

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

<p>GMO FREE USA d.b.a. TOXIN FREE USA, P.O. Box 458 Unionville, CT 06085, and CLEAN LABEL PROJECT FOUNDATION, 280 E. 1st Ave. #873, Broomfield, CO 80038,</p> <p>Plaintiffs,</p> <p>v.</p> <p>NESTLÉ PURINA PETCARE COMPANY, 1 Checkerboard Square, St. Louis, MO 63164, and NESTLÉ USA, INC., 1812 N. Moore Street Arlington, VA 22209,</p> <p>Defendants.</p>	<p>Case No. <u>2020 CA 002775 B</u></p> <p>COMPLAINT</p> <p><u>DEMAND FOR JURY TRIAL</u></p>
---	---

COMPLAINT

On behalf of themselves and the general public, Plaintiffs GMO Free USA d.b.a. Toxin Free USA (“Toxin Free USA”) and Clean Label Project Foundation (“Clean Label Project” or “CLP”) (collectively, “Plaintiffs”) bring this action against Defendants Nestlé USA, Inc. and its wholly owned subsidiary Nestlé Purina PetCare Company (collectively, “Purina,” or “Defendants”), regarding the deceptive labeling, marketing, and sale of Purina’s Beyond Natural Cat Food products that were or are marketed as “natural” and containing “no artificial . . . preservatives” (collectively, the “Products”),¹ and alleges the following based upon information, belief, and the investigation of counsel:

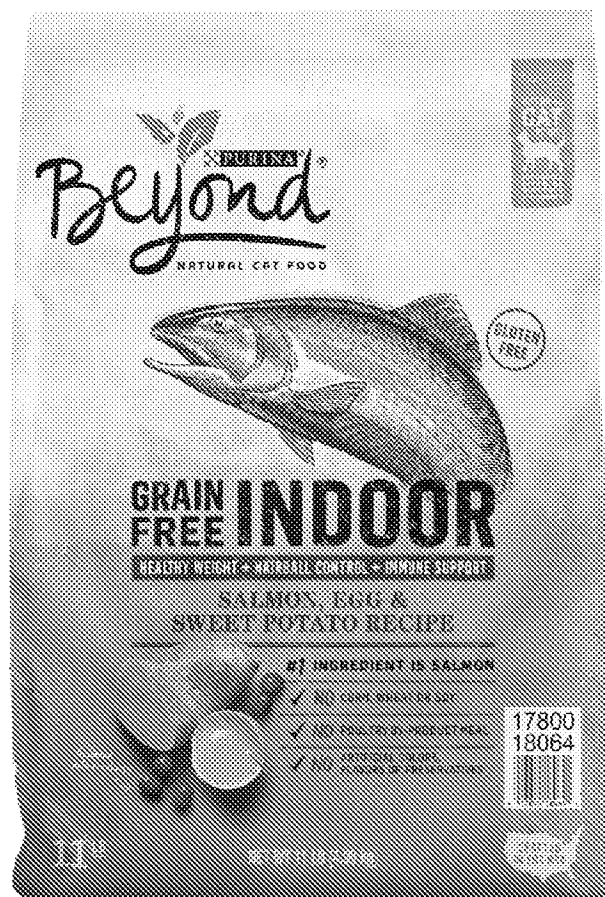
¹ Discovery may demonstrate that additional Purina® products are within the scope of this Complaint. Plaintiffs reserve the right to amend this complaint to include additional pet food items identified through the course of discovery.

INTRODUCTION

1. Due to concerns about health, sustainability, and the use of synthetically created chemicals in the production of food, D.C. consumers are increasingly considering how food, both for them and for their animal companions, is grown, processed, and prepared.

2. Purina knows that consumers seek out and wish to purchase natural foods for their pets that do not contain artificial or synthetic chemicals.

3. To capture this growing market, Purina advertises and promotes the Products as “natural” and as containing “no artificial . . . preservatives.” See **Figure 1**, below:



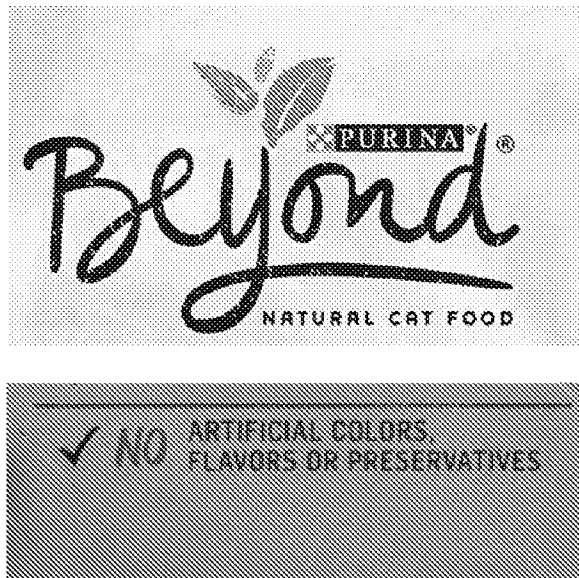


Figure 1

4. D.C. consumers who see these labeling claims on the packaging can find further support for these representations on Purina’s website, including information on what Purina considers “natural” to mean.²

5. These claims are false, deceptive, and misleading. The Products at issue are not “natural” or free of artificial preservatives. The Products contain residues of the unnatural biocide glyphosate and the artificial preservative ethoxyquin.

6. Plaintiffs purchased the Products for the purpose of evaluation by a private laboratory. Quantitative testing performed by that laboratory indicated that the Products purchased by Plaintiffs contained residues of glyphosate and ethoxyquin.

7. This testing suggests that residues of artificial biocides and preservatives are

² See, e.g., Purina, *What Is The Difference Between Natural and Organic Cat Food?*, <https://www.purina.com/articles/cat/nutrition/what-is-the-difference-between-natural-and-organic-cat-food> (last visited May 5, 2020); Purina, *Natural Dog Food vs. Holistic: What’s the Difference?*, <https://www.purina.com/articles/dog/nutrition/natural-vs-holistic-dog-food> (last visited May 5, 2020).

generally present in the Products, or at a minimum, that Purina makes no efforts to confirm that they are not present. As a result, D.C. consumers, who are led to believe that the Products are assuredly “natural” and free of artificial preservatives, in fact bear the risk of purchasing Products that are not natural and that contain artificial preservatives.

8. A reasonable D.C. consumer would not expect products with “natural” and “no artificial . . . preservatives” representations to contain unnatural biocides and artificial preservatives.

9. In sum, Purina is deceiving D.C. consumers into believing that the Products are “natural” and contain “no artificial . . . preservatives” when, in fact, they are not natural and do contain artificial preservatives.

10. Purina’s false and misleading representations and omissions, including a tendency to mislead, violate D.C. Code § 28-3904.

11. Because Purina’s labeling and advertising of the Products tend to mislead and are materially deceptive about the true nature, quality, and ingredients of the Products, Plaintiffs Toxin Free USA and Clean Label Project bring this deceptive advertising case on behalf of themselves and the general public, and seek relief, including an injunction to halt Purina’s false marketing of the Products.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over the parties in this case. Plaintiffs, by filing this Complaint, consent to this Court having personal jurisdiction over them.

13. Plaintiffs have members and/or staff based in the District of Columbia.

14. This Court has personal jurisdiction over Defendants pursuant to D.C. Code § 13-423. Defendants have sufficient minimum contacts with the District of Columbia to establish

personal jurisdiction of this Court over them because, *inter alia*, Defendants are engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avail themselves of the laws of this District through their marketing and sales of the Products in this District.

15. This Court has subject-matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), and (k)(2).

PARTIES

16. GMO Free USA d.b.a. Toxin Free USA is a section 501(c)(3) non-profit, public-interest organization whose mission is to harness independent science and agroecology concepts to advocate for clean and healthy food and ecological systems. Toxin Free USA educates consumers about potential hazards of synthetic ingredients, pesticides and biocides, and genetically engineered organisms.

17. Toxin Free USA performs its work throughout the United States, including in the District of Columbia.

18. Toxin Free USA was formed in 2012 with the intent of organizing national boycotts of food companies that use genetically modified ingredients and related synthetic herbicides and pesticides in their products and pressuring companies to remove those ingredients or contaminants.

19. Toxin Free USA firmly believes in food transparency. The organization diligently works to promote food and ecological systems that are clean, accessible, and free of contamination. To that end, Toxin Free USA educates consumers, increasing their awareness and knowledge of glyphosate use in agricultural production and its effect on health and the environment, as well as the use and effects of artificial preservatives.

20. Toxin Free USA's website, publications, public education, research, network

building, and mobilization activities provide an important service to consumers and community activists every month.

21. In July of 2019, Toxin Free USA purchased Purina® Beyond® Natural Cat Food—Grain Free Indoor: Salmon, Egg & Sweet Potato Recipe from a Target store located at 3100 14th St NW #201, Washington, DC 20010, in order to evaluate their purported qualities as “natural” products containing “no artificial . . . preservatives.”

22. Clean Label Project is a section 501(c)(3) non-profit, public-interest organization whose mission is to educate the public and enable consumers to make informed choices on cleaner options every time they shop.

23. Clean Label Project uses state-of-the-art laboratory testing to identify the best and worst labeled products and publishes its findings using a 5-star rating system.

24. Clean Label Project was formed in 2016 with the goal of reducing contamination across all consumer products.

25. Clean Label Project has an interest in food label truth and transparency and consumers’ right to know what is in the products they purchase. To that end, CLP educates consumers by presenting unbiased science in a straightforward and useful way to the public, thus allowing consumers to make data-based decisions.

26. In 2017, through an initiative that received press coverage, Clean Label Project “tested 900 pet food products from 71 brands and screened for 130 toxins,”³ providing an important service to pet owners.

³ *Are you poisoning your pet? Check food ratings.* KNXV. <https://www.abc15.com/news/local-news/water-cooler/are-you-poisoning-your-pet-clean-label-project-releases-pet-food-ratings> (last visited Mar. 23, 2020).

27. In March of 2020, Clean Label Project purchased Purina® Beyond® Natural Cat Food—Grain Free Indoor: Salmon, Egg & Sweet Potato Recipe from Amazon.com, in order to evaluate their purported qualities as “natural” products containing “no artificial . . . preservatives.”

28. At all times mentioned herein, Nestlé Purina PetCare Company was and is a Missouri corporation that maintains its principal place of business and headquarters at Checkerboard Square in St. Louis, MO.

29. Nestlé Purina PetCare Company is a wholly owned subsidiary of Nestlé USA, Inc.

30. Nestlé USA, Inc. is a Delaware corporation that maintains its principal place of business in Arlington, Virginia.

31. Defendants market and distribute the Products in retail outlets in the District of Columbia and throughout the United States.

32. Upon information and belief, Defendants have caused harm to the general public of the District of Columbia.

33. Plaintiffs are acting on behalf of the general public as private attorneys general pursuant to D.C. Code §§ 28-3905(k)(1)(C)-(D). Plaintiffs are non-profit organizations pursuant to D.C. Code § 28-3901(a)(14) and public-interest organizations pursuant to D.C. Code § 28-3901(a)(15). Plaintiffs are longstanding advocates of the rights of consumers, including D.C. consumers, to truthful labeling and marketing.

FACTUAL ALLEGATIONS

34. D.C. consumers increasingly and consciously seek out natural and healthful food products for themselves and their pets. Healthful, natural pet foods were once a niche market, but now they are now sold by conventional retailers, and their sales continue to soar.

35. D.C. consumers value natural foods for themselves and their pets for myriad health, environmental, and political reasons, including avoiding chemicals and additives, keeping their pets well, helping the environment, and financially supporting companies that share their values.

36. A study conducted by The Nielsen Company found that “sales of U.S. pet foods bearing the claims ‘natural’ and ‘no artificial preservatives’ have grown dramatically” and that “many consumers perceive natural foods to have unique advantages.”⁴

A. Purina Presents the Products as “Natural” and as Containing “No Artificial . . . Preservatives.”

37. Purina knows that consumers seek out and wish to purchase whole, natural foods for their pets that do not contain artificial chemicals.

38. Recent national surveys have found that a majority of consumers seek out products with a “natural” label, believing that “natural” means that the products are produced without pesticides or artificial chemicals.⁵

39. To capture this market, Purina markets its Beyond® brand of pet food as “natural” and as containing “no artificial . . . preservatives.”⁶

40. D.C. consumers reasonably believe that a product or ingredient represented as “natural” does not contain residues of synthetic chemicals.

⁴ *The Humanization of Pet Food*, Nielsen (2016), <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/humanization-of-pet-food-report-mar-2016-1.pdf>

⁵ See, e.g., Jayson L. Lusk, *Consumer Perceptions of Healthy and Natural Food Labels*, 29 (Jan. 15, 2019), <https://bit.ly/2Hy06ML> (finding that 68.1% more consumers perceive crops “sprayed with synthetic pesticides like glyphosate or chlorpyrifos” to be “unnatural” than “natural,” and that 58.8% of consumers understand “natural” to mean “no preservatives”); Consumer Reports National Research Center, *Natural Food Labels Survey* (2015) (finding that 63% of consumers understand a “natural” label to mean that “no toxic pesticides were used”).

⁶ Purina’s website supplements these claims on its *Quality Pet Food* page. See <https://www.purina.com/nutrition/quality-pet-food> (last visited Mar. 23, 2020) (“every ingredient is inspected for quality before it goes into your pet’s food”).

41. D.C. consumers reasonably believe that a product or ingredient represented as “natural” does not contain residues of unnatural biocides.

42. In 2015, the Consumer Reports National Research Center conducted a nationally representative phone survey to assess consumer opinion regarding food labeling.⁷

43. Sixty-three percent of all respondents in the Consumer Reports survey said that a “natural” label on packaged and processed foods means that “no toxic pesticides were used.”⁸

44. Purina knows and intends that when consumers see the Product labels or advertisements promising that the Products are “natural,” consumers will understand that to mean that, at the very least, that the products do not contain the residues of synthetic chemicals like pesticides and biocides.

45. Purina itself tells consumers that “natural” means “[e]xisting in or caused by nature” and “not made or caused by humankind.”⁹

46. Glyphosate and ethoxyquin are manmade chemicals that neither exist in nor are caused by nature.

47. Purina goes on to assure consumers that its “natural” pet foods comply with the guidelines set forth by the Association of American Feed Control Officials, stating that there are exceptions for “synthetic sources of essential amino acids, vitamins or minerals,” provided that there is a “disclaimer statement.”¹⁰

48. Neither glyphosate nor ethoxyquin are a source of essential amino acids, vitamins, or minerals.

⁷ Consumer Reports National Research Center, *supra* note 6.

⁸ *Id.* at 2.

⁹ Purina, *Natural Dog Food vs. Holistic: What’s the Difference?*, *supra* note 2.

¹⁰ *Id.*; see also Purina, *What Is The Difference Between Natural and Organic Cat Food?*, *supra* note 2.

49. Purina’s definition of “natural” and its accompanying explanation of the exceptions give consumers the false expectation that “natural” pet food will not contain synthetic chemicals other than disclosed “synthetic nutrients [that] are necessary to help ensure the product is nutritionally complete.”¹¹

50. Unfortunately for consumers, and contrary to the expectations set by Purina, the Products in fact contain other synthetic chemicals even if glyphosate or ethoxyquin did fit within the exceptions that Purina claims to recognize (they do not), Purina does not include the disclaimer statement that it tells consumers to expect when synthetic chemicals are present in “natural” pet food.¹²

B. Glyphosate is Not Natural.

51. Quantitative testing performed by an independent laboratory on samples of the Products purchased by Plaintiffs has revealed the presence of glyphosate residue.

52. Glyphosate was invented by the agrochemical and agricultural biotechnology corporation Monsanto, which began marketing the herbicide in 1974 under the trade name Roundup.¹³

53. Glyphosate is derived from the amino acid glycine.

¹¹ *Id.*

¹² Plaintiffs do not allege that Purina has a general duty to disclose or warn consumers about the presence of glyphosate or ethoxyquin residues in the Products. Instead, Plaintiffs allege that by representing the Products as “natural” and not containing artificial preservatives, Purina unqualifiedly represented to D.C. consumers that such residues would not be present. Moreover, Purina reinforced this promise by choosing to specifically define what types of chemicals might be present in “natural” food, while leaving glyphosate and ethoxyquin out of that definition.

¹³ See Shannon Van Hoesen, *Study: Monsanto’s Glyphosate Most Heavily Used Weed-Killer in History*, Environmental Working Group (Feb. 2, 2016), <https://www.ewg.org/release/study-monsanto-s-glyphosate-most-heavily-used-weed-killer-history>.

54. To create glyphosate, one of the hydrogen atoms in glycine is artificially replaced with a phosphonomethyl group. Thus, glyphosate is not natural.

55. Over the past several years, consumers have become increasingly conscious¹⁴ of the potential detrimental health effects of biocides such as glyphosate.¹⁵

C. Ethoxyquin is an Artificial Preservative.

56. Quantitative testing performed by an independent laboratory on samples of the Products purchased by Plaintiffs has revealed the presence of ethoxyquin residue.

57. Ethoxyquin is a synthetic¹⁶ chemical commonly used as an artificial preservative in animal feed and some pet food.¹⁷

58. Over the past several decades,¹⁸ consumers have become increasingly conscious of the potential detrimental health effects of artificial preservatives such as ethoxyquin.

59. Purina discloses ethoxyquin for some products *but not* on the Products with the “natural” and “no artificial . . . preservatives” representations. *See Figures 2 and 3*, below¹⁹:

¹⁴ In fact, Purina has publicly responded to consumer concerns on glyphosate on its social media page. *See* Purina (@Purina), “Hi! Purina pet food is safe and does not contain harmful levels of glyphosate.” Twitter (Oct. 26, 2018, 10:26 AM), <https://twitter.com/Purina/status/1055827901000617984>.

¹⁵ Patricia Cohen, *\$2 Billion Verdict Against Monsanto Is Third to Find Roundup Caused Cancer*, New York Times (May 13, 2019), <https://www.nytimes.com/2019/05/13/business/monsanto-roundup-cancer-verdict.html>.

¹⁶ *See, e.g.*, A.K. Lundebye et. al, *Levels of synthetic antioxidants (ethoxyquin, butylated hydroxytoluene and butylated hydroxyanisole) in fish feed and commercially farmed fish*, Part A, 27:12 Food Additives & Contaminants 1652 (2010).

¹⁷ *See, e.g.*, 21 C.F.R. § 573.380 (“[Ethoxyquin] is intended for use only: (1) As a chemical preservative for retarding oxidation of carotene, xanthophylls, and vitamins A and E in animal feed and fish food and, (2) as an aid in preventing the development of organic peroxides in canned pet food”).

¹⁸ Purina has been aware of consumer concern over ethoxyquin since at least 1991. *See* Mary Daniels, *Pet Food Debate*, Chicago Tribune (May 12, 1991) <https://www.chicagotribune.com/news/ct-xpm-1991-05-12-9102120163-story.html>

¹⁹ *Compare Beyond Natural product page*, Purina, <https://www.purina.com/beyond/cats/dry-cat-food/indoor-grain-free-salmon-egg-sweet-potato> (last visited Mar. 23, 2020), *with Burger With Cheddar Cheese*, Purina,

Ingredients & Nutrition

Salmon, pea starch, chicken meal, pea protein, canola meal, cassava root flour, dried egg product, powdered cellulose, dried yeast, dried sweet potatoes, pea fiber, beef fat preserved with mixed-tocopherols, natural flavor, phosphoric acid, calcium carbonate, sodium bisulfate, potassium chloride, whole cranberries, salt, taurine, DL-Methionine, choline chloride, **MINERALS** [zinc sulfate, ferrous sulfate, manganese sulfate, copper sulfate, calcium iodate, sodium selenite], **VITAMINS** [Vitamin E supplement, niacin (Vitamin B-3), Vitamin A supplement, calcium pantothenate (Vitamin B-5), thiamine mononitrate (Vitamin B-1), Vitamin B-12 supplement, riboflavin supplement (Vitamin B-2), pyridoxine hydrochloride (Vitamin B-6), folic acid (Vitamin B-9), menadione sodium bisulfite complex (Vitamin K), Vitamin D-3 supplement, biotin (Vitamin B-7)], L-Lysine monohydrochloride, Vitamin E supplement, dried *Bacillus coagulans* fermentation product. C424319

Figure 2 (Beyond® Natural Webpage)

Ingredients & Nutrition

Beef by-product, soy flour, soy grits, high fructose corn syrup, water, wheat flour, corn syrup, beef, phosphoric acid, calcium carbonate, beef fat preserved with mixed-tocopherols, salt, soybean oil, sorbic acid (a preservative), cheese powder (source of cheddar cheese flavor), calcium propionate (a preservative), added color, **MINERALS** [zinc sulfate, ferrous sulfate, manganese sulfate, copper sulfate, calcium iodate, sodium selenite], DL-Methionine, **VITAMINS** [Vitamin E supplement, niacin (Vitamin B-3), Vitamin A supplement, calcium pantothenate (Vitamin B-5), thiamine mononitrate (Vitamin B-1), Vitamin B-12 supplement, riboflavin supplement (Vitamin B-2), pyridoxine hydrochloride (Vitamin B-6), folic acid (Vitamin B-9), menadione sodium bisulfite complex (Vitamin K), Vitamin D-3 supplement, biotin (Vitamin B-7)], choline chloride, ~~ethoxyquin~~ (a preservative), Yellow 5, Red 40, Yellow 5. D410419

Figure 3 (other Purina product not represented as “natural”)

D. Purina’s Marketing Is Misleading and Omits Material Facts.

60. Purina’s conduct in marketing or representing that the Products are “natural” and contain “no artificial . . . preservatives” misleads and/or tends to mislead the general public of the District of Columbia.

61. Discovery of the true nature of the content of the Products requires knowledge of chemistry and access to laboratory testing that is not available to the average reasonable consumer in the District.

<https://www.purina.com/moist-meaty/soft-dog-food/burger-with-cheddar-cheese> (last visited Mar. 13, 2020).

62. Failing to clarify what is meant by or “natural” or “no artificial . . . preservatives” when that meaning deviates from reasonable consumer expectations is an omission of relevant fact.

63. D.C. consumers reasonably believe that a product represented as “natural” does not contain, and was not made with, any synthetic or unnatural chemical.

64. D.C. consumers reasonably believe that a product represented as containing “no artificial . . . preservatives” does not contain, and was not made with, an artificial preservative like ethoxyquin.

65. Only Purina knows the methods by which the Products are produced and what would account for the presence of glyphosate and ethoxyquin residue in the Products.²⁰

66. Testing by Plaintiffs revealed the presence of glyphosate and ethoxyquin residues in the Products, as shown in the table below.

Products Tested	Purchase Date	Test Results (in parts-per-billion)
Purina Beyond® Natural Cat Food - Grain Free Indoor: Salmon, Egg & Sweet Potato Recipe	July 9, 2019	Ethoxyquin: 16 ppb Glyphosate: 965 ppb
Purina Beyond® Natural Cat Food - Grain Free Indoor: Salmon, Egg & Sweet Potato Recipe	March 24, 2020	Ethoxyquin: 112 ppb Glyphosate: 203 ppb

67. To this day, Purina continues to conceal and suppress the true nature, identity, source, and method of production of its Products.

²⁰ Purina does tell consumers that it has “the power to reject any ingredients that don’t meet our high standards,” which furthers the deception that the Products at issue would not contain contaminants which consumers find “unnatural” and “artificial.” *See Sourcing Quality Ingredients*, Purina, <https://www.purina.com/nutrition/sourcing> (last visited Mar. 13, 2020).

E. Purina Knew or Should Have Known That Its Representations Were False.

68. Purina holds itself out to the public as a trusted expert in the sourcing and processing of pet food.

69. Purina knew what representations it made on the labels of the Products. Purina also knew how the pet food was sourced and processed, and therefore knew or should have known that the Products contain residues of glyphosate, an unnatural biocide, and ethoxyquin, an artificial preservative.

70. Purina thus knew, or should have known, the facts demonstrating that the Products were mislabeled and falsely advertised.

71. D.C. consumers rely on label representations and information in making purchase decisions, especially in purchasing food.

72. Purina made the false, misleading, and deceptive representations and omissions, intending for D.C. consumers to rely upon these representations and omissions in purchasing the Products.

73. Purina knows that D.C. consumers prefer natural pet foods and pet foods that do not contain unnatural or potentially dangerous chemicals or their residues.

74. Upon information and belief, Purina has failed to remedy the problem with the Products, thus causing ongoing harm to D.C. consumers.

75. D.C. consumers are at risk of real, immediate, and continuing harm if the Products continue to be sold in the District with the misleading representations.

76. Reasonable consumers do not expect the Products, represented and advertised as “natural,” and as containing “no artificial . . . preservatives,” to contain unnatural chemical residues such as glyphosate or artificial preservative residues such as ethoxyquin.

CAUSE OF ACTION
VIOLATION OF THE DISTRICT OF COLUMBIA
CONSUMER PROTECTION PROCEDURES ACT

77. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), Toxin Free USA and Clean Label Project bring this claim on behalf of themselves and the general public of the District of Columbia, for Purina’s violation of the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.*

78. Plaintiffs incorporate by reference all the allegations in the preceding paragraphs of this Complaint.

79. Purina has labeled and advertised the Products as “natural” and has otherwise presented an image and marketing materials suggesting that the Products are natural, when in fact the Products contain residues of an unnatural chemical biocide and an artificial preservative.

80. Purina has labeled and advertised the Products as containing “no artificial . . . preservatives” and has otherwise presented an image and marketing materials suggesting that the Products contain no artificial preservatives, when in fact the Products contain residues of an artificial preservative.

81. Purina’s advertising of the Products misrepresents, tends to mislead regarding material facts, and omits facts regarding the source, characteristics, standard, quality, and grade of the Products.

82. The Products lack the characteristics, ingredients, benefits, standards, qualities, or grades that Purina states and implies.

83. Purina’s misstatements, innuendo, and omissions are material and have the tendency to mislead.

84. Purina knowingly did not sell the Products as advertised.

85. The facts as alleged above demonstrate that Purina has violated the CPPA, D.C. Code § 28-3901 *et seq.* Specifically, Purina has violated D.C. Code § 28-3904, which makes it an unlawful trade practice to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
- (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (e) misrepresent as to a material fact which has a tendency to mislead; . . .
- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead; . . . [or]
- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

86. The CPPA makes such conduct an unlawful trade practice “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904.

87. Toxin Free USA and CLP have a sufficient nexus to D.C. consumers of the Products adequately to represent their interests.

88. Because Purina misrepresents the characteristics, ingredients, and benefits of the Products; misrepresents the standard, quality, and grade of the Products; misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about the Products; and advertises the Products without the intent to sell

the Products as advertised, Purina’s marketing of the Products as “natural” and as containing “no artificial . . . preservatives” violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

89. Purina is a “person” within the meaning of D.C. Code § 28-3901(a)(1), is a merchant under § 28-3901(a)(3) and provides “goods” within the meaning of § 28-3901(a)(7).

90. Pursuant to D.C. Code § 28-3905(k)(1)(C), “[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.”

91. Toxin Free USA is a nonprofit organization pursuant to D.C. Code § 28-3905(k)(1)(C) that in July of 2019, purchased Products in order to test or evaluate their qualities.

92. CLP is a nonprofit organization pursuant to D.C. Code § 28-3905(k)(1)(C) that in March of 2020, purchased Products in order to test or evaluate their qualities.

93. Purina’s conduct violates the CPPA regardless of whether “any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904. Pursuant to D.C. Code § 28-3905(k)(1)(A), “[a] consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

94. Any D.C. consumer, regardless of purchasing or being misled, has the right to bring an action for redress of Purina’s unlawful behavior. *See* D.C. Code § 28-3905(k)(1)(A). As alleged in this Complaint, the Purina Products are marketed and sold in the District, *see supra* ¶¶ 14, 31, and consumers within the District have purchased these Products under the misrepresentations

made by Purina. Therefore, a variety of purchasing and non-purchasing consumers could bring an action against Purina based on the misrepresentations and omissions listed in this Complaint.

95. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), “a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.”

96. The only limitation on this power of a public interest organization to act on behalf of consumers is that the public interest organization must have “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see supra* ¶¶ 16-27, Plaintiffs were founded with the purpose of advocating for and educating consumers, including consumers in the District of Columbia, in the arena of clean and healthy food and ecological systems. In addition, Plaintiffs have retained the undersigned competent counsel, with significant experience in litigating under the CPPA, to pursue this action, and Plaintiffs have previously represented District consumers in similar actions under the CPPA.

97. Plaintiffs are public-interest organizations pursuant to D.C. Code § 28-3905(k)(1)(D) and bring this action on behalf of members of the general public who could bring the action under D.C. Code § 28-3905(k)(1)(A).

98. Via §§ 28-3905(k)(1)(D)(i), the CPPA allows for non-profit organizational standing and public interest organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of constitutional standing under Article III.

99. Plaintiffs are each a “person” within the meaning of D.C. Code § 28-3901(a)(1), a “non-profit organization” within the meaning of D.C. Code § 28-3901(a)(14), and a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Toxin Free USA and Clean Label Project pray for judgment against Purina and request the following relief:

- A. a declaration that Purina’s conduct is in violation of the CPPA;
- B. an order enjoining Purina’s conduct found to be in violation of the CPPA;
- C. an order granting Plaintiffs’ costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

JURY TRIAL DEMANDED

Plaintiffs Toxin Free USA and Clean Label Project hereby demand a trial by jury.

DATED: June 12, 2020

RICHMAN LAW GROUP



By: Kim E. Richman (D.C. Bar No. 1022978)
krichman@richmanlawgroup.com
8 West 126th Street
New York, New York 10027
T: (718) 878-4707 | F: (212) 687-8292

Attorneys for Plaintiffs

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

INFORMATION SHEET

GMO FREE USA d.b.a. TOXIN FREE USA, and CLEAN LABEL PROJECT FOUNDATION

Case Number: **2020 CA 002775 B**

vs

Date: 6/12/2020

NESTLÉ PURINA PETCARE COMPANY and NESTLÉ USA, INC.

One of the defendants is being sued in their official capacity.

Name: <i>(Please Print)</i> Kim E. Richman	Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff
Firm Name: Richman Law Group	<input type="checkbox"/> Self (Pro Se)
Telephone No.: (718) 878-4707	<input type="checkbox"/> Other: _____
Six digit Unified Bar No.: 1022978	

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
 Demand: \$ _____ Other: Type text here

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: *(Check One Box Only)*

A. CONTRACTS

COLLECTION CASES

- | | | |
|---|---|--|
| <input type="checkbox"/> 01 Breach of Contract
<input type="checkbox"/> 02 Breach of Warranty
<input type="checkbox"/> 06 Negotiable Instrument
<input type="checkbox"/> 07 Personal Property
<input type="checkbox"/> 13 Employment Discrimination
<input type="checkbox"/> 15 Special Education Fees | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent
<input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent
<input type="checkbox"/> 27 Insurance/Subrogation Over \$25,000 Pltf. Grants Consent
<input type="checkbox"/> 07 Insurance/Subrogation Under \$25,000 Pltf. Grants Consent
<input type="checkbox"/> 28 Motion to Confirm Arbitration Award (Collection Cases Only) | <input type="checkbox"/> 16 Under \$25,000 Consent Denied
<input type="checkbox"/> 18 OVER \$25,000 Consent Denied
<input type="checkbox"/> 26 Insurance/Subrogation Over \$25,000 Consent Denied
<input type="checkbox"/> 34 Insurance/Subrogation Under \$25,000 Consent Denied |
|---|---|--|

B. PROPERTY TORTS

- | | | |
|---|--|--------------------------------------|
| <input type="checkbox"/> 01 Automobile
<input type="checkbox"/> 02 Conversion
<input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | <input type="checkbox"/> 03 Destruction of Private Property
<input type="checkbox"/> 04 Property Damage | <input type="checkbox"/> 05 Trespass |
|---|--|--------------------------------------|

C. PERSONAL TORTS

- | | | |
|---|---|---|
| <input type="checkbox"/> 01 Abuse of Process
<input type="checkbox"/> 02 Alienation of Affection
<input type="checkbox"/> 03 Assault and Battery
<input type="checkbox"/> 04 Automobile- Personal Injury
<input checked="" type="checkbox"/> 05 Deceit (Misrepresentation)
<input type="checkbox"/> 06 False Accusation
<input type="checkbox"/> 07 False Arrest
<input type="checkbox"/> 08 Fraud | <input type="checkbox"/> 10 Invasion of Privacy
<input type="checkbox"/> 11 Libel and Slander
<input type="checkbox"/> 12 Malicious Interference
<input type="checkbox"/> 13 Malicious Prosecution
<input type="checkbox"/> 14 Malpractice Legal
<input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death)
<input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice) | <input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice)
<input type="checkbox"/> 18 Wrongful Death (Not Malpractice)
<input type="checkbox"/> 19 Wrongful Eviction
<input type="checkbox"/> 20 Friendly Suit
<input type="checkbox"/> 21 Asbestos
<input type="checkbox"/> 22 Toxic/Mass Torts
<input type="checkbox"/> 23 Tobacco
<input type="checkbox"/> 24 Lead Paint |
|---|---|---|

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS


- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-1 (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |



Attorney's Signature

6/12/2020

Date



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Telephone: (202) 879-1133 • Website: www.dccourts.gov

GMO FREE USA et al
Vs.
NESTLE USA, INC. et al

C.A. No. 2020 CA 002775 B

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure (“Super. Ct. Civ. R.”) 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge’s name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the summons, the complaint, and this Initial Order and Addendum. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in Super. Ct. Civ. R. 4(m).

(3) Within 21 days of service as described above, except as otherwise noted in Super. Ct. Civ. R. 12, each defendant must respond to the complaint by filing an answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in Super. Ct. Civ. R. 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an initial scheduling and settlement conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than seven business days before the scheduling conference date.

No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge’s Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court’s website <http://www.dccourts.gov/>.

Chief Judge Robert E. Morin

Case Assigned to: Judge KELLY A HIGASHI

Date: June 15, 2020

Initial Conference: 9:30 am, Friday, September 11, 2020

Location: Courtroom JM-4

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 2900, 410 E Street, N.W. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Actions Branch. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Robert E. Morin