



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 22-Aug-2017  
Délivré par voie électronique  
Ottawa

**C. BAJINSKI**

Plaintiff

- and -

**SERGEANT'S PET CARE PRODUCTS, INC.**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

**TO THE DEFENDANT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL**

**FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: August 22, 2017

Issued by Electronically Issued  
**Local Registrar**

Address of court office: 161 Elgin Street  
2<sup>nd</sup> Floor  
Ottawa, ON K2P 2K1

**TO: Sergeant's Pet Care Products, Inc.**  
10077 S 134<sup>th</sup> Street  
Omaha, Nebraska, 68138  
U.S.A.  
  
Tel: 1 (402) 938-7000

## DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) **“Pur Luv Treats”** or **“Dog Treats”** means the semi-soft dog treats that were designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold by the **Defendant** and include, but are not limited to the “Grande Bones”, “Chewy Bites”, and “Mini Bones” brands;
- (b) **“Product Defect”** means the serious and pervasive design and manufacturing defects that render the **Pur Luv Treats** unmerchantable and unsuitable for use and which place Class Members’ dogs at risk of the **Physical Injuries**;
- (c) **“Physical Injuries”** means the serious illness and injury caused by the canine ingestion of the **Pur Luv Treats** including *inter alia* extreme pain, vomiting, diarrhea, constipation, internal bleeding, stomach obstructions, obstructed bowels, and death;
- (d) **“Class”**, **“Proposed Class”**, or **“Class Members”** means all persons residing in Canada who purchased and/or whose dog(s) consumed one or more packages of **Pur Luv Treats**;
- (e) **“Courts of Justice Act”** means the *Ontario Courts of Justice Act*, RSO 1990, c. C-43, as amended;
- (f) **“Class Proceedings Act”** means the *Class Proceedings Act*, 1992, SO 1992, c. 6, as amended;

- (g) “***Sale of Goods Act***” means the *Sale of Goods Act*, R.S.O. 1990, c. S.1, as amended, including s. 16;
- (h) “***Consumer Packaging and Labelling Act***” means the *Consumer Packaging and Labelling Act*, R.S.C. 1985, c. C-38, as amended;
- (i) “***Competition Act***” means the *Competition Act*, RSC 1985, c. C-34, as amended, including ss. 36 & 52;
- (j) “***Consumer Protection Act***” means the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Schedule A, including ss. 8, 11, 14, 15, 17, 18 & 100 [Ontario];
- (k) “**Consumer Protection Legislation**” means:
- (i) The *Business Practices and Consumer Protection Act*, SBC 2004, c.2, including ss. 4-10, 171 & 172 [British Columbia];
  - (ii) The *Fair Trading Act*, RSA 2000, c. F-2, including ss. 5-7, 7.2, 7.3, 9 & 13 [Alberta];
  - (iii) *The Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2, including ss. 6-9, 26-28, 35-38 & 93 [Saskatchewan];
  - (iv) *The Business Practices Act*, CCSM, c. B120, including ss. 2-9 & 23 [Manitoba];
  - (v) The *Consumer Protection Act*, CQLR c. P-40.1, including ss. 41, 215, 216, 218, 219, 220(a), 221(g), 228, 239, 253 & 272 [Quebec];
  - (vi) *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, including ss. 7-10 [Newfoundland and Labrador];
  - (vii) The *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10-13, 15-18, 23 & 27 [New Brunswick];

- (viii) The *Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26-29 [Nova Scotia];
  - (ix) The *Business Practices Act*, RSPEI 1988, c. B-7, including ss. 2-4 [Prince Edward Island];
  - (x) The *Consumers Protection Act*, RSY 2002, c 40, including ss. 58 & 86 [Yukon];
  - (xi) The *Consumer Protection Act*, RSNWT 1988, c C-17, including ss. 70 & 71 [Northwest Territories]; and
  - (xii) The *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, including ss. 70 & 71 [Nunavut].
- (l) “**Competition Act**” means the *Competition Act*, RSC 1985, c. C-34, as amended, including ss. 36 & 52;
- (m) “**Defendant**” or “**Sergeant’s**” means Sergeant’s Pet Care Products, Inc.;
- (n) “**Plaintiff**” means C. Bajinski;
- (o) “**Representation(s)**” means the **Defendant’s** false, misleading or deceptive representations that its **Pur Luv Treats** (a) have performance characteristics, uses, ingredients, benefits and/or qualities which they do not have, (b) are of a particular standard, quality, and/or grade which they are not, (c) are available for a reason that does not exist, and (d) its use of exaggeration, innuendo and ambiguity as to a material fact or (e) failing to state a material fact regarding the **Product Defect** as such use or failure deceives or tends to deceive; and

- (p) “**Health Benefits**” means the benefits and assurances that the **Defendant** represents its **Pur Luv Treats** as possessing, namely, as “providing the products you need for the health, well-being and happiness of your pet” and as being “nutritious”, safe and wholesome.

### THE CLAIM

2. The proposed Representative Plaintiff, C. Bajinski, claims on her own behalf and on behalf of the members of the members of the Class as defined in defined in paragraph 5 below (the “Class”) as against Sergeant’s Pet Care Products Inc. (the “Defendant”):

- (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
- (b) A declaration that that Defendant is strictly liable to the Class Members;
- (c) A declaration that the Defendant breached its express warranties to Class Members;
- (d) A declaration that the Defendant breached its implied warranties of merchantability and/or fitness for a particular purpose;
- (e) A declaration that the Defendant committed the tort of fraudulent concealment;
- (f) A declaration that the Defendant breached its duty of care to the Plaintiff and to Class Members;

- (g) A declaration that the Defendant was negligent in the design, manufacture, production, distribution, packaging, labelling, advertising, marketing, promotion and/or sale of the Pur Luv Treats;
- (h) A declaration that the Defendant breached its duty to test the Pur Luv Treats prior to introducing them into the market as well as afterward;
- (i) A declaration that the Defendant breached its duty to warn the Plaintiff and Class Members of the dangerous and defective nature of the Pur Luv Treats;
- (j) A declaration that the Defendant committed the tort of negligent misrepresentation;
- (k) A declaration that the Defendant breached the *Sale of Goods Act* when it breached the implied condition as to quality or fitness for a particular purpose;
- (l) A declaration that the Defendant made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;
- (m) A declaration that the Defendant breached the *Consumer Packaging and Labelling Act* when it packaged, labelled, sold, imported into Canada, and/or advertised the Pur Luv Treats with false or misleading representations;

- (n) A declaration that the present Statement of Claim is considered as notice given by the Plaintiff on her own behalf and on behalf of “person similarly situated” and is sufficient to give notice to the Defendant on behalf of all Class Members;
- (o) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (p) General damages in an amount to be determined in the aggregate for the Class Members for, *inter alia*, loss of companionship and protection, worry and concern, loss of enjoyment of life, pain, suffering, stress, trouble and inconvenience;
- (q) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, the purchase price of the Defendant’s Pur Luv Treats, veterinary expenses (including diagnostic tests, medical examinations and evaluations, hospitalization, as well as surgeries and/or other procedures), ongoing/future veterinary expenses, all medications purchased (both over the counter and prescription), and lost time/wages/earnings, funeral expenses, the purchase price of the dog and/or the cost of a replacement pet;
- (r) Punitive (exemplary) and aggravated damages in the aggregate in an amount to be determined as this Honourable Court deems appropriate;
- (s) In the alternative to the claim for damages, an order for an accounting of revenues received by the Defendant resulting from the sale of the Pur Luv Treats;



- (t) A declaration that any funds received by the Defendant through the sale of its Pur Luv Treats are held in trust for the benefit of the Plaintiff and Class Members;
- (u) Restitution and/or a refund of all monies paid to or received by the Defendant from the sale of its Pur Luv Treats to members of the Class on the basis of unjust enrichment;
- (v) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendant from the sale of its Pur Luv Treats to members of the Class on the basis of *quantum valebant*;
- (w) An interim interlocutory and permanent order restraining the Defendant from continuing any actions taken in contravention of the law, whether tortious, statutory, and/or equitable;
- (x) A mandatory order compelling the Defendant to recall its Pur Luv Treats;
- (y) An order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (z) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (aa) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;

- (bb) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;
- (cc) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and
- (dd) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

## **THE PARTIES**

### **The Representative Plaintiff**

3. The Plaintiff, C. Bajinski, is an individual residing in the city of Newmarket, in the province of Ontario.

4. On January 26, 2016, the Plaintiff purchased one (1) package of Pur Luv Treats, specifically the Grande Bones, from Global Pet Foods located at 130 Davis Drive, Box 40, in Newmarket, Ontario for a total purchase price of \$16.99 plus taxes.

### **The Class**

5. The Plaintiff seeks to represent the following class of which she is a member (the “Proposed Class”):

All persons residing in Canada who purchased and/or whose dog(s) consumed one or more packages of Pur Luv Treats.

## **The Defendant**

6. The Defendant, Sergeant's Pet Care Products, Inc. ("Sergeant's"), is an American corporation with its head office in Omaha, Nebraska. It is a wholly-owned subsidiary of non-party Perrigo Company.

7. Sergeant's is the current owner of the Canadian trade-mark (word) "SERGEANT'S" (UCA40087), which was registered on April 13, 1950 and it is the registrant of the Canadian trade-mark (word) "SENTRY" (TMA871747) which was registered on February 20, 2014.

8. The Defendant designs, manufactures, produces, distributes, packages, labels, advertises, markets, promotes, and/or sells the Pur Luv Treats throughout Canada, including within the province of Ontario.

## **THE NATURE OF THE CLAIM**

9. These class proceedings concern the serious and pervasive design and manufacturing defects associated with the Defendant's Pur Luv Treats, which place Class Members' dogs at risk of the following serious illnesses and injuries: extreme pain, vomiting, diarrhea, constipation, internal bleeding, stomach obstructions, obstructed bowels, and death (the "Physical Injuries") and which render them unmerchantable, unsafe and unfit for canine ingestion.

10. Further, the Defendant falsely, misleadingly and/or deceptively represented that the Pur Luv Treats were safe and fit for canine consumption and it failed to provide adequate warning regarding the serious risks and adverse effects associated with the canine ingestion of the Pur Luv Treats.

11. More specifically, the coloured centers of the Pur Luv Treats do not properly dissolve or otherwise break down in dogs' digestive tracts, but instead persist as rock-hard chunks which can and do cause bowel obstructions and the other Physical Injuries to dogs. Consequently, many dogs have suffered after consuming Sergeant's Pur Luv Treats and subsequently required costly life-saving veterinary care as a result of said consumption.

12. The Defendant failed to disclose and/or actively concealed these material risks and hazards to Class Members who purchased the Pur Luv Treats in order to induce purchase. Moreover, notwithstanding the above, the Defendant engaged in and continues to engage in conduct likely to mislead consumers including the Plaintiff and the Class Members about the safety of its Dog Treats and their appropriateness for ingestion by dogs, including the communication of the representation that it provides "high quality products" that are "nutritious" and made with "quality ingredients".

13. The Defendant knew or should have known that canine ingestion of the Pur Luv Treats created an increased serious risk of Physical Injuries, but they nevertheless failed to disclose to consumers, including the Plaintiff and Class Members the risk of injury to their dogs and other known problems. Sergeant's continues to sell Pur Luv Treats without any warnings or notice of their inherent danger.

14. The Plaintiff and the Class Members have been damaged by the Defendant's concealment and non-disclosure of the defective nature of the Pur Luv Treats and they were misled into purchasing and feeding these products to their dogs of a quality and value different from what was promised.

**I. The Defendant, its Pet Care Products, and the Evolving Market**

15. The Defendant began selling dog food in 1868. Since then, it has spent millions of dollars in promoting trust and confidence among consumers and reinforcing the idea that it is one of North America's "most trusted brands and manufacturers of pet supplies". To this end, the Defendant expressly and impliedly represents to the public that it is a manufacturer of safe, nutritious, and high-quality pet food products, which include the Pur Luv Treats.

16. The Defendant represents that its mission is to "provide innovative, quality and affordable pet care products that enrich the human-animal bond and the lives of pets" and to "improve and support pets' health and well-being".

17. Over the past few years, there has been an evolving trend in the Canadian pet food market driven by a growing concern for health. More and more, consumers are treating their pets as members of their family and this pet "humanization" has evolved to the point where preferences for natural health products and nutritional ingredients are growing. Pet owners are looking for natural, high-quality products to ensure their pets stay healthy. They want to see ingredients that are recognizable, and that are similar to what they themselves are eating.

18. As such, dog food and treat manufacturers have responded by introducing various pet food products into the market targeting different aspects of pet health through products with similar qualities and health benefits to those found in our own food, demonstrating the parallel between human and pet food product marketing.

19. Overall, the differences between human foods and pet food products, including dog treats and snacks, are shrinking rapidly. Pur Luv Treats, for example, are marketed as natural treats for

dogs in flavors such as bacon and peanut butter, and containing ingredients such as carrots, tomatoes, and flax seed.

20. In addition, consumers generally tend to perceive food products marketed as “natural” as less likely to be compromised or contaminated.

21. Given that Canadian pet owners are more likely to gravitate towards pet food products that claim to contain all-natural ingredients and offer health benefits for their pets, the Defendant’s positioning of its brand and pet food products, including the Pur Luv Treats, as natural, with high quality ingredients that are free from artificial colours, flavours and preservatives corresponds with what Canadian consumers are seeking in products for their pets.

22. The Defendant has built its brand, which includes the Pur Luv Treats at issue in this Statement of Claim, by taking advantage of consumers’ desire to keep their pets alive longer and in good health.

23. However, while the Defendant consistently represents itself as being committed to ensuring the well-being of pets and manufacturing high-quality pet food products, the fact remains that the Pur Luv Treats are not safe nor are they suitable for dogs to eat. Simply put, the Defendant’s statements and representations contain numerous inaccuracies and distortions of reality as will be detailed herein.

24. As of 2011, 35% of Canadian households owned a dog, with the dog population reaching just over 5 million in 2011. The dog treat and mixer market sales were \$218.8 million in 2011 and was projected to reach \$248.7 million by 2016.

## II. The Pur Luv Treats

25. The Pur Luv Treats are semi-soft dog treats that are designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted and/or sold under Sergeant's "Sentry Pet Care Products" brand. They come in two flavours and a variety of shapes, which include, "Grande Bones", "Chewy Bites", "Mini Bones", and "Little Trix". With the exception of "Little Trix", the Pur Luv Treats all contain two layers: a bone-coloured outer layer and a red or brown center.




26. The following is an image, taken from the Defendant's website [www.sentrypetcare.com](http://www.sentrypetcare.com), showing the front of typical packaging for one variety of the Pur Luv Treats:




27. A typical back of a Pur Luv Treats product packaging looks as follows:

*LIVE with purpose. LOVE with passion.  
TREAT with Pūr Luv.®*


Share the luv! Pūr Luv® Classic Favorites™ treats are the perfect way to show your pets just how much you love them. With irresistible flavors and nutritious ingredients, Pūr Luv® treats will become your four-legged friend's favorite in no time!



**Flax Seed:** A good source of Omega Fatty Acids.



**Tomatoes:** A sweet and succulent fruit.



**Carrots:** A crunchy, sweet and delectable vegetable.

**Ingredients:** Rice Flour, Pregelatinized Wheat Flour, Corn Flour, Durum Wheat Flour, Glycerin, Maltodextrin, Propylene Glycol, Powdered Cellulose, Dried Corn Syrup, Sodium Hexametaphosphate, Dried Chicken, Gelatin, Flax Seed Meal, Monoglyceride, Caramel, Sulfuric Acid, Natural Smoke Flavor, Potassium Sorbate (a preservative), Tomato Powder, Carrot Powder, Titanium Dioxide (color additive), Red #40 Lake, Natural Flavor, Calcium Hydroxide, Calcium Sulfate.

**Feeding Instructions:** Product should be fed as a reward or treat. Keep plenty of fresh, clean water available for your pet at all times. As with any dog treat, wash hands with soap and water after handling.

**CAUTION:** For supervised use only. Remove and discard if your pet attempts to swallow large pieces or chunks.

**Guaranteed Analysis:**

Crude Protein (min) .....	7.50%
Crude Fat (min) .....	1.75%
Crude Fat (max) .....	7.00%
Crude Fiber (max) .....	3.00%
Moisture (max) .....	23.00%
Omega 6 Fatty Acids (min)* .....	0.05%
Omega 3 Fatty Acids (min)* .....	0.12%

\*Not recognized as an essential nutrient by the AAFCO Dog Food Nutrient Profiles.

Contains no animal by-products or dairy products.

**Calorie Content (ME/Calculated) = 3077 kcal/kg**  
Calories per treat = 246 kcal

Sergeant's is committed to providing high quality products. If you have questions or comments about this product, please write:  
Pūr Luv Consumer Response  
P.O. Box 540399  
Omaha, NE 68154-0399

Visit us at [www.PurLuvTreats.com](http://www.PurLuvTreats.com)  
Manufactured by/Fabriqué par:  
Sergeant's Pet Care Products, Inc.  
Omaha, NE 68138

P089284-6 R18H



28. As is depicted above, and directly under the “feeding” instructions to use the product as a “reward or as a treat”, the following warning appears:

For supervised consumption only. Remove and discard if your pet attempts to swallow large pieces or chunks.

29. The packaging does not warn that the Dog Treats may fail to break down after ingestion, nor does it warn of any other dangers or risks associated with the Dog Treats.

30. The Defendant sells the Pur Luv Treats through various online and in-store retail outlets such as PetSmart, Petco, and Amazon.

31. The Defendant makes substantially similar representations and material omissions about the Pur Luv Treats’ wholesomeness, nutritional value and other attributes of same, namely their safety and appropriateness for dogs, on the packaging in which it sells each of its Pur Luv Treats varieties and on its website, as illustrated by the following examples:

a) The Product Packaging and Labelling:

- “Nutritional ingredients”;
- “Contains flax seed, tomatoes and carrots”;
- “Contain omega fatty acids”, “low fat”, “no animal by-products”;
- “[Pur Luv Treats] are the perfect way to show your pets just how much you love them”.

b) The Website:

- “They are low in fat, contain omega fatty acids and include quality ingredients like peanuts, flax seed and honey”;
- “These are long-lasting, tasty and nutritious treats that your dog will absolutely love”;
- “Give your dog the taste they crave in a nutritious treat”;
- “Contains no poultry by-products or dairy products”;
- “But, Pur Luv treats are not just about benefits — bacon, peanut butter and chicken flavors make them irresistible to dogs!”;
- “They help clean teeth”.

32. Further, on the packaging of many of the Pur Luv Treats, the Defendant specifically represents that products are “for dogs”, as seen in the images below:





33. At all relevant times, the Defendant made and continues to make various positive material representations about the Health Benefits and other attributes of its Pur Luv Treats.

34. Further, on the Defendant's website and the packaging of Pur Luv Treats, the Dog Treats are described as "long lasting chews". However, it appears that the issue is that inner core of the Pur Luv Treats is so "long lasting" that it does not dissolve or digest after dogs ingest them, thus causing serious injury, illness and even death.

35. The Pur Luv Treats are available for sale at the majority of pet food stores across Canada as well as through online retailers such as Amazon.

36. As a result of the Defendant's false and misleading statements, Class Members purchased the Pur Luv Treats for their intended purpose, with no reason to suspect the risks associated with and caused by their indicated use and, in following the instructions, fed them to their dogs.

37. It is not until symptoms began to arise that Class Members would have any reason to suspect that the Pur Luv Treats were defective and, even after the dogs became ill, consumers oftentimes did not immediately make the connection due to the Defendant's false statements concerning the safe and natural foundation of the Pur Luv Treats and the active concealment of the related defects.

### **III. Consumer Complaints**

38. Many dog owners have complained about the Pur Luv Treats and the adverse effects on their dogs from its consumption. There is a consistent pattern of similar symptoms and circumstances among the complaints, including the Physical Injuries, i.e. extreme pain, vomiting, diarrhea, constipation, internal bleeding, stomach obstructions, obstructed bowels, and death, as illustrated by the following random sample of reviews taken from Pur Luv product pages on Amazon:

“Dangerous! Beware of this product. We gave these treats to our dachshunds and they threw them up- no exaggeration- over 10 days later. The middle part of this treat is indigestible. When they threw up you could clearly distinguish the red center portion untouched by attempted digestion. Nothing else they've been given remotely resembles these treats. Read reviews on other sites and you will see that we are not the only ones who have had this issue. Keep your pets safe and healthy; do not give them these treats!” August 18, 2015

“After feeding my dog the peanut butter flavor Pur Luv bones, we thought we'd try the bacon flavor. My dog became lethargic, and lost his appetite for about a week. I thought he might die after eating this bone. DON'T buy this product!!!!” February 25, 2017

“PLEASE DO NOT PURCHASE THESE TREATS! I bought a bag of these treats from another retailer, but am trying to get the word out on all platforms possible. My dog ate one of these bones 10 days ago and has been throwing up chunks of it every day since. Last night, however, she began to act lethargic, confused, and restless, drooling and seemed to be in tremendous pain. She ate grass to induce vomiting which was successful, but still no change in behavior. I have never seen my dog act so sick, and I honestly thought that at her old age I might lose her overnight. I seriously considered taking her to the emergency vet, but she finally was able to lay down and sleep so decided against it. This morning she began to slowly get back to her old self but tonight she went #2 and I checked her stool, and guess what was in there? A ROCK HARD huge chunk of the treat. I have read on various other websites about other dogs having the same reactions, many needing emergency veterinary care. PLEASE DO NOT FEED YOUR DOG THESE TREATS.” February 11, 2017

“AWFUL- DO NOT BUY! AWFUL ... AWFUL ... AWFUL.... All the reviews talking about their dogs throwing up are completely true! I made the mistake of getting these at a local store. All the healthy stuff on the back of the package made me think I was making a good choice, BUT I should have read reviews online! Both of my dogs threw these up - undigested pieces- same as other reviews have stated. DO NOT BUY THESE !!!! With so many horror stories, I am shocked they are even allowed to keep selling these !!!!” October 28, 2016

“The red bacon core of these Pur Luv Bones treats is NOT DIGESTIBLE. I found multiple whole red chunky pieces of the bacon core in my dog's poop.” August 30, 2016

“I can't believe these are still on the market. They should be recalled immediately and the company should be sued and investigated. A few hours after giving my dog one of these, he vomited up hard, red bits of the treat and continued to do so for several days. I would wake up in the middle night to him gagging and vomiting. It was heartbreaking and it's scary to think that something is available on the market that could potentially harm your pet. DO NOT BUY THESE OR ANY PUR LUV PRODUCTS.” August 14, 2016

“I bought these at my local pet store. They were in the aisle of premium dog food. Didn't know the brand but haven't seen any negative news or recalls so I decided to try them. I have a 9yr old mastiff/ yellow lab mix who is on prednisone for the rest of his life which has made him a food addict so I bought these treats thinking I could break them into pieces and give him little bites every once in awhile. Unfortunately they don't even cut with a knife. That's NOT even the bad part. I've been feeding my big dog these treats for a week. I've noticed pink chunks in his poop which has had me concerned cause I wasn't able to figure out what he was getting into. Tonight (so gross and so sorry to post but want others to know these treats don't break down and digest right) I took my dog out to potty in the yard. There was a pile from the morning that I didn't pick up and he

tried to eat a chunk. After dragging him away I found a full sized treat in his poop. The outer layer dissolved but the filling was in full contact. Aside from fighting being sick over the ordeal I googled this product to see if there were similar reviews. Fortunately for me my dog is ginormous and the things he eats always pass through but reading the serious conditions of how these treats have affected small dogs to cause them to vomit I'm very convinced these treats need to be pulled and will NOT subject my dog to them ever again! Not a fan!!!" April 28, 2017

"I also gave this treat to both of my dogs, a cockapoo and schnoodle. About 1 hour later both of them vomited. I did not immediately connect that the dog treat made them sick. A couple days later I gave each of them one dog treat. About an hour later they both vomited again. I emailed the company letting them know what happened, that was two weeks ago and they still have not responded. I started researching online about these treats and now discovered that this is not just my dogs." July 15, 2016

"Do not buy this or give this to your dog. I gave one to my 2 1/2 year old Boxer 5 days ago and he was sick for almost 2 days, 1st day threw up all day, after that just layed down & didn't want move for almost another entire day! I didn't know what was wrong with him. I thought he was gonna die, He wouldn't even let me lift him to get to the vet. He would just growl at me. I looked as his throw up & his poop & found a huge chunk of red material in each that matched the center core of these "Treats" He eventually got better. I sure wish I would research a little before I gave him these. These PUR LUV "treats" should completely taken off the market. BTW, I did not buy from Amazon. I bought them from Petsmart" March 30, 2016

"Very costly mistake not to look into treats purchased. Threw up all day huge chunks of product that wouldn't digest that let to costly vet bills." February 28, 2016

"Don't feed this to your dog! Most of it is not digestible. It causes vomiting or, far worse, intestinal obstruction. I gave it to my dog, thinking I was giving him a tasty treat. It made him sick. He threw up a completely undigested "treat." Thankfully he expelled it before it did more damage. I have since read that there is a class action suit against the maker of the product. Also, it is made in China but you would never know it from the information on the bag." February 14, 2016

"I don't ever write reviews but I figured I should since this almost killed my dog. We gave this to her on Thanksgiving and by Sunday she was throwing everything she took down, back up. She stopped eat and started drinking a ton of water to the point we had to limit her intake so she would stop throwing it back up. We withheld all food until the following day in case it was just an upset stomach she was just re-aggravating. Next morning I woke up to find her cold

and VERY out of it. I rushed her to the vet and she was placed on IV fluids to bring her electrolytes back up. We got xrays and brought her to the emergency vet to get an endoscope done. They brought her into surgery and pulled out a piece of this treat which was blocking her intestinal track. I never thought this would have been the cause..... a friend found an article about this type of thing happening to MANY other pets as far back as 2012/2013 (<http://www.courthousenews.com/2013/02/01/54479.htm>). If you honestly love your pet PLEASE DON'T CHANCE THIS PRODUCT!!!!!!" December 3, 2015

"Do not buy these treats! I purchased these for my 2 puppies and after only eating 2 of these it may them both vomit profusely. These do not digest in the stomach and I could see these undigested pieces in the vomit. Also it gave my senior dog constipation and bloody diarrhea. Please do not give these to you pets!" November 5, 2015

"Dogs loved the treats but center of them is way too hard my retriever cross was concipated for a few days when he did poop it was the center of the treats, whole chunks. I know this cause I live in the city and have to pick up the poop" August 21, 2012

39. In addition to the above complaints, consumers went so far as to start an online petition approximately three (3) years ago addressed to the Defendant and to Amazon to have these dangerous and defective Dog Treats recalled and removed from the market. An example of the comments and complaints found on this petition are produced below:

"I just returned home from the vet were my dog spent 3 days because he had surgery to remove a portion of one of these from his stomach"

"My dog was very sick and required surgery (twice) due to these "indigestible" bone treats!"

"I'm signing this because 3 months I hav this treat to my puppy thinking it would be a great reward.. Well later on that day I had to take her to the vet after she kept throwing up bile. Come to find out she had a blockage. This treat caused it and I will never buy anything from this brand again. Someone has to speak up for those who can't speak!"

"My pet was just discharge from the animal hospital after this product nearly killed him. The ingredients are non-digestible, causing blockage, intestinal damage, relentless vomiting, and severe dehydration. Lab results, x-rays, specimens clearly identified origin/cause as this product. Thankful I took my

dog to the vet's emergent care hospital or the outcome would have been far sadder. After critical care, and a couple thousand dollars later, He is recuperating now, on a special diet and medicines until his digestive system heals.”

“My dog became sick and had to have pieces of the inside of this bone removed from his stomach.”

“no animal should get violently sick . This is suppose to be a special treat”

#### **IV. Testing and Analysis of the Pur Luv Treats**

40. An analysis of the Pur Luv Treats was performed by Dr. Kelly S. Swanson and Dr. George C. Fahey of the University of Illinois, Department of Animal Sciences which demonstrated that the Pur Luv Treats do not sufficiently dissolve in dogs’ digestive tracts.

41. More specifically, the results of the analysis and testing revealed that the Pur Luv Treats do not break down when exposed to gastric acids, and posed a "concern about safety," particularly related to "choking and possible esophageal blockage upon ingestion". The Pur Luv Treats were thus labeled as a "low digestible treat", in comparison other dog treats tested.

42. In order to find out whether dogs can digest the Pur Luv Treats, Dr. Swanson and Dr. Fahey used a procedure that simulated gastric and intestinal digestive fluids present in a dog’s stomach.

43. As such, samples of the Pur Luv Treats were analyzed after being immersed for either six (6) hours or eighteen (18) hours in a fluid that simulated the gastric contents of a dog’s stomach, such as hydrochloric acid and pepsin. To the investigators’ surprise, approximately eighty percent (80%) of the Pur Luv Treats’ samples remained undigested after six (6) hours, as seen in the images below:





44. Moreover, forty-one percent (41%) of the Pur Luv Treats being tested remained undigested after eighteen (18) hours.

45. Essentially, the above described testing and analysis reflects the same issue found in the consumer complaints – the centers of the Pur Luv Treats’ do not break down sufficiently during the digestion process.

As regards gastric + intestinal disappearance, the value of 59% is low when compared to most treats tested in our lab. The outer layers were dissolved by the gastric + small intestinal digestion fluids as noted in the photograph, resulting in the exposure of a red-colored layer in the treat.

46. Further, the results of the testing and analysis revealed additional safety concerns with respect to the consumption of Pur Luv Treats including, without limitation, choking hazards and possible esophageal blockage upon ingestion.

47. The Report concludes that:

The major inference that can be drawn from these data is that little disappearance occurred as a result of the exposure of Grande Bone to simulated gastric digestion fluids, and that exposure to gastric + small intestinal simulated digestion fluids resulted in greater disappearance of the treat, especially the outer layers, leaving behind other layers that were refractory to the simulated small intestinal digestive fluids. A very low gastric disappearance value always is cause for concern about safety of the treat, especially if it is highly palatable and consumed quickly by the dog. Specific safety concerns relate to choking and possible esophageal blockage upon ingestion. Compared with most treats tested, Grand Bone is a low digestible treat.

## **V. The Origins of the Pur Luv Ingredients**

48. The packaging of the Dog Treats frequently touted that they were “Made in USA” or depicted a picture of the American flag. Sergeant’s utilized those references to “Made in USA” and the American flag in order to portray the product as wholesome and to help give it a competitive advantage in the marketplace.

49. In fact, the Treats contain foreign ingredients, including ingredients imported from China, and Sergeant's was aware of those foreign ingredients when it marketed the Dog Treats.

50. Because of past concerns with the safety of pet food from China, pet owners and Sergeant's customers are concerned about products containing Chinese ingredients.

51. It was misleading for Sergeant's to market the Dog Treats in conjunction with a "Made in USA" statement or a depiction of the American flag when the Dog Treats contained ingredients from China.

## **VI. The Defendant's Fault**

52. Despite the widespread problems associated with the Dog Treats described herein, the Defendant continues to design, manufacture, produce, distribute, package, label, advertise, market, market, promote, and/or sell its Pur Luv Treats, despite the fact that they are unfit for canine consumption – the purpose for which it is purchased.

53. In addition, the Pur Luv Treats are designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold without an adequate warning as it concerns the dangerous and defective nature of said Dog Treats.

54. The Defendant does not warn about any of the above-listed risks, negative side effects, and animal health issues associated with the consumption of the Pur Luv Treats on the Dog Treats' packaging, the product inserts, or in any of their marketing materials, including their website.

55. In omitting, concealing, and inadequately providing critical safety information, the Defendant engaged in and continues to engage in conduct likely to mislead consumers, including the Plaintiff and Class Members.

56. In fact, the Pur Luv Treats' product packaging makes no indication that any danger or risk exists beyond a choking hazard and fails to warn consumers that feeding these Dog Treats to their pets in accordance with the instructions found on the product packaging and labelling nonetheless places their pets at a significant risk of injury.

57. The Defendant knew or should have known that the Pur Luv Treats do not break down sufficiently in dogs' digestive tracts, and that the consumption of large pieces or chunks of the Pur Luv Treats can and does cause serious injury to dogs, including, the Physical Injuries.

58. Despite this knowledge, the Defendant failed to warn or to disclose such rates of adverse effects to consumers before purchase and use and further represented that their Dog Treats were safe and appropriate for dogs even though the Defendant knew or should have known this to be untrue.

59. Consumers, including the Plaintiff and Class Members, detrimentally relied on the Defendant's representations, including their omissions, and instructions for use of the Pur Luv Treats.

60. The Defendant has a duty to monitor the safety of its products, both pre and post market, and it would have been reasonable for them to conduct testing, analysis and/or studies related to the safety of their Pur Luv Treats; however, it does not appear that they have done so.

61. The Defendant knew or should have known of the high number of adverse reactions and injuries related to their Pur Luv Treats from a multitude of sources, including, but not limited to their internal claims process, making their apparent failure to conduct any independent testing, analysis or studies particularly abhorrent. The Defendant, who concealed its knowledge of the nature and extent of the Pur Luv Treats' danger from the public, have shown a blatant disregard for the safety and well-being of dogs who consumed the Pur Luv Treats.

## **VII. Summative Remarks**

62. The Defendant designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold its Pur Luv Treats without providing critical safety information and adequate warning in Canada, including within the province of Ontario.

63. The Defendant failed to disclose and/or actively concealed, despite longstanding knowledge, that the Pur Luv Treats are defective and unsafe in order to induce purchase.

64. The Defendant gave inadequate warnings about the Pur Luv Treats in its online and print advertisements as well as on the product packaging and insert.

65. The Defendant continues to design, manufacture, produce, distribute, package, label, advertise, market, promote and/or sell the Pur Luv Treats throughout Canada, including within the province of Ontario, with inadequate warnings as to the serious health consequences for dogs who consume them which are described herein.

66. The Defendant placed Pur Luv Treats into the stream of commerce in Ontario and elsewhere in Canada with the expectation that consumers, such as the Plaintiff and Class Members, would purchase them and feed them to their pets.

67. The Class Members have suffered and will suffer injuries, losses or damages as a result of the Defendant's conduct.

68. The Plaintiff and Class Members would not have purchased the Pur Luv Treats and fed them to their dogs had they known that they were unsafe. When the Plaintiff and members of the Class purchased the Pur Luv Treats, they relied on their reasonable expectation that they did not pose an unreasonable safety risk to the dogs who consumed them.

69. The Defendant concealed material information regarding the truth about the existence and nature of the Product Defect from the Plaintiff and Class Members at all times, even though they knew about the Product Defect and knew that information about the Product Defect would be important to a reasonable consumer.

#### **THE REPRESENTATIVE PLAINTIFF**

70. On January 26, 2016, the Plaintiff purchased one (1) package of Pur Luv Treats, specifically, the Pur Luv Grande Bones, from Global Pet Foods at 130 Davis Drive, Box 40, in Newmarket, Ontario for a total purchase price of \$16.99 plus taxes.

71. The Plaintiff purchased the Pur Luv Treats based on the Defendant's representation that they were healthy, nutritious and natural pet food products suitable for canine consumption.

72. At the time of sale, the Plaintiff was under the impression that she was purchasing Dog Treats that were safe and suitable for canine consumption, and that were free from any Product Defect.

73. On or around March 1, 2016, the Plaintiff gave her healthy dog named “Zeke” one of the Pur Luv Treats. On that same night, Zeke began vomiting and he refused to either eat any foods or drink any liquids.

74. On or around March 2, 2016, the Plaintiff fed another one of the Pur Luv Treats from the same package to her dog, upon which point he became very ill and lethargic.

75. On or around March 3, 2016, the Plaintiff called Gorham Animal Hospital at 852 Gorham Street, in Newmarket, Ontario, L3Y 1L8 and the veterinarian recommended that she bring Zeke in for diagnosis.

76. Subsequently, the Plaintiff brought Zeke to the animal hospital where x-rays were taken, an intravenous tube was administered, and various tests were performed in an attempt to diagnose and abate Zeke’s concerning symptoms. Zeke remained at the veterinary clinic overnight. Upon discharge on March 4, 2016, the bill totalled \$711.76 including taxes.

77. Initially, after the Plaintiff brought her dog home from the vet, Zeke’s condition seemed improved; however, shortly thereafter, he continued vomiting. The Plaintiff was quite anxious, concerned, and worried for the health of her dog and she still could not understand why he was exhibiting the Physical Injuries.

78. Because Zeke's condition seemed to be worsening as the day went on, the Plaintiff brought him back to the Gorham Animal Hospital on that same day, being March 4, 2016. In the evening, the Plaintiff received a call from the veterinarian on duty indicating that Zeke was projectile vomiting and that surgery would have to be performed immediately if there was any hope of saving his life.

79. Consequently, Zeke underwent emergency surgery, at which time the veterinarian removed 8 inches of his intestines, inside which she found what she originally thought to be rocks. The bill for the surgical procedure totalled \$1,985.91 including taxes.

80. Afterward, Zeke was transferred to the Veterinary Emergency Clinic of York Region at 1210 Journey's End Circle, in Newmarket, Ontario, L3Y 8Z6, for overnight monitoring. The bill totalled \$1,050.87 including a \$66.50 discount and including taxes.

81. After placing the rock-like contents taken from Zeke's stomach in a jar, it became clear that the chunks removed from the dog's intestines were not rocks, but in fact were dog treats – more specifically, the Pur Luv Treats (Grande Bones) which Zeke had consumed, as shown in the photographs below:





82. Cumulatively, the Plaintiff has paid a total of approximately \$3,748.54 in veterinary expenses related to the removal of the undigested Pur Luv Treats from her dog's intestines.

83. After discovering that the cause of her dog's Physical Injuries was related to its ingestion of the Pur Luv Treats, the Plaintiff searched online to see if there were others who had experienced the same or similar issues and, in so doing, she came across a class action that had been filed in the United States alleging the exact issues that she and Zeke had experienced.

84. The Plaintiff now has every reason to believe that the Pur Luv Treats are plagued by a serious and pervasive Product Defect, that the Defendant has been engaging in widespread misrepresentations with regard thereto.

85. Had the Plaintiff known about the Product Defect, she would not have purchased the Pur Luv Treats, nor would she have ever agreed to feed them to her dog.

86. The Plaintiff informed Global Pet Foods of the incident and the dangers of their Dog Treats and the store where she initially bought the product has removed the Pur Luv Treats from their shelves.

87. The problem with the Pur Luv Treats is significant, dangerous, economically nontrivial and widespread.

88. The Plaintiff has suffered damages as a result of purchasing and feeding the Pur Luv Treats to her dog. In addition to the damages as outlined above, she has also endured pain, suffering, damage and inconvenience. Due to the surgery, Zeke now requires constant monitoring and supervision.

## CAUSES OF ACTION

### A. Strict Liability

89. The Pur Luv Treats were defective when they left the hands of the Defendant in that they contained materials, ingredients, and/ or substances that are harmful and unreasonably dangerous to dogs upon consumption. Their design and formulation was unreasonably dangerous to animal health and safety and, coupled with inadequate warnings, posed a serious risk of Physical Injury, including, without limitation, extreme pain, vomiting, diarrhea, constipation, internal bleeding, stomach obstructions, obstructed bowels, and death. Thus, the defect existed at the time that the Pur Luv Treats left the possession of the Defendant and were introduced into the stream of commerce in Canada.

90. When the Pur Luv Treats left the hands of the Defendant, the foreseeable risks of the products exceeded the benefits associated with their design or formulation and/or it was more dangerous than an ordinary consumer would reasonably expect when used in its intended or reasonably foreseeable manner.

91. In addition, the Defendant is strictly liable for its business decisions to use unsuitable and/or harmful materials, ingredients, and/or substances in its Pur Luv Treats.

92. The Pur Luv Treats are also defectively designed and manufactured because:

- (a) They cause an unreasonably high rate of adverse medical reactions to the dogs who consume them,

(b) Their cautions and/or warnings are inadequate, as set forth in this Statement of Claim, for the following reasons, *inter alia*:

- i. The Pur Luv Treats fail to warn of the rates of adverse reaction,
- ii. The Defendant denies, minimizes, and/or downplays those risks associated with the Pur Luv Treats that they choose to “disclose”, and
- iii. The Pur Luv Treats fail to display and advise of the product’s risks.

93. The Pur Luv Treats which are designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold by the Defendant were defective due to inadequate post-marketing warning or instruction because, after the Defendant knew or should have known of the risk of serious harm, as set forth herein, from the use of the Pur Luv Treats, the Defendant failed to provide an adequate warning to consumers (to at the very least, identify the source of their pets’ health problems), knowing the product could cause serious injury to the dogs who consume them as set forth herein.

94. The Pur Luv Treats designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold by the Defendant were defective in that, when they left its possession, they did not conform to its representations and were unreasonably dangerous to animal health.

95. These material misrepresentations are false as evidenced by the extreme number of adverse reactions to the Pur Luv Treats by Class Members’ dogs.

96. As a direct and proximate result of their purchase and/or use of the Pur Luv Treats, Class Members suffered harm, damages, and economic loss and will continue to suffer if this situation is not remedied.

97. The Defendant is strictly liable to Class Members for the reasons that follow:

- (a) The Defendant designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold the Pur Luv Treats,
- (b) The Pur Luv Treats suffer from a serious Product Defect rendering them unsafe and unfit for their intended use,
- (c) The Pur Luv Treats could have been made without the Product Defect, but-for the Defendant's business decisions,
- (d) Class Members were entitled to expect that the Pur Luv Treats were not plagued by serious, dangerous and pervasive defects,
- (e) The defects inherent in the design and manufacturing of the Pur Luv Treats outweigh any possible benefits of their design and such defects were material contributing causes of the injuries and losses of Class Members,
- (f) At the time of the injury and loss to Class Members, the Pur Luv Treats were being used for the purpose and manner for which they were intended and Class Members were not aware of the Product Defect and could not, through the exercise of reasonable care and diligence, have discovered such defects.

### **B. Breach of Express Warranty**

98. The Defendant expressly warranted that the Pur Luv Treats were safe and fit for consumption by pets and further, promoted them as “nutritious” and healthy for their pets.

99. The Defendant expressly warrants that its products are safe and that the Pur Luv Treats are “for dogs”, and that they are “high quality products” that are made with “nutritious ingredients”.

100. The Pur Luv Treats designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold by the Defendant did not conform to these express representations because they are not safe or fit for dogs to consume and caused the Class Members’ dogs Physical Injuries when used as recommended and as directed.

101. As a direct and proximate result of the Defendant’s breach of warranty, the Plaintiff and the Class Members have suffered harm, damages, and economic loss and will continue to suffer such harm, damages, and economic loss in the future.

### **C. Breach of Implied Warranties**

102. At all times relevant hereto, applicable law imposed a duty that requires that the Pur Luv Treats be of merchantable quality and fit for the ordinary purposes for which they are used.

103. The Defendant knew of the specific use, i.e. consumption by dogs, for which the Pur Luv Treats were purchased, and they impliedly warranted that these Dog Treats were fit for such use, especially so as the Defendant marketed them for this particular purpose. This defect substantially impairs the use, value, and safety of the Pur Luv Treats.

104. The Pur Luv Treats were defective at the time they left the Defendant's possession, as set forth above. At all times relevant hereto, the Defendant knew of this Product Defect at the time that these transactions occurred. Thus, the Pur Luv Treats, when sold and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

105. The Defendant knew, or should have known, that its Pur Luv Treats were inferior to and unsafe as compared to the other similar pet food products sold by other manufacturers, particularly so due to their knowledge of the Product Defect.

106. The Pur Luv Treats are unfit, unsafe, and inherently unsound for use, and the Defendant knew that they would not pass without objection in the trade, that they were not fit for the ordinary purpose for which they were used, and that they were unsafe and were unmerchantable.

107. Consequently, the Defendant breached the implied warranty of merchantability, to wit: it failed to sell safe Dog Treats.

108. The Defendant has been put on notice of the defects inherent in the Pur Luv Treats for many years now, but has failed to correct them. The Defendant has had actual knowledge of, and received timely notice regarding the defects inherent in the Pur Luv Treats at issue in this Statement of Claim and the U.S. class action referred to earlier. Notwithstanding such notice, the Defendant has failed to take corrective measures.

109. The members of the Class relied on the Defendant's representations, which induced the Plaintiff and Class Members to purchase the Pur Luv Treats and/or to feed the Pur Luv Treats to their dogs.

110. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Class Members have suffered damages.

#### **D. Fraudulent Concealment**

111. The Defendant made material omissions as well as affirmative misrepresentations regarding the Pur Luv Treats.

112. The Defendant knew that the representations were false at the time that they were made.

113. The Defendant fraudulently concealed and/or intentionally failed to disclose to the Plaintiff and the Class, and all others in the chain of distribution (e.g. concealments and omissions in the Defendant's communications with wholesalers, retailers, and others in the chain of distribution that were ultimately passed on to the Plaintiff and the Class), the true nature of the Pur Luv Treats, i.e. that they suffer from a dangerous Product Defect.

114. The Pur Luv Treats that were purchased by Class Members and/or that were fed to their dogs likewise suffered from the Product Defect.

115. The Defendant had a duty to disclose material facts regarding the true nature of the Pur Luv Treats because the Defendant had exclusive knowledge of the true properties of the Pur Luv Treats at the time of sale. The Product Defect is latent and not something that the Plaintiff or Class Members could, in the exercise of reasonable diligence, have discovered on their own prior to purchase.



116. In other words, the Defendant had a duty to disclose these omitted material facts because they were known and/or accessible only to the Defendant who had superior knowledge and access to the facts and the Defendant knew they were not known to or reasonably discoverable by the Class Members.

117. The Defendant actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce the Class Members to purchase the Pur Luv Treats and/or to feed them to their dogs.

118. The Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Class Members' actions were reasonable and justified. The Defendant was in exclusive control of the material facts concerning the Pur Luv Treats' Product Defect and such facts were not known to the public or to the Class Members.

119. The facts concealed and/or not disclosed by the Defendant to the Plaintiff and Class Members are material facts, in that a reasonable person would have considered them important in deciding whether to purchase the Pur Luv Treats and/or whether to feed the Pur Luv Treats to their pets.

120. Furthermore, Class Members relied on the Defendant's Representation and they purchased the Pur Luv Treats. Said reliance was reasonable. The Class members were without the ability to determine the truth on their own and could only rely on the Defendant's statements and representations.

121. As a result of the concealment and/or suppression of facts, the Class Members have sustained and will continue to sustain damages.

### **E. Civil Negligence**

122. The Defendant had a positive legal duty to use reasonable care to perform its legal obligations to the Class Members, including, but not limited to designing, manufacturing, producing, distributing, packaging, labelling, advertising, marketing, promoting and/or selling a safe pet food product, that was safe for canine consumption and did not pose a significantly increased risk or injury to the Plaintiff, to the Class Members and to their pets.

123. The Defendant breached its duty of care to the Class Members by negligently designing, manufacturing, producing, distributing, packaging, labelling, advertising, marketing, promoting and/or selling the Pur Luv Treats and by failing to ensure that they were of merchantable quality and fit for their intended purpose, free from the Product Defect.

124. The Defendant knew or should have known that dog treats that are marketed, promoted, and advertised as natural and nutritious treats to be consumed by dogs that present a risk of serious Physical Injuries upon their ingestion, are not safe for use by the Plaintiff and Class Members for the purpose for which they were intended.

125. The aforesaid loss suffered by the Class Members was caused by this negligence, particulars of which include, but are not limited to, the following:

- (a) The Defendant failed to properly design, manufacture and produce the Pur Luv Treats such that, when used in an intended or reasonably foreseeable manner, they were unsafe for canine consumption;
- (b) The Defendant failed to adequately test the Pur Luv Treats to ensure a proper design to eliminate the foreseeable risks associated therewith;
- (c) The Defendant failed to properly market the Pur Luv Treats such that they did not warn Class Members about the deficiencies with the Pur Luv Treats and the associated serious consequences;
- (d) The Defendant failed to accurately, candidly, promptly and truthfully disclose the defective nature of the Pur Luv Treats;
- (e) The Defendant failed to conform with good manufacturing practices;
- (f) The Defendant failed to disclose and/or to warn Class Members that the Pur Luv Treats were defective when knowledge of the defects became known to them;
- (g) The Defendant failed to recall said defective Dog Treats;
- (h) The Defendant continued to sell the Pur Luv Treats when they knew or should have known of their defective nature and other associated problems;
- (i) The Defendant consciously accepted the risk of the Product Defect;

- (j) The Defendant failed to change their design, manufacturing, production, distribution, packaging, labelling, advertising, marketing and/or promotion process with respect to the Pur Luv Treats in a reasonable and timely manner; and
- (k) The Defendant has not modified its practices and therefore continues to fail to fulfill its ongoing duties toward Class Members;

126. Despite the fact that the Defendant knew or should have known that Pur Luv Treats could cause serious injury and even death to their dogs, the Defendant continued to market the Pur Luv Treats as a safe pet food product and failed to use ordinary care in warning Class Members of this risk.

127. By virtue of the acts and omissions described above, the Defendant was negligent and caused damage to the Plaintiff and to the Class Members, and posed a real and substantial risk to the safety of the Plaintiff and the Class Members' pets.

128. The loss, damages and injuries were foreseeable.

129. The Defendant's negligent proximately caused the loss, damage, injury and damages to the Class Members.

130. By reason of the foregoing, Class Members are entitled to recover damages and other relief from Defendant.

**F. Failure to Test**

131. The Defendant had a positive legal duty to perform adequate testing on the Pur Luv Treats, which were defectively designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold to the Class.

132. Had adequate testing been performed on the Pur Luv Treats, it would have revealed the serious deficiencies in the Pur Luv Treats in that it would have revealed the prevalence of the Physical Injuries and other serious medical problems occasioned by use of the Pur Luv Treats.

133. The Defendant had, and continues to have, a duty to exercise reasonable care to properly design, which includes the ongoing duty to test the Pur Luv Treats both before introducing them into the stream of commerce and throughout.

134. The Defendant breached these duties by failing to exercise ordinary care in the design and testing of the Pur Luv Treats because they knew or should have known that the Pur Luv Treats could cause the Physical Injuries and then further, had actual knowledge.

135. The Defendant knew or should have known that Class Members such as the Plaintiff would suffer injuries and economic damages and/or be at an increased risk of suffering damages and injury, as a result of their failure to exercise ordinary care in the design and manufacture of the Pur Luv Treats by failing to conduct appropriate testing

136. By reason of the foregoing, the Plaintiff and the Class experienced and/or are at risk of experiencing financial damage and injury.

## **G. Failure to Warn**

137. The Defendant had a duty to warn consumers about the risks, dangers, and known problems associated with the use of Pur Luv Treats as designers, manufacturers, producers, distributors, packagers, labellers, advertisers, marketers, promoters and/or sellers.

138. It is certainly reasonably foreseeable that Class Members would use the Pur Luv Treats as directed, i.e. to be fed to their dogs, and that it so doing, be exposing their dogs to an increased serious risk of injury.

139. The Defendant failed to exercise reasonable care and to properly warn of the risks associated with the use of the Pur Luv Treats.

140. At the very least, certainly after receiving complaints from customers, a duty arose to provide a warning to consumers that use of the product could result in Physical Injuries to their dogs.

141. The Plaintiff states that her damages and the damages of other Class Members were caused by the Defendant's failure to warn, which includes, but is not limited to, the following:

- (a) The Defendant failed to provide Class Members with proper, adequate, and/or fair warning of the serious risks associated with feeding its Pur Luv Treats to their dogs including, but not limited to the Physical Injuries;
- (b) The Defendant failed to adequately monitor, evaluate and act upon reports of adverse reactions to the Pur Luv Treats in Canada and the United States; and

- (c) The Defendant, after being notified of problems associated with the Pur Luv Treats, failed to issue adequate warnings, timely recall the product, publicize the problem, and otherwise act properly and in a timely manner to alert the public, including adequately warning persons feeding the Pur Luv Treats to their dogs of the inherent dangers associated with said pet food products.

#### **H. Negligent Misrepresentation**

142. The tort of negligent misrepresentation can be made out as:

- (a) There was a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the Class;
- (b) The Defendant made a Representation that was untrue, inaccurate and/or misleading;
- (c) The Defendant acted negligently in making the Representation;
- (d) The Representation was reasonable relied up by the Class; and
- (e) The Class has sustained damages as a result of their reliance.

143. The Defendant represented to the Class Members that the Pur Luv Treats were safe and suitable for dogs when, in fact, the Pur Luv Treats endangered their pets' health – this Representation was untrue as set forth herein.

144. These material misrepresentations made by the Defendant are false as evidenced by the extreme number of adverse reactions to its Pur Luv Treats by Class Members' dogs and their materiality is evidenced by the fact that Class Members even purchased the products in the first place.

145. At the time that the Defendant made the misrepresentations herein alleged, it knew that they were false, it had no reasonable grounds to believe that they were true as there was ample evidence to the contrary as set forth herein in this Statement of Claim.

146. The Defendant knew or was reckless in not knowing that its representations were untrue. The Defendant either had actual knowledge of the fact that the Pur Luv Treats were unsafe for dogs to consume or they were reckless or negligent in not knowing.

147. The Defendant made the Representation herein alleged with the intention of inducing the Class Members to act by purchasing its Pur Luv Treats in reliance thereupon by appealing to the buyers' desire to feed their dogs natural and nutritious food and keep them alive longer.

148. The Class Members relied upon the Defendant's material misrepresentations and, in reliance upon them, purchased such Pur Luv Treats and/or fed them to their dogs. Said reliance was justified and reasonable.

149. The Class Members were unaware of the fact that the Pur Luv Treats suffered from the Product Defect.

150. The Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendant to this end.



151. The safety of the Pur Luv Treats is a primary selling point to the Class Members. Had the Class Members known the true facts, they would not have purchased the products and would have instead opted for a safer alternative.

152. By reason of the foregoing, the Class Members are entitled to recover damages and other relief from Defendant.

### STATUTORY REMEDIES

153. The Defendant's design, manufacturing, production, distribution, packaging, labelling, advertising, marketing, promotion and/or selling practices violate the *Sale of Goods Act*, the *Consumer Protection Act*<sup>1</sup>, the *Competition Act*, and the *Consumer Packaging and Labelling Act*.

154. The Plaintiff pleads and relies upon trade legislation and common law, as it exists in this jurisdiction and the equivalent/similar legislation and common law in other Canadian provinces and territories.

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<sup>1</sup> While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: t The Business Practices and Consumer Protection Act, SBC 2004, c.2, including ss. 4-10, 171 & 172 [British Columbia]; The Fair Trading Act, RSA 2000, c. F-2, including ss. 5-7, 7.2, 7.3, 9 & 13 [Alberta]; The Consumer Protection and Business Practices Act, SS 2014, c. C-30.2, including ss. 6-9, 26-28, 35-38 & 93 [Saskatchewan]; The Business Practices Act, CCSM, c. B120, including ss. 2-9 & 23 [Manitoba]; The Consumer Protection Act, CQLR c. P-40.1, including ss. 41, 215, 216, 218, 219, 220(a), 221(g), 228, 239, 253 & 272 [Quebec]; Consumer Protection and Business Practices Act, SNL 2009, c. C-31.1, including ss. 7-10 (Newfoundland and Labrador); The Consumer Product Warranty and Liability Act, SNB 1978, c. C-18.1, including ss. 4, 10-13, 15-18, 23 & 27 [New Brunswick]; The Consumer Protection Act, RSNS 1989, c. 92, including ss. 26-29 [Nova Scotia]; The Business Practices Act, RSPEI 1988, c. B-7, including ss. 2-4 [Prince Edward Island]; The Consumers Protection Act, RSY 2002, c 40, including ss. 58 & 86 [Yukon]; The Consumer Protection Act, RSNWT 1988, c C-17, including ss. 70 & 71 [Northwest Territories]; and The Consumer Protection Act, RSNWT (Nu) 1988, c C-17, including ss. 70 & 71 [Nunavut].

**A. Breach of the *Sale of Goods Act***

155. At all times relevant to this action, the Class Members were “buyer[s]” within the meaning of that term as defined in s. 1 of the *Sale of Goods Act*.

156. At all times relevant to this action, the Defendant was a “seller” within the meaning of that term as defined in s. 1 of the *Sale of Goods Act*.

157. At all times relevant to this action, the Pur Luv Treats were “goods” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

158. The transactions by which the Plaintiff and Class Members purchased their “goods” from the Defendant were “sale[s]” within the meaning of those terms as defined in s. 1 of the *Sale of Goods Act*.

159. The Defendant was aware that consumers purchased the Pur Luv Treats based on its representations and based on its marketing and advertising and there is therefore an implied warranty or condition that the goods will be reasonably fit for such purpose.

160. The Defendant committed a fault or wrongful act by breaching the implied condition as to quality or fitness for a particular purpose. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, as per s. 15 of the *Sale of Goods Act*, the Defendant is liable. The Class is entitled to maintain an action for breach of warranty under ss. 51 and 55 of the *Sale of Goods Act*.

**B. Breach of the *Consumer Protection Act***

161. At all times relevant to this action, the Class Members were “consumer[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

162. At all times relevant to this action, the Defendant was a “supplier” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

163. The transactions by which the Class Members purchased the Pur Luv Treats were “consumer transaction[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

164. The Defendant is resident in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

165. The Defendant has engaged in an unfair practice by making a Representation to Class Members which was and is “false, misleading or deceptive” and/or “unconscionable” within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

- (a) Representing that the Pur Luv Treats have performance characteristics, uses, ingredients, benefits and/or qualities, which they did not possess;
- (b) Representing that the Pur Luv Treats are of a particular standard, quality, and/or grade which they are not;
- (c) Representing that the Pur Luv Treats are available for a reason that does not exist; namely, being a safe pet treat to feed to a dog; and

- (d) Using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the Product Defect as such use or failure deceives or tends to deceive.

166. The Representation was and is unconscionable because *inter alia* the Defendant knew or ought to have known that consumers are likely to rely, to their detriment, on Defendant's misleading statements as to the safety of the Pur Luv Treats.

167. The Class Members relied on the Representation.

168. The reliance upon the Representation by the Class Members is established by his or her purchase and/or use of the Pur Luv Treats. Had the Class Members known that the Representation was false and misleading they would not have purchased the Pur Luv Treats.

169. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Class to purchase the Pur Luv Treats as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

### **C. Breach of the *Competition Act***

170. At all times relevant to this action, the Defendant's design, manufacturing, production, distribution, packaging, labelling, advertising, marketing, promotion and/or selling was a "business" and the Pur Luv Treats were "product[s]" within the meaning of that term as defined in s. 2 of the *Competition Act*.

171. The Defendant made the Representation to the public and in so doing breached s. 52 of the *Competition Act* because the Representation:

- (a) Was made for the purpose of promoting, directly or indirectly, the use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendant;
- (b) Was made knowingly or recklessly;
- (c) Was made to the public;
- (d) Was false and misleading in a material respect; and
- (e) Stated a standard and quality of the Pur Luv Treats that was not based on adequate and proper testing.

172. The Class Members relied upon the Representation by purchasing and/or feeding the Pur Luv Treats to their dogs and suffered damages and loss.

173. Pursuant to s. 36 of the *Competition Act*, the Defendant is liable to pay the damages which resulted from the breach of s. 52.

174. Pursuant to s. 36 of the *Competition Act*, the Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

**D. Breach of the *Consumer Packaging and Labelling Act***

175. At all times relevant to this action, the Defendant was a “dealer” within the meaning of that term as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

176. At all times relevant to this action, the Pur Luv Treats were “prepackaged product[s]” within the meaning of that term as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

177. At all times relevant to this action, the Representation, including those related to the safety and appropriateness of the Pur Luv Treats for dogs that made to the public on the Pur Luv Treats’ packaging, were “label[s]” within the meaning of that term as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

178. At all times relevant to this action, the Representation that was made to the public on the Defendant’s website and otherwise, were “advertise[ments]” within the meaning of that term as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

179. The Defendant packaged, labelled, marketed, promoted, advertised and/or sold the Pur Luv Treats with “false or misleading representations” under s.7 of the *Consumer Packaging and Labelling Act* in that they used (i) expressions, words, figures, depictions or symbols that implied or may reasonably be regarded as implying that the Pur Luv Treats are not dangerous when used as directed, and (ii) descriptions and/or illustrations of the type, quality, performance, and/or function that may reasonably be regarded as likely to deceive the Plaintiff and Class Members.

180. In addition, the Defendant sold and/or advertised the Pur Luv Treats which were packaged and/or labelled in such a manner that the Plaintiff and Class Members likely would be, and were, reasonably misled with respect to the quality of the product.

181. As such, the Defendant breached ss. 7 and 9 of the *Consumer Packaging and Labelling Act* and are liable to pay damages as a result under s. 20 thereof.

### **CAUSATION**

182. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendant directly and proximately caused the Plaintiff's and Class Members' damages.

183. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendant, including damages, consequential damages, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

### **DAMAGES**

184. By reason of the acts, omissions and breaches of legal obligations of the Defendant, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include, but are not limited to, the following general, special, and punitive damages:

#### **A. General Damages (Non-Pecuniary Damages)**

185. The general damages being claimed in this Statement of Claim include:

- a. Loss of companionship and protection;
- b. Worry and concern;
- c. Loss of enjoyment of life;
- d. Pain;
- e. Suffering;
- f. Stress;
- g. Trouble;
- h. Inconvenience

**B. Special Damages (Pecuniary Damages)**

186. The special damages being claimed in this Statement of Claim include:

- a. The purchase price of the Pur Luv Treats;
- b. Veterinary expenses (including diagnostic tests, medical examinations and evaluations, hospitalization, as well as surgeries and/or other procedures);
- c. Ongoing/future veterinary expenses;
- d. Medications purchased (including both over-the-counter and prescriptions);
- e. Lost time/wages/earnings;
- f. Funeral expenses;
- g. The purchase price of the dog and/or the cost of a replacement pet; and
- h. Other damages as described herein.



### **C. Punitive (Exemplary) and Aggravated Damages**

187. The Defendant has taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members and have knowingly been selling the Pur Luv Treats that are inherently dangerous while actively misrepresenting facts concerning their safety and appropriateness for dogs and, in so doing, has placed Class Members' dogs at an increased risk of Physical Injuries.

188. It is imperative to avoid any perception of evading the law without impunity. Should the Defendant only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive and aggravated damages are necessary in the case at hand to be material in order to have a general deterrent effect on other corporations.

189. At all material times, the conduct of the Defendant as set forth was malicious, deliberate, and oppressive towards their customers and the Defendant conducted itself in a wilful, wanton and reckless manner.

### **WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST**

190. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendant's conduct, including the alleged breaches of any of the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, and/or the *Consumer Packaging and Labelling Act* constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

191. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendant or the net income received by the Defendant or a percent of the sale of the Pur Luv Treats as a result of the Defendant's unfair practices and false representations which resulted in revenues and profit for the Defendant.

192. Further, the Defendant has been unjustly enriched as a result of the revenues generated from the sale of the Pur Luv Treats and as such, *inter alia*, that:

- (a) The Defendant has obtained an enrichment through *inter alia* revenues and profits from the sale of the Pur Luv Treats;
- (b) The Plaintiff and other Class Members have suffered a corresponding deprivation including the purchase price of the Pur Luv Treats; and
- (c) The benefit obtained by the Defendant and the corresponding detriment experienced by the Plaintiff and Class Members have occurred without juristic reason. Since the monies that were received by the Defendant resulted from the Defendant's wrongful acts, there is and can be no juridical reason justifying the Defendant retaining any portion of such monies.

193. Further, or in the alternative, the Defendant is constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendant was unjustly enriched by receipt of the monies paid for the Pur Luv Treats;

- (b) The Class Members suffered a corresponding deprivation by purchasing the Pur Luv Treats;
- (c) The monies were acquired in such circumstances that the Defendant may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the market would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

194. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits which accrued to the Defendant.

### **COMMON ISSUES**

195. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Do the Pur Luv Treats designed, manufactured, produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold by the Defendant suffer from a Product Defect?

- (b) Are the Pur Luv Treats defective, non-merchantable, and/or unsafe in the course of their normal use?
- (c) Are the Pur Luv Treats unsafe for canine consumption?
- (d) Do the Pur Luv Treats contain materials, ingredients, or substances that prevent them from fully digesting upon consumption?
- (e) Did the Defendant know or should it have known about the Pur Luv Treats' Product Defect, and, if yes, how long has the Defendant known of the defect?
- (f) Did the Defendant negligently perform its duties to reasonably design, manufacture, produce, distribute, package, label, advertise, market, promote and/or sell the Pur Luv Treats?
- (g) Did the Defendant misrepresent the Pur Luv Treats as safe or fail to adequately disclose to consumers the true defective nature of the Pur Luv Treats?
- (h) Did the Defendant engage in marketing and promotional activities which are likely to deceive consumers by omitting, suppressing, and/or concealing the true efficacy and safety of the Pur Luv Treats?
- (i) Did the Defendant omit, suppress, and/or conceal material facts concerning the Pur Luv Treats from consumers?
- (j) Was the marketing of the Pur Luv Treats as "Made in USA" deceptive as they contain ingredients of foreign origin?

- (k) Is the Defendant strictly liable for the damages suffered by the Class Members?
- (l) Did the Defendant breach its express and/or implied warranties?
- (m) Did the Defendant commit the tort of fraudulent concealment when it concealed and/or suppressed material facts concerning the Pur Luv Treats?
- (n) Did the Defendant owe the Class members a duty to use reasonable care?
- (o) Did the Defendant act negligently in failing to use reasonable care to perform its legal obligations?
- (p) Did the Defendant failed to properly test the Treats prior to market entry (or at any other relevant time thereafter)?
- (q) Did the Defendant breach its duty to warn of the dangerous and defective nature of the Pur Luv Treats?
- (r) Did he Defendant commit negligent misrepresentation?
- (s) Did the Defendant intend or foresee that the Pur Luv Treats would be purchased by the Plaintiff or other Class Members based on their representations?
- (t) Did the Defendant misrepresent or fail to adequately disclose to customers the true defective nature of the Pur Luv Treats?
- (u) Did the Defendant proximately cause loss or injury and damages?

- (v) Did the Defendant engage in unfair, false, misleading and/or deceptive acts or practices in its design, manufacturing, production, distribution, packaging, labelling, advertising, marketing, promotion and or sale of the Pur Luv Treats?
- (w) Did the Defendant's acts or practices breach the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, and/or other similar/equivalent legislation?
- (x) Have Class Members been damaged by the Defendant's conduct and, if so, what is the proper measure of such damages?
- (y) Is the Defendant responsible for all related non-pecuniary damages, including, but not limited to loss of companionship and protection, worry and concern, loss of enjoyment of life, pain, suffering, stress, trouble, and inconvenience associated with feeding the Pur Luv Treats to one's pet?
- (z) Is the Defendant responsible for all related pecuniary damages, including, but not limited to the purchase price of the Defendant's Pur Luv Treats, veterinary expenses (including diagnostic tests, medical examinations and evaluations, hospitalization, as well as surgeries and/or other procedures), ongoing/future veterinary expenses, all medications purchased (both over the counter and prescription), lost time/wages/earnings, funeral expenses, and the purchase price of the dog and/or the cost of a replacement pet, as a result of the Product Defect associated with the Pur Luv Treats?

- (aa) Is the Defendant responsible to pay punitive (exemplary) and aggravated damages to Class Members and in what amount?
- (bb) Was the Defendant unjustly enriched?
- (cc) Should an injunctive remedy be ordered to prohibit the Defendant from continuing to perpetrate its unfair practices?

### **EFFICACY OF CLASS PROCEEDINGS**

196. The members of the proposed Class potentially number in the thousands. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

197. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendant. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded, and, at the very least, is certainly not in the interests of judicial economy. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system.

198. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the Class.

199. In these circumstances, a class action is the only viable means for all of the members of the Class to effectively pursue their respective rights and have access to justice.

200. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to her counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

### **LEGISLATION**

201. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Courts of Justice Act*, the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, and other Consumer Protection Legislation.

### **JURISDICTION AND FORUM**

#### **Real and Substantial Connection with Ontario**

202. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) The Defendant engages in business with residents of Ontario;
- (b) The Defendant derives substantial revenue from carrying on business in Ontario;  
and
- (c) The damages of Class Members were sustained in Ontario.



203. The Plaintiff proposes that this action be tried in the city of Ottawa, in the province of Ontario as a proceeding under the *Class Proceedings Act*.

### **SERVICE OUTSIDE ONTARIO**

204. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02 (a));
- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));
- (c) In respect of a tort committed in Ontario (rule 17.02 (g));
- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02 (h));
- (e) The claim is authorized by statute, the *Sale of Goods Act*, the *Competition Act* and the *Consumer Protection Act* (rule 17.02 (n)); and
- (f) Against a person carrying on business in Ontario (rule 17.02 (p)).

Date: August 22, 2017

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Plaintiff

Court File No. CV-17-00073701-00CP  
**SERGEANT'S PET CARE PRODUCTS, INC.**  
Defendant

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED IN OTTAWA**

Proceeding under the *Class Proceedings Act, 1992*

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**STATEMENT OF CLAIM**

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