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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSHUA TEPERSON, on behalf of himself
and All Others Similarly Situated,

Plaintiff,

vs.

THE BLUE BUFFALO COMPANY, LTD,
a Delaware Corporation and Does 1-20,

Defendant.

Case No. '14CV1682 WQHRBB

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*;
2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750, *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiff Joshua Teperson brings this action on behalf of himself and similarly
2 situated individuals who purchased pet food manufactured and marketed by Defendant
3 The Blue Buffalo Company Ltd. and states:

4 **NATURE OF ACTION**

5 1. This is a class action against Blue Buffalo arising out of the marketing and
6 sale of its pet food products (“Pet Food”). Defendant currently, and at all times relevant
7 hereto promoted its Pet Food by issuing several materially false claims concerning the
8 ingredients in its Pet Food. Specifically, Defendant conveyed a clear representation to
9 consumers through its marketing, advertising and labeling campaign that its Pet Food did
10 not contain certain undesirable ingredients.

11 2. Defendant’s marketing and advertising campaign is extensive and
12 nationwide, targeting ingredient-conscious pet owners.

13 3. The most significant false material representation made by Defendant is that
14 “NO Chicken/Poultry By-Product Meals” are present as ingredients in any of Defendant’s
15 Pet Food.

16 4. Defendant also stated falsely that its products do not contain corn, wheat, or
17 soy and that there are no artificial preservatives, colors, or flavors present in its Pet Food.

18 5. Defendant’s representations are materially false, misleading, and deceptive to
19 consumers. Moreover, they are blanketed all over its advertisements, product packaging,
20 commercials, and internet website as part of a comprehensive and deceptive marketing
21 campaign.

22 6. Plaintiff relied on Defendant’s misleading representations when he purchased
23 Blue Buffalo’s Hearty Chicken Dinner, “Freedom Grain Free Grillers” for his dogs.
24 Plaintiff and the Class (defined below) paid a premium for the Pet Food over comparable
25 pet food brands that do not implicate its pet food to be “chicken/poultry by-product meal”
26 free.

27 7. Reliance on the misrepresentations led Plaintiff and other members of the
28 Class to suffer economic loss by purchasing the Pet Food because they paid more than

1 they would have for comparable pet food that also contains chicken/poultry by-product
2 meal. In fact, Plaintiff and the Class members did not receive the benefit of the bargain
3 and instead, received pet food that contains chicken/poultry by-product meal.

4 8. Reasonable consumers, such as Plaintiff and the other members of the Class,
5 do not have the specialized knowledge and/or equipment to determine the ingredients in
6 the Pet Food as being inconsistent with Blue Buffalo's representations. The consumers
7 are forced to rely on Blue Buffalo's representations about its Pet Food.

8 9. In fact, Defendant knows that consumers are willing to pay a premium for
9 Pet Food that does not contain certain undesirable ingredients, and consumers rely on the
10 representations made in Defendant's advertising and product labels. The representations
11 made by Defendant concerning the ingredients in its Pet Food are deceptive and
12 misleading and are designed to induce consumers to buy the Pet Food. Defendant knew,
13 at the time it began selling the Pet Food, that it contained the aforementioned undesirable
14 ingredients.

15 10. This action seeks to provide relief and redress to consumers who have been
16 harmed and misled by Defendant's advertising practices. Defendant's conduct has
17 included the systematic and ongoing practice of disseminating false and misleading
18 information throughout the United States, including California, by way of ubiquitous,
19 multi-media advertising and product labeling.

20 11. Plaintiff asserts these claims on behalf of himself and the Class for violations
21 of California's Unfair Competition Law, Business & Professions Code Section 17200, et
22 seq., California's Consumer Legal Remedies Act, Civil Code Section 1750, et seq., and
23 for breach of express warranty.

24 12. Through this action, Plaintiff seeks injunctive relief, actual damages,
25 restitution, and/or disgorgement of profits, statutory damages, attorneys' fees, costs, and
26 all other relief available to the Class as a result of Blue Buffalo's unlawful conduct.

27 13. Plaintiffs and the Class have been damaged in the amount of the price of the
28 Products they purchased.

1 **JURISDICTION AND VENUE**

2 14. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The
3 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
4 \$5,000,000 and is a class action in which there are in excess of 100 class members and
5 many members of the Class are citizens of a state different from Defendant.

6 15. Venue is proper in this Court pursuant to 28 U.S.C. § § 1391(a) and (b)
7 because a substantial part of the events or omissions giving rise to Plaintiff’s claims
8 occurred in this judicial district.

9 **PARTIES**

10 16. Plaintiff Josh Teperson is, and at all times relevant to this action has been, a
11 resident and citizen of San Diego County, California. Plaintiff has purchased the Pet
12 Food in San Diego, California in reliance on Defendant’s representations the Pet Food did
13 not contain “chicken/poultry by-product meal.” This representation was material to
14 Plaintiff’s decision to purchase the Pet Food at a premium. Plaintiff was willing to
15 purchase the Pet Food at the premium because of the representations that the Pet Food did
16 not contain “chicken/poultry by-product meal.” Indeed, Plaintiff would not have
17 purchased the Pet Food, nor paid as much for the Pet Food, or would have purchased an
18 alternative pet food in the absence of Defendant’s representation the Pet Food was
19 “chicken/poultry by-product meal” free.

20 17. Defendant Blue Buffalo is a Delaware Corporation, with its principal place of
21 business located at 444 Danbury Road, Wilton, Connecticut 06897. Blue Buffalo is in the
22 business of manufacturing, marketing, advertising, and selling its pet food, pet treats, and
23 other pet related products to individuals throughout the United States, including
24 individuals in California, such as Plaintiff and the Class.

25 **FACTUAL BACKGROUND**

26 18. Plaintiff purchased Defendant’s Pet Food products, specifically Blue
27 Buffalo’s Hearty Chicken Dinner, “Freedom Grain Free Grillers” at a PetSmart store
28 located at 4253 Genesee Avenue, San Diego, California 92117, San Diego, California.

1 Plaintiff purchased the Defendant’s Pet Food for personal use, specifically for feeding his
2 two dogs.

3 19. Plaintiff observed and reasonably relied on Defendant’s material
4 misrepresentations concerning the ingredients present in its products when making the
5 purchase. This reliance was to Plaintiff’s detriment, and Plaintiff would not have
6 purchased the Pet Food had he been aware of the actual ingredients present in the Pet
7 Food.

8 20. Defendant Blue Buffalo sells pet products for household pets including, but
9 not limited to, dry food, wet food, and treats. Defendant’s marketing strategy and the
10 value of its brand reputation are dependent upon its ingredients and promises to
11 consumers that its products are nutritional and superior to other brands because its
12 products allegedly do not contain “chicken/poultry by-product meals,” as well as alleged
13 claims its products are free of corn, grains, and artificial preservatives.

14 21. Defendant’s promotional strategy is specifically designed to capitalize on the
15 trend among pet owners - more commonly referred to now as “pet parents” - to treat their
16 pets like members of the family. Blue Buffalo’s slogan is specifically directed at such
17 “pet parents”: “Love them like family. Feed them like family.”

18 22. Blue Buffalo’s slogan implies strongly that its products are human-grade and
19 fit for human consumption. Yet these statements are materially false because products
20 that contain ingredients such as chicken/poultry by-product meal are, in fact, *not* fit for
21 human consumption.

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Blue Buffalo Nutrition and Ingredient Philosophy

"Love them like family. Feed them like family."

We love our pets, which is why everything we do always comes back to the idea that we think of them as family. Our goal is to create the healthiest foods possible—because a healthier dog or cat is a happier one, and a happier pet means a happier pet parent. That care and dedication goes into every bag we make.

Source: www.bluebuffalo.com/nutrition 5/23/2014

23. Defendant's misrepresentations also include a misleading so-called "True BLUE Promise" to consumers that Blue Buffalo uses "Only the Finest Natural Ingredients." This promise is prominently displayed throughout all of Defendant's advertising and on its product labels.

The True BLUE Promise

1. All BLUE dog and cat foods start with healthy recipes created by leading animal nutritionists and veterinarians.
2. We will source only the finest ingredients from a limited group of proven suppliers, with the best available inspection procedures and safety standards.
3. We will test all ingredients for quality and safety before, during and after the manufacturing process.
4. We will supplement our own quality assurance staff with independent inspection services to verify that our products are prepared according to the highest standards.
5. We will never stop working to deliver on our commitment to provide pet parents with the safest and most nutritious foods for our beloved dogs and cats.

Sincerely,

The Bishop and the Blue Buffalo Company Family



Source: www.bluebuffalo.com/news/true-blue-promise 5/23/2014



Source: www.bluebuffalo.com/best-dog-food 5/23/2014



Source: Wilderness Blue Rocky Mountain Recipe
~ with Bison ~ and LifeSource Bits Adult product label

24. Furthermore, in addition to Blue Buffalo’s “family” and “promise” slogans, it allows consumers to utilize a comparison tool named “The True BLUE Test” on its website for consumers to evaluate how their current pet food measures up to Blue Buffalo’s. The test invites consumers to compare ingredients, which Blue Buffalo has determined to be significant for their nutritional value. One category included is labeled “NEVER Has Chicken (or Poultry) By-Product Meals.” When a consumer’s computer mouse hovers over this specific label a pop-up window appears:

THE TRUE BLUE TEST RESULTS
Love Them Like Family. Feed Them Like Family.

How does your brand compare? [Learn More](#)

Roll over or touch to expand

- ALWAYS** Has Real Meat as the First Ingredient [Learn More](#)
- ALWAYS** Includes Veggies and Fruit [Learn More](#)
- NEVER** Has Chicken (or Poultry) By-Product Meals [Learn More](#)
- NEVER** Has Artificial Colors, Flavors or Preservatives [Learn More](#)
- NEVER** Has Corn, Wheat or Soy [Learn More](#)

NEVER Has Chicken (or Poultry) By-Product Meals

Poultry (chicken) by-product meal consists of the ground, rendered, clean parts of the carcass of slaughtered poultry, such as necks, feet, undeveloped eggs, and intestines. These ingredients are commonly lower in cost than fresh meat.

CHICKEN OR POULTRY BY-PRODUCT MEALS

✓	✓
—	—
✓	—

For detailed comparison information, [click here](#)

Want to re-take the test? [Click Here](#)

Source: www.bluebuffalo.com/dog-food-comparison/test-results 5/23/2014

25. Defendant’s Pet Food also contains “LifeSource Bits,” exclusively created for and by Blue Buffalo, that it represents as being “cold-formed” kibble that is comprised of essential “vitamins, minerals, and antioxidants” that provides a series of special health benefits for pets, which are present in each dry Pet Food product Defendant manufacturers, including Defendant’s “100% Grain Free” products.

26. In actuality, Nestle Purina Petcare Company hired an independent laboratory to investigate and test Blue Buffalo’s Pet Food. The April 2014 investigation reveals that Blue Buffalo’s core statements about its products’ ingredients are materially false. (*Nestle Purina Petcare Company v. The Blue Buffalo Company LTD.*, E.D. Mo., Case No. 4:14-cv-00859, Dkt. #9 May 11, 2014).

27. Specifically, the independent laboratory revealed that amounts of chicken/poultry by-product meal is present in Blue Buffalo’s Pet Food. Chicken/poultry by-product meal is found at 25% in one sample tested. Furthermore, the investigation concluded chicken/poultry by-product meal is present in Defendant’s “LifeSource Bits” (defined above) at a range between 0% to 11%.

1 28. The independent laboratory also revealed the presence of rice and/or corn in
2 Defendant's 100% Grain Free products and its LifeSource Bits. Corn and/or rice is found
3 in the Pet Food in one sample at 1% and in the LifeSource Bits in ranges between 1% and
4 3%.

5 29. In fact, a recent ruling from the National Advertising Division ("NAD") of
6 Better Business Bureaus confirmed the misleading nature of Blue Buffalo's advertising.
7 The NAD report stated that Blue Buffalo "[should] discontinue its 'no animal by-
8 products' claims when made in reference to pet foods containing fish meal, lamb meal,
9 and/or liver." (NAD Case #4892, decided July 11, 2008, attached hereto as Exhibit A.)

10 30. In addition, the independent laboratory found that Defendant's Pet Food that
11 is labeled "100% Grain Free," which includes "LifeSource Bits," contains rice hulls as an
12 ingredient. The presence of rice hulls renders Defendant's statements that its products are
13 "grain free" materially false and misleading.

14 31. Importantly, Blue Buffalo charges a significant price premium for its Pet
15 Foods compared to its competitors. Defendant is able to charge this premium due in large
16 part to consumers' justifiable reliance on its false claims concerning the
17 quality of the ingredients found in its Pet Food.

18 32. As a direct and proximate result of Defendant's conduct, Plaintiff and the
19 Class members did not receive the benefit of the bargain, and as such, suffered actual
20 damages and/or economic losses.

21 **CLASS DEFINITION AND ALLEGATIONS**

22 33. Plaintiff brings this action on behalf of himself and all other similarly
23 situated individuals pursuant to Rule 23 (a), (b)(2), and (b)(3) of the Federal Rules of
24 Civil Procedure and seeks certification of the following Class:

25 All California consumers who, within the applicable statute of
26 limitations period, purchased the Pet Food.

27 Excluded from the Class are Blue Buffalo, its affiliates, officers
28 and directors.

1 34. The members of the Class are so numerous that joinder of all members of the
2 Class is impracticable. Plaintiff is informed and believes that the proposed Class contains
3 thousands of purchasers of the Pet Food who have been damaged by Blue Buffalo's
4 conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

5 35. This action involves common questions of law and fact, which predominate
6 over any questions affecting individual class members. These common legal and factual
7 questions include, but are not limited to, the following:

- 8 a. whether the claims discussed above are true, or are misleading, or
9 objectively reasonably likely to deceive;
- 10 b. whether Blue Buffalo's alleged conduct violates public policy;
- 11 c. whether the alleged conduct constitutes violations of the laws asserted;
- 12 d. whether Blue Buffalo engaged in false or misleading advertising;
- 13 e. whether Plaintiff and Class members have sustained monetary loss and
14 the proper measure of that loss; and
- 15 f. whether Plaintiff and Class members are entitled to other appropriate
16 remedies, including corrective advertising and injunctive relief.

17 36. Plaintiff's claims are typical of the claims of the members of the Class,
18 because, *inter alia*, all Class members were injured through the uniform misconduct
19 described above having been exposed and misled by Blue Buffalo's false representations
20 regarding the ingredients of its Pet Food. Plaintiff is advancing the same claims and legal
21 theories on behalf of himself and all members of the Class.

22 37. Plaintiff will fairly and adequately protect the interests of the member of the
23 Class, have retained counsel experienced in complex consumer class action litigation, and
24 intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic
25 interests to those of the Class.

26 38. A class action is superior to all other available means for the fair and efficient
27 adjudication of this controversy. The damages or other financial detriment suffered by the
28 individual Class members is relatively small compared to the burden and expense that

1 would be entailed by individual litigation of their claims against Blue Buffalo. It would
2 thus be virtually impossible for the Class, on an individual basis, to obtain effective
3 redress for the wrongs done to them. Individualized litigation would create the danger of
4 inconsistent or contradictory judgments arising from the same set of facts and would also
5 increase the delay or expense to all parties and the courts. By contrast, the class action
6 device provides the benefits of the adjudication of these issues in a single proceeding,
7 ensures economies of scale and comprehensive supervision by a single court, and presents
8 no unusual management difficulties under the circumstances here.

9 39. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
10 behalf of the entire Class, preventing Blue Buffalos from further engaging in the acts
11 described and requiring Blue Buffalo to provide full restitution to Plaintiffs and Class
12 members.

13 40. Unless a Class is certified, Blue Buffalo will retain monies received as a
14 result of its conduct that were taken from Plaintiff and Class members. Unless a Class-
15 wide injunction is issued, Blue Buffalo will continue to commit the violations alleged, and
16 the members of the Class and the general public will continue to be deceived.

17 41. Blue Buffalo has acted and refused to act on grounds generally applicable to
18 the Class, making it appropriate final injunctive relief with respect to the Class as a whole.

19 **FIRST CAUSE OF ACTION**

20 **(Cal. Bus. & Prof. Code § 17500, et seq.)**

21 42. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set
22 forth herein.

23 43. Defendant engaged in unlawful conduct under California Business &
24 Professions Code § 17500, et seq., by marketing the Pet Food in a manner that uniformly
25 misrepresented the Pet Food's ingredients, and in fact, upon reasonable reliance of said
26 marketing, induced Plaintiff and Class members to purchase the Pet Food at a premium.

1 44. As a direct and proximate result of Defendant's violations, Plaintiff would
2 not have otherwise purchased the Pet Food and, therefore, suffered injury in fact and lost
3 money.

4 45. Plaintiff is informed and believes, and on that basis, alleges, that as a further
5 direct and proximate result of the marketing described above, Defendant has received
6 from members of the general public, including the Class, money Defendant obtained
7 through its violation of California Business & Professions Code § 17500, et seq., which
8 Defendant continues to hold for its sole benefit.

9 46. Accordingly, Plaintiff, on behalf of himself and all others similarly situated,
10 seek equitable relief in the form of an order requiring Defendant to refund to Plaintiff and
11 the Class members all monies they paid for the Pet Food and, in addition, an order
12 requiring Defendant to both inform the consuming public that its Pet Food products do
13 indeed contain the undesirable ingredients of chicken/poultry by-product meal.

14 **SECOND CAUSE OF ACTION**

15 **(Cal. Bus. & Prof. Code § 17200, et seq.)**

16 47. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set
17 forth herein.

18 48. Defendant's conduct is unlawful in that it violates the False Advertising Law,
19 California Business & Professions Code § 17500, et seq.

20 49. Defendant's conduct is unfair in that it offends established public policy
21 and/or is immoral, unethical, oppressive, unscrupulous, unconscionable or substantially
22 injurious to Plaintiff and the Class members. The harm to Plaintiff and the Class
23 members arising from Defendant's conduct outweighs any legitimate benefit Defendant
24 has derived from the conduct.

25 50. Defendant's misrepresentation and omissions are likely to mislead a
26 reasonable consumer.

27 51. Plaintiff relied on Defendant's misrepresentations and omissions.

1 52. As a direct and proximate result of Defendant’s violations, Plaintiff would
2 not have otherwise purchased the Pet Food and, therefore, suffered injury in fact and lost
3 money.

4 53. Plaintiff, on behalf of himself and the Class members, seek restitution of
5 monies they paid for the Pet Food. Additionally, Plaintiff seeks equitable and injunctive
6 relief on behalf of himself and the Class members pursuant to Cal. Business & Professions
7 Code § 17203.

8 **THIRD CAUSE OF ACTION**

9 **(Violation of the California Consumers Legal Remedies Act)**

10 54. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set
11 forth herein.

12 55. At all times relevant hereto, there was in full force and effect the California
13 Consumers Legal Remedies Act (“CLRA” or “Act”), Cal. Civ. Code § 1750, which
14 applies to all Class members by virtue of Defendant’s choice of law election.

15 56. Plaintiff and the Class members are consumers within the meaning of Cal.
16 Civ. Code § 1761(d).

17 57. Blue Buffalo violated the CLRA’s proscription against the concealment of its
18 ingredients in its Pet Food. Specifically, Blue Buffalo has violated: (a) § 1770(a)(5)’s
19 proscription against representing that goods have uses or characteristics they do not have;
20 (b) § 1770(a)(7)’s proscription against representing that goods are of particular standard
21 or quality when they are of another; (c) § 1770(a)(14)’s proscription against
22 “Representing that a transaction confers or involves rights, remedies, or obligations which
23 it does not have or involve, or which are prohibited by law.”

24 58. Under California law, a duty to disclose arises in four circumstances: (1)
25 when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant
26 had exclusive knowledge of material facts not known to the plaintiff; (3) when the
27 defendant actively conceals a material fact from the plaintiff; or (4) when the defendant
28 makes partial representations but also suppresses some material facts.

1 59. Defendant owed a duty to disclose material facts about its Pet Food
2 ingredients to consumers. Blue Buffalo breached such duty as alleged in this Complaint.

3 60. Plaintiff and the Class suffered actual damages as a direct and proximate
4 result of Blue Buffalo's actions, concealment and/or omissions in violation of the CLRA,
5 as evidenced by the substantial sums Blue Buffalo pocketed.

6 61. Plaintiff, on behalf of himself and for all those similarly situated, demands
7 judgment against Blue Buffalo for equitable relief in the form of restitution and/or
8 disgorgement of funds paid to Blue Buffalo.

9 62. Pursuant to §1782(d) of CLRA, Plaintiff Josh Teperson notified Defendant in
10 writing by certified mail of the particular violations of §1770 of the Act and demanded
11 that Defendant rectify the problems associated with the actions detailed above and give
12 notice to all affected consumers of Defendant's intent to so act. A copy of the letter is
13 attached hereto as Exhibit B. If Defendant fails to rectify or agree to rectify the problems
14 associated with the actions detailed above and give notice to all affected consumers within
15 30 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend
16 this complaint to add claims for actual, punitive and statutory damages, as appropriate.

17 63. Defendant's conduct is malicious, fraudulent and wanton, and provides
18 misleading information.

19 64. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the affidavit
20 showing that this action has been commenced in the proper forum.

21
22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiffs pray for a judgment:

- 24 A. Certifying the Class as requested herein;
25 B. Awarding Plaintiffs and the proposed Class members damages;
26 C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiffs
27 and the proposed Class members;
28 D. Awarding declaratory and injunctive relief as permitted by law or equity,

1 including: enjoining Defendants from continuing the unlawful practices as set forth
2 herein, and directing Defendants to identify, with Court supervision, victims of their
3 conduct and pay them all money they are required to pay;

- 4 E. Ordering Defendants to engage in a corrective advertising campaign;
- 5 F. Awarding attorneys' fees and costs;
- 6 G. Providing such further relief as may be just and proper.

7
8 Dated: July 17, 2014

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: July 17, 2014

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EXHIBIT A

Case #4892 (07/31/08)

Blue Buffalo Company, LLC

BLUE pet food

Advertising Agency: Undisclosed
Challenger: Hill's Pet Nutrition
Product Type: Pet Products
Issues: Health and Safety Claims
Disposition: Modified/Discontinued/Substantiated

Basis of Inquiry: Website and print advertising claims made by Blue Buffalo Company, LLC (“the advertiser”) for its BLUE pet food were challenged by Hill’s Pet Nutrition (“the challenger”), a manufacturer of competing pet food products.

The following claims are representative of those at issue:¹

“NO Animal By-Products”

“And because the health of our dogs and cats is so important to us, we never use animal by-products”

“Most pet foods contain animal by-products. . . Before you say ‘my pet’s food has no animal by-products,’ take a minute to read the ingredients. You’ll probably be surprised to learn that you’re not feeding them as well as you thought you were.”

“Because the leading pet foods did not meet our standards, we developed a two-part product which combined a nutrition kibble that included human grade ingredients with our exclusive LifeSource Bits—active ingredients and antioxidants ‘cold-formed’ to preserve their potency.”

“Now you can feed your dog like you feed your family”

“Feed your pet like you feed your family.”

Challenger’s Position:

I. “No Animal By-Products” Claims

The challenger took issue with the advertiser’s express claims that none of its pet foods contain animal by-products. It also took issue with the implied claim that BLUE pet foods are healthier for pets than competitive foods that contain by-products.

The challenger pointed to the definitions promulgated by the Association of American Feed Control Officials (“AAFCO”). It argued that under these definitions, the lamb meal, fish meal, and animal liver that Blue Buffalo uses in many of its BLUE brand pet food products include—or, in the case of liver, are—animal by-products. The challenger noted that many of the

¹ In its initial letter to NAD, the challenger challenged numerous claims, many of which the advertiser subsequently agreed to discontinue on a voluntary basis. Such claims include: “human grade” claims, certain “feed your family” claims, certain “no animal by-products” claims, and several superiority claims. In the interest of best allocating NAD’s resources, the scope of this decision is limited to those challenged claims which the advertiser has not voluntarily agreed to discontinue.

Blue Buffalo Company, LLC

BLUE pet food

Page: 2

advertiser's lamb- and fish-based pet food products contain as primary ingredients lamb meal and/or some variety of fish meal. It argued that under AAFCO's definitions, "meat meal"—including lamb meal—and fish meal both may contain animal by-products.

The challenger noted AAFCO's definition of meat meal: "the rendered product from mammal tissues, exclusive of any added blood, hair, hoof, horn, hide trimming, manure, stomach and rumen contents except in such amounts as may occur unavoidably in good processing practices." According to the challenger, this definition allows meat meal to contain animal by-products, such as intestines and other internal organs. The challenger noted that the advertiser does not deny that there are lamb intestines in its products. It disagreed with the advertiser's reliance on AAFCO's definition of "animal by-product meal," because the ingredient that is found in Blue pet foods is "lamb meal," the definition of which allows it to contain intestines and other internal organs.

The challenger noted that AAFCO defines "fish meal" as "the clean, dried, ground tissue of undecomposed whole fish or fish cuttings, either or both, with or without the extraction of part of the oil." The challenger noted that this definition allows fish meal to contain any part of a whole fish, including the head, intestines, and other internal organs. The challenger noted that the industry considers such parts, including intestines, to be "by-products." The challenger reiterated that the advertiser does not dispute that these parts are present in its products. The challenger objected to the advertiser's reliance on AAFCO's definition of "fish by-products," as opposed to "fish meal," which is the ingredient listed on the label of the Blue products. The challenger argued that the fact that there is a definition for an ingredient called "fish by-products" does not mean that fish meal cannot contain by-products. Indeed, as the "fish meal" definition makes clear, fish meal can contain any part of the fish, including the by-products. With respect to the advertiser's contention that fish organs cannot be by-products unless they have been processed, the challenger responded that even if true, the organs in Blue's fish meal are processed. The "fish meal" definition provides that all the fish tissues in the ingredient must be ground.

The challenger argued that based on these definitions, suppliers of lamb meal and fish meal in the pet industry are permitted to—and do—include animal by-products in their meals. It noted that the advertiser does not deny that the lamb meal and fish meal it uses in its products contain lamb and fish intestines and other internal organs.

The challenger also noted that many of Blue Buffalo's canned pet foods contain portions of animal liver (e.g. chicken liver, beef liver, and lamb livers) as ingredients. It noted that AAFCO defines "poultry by-products" to include viscera, and defines "viscera" to include "[a]ll the organs in the great cavity of the body." It specifically defines "poultry viscera" to include "liver." AAFCO also defines "meat by-products" (i.e. by-products from animals) to include livers. Thus, the challenger argued that according to the AAFCO definitions, the advertiser's "no animal by-products" claims are literally false. The challenger objected to the advertiser's reliance on AAFCO definitions for "animal liver meal" and "animal by-product meal." It argued that these definitions do not mean that animal liver is not a by-product, or that only "animal by-product meal" may contain by-products. In fact, the challenger argued, both ingredients contain by-products. The difference is simply that "animal by-product meal" can include by-products

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other than liver. Finally, the challenger disagreed with the advertiser's argument that livers are not by-products "when they are harvested as 'primary' organ meats." The challenger argued that the AAFCO definitions contain no such qualifications.

In response to the advertiser's argument that the AAFCO guidelines are not binding, the challenger argued that government regulators and the pet food industry give deference to the AAFCO guidelines, and that virtually all the states have adopted some portion of the AAFCO suggested guidelines within their regulatory schemes—including the feed ingredient definitions.

In response to the advertiser's argument that animal feed regulators have endorsed Blue Buffalo's interpretation of the AAFCO guidelines, the challenger argued that a regulator's approval of a pet food label does not mean that all claims on the label are automatically substantiated. The challenger noted several successful challenges to pet food advertising claims, before NAD as well as the district courts. Finally, the challenger noted a review conducted by the FDA's Center for Veterinary Medicine of similar "no by-product" claims in connection with a different pet food. The FDA found these claims to be misleading because, like Blue Buffalo products, the pet food in question contained lamb meal and fish meal.

The challenger further argued that even if Blue pet foods did not contain animal by-products, the advertiser still could not support its implied claim that Blue is healthier for pets than competing foods that contain animal by-products. If anything, the challenger maintained, Hill's ingredients that include by-products are healthier than Blue Buffalo's. The challenger contended that the advertiser's pet foods contain more bone—and therefore more calcium and phosphorus (both of which are dangerous in excessive levels)—by virtue of the advertiser's use of "chicken meal" as opposed to "chicken by-product." The challenger argued that this difference in calcium and phosphorus levels makes Hill's pet foods healthier.

II. *"Because the leading pet foods did not meet our standards, we developed a two-part product which combined a nutrition kibble that included human grade ingredients with our exclusive LifeSource Bits—active ingredients and antioxidants 'cold-formed' to preserve their potency."*

The challenger also took issue with the claim: "Because the leading pet foods did not meet our standards, we developed a two-part product which combined a nutrition kibble that included human grade ingredients with our exclusive LifeSource Bits—active ingredients and antioxidants 'cold-formed' to preserve their potency." The challenger characterized this as a comparative claim that communicates superiority over the leading brands.

The challenger objected to the data submitted by the advertiser in support of this claim. Rather than submitting data regarding all the leading brands, the challenger noted, the advertiser submitted only a single nutrient comparison between one of its dog foods and two of Hill's products. Moreover, the challenger noted that the advertiser did not conduct any independent testing of the nutrient levels in the two Hill's products, but instead consulted the nutrient values reported on Hill's product labels. The challenger asserted that in the case of Hill's Science Diet Nature's Best (one of the two tested Hill's products), the only nutrient values that are reported on

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the labeling and website are guaranteed minimums and maximums—not the levels that are actually present in a typical sample of Hill’s products. Second, regarding the nutrient contents taken from the labeling of the other tested Hill’s product—Hill’s Science Diet Advanced Protection—the packaging only reports guaranteed minimum values of antioxidant data. The challenger also noted that the other data relied upon by the advertiser concerning the nutrients of Hill’s Science Diet Advanced Protection omits values for several key ingredients. These include carbohydrates, omega-3 and omega-6 fatty acids, and linoleic acid, all of which are important to an overall nutritional comparison. As for the advertiser’s nutritional data concerning its own Blue product, the challenger argued that it could not determine the appropriateness of its test methodology because the data was submitted confidentially.

The challenger provided its own testing, conducted by an independent laboratory, of Hill’s Science Diet Advanced Protection and Blue Buffalo’s BLUE Chicken & Brown Rice and Lamb & Brown Rice formulas. This testing analyzed three off-the-shelf samples of each product. According to the challenger, the results show that Hill’s Science Diet Advanced Protection is at parity with, or exceeds, the two Blue Buffalo products. The challenger noted that the Hill’s product exceeds the Blue products in total omega-3 fatty acids, and is also superior by virtue of being lower in ash and sodium. Further, the challenger argued that the testing indicates that its own Science Diet product contains significantly higher levels of antioxidants than the Blue products. Finally, it noted that the Hill’s product has much lower levels than the two Blue products of calcium and phosphorus, excessive amounts of which can lead to serious kidney problems in pets. In response to the advertiser’s retort that the levels of these nutrients are still less than the maximums allowed by AAFCO, the challenger argued that these guidelines do not speak to the optimal levels of calcium and phosphorus, but to their upper limits.

III. “Feed your pet like you feed your own family” claims

Finally, the challenger took issue with the advertiser’s claims that with Blue pet foods, a consumer can feed his or her pet “like you feed your family.”² The challenger noted that the AAFCO guide provides that “Claims that a product contains or is made from ingredients that are . . . food(s) that you (the purchaser) would feed your own family, or similar claims, are false and misleading unless the entire product, itself, meets the USDA and FDA standard for foods edible by humans.” The challenger argued that AAFCO promulgated this rule due to a concern that claims such as Blue Buffalo’s would mislead consumers into believing that pet foods contain the same ingredients as “people foods.” Even in the rare case in which a pet food contained ingredients that would be edible by people, the challenger contended, the food is normally not prepared or handled according to the same standards and conditions that the USDA and FDA require for human food.

Regardless of AAFCO, the challenger argued, advertisers must substantiate all reasonable interpretations of their claims. It contended that the challenged claims convey the message that Blue pet foods are made from ingredients that people would eat. To the contrary, it noted, the

² The challenger also initially challenged the advertiser’s “human grade” claims, although the advertiser subsequently decided to discontinue its “human grade” claims as well as certain “feed your family” claims.

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products contain ingredients such as rendered animal meal powders including chicken meal, fish meal, and lamb meal that contain animal intestines and a significant amount of ground bone.

Advertiser's Position:

The advertiser first notified NAD that for marketing reasons, it has decided to permanently discontinue some of those claims that were challenged by Hill's.³ As background, the advertiser explained that it markets a line of Blue pet foods for dogs and cats. Its foods are made of high quality ingredients, such as deboned chicken, lamb, fish, and whole grains. The advertiser also noted that its foods contain "LifeSource Bits," which are active nutrients and antioxidants that have been "cold-formed" to preserve their potency and increase the bio-availability of vitamins to pets. It further explained that its pet foods do not contain corn, wheat, or soy, which are known to trigger pet allergies.

I. "Feed your pet like you feed your family" claims

The advertiser argued that its "feed your pet like you feed your family" claims are supported, and are not "human grade" claims.⁴ The advertiser maintained that these claims convey the message that the ingredients in Blue pet foods are chosen with the same degree of care that consumers use in selecting foods for their own families.

The advertiser contended that these "feed your family" claims must be viewed in context. It noted that the print advertising that contains these claims lists the nutritious ingredients contained in the pet foods, such as deboned chicken, fish, lamb, as well as whole grains, vegetables, and LifeSource Bits. It further noted that this claim is part of a larger paragraph that informs consumers that Blue pet foods contain all-natural ingredients, such as whole grains, and "LifeSource Bits." With respect to this claim as it appears in advertising for Blue Organics, the advertiser noted that it appears in an advertisement featuring a girl hugging her dog, accompanied by the claim, "Feed your pet like you feed your family. Introducing Blue Organics." The advertiser maintained that the photograph and copy together make clear that by

³ The voluntarily discontinued claims include: (i) "And because the health of our dogs and cats is so important to us, we never use animal by-products"; (ii) "[m]ost pet foods contain animal by-products. . . Before you say 'my pet's food has no animal by-products,' take a minute to read the ingredients. You'll probably be surprised to learn that you're not feeding them as well as you thought you were"; (iii) "the nutrition in our formulas exceeds that of the leading pet food brands"; (iv) "By feeding your dog or cat BLUE, you can feel good knowing that LifeSource Bits are providing them with a level of protection they can't get with any other pet food"; (v) "it's this combination of higher level nutrition and breakthrough protection that sets BLUE apart from any other food you can feed your dog

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feeding one's pet Blue Organics, one can feed the pet with the same loving care is she would her own family.

Additionally, the advertiser noted that the AAFCO guidelines on which Hill's relies are not binding. In any case, it argued that the guidelines are inapplicable because they only apply to labeling. Even assuming the guidelines were relevant, however, the advertiser argued that these claims are permissible under the guidelines. The advertiser noted that the cited definition pertains to claims that a product "is made from ingredients that are. . . foods you (the purchaser) would feed your own family." However, it argued that the challenged advertising makes no claims, expressly or impliedly, that the ingredients in its pet foods are the same as those which consumers would feed their own families.

Finally, the advertiser noted that its advertising specifically refers to ingredients that it is clear that no humans would eat—Life Source Bits. The advertiser further noted that Hill's makes the same claim that consumers can "feed their pet as they would feed themselves." It disagreed with the challenger's argument that the Hill's claim "merely reported the results of a survey."

II. *"Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants 'cold formed' to preserve their potency."*

The advertiser next addressed Hill's challenge of its claim: "Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants 'cold formed' to preserve their potency." It argued that no reasonable consumer would interpret this statement as a superiority claim. First, it conveys only one message about the leading brands—that Blue Buffalo was dissatisfied with their product formulas. The advertiser characterized this statement as a "claim of differentiation," meaning that Blue Buffalo was dissatisfied with the leading pet food manufacturers' formulas, and, as a result, created its own unique food-making process.

The advertiser explained that heat processing can be detrimental to the vitamin and nutrient contents of foods. During processing, pet foods undergo a process called extrusion, in which the ingredients are typically subjected to temperatures ranging from 240 to 260 degrees Fahrenheit. To combat the detrimental effects of extrusion, the advertiser developed a unique two-step approach to achieve greater levels and vitamins and antioxidants. The "LifeSource Bits" in the pet foods are "cold-formed" cooked, avoiding high temperatures and thereby enhancing the bioavailability of the LifeSource Bits.

The advertiser further argued that its claim regarding the advertiser's "standards" is simply the advertiser's subjective opinion. It contended that this type of vague and subjective expression of opinion is puffery, which no reasonable consumer would take seriously. The advertiser noted the ABC Advertising Guidelines, which state that "Goal or promise claims expressing commitments or objectives established by the advertiser for its product, service, or company generally cannot be verified. . . Such claims are generally acceptable [without substantiation] provided that it is clear that they are simply the advertiser's self-made goals or aspirations. The advertiser noted its use of the words "our standards," which it classified as denoting its "self-made goals or

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aspirations.” The advertiser disagreed with the challenger’s reliance on NAD’s decision in Nestle Purina Petcare Company (Fancy Feast Gourmet Gold).

The advertiser argued that having removed all of the superiority claims from the challenged advertising, it need not provide support for a superiority message. In any case, the advertiser submitted a nutrient comparison between Blue Buffalo Chicken Adult Dog Dry food and two Hill’s products. The advertiser argued that this comparison shows that the Blue Buffalo product (i) far exceeds the minimum requirements for nutrients as established in the AAFCO guidelines; and (ii) exceeds the nutrient levels in the comparable Hill’s product for certain key nutrients, protein, fat, and Vitamin C.⁵ The advertiser disputed the challenger’s argument that the calcium and phosphorus levels in Blue Buffalo pet foods are unacceptably high because they are higher than 1.0% and 0.9% respectively. The advertiser noted that the AAFCO guidelines suggest a maximum level of 2.5% and 1.6% for calcium and phosphorus. It explained that the reason why it provided the nutrient comparison data was not to support a superiority message, but simply to show that its pet foods are healthy and contain key beneficial ingredients and nutrients.⁶

With respect to the comparative testing submitted by Hill’s, the advertiser noted that Hill’s did not test the same products that were reviewed in its own comparison. Accordingly, the advertiser disagreed with the challenger’s conclusion that Hill’s testing invalidates its own data. In any case, the advertiser noted that according to the challenger’s own testing, the Blue products are shown to be healthy and nutritious—in many respects, more so than Hill’s products. The advertiser argued that Blue Buffalo outperformed Hill’s in each of these categories, as well as in metabolizable energy: (i) protein; (ii) fat; (iii) carbohydrates; (iv) linoleic acid; and (v) omega-6. The advertiser contended that these results are consistent with the nutrient comparison provided by Blue Buffalo.

III. “No animal by-products” claims

The advertiser argued that its pet foods contain no animal by-products as such term is interpreted and applied by state feed control officers. The advertiser noted that state regulators in 44 states—all the states to which Blue Buffalo has submitted applications for registration—have approved

⁵ The advertiser submitted this data to NAD on a confidential basis.

⁶ More generally, the advertiser argued that its pet foods are extremely nutritious and beneficial for pets. The advertiser explained that its products were formulated by veterinarians and PhD pet food nutritionists in a manner that achieves high levels of nutrients for pets. For example, it noted that its foods (i) contain scientifically-selected ingredients such as fresh lamb meat, chicken, and fish, which are always in the first position in the products and have a higher quality of protein than rendered meals; (ii) contain animal protein, which is extremely digestible and contains a complete source of amino acids; (iii) use only whole grains that contain a balance of carbohydrates, protein, and fat; (iv) include endosperm, which contains energy-producing carbohydrates; (v) include a choice selection of grains that have a lower incidence of allergenicity than corn, wheat, and soy; (vi) include fresh fruits and vegetables; (vii) contain chelated or proteinated minerals that are more easily absorbed into the body through the gut wall due to their protein carriers, thus increasing the bioavailability of more minerals to pets; (viii) contain natural fish oils that supply omega-3 fatty acids; (ix) contain natural taurine, which promotes healthy eyes and heart, as well as natural glucosamine and chondroitin sulfate; and (x) include other natural and holistic ingredients such as kelp, parsely, alfalfa, yucca, and flaxseed.

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BLUE pet foods, including many foods that contain livers, lamb meal, and fish meal, with packaging bearing the claim “no by-products” or “no animal by-products.”

With respect to the challenger’s reliance on the AAFCO guidelines, the advertiser noted that AAFCO lacks regulatory authority. It noted that compliance with these guidelines is voluntary, not mandatory. Further, the advertiser argued that although virtually all of the states have adopted some portion of the AAFCO suggested guidelines, the interpretation, application, and enforcement of these guidelines is left to state agencies. The advertiser contended that states are regularly called upon to review pet food labeling and packaging for accuracy and compliance with AAFCO definitions, and that numerous state officials have approved the challenged Blue Buffalo packaging. The advertiser noted that the approved packaging includes the challenged “no animal by-product” claims. It reported that not one state has refused to accept any of these products for registration.

In addition, the advertiser argued that BLUE pet food ingredients do not constitute by-products under AAFCO definitions. The advertiser noted that AAFCO defines “by-products” as “secondary products produced in addition to the principal product.” With respect to the issue of fish by-products in particular, the advertiser pointed to AAFCO’s definition of “fish by-products” which refers to “non-rendered, clean undecomposed portions of fish (such as, but not limited to, heads, fins, tails, ends, skin, bone and viscera) which result from the fish processing industry.” According to this definition, the advertiser argued, fish by-products are created when fish has undergone processing. The advertiser noted that most of the fish meal used in its products are made using the entire, unprocessed fish—thereby not qualifying as fish by-products as defined by AAFCO. Conversely, the advertiser noted, AAFCO defines “fish meal” as “the clean, dried, ground tissue of undecomposed whole fish or fish cuttings, either or both, with or without the extraction of part of the oil.”

Similarly, the advertiser argued that the lamb meal used in its pet foods is not a by-product. The advertiser noted that AAFCO has two separate definitions for “meat meal” and “animal by-product meal.” The latter definition is said to cover “products that cannot meet the criteria set forth elsewhere.” The advertiser argued that the lamb meal in its products meets the definition of “meat meal” and therefore cannot also be an “animal by-product.” The advertiser contended that state feed control officers view these definitions as it does. The advertiser also noted the two separate definitions for (i) “Meat by-products”: “The non-rendered, clean parts, other than meat, derived from slaughtered mammals. It includes, but is not limited to, lungs, spleen, kidneys, brain, livers, blood, bone, partially defatted low temperature fatty tissues and stomachs and intestines freed from their contents. It does not include hair, horns, teeth and hoofs”; and (ii) “Meat meal”: “The rendered product from mammal tissues, exclusive of any added blood, hair, hoof, horn, hide trimmings, manure, stomach and rumen contents except in such amounts as may occur unavoidably in good processing practices. It shall not contain added extraneous materials not provided for by this definition.” The advertiser argued that in order to create lamb (or meat) meal, the product must be rendered (unlike meat by-products.) It noted that another important

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difference between meat meal and meat by-products is the inclusion of blood—the former cannot contain blood, whereas the latter does.⁷

Finally, it argued that the liver in its products are not by-products. The advertiser argued that AAFCO guidelines provide that livers are treated (and defined) differently when they are secondary products produced during the processing of the principal product. It noted that the guidelines contain a separate definition for “animal liver,” which means that animal liver is not always considered a by-product. The definition provides that “animal liver meal” is “obtained by drying and grinding liver from slaughtered animals.” The advertiser contended that animal liver meal is therefore a different ingredient than animal by-product meal and poultry by-product meal. The advertiser argued that state regulators also take the position that livers, when they are harvested by themselves as “primary” organ meats, and listed as such in the ingredients, are not “by-products” under the definitions. However, it contended, when livers are collected as a component, among other internal organs and tissues left over in the slaughtering process, they may be by-products.

Additionally, the advertiser argued that its “no by-products” claims is consistent with industry usage. The advertiser noted many examples of pet food brands that feature “no by-products” claims, but include liver, lamb meal, and/or fish meal. Finally, the advertiser disagreed with the challenger’s argument that Blue’s “no by-products” claims are misleading. The advertiser noted that its advertising does not list unsavory animal parts, nor does it make any mention of animal feet, intestines, viscera, or necks.

Decision:

NAD noted that Blue Buffalo pet foods are nutritious products made using innovative processing methods. NAD acknowledged the great care with which the advertiser chooses its ingredients, and appreciated the advertiser’s inventive “cold-forming” technique. The scope of the instant proceeding, however, extends beyond the general issue of pet food quality. NAD was called upon to review three types of claims made for Blue pet foods: (i) claims that the foods contain “no animal by-products,” (ii) claims that with Blue pet foods, consumers can feed their pets “like you feed your family,” and (iii) the claim that “[b]ecause the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants ‘cold formed’ to preserve their potency.” NAD considered these claims in turn.

I. “No animal by-products” claims

NAD first considered the claim that Blue Buffalo pet foods contain “no animal by-products.” Prior to reviewing the evidence offered in support of this claim, NAD considered the reasonable takeaway of the “no animal by-products” claim. In the absence of consumer perception evidence,

⁷ With respect to the injunction referenced by the challenger, the advertiser argued that this is a useless example because this injunction was a “consent” injunctive order. As such, it was not decided by a court based on the parties’ evidence, but was voluntarily agreed upon by the defendant.

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NAD routinely steps into consumers' shoes to assess the reasonable takeaway of advertising claims. Here, NAD determined that consumers could reasonably interpret a "no animal by-products" claim to mean that the advertised product does not contain various non-meat animal parts that are generally considered unappetizing, such as intestines, heads, kidneys, spleens, viscera, skin, and bones.

Such an interpretation is supported by other pet food manufacturers' definitions of what constitutes "by-products," as seen in the record. For example, the website for Pet Promise pet foods, in a "Frequently Asked Questions" section, defines "animal by-products" as containing "the identified meat, plus a wide variety of 'secondary' items from meat animals, including some of the internal organs. This term can be used to everything from the trachea to the viscera." Similarly, the Wellness pet food website states that animal by-products include "intestines, lungs, spleen, livers, kidneys, brains, blood, bone, stomachs, beaks, feathers, and feet." Likewise, a former page from the Blue Buffalo website, in a FAQ section, defines "poultry by-product" as "chicken meat that has been derived from ground necks, feet and intestines."

NAD next looked to the composition of Blue Buffalo pet foods in order to assess whether the products contain animal parts that could be reasonably understood by consumers to be "by-products." The Blue Buffalo labels report that the products include as ingredients "lamb meal," "fish meal," and liver. With respect to the "fish meal" in its products, the advertiser explained that the products contain whitefish meal and Menhaden fish meal, both of which are prepared from the whole fish. However, NAD noted the absence of evidence in the record documenting or explaining the composition of lamb meal as it is found in Blue Buffalo products. Rather than providing direct evidence as to the composition of its lamb meal, the advertiser pointed to AAFCO's definition of "meat meal," and, in contrast, "meat by-products."

Although the AAFCO definitions set forth certain parameters for what constitutes "meat meal," NAD noted that AAFCO definitions, by their nature, are not substitutes for direct evidence that speaks to the composition of Blue Buffalo products in particular. In support of a "no animal by-products" claim, NAD would expect information as to whether the lamb meal in its products contains, for example, intestines, heads, feet, intestines, viscera, etc—all of which consumers could reasonably construe to be "by-products." NAD was therefore troubled by the absence of documentation detailing the composition of Blue Buffalo's lamb meal.

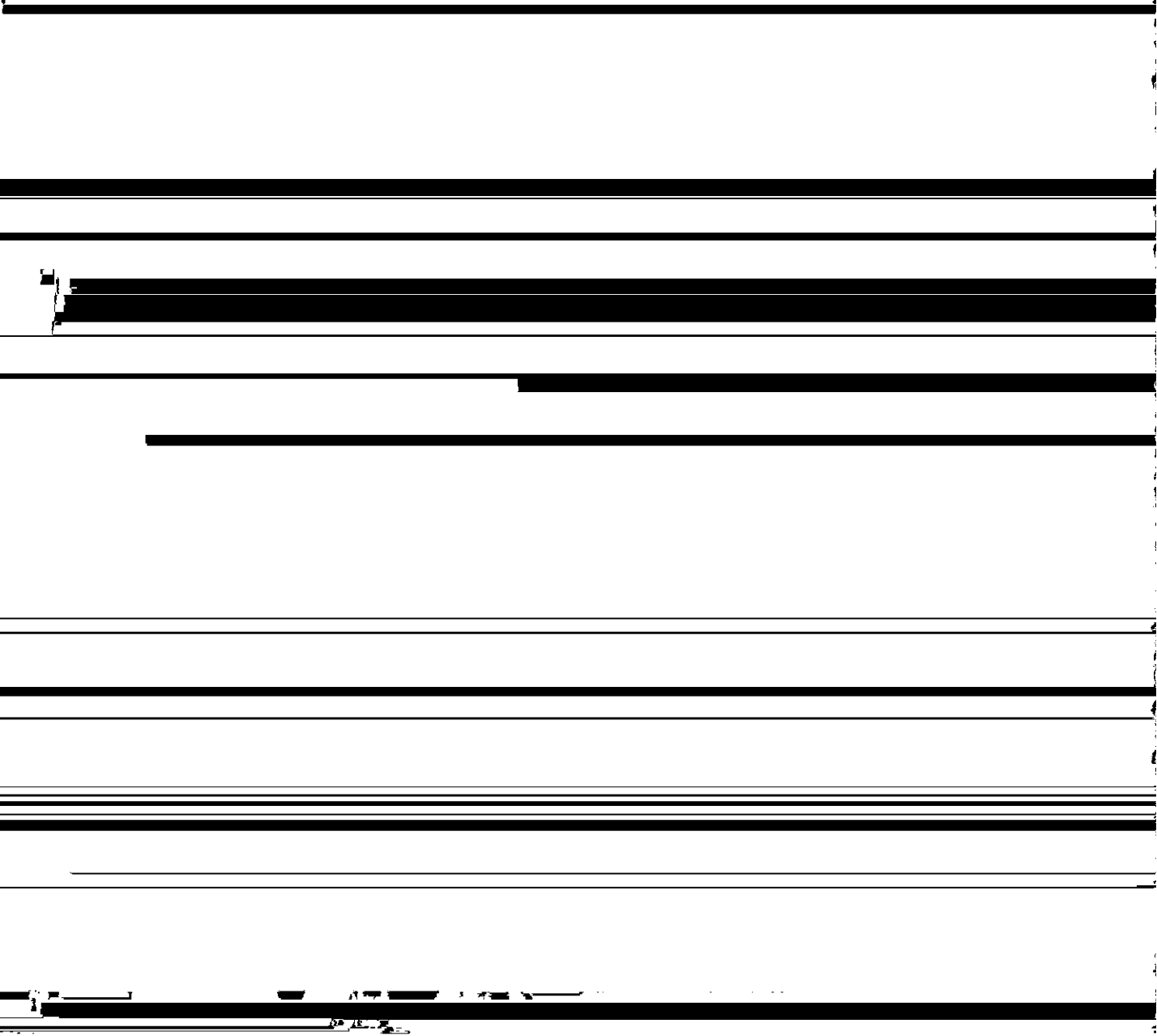
The absence of such information was of particular concern in light of the challenger's repeated insistence that the lamb meal in Blue Buffalo products contains internal organs. Although Blue Buffalo denied, in a footnote in its second submission to NAD, that its products contain intestines, the advertiser did not dispute the challenger's more general assertion that its products contain other internal organs from lambs. Moreover, the advertiser's sole contention that its products contain no intestines was seemingly linked to the advertiser's interpretation of the applicable AAFCO definitions.⁸

⁸ See Footnote 14 of the advertiser's May 27, 2008 letter to NAD, which reads "We note that Hill's allegations that Blue Buffalo has conceded that its lamb meal contains intestines is similarly untrue. It is apparent from the applicable AAFCO definitions (along with state and industry interpretations) that the lamb meal in BLUE pet foods does not constitute by-products."

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Absent any evidence pertaining to the make-up of Blue Buffalo's lamb meal itself, NAD was left to rely on the term "meat meal" as defined by AAFCO.⁹ According to the AAFCO guidelines, meat meal (of which lamb meal is one type) is "[t]he rendered product from mammal tissues, exclusive of any added blood, hair, hoof, horn, hide trimmings, manure, stomach and rumen contents except in such amounts as may occur unavoidably in good processing practices. It shall not contain added extraneous materials not provided for by this definition."

NAD noted that "mammal tissues" is a very broad category, which may include parts such as kidneys, intestines, spleens, and brains—all of which could be reasonably understood by consumers to be by-products. NAD was not persuaded by the advertiser's argument that if an ingredient meets AAFCO's definition of "meat meal," it by definition cannot contain "meat by-products." NAD acknowledged that AAFCO provides concrete definitions for "meat meal" and



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particular animal parts—not the harvesting method used, or the theoretical status of the organ as “primary” versus “secondary.”¹⁰

Finally, NAD was not persuaded by the advertiser’s argument that because its pet food labels have not been rejected by state regulators, this proves that regulators support the advertiser’s interpretation of the AAFCO guidelines. NAD noted that mere lack of enforcement by such state

regulators does not demonstrate that advertising claims are supported. As noted by the challenger, NAD has often found state regulator-approved pet food labeling to contain unsupported messages.¹¹

NAD therefore recommended that the advertiser discontinue its “no animal by-products” claims when made in reference to pet foods containing fish meal, lamb meal, and/or liver.

II. *“Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants ‘cold formed’ to preserve their potency.”*

NAD next looked to the advertiser’s claim: “Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants ‘cold formed’ to preserve their potency.” NAD first considered the reasonable takeaway of this claim. In the absence of consumer perception evidence, NAD routinely steps into consumers’ shoes to determine the reasonable takeaway of advertising claims. Here, NAD determined that consumers could reasonably understand this claim to mean that Blue Buffalo developed a product with a superior nutritional value (relating to nutrients and antioxidants) as compared to the leading pet food brands, which did not meet the advertiser’s standards. NAD was not persuaded by the advertiser’s argument that this claim is merely a “claim of differentiation” indicating that Blue Buffalo was dissatisfied with competitor’s standards and therefore created its own process for making pet food. Although the claim does not explicitly state that Blue pet foods are more nutritious than competing brands, it is established NAD precedent that advertisers must not only substantiate their express claims but also those that are reasonably implied. Here, NAD found, the implication of superiority is clear. NAD noted that there must be a reason why the competition “did not meet [the

¹⁰ While NAD appreciated that AAFCO defines by-products, as a general matter, as “secondary products produced in addition to the primary product,” NAD disagreed with the advertiser’s method of speculation as to what constitutes “secondary” versus “primary” products. For example, if a cow were slaughtered with the “primary” intent of obtaining beef for human consumption, any leftover cow parts (including leftover meat) that are used to make “meat meal” for pet food could presumably be considered “secondary.” If the same cow were slaughtered for the sole purpose of creating meat meal for pet food, the same meat could be considered “primary,” and therefore not a by-product. NAD determined that AAFCO’s definition of “by-product” should not be subject to such speculation about the circumstances under which particular animal parts are obtained. NAD therefore concluded that AAFCO’s distinction of “secondary” versus “primary” products is best understood as relating to the common layperson’s understanding of parts that could be considered “secondary” or throw-away animal parts, such as kidneys, spleens, brains, eyeballs, etc.

¹¹ See e.g. *Hill’s Pet Nutrition, Inc. (Hill’s Science Diet puppy and kitten products)*, Case # 4355, NAD/CARU Case

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advertiser's] standards," and that consumers would be very likely to understand this reason to be the leading brands' nutritional inferiority.¹²

Having determined that the challenged "meet our standards" claim communicates a superior nutrition message, NAD noted that the advertiser was required to show that Blue Buffalo pet foods are more nutritious than the leading brands. NAD first looked to the nutritional data, provided on a confidential basis by the advertiser, which compares: (i) Blue Buffalo Chicken and Brown Rice; (ii) Hill's Science Diet Advanced Protection; and (iii) Hill's Nature's Best Chicken and Brown Rice.

First and foremost, NAD determined that in order to support a superiority claim about "the leading pet foods," an advertiser would need to provide nutritional data on not just two particular pet foods made by one competitor—but on a diverse range of competing products produced by different pet food makers. Here, the advertiser provided data only regarding two Hill's products. NAD therefore concluded that the advertiser's evidence was not sufficient to support a broad superiority claim as to "the leading pet foods."

NAD was also troubled that the advertiser did not conduct independent testing of the nutrient levels in the two Hill's products, but instead relied on the nutrient values reported on the product labels. As noted by the challenger, the nutrient values that are reported on the label of Hill's Science Diet Nature's Best are guaranteed minimums and maximums—not the levels that are actually present in an average sample of Hill's products. Likewise, the nutrient contents reported on the labeling of Hill's Science Diet Advanced Protection only reflect the guaranteed minimum values of antioxidant data. The other data relied upon by Hill's concerning the nutrients of Hill's Science Diet Advanced Protection omits values for carbohydrates, omega-3 and omega-6 fatty acids, and linoleic acid, all of which are important to an overall nutritional comparison.

Adding to NAD's concern was the fact that the calcium and phosphorus levels (excessive amounts of which can lead to health problems in pets) in Blue Buffalo pet foods are shown to be higher than in the competing Hill's product. While NAD appreciated the advertiser's argument that the calcium and phosphorus content in its foods are still lower than the maximums provided by AAFCO, NAD noted that AAFCO's guidelines provide *maximum* levels rather than ideal levels.¹³

For these reasons, NAD determined that the advertiser did not have a reasonable basis for the superiority message arising from the "meet our standards" claim. NAD therefore recommended that the advertiser either discontinue this claim, or modify it by omitting reference, or comparison, to the leading pet food manufacturers not meeting its standards.

III. "Feed your pet like you feed your family" claims

¹² NAD was not persuaded by the advertiser's argument that this statement was mere puffery. NAD determined that reasonable consumers would not dismiss this claim as mere hyperbole or exaggeration. NAD noted that this claim lacked any of the hallmark indicators of puffery (vague wording, obvious exaggeration, etc.)

¹³ Having determined that the superiority message lacked a reasonable basis, NAD did not have the occasion to assess the challenger's evidence regarding the nutritional comparison of its own products and Blue Buffalo's.

Blue Buffalo Company, LLC

BLUE pet food

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Finally, NAD reviewed the advertiser's "feed your pet like you feed your family" claims. First, NAD noted its appreciation of the advertiser's voluntary commitment to discontinue certain "feed your family" claims, such as (i) "BLUE uses only the finest ingredients—the kind you feed your own family," and (ii) "BLUE Spa Select has no corn gluten or artificial preservatives, just wholesome natural ingredients like you'd choose for your family." Given the evidence in the record, NAD determined that the decision to discontinue these claims was appropriate and necessary.

NAD next addressed the takeaway of the remaining "like you feed your family" claims. As always, NAD reviewed the claims in the context in which they appear. NAD noted, for example, an advertisement for "BLUE Natural Food and Treats for Dogs" which reads: "Now you can feed your dog like you feed your family with the BLUE line of natural, healthy and holistic foods for dogs. All BLUE recipes contain real meat as the first ingredient, along with wholesome whole grains, garden veggies and healthy fruit—the kinds of things you put on your own dinner table." In the context of an advertisement touting Blue's use of particular healthy ingredients ("real meat," "wholesome whole grains," "garden veggies," etc.), such as those "you put on your own dinner table," NAD determined that a claim that "you can feed your dog like you feed your family" conveys the message that the dog food is made from human-edible ingredients and is fit for human consumption. NAD noted there is no support for such a message in the record.

NAD further noted the AAFCO guidelines, which provide that "Claims that a product contains or is made from ingredients that are. . . food(s) that you (the purchaser) would feed your own family, or similar claims, are false and misleading unless the entire product, itself, meets the USDA and FDA standard for foods edible by humans." NAD determined that the "feed your dog like you feed your family" claim—in the context of an advertisement that touts the product's "real meat," "wholesome whole grains," and "garden veggies," such as those "you put on your own dinner table"—falls into the category of false and misleading claims under AAFCO's guidelines.

NAD therefore recommended that the advertiser discontinue the "like you feed your family" claim as it appears appear in the context of advertisements touting the wholesome fruits, vegetables, and other ingredients found in BLUE products.

NAD came to a different conclusion, however, with respect to the challenged print advertisement for "BLUE Organics." This advertisement features a photograph of a young girl hugging a dog along with the copy, "Feed your pet like you feed your family. Introducing BLUE Organics." In the context of this advertisement—which is not about the wholesome ingredients found in BLUE pet foods, but merely introducing an organic product line—NAD found that the message conveyed is that which the advertiser intended: that by choosing BLUE brand pet foods, consumers can feed their pets with the same care (using organic ingredients) that they feed their

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own families. NAD found this message to be supported by the record, which shows that BLUE brand pet food ingredients are indeed healthy and carefully chosen.¹⁴

Conclusion:

NAD recommended that the advertiser discontinue its “no animal by-products” claims when made in reference to pet foods containing fish meal, lamb meal, and/or liver. NAD determined that the advertiser did not have a reasonable basis for the superior nutrition message arising from the claim: “Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants ‘cold formed’ to preserve their potency.” NAD therefore recommended that the advertiser either discontinue this claim, or modify it by omitting reference to the leading pet food manufacturers not meeting its standards. NAD recommended that the advertiser discontinue the “feed your [pet] like you feed your family” claim that appears in the context of advertisements that tout the wholesome fruits, vegetables, and other ingredients that “you put on your own dinner table.” NAD came to a different conclusion, however, with respect to the “[f]eed your pet like you feed your family” claim as it appears in the context of advertising for its Blue Organics line, which makes no reference to the product’s ingredients. NAD found that the message conveyed by such advertisements is that which the advertiser intended: that by choosing BLUE brand pet foods, consumers can feed their pets with the same care (by selecting organic ingredients) with which they feed their own families. NAD found this message to be supported by the record, which shows that BLUE brand pet food ingredients are indeed healthy and carefully chosen.

Advertiser’s Statement:

Blue Buffalo is pleased with NAD’s determination that BLUE pet foods are nutritious products made using innovative processing methods, that Blue Buffalo takes great care in choosing ingredients for its pet foods, and that Blue Buffalo’s “cold-forming” technique is inventive. Additionally, Blue Buffalo is pleased that NAD determined that the BLUE Organics print advertising claim “feed your pet like you feed your family” claim was substantiated because BLUE pet food ingredients are indeed healthy and carefully chosen.

However, Blue Buffalo respectfully disagrees with the remainder of NAD’s findings. Blue Buffalo does not agree with NAD’s determination that the statement “Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants ‘cold formed’ to preserve their potency” is a superiority claim. Nor does Blue Buffalo agree that the claim “feed your [pet] like you feed your family” in the context of advertisements discussing the healthy ingredients in BLUE pet foods conveys the message that BLUE pet foods are of human grade

¹⁴ NAD noted that this iteration of the “feed your family” claim is not in violation of AAFCO’s rule that “Claims that a product contains or is made from ingredients that are . . . food(s) that you (the purchaser) would feed your own family, or similar claims, are false and misleading unless the entire product, itself, meets the USDA and FDA standard for foods edible by humans.” As noted above, NAD determined that consumers would not take away a message from this advertisement that the pet food itself, or ingredients therein, would be edible by people.

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quality. Nonetheless, in the spirit of cooperation with the self-regulatory process, Blue Buffalo will take NAD's recommendations into account in future advertising.

Blue Buffalo is particularly disappointed that NAD recommended that it discontinue its "no animal by-products" claims in connection with pet foods that contain lamb meal, fish meal, and/or liver. Blue Buffalo believes that its use of the term "by-products" is fully consistent with the Association of American Feed Control Officials (AAFCO) definitions, state regulatory enforcement, and industry usage of the term, particularly among many of Blue Buffalo's competitors. Blue Buffalo believes that its "no animal by-products" claims are fully substantiated. Accordingly, Blue Buffalo will appeal this portion of the decision to the NARB. (**#4892 JF, closed 07/31/2008**)

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EXHIBIT B



TODD D. CARPENTER
619.756.6994 direct
todd@carpenterlawyers.com

July 17, 2014

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Chief Executive Officer / President
The Blue Buffalo Company
444 Danbury Road
Wilton, Connecticut 06897

Re: **Teperson v. The Blue Buffalo Company, LTD**

Dear Sir/Madame:

Our law firm, Patterson Law Group and Carlson Lynch represent Joshua Teperson and all other similarly situated California Residents in an action against The Blue Buffalo Company, LTD arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Pet Food products do not contain chicken/poultry by-product meals; do not contain corn, wheat, or soy and that there are no artificial preservatives, colors or flavors present in its Pet Food.

Mr. Teperson and others similarly situated purchased the Blue Buffalo Pet Food products unaware that Blue Buffalo's representations found on the Products' labels and packages are false. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Blue Buffalo's representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Blue Buffalo with the intent to result in the sale of its pet food(s). Blue Buffalo's slogan implies strongly that its products are human-grade and fit for human consumption. Yet these statements are materially false because products that contain ingredients such as chicken/poultry by-product meal are, in fact, not fit for human consumption. Blue Buffalo's misrepresentations also include a misleading so-called "True BLUE Promise" to consumers that Blue Buffalo uses "Only the Finest Natural Ingredients." This promise is prominently displayed throughout all of its advertising and on its product labels. Furthermore, in addition to Blue Buffalo's "family" and "promise" slogans, it allows consumers to utilize a comparison tool named, "The True BLUE Test" on its website for consumers to evaluate how their current pet food measures up to Blue Buffalo's. The test invites consumers to compare ingredients, which Blue Buffalo has

determined to be significant for their nutritional value. One category included is labeled “NEVER Has Chicken (or Poultry) By-Product Meals.”

Blue Buffalo’s Pet Food also contains “LifeSource Bits,” exclusively created for and by Blue Buffalo, that it represents as being “cold-formed” kibble that is comprised of essential “vitamins, minerals, and antioxidants” that provides a series of special health benefits for pets, which are present in each dry Pet Food product it manufacturers, including its “100% Grain Free” products.

In actuality, Nestle Purina Petcare Company hired an independent laboratory to investigate and test Blue Buffalo’s Pet Food. The April 2014 investigation reveals that Blue Buffalo’s core statements about its products’ ingredients are materially false. (*Nestle Purina Petcare Company v. The Blue Buffalo Company LTD.*, E.D. Mo., Case No. 4:14-cv-00859, Dkt. #9 May 11, 2014). Specifically, the independent laboratory revealed that amounts of chicken/poultry by-product meal are present in Blue Buffalo’s Pet Food. Chicken/poultry by-product meal is found at 25% in one sample tested. Furthermore, the investigation concluded chicken/poultry by-product meal is present in Defendant’s “LifeSource Bits” (defined above) at a range between 0% to 11%. The independent laboratory also revealed the presence of rice and/or corn in Blue Buffalo’s 100% Grain Free products and its LifeSource Bits. Corn and/or rice is found in the Pet Food in one sample at 1% and in the LifeSource Bits in ranges between 1% and 3%.

In fact, a recent ruling from the National Advertising Division (“NAD”) of Better Business Bureaus confirmed the misleading nature of Blue Buffalo’s advertising. The NAD report stated that Blue Buffalo “[should] discontinue its ‘no animal by-products’ claims when made in reference to pet foods containing fish meal, lamb meal, and/or liver.” *See*, NAD Case #4892, decided July 11, 2008. In addition, the independent laboratory found that Blue Buffalo’s Pet Food that is labeled “100% Grain Free,” which includes “LifeSource Bits,” contains rice hulls as an ingredient. The presence of rice hulls renders Defendant’s statements that its products are “grain free” materially false and misleading. Importantly, Blue Buffalo charges a significant price premium for its Pet Foods compared to its competitors. Blue Buffalo is able to charge this premium due in large part to consumers’ justifiable reliance on its false claims false claims concerning the quality of the ingredients found in its Pet Food

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that Blue Buffalo’s Pet Food has. . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [Blue Buffalo’s Pet Food is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

(9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

(16) Representing that [Blue Buffalo's Pet Food has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Blue Buffalo's representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our clients and all other similarly situated California Residents that Blue Buffalo immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Blue Buffalo should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiffs will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Blue Buffalo address this problem immediately.

Blue Buffalo must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;
2. Notify all such purchasers so identified that upon their request, Blue Buffalo will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done

Teperson v. The Blue Buffalo Company, LTD

July 17, 2014

Page Four

immediately) the actions described above for all Blue Buffalo Pet Food purchasers who so request; and

4. Cease from expressly or impliedly representing to consumers that these products contain higher quality ingredients than they actually do in the manner described herein and in the operative Complaint.

We await your response.

Sincerely,

CARPENTER LAW GROUP

/s/ Todd D. Carpenter

Enclosure(s)

Cc: Patterson Law Group
Carlson Lynch

EXHIBIT C

CARPENTER LAW GROUP

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CARLSON LYNCH LTD

Benjamin Sweet (*to be admitted pro hac vice*)
Edwin Kilpella (*to be admitted pro hac vice*)
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Bsweet@Carlsonlynch.com
Ekilpella@Carlsonlynch.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSHUA TEPERSON, on behalf of himself
and All Others Similarly Situated,

Plaintiff,

vs.

THE BLUE BUFFALO COMPANY, LTD,
a Delaware Corporation and Does 1-20,

Defendant.

Case No. '14CV1682 WQHRBB

CLASS ACTION

**DECLARATION OF TODD D.
CARPENTER IN SUPPORT OF
JURISDICTION**

1 I, Todd D. Carpenter, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State
3 of California. I am the principle and owner of the Carpenter Law Group, and the counsel
4 of record for plaintiffs in the above-entitled action

5 2. Defendant THE BLUE BUFFALO COMPANY has done and is doing
6 business in the Southern District of California. Such business includes the marketing,
7 distributing and sale of its Blue Buffalo branded pet food.

8 3. Plaintiff Teperson purchased the Blue Buffalo products in San Diego,
9 California.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct. Executed this 17th Day of July, 2014 in San Diego,
12 California.

13
14
15 */s/ Todd D. Carpenter*

Todd D. Carpenter

JS 44 (Rev. 12/12)

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.)

I. (a) PLAINTIFFS

JOSHUA TEPERSON, on behalf of himself and All Others Similarly Situated,

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

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

DEFENDANTS

THE BLUE BUFFALO COMPANY, LTD, a Delaware Corporation and Does 1 - 20,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'14CV1682 WQHRBB

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	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 1332(d)(2); 28:1331 - Federal Question

Brief description of cause:
 Violation of the Unfair Competition Law, Violation of the Consumers Legal Remedies Act, Breach of Express Warranty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: July 17, 2014 SIGNATURE OF ATTORNEY OF RECORD: /s/ Todd D. Carpenter

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Attachment to Civil Cover Sheet

Todd D. Carpenter (CA 234464)

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Benjamin Sweet (*to be admitted pro hac vice*)

Edwin Kilpella (*to be admitted pro hac vice*)

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