

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

KELLIE LOEB, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

Case No. 18-cv-00494-NJ

CHAMPION PETFOODS USA INC. and
CHAMPION PETFOODS LP,

Defendants.

**DEFENDANTS CHAMPION PETFOODS USA INC.'S AND
CHAMPION PETFOODS LP'S MOTION TO DISMISS**

Defendants Champion Petfoods USA Inc. and Champion Petfoods LP (collectively, the “Defendants”) hereby move to dismiss the purported Class Action Complaint (“Complaint”) filed by Plaintiff Kellie Loeb pursuant to Federal Rules of Civil Procedure 8(a), 9(b), 12(b)(1) and 12(b)(6) for lack of standing and failure to state a claim upon which relief can be granted. Defendants respectfully submit that the well-pleaded factual allegations set forth in the Complaint are insufficient to support jurisdiction or any of the causes of action asserted therein. This Motion is supported by the accompanying Memorandum in Support of Defendants’ Motion to Dismiss.

WHEREFORE, Defendants respectfully request that this action be dismissed pursuant to Federal Rules of Civil Procedure 8(a), 9(b), 12(b)(1) and 12(b)(6), and that the Court grant such other and further relief as it may find just and proper.

Dated: April 13, 2018

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**DEFENDANTS CHAMPION PETFOODS USA INC.'S AND
CHAMPION PETFOODS LP'S MEMORANDUM IN SUPPORT
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I. INTRODUCTION

This lawsuit falsely accuses Champion Petfoods USA Inc. and Champion Petfoods LP (collectively, “Champion”) of misleading pet lovers by selling ORIJEN and ACANA dog food with alleged “excessive levels of heavy metals” and without disclosing such. In direct contradiction to these allegations, Plaintiff Kellie Loeb’s (“Loeb”) Complaint incorporates Champion’s publicly available May 2017 White Paper (the “White Paper”) which analyzes and discloses the miniscule levels of naturally occurring heavy metals in Champion’s dog food. Because Champion uses a significant amount of fresh and raw meat, fish, and other natural ingredients in making its dog food, the finished product contains naturally occurring heavy metals. Based on third-party testing, the White Paper points out that the small amount of naturally occurring heavy metals present in ORIJEN and ACANA diets are well below a level that would pose a danger to dogs:

All heavy meals in ORIJEN and ACANA are from natural sources and not from artificial or industrial sources. All heavy metal results for ORIJEN and ACANA are well below the maximum tolerable limits set by the NRC Committee on Mineral and Toxic Substances in Diets and Water for Animals.

In conclusion, the heavy metals reported in ORIJEN and ACANA foods do not lead to adverse effects or food safety concerns for dogs and cats.

White Paper at 4. The test data reflected in the White Paper (and relied on by Loeb) demonstrates that (1) the average arsenic level is 7% of the maximum tolerable limit (“MTL”) set forth by the Food and Drug Administration (“FDA”); (2) the average cadmium level is .9% of the MTL set forth by the National Research Council (“NRC”); (3) the average lead level is 2% of the MTL set forth by the NRC; and (4) the average mercury level is 7% of the MTL set forth by the FDA based on the NRC recommendations. The MTL means the largest intake of a chemical which is unlikely to cause harm, and the White Paper demonstrates that Champion’s dog food is not close to approaching an unsafe level for heavy metal content.

The Complaint is devoid of any non-conclusory allegation whatsoever, let alone a plausible one, that Champion's dog foods pose a health risk to pets. As recognized by the United States Supreme Court in *Twombly* and *Iqbal*, conclusory and implausible allegations of the type made here fall far short of adequately pleading a claim for relief. The Complaint should be dismissed on this basis alone.

Nor has Loeb pled facts to establish Article III standing which is required for the Court to have jurisdiction over any of her claims. Specifically, she has not alleged any facts which establish that she suffered any concrete harm from her purchase of the Champion dog food because, based on the White Paper, she received what was described on the packaging: a safe premium dog food. On these additional grounds, the Complaint should also be dismissed.

In addition, when further legal scrutiny is given to each of the individual claims, they have various other pleading deficiencies as well, requiring dismissal. Count I, violation of the Wisconsin Deceptive Trade Practices Act ("WDTPA"), fails because (1) Loeb does not plead the claim with the specificity required by Rule 9(b), (2) the statements on Champion's packaging constitute classic non-actionable puffery under Wisconsin law, and (3) a WDTPA claim cannot be based on an omission. Loeb's Count II, violation of ATCP § 90.02, should be dismissed based on the plain language of the statute and the types of representations this statute pertains to, none of which are present here. The claims for breach of express and implied warranty in Counts III and IV should be dismissed because Loeb, based on the allegations in the Complaint, is not in privity with Champion. The breach of express warranty claim fails for the additional reason that Loeb did not plead any facts which establish that a warranty exists between her and Champion, and the breach of implied warranty claim fails because Loeb has not pled facts adequate to aver that the dog food she received was not merchantable. Finally, based on the pleadings, Count V

for unjust enrichment fails because Loeb received what she bargained for—safe premium dog food. For these reasons, and as set forth in more detail below, Loeb’s Complaint should be dismissed.

II. SUMMARY OF FACTUAL ALLEGATIONS

Champion sells a variety of dog foods throughout the United States. Dkt. 1 ¶ 1. Its dry dog food products are sold under the ORIJEN or ACANA brand names. *Id.* On the packaging of Champion dog foods it states that Champion’s products are “Biologically Appropriate” and contain “fresh, regional ingredients.” *Id.* According to the Complaint, on ORIJEN’s packaging, it also states that ORIJEN “features FRESH, RAW or DEHYDRATED ingredients, from minimally processed poultry, fish and eggs that are deemed fit for human consumption prior to inclusion in our foods.” *Id.*

Loeb alleges that she purchased ORIJEN dry dog food products (specifically, ORIJEN Original and ORIJEN Senior) for her two dogs on numerous occasions within the last 18 months, from various pet stores located within Waukesha County, Wisconsin. *Id.* at ¶ 6. She asserts her most recent purchase was a bag of ORIJEN Original purchased in early March of 2018. According to the Complaint, Loeb purchased the aforementioned products because she believed they were healthy, quality products for her dogs. *Id.*

In May of 2017, Champion published a White Paper (cited in ¶ 15 of the Complaint and for ease of reference attached hereto as Exhibit “A”)¹ analyzing ORIJEN and ACANA foods in

¹ “Documents attached to a motion to dismiss are treated as part of the pleadings if they are referenced by plaintiff’s complaint and are central to plaintiff’s claim.” *Maldonis v. City of Shell Lake*, No. 08-460, 2008 WL 4735143, at *1 (W.D. Wis. Oct. 28, 2008) (citing *Menominee Indian Tribe of Wis. v. Thompson*, 161 F.3d 449, 456 (7th Cir. 1998)). Loeb cites the White Paper in her Complaint (¶ 15 and <http://www.championpetfoods.com/wp-content/themes/champion-petfoods/res/research/Champion-Petfoods-White-Paper-Heavy-Metals.pdf>), and it is central to her claim that the dog food contains heavy metals because it discloses the amount of naturally occurring heavy metals in Champion’s dog food. As a result,

comparison to pet food safety standards. *Id.* at ¶ 15. Specifically, Champion analyzed the amount of arsenic, cadmium, lead, and mercury in its ACANA and ORIJEN dog and cat foods.

See Ex. A. In the White Paper, Champion provides the following chart:

HEAVY METAL	ACANA & ORIJEN DOG FOODS		ACANA & ORIJEN CAT FOODS		NRC/FDA Maximum Tolerable Limits (mg/kg)
	AVERAGE (mg/kg)	STANDARD DEVIATION (mg/kg)	AVERAGE (mg/kg)	STANDARD DEVIATION (mg/kg)	
Arsenic	0.89	1.05	1.36	1.37	12.50
Cadmium	0.09	0.09	0.09	0.09	10.00
Lead	0.23	0.15	0.17	0.14	10.00
Mercury	0.02	0.02	0.03	0.03	0.27

Loeb purports to reproduce the data from this chart in the Complaint, but left out the columns detailing the maximum tolerable limits pursuant to the FDA² and the NRC and converted the amounts in the chart from milligrams (mg) over kilograms (kg) to micrograms (ug) over kilograms (in an apparent attempt to make the numbers look large and scary). Dkt. 1 ¶ 15. Loeb next cites the FDA Total Diet Study for the average amount of arsenic, lead, cadmium, and mercury measured by the FDA in chicken, turkey, and eggs consumed by humans. *Id.* at ¶ 18.

the White Paper is not considered “material outside the pleadings” for the purposes of a motion to dismiss. *See Menominee Indian Tribe of Wis. v. Thompson*, 161 F.3d 449, 456 (7th Cir. 1998) (affirming that the district court could consider a treaty referenced in the complaint on a motion to dismiss).

² As reflected in the White Paper, the NRC and FDA set standards for the MTL for arsenic in pet food, but Champion, as reflected in the White Paper, chose for its chart the lower MTL set by the FDA. In the Complaint, Loeb contends that the pet food is “contaminated” because of the presence of heavy metals. The term “contamination” means “the action or state of making or being made impure by polluting or poisoning.” Oxford Online Dictionary, Definition of Contamination, <https://en.oxforddictionaries.com/definition/contamination> (last visited April 11, 2018). However, Loeb has not pled any facts which establish that Champion introduced the heavy metals into the dog food. In fact, as the White Paper makes clear, these heavy metals exist in the environment. *See* Ex. A. Additionally, as also demonstrated by the White Paper, the levels of heavy metals in the dog food were well below the limits set forth by the FDA and the NRC. Accordingly, the presence of these heavy metals did not “contaminate,” “pollute,” or “poison” the dog food.

However, this is just an average and does not constitute the limits on heavy metals set forth by the FDA. See <https://www.fda.gov/Food/FoodScienceResearch/TotalDietStudy/default.htm> (last visited April 4, 2018). Based on this study analyzing the averages of heavy metals in foods which make up human diets, Loeb alleges in conclusory fashion that the ingredients with heavy metal concentrations found in Champion's products are not suitable for consumption by humans and are not of advertised quality. Dkt. 1 ¶ 20.

III. STANDARD OF REVIEW

To survive a motion to dismiss, a complaint must contain facts that sufficiently “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 463 (7th Cir. 2010). “When the allegations of the complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). Under this standard, “a plaintiff’s obligation to provide the ‘grounds’ for ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555; *Cent. Brown Cty. Water Auth. v. Consoer, Townsend, Envirodyne, Inc.*, No. 09-C-131, 2011 WL 5040453, at *1 (E.D. Wis. Oct. 21, 2011). That is, “a complaint’s factual allegations must be enough to raise a right to relief above a speculative level.” *Twombly*, 550 U.S. at 555. Although the well-pled factual allegations are to be accepted as true, “threadbare recitals of a cause of action’s elements, supported by mere conclusory statements” must be disregarded. *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678). In addition, the Court is not “bound to accept as true a legal conclusion couched as a factual allegation.” *Bonte*, 624 F.3d at 465 (internal quotation marks and citation omitted).

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a district court must dismiss an action if it lacks jurisdiction over the subject matter of the suit due to failure to allege Article III standing. *Groshek v. Time Warner Cable, Inc.*, 865 F.3d 884, 889 (7th Cir. 2017) (affirming district court’s dismissal of complaint due to plaintiff failing to allege facts which establish Article III standing). The United States Supreme Court “established that the ‘irreducible constitutional minimum’ of standing consists of three elements.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992)). “The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable decision.” *Id.* “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* (quoting *Lujan*, 504 U.S. at 560).

IV. ARGUMENT

A. All Claims Asserted In the Complaint Fail To State a Plausible Claim For Relief In Accordance With the Basic Pleading Standards Set Forth By the Supreme Court in *Iqbal* and *Twombly*.

Right out of the gate, Loeb’s Complaint fails in its entirety because she has not alleged facts that give rise to a “claim that is plausible on its face.” *See Iqbal*, 556 U.S. at 678. The entire Complaint is premised on the presence of naturally occurring heavy metals contained in Champion’s dog food which Champion voluntarily disclosed in its White Paper. In each count of the Complaint, Loeb contends that the presence of these naturally occurring heavy metals in Champion’s dog food make certain statements found on Champion’s packaging misleading or deceptive. These statements include that the dog food contains “fresh, raw, or dehydrated animal ingredients” and that the content in the dog food is “from poultry, fish and eggs passed fit for human consumption.” Dkt. 1 ¶¶ 13, 17. However, even a cursory glance at the documents Loeb

relies on (*i.e.*, the White Paper and the FDA Total Diet Study) reveals that there are no facts to support her claims that any of the statements on Champion's packaging were false or misleading, or otherwise give rise to any claim against Champion.

In the Complaint, Loeb inserts only a portion of the information contained in a table found in Champion's White Paper and manipulates the data (by altering the measurements from mg/kg to ug/kg) in an attempt to make Champion's products seem dangerous. However, as explained in detail in the White Paper and set forth more fully below, Champion's products are anything but dangerous. In the White Paper, Champion disclosed that its products contain arsenic, cadmium, lead, and mercury, which are all from natural sources. Ex. A at 4. In fact, as discussed in the White Paper, any pet food made from natural sources will have some levels of heavy metals such as arsenic, cadmium, lead, and mercury because these metals are naturally present in the environment. *Id.* Given this fact, their presence alone cannot form the basis of any of Plaintiff's claims. *Iqbal*, 556 U.S. at 678 ("Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement."); *Stayart v. Google Inc.*, 783 F. Supp. 2d 1055, 1057 (E.D. Wis. 2011) (dismissing complaint pursuant to the Supreme Court's holding in *Iqbal* because plaintiff failed to allege sufficient facts which give rise to a claim under Wisconsin law).

The White Paper also discloses the results of third-party testing performed by two third-party laboratories over the course of three years for the average levels of heavy metals contained in Champion's dog food and cat food. Ex. A at 2. According to the FDA, the highest level of arsenic in pet food should be 12.50 mg/kg and the highest level of mercury should be .27 mg/kg. *Id.* The average level of arsenic found in Champion's dog food is 0.89 mg/kg, or in other words, less than one-tenth the limit set forth by the FDA, and the average level of mercury was .02

mg/kg. Additionally, the NRC establishes the guidelines in relation to the highest level of cadmium and lead in pet food which is 10 mg/kg for each. *Id.* The average levels of cadmium and lead Champion's dog food are .09 mg/kg and .23 mg/kg respectively. *Id.* Again, the presence of these heavy metals is a small fraction of the maximum allowed for pet food. Therefore, based on third-party testing in a document relied on by Loeb, the levels of heavy metals in Champion's dog food are far below the standards set forth by the FDA and the NRC. Accordingly, even though Champion's dog food contains naturally occurring heavy metals, none of the statements identified by Loeb as being on Champion's packaging are misleading because those naturally heavy metals are well below the guidelines set forth by the FDA and NRC. *Iqbal*, 556 U.S. at 678 (noting that courts should not accept as true a "legal conclusion couched as a factual allegation"); *see also Gliniecki v. Brunswick Corp.*, No. 12-C-280, 2012 WL 2046500, at *1 (E.D. Wis. June 6, 2012) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.") (internal quotation marks and citation omitted).

Loeb also contends that the statement on Champion's packaging that its ingredients are fit for human consumption is also misleading and deceptive. However, as with the heavy metal allegations, a review of the document relied on by Loeb, the FDA Total Diet Study, reveals that this conclusion is misguided and also not supported by adequate factual allegations. Again, Loeb utilizes a chart derived from data published by the FDA in its Total Diet Study. Dkt. 1 ¶ 18. The chart merely includes the *average* levels of heavy metals found in chicken, turkey, and eggs consumed by humans. *Id.* However, this study only includes an average of certain heavy metals found in chicken, turkey, and eggs. *See* <https://www.fda.gov/Food/FoodScienceResearch/TotalDietStudy/default.htm> (last visited April 4, 2018). Nothing in the FDA's Total Diet Study

sets a baseline for the levels of naturally occurring heavy metals permitted in foods consumed by humans. Nevertheless, Loeb makes the illogical leap that the ingredients in Champion's dog food are unfit for human consumption without any factual foundation.

At bottom, Loeb's Complaint is littered with nothing more than "unadorned, the defendant-unlawfully-harmed-me accusation[s]" that the Supreme Court has found to be insufficient to state a claim. *Iqbal*, 556 U.S. at 678. Her allegations that Champion's dog food contains "excessive" quantities of heavy metals, based on Champion's disclosures in the White Paper, are directly contradicted by the permissible levels of heavy metals set forth by the FDA and NRC in the very White Paper upon which she relies. *See Ex. A*. Moreover, she does not define a baseline as to what would not count as "excessive" quantities of heavy metals.³ Based on this alone, any purported misrepresentations on Champion's packaging cannot form the bases of her claims. *Iqbal*, 550 U.S. at 678 ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.") (internal quotation marks and citation omitted). To the extent Loeb's claims rely on the allegation that Champion's dog food is unfit for human consumption, again Loeb fails to allege any facts to establish this assertion. *Id.* ("The plausibility standard...asks for more than a sheer possibility that a defendant has acted unlawfully."). Consequently, Loeb has "not nudged [any of] her claims across the line from conceivable to plausible," warranting dismissal of the entire Complaint. *Twombly*, 550 U.S. at 554, 556; *Inzeo v. Indus. for the Blind, Inc.*, No. 14-C-1576, 2015 WL 905311, at *1 (E.D. Wis. Mar. 2, 2015) (dismissing the lawsuit because the plaintiff "has yet to plead a plausible claim for relief" as the complaint "states that

³ The baseline for heavy metals could not plausibly be zero, or else the FDA and the NRC would not have established permissible levels of heavy metals.

the defendant violated the law, but [] does not ‘allege enough factual content to support’ such an inference.”).

B. Loeb Lacks Article III Standing Because She Has Not Suffered Any Harm.

Article III requires a plaintiff to show that he or she personally suffered a harm “that is concrete and actual or imminent, not conjectural or hypothetical.” *Steel Co. v. Citizens for a Better Env’t.*, 523 U.S. 83, 102–03 (1998) (internal quotation marks and citation omitted). Loeb contends she was harmed by purchasing a product that was advertised as safe for human consumption and receiving what she asserts is an “inferior and contaminated product.” Dkt. 1 ¶ 3. Loeb’s conclusion is incorrect. First, she received the product that was advertised, a safe premium dog food as set forth in Champion’s White Paper, which Loeb cites. Second, her contention that the product is unsafe for human consumption is completely conclusory as she does not cite to any human standard which Champion’s dog food supposedly violates. Accordingly, she lacks Article III standing to state a claim.

Multiple courts have dismissed plaintiffs’ claims for failure to plead Article III standing where the claims were premised on a defendant’s failure to disclose levels of heavy metals where the levels were under the standards set forth by the FDA. *See Koronthaly v. L’Oreal USA, Inc.*, 374 Fed. App’x 257, 259 (3rd Cir. 2010) (affirming dismissal based on Article III standing of plaintiff’s claims alleging that defendant’s products contained unsafe levels of lead where the levels were deemed safe by the FDA); *Boysen v. Walgreen Co.*, No. C 11-06262 SI, 2012 WL 2953069, at *5 (C.D. Cal. July 19, 2012) (dismissing plaintiff’s claims for failure to plead Article III standing premised on allegations that defendant failed to disclose material and significant levels of lead and arsenic in its apple and grape juice that were under FDA levels). In *Boysen*, plaintiff brought a putative class action lawsuit asserting four causes of action premised on defendant promoting its apple juice and grape juice as “healthy and safe” when the juices

contained arsenic and lead, which was not disclosed to consumers. 2012 WL 2953069, at *1. In response to plaintiff's claims, defendant asserted that the levels for arsenic and lead found in its juices were below the levels considered safe by the FDA. *Id.* Further, the plaintiff never pled that the products caused him any physical injury. *Id.* at *7. Consequently, the court dismissed plaintiff's claims because "[p]ut simply, plaintiff only alleges that he purchased and consumed the fruit juices, but that the levels of lead and arsenic in defendant's products were unsatisfactory to him...[which] is not sufficient to establish Article III injury in fact." *Id.*

Similarly, in *Koronthaly*, plaintiff brought a putative class action premised on allegations that defendants' lipsticks contained unsafe levels of lead which defendants failed to disclose. 374 Fed. App'x at 258. However, defendants argued that plaintiff's arguments were "belied by the FDA's report finding that the lead levels in the [d]efendants' lipsticks were not dangerous and therefore did not require warnings." *Id.* at 259. As in *Boysen* and in this case, plaintiff did not allege that she suffered any adverse health effects from the lipsticks. *Id.* Accordingly, the Third Circuit affirmed the dismissal because plaintiff "has asserted only a subjective allegation that the trace amounts of lead are unacceptable to her, not an injury-in-fact sufficient to confer Article III standing." *Id.*

Loeb's allegations mirror the failed allegations in *Boysen* and *Koronthaly*. She asserts that the naturally occurring heavy metals in Champion's dog food are unsafe and render the dog food "contaminated;" however, the White Paper, to which she cites, demonstrates that the heavy metals are well below the standards set forth by the FDA and NRC. Further, she does not allege that Champion's dog food caused any harm to her or her dog. Therefore, just as in *Boysen* and *Kornthaly*, Loeb has failed to allege an injury-in-fact to confer Article III standing.

Moreover, Loeb's assertion that the food is unsafe for human consumption does not distinguish this case from *Boysen* and *Kornthaly*. As in *Boysen* and *Kornthaly*, Loeb does not cite to any FDA guideline or rule for heavy metals in human food which Champion's dog food violates. Rather, Loeb relies on the averages of heavy metals the FDA found in chicken, turkey, and eggs consumed by humans. Dkt. 1 ¶ 18. However, the study does not set forth any FDA guidelines or rules for the levels of heavy metals permitted in different types of food. Moreover, Loeb does not allege that she consumed the food or intended to consume the food which did or would have resulted in a physical injury, or that her dog was physically injured by the miniscule amounts of heavy metals. Consequently, the facts as pled do not alter the analysis set forth in *Boysen* and *Kornthaly*. At bottom, Loeb purchased Champion dog food that was safe for her dogs to consume as confirmed by the third-party testing in the White Paper on which she relies. On that basis, as in *Boysen* and *Kornthaly*, Loeb has failed to allege adequate facts to confer Article III standing. Her claims should be dismissed.

C. Loeb Fails to Plead a Violation of the WDTPA.

Count I of the Complaint must be dismissed because Loeb does not sufficiently plead adequate factual details to support her WDTPA claim. This is apparent because she does not allege she saw any of the purported misrepresentations prior to her purchase of the dog food. Moreover, the statements which Loeb contends are factual misrepresentations constitute, under the law, puffery, and thus are not actionable. Finally, to the extent Loeb relies on Champion's purported failure to disclose that the dog food contained naturally occurring heavy metals, omissions are not actionable under the WDTPA. For these reasons and in addition to the reasons set forth above, the Court should dismiss Loeb's WDTPA claim.

1. Loeb's WDTPA claim fails pursuant to Rule 9(b) because the Complaint fails to allege what statements Loeb saw that induced her to purchase the dog food.

To state a claim under the WDTPA, Loeb must allege: (1) Champion made a representation to the public with the intent to induce an obligation; (2) the representation was untrue, deceptive, or misleading; and (3) the representation materially caused a pecuniary loss to the plaintiff. To demonstrate that a representation caused a pecuniary loss, "it is not enough for the plaintiff to show that [she] sustained a loss that is somehow connected to a misrepresentation made to 'the public.'" *Spacesaver Corp. v. Marvel Group, Inc.*, 621 F. Supp. 2d 659, 663 (W.D. Wis. 2009). Rather, Loeb must plead that the representation "materially induced [her] decision to act and whether [she] would have acted in the absence of the representation." *Id.* (internal quotation marks and citation omitted). Further, as "a claim under the [W]DTPA sounds in fraud, it must be pled with particularity" pursuant to Rule 9(b) of the Federal Rules of Civil Procedure. *Miller v. Vonage Am., Inc.*, No. 14-CV-379, 2015 WL 59361, at *5 (E.D. Wis. Jan. 5, 2015).

Loeb's WDTPA claim appears to be based on the statements contained on Champion dog foods' packaging, and the allegation that Champion did not disclose the presence of heavy metals in its dog food. Dkt. 1 ¶ 32. The only purported representations on the packaging identified by Loeb are that the dog food is "Biologically Appropriate," contains "fresh, regional ingredients", includes ingredients "deemed fit for human consumption," and is "The World's Best Pet Food." *Id.* at ¶¶ 1, 10. However, Loeb fails to allege that she saw any of these representations prior to her purchase of the dog food, much less that she was induced to purchase the dog food because of the representations. *Spacesaver*, 621 F. Supp. 2d at 663 (dismissing plaintiff's WDTPA claim because the "plaintiff does not allege it was 'induced' to do anything by defendant"); *Schmidt v. Bassett Furniture Industries*, No. 08-1035, 2011 WL 67255, at *6 (E.D. Wis. Jan. 10, 2011) ("At a minimum, to meet the causation element under [the WDTPA],

plaintiffs would have to show that they saw the Bassett sign or other indicia of agency prior to placing their furniture order.”); *Moscinski v. Bristol-Myers Squibb Co.*, No. 06-6055, 2009 WL 5216962, at *8 (D.N.J. Dec. 30, 2009) (dismissing plaintiff’s WDTPA because “[p]laintiff fails to identify any specific advertisements they viewed, how they were misled by these advertisements, how these advertisements affected [plaintiff’s] prescriptions for Plavix and how these advertisements caused any of his injuries”); *Valenti v. Hewlett Packard Co.*, No. 03-2257, 2004 WL 1277490, at *1 (Wis. Ct. App. 2004) (holding consumers’ failure to see or rely on affirmative statements prior to making their purchase was fatal to their WDTPA claim); *see also Camasta v. Jos. A. Bank Clothiers, Inc.*, 761 F.3d 732, 736 (7th Cir. 2014) (affirming dismissal of claim for violation of the Illinois Deceptive Trade Practices pursuant to Rule 9(b) where plaintiff “did not provide any additional details about the content of the advertisement he saw the day he purchased shirts from JAB beyond the claim that merchandise was being offered at ‘sale prices’ and was ‘on sale’”). For this reason alone, Loeb’s WDTPA claim must be dismissed.

2. The statements on the dog food packaging are not actionable pursuant to the WDTPA.

Even if Loeb saw the statements on the dog food packaging, which she did not plead, her WDTPA claim still fails because the aforementioned statements are puffery that are not actionable under the WDTPA. The Wisconsin Supreme Court defines puffery as “exaggerations reasonably to be expected of a seller as to the degree of quality of his product, the truth or falsity of which cannot be precisely determined.” *Tietsworth v. Harley-Davidson, Inc.*, 677 N.W. 2d 233, 245 (Wis. 2004) (internal quotation marks and citation omitted). Moreover, “[p]uffery is considered an expression of the seller’s opinion, and as such, the buyer has no right to rely upon such statements.” *Loula v. Snap-On Tools Corp.*, 498 N.W. 2d 866, 868 (Wis. Ct. App. 1993).

Although Loeb does not specifically identify the statements that induced her to buy the dog food, the statements on the packaging of Champion dog food as alleged in the Complaint are—under the law—mere puffery. For example, Loeb contends that Champion touts its products as “The World’s Best Pet Food.” Dkt. 1 ¶ 10. However, “[a] general statement that one’s products are best is not actionable as a misrepresentation of fact” and cannot support a claim pursuant to WDTPA. *State v. Am. TV & Appliance of Madison, Inc.*, 430 N.W. 2d 709, 712 (Wis. 1988). Likewise, statements such as Champion dog food is “the fullest expression of our biologically appropriate and fresh regional ingredients commitment” (Dkt. 1 ¶ 11) also constitute puffery because these statements are “not capable of being substantiated or refuted.” *Tietzworth*, 677 N.W. 2d at 246 (internal quotation marks and citation omitted). Moreover, the statement “bursting with rich nourishing meat and protein...so [the dog food is] loaded with goodness and taste” (Dkt. 1 ¶ 13) is not actionable for the same reason. *Id.* Consequently, as Loeb has failed to allege an actionable misrepresentation, her WDTPA should be dismissed for this reason as well. *See id.* at 245 (affirming the dismissal of a WDTPA claim for failure to state a claim because the only assertions alleged in the complaint were mere puffery).⁴

3. Loeb’s claim for violation of the WDTPA cannot be premised on an omission.

In Count I, Loeb contends that as a result of purported misrepresentations **and omissions**, Loeb suffered economic loss by purchasing the Champion dog food at a premium price. Dkt. 1 ¶ 34 (emphasis added). Presumably, Loeb is referring to Champion not disclosing the presence of naturally occurring heavy metals in its dog food prior to the issuance of the White Paper.

⁴ To the extent Loeb is contending that the actionable misrepresentation is that the food does not include ingredients fit for human consumption, this allegation does not pass muster. As stated previously, Loeb has not cited to any specific standard for human consumption which the food violates. Accordingly, Loeb has failed to plead facts that this statement which appears on the packaging is false or misleading, and, therefore, it cannot be the basis for a violation of WDTPA.

However, as the Wisconsin Supreme Court made clear, “[s]ilence—an omission to speak—is insufficient to support a claim under [the WDTPA].” *Tietzworth*, 677 N.W. 2d at 245. Further, “[t]he [W]DTPA does not purport to impose a duty to disclose, but rather, prohibits only affirmative assertions, representations, or statements that are false, deceptive, or misleading.” *Id.* Based on this clear Wisconsin Supreme Court precedent, Loeb cannot maintain her WDTPA claim on the basis that Champion allegedly did not disclose that its dog food contained naturally occurring heavy metals. *Id.*

D. Loeb Fails to State a Claim Pursuant to Wis. Admin. Code ATCP § 90.02 Because the Statute Does Not Pertain To the Declarations that Loeb Contends Are Misleading.

In Count II, Loeb contends that Champion violated ATCP § 90.02 because the Champion product’s labels did not include information regarding the heavy metals and because its label stated the Champion dog food ingredients were fit for human consumption. Loeb, however, misconstrues the type of declaration covered by the statute. Based on the plain language of the statute, her claim for a violation ATCP § 90.02 must be dismissed.

First, ATCP § 90.02(1) states:

“DECLARATION REQUIRED. No person may sell or distribute a consumer commodity in package form unless each package clearly and conspicuously identifies the commodity contained in that package. The declaration shall identify the commodity by its common or usual name, by its legally required name, if any, or by a generic name or other appropriate description that is readily understood by consumers.”

Second, ATCP § 90.02(3) expounds on what types of declarations are prohibited and states:

DECEPTIVE DECLARATIONS PROHIBITED. The declaration of identity under sub. (1) may not be false, deceptive, or misleading. Ingredients or components that are not present in the commodity in substantial or significantly effective amounts may not be featured in the declaration of identity.

On its face, the statute clearly contemplates a declaration on the package which identifies the commodity by its common or usual name. *See* ATCP § 90.02(1). In this specific case, the declaration would be that the Champion product that Loeb purchased was dog food. Section 90.02(3) further expounds on Section 90.02(1) and states that “the declaration of identity under sub. (1) may not be false, deceptive, or misleading.” *See* ATCP § 90.02(3). An example of a false, deceptive, or misleading declaration in this instance would be if the food in the package Loeb purchased was cat food and not dog food. However, Loeb has not asserted any facts which suggest that she received anything but the commodity identified by the package’s declaration, *i.e.*, dog food. Further, ATCP § 90.02(3) prohibits the inclusion of ingredients or components in the declaration of identity unless they are in substantial or significant amounts in the commodity. *Id.* Again, Loeb has not pled any facts which suggest that Champion’s declaration of identity (dog food) had any ingredients or components in “substantial or significantly effective amounts” that were not actually present in the dog food. Consequently, Loeb cannot state a claim for violation of ATCP § 90.02.

E. Loeb Fails to Plead a Breach of Express or Implied Warranty Claim.

1. Loeb fails to plead that she is in privity with Champion which is fatal to her warranty claims.

Counts III and IV must be dismissed because Loeb fails to plead that she is in privity with Champion. “Wisconsin law requires privity of contract between parties before liability can be found on breach of express or implied warranty.” *Twin Disc, Inc. v. Big Bud Tractor, Inc.*, 582 F. Supp. 208, 215 (E.D. Wis. 1984).

Here, Loeb does not allege that she purchased the dog food directly from Champion to establish privity. To the contrary, Loeb alleges that she purchased the dog food “from various pet stores located within Waukesha County, Wisconsin.” Dkt. 1 ¶ 6. As a result, because Loeb fails

to establish the requisite privity with Champion in order to maintain an action for breach of express warranty and breach of implied warranty, Counts III and IV should be dismissed. *See St. Paul Mercury Ins. Co. v. The Viking Corp.*, 539 F. 3d 623, 628 (7th Cir. 2008) (“Whether fair or not, the most recent pronouncement by the Wisconsin Supreme Court on this issue suggests that privity of contract still applies for warranty claims...”); *Gliniecki*, 2012 WL 2046500, at *2 (dismissing claims for breach of express warranty and breach of implied warranty “because there is no privity of contract between [plaintiff] and the [d]efendants”).

2. Loeb fails to plead an express warranty exists between the parties.

Independent of the privity argument, Loeb’s breach of express warranty claim fails because she has not pled facts to establish the existence of an express warranty between her and Champion. In Count III, Loeb states that “[t]he packaging of the [dog food] constituted an express warranty.” Dkt. 1 ¶ 36. However, Loeb fails to allege specifically what statement on the packaging constitutes an express warranty. Rather, she merely alleges that Champion breached this unknown warranty because the dog food does not contain “high quality ingredients” and contains “excessive quantities of heavy metals.”⁵ *Id.* ¶ 38. However, without specifying what express terms Champion is actually breaching, Champion cannot possibly be expected to respond to this allegation. For this very reason, Loeb fails to state a claim for breach of express warranty. *Jay Dee Contractors, Inc. v. Tews Co.*, 787 F. Supp. 160, 163 (E.D. Wis. 1992) (dismissing plaintiff’s breach of express warranty claim for failing to identify an affirmation of fact that defendant breached); *see also Anthony v. Country Life Mfg., LLC*, 70 F. App’x 379, 385 (7th Cir. 2003) (affirming the dismissal of plaintiff’s breach of express warranty claim

⁵ As explained previously, Loeb’s allegations that the dog food contains excessive quantities of heavy metals is contradicted by the White Paper, upon which Loeb relies, which demonstrates that the heavy metals in the dog food are well below the limits set forth by the FDA and the NRC. Further, Loeb has pled no facts which suggest that the dog food does not actually contain “high quality ingredients.”

where “there was absolutely no affirmation, and the products displayed, i.e. the Lo Carb and Lo Carb 2 bars, consisted of exactly what was disclosed.”).

To the extent Loeb contends statements which appear on the packaging constitute express warranties between the parties, Loeb is mistaken, and even if these statements were warranties, Champion did not breach them. For example, Loeb alleges that statements such as “fresh, regional ingredients” and “biologically appropriate” are present on Champion’s packaging. Dkt. 1 ¶ 1. However, as noted above, these statements are classic puffery and not sufficient to constitute an express warranty. *Haley v. Kolbe & Kolbe Millwork Co.*, 863 F.3d 600, 604 (7th Cir. 2017) (affirming the district court finding that the alleged advertising which plaintiff contended were warranty statements was “mere puffery or otherwise too vague to support such a claim”). Separate and apart from that, Loeb has not pled facts which demonstrate that any of the aforementioned statements are untrue. Loeb does not plead that the ingredients in the dog food are not fresh or not from regional sources. Loeb also identifies the statement “deemed fit for human consumption” as appearing on the packaging. Dkt. 1 ¶ 1. With respect to that, Loeb has not pled any facts which plausibly suggest that the ingredients used in Champion’s dog food are not fit for human consumption. *See* Ex. A. For the foregoing reasons, Loeb has failed to plead a breach of warranty claim.

3. Loeb fails to plead that the Champion products she purchased were not merchantable in order to state a claim for breach of the implied warranty.

Count IV additionally fails because Loeb has not pled facts which demonstrate that the Champion pet food was not merchantable. For goods to be merchantable under Wisconsin law, the goods must: (1) pass without objection in the trade under the contract description; (2) be of fair average quality within the description; (3) be fit for the ordinary purposes for which such goods are used; (4) run, within the variations permitted by the agreement, of even kind, quality

within each unit and among all units involved; and (5) conform to the promises or affirmations of fact made on the container or label if any. Wis. Stat. § 402.314.

Loeb pleads, in wholly conclusory fashion, that the pet food is not merchantable because it is “not adequately contained, packaged, and labeled,” does “not conform to the promises and affirmations of facts made on their containers and labels,” “do[es] not pass without objection in the trade under the contract,” and is “not of fair average quality within the description.” Dkt. 1 ¶¶ 45-48. However, she pleads inadequate facts in support of her implied warranty claim. For example, she does not plead that her dog suffered any ill effects from the Champion dog food she purchased. In contrast to these conclusory allegations and as demonstrated by the White Paper upon which she relies for the levels of heavy metals cited in the Complaint, Champion’s pet food is merchantable. *See* Ex. A. Accordingly, Loeb’s claim for breach of implied warranty of merchantability should be dismissed. *See Haley v. Kolbe & Kolbe Millwork Co.*, No. 14-cv-99-bbc, 2016 WL 3190286, at *5 (W.D. Wis. June 7, 2016) (dismissing plaintiff’s breach of implied warranty claim as plaintiff has “not alleged any facts related to the labels on defendant’s windows or defendant’s alleged failure to conform to promises it made on the labels”).

F. Loeb’s Unjust Enrichment Claim Fails Because She Has Not Pled Facts That Establish Inequitable Conduct.

To state a claim for unjust enrichment, Loeb must plead the following elements: “(1) a benefit conferred on the defendant by the plaintiff; (2) appreciation or knowledge by the defendant of the benefit; and (3) acceptance or retention of the benefit by the defendant under circumstances making it inequitable to do so.” *Sands v. Menard*, 904 N.W. 2d 789, 798 (Wis. 2017). Stated differently, “unjust enrichment is a legal cause of action founded on the moral principal that one who has received a benefit has a duty to make restitution where retaining such a benefit would be unjust.” *Stadler v. John Hancock Life Ins. Co.*, No. 13-CV-679-JPS, 2013 WL

5798555, at *7 (E.D. Wis. Oct. 28, 2013) (internal quotation marks and citation omitted). However, an unjust enrichment claim must be dismissed when it lacks allegations of inequitable conduct. *See Puttkammer v. Minth*, 266 N.W.2d 361, 364, 366 (Wis. 1978) (holding inequitable conduct is a “critical factor” of an unjust enrichment claim and affirming dismissal of complaint for failure to plead inequitable conduct).

Here, Loeb alleges in conclusory fashion that Champion was unjustly enriched because she paid a premium price expecting that the dog food contained high quality, healthy ingredients that would be fit for human consumption. Dkt. 1 ¶ 52. Loeb contends that she would not have paid the price she did for the pet food had she known the pet food contained “excessive” quantities of heavy metals. *Id.* However, Loeb has not pled adequate facts to support these conclusions. For example, as stated previously, she has not pled any facts which suggest that the ingredients in the dog food are unsafe for human consumption. Along those same lines, she has not pled any facts which establish that the dog food she purchased did not contain high quality, healthy ingredients. Finally, the White Paper she relies on for the fact that the dog food contains heavy metals directly contradicts her assertion that the heavy metals were present in excessive quantities. *See Ex. A.* Consequently, Loeb received exactly what she intended to purchase: a safe premium dog food. Accordingly, Loeb has not pled facts which establish that it would be inequitable for Champion to retain any benefits that Loeb purportedly conferred by purchasing Champion dog food from a third-party retailer. *Stadler*, 2013 WL 5798555, at *7 (dismissing plaintiff’s unjust enrichment claim as plaintiffs “received a very substantial benefit for the amount they paid”); *Voeks v. Wal-Mart Stores, Inc.*, No. 07-0030, 2007 WL 2358645, at *8 (E.D. Wis. Aug. 17, 2007) (dismissing plaintiff’s unjust enrichment claim “because she received the compensation specified by the parties’ ATM contract”).

V. CONCLUSION

As demonstrated by the foregoing, Loeb has not stated an actionable claim against Champion. Accordingly, Loeb's Complaint should be dismissed in its entirety.

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EXHIBIT A

ORIJEN AND ACANA FOODS IN COMPARISON TO PET FOOD SAFETY STANDARDS

INTRODUCTION

At Champion Petfoods we make award-winning Biologically Appropriate™ foods that are trusted by Pet Lovers everywhere. That means our foods are rich in meat and protein, and subject to rigorous nutritional validation and industry leading food safety standards.

We believe that describing heavy metals as “contaminants” in pet foods confuses Pet Lovers on the origin of these elements as well as their safety limits for dogs and cats.

As the maker of ORIJEN and ACANA dog and cat foods, Champion developed this paper to:

- discuss the source of heavy metals in pet foods;
- publish the maximum tolerable limits (MTLs) for dogs and cats; and
- discuss the results in comparison to animal health to help bring clarity and restore confidence.

At Champion, our Biologically Appropriate™ ORIJEN and ACANA foods use the highest amount of FRESH and RAW meat and fish ingredients in the industry.

HEAVY METALS SAFETY LIMITS FOR PETS

In general, heavy metals are naturally occurring elements that have relatively high density, atomic weight and atomic number.

Some heavy metals are essential nutrients and relatively harmless, while others can be toxic in larger amounts or certain forms to humans and certain animal species.

The same is true for other nutrients in pet foods such as vitamins and minerals that could be toxic to animals in quantities which are larger than the upper limits

recommended by the Association of American Feed Control Officials (AAFCO) and based on the guidelines from the National Research Council (NRC).

According to the Target Animal Safety Review conducted by the FDA in 2011, some heavy metals are required nutrients for animals (e.g. chromium +3 valence state, cobalt and molybdenum) and some are possibly required in their diets, albeit in very small amounts².

Other heavy metals are not essential in animal diets and may be considered unsafe if the exposure and dose exceeds the MTLs for animal species as recommended in the “Mineral Tolerance of Animals: Second Revised Edition”¹.

The MTL of a mineral is defined as the dietary level that, when fed for a defined period of time, will not impair animal health or performance¹. Research on mineral toxicities in domestic animals conducted during the past 25 years has resulted in adjustments to many of the MTLs provided in the NRC report¹. Heavy metals are usually presented in Parts Per Million (PPM = mg/kg) or Parts Per Billion (PPB = µg/kg) considering the low level of heavy metals present in foods.

The toxicities of heavy metals depend on several factors including the dose, route of exposure, chemical species, age, gender, genetics, and nutritional status of the exposed animals and, most importantly, the target animal species.

In this White Paper, we discuss the recommended MTLs for heavy metals and compare the test results from ACANA and ORIJEN foods for dogs and cats. The goal is to educate Pet Lovers on this subject.



WHITE PAPER

HEAVY METALS AND PET FOOD



METHODOLOGY

We systematically test ORIJEN and ACANA products for heavy metals (arsenic, cadmium, lead and mercury) at two third-party laboratories using the Official Methods of Analysis by Association of Analytical Communities (AOAC).

Heavy metal testing is an important control point for our food safety and HACCP plans to control chemical hazards in our foods. We have statistically analyzed three years of data collected from May 2014 to May 2017 and compared the results against the NRC standards for heavy metals and the MTLs listed in the FDA Target Animal Safety Review Memorandum.

RESULTS AND DISCUSSION

HEAVY METAL	ACANA & ORIJEN DOG FOODS		ACANA & ORIJEN CAT FOODS		NRC / FDA Maximum Tolerable Limits (mg/kg)
	AVERAGE (mg/kg)	STANDARD DEVIATION (mg/kg)	AVERAGE (mg/kg)	STANDARD DEVIATION (mg/kg)	
Arsenic	0.89	1.05	1.36	1.37	12.50
Cadmium	0.09	0.09	0.09	0.09	10.00
Lead	0.23	0.15	0.17	0.14	10.00
Mercury	0.02	0.02	0.03	0.03	0.27

ARSENIC (As)

Sources of Arsenic

Arsenic occurs naturally in both organic and inorganic forms. Inorganic arsenic is more toxic than organic arsenic³. In marine environments, arsenic is often found in high concentrations of organic forms, up to 50 mg/kg of arsenic on a net weight basis in some seafood including seaweed, fish, shellfish and crustaceans⁴. According to the Codex Alimentarius standard⁴, organic forms of arsenic have a low acute toxicity while arsenobetaine, which is the principal organic arsenic form in fish and crustaceans, is considered non-toxic.

Arsenic and Human Food

Most foods contain low levels of arsenic due to its wide distribution in the environment and, to some extent, its use in agriculture³. Some types of seafood contain up to 10 times the arsenic of other foods. People who consume large amounts of seafood may therefore ingest significant amounts of arsenic. The arsenic in seafood is primarily in organic form³. Health Canada has a human regulatory standard outlining maximum arsenic levels of 3.5 mg/kg in fish protein⁵. The Codex Alimentarius has set maximum permissible concentrations for total arsenic in several food commodities, e.g. 0.1 mg/kg for edible fats and oils and 0.5 mg/kg for food grade salt⁴.

Arsenic and Pet Food

Arsenic is generally not considered an essential nutrient for higher animals¹, nor is it considered one of the most toxic nutrients. Sea plant and fish ingredients are the source of most arsenic found in animal food including pet food¹. The majority of arsenic found in these sources is organic, and virtually non-toxic in nature.

According to NRC references, the inorganic form of arsenic at 50 mg/kg of diet is toxic to rats and 100 mg/kg diet is toxic to chickens, whereas other animals are more tolerant to inorganic arsenic¹.

The NRC suggests 30 mg/kg, which is the mid-point between 12.5 to 50 mg/kg, as a reasonable MTL for arsenic for dogs and cats. The FDA recommends using the lowest level of 12.5 mg/kg, which we used in this white paper to compare the results.

ORIJEN and ACANA Results

ORIJEN and ACANA foods tested for total arsenic were found to have average levels of 0.89 mg/kg (+/- 1.05 SD) and 1.36 mg/kg (+/- 1.37 SD) in dog and cat foods respectively. The maximum arsenic levels reported are less than 16% for dogs and less than 22% for cats of the MTL of 12.5 mg/kg recommended by the FDA.


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AND PET FOOD**



CADMIUM (Cd)

Sources of Cadmium

Cadmium is sparsely distributed in the environment and normally ranges in concentrations between 0.1 and 1 mg/kg in the earth's crust¹. In aquatic and benthic environments, cadmium concentrations are relatively uniform throughout the food web. Cadmium does not appear to biomagnify as it moves up the food chain¹. Increases in soil cadmium content will result in increased uptake of cadmium by plants; this is the pathway of human and animal exposure from agricultural crops⁴. Edible free-living food organisms such as shellfish, crustaceans, and fungi are natural accumulators of cadmium⁴.

Cadmium in Human Food

The European Union (EU) food safety regulation outlines different cadmium levels such as 0.05 mg/kg (meat excluding offal), 0.10 mg/kg (muscle meat from specific fish), 1.0 mg/kg (livers of bovine animals, sheep and pigs) and 1.0 mg/kg (kidneys of food animals, bivalve molluscs and Cephalopods)⁶.

Cadmium and Pet Food

Cadmium is not considered an essential nutrient for animals. However, the NRC publication on mineral tolerance of animals shows that studies with rodents, chickens and livestock reported increased weight gain when low levels of cadmium were added to the diet¹.

The NRC defines the maximum tolerable limit of cadmium as the dietary level that when fed for a defined period will not impair accepted indices of animal health or performance¹. Some animals can tolerate acute exposure to 25 mg/kg cadmium in the diet for a few days, whereas dogs can tolerate up to 10 mg/kg cadmium in the diet for 8 years¹.

ORIJEN and ACANA Results

Third-party testing for cadmium in ORIJEN and ACANA foods showed averages of 0.09 mg/kg (+/- 0.09 SD) and 0.09 mg/kg (+/- 0.09 SD) for dog and cat foods respectively. The maximum cadmium level reported is less than 5% of the MTL of 10 mg/kg recommended by the NRC.

LEAD (Pb)

Sources of Lead

Lead occurs naturally in the earth's crust at a concentration of about 13 mg/kg, but some areas have much higher concentrations, including lead ore deposits scattered throughout the world¹. Primary sources of lead exposure for animals are through contaminated soils from industries¹.

Lead and Human Food

The European Union's food safety regulation⁶ has outlined maximum safety limits for lead ranging from 0.02 mg/kg (milk and infant formulas), to 0.10 mg/kg (meat), to 0.30 mg/kg (leaf vegetables and fish), to 0.50 mg/kg (crustaceans) and to 1.5 mg/kg (bivalve molluscs).

Lead and Pet Food

Lead is not an essential nutrient for animals. However, several studies show that adding lead to the diet of rats and pigs improved growth rates and lipid metabolism, and improved egg production in chickens¹.

The maximum tolerable level of lead is defined as the dietary level that when fed for a defined period will not impair accepted indices of animal health or performance¹. Based on the NRC guidelines, dogs tolerate lead at 10 mg/kg diet without changes in functional indices in hematopoiesis or kidney function¹.

ORIJEN and ACANA Results

Third-party testing for lead in ORIJEN and ACANA foods showed averages of 0.23 mg/kg (+/- 0.15 SD) and 0.17 mg/kg (+/- 0.14 SD) in dog and cat foods respectively. The maximum lead level reported is less than 5% of the MTL of 10 mg/kg recommended by the NRC.


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MERCURY (Hg)

Mercury Source

Mercury is a naturally occurring metallic element which can be present in food by natural causes; elevated levels can also occur due to environmental contamination by industrial or other uses⁴. Mercury occurs in the earth's crust at levels averaging 80 µg/kg, but the actual concentration varies considerably depending on location. Certain shales have mercury up to 10 mg/kg¹. Methylmercury and total mercury levels in terrestrial animals and plants are usually very low⁴.

Mercury in Human Food

The European Union's (EU) food safety regulation has outlined maximum safety limits for mercury ranging from 0.5 – 1.0 mg/kg⁶ in fish dependent upon the fish species.

Mercury and Pet Food

Mercury is not an essential nutrient for animals¹. The NRC suggests a mercury safe level of 5 mg/kg diet for acute exposure (10 days or less)¹. In the Target Animal Safety Review, the FDA recommended mercury MTL values for non-reproducing cats (0.267 mg/kg) and for reproductive cats (0.067 mg/kg)² are regarded as the standard for food safety and animal health considerations for long term exposure to mercury.

ORIJEN and ACANA Results

Third-party testing for mercury in ORIJEN and ACANA foods showed averages of 0.02 mg/kg (+/- 0.02 SD) and 0.03 mg/kg (+/- 0.03 SD) in dog and cat foods respectively. The maximum mercury level reported is less than one-quarter of the FDA's recommended MTL of mercury for non-reproducing cats (0.267 mg/kg) and less than half of the MTL for reproductive cats based on the NRC guidelines.

CONCLUSION

ORIJEN and ACANA are Biologically Appropriate™ foods that feature much higher levels of quality FRESH and RAW meat ingredients than conventional pet foods, including fish and seafood ingredients.

All heavy metals in ORIJEN and ACANA are from natural sources and not from artificial or industrial sources. All heavy metal results for ORIJEN and ACANA are well below the maximum tolerable limits set by the NRC Committee on Mineral and Toxic Substances in Diets and Water for Animals.

In conclusion, the heavy metals reported in ORIJEN and ACANA foods do not lead to adverse effects or food safety concerns for dogs and cats, and results are reinforced by Champion's 25 years of excellence and international leadership in companion animal nutrition.

REFERENCES

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5. Health Canada, List of Contaminants and Other Adulterating Substances in Foods (May 2016).
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