

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

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

Plaintiffs,

v.

MIDWESTERN PET FOODS, INC.,

Defendant.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

CASE NO. 3:21-cv-22

Plaintiffs Harvey E. Williams, Owen Woodall, Vollie Griffin, Mel LaFebre, and Christina Kennedy (“Plaintiffs”), on behalf of themselves and all others similarly situated, bring this class action suit for damages and equitable relief against Defendant Midwestern Pet Foods, Inc. (“Defendant”). Plaintiffs allege the following based upon personal information as to allegations regarding themselves, on the investigation of their counsel, and on information and belief as to all other allegations:

**NATURE OF THE ACTION**

1. Plaintiffs Harvey E. Williams, Owen Woodall, Vollie Griffin, Mel LaFebre, and Christina Kennedy bring this case on behalf of themselves and other all consumers nationwide who bought Defendant’s pet food products containing excessive levels of Aflatoxin, a toxin created by the mold *Aspergillus flavus*. At high levels, aflatoxin can result in illness and death.

2. Defendant manufactures, warrants, advertises, and sells a variety of pet foods under

several brand names, including Sportmix CanineX, Earthborne Holistic, Pro Pac, Venture, Wholesomes, Sportmix, Sportstrail, Splash, Nunn Better and Unrefined.

3. On or around December 30, 2020, Defendant announced a recall of three formulas of cat and dog food products; specifically, Sportmix Energy Plus, Sportmix Premium High Energy and Sportmix Original Cat. According to Defendant's news announcement, tests indicated that the recalled products contained "levels of Aflatoxin that exceed acceptable limits." Aflatoxin is a toxic mold that can result in illness or death if ingested. On or around the same day, the Food and Drug Administration ("FDA") published news about Defendant's recall and reported that several dogs have fallen ill or died after consuming Defendant's Sportmix products.

4. On or around January 11, 2021, Defendant announced that it was expanding the list of recalled pet foods.<sup>1</sup> According to Defendant's January 11, 2021 news release, the recalled products were made with corn ingredients and were produced at its Chickasha Operations Facility in Oklahoma. The recalled products all expire on or before July 9, 2022 and are identified as:

- 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
- Sportstrail, 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

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<sup>1</sup> <https://www.fda.gov/animal-veterinary/outbreaks-and-advisories/fda-alert-certain-lots-sportmix-pet-food-recalled-potentially-fatal-levels-aflatoxin>

- 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 above products are hereinafter referred to as “Pet Food Products.”

5. Defendant has marketed and advertised the Pet Food Products as suitable for animals, has represented that the Pet Food Products provide targeted nutrition, and/or has guaranteed the Pet Food Products for taste and nutrition. As alleged herein, Defendant’s marketing and advertising of the Pet Food Products is false, deceptive, and misleading to reasonable consumers because the Pet Food Products contained dangerous or toxic levels of Aflatoxin, and thus were not as advertised, represented, or guaranteed.

6. Plaintiffs and Class members would not have purchased the Pet Food Products had they known the Products contained, or might have contained, dangerous or toxic levels of Aflatoxin and/or that Defendant did not adequately test or inspect the Pet Food Products before selling them.

7. Accordingly, Plaintiffs Harvey E. Williams bring this action and asserts claims on behalf of themselves and all other similarly situated persons (defined below) for negligence, negligent misrepresentation, fraud, and unjust enrichment.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds \$5 million, exclusive of interests and costs; the number of members of the proposed Class exceeds 100; and many members of the proposed Class are citizens of different states than the Defendant.

9. This Court has personal jurisdiction over Defendant because Defendant is headquartered in the State of Indiana, regularly conducts business in this Judicial District, and has extensive contacts with this forum.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as Defendant transacts substantial business in this District.

11. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

## **THE PARTIES**

### **Plaintiffs**

12. Plaintiff Harvey E. Williams is a citizen of Georgia who resides in Baxley, Georgia. Plaintiff bought and fed Defendant's Sportmix Premium High Energy to his pet American Pitbull Terriers—Jamaica, Red and Dozer—who were healthy before consuming the Sportmix Premium High Energy food. Plaintiff bought the Sportmix Premium High Energy from Tractor Supply in Baxley, Georgia in or around December 2020. After consuming the product, Jamaica, Red and Dozer experienced sluggishness and gastrointestinal issues. Jamaica and Red passed away suddenly and unexpectedly. Jamaica had given birth to a litter of eight puppies shortly after Christmas and all the puppies also died suddenly and unexpected. Dozer ultimately recovered after he stopped consuming the Sportmix Premium High Energy food.

13. Before Defendant's recalls, Plaintiff Williams was not aware nor had any knowledge that Defendant's recalled Sportmix Premium High Energy food might contain excessive levels of Aflatoxin, or that Defendant did not adequately test or inspect the food before selling it. Defendant did not disclose these material facts on the food label. Plaintiff would not have purchased the Sportmix Premium High Energy food or fed it to Jamaica, Red, and Dozer had he known that the food might contain excessive levels of Aflatoxin, or that Defendant did not adequately test or inspect the food before selling. In buying the Sportmix Premium High Energy food, Plaintiff relied on the representations on the food label.

14. Plaintiff Owen Woodall is a citizen of North Carolina who resides in Dallas, North Carolina. Plaintiff purchased and fed Defendant's Sportmix Energy Plus to his pet Treeing Walker—Billy—who was healthy before consuming the Sportmix Energy Plus food. Plaintiff bought the Sportmix Energy Plus from Southern States in Dallas, North Carolina in or around November or December 2020. After consuming the product, Billy experienced loss of appetite, weight loss,

gastrointestinal issues, and growths on his intestines and anus. Billy was treated by a veterinarian but was ultimately euthanized in early January 2021. Plaintiff incurred expenses in connection with veterinary treatment.

15. Before Defendant's recalls, Plaintiff Woodall was not aware nor had any knowledge that Defendant's recalled Sportmix Energy Plus food might contain excessive levels of Aflatoxin, or that Defendant or that Defendant did not adequately test or inspect the food before selling it. Defendant did not disclose these material facts on the food label. Plaintiff would not have purchased the Sportmix Energy Plus food or fed it to Billy had he known that the food might contain excessive levels of Aflatoxin, or that Defendant did not adequately test or inspect the food before selling. In buying the Sportmix High Energy Plus food, Plaintiff relied on the representations on the food label.

16. Plaintiff Vollie Griffin is a citizen of Texas, residing in Cuero, Texas. Plaintiff purchased and fed Defendant's Sportmix Energy Plus to her pet rottweiler—Bishop—who was healthy before consuming the Sportmix Energy Plus. Plaintiff bought the Sportmix Energy Plus from Ful-O-Pep in Cuero, Texas in or around December 2020. After consuming the product, Bishop experienced skin issues, gastrointestinal problems, and swelling of his testicles requiring him to be neutered. Bishop was seen by a veterinarian and prescribed medication for diarrhea but continues to suffer symptoms. Plaintiff incurred expenses in connection with veterinary treatment.

17. Before Defendant's recalls, Plaintiff Griffin was not aware nor had any knowledge that Defendant's recalled Sportmix Energy Plus food might contain excessive levels of Aflatoxin, or that Defendant did not adequately test or inspect the food before selling it. Defendant did not disclose these material facts on the food label. Plaintiff would not have purchased the Sportmix Energy Plus or fed it to Bishop had she known that the food might contain excess levels of Aflatoxin, or that Defendant did not adequately test or inspect the food before selling. In buying the Sportmix Energy Plus, Plaintiff relied on the representations on the food label.

18. Plaintiff Mel LaFebre is a citizen of California, who resides in Valley Springs, California. Plaintiff purchased and fed Defendant's Sportmix Energy Plus to his pet Pitbull—Bella—who was healthy before consuming the Sportmix Energy Plus. Plaintiff bought the Sportmix Energy Plus online from Tractor Supply in or about December 2020. After consuming the product, Bella

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