

Court File No:

07-CV-329776 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**JANET GRIXTI**

Plaintiff

and

**ROYAL CANIN CANADA COMPANY**

Defendant

**STATEMENT OF CLAIM**

Proceedings under the *Class Proceedings Act, 1992*

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s)' lawyer or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE

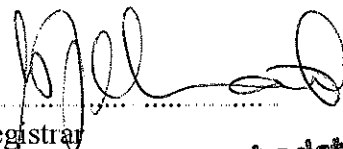
Date:

March 20, 2007

Issued

by:

Local Registrar



S.J. Chandradat

Address of court office:

393 University Avenue  
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Toronto, Ontario  
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TO: Royal Canin Canada Company  
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## CLAIM

1 The Plaintiff, on her own behalf, and on behalf of the members of the class of persons (the “Class”) described in paragraph 4 (the “Class Members”), claim:

- a.) an order certifying this action as a class proceeding and appointing the Plaintiff as the Representative Plaintiff;
- b.) general damages in the amount of \$50,000,000 or such other amount as may be proved in this Honourable Court;
- c.) special damages in the amount of \$5,000,000;
- d.) punitive damages in the amount of \$5,000,000;
- e.) prejudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- f.) costs of this action on a substantial indemnity basis and GST thereon; and,
- g.) such further and other relief as to this Honourable Court seems just.

## THE PARTIES

2. The Plaintiff, Janet Gixti (“Ms. Gixti”) is the owner of a 5-year old Chocolate Labrador Retriever, named Mocha. Ms. Gixti resides in Whitby, Ontario.

3 The Defendant, Royal Canin Canada Company (“Royal Canin Canada”) manufactures and distributes pet food products for dogs and cats. Royal Canin Canada is the Canadian subsidiary of Royal Canin, an international company with headquarters in Aimargues, France. In 2006 Royal Canin earned revenues of 7,773 million Euros, more than 80% of which were earned outside France. Royal Canin Canada’s products are sold by

prescription through veterinarians' offices and are also otherwise available for sale in retail outlets.

4. This action is brought on behalf of the Class defined as follows:

“All persons in Canada, except Québec, who purchased dog food and/or cat food as designed, developed, fabricated, manufactured, imported, distributed, marketed, sold or otherwise placed into the stream of commerce in Canada by Royal Canin Canada since August 1, 2004.”

## **MATERIAL FACTS**

### **Royal Canin Canada Dog Food and Cat Food**

5 The manufacturing of dog food and cat food involves a heat processing. Because some vitamins in the food products may be destroyed during the heat processing stage of manufacturing, Royal Canin Canada adds *vitamin premixes* to its dog food and cat food products to offset the destruction of certain vitamins

6 Vitamin premixes generally contain higher levels of vitamins than the required recommended levels for a balanced diet. This is referred to as *overage* and is intended to compensate for vitamin destruction during the manufacturing process and over the shelf life of the product.

7 Vitamin D is more stable than most other vitamins. It is not subject to break down or destruction during the heat processing stage of manufacturing or over the life of the products.

Therefore, any overage of vitamin D contained in the premixes will remain at full strength in the food products when the vitamin premixes are added to the food.

8 At all material times, Royal Canin Canada knew or ought to have known that any defects in the manufacturing process of dog food or cat food could lead to serious illness or death. Specifically, Royal Canin knew or ought to have known that the overage of Vitamin D in the vitamin premixes was not likely to break down during manufacturing or over the shelf life of the products, thus, creating the potential for an overdose.

9. The specific Royal Canin Canada dog food and cat food products which are the subject of this class proceeding include products identified in Schedule "A" to the Statement of Claim

#### **Royal Canin Canada's Product Deficiencies**

10. In or about November 2005, Royal Canin Canada made public that some of its dog food products which were produced in July 2005 and August 2005 contained mould.

11. On or about February 2, 2006, Royal Canin Canada issued a Product Quality Notice ("Notice") in respect of certain of its products. In that Notice, Royal Canin Canada stated that it had knowledge of approximately 24 reported cases across Canada of hypercalcemia in dogs since November 2005. The Notice stated that Royal Canin Canada would commence an exhaustive nutrient analysis of all its products

12 The Notice conceded that certain of its products contained excessive Vitamin D levels. Royal Canin Canada issued a product recall of these dog food products.

13. On or about March 6, 2006, Royal Canin Canada expanded its product recall to include certain cat food products linked to renal failure.

#### **Vitamin D Levels in Pet Foods**

14. Vitamin D is one of three compounds which control calcium levels in dogs and cats. Vitamin D increases the amount of calcium recovered from the bloodstream and filtered through the kidneys. The kidneys of dogs and cats are particularly sensitive to increases in blood calcium levels.

15. If a dog or cat ingests food with higher than normal levels of Vitamin D, the dog or cat may develop hypercalcemia. Left untreated, hypercalcemia may lead to renal failure, or death. Even if treated, hypercalcemia in dogs or cats may lead to chronic renal failure, which may require monitoring, specially made foods, regular testing and ongoing medication.

#### **Mocha's Illness**

16 On or about August 4, 2005, Ms. Grixti took Mocha to her regular Animal Clinic for an annual examination. The examination revealed that Mocha was healthy, with normal weight. On that day, Mocha received a Lepto virus vaccination.

17. On August 27, 2005, Mocha began vomiting after ingesting a mixture of Royal Canin Maxi light 27 and Royal Canin canned Calorie Control Food. Ms. Grixti took Mocha to the emergency animal clinic where he was observed by a veterinarian. The veterinarian's initial observation was that Mocha was exhibiting symptoms akin to rat poisoning. The veterinarian injected Mocha with antibiotics, following which Mocha ceased vomiting. Ms. Grixti was given medication for Mocha and was advised to keep Mocha hydrated through the night.

18. Mocha remained on a diet of water and rice for the next few weeks.

19. On or about August 29, 2005, Ms. Grixti sent Royal Canin Canada a sample of its product, which Mocha had ingested for testing. Royal Canin Canada tested the sample and confirmed on September 27, 2005 that its product was rancid. Royal Canin Canada did not confirm or advise of any other abnormalities in the product sample. Ms. Grixti noted that Mocha was lethargic, drinking more water than usual and urinating frequently.

20. In or about October, 2005, Ms. Grixti purchased a new bag of Royal Canin Canada's Maxi light 27 for Mocha. Again, Mocha became ill after ingesting the Royal Canin Maxi light 27, and on or about October 4, 2005 Mocha required hospitalization. He was brought to the Baker Animal Clinic and then transferred to the Ontario Veterinary College at Guelph University. It was discovered that Mocha was hypercalcemic and experiencing renal failure.

21. Following Mocha's release from the Ontario Veterinary College at Guelph University, Ms. Gixti purchased Royal Canin Canada's Renal LP product, which is available by prescription. After Mocha ingested the product, Ms. Gixti noted that Mocha remained lethargic, and was still drinking excessive amounts water and urinating more frequently than usual. Ms. Gixti took a sample of Mocha's urine to the veterinarian for analysis.

22. On or about October 5, 2005, Mr. Xavier Unkovic, President of Royal Canin Canada attended at Ms. Gixti's residence. In the course of the meeting, Ms. Gixti described Mocha's illness to Mr. Unkovic. Mr. Unkovic advised that Royal Canin Canada would pay for the veterinarian bills incurred by Ms. Gixti.

23. On or about January 3, 2006, Ms. Gixti telephoned the head office of Pet Valu, a pet store which sells Royal Canin Canada products. The purpose of the telephone call was to make inquiries about Royal Canin Canada products and to inquire of any further problems with those products. Ms. Gixti was advised for the first time that the Maxi line of Royal Canin Canada products had been the subject of a product recall commencing on or about July 20, 2005 and ending in or about October 2005 as a result of mouldy dog food.

24. On or about March 14, 2006, as a result of a phone call from her veterinarian, Ms. Gixti learned that Royal Canin Canada recalled a number of its products because of excessive Vitamin D levels. She was told to stop feeding Mocha Royal Canin products.

25. Mocha now suffers from Chronic Renal Failure, a condition he will have for life.

## CAUSES OF ACTION

### Negligence

26. At all material times, Royal Canin Canada owed a duty of care to the Plaintiff and to the Class to ensure that its cat food and dog food products were safe for consumption in cats and dogs and that ingestion of those products would not cause illness or death in cats and dogs.

27. Royal Canin Canada breached its duties by failing to ensure that its pet food products were fit for their intended purpose. The Plaintiff states that her damages and the damages of the Class Members were caused by the negligence of Royal Canin Canada. Such negligence includes but is not limited to the following:

- a) Royal Canin Canada failed to test its cat food and dog food products prior to marketing and selling the products to ensure they were fit for consumption;
- b) Royal Canin Canada failed to implement or follow quality assurance processes in the manufacturing of its dog and cat food products, including monitoring levels of Vitamin D in products and vitamin premixes;
- c) Royal Canin Canada failed to test its dog and cat food products prior to marketing and selling the products to ensure that they did not contain excessive levels of Vitamin D;
- d) Royal Canin Canada failed to recall all of its defective dog and cat food products immediately upon learning of the excessive levels of Vitamin D;
- e) Such further and other particulars of negligence which is within the knowledge of Royal Canin Canada.

### **Waiver of Tort**

28. As a result of the Defendant's conduct described herein, the Plaintiffs reserve the right to elect at the trial of the common issues to waive the tort of negligence and to have damages assessed in an amount equal to the gross revenues earned by the Defendant, or the net income received by the Defendant, or a percent of the sale of the dog and cat food as a result of the Defendant's failure and refusal to properly recall and warn pet owners of the excessive amounts of Vitamin D which resulted in revenues and profit for the Defendant.

### **Unjust Enrichment**

29. Further, the Plaintiff states that the Defendant was unjustly enriched as a result of the revenues generated from the sale of the dog and cat Food as outlined below:

- a) The Defendant has obtained an enrichment through revenues and profit from the sale of the dog and cat food;
- b) The Plaintiff and class members have suffered a corresponding deprivation including the price of the dog and cat food and subsequent veterinary costs to treat conditions associated with excessive Vitamin D; and
- c) The benefit obtained by the Defendant and corresponding detriment experienced by the Plaintiff and class members has occurred without juristic reason;

### **DAMAGES**

30. As a result of the negligence of Royal Canin Canada, Ms Grixti and the other class members have suffered the following damages:

- a) The death of a valued dog or cat from renal failure;
- b) Emotional and psychological trauma as a result of the chronic illness and/or death of their dog or cat;
- c) Veterinary and other expenses related to the care and treatment of their dog or cat;
- d) The cost of the dog or cat food as set out in Schedule "A"; and,
- e) Such further and other damages the particulars of which will be provided prior to trial.

The Plaintiff proposes that this action be tried in Toronto.

DATE: March 20, 2007

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Solicitors for the Plaintiff

**Schedule "A"**

1. Royal Canin Veterinary Diet Renal LP;
2. Medi-Cal Reduce Protein(cats);
3. Medi-cal Hypo-Allergenic Gastro / Gastro Formula (cats);
4. Royal Canin Veterinary Diet <sup>TM</sup> Canine Urinary SO<sup>TM</sup>;
5. Royal Canin Veterinary Diet <sup>TM</sup> Feline Urinary SO<sup>TM</sup>
6. Royal Canin Shih Tzu 24;
7. Royal Canin Daschund 28;
8. Royal Canin Babydog 30;
9. Royal Canin Persian 30;
10. Royal Canin Maine Coon 31;
11. Royal Canin Skin Care 30;
12. Kitten 34 Royal Canin;
13. Royal Canin Intense Hairball 34;
14. Royal Canin Special 33;
15. Royal Canin Beauty and Fit 27;
16. Royal Canin Mature 27;
17. Royal Canin Oral Sensitive 30;
18. Royal Canin Yorkshire 28;
19. Techni-Cal Kitten Formula;
20. Adult Chicken Formula #1 Technical Lifestages;

21. Adult Chicken Formula Dog Technical Lifestages;
22. Techni-Cal Hairball Control Formula;
23. Techni-Cal Indoor Urinary Health Formula;
24. Techni-Cal Lifestages Senior Formula;
25. Royal Canin Poodle 30;
26. Royal Canin Chihuahua 28;
27. Royal Canin Puppy 33;
28. Royal Canin Puppy 32;
29. Royal Canin Baby cat 34;
30. Royal Canin Puppy 32;
31. Royal Canin Light 27;
32. Royal Canin Bulldog 24;
33. Royal Canin Light 30;
34. Royal Canin Indoor 27;
35. Royal Canin Beauty and Care 32;
36. Royal Canin Boxer 26;
37. Royal Canin Special 30;
38. Royal Canin Adult Fit 32;
39. Royal Canin Labrador Retriever 30;
40. Royal Canin Mini Mature 27;
41. Royal Canin Adult 26;
42. Royal Canin German Shepard 24;
43. Royal Canin Indoor Adult 27;

44. Royal Canin Active Mature 28;
45. Royal Canin Adult 25;
46. Royal Canin Special 25;
47. Techni-Cal Senior Formula;
48. Techni-Cal Precision Large Breed Adult Formula;
49. Maxilight 27 30111 63908 Royal Canin;
50. Maxilight 27 30111 63940 Royal Canin;
51. Techni-Cal Precision Lamb and Rice Adult Formula;
52. Senior Cat 170g Technical;
53. Techni-Cal Adult Formula;
54. Royal Canin Kitten 34;
55. Techni-Cal Weight Control Formula;
56. Techni-Cal Precisions Chicken and Rice Adult Formula;
57. Techni-Cal Lifestages Puppy Formula;
58. Royal Canin Adult 27;
59. Royal Canin Light 37; and
60. Such other products within the knowledge of Royal Canin Canada

JANET GRIXTI  
Plaintiff)

v.

ROYAL CANIN CANADA COMPANY

(Defendant)

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