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*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ROBIN HUMPHREY, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE J.M. SMUCKER COMPANY,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Robin Humphrey (“Plaintiff”) brings this action on behalf of herself, and all others  
2 similarly situated against The J.M. Smucker Company (“Defendant” or “Smucker”). Plaintiff makes  
3 the following allegations pursuant to the investigation of her counsel and based upon information  
4 and belief, except as to the allegations specifically pertaining to herself, which are based on personal  
5 knowledge.

6 **NATURE OF THE ACTION**

7 1. Plaintiff brings this Class action lawsuit on behalf of herself and similarly situated  
8 consumers (“Class Members”) who purchased 9Lives-branded pet food,<sup>1</sup> Kibbles ‘n Bits-branded  
9 pet food,<sup>2</sup> and Meow Mix-branded pet food<sup>3</sup> (the “Products”), which are misleading labeled as  
10 healthful despite containing titanium dioxide (“TiO<sub>2</sub>” or the “Additive”). Worse, the packaging of  
11 Defendant’s products—which is essential and integral to delivering the food to consuming pets—  
12 also contain per-and polyfluoroalkyl substances (“PFAS”), which are synthetic chemicals that pose  
13 undue health risks further rendering Defendant’s healthful representations false and misleading.

14 2. Defendant has known of the health problems posed by TiO<sub>2</sub> since at least February  
15 2014 when big players in the food market publicly announced they would no longer use the additive  
16 in products due to health concerns. These announcements have been widely reported on by several  
17 news outlets, including Time Magazine, CNN, The Guardian, and the Los Angeles Times.

18 3. Major retailers of pet food, including retailers that at one time offered brands by  
19 Defendant, also announced that they would not sell pet food containing TiO<sub>2</sub>.

20 4. The industry announcements were informed by scientific research concluding that  
21 TiO<sub>2</sub> is unhealthy and unsafe for consumption.

22 5. Similarly, in light of the growing scientific research, several nations have banned  
23 TiO<sub>2</sub> because of its toxicity. For example, in 2019, TiO<sub>2</sub> was banned in France for human

24 \_\_\_\_\_  
25 <sup>1</sup> Those products include, but are not limited to, all flavors of 9 Lives: Daily Essentials, Indoor Complete, Seafood & Poultry Favorites, Plus Care.

26 <sup>2</sup> Those products include, but are not limited, all flavors of Kibbles ‘n Bits: Original, Bacon and Steak, Bistro, Mini Bits, Complete and Balanced, and Homestyle.

27 <sup>3</sup> Those products include, but are not limited to, all flavors of Meow Mix: Original Choice, Tender Centers, Irresistible, Indoor Health, Seafood Medley, Bistro Recipes, and Ocean Explosion,  
28 amongst others.

1 consumption. In May 2021, the European Food Safety Authority (“EFSA”) released its report on  
2 the health concerns associated with TiO<sub>2</sub>, determining that TiO<sub>2</sub> could not be considered safe for  
3 consumption for humans *or animals*.

4 6. Professor Maged Younes, Chair of EFSA’s expert Panel on Food Additives and  
5 Flavourings (“FAF”) underscored these findings, stating that: “Taking into account all available  
6 scientific studies and data, the Panel concluded that titanium dioxide can no longer be considered  
7 safe as a food additive. A critical element in reaching this conclusion is that we could not exclude  
8 genotoxicity concerns after consumption of titanium dioxide particles.”

9 7. Building on EFSA’s research, the European Commission (“EC”) announced that it  
10 too would adopt a ban on the use of TiO<sub>2</sub> as a food additive. The EC additionally announced it  
11 would adopt a ban on the use of TiO<sub>2</sub> as a food additive for all animal species.

12 8. Similarly, Defendant has long known of the health problems posed by PFAS, which  
13 persist and accumulate and are harmful even at very low levels. PFAS have been shown to have a  
14 number of toxicological effects in laboratory studies as PFAS exposure raises a host of health effects,  
15 including but not limited to various cancers, liver damage, and immunotoxic effects.

16 9. Defendant employs food scientists who focus on food safety and nutrition specifically  
17 for pet food products, including tracking industry developments concerning ingredients and  
18 additives. Defendant also employs packaging engineers, scientists, and managers who focus on pet  
19 food products, including assessing suitability for direct food contact applications.

20 10. Defendant nonetheless consistently makes various misrepresentations concerning the  
21 Products to convince consumers that the Products are healthful for consumption and do not expose  
22 pets to heightened risk of a host of health effects from consuming Defendant’s Products.

23 11. Defendant knew or should have known that titanium dioxide is unhealthy and raises  
24 health risks from various sources, including but not limited to information provided by certain of its  
25 major retailers and its food scientists.

26 12. Nonetheless Defendant sells pet food containing TiO<sub>2</sub> and PFAS, abusing the  
27 Public’s trust and failing to inform consumers of the implications of consuming the toxins. Instead,  
28 Defendant relies on the ingredient list, which is provided in tightly woven, miniscule block print on

1 the back of the Products, which consumers are unlikely to notice. Defendant nowhere informs  
2 consumers that the Products also contain PFAS.

3 13. The inadequate labeling means that consumers who purchase Defendant's Products  
4 are unaware that they are at heightened risk of a host of health effects stemming from TiO<sub>2</sub> and  
5 PFAS.

6 14. Based on Defendant's omissions, a reasonable consumer would expect that the  
7 Products are healthful and can be purchased and consumed as marketed and sold. However, the  
8 Products are not healthful and pose a significant health risk. Yet, neither before nor at the time of  
9 purchase does Defendant notify consumers like Plaintiff that the Products are not healthful, pose  
10 health risks, and should otherwise be approached with caution.

11 15. Accordingly, Plaintiff brings her claims against Defendant individually and on behalf  
12 of a class of all others similarly situated for (1) violation of California's Unfair Competition Law,  
13 Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) violation of the Consumers Legal Remedies Act, Cal.  
14 Civ. Code § 1750, *et seq.*; (3) violation of California's False Advertising Law, Cal. Bus. & Prof.  
15 Code § 17200, *et seq.*; (4) Fraud; (5) Constructive Fraud; (6) Fraudulent Inducement; (7) Fraudulent  
16 Omission or Concealment; (8) Fraudulent Misrepresentation; (9) Negligent Misrepresentation; and  
17 (10) Quasi-Contract / Unjust Enrichment.

### 18 PARTIES

19 16. Plaintiff Robin Humphrey is a natural person and citizen of California who resides in  
20 Clearlake, California. Ms. Humphrey has purchased the Products numerous times from her local  
21 Walmart, including as recently as July 2022. Prior to her purchase, Ms. Keene reviewed the labeling,  
22 packaging, and marketing materials of the products and saw the false and misleading claims that,  
23 among other things, the Products are healthful for animal consumption. Ms. Humphrey understood  
24 these claims to be representations and warranties by Defendant, that the Products are free from  
25 harmful ingredients. Ms. Humphrey reasonably relied on these representations and warranties in  
26 deciding to purchase the Products, and these representations were part of the basis of the bargain in  
27 that she would not have purchased the Products or would not have purchased them on the same terms,  
28 if the true facts about their contents had been known. As a direct result of Defendant's material

1 misrepresentations and omissions, Ms. Humphrey suffered, and continues to suffer, economic  
2 injuries.

3 17. Ms. Humphrey remains interested in purchasing pet food made by Defendant that is  
4 safe for consumption. However, Plaintiff Humphrey is unable to determine if the Products are  
5 actually healthful for consumption. Plaintiff understands that the composition of the Products may  
6 change over time. But so long as Defendant may market the Products as healthful for consumption  
7 when the Products are not healthful and pose health risks, then when presented with false or  
8 misleading information when shopping, she will be unable to make informed decisions about  
9 whether to purchase Defendant's Products and will be unable to evaluate the different prices between  
10 Defendant's Products and competitor's Products. Plaintiff is further likely to be repeatedly misled  
11 by Defendant's conduct, unless and until Defendant is compelled to ensure that Products marketed  
12 and labeled as healthful for consumption, are, in fact, healthful for consumption.

13 18. Defendant The J.M. Smucker Co., d/b/a 9Lives, Kibbles 'n Bits, and Meow Mix, is a  
14 corporation with its headquarters located at 4400 Easton Commons Way, Suite 125, Columbus, Ohio  
15 43219. Relevant to Plaintiff's claim herein, Defendant is a leading manufacturer, packager, and  
16 distributor of pet food. Defendant has done business throughout California and the United States at  
17 all times during the Class Period. At all relevant times, Defendant has advertised, marketed,  
18 manufactured, distributed, and/or sold pet food, including the Products at issue, to consumers in and  
19 throughout California and the United States. At all relevant times, Defendant formulated, directed,  
20 controlled, had the authority to control, and/or participated in the acts and practices set forth in this  
21 Complaint.

22 19. Plaintiff reserves the right to amend this Complaint and add different products and  
23 additional defendants, including without limitation and officer, director, employee, supplier, or  
24 distributor of Defendant who has knowingly and willfully aided, abetted, and/or conspired in the  
25 false and deceptive conduct alleged herein.

#### 26 **JURISDICTION AND VENUE**

27 20. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as  
28 amended by the Class Action Fairness Act of 2005 ("CAFA"), because this case is a class action

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