

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

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

Plaintiff,

v.

MIDWESTERN PET FOODS, INC.,

Defendant.

Case No.: 3:21-CV-00007-RLY-MPB

TAMMY JOHNSON, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

MIDWESTERN PET FOODS, INC., an Indiana  
Corporation,

Defendant.

Case No.: 3:21-cv-00009-RLY-MPB

STEPHANIE ROMERO, DAVID STARNES,  
STACI FOOTE, ASHLEY LILL, and CRYSTAL  
FABELA, individually and on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

MIDWESTERN PET FOODS, INC.

Defendant.

Case No.: 3:21-cv-00014-RLY-MPB

HARVEY E. WILLIAMS, OWEN WOODALL,  
VOLLIE GRIFFIN, and MEL LAFEBRE, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

MIDWESTERN PET FOODS, INC.,

Defendant.

Case No.: 3:21-cv-00022-RLY-MPB

CHARLES FOSTER, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

MIDWESTERN PET FOODS, INC., an Indiana  
Corporation,

Defendant.

Case No.: 1:21-cv-00360-JPH-TAB

### PLAINTIFFS' MOTION TO CONSOLIDATE CASES

Plaintiffs Tiffany Carlson, Tammy Johnson, Stephanie Romero, David Starnes, Staci Foote, Ashley Lill, Crystal Fabela, Harvey Williams, Owen Woodall, Vollie Griffin, Mel Labefre, and Charles Foster ("Plaintiffs") filed the following five separate proposed class actions against Defendant Midwestern Pet Foods, Inc. ("Midwestern") in this District:

1. *Carlson v. Midwestern Pet Foods, Inc.*, Case No. 3:21-CV-00007-RLY-MPB;
2. *Johnson v. Midwestern Pet Foods, Inc.*, Case No. 3:21-cv-00009-RLY-MPB;
3. *Romero, et al. v. Midwestern Pet Foods, Inc.*, Case No. 3:21-cv-00014-RLY-MPB;

4. *Williams, et al. v. Midwestern Pet Foods, Inc.*, Case No. 3:21-cv-00022-RLY-MPB;  
and
5. *Foster, et al. v. Midwestern Pet Foods, Inc.*, Case No. 1:21-cv-00360-PJH-TAB.

(collectively, the “Actions”).

Plaintiffs, by and through their counsel of record and pursuant to Rule 42 of the Federal Rules of Civil Procedure and Local Rule 42-1, hereby jointly move for an order consolidating the Actions.

Under Rule 42 of the Federal Rules of Civil Procedure, a court may consolidate actions that “involve a common question of law or fact.” Fed. R. Civ. P. 42. A decision to grant or deny consolidation is reviewed for an abuse of discretion. *Star Insurance Company v. Risk Marketing Group, Inc.*, 561 F.3d 656, 660 (7th Cir.2009); *King v. Gen. Elec. Co.*, 960 F.2d 617, 626 (7th Cir.1992).

“Consolidation is preferred if it will promote judicial economy and efficiency without prejudice to the parties.” *See Adams v. Northern Public Service Co.*, 2012 WL 23575324, at \*1 (N.D. Ind. June 22, 2012). Courts should consider “whether the risks of prejudice and possible confusion were overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on the parties, witnesses and available judicial resources posed by multiple lawsuits, and the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned.” *Id.* (citing *Arnold v. Eastern Airlines, Inc.*, 681 F.2d 186, 193 (4th Cir.1982); *Ikerd v. Lapworth*, 435 F.2d 197, 204 (7th Cir. 1970); *Van Patten v. Wright*, 2009 WL 1886010, \*2 (E.D. Wis. 2009); *Back v. Carter*, 933 F. Supp. 738, 748 (N.D. Ind. 1996)).

The Actions should be consolidated. First, all of the Actions are against the same defendant, Midwestern; arise out of the recalls of Midwestern’s pet food announced in December 2020 and January 2021; involve the same pet food products; and involve common questions of fact, such as, among other things, whether Midwestern’s pet food products were advertised as providing “targeted nutrition to pets,” “100% guaranteed taste and nutrition,” and “complete and balanced nutrition,” yet were at risk of contamination with excessive levels Aflatoxin, which Plaintiffs allege could and did cause illness and

death in pets. Additionally, the Actions involve common questions of law, such as whether Midwestern violated state consumer protection statutes and has been unjustly enriched, among other things. Finally, all the Actions are brought on behalf of persons in the United States who purchased Midwestern's pet food products.

Consolidation of the Actions will likewise serve the convenience of the parties and witnesses and promote the just and efficient course of this litigation. Consolidation will eliminate duplicative discovery and prevent inconsistent rulings, including on the issues of whether Midwestern knowingly and/or recklessly sold contaminated pet foods, whether Midwestern failed to implement appropriate and required testing, and/or whether Midwestern engaged in false and deceptive advertising.

Consolidation will also conserve the resources of the parties, their counsel and the judiciary in that, subject to the Court's approval, Plaintiffs intend to file a consolidated complaint so that Midwestern must only respond to one complaint and defend one unified action. That means that if Midwestern wishes to file a motion to dismiss, the Court will decide only one. Finally, there will not be any delay or prejudice resulting from consolidation.

Additionally, Plaintiffs' counsel in the Actions are meeting and conferring regarding a proposal for Interim Counsel and hope to reach an agreement to present to the Court. Plaintiffs' counsel propose that the Court set a deadline for the filing of an Interim Counsel application pursuant to Fed. R. Civ. P. 23(g) that is within 21 days from the date the Court enters an order consolidating the Actions.

Accordingly, Plaintiffs respectfully request that this Court consolidate the actions, direct that the filings in each matter carry the case number of the *Carlson* Action and direct that all future filings shall bear the following caption:

*In re: Midwestern Pet Foods Marketing, Sales  
Practices and Product Liability Litigation*

Case No.: 3:21-CV-00007-RLY-MPB

Finally, Plaintiffs respectfully request that the Court enter the following schedule set forth in the accompanying [Proposed] Order Granting Motion to Consolidate Cases:

- (1) Deadline to file application(s) for appointment of Interim Counsel within 21 days of the entry of an order granting consolidation of the Actions; and
- (2) Deadline for the filing of a Consolidated Complaint: 60 days after the appointment of Interim Counsel.

Prior to this filing of this motion, Plaintiffs reached out to counsel for Midwestern, Mr. Justin Penn, and notified him of this anticipated motion.

Dated: February 26, 2021

Respectfully submitted,

/s/ Jeffrey S. Goldenberg  
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