

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

**MARY HARMON and
CONNIE CURTS, on behalf of themselves
and all others similarly situated,**

Plaintiffs,

v.

**SCHELL & KAMPETER, INC.
d/b/a Diamond Pet Foods and/or Taste of
the Wild,**

**Serve Registered Agent:
Michael Kampeter
103 North Olive
Meta, Missouri 65058**

Defendant.

Case No. _____

Division ____

CLASS ACTION PETITION

Plaintiffs Mary Harmon and Connie Curts, on behalf of themselves and all other similarly situated Missouri consumers, for their Class Action Petition against Defendant Schell & Kampeter, Inc. d/b/a Diamond Pet Foods and/or Taste of the Wild Pet Foods, state and allege as follows:

Nature of the Action

1. This lawsuit arises out of Defendant's marketing and sale of Taste of the Wild dog food, which is represented to consumers as a uniquely high-quality, safe and healthy dog food. Defendant's representations of the dog food are false, deceptive, misleading and unfair because the dog food is contaminated with toxins and other harmful substances, is associated with increased risk of developing dilated cardiomyopathy, and does not have support for the claims of

probiotic benefit. Defendant's unlawful practices have caused financial injury to all Missouri consumers who have purchased Taste of the Wild dog food.

2. Defendant's conduct as alleged in this case violates the Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.010 *et seq.*, which prohibits "[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce." Mo. Rev. Stat. § 407.020.1.

The Parties

3. Plaintiff Mary Harmon is a Missouri citizen and resident of Kansas City, Missouri. On at least five occasions between 2015 and 2018, she purchased a 30-pound bag of Taste of the Wild dog food through online retailers Amazon.com and Chewy.com.

4. Plaintiff Connie Curts is a Missouri citizen and resident of Lee's Summit, Missouri. In late 2016 or early 2017, she purchased a bag of Taste of the Wild dog food from the Richards Gerbaur Commissary in Kansas City, Missouri.

5. Defendant Schell & Kampeter, Inc. d/b/a Diamond Pet Foods and/or Taste of the Wild Pet Foods is a Missouri corporation with its principal place of business and headquarters located in Meta, Missouri. Defendant is engaged in the business of marketing and selling pet food products, including the Taste of the Wild brand dog food at issue in this lawsuit. Defendant advertises its dog food products through various means, including on-product labels, web-based marketing and print advertisements. Defendant's Taste of the Wild dog food products are sold in stores and via online retailers to consumers throughout the State of Missouri.

Jurisdiction and Venue

6. Defendant is incorporated in the State of Missouri and registered with the Missouri Secretary of State to transact business in this State. Defendant maintains its principal place of business in the State of Missouri and designates a registered agent for the service of process in this State. This Court has general personal jurisdiction over Defendant.

7. Venue is proper in this Court pursuant to Mo. Rev. Stat. § 407.025.1 because Plaintiffs purchased Taste of the Wild dog foods products in Jackson County, Missouri. Venue also is proper in this Court pursuant to Mo. Rev. Stat. § 508.010.4 because Jackson County, Missouri is the place where Plaintiffs were first injured by Defendant's conduct.

Factual Allegations

8. Defendant manufactures, markets and sells Taste of the Wild brand dog food. The standard line of Taste of the Wild dog food comes in dry varieties including Appalachian Valley, High Prairie, Pacific Stream, Pine Forest, Sierra Mountain, Southwest Canyon, Wetlands, and wet varieties including High Prairie, Pacific Stream, Sierra Mountain, Southwest Canyon and Wetlands. The PREY line of Taste of the Wild dog food comes in dry varieties including Angus Beef Limited Ingredient, Trout Limited Ingredient, and Turkey Limited Ingredient. Collectively, these products are referred to as "Taste of the Wild Dog Food."

9. Defendant markets Taste of the Wild Dog Food as a "high-quality" product with "protein sources that are based on your pet's natural diet." Defendant advertises the dog food as "inspired by the protein sources your dog . . . was meant to eat" and claims the dog food will "give domestic dogs . . . the vitality nature intended" because it contains "all the ingredients and nutrition they need to thrive." Defendant describes the product line as "premium, complete pet foods based on the protein sources from your pet's ancestral diet."

10. Defendant also represent that “All Taste of the Wild dog foods . . . are grain-free formulations that provide your pet with complete nutrition for health and vitality,” that the dog food is “processed under strict quality and safety standards,” and that the dog food promotes and supports the “overall good health and well-being” of dogs.

11. Defendant claims to use only ingredients of “exceptional quality” in Taste of the Wild Dog Food and represents that its suppliers are subject to “a careful vetting process.” It also guarantees its products “to be free of harmful pathogens or other contaminants.”

12. Defendant acknowledges that “*healthy* dog . . . food is synonymous with *safe* dog . . . food.” Defendant further claims to put “safety first” by using “scientific and technological advancements” to develop and implement “a comprehensive food safety system that ensures our pet food is always healthy, safe and nutritious.”

13. Defendant also markets the dry versions of Taste of the Wild Dog Food as including its proprietary “K9 Strain Probiotics,” which are claimed to promote “overall pet health,” maintain “digestive health,” and support “a health immune system.” Defendant represents that the probiotics help dogs “break down food and absorb nutrients more efficiently.”

14. Defendant’s representations about the quality, safety and healthiness of Taste of the Wild Dog Food are false, deceptive and misleading. Contrary to those representations, tests of the dog food have shown the products to be contaminated with heavy metals (including arsenic, lead, mercury and cadmium), pesticides, plasticizers, acrylamide and bisphenol A (“BPA”). These contaminants are potentially harmful to dogs. For example, exposure to the various heavy metals can cause dogs to experience gastrointestinal issues, central nervous system problems, brain disorders, vomiting, dehydration and even death.

15. Defendant's representations about the quality, safety and healthiness of Taste of the Wild Dog Food are also false, deceptive and misleading because the dog food is associated with increased risk of developing dilated cardiomyopathy ("DCM"), a potentially fatal condition in which the heart loses its ability to effectively and efficiently pump blood because the left ventricle is enlarged and weakened. The United States Food and Drug Administration ("FDA") is currently investigating incidents of DCM in dogs that are fed grain-free dog foods (like Taste of the Wild), and notes that these incidents "involve a wide range of dog breeds, ages and weights." The FDA also notes that cases of DCM are likely underreported, but of the cases reported, FDA data indicates that dogs eating Taste of the Wild Dog Food had the third highest prevalence of DCM cases and accounted for more than 12% of the total cases.

16. Defendant also falsely, deceptively and misleadingly represents the efficacy and benefit of the probiotics added to Taste of the Wild Dog Food. There is insufficient scientific evidence to draw the definitive conclusions Defendant makes in this regard, but consumers are not advised of the dubious underpinnings of Defendant's claims. The physiological effects of probiotics added to dog food are likely negligible, and their benefit is significantly reduced (if not eliminated completely) by common environmental factors (such as sub-optimal storage conditions) likely to render the probiotics non-viable.

17. Substantially similar and equally false, deceptive and misleading representations about the quality, safety and healthiness of Taste of the Wild Dog Food are made by Defendant across all advertising media used to market the products, including website content, on-product claims, social media marketing and other similar publications.

18. Defendant touts itself as "one of the fastest-growing pet food brands in the world." It is part of growing industry of so-called "healthy" and "natural" pet foods that appeal

to consumer preference for safer, better quality products. Defendant's false, deceptive and misleading claims about Taste of the Wild Dog Food are designed to drive greater product sales and allow Defendant to charge a premium price for the products because consumers who buy the dog food are willing to pay more for products represented as safe, healthy and high-quality.

19. All Missouri consumers who purchased Taste of the Wild Dog Food have suffered uniform financial injury and ascertainable loss at the point of sale caused by the false, deceptive and misleading marketing of a product that was different than advertised. Defendant's unlawful conduct has deprived all consumers of the benefit of the bargain and caused them ascertainable loss because the dog food they purchased did not have the qualities and characteristics advertised and was worth less than products actually having the advertised features. The damages for each consumer are measured as a portion of the product purchase price reflecting the value of misrepresented product attributes.

Class Action Allegations

20. The MMPA authorizes Plaintiffs to bring this suit as a class action because Defendant's alleged unlawful conduct has "caused similar injury to numerous other persons." Mo. Rev. Stat. § 407.025.2.

21. Plaintiffs bring this class action for violation of the MMPA pursuant to Mo. R. Civ. P. 52.08 and Section § 407.025 on behalf of all consumers who have purchased Taste of the Wild Dog Food in the State of Missouri for personal, family or household purposes at any time from August 27, 2015 to the present and who were citizens of the State of Missouri on the date this Class Action Petition was filed (the "Class"). Excluded from the Class are (1) Defendant, its subsidiaries and affiliates, and its directors and officers and members of their immediate families;

(2) federal, state, and local governmental entities; and (3) any judicial officers presiding over this action, their judicial staff, and members of their immediate families.

22. Members of the Class are so numerous that their individual joinder herein is impracticable.

23. Common questions of law and fact exist for all class members. The MMPA claims of Plaintiffs and the Class arise from a common nucleus of operative facts including questions regarding: (1) the existence of Defendant's uniform representations about the quality, safety and healthiness of Taste of the Wild Dog Food; (2) whether Defendant's representations are false, deceptive and misleading; and (3) whether consumers have suffered uniform economic harm from the purchase of the falsely, deceptively and misleadingly marketed Taste of the Wild Dog Food. The claims of Plaintiffs and the Class involve common questions of law regarding the legality of Defendant's conduct under the MMPA and the entitlement of class members to damages under that statute. These common questions of law and fact are amenable to class-wide resolution based on common evidence.

24. Plaintiffs' MMPA claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's unlawful conduct. Plaintiffs have no interests that are antagonistic to the interests of other class members. Plaintiffs and all members of the Class have sustained similar economic injury arising out of the alleged unlawful conduct for which Defendant is liable.

25. Plaintiffs are fair and adequate representatives of the Class because their interests do not conflict with the interests of the Class members they seek to represent. Plaintiffs have retained competent and experienced counsel, who are fair and adequate representatives of the proposed Class because they will vigorously prosecute this action and do not have any conflicts of

interest with the Class. The interests of Class members will be fairly and adequately protected in this lawsuit by Plaintiffs and their counsel.

26. Common issues predominate over individual issues in this case because the overriding issues of liability and damages under the MMPA can be determined on a class-wide basis from common evidence regarding Defendant's uniform misconduct and the uniform economic harm to class members who purchased Taste of the Wild Dog Food.

27. Class treatment is the superior method of adjudicating the class members' MMPA claims because it avoids the inefficiencies and inconsistencies of piecemeal litigation and ensures that all class members are given their day in Court that would not otherwise be possible for such small value claims. Class treatment also is expressly authorized by the MMPA. *See* Mo. Rev. Stat. § 407.025.2.

Count I
(Violation of the Missouri Merchandising Practices Act)

28. Plaintiffs incorporate by reference the allegations in all paragraphs of this Petition as though fully set forth in this paragraph.

29. Plaintiffs bring this MMPA claim individually and on behalf of the members of the proposed Class, all of whom purchased Taste of the Wild Dog Food for personal, family or household purposes.

30. Taste of the Wild Dog Food is "merchandise" under the MMPA, which is defined to include "any objects, wares, goods, [or] commodities." Mo Rev. Stat. § 407.010(4).

31. At all times during the class period, Defendant has made false, deceptive and misleading representations about the quality, safety and healthiness of Taste of the Wild Dog Food and has used deceptive means of advertising in selling the dog food to Missouri consumers. De-

fendant's unlawful marketing of Taste of the Wild Dog Food has been, and continues to be, conducted through a uniform advertising campaign consisting of website content, on-product claims, social media marketing and other similar publications.

32. Defendant's representations of Taste of the Wild Dog Food are unlawful under the MMPA because they are false and have the capacity to mislead prospective purchasers about the quality, safety and healthiness of the dog food, which is contaminated with toxins and other harmful substances, is associated with increased risk of developing DCM, and does not have support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-7.020(1).

33. Defendant's representations of Taste of the Wild Dog Food are unlawful under the MMPA because they omit material facts regarding the quality, safety and healthiness of the dog food, including the presence of toxins and other contaminants in the product, the increased risk of developing DCM for dogs that consume the product, and the lack of support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-7.030(1).

34. Defendant's representations of Taste of the Wild Dog Food are unlawful under the MMPA because Defendant does not have a reasonable basis for making performance claims with respect to the quality, safety and healthiness of the dog food in light of the presence of toxins and other contaminants in the product, the increased risk of developing DCM for dogs that consume the product, and the lack of support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-7.040(1).

35. Defendant's representations of Taste of the Wild Dog Food constitute unfair practices under the MMPA because they offend public policy, are unethical and unscrupulous, and present a risk of substantial injury to consumers, including risks associated with the presence

of toxins and other contaminants in the product and the increased risk of developing DCM for dogs that consume the product. *See* Mo. Code Regs. Ann. tit. 15, § 60-8.020(1).

36. Defendant's representations of Taste of the Wild Dog Food constitute unfair practices under the MMPA because it is unconscionable for Defendant to make false, deceptive and misleading claims about the quality, safety and healthiness of the product that is contaminated with toxins and other harmful substances, is associated with increased risk of developing DCM, and does not have support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-8.080(1).

37. Defendant's representations of Taste of the Wild Dog Food are deceptive under the MMPA because they have the tendency or capacity to mislead, deceive and cheat consumers into believing that the dog food is high-quality, safe and healthy for dogs to eat. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.020(1).

38. Defendant's representations of Taste of the Wild Dog Food are deceptive under the MMPA because they tend to create a false impression of the dog food as high-quality, safe and healthy for dogs to eat. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.020(1).

39. Defendant's representations of Taste of the Wild Dog Food are unlawful under the MMPA because they employ deceptive format in the overall appearance of product packaging and advertising (including depictions of wild animals in nature) that present the product to be what nature intended and have the tendency or capacity to mislead consumers into believing that the product is not contaminated or harmful. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.030(1).

40. Defendant's representations of Taste of the Wild Dog Food are fraudulent under the MMPA because they use falsehoods, deception, trickery and breach of trust to cause financial

injury to consumers and gain an undue and unconscionable advantage over consumers in the selection and purchase of dog food. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.040(1).

41. Defendant's representations of Taste of the Wild Dog Food are unlawful under the MMPA because they use false pretense by means of trickery, deception, and false or fraudulent representation or pretense to defraud consumers in the purchase of the falsely, deceptively and misleadingly represented dog food. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.050(1).

42. Defendant's representations of Taste of the Wild Dog Food constitute unlawful misrepresentations under the MMPA because they make assertions about the quality, safety and healthiness of the product that are not in accord with the facts indicating that the product is contaminated with toxins and other harmful substances, is associated with increased risk of developing DCM, and does not have support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.070(1).

43. Defendant's representations of Taste of the Wild Dog Food constitute unlawful misrepresentations under the MMPA because they contain material untruths about the quality, safety and healthiness of the product, which is contaminated with toxins and other harmful substances, is associated with increased risk of developing DCM, and does not have support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.080(1).

44. Defendant's representations of Taste of the Wild Dog Food constitute unlawful misrepresentations under the MMPA because they use half-truths to advertise the quality, safety and healthiness of the product while omitting material facts necessary to make the representations not misleading, including information regarding the presence of toxins and other contaminants in the product, the increased risk of developing DCM for dogs that consume the product,

and the lack of support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.090(1).

45. Defendant's representations of Taste of the Wild Dog Food constitute fraudulent misrepresentations under the MMPA because they make claims about the quality, safety and healthiness of the product that Defendant knows are not in accord with the facts and/or that Defendant knows do not have a reasonable basis. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.100(1).

46. Defendant's representations of Taste of the Wild Dog Food are unlawful under the MMPA because they conceal material facts from consumers regarding the presence of toxins and other contaminants in the product, the increased risk of developing DCM for dogs that consume the product, and the lack of support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.100(1).

47. Defendant's representations of Taste of the Wild Dog Food are unlawful under the MMPA because they suppress material facts by curtailing and reducing the ability of consumers to take notice of material facts regarding the presence of toxins and other contaminants in the product, the increased risk of developing DCM for dogs that consume the product, and the lack of support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.100(2).

48. Defendant's representations of Taste of the Wild Dog Food are unlawful under the MMPA because they omit material facts by failing to disclose to consumers information regarding the presence of toxins and other contaminants in the product, the increased risk of developing DCM for dogs that consume the product, and the lack of support for the claims of probiotic benefit. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.100(3).

49. As a direct and proximate result of Defendant's unlawful conduct, Plaintiffs and the members of the Class have suffered an ascertainable loss of money under the benefit of the

bargain rule by paying more for Taste of the Wild Dog Food than the product was worth had it not been falsely, deceptively, misleadingly and unfairly represented. This constitutes a uniform, objective measure of damages for each class member, determined at the time of purchase without regard to any individualized consideration of transactional motivation or subsequent use of the product. Damages for each consumer are measured as the portion of the product purchase price reflecting the value of the falsely, deceptively, misleadingly or unfairly advertised product attributes.

50. Plaintiffs and the Class are entitled to punitive damages because Defendant's conduct involves a high degree of moral culpability and was wanton, outrageous and/or made with reckless disregard to the consequences to Plaintiffs and the members of the Class.

Prayer for Relief

WHEREFORE, Plaintiffs Mary Harmon and Connie Curts pray for judgment in favor of themselves and the class against Defendant Schell & Kampeter, Inc. for actual damages, punitive damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, costs of suit and any other appropriate relief.

Demand for Jury Trial

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

Respectfully submitted,

SHANK & MOORE, LLC

By: /s/ Stephen J. Moore

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