

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION**

Civil Case No.:

MAJA MACKENZIE as an individual, and on :
behalf of all others similarly situated, :

Plaintiff, :

vs. :

THE BLUE BUFFALO COMPANY, LTD., :
INC., a Delaware corporation, :

Defendant. :

CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiff, MAJA MACKENZIE, individually, and on behalf of all others similarly situated, by and through her undersigned counsel, and pursuant to all applicable *Federal Rules of Civil Procedure*, hereby files this Class Action Complaint, and alleges against Defendant, THE BLUE BUFFALO COMPANY, LTD., INC. (collectively referred to herein as “Blue Buffalo” or “Defendant”), as follows:

I. INTRODUCTION

1. At all material times hereto, Defendant has unlawfully, fraudulently, unfairly, negligently, misleadingly, and/or deceptively represented that its Products contain “NO Chicken/Poultry By-Product Meals,” that they contain no corn, wheat, or soy, or artificial preservatives, and that they provide superior nutrition compared to other comparable pet food products. Blue Buffalo’s claims are false and misleading because they do in fact contain Chicken/Poultry By-Product Meals, corn, wheat, and soy, and artificial preservatives, and do not provide superior nutrition compared to other comparable pet food products.

2. Defendant manufactures, markets, advertises, and sells the Products with its misleading representations and “True Blue” promise on the front packaging of the Products, in print and online advertising, and in television media.

3. At all material times hereto, all of the Products uniformly make the same misleading representations, which are prominently displayed on the front packaging for the Products and other advertising media. Defendant’s misleading representations are substantially similar on all of his Products.

4. Defendant’s representations are central to the marketing of the Products. The misrepresentations were communicated to Plaintiff and every other member of the Class.

5. Defendant’s conduct is an unfair business practice, and is false, misleading, and likely to deceive reasonable consumers in the same respect.

6. Contrary to Defendant’s representations, the Products, at all material times hereto, do contain Chicken/Poultry By-Product Meals, corn, other grains, and artificial preservatives, and do not provide superior nutrition compared to other comparable pet food products.

7. As a result, Plaintiff brings this class action to secure, among other things, damages and equitable relief, declaratory relief, restitution, and in the alternative to damages, relief for unjust enrichment, for a Class of similarly situated nationwide and/or Florida purchasers, against Defendant, for: (1) false, deceptive, unfair, and unlawful business practices in violation of Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”), FLA. STAT. §§ 501.201, *et seq.*; (2) Negligent Misrepresentation; (3) Breach of Express Warranty; (4) Violation of Magnusson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*; and (5) Unjust Enrichment (brought in alternative to Plaintiff’s other causes of action).

8. Plaintiff is seeking damages individually and on behalf of the Class. In addition, Plaintiff is seeking an Order requiring Defendant to cease from misrepresenting the true nature of the ingredients in its Products.

9. Plaintiff expressly does not seek to contest or enforce any state law that has requirements beyond those required by Federal laws or regulations.

10. All allegations herein are based on information and belief and/or are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter presented by this Class Action Complaint because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs. Pursuant to 28 U.S.C. § 1332(d)(2)(A), Plaintiff alleges that the total claims of the individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00, in the aggregate, exclusive of interest and costs, and as set forth below, diversity of citizenship exists under CAFA because, as more fully set forth below, Plaintiff is a citizen of Florida, and Defendant can be considered a citizen of Delaware for diversity purposes.

12. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because, as set forth below, Defendant conducts business in, and may be found in, this district, and Plaintiff purchased the subject Products of this action in this judicial district.

III. PARTIES

13. Plaintiff, MAJA MACKENZIE, is an individual more than 18 years old, and is a citizen of Florida, who resides in Palm Beach County. Plaintiff respectfully requests a jury trial on all damage claims.

14. Defendant, Blue Buffalo, is a Delaware corporation with its principal place of business located in Connecticut at 11 River Road, Wilton, CT 06897. Defendant lists with the Florida Department of State a Registered Agent as United Corporate Services, Inc., 9200 S. Dadeland Blvd., Suite 508, Miami, FL 33156. Defendant promoted and marketed the Products at issue in this jurisdiction and in this judicial district.

15. The Products' advertising relied upon by Plaintiff was prepared and/or approved by Defendant and its agents, and was disseminated by Defendant and its agents through advertising containing the misrepresentations alleged herein. The advertising for the Products was designed to encourage consumers to purchase the Products and reasonably misled the reasonable consumer, i.e. Plaintiff and the Class into purchasing the Products. Defendant is the owner, manufacturer and distributor of the Products, and is the company that created and/or authorized the unlawful, negligent, fraudulent, unfair, misleading and/or deceptive advertising and statements for the Products.

16. Plaintiff alleges that, at all times relevant herein, Defendant and its subsidiaries, affiliates, and other related entities, as well as their respective employees, were the agents, servants and employees of Defendant, and at all times relevant herein, each was acting within the purpose and scope of that agency and employment. Plaintiff further alleges on information and belief that at all times relevant herein, the distributors and retailers who delivered and sold the Products, as

well as their respective employees, also were Defendant's agents, servants and employees, and at all times herein, each was acting within the purpose and scope of that agency and employment.

17. In addition, Plaintiff alleges that, in committing the wrongful acts alleged herein, Defendant, in concert with its subsidiaries, affiliates, and/or other related entities and their respective employees, planned, participated in and furthered a common scheme to induce members of the public to purchase the Products by means of untrue, misleading, deceptive, and/or fraudulent representations, and that Defendant participated in the making of such representations in that it disseminated those misrepresentations and/or caused them to be disseminated. Whenever reference in this Complaint is made to any act by Defendant or its subsidiaries, affiliates, distributors, retailers and other related entities, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Defendant committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of Defendant while actively engaged in the scope of their duties.

IV. FACTUAL ALLEGATIONS

A. Blue Buffalo's Advertising of the Products

18. Defendant manufactures, distributes, markets, advertises, and sells the Products, which uniformly claim to contain "NO Chicken/Poultry By-Product Meals," that they contain no corn, wheat or soy, or artificial preservatives, and they provide superior nutrition compared to other comparable pet food products.

19. For example, like its Products, Defendant's website boasts¹:

BLUE uses only the finest natural ingredients and:

- NO chicken (or poultry) by-product meals

1. Defendant's website, available at <http://bluebuffalo.com/best-dog-food> (last visited May 13, 2014).

- NO artificial flavors, colors, or preservatives
- NO corn, wheat or soy, as they have been linked to allergic reactions in some pets

20. Defendant induces consumers with its “True Blue Promise” depicted below²:



21. Defendant promises that its Products provide superior nutrition as compared to other pet food³:

The Finest Natural Ingredients for Superior Nutrition

All of our great-tasting, natural and holistic [BLUE dog food](#) and [BLUE cat food](#) recipes feature:

- Deboned chicken, lamb or fish is the FIRST ingredient
- Wholesome whole grains
- Garden vegetables and antioxidant-rich fruit

Why Choose BLUE?

Because only BLUE is made with the unique combination of high-quality, natural ingredients plus exclusive LifeSource® Bits.

We love our dogs and cats like family so we want to feed them with the same care as family. That's why BLUE™ is made with only the finest natural ingredients plus the active nutrients and antioxidants of our exclusive, cold-formed LifeSource® Bits.

2. *Id.*

3. *Id.*

22. Defendant seeks to differentiate itself from other pet products by making claims such as⁴:

What's In Our Food and Why

BLUE foods consist of the finest natural ingredients combined in perfect balance for superior nutrition.

Of equal importance is the quality of the ingredients from which these nutrients are derived. For example, real chicken meat is a higher quality protein source than chicken or poultry by-product meals; chicken fat is considered a higher quality source of essential fatty acids than generic "animal fats." Subtle differences like these may determine whether a pet food brand's ingredients are as healthy as they claim to be.

BLUE recipes always feature high-quality proteins as the first ingredient—deboned chicken, lamb, or fish. That means there is more of that ingredient than any other in each recipe of BLUE.

Some brands cut corners by using protein from chicken or poultry by-product meals, or even worse, from corn or soy—not BLUE.

BLUE only uses quality whole grains, not the less expensive and less effective "fractionated" grains found in many pet foods. And of course, BLUE never uses corn, wheat, or soy. These are considered by many veterinary nutritionists to be lower quality ingredients used as fillers and are often associated with pet allergies.

23. All consumers within the Class, including Plaintiff, were exposed to Defendant's claims.

24. Unfortunately for consumers, they were charged a price premium for these alleged superior Products, over and above Products that did not the same false and misleading claims.

25. Defendant's representations convey a series of express and implied claims which Defendant knows are material to the reasonable consumer, and which Defendant intends for consumers to rely upon when choosing to purchase the Products.

B. Blue Buffalo's Claims are False, Deceptive, and Misleading

26. Independent testing proves that Blue Buffalo's claims are untrue.

27. Nestlé Purina PetCare Company ("Purina") recently filed a lawsuit against

4. Defendant's website, available at <http://bluebuffalo.com/nutrition> (last visited May 13, 2014).

Defendant for false advertising, disparagement, and unjust enrichment, including violations of the Federal Lanham Act (15 U.S.C. §1125(a)).⁵ The lawsuit has gained public attention and brought to light Defendant's conduct.

28. Purina's independent and scientific testing revealed that the Products do in fact contain poultry by-product meal and rice and/or corn.

29. Some of Defendant's Products contained upwards of 20% chicken/poultry by-product meals.

30. The Products also contain artificial preservatives because they are made with chicken/poultry by-product meals.

31. Additionally, the National Advertising Division (NAD) of the Council of Better Business Bureaus ruled that Defendant is engaging in misleading advertising practices and making unsupported claims by falsely representing that its Products are superior to other pet food.

32. Plaintiff will establish throughout the course of discovery that Defendant's claims are false, deceptive, and misleading, and not supported by competent, reliable, scientific evidence.

C. Defendant Deceptively Markets the Products to Induce Consumers to Purchase the Products

33. Defendant's representations are material to a reasonable consumer.

34. Defendant falsely markets and advertises the Products to increase sales derived from the Products and Defendant is well-aware that its claims are material to consumers.

35. Defendant's tactics are designed to play on the emotions and health conscious well-being pet owners have for their pets. Defendant knows that consumers treat and view their pets as family, and strive to ensure that their pets have healthy and long lives. Defendant targets consumers

5. See Nestlé Purina PetCare Company v. The Blue Buffalo Company, Ltd., 4:14-cv-00859 [DE 1], (E.D. Mo May 6, 2014).

by stating, "Love them like family. Feed them like family," suggesting that the Products are even fit for human consumption.

36. Defendant engaged in this misleading and deceptive campaign to charge a premium for the Products and take away market share from other similar products. As stated herein, such representations and the widespread marketing campaign are misleading and likely to deceive reasonable consumers because the Product's claims are simply not true.

37. Reasonable consumers rely on food label representations and information in making purchase decisions.

38. Plaintiff and the other Class members reasonably relied to their detriment on Defendant's misleading representations and omissions. Defendant's misleading affirmative statements about the Products obscure the material facts that Defendant failed to disclose about the Products.

39. Plaintiff and the other Class members were among the intended recipients of Defendant's deceptive representations and omissions.

40. Defendant made the deceptive representations and omissions on the Products with the negligent and/or purposeful intent to induce Plaintiff's and the other Class members' purchase of the Products.

41. Defendant's deceptive representations and omissions are material in that a reasonable person attaches importance to such information and would be induced to act upon such information in making purchase decisions.

42. Thus, Plaintiff and the other Class members' reliance upon Defendant's misleading and deceptive representations and omissions may be presumed.

43. The materiality of those representations and omissions also establishes causation between Defendant's conduct and the injuries sustained by Plaintiff and the Class.

44. Defendant's false, misleading, and deceptive misrepresentations and omissions are likely to continue to deceive and mislead reasonable consumers and the general public, as they have already deceived and misled Plaintiff and the other Class members.

45. In making the false, misleading, and deceptive representations and omissions, Defendant knew and intended that consumers would pay a premium for the Products over comparable products that do not make the same claims, furthering Defendant's private interest of increasing sales for its Products and decreasing the sales of products that are truthfully advertised.

46. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive representations and omissions, Defendant injured Plaintiff and the other Class members in that:

- 1) They paid a sum of money for Products that were not as represented;
- 2) They paid a premium price for Products that were not as represented;
- 3) They were deprived the benefit of the bargain because the Products they purchased were different than what Defendant warranted;
- 4) They were deprived the benefit of the bargain because the Products they purchased had less value than what was represented by Defendant;
- 5) They did not receive Products that measured up to their expectations as created by Defendant;
- 6) Their pets ingested a substance that was other than what was represented by Defendant;
- 7) Their pets ingested a substance that Plaintiff and the other members of the Class did not expect or consent to;
- 8) Their pets ingested a substance that was of a lower quality than what Defendant promised;

- 9) They were denied the benefit of knowing what their pets ingested;
 - 10) They were denied the benefit of truthful food labels; and
 - 11) Their pets were denied the benefit of the beneficial properties the foods promised.
47. Had Defendant not made the false, misleading, and deceptive representations and omissions, Plaintiff and the other Class members would not have been economically injured.
48. Plaintiff and the other Class members did not obtain the full value of the advertised Products due to Defendant's misrepresentations and omissions.
49. Plaintiff and the other Class members purchased, purchased more of, or paid more for, the Products than they would have done, had they known the truth about the Products' unnaturalness.
50. Accordingly, Plaintiff and the other Class members have suffered injury in fact and lost money or property as a result of Defendant's wrongful conduct.

D. Plaintiff's Purchase

51. Plaintiff has purchased at least one of the Products—including but not limited to the Life Protection Formula Chicken & Brown Rice Recipe—more than one time during the Class Period, from a Petco Animal Supplies located in Jupiter, Florida, for the purchase price of approximately \$19.00. Plaintiff read the Statements on the front packaging, which Plaintiff perceived, and relied on in making her purchase. Subsequent to purchasing the Products, Plaintiff discovered that the Statements were not true.

52. The Products are valueless or worthless because Plaintiff and members of the putative Class would not have purchased them, or in other words, would have paid zero dollars, had they known Defendant was committing an unfair deception on them and that the Statements were not true.

53. Plaintiff and members of the Class would not have purchased the Products had they known that they contain chicken/poultry by-product meals, that they contain corn, wheat, or soy, artificial preservatives, and they do not provide superior nutrition compared to other comparable pet food products.

E. Plaintiff Has Suffered Economic Damages

54. As a result of purchasing the Products, Plaintiff and members of the Class have suffered economic damages.

55. The Products are valueless, worth less than what Plaintiff and members of the Class paid for them, and/or are not what Plaintiff and members of the Class reasonably intended to receive.

56. Plaintiff and the Class seek damages equal to the aggregate purchase price paid for the Products during the Class Period because Defendant's conduct constitutes an unfair business practice and/or because the Products are worthless due to containing Chicken/Poultry By-Product Meals, corn, wheat, and soy, and artificial preservatives, and because they provide no superior nutrition compared to other comparable pet food products. Moreover, Plaintiff and members of the Class paid a price premium for the Products, over other similar products that do not make the same false and misleading claims.

V. CLASS ACTION ALLEGATIONS

57. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

58. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this class action and seeks certification of the claims and certain issues in this action on behalf of a Class defined as:

All United States residents who have purchased for personal use any of Defendant's Blue Buffalo Product's that contain chicken/poultry by-product meals, corn, wheat, or soy, or artificial preservatives, from May 13, 2010, through and to the date Notice is provided to the Class.

59. Alternatively and/or in addition, Plaintiff brings this class action and seeks certification of the claims and certain issues in this action on behalf of a Class defined as:

All Florida residents who have purchased for personal use any of Defendant's Blue Buffalo Product's that contain chicken/poultry by-product meals, corn, wheat, or soy, or artificial preservatives, from May 13, 2010, through and to the date Notice is provided to the Class.

60. Plaintiff respectfully reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

61. Defendant's practices and omissions were applied uniformly to all members of the Class, including any subclass, so that the questions of law and fact are common to all members of the Class and any subclass.

62. All members of the Class and any subclass were and are similarly affected by the deceptive advertising for the Products, and the relief sought herein is for the benefit of Plaintiff and members of the Class and any subclass.

63. Based on the annual sales of the Products and the popularity of the Products, it is readily apparent that the number of consumers in both the Class and any subclass is so large as to make joinder impractical, if not impossible.

64. Questions of law and fact common to the Plaintiff Class and any subclass exist that predominate over questions affecting only individual members, including, *inter alia*:

- a. Whether Defendant's business practices violated FDUTPA, Fla. Stat. §§ 501.201, *et seq.*;
- b. Whether Defendant's Products contain Chicken/Poultry By-Product Meals;
- c. Whether Defendant's Products contain corn, wheat, or soy, or artificial preservatives;
- d. Whether Defendant's Products provide superior nutrition compared to other comparable pet food products"
- e. Whether the ingredients contained in the Products conform to the representations made on Defendant's advertng for the Products;
- f. Whether Defendant's claims on the Products' packaging and advertising is material to a reasonable consumer;
- g. Whether Defendant's claims on the Products' packaging and advertising is false to a reasonable consumer.
- h. Whether Defendant's claims on the Products' packaging and advertising is likely to deceive a reasonable consumer;
- i. Whether Defendant's claims on the Products' packaging and advertising is misleading to a reasonable consumer;
- j. Whether Defendant was unjustly enriched by the sale of the Products; and

- k. Whether Defendant's conduct as set forth above injured consumers and if so, the extent of the injury;
- l. Whether Defendant should be required to engage in corrective advertising and/or cease from making false and misleading claims on the Products' packaging and advertising.

65. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Plaintiff Class and any subclass, as the claims arise from the same course of conduct by Defendant, and the relief sought within the Class and any subclass is common to the members of each.

66. Plaintiff will fairly and adequately represent and protect the interests of the members of the Plaintiff Class and any subclass.

67. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

68. Certification of this class action is appropriate under Federal Rule of Civil Procedure 23 because the questions of law or fact common to the respective members of the Class and any subclass predominate over questions of law or fact affecting only individual members.

69. This predominance makes class litigation superior to any other method available for a fair and efficient decree of the claims.

70. Absent a class action, it would be highly unlikely that the representative Plaintiff or any other members of the Class or any subclass would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery.

71. Certification also is appropriate because Defendant acted, or refused to act, on grounds generally applicable to both the Class and any subclass, thereby making appropriate the relief sought on behalf of the Class and any subclass as respective wholes.

72. Further, given the large number of consumers of the Products, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

73. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that individual actions would engender.

74. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

**VI. FIRST CAUSE OF ACTION:
FOR VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES
ACT, FLA. STAT. §§ 501.201, *ET SEQ.***

75. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs numbered one (1) through seventy-four (74) of this Complaint as if fully set forth herein verbatim.

76. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213, *Florida Statutes*. The express purpose of the Act is to “protect the consuming public . . . from those who engage in unfair methods of competition, or

unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce”
Section 501.202(2).

77. The sale of the Products at issue in this cause was a “consumer transaction” within the scope of the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213, *Florida Statutes*.

78. Plaintiff is a “consumer” as defined by Section 501.203, *Florida Statutes*. Each of Defendant’s Products is a “good” within the meaning of the Act. Defendant is engaged in trade or commerce within the meaning of the Act.

79. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce”.

80. Section 501.204(2), *Florida Statutes* states that “due consideration be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Trade Commission Act.” Defendant’s unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably under the circumstances and, therefore, violate Section 500.04, Florida Statutes and 21 U.S.C. Section 343.

81. Defendant has violated the Act by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers. Specifically, Defendant has made unfair, false, deceptive, and misleading claims on the packaging and advertising of its Products.

82. Plaintiff and Class Members have been aggrieved by Defendant’s unfair and deceptive practices in that they purchased and consumed Defendant’s Products.

83. Reasonable consumers rely on Defendant to honestly represent the true nature of their ingredients.

84. As described in detail above, Defendant has falsely represented the ingredients and quality that it's Products.

85. Defendant has deceived reasonable consumers, like Plaintiff and the Class, into believing its Products were something they were not.

86. The knowledge required to discern the true nature of Defendant's Products is beyond that of the reasonable consumer.

87. The damages suffered by the Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendant, as described above.

88. Pursuant to Section 501.211(1), *Florida Statutes*, Plaintiff and the Class seek a declaratory judgment and court order enjoining the above described wrongful acts and practices of the Defendant, and for restitution and disgorgement.

89. Additionally, pursuant to sections 501.211(2) and 501.2105, *Florida Statutes*, Plaintiff and the Class make claims for damages, attorney's fees and costs.

**VII. SECOND CAUSE OF ACTION:
NEGLIGENT MISREPRESENTATION**

90. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs numbered one (1) through seventy-four (74) of this Complaint as if fully set forth herein verbatim.

91. Defendant has negligently represented the ingredients contained in, and the quality of the Products.

92. Defendant has misrepresented material facts to the public, including Plaintiff and Class Members, about its Products; specifically, that the Products contain "NO Chicken/Poultry

By-Product Meals,” that they contain no corn, other grains, or artificial preservatives, and they provide superior nutrition compared to other comparable pet food products.

93. The Product is marketed directly to consumers by Defendant, comes in sealed packages, and does not change from the time it leaves Defendant's possession until it arrives in stores to be advertised and sold to consumers.

94. Defendant knew or should have known that these representations and omissions would materially affect Plaintiff's and Class members' decisions to purchase the Products.

95. Defendant has omitted the fact that the Products do in fact contain chicken/poultry by-product meal, corn, wheat, or soy, or artificial preservatives, and that they do not provide superior nutrition compared to other comparable pet food products.

96. Plaintiff and other reasonable consumers, including the Class members, reasonably relied on Defendant's representations set forth herein, and, in reliance thereon, purchased the Products. The reliance by Plaintiff and Class members was reasonable and justified in that Defendant appeared to be, and represented itself to be, a reputable business, and it distributed the Products through reputable companies. Plaintiff would not have been willing to pay for Defendant's Products if she knew that Defendant's claims were untrue.

97. As a direct and proximate result of these misrepresentations, Plaintiff and members of the Class were induced to purchase and consume Defendant's Products, and have suffered damages to be determined at trial in that, among other things, they have been deprived of the benefit of their bargain in that they bought Products that were not what they were represented to be, and they have spent money on Products that had less value than was reflected in the premium purchase price they paid for the Products.

98. Plaintiff seeks all available remedies, damages, and awards as a result of Defendant's negligent misrepresentations and/or omissions.

**VIII. THIRD CAUSE OF ACTION:
BREACH OF EXPRESS WARRANTY**

99. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs numbered one (1) through seventy-four (74) of this Complaint as if fully set forth herein verbatim.

100. Defendant has expressly represented that the Products contain "NO Chicken/Poultry By-Product Meals," that they contain no corn, wheat, or soy, or artificial preservatives, and they provide superior nutrition compared to other comparable pet food products, when in fact, they do contain these ingredients and do not provide superior nutrition over other comparable products.

101. The Product is marketed directly to consumer by Defendant, comes in sealed packages, and does not change from the time it leaves Defendant's possession until it arrives in stores to be advertised and sold to consumers.

102. Plaintiff is informed and believes, and thereon alleges, that Defendant made an express warranty by making its Statements on the Products and other advertising.

103. Defendant breached its claimed express warranty because the Products do in fact contain the disclaimed ingredients.

104. As a proximate result of the failure of the Products to perform as expressly warranted by Defendant, Plaintiff and members of the Class have suffered actual economic damages in an amount to be determined at trial in that they were induced to purchase products they would not have purchased had they known the true facts about, and have spent money on Products

that were not what they were represented to be, and that lack the value Defendant represented the Products to have.

105. Plaintiff seeks all available remedies, damages, and awards as a result of Defendant's breach of express warranty.

**IX. FOURTH CAUSE OF ACTION:
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
(15 U.S.C. §§ 2301 *et seq.*)**

106. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs numbered one (1) through seventy-four (74) of this Complaint as if fully set forth herein verbatim.

107. Defendant has breached express warranties regarding the Product, as described in the third cause of action above.

108. Plaintiff and the Class are consumers as defined in 15 U.S.C. § 2301(3).

109. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4)(5).

110. The Products are consumer products as defined in 15 U.S.C. § 2301(6).

111. By reason of Defendant's breach of the above express warranty, Defendant has violated the statutory rights due to Plaintiff and members of the Class pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, thereby economically damaging Plaintiff and the Class.

112. Therefore, Plaintiff and the Class seek all available remedies, damages, and awards under the Magnuson-Moss Warranty Act.

**X. FIFTH CAUSE OF ACTION:
UNJUST ENRICHMENT**

113. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs numbered one (1) through seventy-four (74) of this Complaint as if fully set

forth herein verbatim.

114. In its marketing and advertising, Defendant has made false and misleading statements and/or omissions regarding the Products, as described herein.

115. The Product is marketed directly to consumer by Defendant, comes in sealed packages, and does not change from the time it leaves Defendants possession until it arrives in stores to be advertised and sold to consumers.

116. Plaintiff and Class Members conferred a benefit on Defendant by purchasing the Products. Defendant accepted and retained the benefit in the amount of the purchase price and/or profits it earned from sales of the Products to Plaintiff and other Class members.

117. Defendant profited from its unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Defendant to be permitted to retain said benefit.

118. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's actions, as set forth herein.

119. Defendant is aware that the claims and/or omissions that it makes about the Products are false, misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class.

120. Plaintiff and Class members do not have an adequate remedy at law against Defendant (in the alternative to the other causes of action alleged herein).

121. Accordingly, the Products are valueless such that Plaintiff and Class members are entitled to restitution in an amount not less than the purchase price of the Products paid by Plaintiff and Class members during the Class Period.

122. Plaintiff and Class members are entitled to restitution of the excess amount paid for the Products, over and above what they would have paid if the Products had been adequately advertised, and Plaintiff and Class members are entitled to disgorgement of the profits Defendant derived from the sale of the Products.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated, prays for relief pursuant to each cause of action set forth in this Complaint as follows:

1. For an order certifying that the action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating Plaintiff's attorneys Class counsel;
2. For on order declaring Defendant's conducts to be in violation of FDATPA;
3. For an award of equitable relief for all causes of action as follows:
 - (a) Enjoining Defendant from continuing to engage, use, or employ any unfair and/or deceptive business acts or practices related to the design, testing, manufacture, assembly, development, marketing and advertising of the Products for the purpose of selling the Products in such manner as set forth in detail above or making any claims found to violate FDUTPA or the other causes of action as set forth above;
 - (b) Requiring Defendant to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint;
 - (c) Restoring all monies that may have been acquired by Defendant as a result of such unfair and/or deceptive act or practices; and

- (d) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct described herein.
3. For actual damages in an amount to be determined at trial for all causes of action;
 4. For an award of attorney's fees pursuant to, *inter alia*, FDUTPA;
 5. For an award of costs and any other award the Court might deem just, appropriate, or proper; and
 6. For pre- and post-judgment interest on any amounts awarded.

XII. DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a jury trial on all issues so triable.

Respectfully Submitted By,

Dated: May 13, 2014

/s/ Joshua H. Eggnatz
Joshua H. Eggnatz, Esq.
Fla. Bar. No.: 0067926
THE EGGNATZ LAW FIRM, P.A.
1920 N. Commerce Parkway, Suite 1
Weston, FL 33326
Telephone: (954) 634-4355
Facsimile: (954) 634-4342
Email: *JEggnatz@EggnatzLaw.com*

Howard W. Rubinstein, Esq.
Florida Bar No.: 104108
**THE LAW OFFICES OF
HOWARD W. RUBINSTEIN, P.A.**
1615 Forum Place, Suite 4C
West Palm Beach, FL 33401
(800) 436-6437
(415) 692-6607 (fax)
Email: *howardr@pdq.net*

*Attorneys for Plaintiff
and the Proposed Class*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

MAJA MACKENZIE as an individual, and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Palm Beach County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

The Eggnatz Law Firm, P.A. 1920 N. Commerce Parkway, Ste. 1, Weston, FL 33326, (954)634-4355

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

DEFENDANTS

THE BLUE BUFFALO COMPANY, LTD., INC., a Delaware corporation

County of Residence of First Listed Defendant Fairfield County, CT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment
8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

a) Re-filed Case YES NO b) Related Cases YES NO

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332 (d)(2): Claims for Violations of Florida's Deceptive & Unfair Trade Practices Act, et al. LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE May 13, 2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Joshua H. Eggnatz, Esq.

FOR OFFICE USE ONLY

RECEIPT # aaaaaaaaaa AMOUNT aaaaaaaaaa IFP aaaaaaaaaa JUDGE aaaaaaaaaa*****MAG JUDGE aaaaaaaaaa

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

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: