

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

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

Plaintiff,

v.

MIDWESTERN PET FOODS, INC., an
Indiana Corporation.

Defendant.

Case No.: 3:21-cv-00009

CLASS ACTION

COMPLAINT AND JURY DEMAND

Plaintiff Tammy Johnson (“Plaintiff” or “Plaintiff Johnson”) hereby files this Complaint on behalf of herself and all others similarly situated, by and through the undersigned attorneys, against Midwestern Pet Foods, Inc., (hereinafter, “Midwestern” or “Defendant”) and alleges as follows based upon personal knowledge as to herself and her own acts and experiences; and, as to all other matters, upon information and belief based upon, *inter alia*, investigations conducted by her attorneys.

INTRODUCTION

1. This is a class action lawsuit brought by Plaintiff on behalf of herself and a class of purchasers of dog and cat food manufactured by Midwestern Pet Foods, Inc. (hereinafter, “Midwestern Pet Food” or “Products”), marketed and distributed by the Defendant, which contain Aflatoxin, a toxin produced by the

mold variety *Aspergillus flavus*.

2. The Midwestern Pet Food includes Products branded as Pro Pac, Splash Fat Cat, Nunn Better, Sportstrail 50, and Sportmix.

3. Defendant touts that it has been “making high-quality pet food & treats” for generations.¹

4. Despite Defendant’s claim that its Products are high quality, when pets ingest the Pet Food that is contaminated with Aflatoxin, it can result in serious medical peril, including vomiting, loss of appetite, jaundice, diarrhea, colitis, liver damage, and death.²

5. According to the FDA, “As of January 11, 2021, FDA is aware of more than 70 pets that have died and more than 80 pets that are sick after eating Sportmix pet food.”³

6. Based on Midwestern’s own pre-sale representations about health testing and quality control measures, *infra*, it knew or should have known about the

¹ <https://midwesternpetfoods.com/>.

² FDA ALERT: CERTAIN LOTS OF SPORTMIX PET FOOD RECALLED FOR POTENTIALLY FATAL LEVELS OF AFLATOXIN, <https://www.fda.gov/animal-veterinary/outbreaks-and-advisories/fda-alert-certain-lots-sportmix-pet-food-recalled-potentially-fatal-levels-aflatoxin> (last visited Jan. 14, 2021).

³ FDA ALERT: CERTAIN LOTS OF SPORTMIX PET FOOD RECALLED FOR POTENTIALLY FATAL LEVELS OF AFLATOXIN, <https://www.fda.gov/animal-veterinary/outbreaks-and-advisories/fda-alert-certain-lots-sportmix-pet-food-recalled-potentially-fatal-levels-aflatoxin> (last visited Jan. 14, 2021). Not all of these cases have been officially confirmed as aflatoxin poisoning through laboratory testing or veterinary record review. This count is approximate and may not reflect the total number of pets affected.

Aflatoxin contamination in the Midwestern Pet Food.

7. Upon information and belief, Defendant failed to disclose and/or actively concealed the known Aflatoxin contamination in the Midwestern Pet Food and its health risk to consumers' pets.

8. As a result of Defendant's business practices, Plaintiff's and Class members' purchases of Midwestern Pet Food have caused them to suffer an ascertainable loss of money and/or property.

9. Had Plaintiff and other Class members known about the Aflatoxin contamination of Midwestern Pet Food at the time of purchase, they would not have purchased the Midwestern Pet Food, or would have paid substantially less for it, and would have avoided the significant out-of-pocket expenses of providing veterinary care to their pets as a result of their purchase of Midwestern Pet Food.

10. As a result of the Midwestern Pet Food contamination and the considerable monetary costs associated with attempting to treat related symptoms in their pets, Plaintiff and Class members have suffered injury in fact, incurred damages and have otherwise been harmed by Defendant's conduct.

11. Accordingly, Plaintiff brings this action to redress Defendant's violations of various state and federal consumer protection statutes, and to recover for Defendant's breach of express and implied warranties, common law fraud and unjust enrichment.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because Plaintiff and Defendant are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant transacts business in this District, maintains its corporate headquarters in this District, is subject to personal jurisdiction in this District, and therefore is deemed to be a citizen of this District. Additionally, Defendant has advertised in this District and has received substantial revenue and profits from its sales of Midwestern Pet Food in this District; therefore, a substantial part of the events and/or omissions giving rise to the claims occurred, in part, within this District.

14. This Court has personal jurisdiction over Defendant because: Defendant's corporate headquarters is located in this District; Defendant is registered with the Indiana Secretary of State as a for-profit corporation permitted to operate in Indiana; Defendant conducts substantial business in the District; a

substantial part of the acts and omissions complained of occurred in this District; and Defendant has intentionally and purposefully placed Midwestern Pet Food into the stream of commerce within Indiana and throughout the United States.

THE PARTIES

Plaintiff Tammy Johnson

15. Plaintiff Tammy Johnson (“Plaintiff” or “Johnson”) is a citizen of the State of Georgia, and currently resides in Eastman, Georgia.

16. Plaintiff owns seven dogs, of which six are adult dogs, and one is a six-month old puppy.

17. For approximately two years, Johnson has purchased two types of Midwestern Pet Foods for her animals – SPORTMiX for her adult dogs, and SPORTMiX Puppy Small for her puppy. She has generally purchased the Products from Tractor Supply in Eastman, Georgia.

18. Prior to purchasing Midwestern Pet Food products, Plaintiff reviewed and relied upon information furnished by Defendant, which did not disclose or mention the health risks resulting from the Aflatoxin contamination of the Products. Plaintiff viewed this information on the Midwestern Pet Food packaging as well as on Defendant’s website.

19. During the week of January 3, 2021, Plaintiff noticed health problems arising in several of her dogs, including vomiting and diarrhea. The dogs who had

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