any form.
- (3) any damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, benzene in any form, by any insured or by any other person or entity.
- (4) any claim or "suit" by or on behalf of a governmental authority for damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, benzene in any form, by any insured or by any other person or entity.

This exclusion shall apply without regard to the source or sources of benzene, or the basis of the insured's liability. This exclusion includes defects or negligence in design, construction or materials, or any other event, conduct or misconduct, which may have or is claimed to have precipitated, caused or acted jointly, concurrently or in any sequence with benzene in any form in causing injury or damage.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

EXHIBIT E

IL P 001 01 04

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.





Privacy Policy

Argo Group US, Inc. ("Argo Group") recognizes the importance of maintaining the privacy of our customers and the confidentiality of each individual's nonpublic personal information, including Social Security numbers. We take seriously the responsibility that accompanies our collection of nonpublic personal information, including Social Security numbers. Accordingly, Argo's corporate policy is to protect the privacy and confidentiality of our consumers and their nonpublic personal information as required by law.

Information Collection and Use

In order to conveniently and effectively provide and service the insurance products we sell, we may collect and use Social Security numbers and other nonpublic personal information. As such, this policy does not prohibit the collection or use of Social Security numbers and nonpublic personal information where legally authorized and/or required. This policy complies with the requirements of the Gramm-Leach-Bliley Act (GLBA) and applicable federal and state laws and regulations implementing the act. Such laws impose certain obligations upon third persons and organizations with which we share nonpublic personal information of our consumers, customers, former customers, or claimants. Accordingly, we prohibit the unauthorized disclosure of Social Security numbers and other protected nonpublic personal information, except as legally required or authorized.

Information Sharing and Disclosure

Argo Group does not rent, sell or share your personally identifiable information with nonaffiliated third parties. Argo Group may, however, share personally identifiable information with third-party contractors. These third-party contractors are prohibited from using the information for purposes other than performing services for Argo Group. Argo Group may disclose your information to third parties when obligated to do so by law and to investigate, prevent, or take action regarding suspected or actual prohibited activities, including but not limited to fraud and situations involving the security of our operations and employees.

Finally, Argo Group may transfer information, including any personally identifiable information, to a successor entity in connection with a corporate merger, consolidation, sale of all or a portion of its assets, bankruptcy, or other corporate change.

Security

In order to protect your nonpublic personal information, we limit access to nonpublic personal information by only allowing authorized personnel to have access to such information. Furthermore, we maintain physical, electronic and procedural security protections to safeguard the nonpublic personal information in our records. Documents that contain an individual's protected information are destroyed before disposal; this destruction process includes the shredding of print and disposable media and deletion of electronic media. Argo Group has security measures in place to protect the loss, misuse and alteration of the information under our control. Our hardware infrastructure is housed in a controlled access facility that restricts access to authorized individuals. The network infrastructure is protected by a firewall and traffic is monitored and logged both on the firewall and servers. Sensitive administrative activities are carried out over secure, encrypted links between our offices and hosting facility. Administrative

access is limited not only to authorized employees but also to specific remote administration protocols and IP addresses. All employees with access to personally identifiable information have been advised of Argo Group's security policies and practices. Argo Group will continue to conduct internal audits of its security systems and make all necessary enhancements to ensure the safety of the website and its users. No method of transmission over the Internet or method of electronic storage is 100% secure; therefore, while Argo Group uses commercially acceptable means to protect your information, we cannot guarantee absolute security.

Any Argo Group employee who becomes aware of the inappropriate use or disclosure of Social Security numbers and other protected nonpublic personal information is expected to immediately report such behavior to the General Counsel for further action.

Corrected/Updated Information

This policy applies to certain insureds of Argo Group, including but not limited to worker's compensation claimants. If you have any questions about this Privacy Policy, please contact:

General Counsel
Argo Group US, Inc.
P.O. Box 469011
San Antonio, Texas 78246
(210) 321-8400

*Note: Argo Group is the parent of Argonaut Insurance Company; Argonaut-Southwest Insurance Company; Argonaut-Midwest Insurance Company; Argonaut Great Central Insurance Company; Argonaut Limited Risk Insurance Company; ARIS Title Insurance Corporation; Select Markets Insurance Company; Colony Insurance Company; Colony Specialty Insurance Company; Peleus Insurance Company (fka Colony National Insurance Company); Rockwood Casualty Insurance Company; Somerset Casualty Insurance Company; Grocers Insurance Agency, Inc.; Central Insurance Management, Inc.; Alteris Insurance Services, Inc.; Trident Insurance Services, LLC; Commercial Deposit Insurance Agency, Inc.; Sonoma Risk Management, LLC; John Sutak Insurance Brokers, Inc.; Colony Management Services, Inc.; Argonaut Management Services, Inc.; and Argonaut Claims Management, LLC. This Privacy Policy applies to all companies and business produced or underwritten within Argo Group.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT

If service of process is to be made upon the Company by way of hand delivery or courier service, delivery should be made to the Company's principal place of business:

Claims Manager

Colony Insurance Company,
Colony Specialty Insurance Company, or
Peleus Insurance Company
8720 Stony Point Parkway, Suite 400
Richmond, Virginia 23235

If service of process is to be made upon the Company by way of the U.S. Postal Service, the following mailing address should be used:

General Counsel

Colony Insurance Company,
Colony Specialty Insurance Company, or
Peleus Insurance Company
P.O. Box 469011
San Antonio, Texas 78246

Where required by statute, regulation, or other regulatory directive, the Company appoints the Commissioner of Insurance, or other designee specified for that purpose, as its attorney for acceptance of service of all legal process in the state in any action or proceeding arising out of this insurance.

The Commissioner or other designee is requested to forward process to the Company as shown above, or if required in his/her particular state, to a designated resident agent for service of process.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

SIGNATURE PAGE

IN WITNESS WHEREOF, the company issuing this policy has caused this policy to be signed by its President and its Secretary and countersigned (if required) on the Declarations page by a duly authorized representative of the company. This endorsement is executed by the company stated in the Declarations.

Colony Insurance Company



President



Secretary

COMMON POLICY DECLARATIONS

Colony Insurance Company
8720 STONY POINT PARKWAY, SUITE 400
RICHMOND, VA 23235

POLICY NUMBER: 103 GL 0010808-01

RENEWAL OF: 103 GL 0010808-00

Issued 08/24/2016

1. NAMED INSURED AND MAILING ADDRESS:

Evangers Dog and Cat Food Company, Inc.
221 Wheeling Road
Wheeling, IL 60090

PRODUCER: 0010164

Burns & Wilcox, Ltd. (Chicago)
155 N Wacker
Chicago, IL 60606

2. POLICY PERIOD: From 08/15/2016 to 08/15/2017 12:01 A.M. Standard Time at your Mailing Address above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL OF THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

3. THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

COVERAGE PARTS	PREMIUM
Commercial General Liability Coverage Form Premium charge for coverage of certified acts of terrorism: (Per Terrorism Policyholder Disclosure attached.) or Coverage for certified acts of terrorism has been rejected; exclusion attached. (Per Terrorism Policyholder Disclosure attached.)	\$5,500.00 <input checked="" type="checkbox"/>
Premium shown is payable at inception	Total Policy Premium: \$5,500.00

Inspection Fee:

4. FORMS APPLICABLE TO ALL COVERAGES:

See Form U001 – Schedule of Forms and Endorsements

5. BUSINESS DESCRIPTION: Pet Food Manufacturing

Countersigned: _____
Date

By: _____
Authorized representative

Insured: Evangers Dog and Cat Food Company, Inc. U001 (10/04)
 Policy Number: 103 GL 0010808-01

SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and Endorsements applying to and made part of this policy at the time of issuance:

NUMBER	TITLE
ILP001-0104	U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS
PRIVACYNOTICE-0415	PRIVACY NOTICE
U094-0415	SERVICE OF SUIT
SIGCIC-1013	SIGNATURE PAGE
DCJ6550-0702	COMMON POLICY DECLARATIONS
U001-1004	SCHEDULE OF FORMS & ENDORSEMENTS
DCJ6553-0702	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
CG0001-0413	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
IL0017-1198	COMMON POLICY CONDITIONS
IL0162-0908	ILLINOIS CHANGES - DEFENSE COSTS
UCG2175-0115	CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM EXCLUSION
CG2015-0413	ADDITIONAL INSURED - VENDORS
CG2104-1185	EXCLUSION - PRODUCTS/COMPLETED OPERATIONS HAZARD
CG2107-0514	EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY - LIMITED BODILY INJURY EXCEPTION NOT INCLUDED
CG2109-0615	EXCLUSION - UNMANNED AIRCRAFT
CG2138-1185	EXCLUSION - PERSONAL AND ADVERTISING INJURY
CG2149-0999	TOTAL POLLUTION EXCLUSION ENDORSEMENT
CG2167-1204	FUNGI OR BACTERIA EXCLUSION
CG2196-0305	SILICA OR SILICA-RELATED DUST EXCLUSION
CG2426-0413	AMENDMENT OF INSURED CONTRACT DEFINITION
IL0021-0908	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
U002A-0212	MINIMUM POLICY PREMIUM
U009-0310	AIRCRAFT PRODUCTS AND GROUNDING EXCLUSION
U048-0310	EMPLOYMENT RELATED PRACTICES EXCLUSION
U173AS-0708	CANCELLATION
U265-0116	EXCLUSION - PROFESSIONAL SERVICES
U266-0510	EXCLUSION - USL&H, JONES ACT OR OTHER MARITIME LAWS
U267A-0813	CROSS SUITS EXCLUSION
U276-0310	EXCLUSION - BREACH OF CONTRACT
U466-0212	EXCLUSION - LEAD
U467-0212	EXCLUSION - ASBESTOS
U582-0708	EXCLUSION - LATEX
U640-0410	EXCLUSION - UREA FORMALDEHYDE
U730-0212	EXCLUSION - BENZENE

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

This coverage part consists of this Declarations form, the Common Policy Conditions, the Commercial General Liability Coverage Form and the endorsements indicated as applicable.

POLICY NO. 103 GL 0010808-01

NAMED INSURED: Evangers Dog and Cat Food Company, Inc.

LIMITS OF INSURANCE

General Aggregate Limit (Other Than Products – Completed Operations)	\$2,000,000	
Products Completed Operations Aggregate Limit	Excluded	
Personal & Advertising Injury Limit	Excluded	
Each Occurrence Limit	\$1,000,000	
Damage To Premises Rented To You Limit	\$100,000	Any One Premises
Medical Expense Limit	\$5,000	Any One Person

RETROACTIVE DATE (CG 00 02 only) – Coverage A of this insurance does not apply to “bodily injury” or “property damage” which occurs before Retroactive Date, if any, shown below.

Retroactive Date: (Enter Date or “None” if no Retroactive Date Applies)

Location of All Premises You Own, Rent or Occupy (Same as Item 1 unless shown below):

211 Wheeling Road, Wheeling, IL 60090

CLASSIFICATION	CODE NO.	PREMIUM BASIS	RATE	ADVANCE PREMIUM	
				PR / CO	ALL OTHER
Pet Food Mfg.	57913	Gross Sales \$10,000,000	\$0.54	Excluded	\$5,500.00 - MP

FORMS / ENDORSEMENTS APPLICABLE:

SEE FORM U001 - SCHEDULE OF FORMS AND ENDORSEMENTS

**TOTAL PREMIUM
FOR THIS
COVERAGE PART**

\$5,500.00

FORM OF BUSINESS: Corporation

Audit Period: Annual unless otherwise stated:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;

- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

COVERAGE C – MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

(a) Owned, occupied or used by;

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

a. Medical expenses under Coverage C;

b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

c. Damages under Coverage B.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and

- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in Paragraph a. above;

(2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ILLINOIS CHANGES – DEFENSE COSTS

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART – LEGAL LIABILITY COVERAGE FORM
COMMERCIAL PROPERTY COVERAGE PART – MORTGAGEHOLDERS ERRORS AND OMISSIONS COVERAGE FORM
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA LIABILITY POLICY
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK COVERAGE PART

A. The provisions of Paragraph B. are added to all Insuring Agreements that set forth a duty to defend under:

1. Section I of the Commercial General Liability, Commercial Liability Umbrella, Employment-Related Practices Liability, Farm, Liquor Liability, Owners And Contractors Protective Liability, Pollution Liability, Products/Completed Operations Liability, Product Withdrawal, Medical Professional Liability, Railroad Protective Liability, Underground Storage Tank Coverage Parts and the Farm Umbrella Liability Policy;
2. Section II – Liability Coverage in Paragraph A. Coverage under the Business Auto, Garage, Motor Carrier and Truckers Coverage Forms;
3. Section A. Coverage under the Legal Liability Coverage Form; and
4. Coverage C – Mortgageholder's Liability under the Mortgageholders Errors And Omissions Coverage Form.

B. If we initially defend an insured ("insured") or pay for an insured's ("insured's") defense but later determine that the claim(s) is (are) not covered under this insurance, we will have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement for the defense costs under this provision will only apply to defense costs we have incurred after we notify you in writing that there may not be coverage, and that we are reserving our rights to terminate the defense and seek reimbursement for defense costs.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

A. The following exclusion is added:

TERRORISM AND PUNITIVE DAMAGES

This insurance does not apply to "any injury or damage" arising, directly or indirectly, out of:

- (1) A "certified act of terrorism" or an "other act of terrorism", including any action taken in hindering or defending against an actual or expected incident of a "certified act of terrorism" or an "other act of terrorism"; or
- (2) Any act of terrorism:
 - (a) that involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
 - (b) that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - (c) in which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials;regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage in (1) or (2) above; including
- (3) Damages arising, directly or indirectly, out of (1) or (2) above that are awarded as punitive damages.

B. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

C. The following definitions are added to the **DEFINITIONS** Section:

For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to any damage, "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

- b.** The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

“Other act of terrorism” means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a “certified act of terrorism”. Multiple incidents of an “other act of terrorism” which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

POLICY NUMBER: 103 GL 0010808-01

COMMERCIAL GENERAL LIABILITY
CG 20 15 04 13**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – VENDORS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s) (Vendor)	Your Products
All persons or organizations as required by written contract with the Named Insured	All products manufactured by the Named Insured.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) (referred to throughout this endorsement as vendor) shown in the Schedule, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business.

However:

1. The insurance afforded to such vendor only applies to the extent permitted by law; and
2. If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

B. With respect to the insurance afforded to these vendors, the following additional exclusions apply:

1. The insurance afforded the vendor does not apply to:
 - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;
 - d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) The exceptions contained in Sub-paragraphs d. or f.; or

- (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- 2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

C. With respect to the insurance afforded to these vendors, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the vendor is required by a contract or agreement, the most we will pay on behalf of the vendor is the amount of insurance:

- 1. Required by the contract or agreement; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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EXCLUSION - PRODUCTS - COMPLETED OPERATIONS HAZARD

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to "bodily injury" or "property damage" included within the "products - completed operations hazard".

COMMERCIAL GENERAL LIABILITY
CG 21 07 05 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – ACCESS OR DISCLOSURE OF
CONFIDENTIAL OR PERSONAL INFORMATION AND
DATA-RELATED LIABILITY – LIMITED BODILY INJURY
EXCEPTION NOT INCLUDED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion 2.p. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

B. The following is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – UNMANNED AIRCRAFT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion 2.g. Aircraft, Auto Or Watercraft under Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

g. Aircraft, Auto Or Watercraft

(1) Unmanned Aircraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This Paragraph g.(1) applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

(2) Aircraft (Other Than Unmanned Aircraft), Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This Paragraph g.(2) applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This Paragraph g.(2) does not apply to:

- (a) A watercraft while ashore on premises you own or rent;
- (b) A watercraft you do not own that is:
 - (i) Less than 26 feet long; and
 - (ii) Not being used to carry persons or property for a charge;
- (c) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (d) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(e) "Bodily injury" or "property damage" arising out of:

(i) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(ii) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

B. The following exclusion is added to Paragraph 2. Exclusions of Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Unmanned Aircraft

"Personal and advertising injury" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the offense which caused the "personal and advertising injury" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

This exclusion does not apply to:

a. The use of another's advertising idea in your "advertisement"; or

b. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

C. The following definition is added to the Definitions section:

"Unmanned aircraft" means an aircraft that is not:

1. Designed;

2. Manufactured; or

3. Modified after manufacture;

to be controlled directly by a person from within or on the aircraft.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – PERSONAL AND ADVERTISING INJURY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

COVERAGE B (Section I) does not apply and none of the references to it in the Coverage Part apply.

COMMERCIAL GENERAL LIABILITY
CG 21 49 09 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

f. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

COMMERCIAL GENERAL LIABILITY
CG 21 67 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

- a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

- a. "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.
- b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

C. The following definition is added to the Definitions Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

COMMERCIAL GENERAL LIABILITY
CG 21 96 03 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SILICA OR SILICA-RELATED DUST EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Silica Or Silica-Related Dust

- a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silica-related dust".
- b. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- c. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

- B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Silica Or Silica-Related Dust

- a. "Personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

- C. The following definitions are added to the Definitions Section:**

1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

COMMERCIAL GENERAL LIABILITY
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

The definition of "insured contract" in the Definitions section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

- (1)** With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2)** Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1)** The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or **(b)** has been discharged or dispersed therefrom;
- (2)** The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3)** The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(3)** applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM PREMIUM

The following additional policy Conditions supersede any other policy conditions regarding a minimum premium for this policy:

Policy Premium

Policy premium means the premium that is calculated as follows:

1. The total policy premium as shown in the Policy Declarations, plus
2. Any premium adjustment by endorsements, plus
3. Any additional premium developed by audit.

Audits

Audits will not reduce the policy premium. The due date for audit premium is the date shown as the due date on the bill.

Cancellation and Minimum Earned Premium

1. If you cancel this policy, the return premium will be 90% of the unearned premium. However, as a minimum earned premium, we will retain no less than 25 % of the policy premium.
2. If we cancel the policy:
 - a. for non-payment of premium, for any of the reasons stated in the U173-Cancellation Endorsement that provide a 10 day notice or for the reasons stated in an amendatory state specific cancellation endorsement (up to and including a 30 day notice), the earned premium will be computed pro rata based on the length of the cancelled policy term; however, as a minimum earned premium, we will retain no less than 25 % of the policy premium; or
 - b. for any reason other than those identified in subparagraph 2.a. above, the earned premium will be computed pro rata based on the length of the cancelled policy term and the minimum earned premium as stated in 2.a. shall not apply.

Any unearned premium will be returned as soon as practicable.

3. However, if the policy is a project specific policy where specified locations are designated for coverage and the policy period is in excess of one year, regardless of who initiates cancellation of the policy, the policy premium will be deemed fully earned after 75% of the policy period has passed. For a project specific policy, the policy premium will be deemed fully earned with no return premium to be provided upon cancellation once the project has reached a level of substantial completion following construction or renovation. Substantial completion means the earliest of the following:
 - a. The date of use or occupancy of one or more of the locations of the specified project occurs;
 - b. A temporary or permanent certificate of occupancy has been issued;
 - c. The date of the final inspection of the construction project by the applicable public agency occurs; or
 - d. The final cost of construction is at least 90% of the estimated construction cost upon which this policy premium was based.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AIRCRAFT PRODUCTS AND GROUNDING EXCLUSION

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS COMPLETED OPERATIONS LIABILITY COVERAGE PART**

- A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and SECTION I – PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions are amended and the following added:**

Aircraft or Grounding

This insurance does not apply to “bodily injury” or “property damage” arising directly or indirectly out of:

1. any “aircraft product” or the “grounding” of any aircraft; or
2. “your work” on aircraft (including missile or spacecraft, and any ground support or control equipment).

- B. SECTION V – DEFINITIONS is amended and the following added:**

“Aircraft product” means:

- a. Aircraft (including missile or spacecraft, and any ground support or control equipment used therewith);
- b. Any article furnished by you or on your behalf and installed in an aircraft or used in connection with an aircraft or for spare parts for an aircraft including ground handling tools and equipment;
- c. Any of “your products” used at an airport for the purpose of guidance, navigation or direction of aircraft;
- d. training aids, instructions, manuals, blueprints, engineering or other data or advice and services and labor relating to such aircraft, articles or products that you or any other person or organization on your behalf:
 - (1) sold, handled or distributed; or
 - (2) manufactured, assembled or processed:
 - (a) according to specifications, plans, suggestions, orders, or drawings provided by you or on your behalf; or
 - (b) with tools, machinery or equipment furnished to such persons or drawings provided by you or on your behalf.

“Grounding” means:

- a. the withdrawal of one or more aircraft from flight operations; or
- b. the imposition of speed, passenger or load restrictions on such aircraft

by reason of the existence of or alleged or suspected existence of any defect, fault or condition in such aircraft or any part thereof whether such aircraft so withdrawn are owned or operated by the same or different persons, organizations or corporations.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

Employment-Related Practices

This insurance does not apply to “bodily injury” or “personal and advertising injury” to:

- (1) a person arising directly or indirectly out of any:
 - (a) refusal to employ that person;
 - (b) termination of that person's employment; or
 - (c) employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, assault, battery, discrimination, malicious prosecution or abuse including sexual abuse directed at any person; or
- (2) the spouse, child, parent, brother or sister of that person as a consequence of “bodily injury” or “personal and advertising injury” to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) whether the injury-causing event described in paragraphs (1) (a), (b), or (c) above occurs before employment, during employment or after employment of that person;
- (2) whether the insured may be liable as an employer or in any other capacity; and
- (3) to any obligation to share damages with or repay someone else who must pay damages because of the injury.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CANCELLATION

This endorsement modifies insurance provided under the following:

OUTPUT POLICY COVERAGE PART
COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
EXCESS LIABILITY POLICY
FARM COVERAGE PART
FARM UMBRELLA LIABILITY POLICY
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART

Paragraph **A. 2. Cancellation** of the COMMON POLICY CONDITIONS is deleted and replaced by the following:

2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for one or more of the following reasons:
 - (1) nonpayment of premium or failure to pay a premium when due;
 - (2) conviction of an insured of a crime arising out of acts increasing the hazard insured against;
 - (3) violation of any local fire, health, safety, building or construction regulation or ordinance which increases the hazard insured against under the policy;
 - (4) any willful or reckless act or omission by an insured increasing the hazard insured against;
 - (5) omission or concealment of fact relating to an insurance application, rating, claim or coverage under this policy;
 - (6) failure or refusal of an insured to:
 - (a) provide information necessary to confirm exposure or determine the policy premium;
or
 - (b) comply with underwriting requirements;
 - (7) a substantial change in the risk covered by the policy;
 - (8) loss of reinsurance or substantial decrease in reinsurance;
 - (9) the cancellation is for all insureds under such policies for a given class of insureds; or
 - (10) any reason determined by the insurance commissioner.
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions and SECTION I – COVERAGES, PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions are amended and the following added:

This insurance does not apply to:

Professional Services

any “bodily injury”, “property damage” or “personal and advertising injury” arising out of the rendering or failure to render any professional service. This includes but is not limited to:

- (1)** legal, accounting or advertising services;
- (2)** preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- (3)** inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- (4)** engineering services, including related supervisory or inspection services;
- (5)** medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction;
- (6)** any health or therapeutic service, treatment, advice or instruction;
- (7)** any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
- (8)** any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;
- (9)** optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (10)** body piercing or tattooing services including but not limited to the insertion of pigment, collagen or any other foreign substance into or under the skin;
- (11)** services in the practice of pharmacy;
- (12)** law enforcement or firefighting services; or
- (13)** handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the “occurrence” which caused the “bodily injury” or “property damage”, or the offense which caused the “personal and advertising injury” involved the rendering of or failure to render any professional service.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – USL&H, JONES ACT OR OTHER MARITIME LAWS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following is added:

USL&H, Jones Act or Other Maritime Laws Exclusion

This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” arising directly or indirectly out of:

- (1) operations over navigable waters or offshore including but not limited to drilling and production platforms, pipelines, and vessels where coverage is provided by the U.S. Longshore & Harbor Workers Compensation Act (USL&H), Merchant Marine Act (“Jones Act”) or other maritime laws and any amendments to those laws;
- (2) actions including but not limited to subrogation involving U.S. Longshore & Harbor Workers Compensation Act (USL&H), Merchant Marine Act (“Jones Act”) or other maritime laws and any amendments to those laws; or
- (3) any obligation of the insured resulting from actions under the U.S. Longshore & Harbor Workers Compensation Act (USL&H), Merchant Marine Act (“Jones Act”) or other maritime laws and any amendments to those laws.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CROSS SUITS EXCLUSION

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions in the Commercial General Liability Coverage Part; and SECTION I – COVERAGES, PRODUCTS/COMPLETED OPERATIONS BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions in the Products/Completed Operations Liability Coverage Part are amended and the following added:

CROSS SUITS EXCLUSION

This insurance does not apply to any claim or "suit" for "bodily injury", "property damage" or "personal and advertising injury" brought by any Named Insured against any other Named Insured.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BREACH OF CONTRACT EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions, f. Breach Of Contract is deleted and replaced by the following:

This insurance does not apply to damages directly or indirectly arising out of:

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, including an implied contract to use another's advertising idea in your "advertisement".

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – LEAD

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

This insurance does not apply to:

Lead

- (1) "bodily injury" or "personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, lead in any form.
- (2) "property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, lead in any form.
- (3) any damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, lead in any form, by any insured or by any other person or entity.
- (4) any claim or "suit" by or on behalf of a governmental authority for damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, lead in any form, by any insured or by any other person or entity.

This exclusion shall apply without regard to the source or sources of lead, or the basis of the insured's liability. This exclusion includes defects or negligence in design, construction or materials, or any other event, conduct or misconduct, which may have or is claimed to have precipitated, caused or acted jointly, concurrently or in any sequence with lead in any form in causing injury or damage.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ASBESTOS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION 1 – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

This insurance does not apply to:

Asbestos

- (1) “bodily injury” or “personal and advertising injury” arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, asbestos in any form.
- (2) “property damage” arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, asbestos in any form.
- (3) any damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, asbestos in any form, by any insured or by any other person or entity.
- (4) any claim or “suit” by or on behalf of a governmental authority for damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, asbestos in any form, by any insured or by any other person or entity.

This exclusion shall apply without regard to the source or sources of asbestos, or the basis of the insured's liability. This exclusion includes defects or negligence in design, construction or materials, or any other event, conduct or misconduct, which may have or is claimed to have precipitated, caused or acted jointly, concurrently or in any sequence with asbestos in any form in causing injury or damage.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – LATEX

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The policy is hereby amended to include the following additional exclusion:

LATEX EXCLUSION

This insurance does not apply to liability, arising directly or indirectly out of:

- a. The actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of latex or products or materials containing latex, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to any injury or damage;
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of latex by any insured or by any other person or entity;
- c. Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with a. and b. above;
- d. Any obligation to share damages with or repay someone else who must pay damages because of latex or products or materials containing latex;
- e. Any injury or damage arising out of the loss of use of, or other unavailability of, any product or material actually, potentially, or allegedly containing latex; or
- f. Any injury or damage arising out of the loss of use of, or other unavailability of, "your product" or "your work", arising out of the loss of use of, or other unavailability of, any product or material actually, potentially, or allegedly containing latex.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – UREA FORMALDEHYDE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The policy is hereby amended to include the following additional exclusion:

Urea Formaldehyde Exclusion

This insurance does not apply to, and we shall have no duty to defend any claims for, "bodily injury", "property damage" or "personal and advertising injury" arising directly or indirectly out of:

- (1) the design, manufacture, construction, fabrication, preparation, distribution, sale, installation, application, maintenance, repair, remodeling, servicing, correction or replacement of any urea formaldehyde;
- (2) the actual, alleged or threatened inhalation of, ingestion of, contact with, handling of, exposure to, existence of, or presence of urea formaldehyde or products or materials containing urea formaldehyde, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to any injury or damage;
- (3) any loss, cost or expenses arising directly or indirectly out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of urea formaldehyde by any insured or by any other person or entity;
- (4) any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with (2) and (3) above;
- (5) any obligation to share damages with or repay someone else who must pay damages because of urea formaldehyde or products or materials containing urea formaldehyde;
- (6) the loss of use of, or other unavailability of, any product or material actually, potentially, or allegedly containing urea formaldehyde; or
- (7) the loss of use of, or other unavailability of, "your product" or "your work", arising directly or indirectly out of the loss of use of, or other unavailability of, any product or material actually, potentially or allegedly containing urea formaldehyde.

This exclusion does not apply to claims resulting from products manufactured by the Named Insured after April 1, 2009, meeting or exceeding the Recreation Vehicle Industry Association's adopted standards regarding urea formaldehyde, in effect at the time of manufacture of the product giving rise to the claim.

The Named Insured represents and warrants that it will meet or exceed the Recreation Vehicle Industry Association's newest adopted standards regarding urea formaldehyde in all products that it manufactures containing urea formaldehyde. This exclusion will apply in its entirety and in every aspect for claims determined, in our sole discretion, to have resulted from failure of the Named Insured to comply with this representation and warranty.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – BENZENE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

This insurance does not apply to:

Benzene

- (1) "bodily injury" or "personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, benzene in any form.
- (2) "property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, benzene in any form.
- (3) any damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, benzene in any form, by any insured or by any other person or entity.
- (4) any claim or "suit" by or on behalf of a governmental authority for damages, loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, benzene in any form, by any insured or by any other person or entity.

This exclusion shall apply without regard to the source or sources of benzene, or the basis of the insured's liability. This exclusion includes defects or negligence in design, construction or materials, or any other event, conduct or misconduct, which may have or is claimed to have precipitated, caused or acted jointly, concurrently or in any sequence with benzene in any form in causing injury or damage.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.