

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

TIFFANY CARLSON, *on behalf of herself
and all others similarly situated,*

Plaintiff,

v.

MIDWESTERN PET FOODS, INC.,

Defendant.

Civil Action No.: 3:21-cv-00007

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Tiffany Carlson (“Plaintiff”), individually and on behalf of all others similarly situated (the “Class,” as defined below), brings this Class Action Complaint against Midwestern Pet Foods, Inc. (“Midwestern” or “Defendant”). Plaintiff bases these allegations on personal knowledge as to matters related to and known to her. As to all other matters, Plaintiff bases her allegations on information and belief and through investigation of her counsel. Plaintiff believes substantial evidentiary support exists for the allegations below.

NATURE OF THE ACTION

1. Midwestern is a manufacturer and seller of pet foods.
2. Despite representations and express warranties regarding the safety and quality of these pet foods and regarding Midwestern manufacturing processes to create these pet foods, Midwestern manufactured and sold dog and cat food containing Aflatoxin (“Sportmix Products”

or “Products”).¹

3. Aflatoxin is a toxin produced by the mold *Aspergillus flavus*, which can grow on corn and other grains used as ingredients in pet food. At high levels, aflatoxin can cause illness or death in pets.

4. Because the Products contained or may have contained Aflatoxin, pet owners throughout the United States purchased Sportmix Products that were misrepresented and that did not conform to express warranties.

5. This is a class action lawsuit on behalf of pet owners who purchased Sportmix Products manufactured with undisclosed ingredients, which increased the risk of injury or death to their pets, or which caused actual injury or the death of their pets.

PARTIES

6. Plaintiff Tiffany Carlson is a citizen of Michigan and resides in Leonard, Michigan.

¹ “Sportmix Products” include: Sportmix Premium Energy Plus dog food; Sportmix Premium High Energy dog food; Sportmix Premium Maintenance dog food; Sportmix Premium Stamina dog food; Sportmix Premium Puppy Small Bites; Sportmix Original High Protein dog food; Sportmix Original Bite Size dog food; Sportmix Gourmet Mix cat food; Sportmix Original cat food; Pro Pac Adult Mini Chunk, 40 lb. bag; Pro Pac Performance Puppy, 40 lb. bag; Splash Fat Cat 32%, 50 lb. bag; Nunn Better Maintenance, 50 lb. bag; Sportmix Original Cat, 15 lb. bag; Sportmix Original Cat, 31 lb. bag; Sportmix Maintenance, 44 lb. bag; Sportmix Maintenance, 50 lb. bag; Sportmix High Protein, 50 lb. bag; Sportmix Energy Plus, 44 lb. bag; Sportmix Energy Plus, 50 lb. bag; Sportmix Stamina, 44 lb. bag; Sportmix Stamina, 50 lb. bag; Sportmix Bite Size, 40 lb. bag; Sportmix Bite Size, 44 lb. bag; Sportmix High Energy, 44 lb. bag; Sportmix High Energy, 50 lb. bag; Sportmix Premium Puppy, 16.5 lb. bag; Sportmix Premium Puppy, 33 lb. bag; Pro Pac Adult Mini Chunk dog food; Pro Pac Performance Puppy; Splash Fat Cat 32%; Nunn Better Maintenance dog food; Sportmix Original Cat food; Sportmix Original Cat, 31 lb. bag; Sportmix Maintenance, 44 lb. bag; Sportmix Maintenance, 50 lb. bag; Sportmix High Protein, 50 lb. bag; Sportmix Energy Plus, 44 lb. bag; Sportmix Energy Plus, 50 lb. bag; Sportmix Stamina, 44 lb. bag; Sportmix Stamina, 50 lb. bag; Sportmix Bite Size, 40 lb. bag; Sportmix Bite Size, 44 lb. bag; Sportmix High Energy, 44 lb. bag; Sportmix High Energy, 50 lb. bag; Sportmix Premium Puppy, 16.5 lb. bag; Sportmix Premium Puppy, 33 lb. bag. The Sportmix Products at issue have an expiration date on or before July 9, 2022, and have “05” in the date or lot code. Plaintiff reserves the right to amend this definition as necessary (The list of Defendant’s recalled dog and cat food products, originally recalled on December 30, 2020, was expanded on January 12, 2021).

Plaintiff has two dogs—one is a great dane and the other is a lab and beagle mix. Prior to the recall at issue, the only dog food Plaintiff fed to her two dogs was SportMix Premium High Energy dog food manufactured by Defendant. Thus, at various times during the period beginning when Sportmix Products were offered for sale and continuing at least through the date of the most recent recall update (currently January 12, 2021) (the “Relevant Time Period”), Plaintiff purchased Sportmix Products and suffered economic damages related to the purchase of the Sportmix Products. More specifically, Plaintiff purchased the Sportmix Products from Chewy.com and from Chapter Supply. Plaintiff’s dates of purchase include but are not limited to November 14th and 28th, 2020 and December 22nd, 2020. As a result of consuming Sportmix Products, both dogs became sick with constant diarrhea, which they both still have. Because her dogs were quite ill and had lost substantial weight, Plaintiff had a virtual visit with her veterinarian. During this appointment, the veterinarian told Plaintiff to stop feeding the Sportmix Products to the dogs which Plaintiff did; however, both dogs remain sick. In fact, one of Plaintiff’s dogs is a service dog for her son; however, because of the illnesses described above the dog can no longer accompany Plaintiff’s son to school.

7. Defendant Midwestern Pet Foods, Inc. is a corporation organized under the laws of Indiana. Midwestern’s principal place of business is located at 9634 Hedden Road, Evansville, Indiana 47725.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over Defendant Midwestern because Midwestern is headquartered within this District and much of the conduct at issue occurred in this District.

9. This Court has original subject-matter jurisdiction over this proposed class action

pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), which provides for the original jurisdiction of the federal district courts over “any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). Because the proposed Class that Plaintiff seeks to represent includes residents from throughout the United States, the Class necessarily includes citizens from States other than the State of which Midwestern is a citizen. Further, Plaintiff alleges the matter in controversy exceeds \$5,000,000.00 in the aggregate, exclusive of interest and costs. Finally, “the number of members of all proposed plaintiff classes in the aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

10. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because Defendant is headquartered within this District and much of the conduct at issue occurred in this District.

FACTUAL ALLEGATIONS

Defendant Markets and Sells Pet Foods as Premium, Health-Based Products

11. Midwestern is a leading North American producer of pet food products sold in the United States and around the world. Upon information and belief, it produces and sells hundreds of thousands of containers of cat and dog food annually.

12. Midwestern holds itself out to the public as a producer of safe, nutritious, and high-quality pet food. As part of its marketing and sales, Midwestern makes numerous representations and express warranties about the quality of its dog food and its manufacturing facilities and processes.

13. Midwestern manufactures, produces, markets, distributes, and/or sells dog food products under various brand names, including “Sportmix.”

14. Midwestern promotes and prices the Products as “premium” dog food by, among other things, uniformly labeling their products as providing “Targeted Nutrition” for dogs and cats. The product labels further uniformly represent that the pet foods are “100% Guaranteed Taste & Nutrition.”

15. Midwestern claims that its products “are subject to rigorous testing in independent laboratories to ensure quality nutrition and safety.”² “We create our own nutritious dry recipes and treats, selectively choose our ingredients, and prepare our foods with care in our 4 family-owned kitchens.”³

16. Midwestern represents that its Sportmix Premium Energy Plus dog food is “formulated for highly active dogs needing a maximum high level of energy” and “to meet the nutritional levels established by the AAFCO Dog Food Nutrient Profiles for maintenance.”⁴

17. Midwestern similarly represents that its Sportmix Premium High Energy recipe is “formulated for adult dogs who require extra protein and fat in their diet due to their level of activity or living environment” and “to meet the nutrition levels established by the AAFCO Dog Food Nutrient Profiles for maintenance.”⁵

18. Midwestern represents that its Sportmix Premium Maintenance is “formulated for adult dogs who require a lower level of energy and protein due to their activity level or living environment” and “to meet the nutritional levels established by the AAFCO Dog Food Nutrient

² <https://midwesternpetfoods.com/#about-us> (last visited Jan. 8, 2021)

³ *Id.*

⁴ <https://www.sportmix.com/dog-food/premium-formulas/energy-plus-adult-mini-chunk/> (last visited Jan. 8, 2021)

⁵ <https://www.sportmix.com/dog-food/premium-formulas/high-energy-adult-mini-chunk/> (last visited Jan. 8, 2021)

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