

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**NESTLÉ PURINA PETCARE COMPANY,**

Plaintiff,

v.

**BLUE BUFFALO COMPANY, LTD.,**

Defendant.

**BLUE BUFFALO COMPANY, LTD.,**

Counterclaim Plaintiff,

v.

**NESTLÉ PURINA PETCARE COMPANY,  
et al.,**

Counterclaim Defendants.

**BLUE BUFFALO COMPANY, LTD.,**

Third-Party Plaintiff,

v.

**WILBUR-ELLIS COMPANY, et al.,**

Third-Party Defendants.

**DIVERSIFIED INGREDIENTS, INC.,**

Crossclaim Plaintiff,

v.

**WILBUR-ELLIS COMPANY,**

Crossclaim Defendant.

**DIVERSIFIED INGREDIENTS, INC.,**

Third-Party Plaintiff,

v.

**CUSTOM AG COMMODITIES, LLC, TROY  
GERACI, WILLIAM DOUGLAS HANING,  
HENRY R. RYCHLIK JR., and OLIVER  
HARWELL,**

Third-Party Defendants.

Cause No.: 4:14-CV-00859 RWS

**DIVERSIFIED INGREDIENTS, INC.'S  
FIRST AMENDED CROSSCLAIMS  
AND THIRD-PARTY COMPLAINT**

JURY TRIAL DEMANDED

Third-Party Defendant, Crossclaim Plaintiff, and Third-Party Plaintiff Diversified Ingredients, Inc. (“Diversified”), pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, for its FIRST AMENDED CROSSCLAIMS AND THIRD-PARTY COMPLAINT states:

### **THE PARTIES**

1. Crossclaim defendant Wilbur-Ellis Company (“Wilbur-Ellis”) is a California company with headquarters in San Francisco and business operations in Texas and Washington. Wilbur-Ellis is an international marketer and distributor of agricultural products, animal feed and specialty chemicals and ingredients.

2. Third-party defendant Custom Ag Commodities, LLC (“Custom Ag”) is a Texas corporation with headquarters in Winnsboro, Texas. Custom Ag is primarily a wholesaler of fresh fruits and vegetables that also does business under the name of Mike Benben, Inc.

3. Third-party defendant Troy Geraci is a resident of Sulphur Springs, Texas, and is the managing member of Custom Ag.

4. Third-party defendant William Douglas “Doug” Haning is a resident of Kaufman, Texas, who operated the Wilbur-Ellis plant at Rosser, Texas.

5. Third-party defendant Henry R. Rychlik Jr., lives in Scurry, Texas. He was quality assurance manager at the Wilbur-Ellis plant at Rosser, Texas in charge of ensuring the quality of products sold to Wilbur-Ellis’ customers.

6. Third-party defendant Oliver “Ollie” Harwell lives in Rice, Texas. He was a marketer at the Wilbur-Ellis plant in Rosser, Texas.

7. Crossclaim and Third-Party Plaintiff Diversified Ingredients, Inc. (“Diversified”) is a Missouri corporation with headquarters in Ballwin, Missouri. It is a commodities and transportation broker whose customers include a number of pet food manufacturers.

8. This Court has original jurisdiction over this dispute pursuant to 28 U.S.C. § 1332 because the parties’ citizenship is diverse and the amount in controversy is more than \$75,000, exclusive of interest and costs.

9. The Court has personal jurisdiction over the third-party defendants and crossclaim defendants because of their systematic and consistent activities in this District contracting with Diversified as part of a widespread fraud, selling mislabeled and adulterated goods to Diversified, and committing other acts in Ballwin, Missouri. Diversified’s claims against these defendants arose from those activities in this District.

### **FACTS**

10. Unbeknownst to Diversified, the plants at Rosser, Texas now owned by Wilbur-Ellis (“Rosser Facility”), have been adulterating and mislabeling feed ingredients for at least a decade. Texas agriculture officials have suspected it of violating feed ingredient labeling and purity laws for almost a decade.

#### Texas Feed Regulations and AAFCO Standards

11. Like many states, Texas has strict laws governing the production, labeling and distribution of feed ingredients, including those used for pet foods. Ingredients must be identified by names defined by the American Association of Feed Control Officials (“AAFCO”). AAFCO definitions are incorporated into the Texas Agriculture Code and nearly all other state agriculture laws that implement United States Food and Drug Administration regulations that safeguard the nation’s food supply.

12. AAFCO's uniform definition of "chicken meal" expressly forbids feathers as a component, as does its "chicken by-product meal" definition. Thus, it is violative of the AAFCO definitions, and in fact is illegal, to sell a product as "chicken meal" or "chicken by-product meal" if it in fact incorporates feathers or feather meal. Similarly, it is violative of the AAFCO definitions, and is illegal, to call a product "chicken meal" if it is actually "chicken by-product meal."

13. If a product contains more than a single feed ingredient, all ingredients must be disclosed in a way that is not misleading. The ingredients' disclosure must be on a product label, a bill of lading, or on a product invoice.

14. Feed ingredient regulations are intended to safeguard the public's health and safety and the quality of livestock and pet food ingredients in the United States.

15. Hydrolyzed feather meal, poultry meal, and poultry by-product meal are indistinguishable to the naked eye.

Product Adulteration and Mislabeling at the Rosser Facility

16. In 2005, the Office of the Texas State Chemist ("OTSC"), charged with investigating violations of the Texas Agriculture Code, suspected the Rosser Facility was illegally blending hydrolyzed feather meal into its products in violation of feed ingredient laws.

17. In 2009, an OTSC investigator found 100 tons of feather meal in storage at the facilities at Rosser, Texas. The feather meal was kept in flat storage bins in an old plant near modern facility in Rosser, Texas (collectively known, along with the new plant, as the "Rosser Facility"). A Rosser Facility employee told the OTSC that little or no single-ingredient feather meal was usually sold from the plant, which, upon information and belief, meant it was stored there solely for mixing with feed ingredients.

18. By June 2010, the OTSC had proof that the Rosser Facility was adulterating its products. A laboratory hired by OTSC found both salmonella and hydrolyzed feathers “too numerous to count” in samples pulled from the Rosser Facility.

19. On May 12, 2010, OTSC investigators interrogated Rosser Facility managers and salesmen, including owner Jerry Haning and his son Doug Haning, who denied mixing feather meal into feed ingredients at the Rosser Facility. Investigators told them the microscopy and an audit report proved the Rosser Facility was distributing “adulterated and misbranded feed ingredients.”

20. Investigators during the plant visit uncovered additional evidence: large quantities of feather meal were stored in the old plant nearby; equipment needed to adulterate feed with feather meal sat near the old plant’s storage bins; and when pressured to divulge how much feather meal was blended into feed ingredients, then-operations manager Henry Rychlik admitted there was “a little,” included in bags labeled as containing low-ash chicken meal.

21. The salesman at the Rosser Facility, “Ollie” Harwell, told investigators that Pilgrim’s Pride Corporation owned the feather meal and stored it at the plant. He said customers sometimes wanted a single-ingredient product that also contained feather meal. Investigators warned him not to engage in such deceptive practices.

22. Investigators concluded that the Rosser Facility routinely added feather meal to all of its products. The OTSC suspended sales of all products made at the Rosser Facility and seized tons of adulterated low-ash chicken meal.

23. The OTSC ordered Wilbur-Ellis’s predecessor to (a) submit an acceptable plan to eliminate distribution of adulterated and misbranded ingredients; (b) submit revised and

corrected labels for its products; and (c) revise and use the protein blend label developed with the assistance of the OTSC three years earlier on any blended product the Rosser Facility distributed.

24. Doug Haning sent a May 17, 2010, letter to OTSC blaming suppliers for any feather meal adulteration at the Rosser Facility. The letter nonetheless pledged that the facility would no longer buy, store, or accept delivery of feather meal at the Rosser Facility in the future, and that it would remove all existing feather meal from the facility by May 29, 2010.

Misbranded and Adulterated Ingredients Sold to Diversified and its Customers

25. In January 2011, Diversified contacted Doug Haning to inquire about the availability of chicken meal to purchase for one of Diversified's customers, a pet food manufacturer. Haning told Diversified that he had no available chicken meal, but Custom Ag had a contract for chicken meal from the Rosser Facility and might have chicken meal for resale.

26. In April 2011, Wilbur-Ellis acquired American By-Products, Inc., and the Rosser Facility. Doug Haning and his brother Gerald Haning operated the plant under the supervision of Wilbur-Ellis's business development manager Marc Yung. Rychlik became the plant quality assurance manager. Wilbur-Ellis continued to sell meal from its Rosser Facility for at least the next four years that was adulterated with feather meal.

27. Doug Haning and Troy Geraci, the owner of Custom Ag, were longtime friends and hunting companions. On information and belief, there was no such contract for chicken meal at that time between Wilbur-Ellis and Custom Ag.

28. Custom Ag agreed to sell to Diversified 25 tons of chicken meal from its Wilbur-Ellis "contract" on May 2, 2011. The purchase order specified chicken meal. The motor carrier's bill of lading, on which Wilbur-Ellis employees wrote shipment weights and seal numbers, identified the cargo as chicken meal. On information and belief, Custom Ag actually sold goods

to Diversified that Wilbur-Ellis adulterated with a significant amount of feather meal and mislabeled it as chicken meal.

29. Throughout its multiyear business relationship with Wilbur-Ellis and Custom Ag, Diversified ordered AAFCO-defined chicken meal and turkey meal, but unknowingly received, instead, cheap low-grade meal blended with beaks, feet, viscera, feathers and other by-products as well as feather meal (the “Adulterated Meal”) that Doug Haning, Geraci, Rychlik, Harwell, Custom Ag and Wilbur-Ellis (collectively, “Defendants”) misrepresented as the products actually ordered.

Misrepresenting and Mislabeled Chicken Meal “Blends”

30. In May or June 2011, Collin McAtee of Diversified emailed the Blue Buffalo ingredient specifications to Geraci to confirm that Custom Ag and Wilbur-Ellis would meet those specifications for genuine, unadulterated chicken meal.

31. Geraci confirmed to McAtee in a June 10, 2011 email that he had shared the Blue Buffalo ingredient specifications with Wilbur-Ellis at the Rosser Facility. Geraci said he was getting low-ash chicken meal and regular chicken meal samples for Blue Buffalo and falsely represented that the “samples will exact [sic] what they will b gettin [sic] on contract once they Agree. They [Wilbur-Ellis] will send a contract. 2 me [sic] my contract at that point will b forward 2 U !!” (the “Email Misrepresentations”).

32. On June 13, 2011, Geraci forwarded an email from Doug Haning with the test results for “Reg chicken meal blend” and “Low ash chicken meal blend.” When McAtee asked Geraci about the “blend” language, he referred all questions to Doug Haning.

33. Haning, in a telephone call with McAtee on or about July 15, 2011, falsely represented that Wilbur-Ellis as a matter of corporate policy required the “blend” designations

because the product was chicken meal shipped to the Rosser Facility from multiple sources. Haning falsely told McAtee that Diversified was paying for chicken meal that met the Blue Buffalo specifications (the “Telephone Call”).

34. Yung, the Wilbur-Ellis business development manager supervising the Rosser Facility in Wichita, asked Linda Strutton, a Wilbur-Ellis marketing assistant in the Rosser Facility, to investigate why the Rosser Facility meals had become more expensive to make. Strutton in an October 17, 2012, email reported that the Rosser Facility had no more lower-quality “B” meal so that Rychlik had to blend more expensive “A” meal (86%) with feather meal (14%) to put in the silo “where all Custom Ag and Tejas loads come from.” The formula change, she said, increased production costs by nearly 50 cents per pound.

35. Geraci and Custom Ag billed for, and Diversified paid, market prices for genuine chicken meal. The scheme required Geraci to email contracts and hundreds of inflated invoices for “chicken meal blend” and “low ash chicken meal blend” to Diversified, including a \$24,706.72 invoice that Geraci emailed July 7, 2011, to McAtee at Diversified for “chicken meal blend” and a Custom Ag invoice Geraci emailed May 13, 2014, to McAtee billing Diversified \$27,897.32 for “chicken meal blend” (the “Invoices”).

36. Wilbur-Ellis falsely certified to Diversified in writing on multiple occasions that its products met Blue Buffalo’s and other customers’ specifications for chicken meal and turkey meal, including through (a) a June 27, 2013, email from Rychlik to McAtee forwarding documents falsely certifying that Wilbur-Ellis provided single-ingredient “chicken meal,” “low ash chicken meal,” and “turkey meal” to Diversified for resale to Blue Buffalo and (b) the completion of Ingredient Information Request Forms as early as May 15, 2013, by which Eric Johansen, the Division Quality Manager of the Wilbur-Ellis Feed Division, affirmed that Wilbur-

Ellis had received the Blue Buffalo specifications for single-ingredient “chicken meal,” “low-ash chicken meal,” and “turkey meal” to be delivered to Diversified for resale to Blue Buffalo, and that the products met those specifications (the “False Certifications”).

37. In a June 14, 2013 email, Terry Oldlund a Wilbur-Ellis manger in Canada, told Doug Haning and Pete Schoonveld that “in fact we probably went too far already” in executing the Blue Buffalo ingredient certifications. Schoonveld is a Wilbur-Ellis manager in San Francisco.

38. On May 12, 2014, Wilbur-Ellis corporate officials, Doug Haning and Rychlik agreed in an email that they would continue to refuse to answer questions from McAtee about what steps the Rosser Facility takes to ensure by-product meal is segregated from chicken meal.

39. On information and belief, Defendants Geraci, Doug Haning, Wilbur-Ellis, Custom Ag, Rychlik, Harwell, and others knew that (a) Wilbur-Ellis sold mislabeled Adulterated Meal to Diversified and its customers in place of the contracted-for commodities; (b) the resulting illegal profits earned by Custom Ag and Wilbur-Ellis were exorbitant; (c) Custom Ag’s millions of dollars in illicit profits from acting as a middleman was shared among the Defendants, and possibly others; (d) Wilbur-Ellis joined Custom Ag in the scheme in an attempt to add a layer of insulation from liability from mislabeling feed ingredients; and (e) the enterprise operated by Haning, Rychlik, Geraci, Harwell, Wilbur-Ellis and Custom Ag also used Diversified, a commodities broker and logistics company, to try to further insulate themselves from direct liability to Diversified’s large number of pet food industry customers who unknowingly used the mislabeled Adulterated Meal in their products.

Misrepresenting and Mislabeling Turkey Meal “Blends”

40. In a separate related scheme, Diversified contracted to purchase turkey meal for its pet food customers directly from Wilbur-Ellis in 2013 and 2014 by placing orders with Harwell. Wilbur-Ellis emailed invoices to Diversified for “turkey meal blend.”

41. No ingredients were listed on the invoices. There were no indications on the invoices that the “turkey meal blend” was anything other than single-ingredient turkey meal.

42. Doug Haning, Rychlik, Harwell and Wilbur-Ellis released the product from the Rosser Facility under bills of lading that identified the product as turkey meal.

43. On information and belief, the “turkey meal blend” was Adulterated Meal. Wilbur-Ellis intentionally omitted any disclosure that the product’s actual ingredients included goods other than turkey meal, in knowing and purposeful violation of state and federal feed ingredient laws and regulations.

44. As a result of Defendants’ false statements, including mislabeling of Adulterated Meal, Diversified paid Custom Ag and Wilbur-Ellis market prices for genuine chicken meal and genuine turkey meal, supposedly meeting customer ingredient specifications, but instead received mislabeled, adulterated and worthless or nearly worthless goods from the Rosser Facility.

**COUNT I: RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT  
(18 U.S.C. §§ 1962(c), 1962(d), 1964(c))  
(as to Doug Haning, Geraci, Rychlik, Harwell, Custom Ag and Wilbur-Ellis)**

45. Diversified’s allegations in paragraphs 1 through 44 are incorporated here by reference.

46. Defendants formed an association-in-fact through the relationships between Defendants Doug Haning, Geraci, Rychlik, Harwell, Custom Ag and Wilbur-Ellis for the common purpose of establishing and operating an illegal enterprise (the “Enterprise”) to

manufacture, market, mislabel, and sell adulterated ingredients over the course of more than four years in violation of state and federal law. The Defendants participated in the operation or management of the Enterprise.

47. In the alternative, the Defendants together colluded with the common purpose of taking over Custom Ag as an Enterprise through which the Defendants illegitimately controlled and operated a racketeering scheme for the common purpose of manufacturing, marketing, mislabeling, and selling adulterated ingredients over the course of more than four years in violation of state and federal law. Custom Ag, the Enterprise, also may have functioned as a legitimate corporation that sold properly labeled and unadulterated commodities and existed independent of the Defendants' illegal racketeering scheme.

48. The Defendants, functioning as a unit, operated the racketeering scheme by selling at inflated prices the mislabeled and adulterated meal in the place of unadulterated meal. The Defendants, operating jointly and as a unit throughout, accomplished this by falsifying bills of lading, invoices, ingredient certifications, and other documents. Meanwhile, the Defendants maintained the legitimate business transactions of Wilbur-Ellis and Custom Ag through transactions in other commodities.

49. Diversified was damaged in its business and property by the Enterprise's racketeering violations and fraudulent scheme. Diversified ordered single-ingredient chicken meal and turkey meal without by-products or feathers from Wilbur-Ellis through Custom Ag, but the Enterprise instead sold Diversified Adulterated Meal, and sent Diversified inflated invoices, false certifications, and false bills of lading to create the false appearance that Diversified had received the product it had ordered.

50. The chargeable predicate RICO offenses are the Email Misrepresentations, the Telephone Call, the Invoices, the False Certifications, and the pattern of hundreds of other acts of wire and mail fraud perpetrated by causing fraudulent bills of lading, other false certifications, and other falsely inflated invoices to be sent by wire and mail in interstate commerce in violation of 18 U.S.C. § 1343. These predicate offenses include the July 7, 2011, inflated invoice representing adulterated meal as “chicken meal blend” emailed by Geraci to McAtee and the May 13, 2014, invoice for “chicken meal blend” emailed by Geraci to McAtee, and a multitude of other similarly achieved RICO offenses during the same time period.

51. The Defendants -- having devised this Enterprise to defraud the entire pet food and livestock food industries through use of false or fraudulent pretenses, representations, or promises -- operated the Enterprise by transmitting or causing to be transmitted writings by mail and wire communication in interstate commerce for the purpose of executing their scheme through the Enterprise.

52. From 2011 until at least May 15, 2014, the Defendants conducted and participated in the Enterprise to intentionally cause the transmission by wire or mail more than 2,500 fraudulent bills of lading and hundreds of false and inflated invoices to Diversified that misrepresented the Adulterated Meal as expensive by-product-free and feather-free chicken meal and turkey meal. On information and belief, the Enterprise sold only Adulterated Meal to all of its victims by systematically misrepresenting and mislabeling the products.

53. The Defendants knew or should have known the bills of lading and invoices were false and that the labeling of the Adulterated Meal as chicken meal or turkey meal was false. The Defendants intended that Diversified pay the false and inflated invoices in reliance on the fraudulent descriptions of the Adulterated Meal sent by mail and wire to Diversified.

54. Diversified justifiably relied on the pattern of false bills of lading, certifications and invoices and paid the inflated prices totaling more than \$63 million over more than four years, causing damage to Diversified's business and property.

55. The Enterprise intentionally manufactured the Adulterated Meal to give it a similar appearance to chicken meal and turkey meal to conceal their fraudulent scheme.

56. The Defendants conspired to violate 18 U.S.C. § 1962(c). Each was part of an agreement to deceive Diversified to obtain the illegal objective of profiting from fraudulently selling mislabeled Adulterated Meal at inflated prices through the Enterprise.

57. The closed-ended scheme operated by the Defendants (assuming it ended in 2014) was broad and far-reaching, stretching out over at least four years and included thousands of fraudulent transactions and predicate acts. The scheme injured a wide range of victims, including Diversified, Blue Buffalo, other pet food manufacturers, the pet food buyers, and in all likelihood other commodities brokers that purchased feed ingredients from Wilbur-Ellis and Custom Ag.

58. In the alternative, the Defendants intend, and intended, the racketeering activity to extend indefinitely. The Rosser Facility, now owned by Wilbur-Ellis, was sanctioned by the State of Texas for mislabeling, and likely sold adulterated meal in the place of unadulterated meal in 2005 through 2010. Through the same activity, the Defendants defrauded Diversified Ingredients, Blue Buffalo and likely other victims from at least 2011 to 2014. The proven repetition of this activity over a decade by the same Defendants establishes a threat of racketeering extending into the future as an ongoing way of doing business. This indefinite history establishes an open-ended threat of continued criminal activity by the Defendants.

59. Diversified is entitled to recover treble damages, attorneys' fees and costs from the Defendants pursuant to 18 U.S.C. § 1964(c).

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against the Defendants jointly and severally in an amount that is three times the damages proven at trial, but not less than \$185 million, plus attorneys' fees and costs; and provide such other and further relief as is just and proper.

**COUNT II: TEXAS DECEPTIVE TRADE PRACTICES ACT**  
**(Tex. Bus. & Com. Code §§ 17.41, *et seq.*)**  
**(as to Wilbur-Ellis and Custom Ag)**

60. Diversified's allegations in paragraphs 1 through 59 are incorporated herein by reference.

61. Wilbur-Ellis sold Adulterated Meal to Diversified that was shipped from its Rosser Facility.

62. Custom Ag, a Texas corporation, brokered the Adulterated Meal to Diversified.

63. The deceptive trade practices of Wilbur-Ellis and Custom Ag ("Corporate Defendants") originated from and were implemented in Texas.

64. Corporate Defendants falsely, misleadingly and deceptively described the Adulterated Meal as "chicken meal blend" or "turkey meal blend," disclosing no other ingredients, in invoices and other communications with Diversified, which believed it had contracted for and purchased chicken meal and turkey meal from Wilbur-Ellis.

65. Corporate Defendants' false, misleading and deceptive descriptions of the Adulterated Meal were misrepresentations that the goods had characteristics and ingredients which they did not in fact have, pursuant to Tex. Bus. & Com. Code § 17.46(b)(5), and therefore violate § 17.50(a).

66. Corporate Defendants' false, misleading and deceptive descriptions of the Adulterated Meal misrepresented that the Adulterated Meal was of a high standard, quality, and grade, but was actually of an inferior standard, quality and grade. These misrepresentations are false, misleading, and are deceptive acts and practices under Tex. Bus. & Com. Code § 17.46(b)(7), and therefore violate § 17.46(a).

67. Diversified relied on Corporate Defendants' false, misleading and deceptive descriptions by accepting and paying inflated prices for the Adulterated Meal.

68. Corporate Defendants breached their express or implied warranty that the chicken meal and turkey meal sold to Diversified would not contain byproducts or feathers, other than possibly trace amounts if unavoidable in good manufacturing practices.

69. Corporate Defendants' sustained course of action in selling the Adulterated Meal as high-quality and single-ingredient chicken or turkey meal for four years in knowing violation of agreed-upon product specifications was unconscionable.

70. Corporate Defendants engaged in these deceptive trade practices knowingly and intentionally.

71. Diversified is entitled to treble damages pursuant to Tex. Bus. & Com. Code § 17.50(b).

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against Defendants Wilbur-Ellis and Custom Ag jointly and severally in an amount that is three times the damages proven at trial, but not less than \$185 million, plus attorneys' fees and costs; and provide such other and further relief as is just and proper.

**COUNT III: WASHINGTON CONSUMER PROTECTION ACT**  
**(Wash. Rev. Code §§ 19.86.010, *et seq.*)**  
**(as to Wilbur-Ellis)**

72. Diversified's allegations in paragraphs 1 through 71 are incorporated herein by reference.

73. On information and belief, Wilbur-Ellis is comprised of multiple "divisions," one of which is the Feed Division.

74. The Feed Division of Wilbur-Ellis is located in Vancouver, Washington.

75. The Feed Division of Wilbur-Ellis was the "parent" of the facility, or plant, in Rosser, Texas.

76. Upon information and belief, the Division Quality Manager of the Feed Division of Wilbur-Ellis, Eric Johansen, from his office in the State of Washington, made misrepresentations as to the ingredients of the chicken meal, low-ash chicken meal and turkey meal shipped from its Rosser, Texas, plant.

77. These misrepresentations were in the form of Ingredient Information Request Forms from Blue Buffalo and the Wilbur-Ellis responses to questionnaires which were relied upon by Diversified and Blue Buffalo.

78. Wilbur-Ellis' deceptive trade practices originated from and were implemented in Washington.

79. Wilbur-Ellis falsely, misleadingly and deceptively described the Adulterated Meal as "chicken meal," "low-ash chicken meal," and "turkey meal" in Ingredient Information Request Forms, responses to questionnaires, and other communications originating in Washington.

80. Based upon these communications, Diversified, which received said communications, believed Wilbur-Ellis was delivering “chicken meal,” “low-ash chicken meal,” and “turkey meal” as set forth the Blue Buffalo specifications.

81. Based upon these deceiving and false representations, upon which Diversified relied, it believed it was brokering the delivery of “chicken meal,” “low-ash chicken meal,” and “turkey meal” as set forth the Blue Buffalo specifications.

82. These representations of Wilbur-Ellis were false.

83. Wilbur-Ellis’s false, misleading and deceptive descriptions of the Adulterated Meal occurred in trade and commerce.

84. Wilbur-Ellis’s false, misleading and deceptive descriptions of the Adulterated Meal misrepresented that the Adulterated Meal was of a high standard, quality, and grade, but was actually of an inferior standard, quality and grade.

85. Diversified relied on Wilbur-Ellis’s false, misleading and deceptive descriptions by accepting and paying inflated prices for the Adulterated Meal.

86. Diversified’s business was injured thereby.

87. But for Wilbur-Ellis’s unfair and deceptive practices, Diversified would not have suffered this injury.

88. Wilbur-Ellis breached its express or implied warranty that the chicken meal and turkey meal sold to Diversified would not contain byproducts or feathers, other than possibly trace amounts if unavoidable in good manufacturing practices.

89. Wilbur-Ellis’s sustained course of action in selling the Adulterated Meal as high quality chicken or turkey meal for three years in knowing violation of agreed-upon product specifications was unconscionable.

90. Wilbur-Ellis engaged in these deceptive trade practices knowingly and intentionally.

91. Wilbur-Ellis knew and intended that the Adulterated Meal would be used by Blue Buffalo in its products.

92. Wilbur-Ellis knew and intended that the Adulterated Meal would be used by Blue Buffalo in its products and distributed in the chain of commerce to consumers, including consumers in the State of Washington.

93. The deceptive trade practices of Wilbur-Ellis either directly, or indirectly, affected consumers in the State of Washington.

94. This lawsuit serves to protect the public and consumers in the State of Washington, and beyond the State of Washington, for actions occurring in the State of Washington.

95. This lawsuit serves to foster fair and honest competition in the State of Washington, and beyond the State of Washington, for actions occurring in the State of Washington.

96. Diversified is entitled to costs, attorneys' fees, and applicable treble damages pursuant to Wash. Rev. Code § 19.86.090.

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against Wilbur-Ellis in an amount that is three times the damages proven at trial to the extent permitted by statute, but not less than \$63 million, plus attorneys' fees and costs; and provide such other and further relief as is just and proper.

**COUNT IV: FRAUDULENT MISREPRESENTATION**  
**(as to all Defendants)**

97. Diversified's allegations in paragraphs 1 through 96 are incorporated herein by reference.

98. The Defendants intended to and did make material false representations (the "Misrepresentations") to Diversified and others from 2011 until the middle of 2014 concerning the type, quality and characteristics of the Adulterated Meal. The Misrepresentations included:

- a. That the Wilbur-Ellis chicken meal and turkey meal met all Blue Buffalo specifications, such as the absence of byproducts and feathers;
- b. That the Wilbur-Ellis chicken meal and turkey meal met the specifications of other Diversified customers that required the absence of byproducts and feathers;
- c. That Defendants sold Diversified only genuine chicken meal and turkey meal that did not include byproducts or feathers or artificial preservatives;
- d. That Wilbur-Ellis and Custom Ag invoices designated the Adulterated Meal as "Chicken Meal Blend" or "Turkey Meal Blend" only because its ingredients were obtained from multiple sources;
- e. That Diversified was paying chicken meal and turkey meal prices and receiving commensurate quality chicken and turkey meal; and
- f. That bills of lading, certificates of analysis, supplier certificates, and other documents describing cargo as chicken meal and turkey meal were correct.

99. Defendants knew the Misrepresentations were false at the times they made them.

100. Defendants intended that Diversified rely on the Misrepresentations by purchasing what Diversified was led to believe was unadulterated chicken meal and turkey meal.

101. Diversified justifiably relied on the Misrepresentations by purchasing Adulterated Meal from Defendants. Had Diversified known the truth about the Adulterated Meal, Diversified would not have purchased it.

102. Defendants' willful, wanton, malicious and continuing course of fraudulent conduct resulted in injury and loss to Diversified, including damages from paying false invoices, impairment of its business reputation, lost profits, and incidental and consequential damages.

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against Defendants for damages to be proven at trial, but not less than \$63 million, plus restitution, and disgorgement of Defendants' profits from the sale of the Adulterated Meal, plus punitive and exemplary damages, attorneys' fees and costs; and for such other and further relief as is just and proper.

**COUNT V: FRAUDULENT CONCEALMENT  
(as to all Defendants)**

103. Diversified's allegations in paragraphs 1 through 102 are incorporated herein by reference.

104. Defendants concealed material facts about the ingredients, type, and character of the Adulterated Meal, specifically that it contained significant amounts of byproducts and feather meal. Defendants knew Diversified was ignorant of and did not have an equal opportunity to discover the true facts.

105. In reliance on Defendants' silence, Diversified entered into a series of supply contracts with Custom Ag and Wilbur-Ellis from 2011 to 2014 for chicken and turkey meal, (the "Contracts") under which Custom Ag and Wilbur-Ellis instead supplied Adulterated Meal.

106. The Defendants intentionally failed to disclose the true nature of the Adulterated Meal to Diversified, which was known only to them. Diversified did not know of, and could not have discovered, the Adulterated Meal because of Defendant's intentional concealment of the truth.

107. The Defendants intended to deceive Diversified by concealing the Adulterated Meal. Defendants were deliberately silent when they had a duty to speak.

108. Diversified reasonably relied on the Defendants' deception by contracting to purchase the Adulterated Meal without the knowledge of its true ingredients and character.

109. Defendants' willful, wanton, malicious and continuing concealment of the Adulterated Meal caused significant harm and damage to Diversified.

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against the Defendants for damages to be proven at trial of more than \$63 million, restitution, and disgorgement of Defendants' profits from the sale of the Adulterated Meal, plus punitive and exemplary damages, attorneys' fees and costs; and for such other and further relief as is just and proper.

**COUNT VI: FRAUD IN THE INDUCEMENT**  
**(as to Wilbur-Ellis and Custom Ag)**

110. Diversified's allegations in paragraphs 1 through 109 are incorporated herein by reference.

111. Before Diversified entered into the Contracts with Corporate Defendants for chicken meal and turkey meal, Corporate Defendants made material false representations with the intention to induce Diversified into entering the contracts.

112. The false representations included statements that Wilbur-Ellis chicken meal and turkey meal met and would continue to meet the specifications of Diversified's customers, including the product specifications of Blue Buffalo.

113. Diversified justifiably relied on the representations, without knowledge that they were false, by entering into meal purchase contracts with Corporate Defendants.

114. Corporate Defendants did not intend to honor its contractual obligations at the time they entered into these contracts with Diversified, and intended to sell Adulterated Meal to Diversified in place of the contracted-for chicken meal and turkey meal.

115. Diversified suffered loss and damage as a direct result of Corporate Defendants' fraudulent inducement.

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against Corporate Defendants, jointly and severally, for damages to be proven at trial of more than \$63 million, restitution, and disgorgement of Corporate Defendants' profits from the sale of the Adulterated Meal, plus punitive and exemplary damages, attorneys' fees and costs; and for such other and further relief as is just and proper.

**COUNT VII: BREACH OF CONTRACT**  
**(as to Wilbur-Ellis and Custom Ag)**

116. Diversified's allegations in paragraphs 1 through 115 are incorporated herein by reference.

117. Corporate Defendants entered into the Contracts for the sale of chicken meal and turkey meal to Diversified. Corporate Defendants knew Diversified resold the meal to pet food manufacturers, including Blue Buffalo.

118. Corporate Defendants in each instance were told which Diversified customers ultimately were to use each shipment of the contracted-for meal in their production, including Blue Buffalo. Wilbur-Ellis agreed to meet Blue Buffalo's specifications for chicken meal and turkey meal, which allowed trace amounts of byproducts and feathers only if unavoidable in good manufacturing practices.

119. Diversified contracted with Corporate Defendants to purchase high-quality chicken meal and turkey meal that contained no byproducts or feathers. Diversified received

instead inexpensive or worthless Adulterated Meal that contained significant amounts of byproducts and feathers, which Corporate Defendants intentionally formulated and manufactured to resemble chicken meal and turkey meal.

120. Corporate Defendants' breach could not be discovered upon delivery due to a coordinated cover-up by Wilbur-Ellis and Custom Ag, including transmitting false bills of lading and false invoices for Adulterated Meal.

121. Diversified accepted Corporate Defendants' goods without knowledge of their failure to conform to the Contracts. Because of Corporate Defendants' active and ongoing concealment of the nonconformity of the meal, Diversified was unable to discover the breach of the Contracts until 2014, at which time Diversified notified Corporate Defendants of the breach.

122. Diversified is entitled to recover its losses resulting from Corporate Defendants' breach of the Contracts.

123. The Adulterated Meal shipments were of little or no value to Diversified or its customers. Diversified would not have purchased the Adulterated Meal under any circumstances had it known the truth.

124. Diversified's damages from Corporate Defendants' breach of Contract include the total of all amounts Diversified paid Corporate Defendants for the Adulterated Meal, plus incidental and consequential damages.

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against Corporate Defendants jointly and severally, for actual damages of at least \$63 million, plus incidental and consequential damages; and for such other and further relief as is just and proper.

**COUNT VIII: BREACH OF EXPRESS WARRANTIES**  
**Uniform Commercial Code § 2-313**  
**(as to Wilbur-Ellis and Custom Ag)**

125. Diversified's allegations in paragraphs 1 through 124 are incorporated herein by reference.

126. Before and during the performance of the Contracts, Corporate Defendants affirmed by descriptions and other statements of fact or promise that the goods Diversified purchased from Wilbur-Ellis would conform to definitions and specifications of chicken meal and turkey meal of Diversified's customers.

127. Corporate Defendants breached their express warranties by failing to sell Diversified chicken meal and turkey meal that they described and warranted as meeting the Diversified customers' definitions and specifications for those goods.

128. Corporate Defendants breached their express warranties by secretly selling Adulterated Meal to Diversified that it would have rejected as nonconforming goods, causing Diversified loss and damage.

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against Corporate Defendants, jointly and severally, for actual damages of at least \$63 million, plus incidental and consequential damages; and for such other and further relief as is just and proper.

**COUNT IX:**  
**BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE**  
**Uniform Commercial Code § 2-315**  
**(as to Wilbur-Ellis and Custom Ag)**

129. Diversified's allegations in paragraphs 1 through 128 are incorporated herein by reference.

130. Corporate Defendants are merchants with the definition of Section 2-104 of the Uniform Commercial Code.

131. When entering into the Contracts, Corporate Defendants knew that the particular purpose for which Diversified required the goods was for resale to manufacturers of pet food and subject to specific specifications.

132. Corporate Defendants had reason to know that Diversified was relying on their skill and judgment to furnish suitable goods for that particular purpose.

133. By providing the Adulterated Meal, which contained significant amounts of byproducts and feathers, Corporate Defendants breached their implied warranties that their goods were fit for Diversified's particular purposes.

134. Diversified was damaged by Corporate Defendants' breach of implied warranty.

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against Corporate Defendants jointly and severally, for actual damages of at least \$63 million, plus incidental and consequential damages; and for such other and further relief as is just and proper.

**COUNT X: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**Uniform Commercial Code § 2-314**  
**(as to Wilbur-Ellis and Custom Ag)**

135. Diversified's allegations in paragraphs 1 through 134 are incorporated herein by reference.

136. The Adulterated Meal could not pass without objection in the trade under the Contract description.

137. The Adulterated Meal was not of fair average quality within the description in the Contracts, bills of lading, product descriptions and invoices.

138. Corporate Defendants breached their implied warranty of merchantability to Diversified, causing loss and damage to Diversified.

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against Corporate Defendants, jointly and severally, for actual damages of at least \$63 million, plus incidental and consequential damages; and for such other and further relief as is just and proper.

**COUNT XI: UNJUST ENRICHMENT  
(as to Wilbur-Ellis and Custom Ag)**

139. Diversified's allegations in paragraphs 1 through 138 are incorporated herein by reference.

140. Corporate Defendants received money paid by Diversified under Contracts tainted by Corporate Defendants' fraud, misconduct, breach of warranties, deceit, and racketeering.

141. In these circumstances, allowing Corporate Defendants to keep their fraudulent gains is inequitable.

142. The benefits under the Contracts which Corporate Defendants unjustly received should be disgorged as a matter of equity.

**WHEREFORE**, Diversified Ingredients, Inc. requests that this Court enter judgment against Corporate Defendants jointly and severally, requiring them to account for and to disgorge all money they received from the Contracts and from their fraudulent activities; and for such other and further relief as is just and proper.

**Count XII: INDEMNITY  
(as to all Defendants)**

143. Diversified incorporates by reference paragraphs 1 through 142 above.

144. Defendants caused the claims and damages Blue Buffalo has alleged against Diversified in this case.

145. Defendants knew or should have known that selling out-of-spec Adulterated Meal to Diversified would cause Diversified damage and loss under its business relationship with Blue Buffalo.

146. As a result of the wrongful conduct of Defendants alleged herein, Diversified might be held liable through no fault of its own to Blue Buffalo and others.

147. Diversified's contracts and other agreements with Corporate Defendants entitle Diversified to implied-in-fact or implied contractual indemnity. The contracting parties intended that, in such a situation, Corporate Defendants would be responsible for any liability resulting from their wrongful conduct.

148. In the alternative, Diversified is entitled to equitable or implied-in-law indemnity from all Defendants. Irrespective of the parties' contemporaneous intent, as between Diversified on the one hand, and Defendants on the other, any liability to Blue Buffalo and others should be borne by Wilbur-Ellis as a matter of equity and good conscience.

149. In these circumstances, equity requires that Defendants indemnify Diversified for all damages that may be awarded to Blue Buffalo or others that may have been harmed by the Defendants' wrongful conduct.

150. If Diversified is liable to Blue Buffalo or others in this case, then Diversified may be held to discharge an obligation that is identical to an obligation owed by Defendants under such circumstances in that the obligation should have been discharged by Defendants.

151. Defendants will be unjustly enriched if Defendants do not reimburse Diversified to the extent that the Defendants' liability has been discharged by Diversified.

**WHEREFORE**, Diversified Ingredients, Inc. requests that the Court enter judgment against Defendants requiring each of them to indemnify Diversified for all damages that may be awarded or other amounts to be paid to Blue Buffalo or other Diversified customers due to the Adulterated Meal, including Nestle and/or the class action plaintiffs or the putative class members; alternatively, requiring them to indemnify Diversified for such amounts to the extent Defendants contributed to losses to Blue Buffalo and other Diversified customers related to the Adulterated Meal, including Nestle and/or the class action plaintiffs or the putative class members; alternatively, requiring Wilbur-Ellis to indemnify Diversified for such amounts to the extent Wilbur-Ellis contributed to losses to Blue Buffalo or Diversified arising from this case; and providing such other and further relief as is just and proper.

**Count XIII: CONTRIBUTION  
(as to all Defendants)**

152. Diversified incorporates by reference paragraphs 1 through 151 above.

153. Blue Buffalo has denied any wrongdoing for causing the injuries and damages alleged in this matter that is the subject of Nestlé's Second Amended Complaint.

154. Diversified has denied any wrongdoing for causing the injuries and damages alleged in this matter that is the subject of Blue Buffalo's Third-Party Complaint.

155. At all times as alleged in Nestlé's Second Amended Complaint and Blue Buffalo's Third-Party Complaint, Defendants had a duty to exercise care regarding the supplying, manufacturing, labeling, selling, hauling, shipping, or brokering of materials and goods for or to Diversified, including to provide Diversified with chicken meal and turkey meal without animal byproducts and feathers as specified by Blue Buffalo, which is the subject of Blue Buffalo's Third-Party Complaint in this matter.

156. Defendants negligently or intentionally breached its duty to Diversified by selling Adulterated Meal that Defendants had misrepresented and mislabeled.

157. As a direct and proximate result of Defendants' acts or omissions, Blue Buffalo and others allegedly sustained injuries and damages of which they now complain.

158. At all relevant times, there was a right of contribution between Diversified and Defendants.

159. Diversified continues to deny it is liable to Blue Buffalo in this case. However, if Blue Buffalo is awarded any verdict against Diversified, then Diversified is entitled to contribution from Defendants for all or a proportional part of any damages of Blue Buffalo that were caused by the wrongdoing of Defendants.

160. If there was negligence or fault giving rise to the events or occurrences described in Nestlé's Second Amended Complaint and Blue Buffalo's Third-Party Complaint, and if Diversified was negligent or at fault (which Diversified denies), then Diversified is entitled to contribution from Defendants.

**WHEREFORE**, Diversified prays for judgment in its favor and against Defendants in the amount of any judgment entered against Diversified; or for judgment in Diversified's favor and against Defendants in any amount Diversified may pay greater than its *pro rata* share of the common liability to Blue Buffalo and for costs of suit; or requiring Defendants to pay such judgments to the extent its wrongful conduct caused such damages; and for a proportionate share of any judgment entered in favor of Nestle or any class action plaintiffs and the putative class members and against Blue Buffalo, or any other defendant, if any such judgment is entered, apportioning liability based on the relative fault of the parties; for costs in this action; and for such other and further relief as the Court deems just and proper.

Dated: September 4, 2015

/s/ Daniel D. Doyle

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*Attorneys for Diversified Ingredients, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date set forth above, the foregoing was filed electronically with the Clerk of the Court to be served upon all counsel of record by operation of the Court's electronic filing system.

/s/ Daniel D. Doyle

AO 441 (Rev. 12/09) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_)
Plaintiff )
v. ) Civil Action No.
\_\_\_\_\_)
Defendant, Third-party plaintiff )
v. )
\_\_\_\_\_)
Third-party defendant )

SUMMONS ON A THIRD-PARTY COMPLAINT

To: (Third-party defendant's name and address)

A lawsuit has been filed against defendant \_\_\_\_\_, who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff \_\_\_\_\_.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

Date: \_\_\_\_\_

CLERK OF COURT

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 441 (Rev. 12/09) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_)
Plaintiff )
v. ) Civil Action No.
\_\_\_\_\_)
Defendant, Third-party plaintiff )
v. )
\_\_\_\_\_)
Third-party defendant )

SUMMONS ON A THIRD-PARTY COMPLAINT

To: (Third-party defendant's name and address)

A lawsuit has been filed against defendant \_\_\_\_\_, who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff \_\_\_\_\_.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

Date: \_\_\_\_\_

CLERK OF COURT

\_\_\_\_\_)
Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

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\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

_____	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No.
_____	)	
<i>Defendant, Third-party plaintiff</i>	)	
v.	)	
_____	)	
<i>Third-party defendant</i>	)	

SUMMONS ON A THIRD-PARTY COMPLAINT

To: *(Third-party defendant's name and address)*

A lawsuit has been filed against defendant \_\_\_\_\_, who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff \_\_\_\_\_.

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It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

Date: \_\_\_\_\_

CLERK OF COURT

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
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\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 441 (Rev. 12/09) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

_____	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No.
_____	)	
<i>Defendant, Third-party plaintiff</i>	)	
v.	)	
_____	)	
<i>Third-party defendant</i>	)	

SUMMONS ON A THIRD-PARTY COMPLAINT

To: *(Third-party defendant's name and address)*

A lawsuit has been filed against defendant \_\_\_\_\_, who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff \_\_\_\_\_.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

Date: \_\_\_\_\_

CLERK OF COURT

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
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Other *(specify)*: \_\_\_\_\_

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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: