

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

BRIAN ANDACKY and MELISSA  
BAGGETT, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

THE BLUE BUFFALO COMPANY, LTD.

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Brian Andacky (“Andacky”) and Melissa Baggett (“Baggett”) (collectively, “Plaintiffs”), by and through their attorneys, bring this action on behalf of themselves and all others similarly situated against The Blue Buffalo Company, Ltd. (“Blue Buffalo” or “Defendant”). Plaintiffs make the following allegations based upon information and belief, except as to allegations specifically pertaining to themselves, which are based on personal knowledge.

### **NATURE OF THE ACTION**

1. This is a class action lawsuit related to Defendant’s false and misleading labeling and marketing of its cat and dog food products in the: (a) “Life Protection” line,<sup>1</sup> (b) “Wilderness” line,<sup>2</sup> (c) “Freedom” line,<sup>3</sup> and (d) “Basics” line<sup>4</sup> (collectively, the “Misabeled Pet Foods”). With tens of millions of dollars spent on advertising and marketing campaigns, Defendant has built a brand targeted at ingredient-conscious cat and dog owners. At the very core of Defendant’s advertising and marketing is its “TRUE BLUE PROMISE,” which promises consumers that the Misabeled Pet Foods contain “NO Chicken or Poultry By-Product Meals,” “NO Corn, Wheat or Soy,” and “NO Artificial Preservatives, Colors or Flavors” (together with the misrepresentations discussed below, the “Misrepresentations”). In reality, however, Defendant’s “TRUE BLUE PROMISE” is false and misleading. Indeed, scientific testing reveals that, contrary to the “TRUE BLUE PROMISE,” the Misabeled Pet Foods do, in fact, contain significant amounts of chicken/poultry by-product meal. That’s not all. The scientific testing also reveals that the Misabeled Pet Foods also contain corn, rice, grains, and/or artificial preservatives. In short, the Misabeled Pet Foods fail to live up to Defendant’s “TRUE BLUE PROMISE.”

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<sup>1</sup> The “Life Protection” line includes all cat and dog varieties of the Life Protection Formula Chicken & Brown Rice Recipe.

<sup>2</sup> The “Wilderness” line includes all cat and dog varieties of the BLUE Wilderness Chicken Recipe.

<sup>3</sup> The “Freedom” line includes all cat and dog varieties of the BLUE Freedom Grain-Free Chicken Recipe.

<sup>4</sup> The “Basics” line includes all cat and dog varieties of the Basics Grain-Free Turkey and Potato Recipe.

2. Importantly, Defendant claims that its Mislabeled Pet Foods provide “superior nutrition” and health benefits compared to other brands of pet food precisely because the Mislabeled Pet Foods use “the finest natural ingredients” and do not contain ingredients such as chicken/poultry by-product meals, corn, rice, and preservatives. Indeed, Defendant represents that its Mislabeled Pet Foods are made with “only the finest natural ingredients” and are free from “less than desirable” ingredients such as chicken/poultry by-product meals, corn, and preservatives “which can trigger allergic reactions.” But these claims are knowingly false and misleading. As a result, Defendant has intentionally deceived consumers to associate its Mislabeled Pet Foods with “ultra-premium healthy” pet foods. Even worse, Defendant uses its Misrepresentations to extract a substantial price premium from consumers. For example, Defendant’s Life Protection Formula Chicken & Brown Rice Recipe for adult dogs commands nearly a 56% price premium, per pound, over a competing product. And Defendant’s Wilderness Chicken Adult Dry Dog Food commands a 94% premium, per pound:

<b>Brand</b>	<b>Quantity</b>	<b>Price</b>	<b>Unit Price</b>
Blue Buffalo “Life Protection Formula Chicken & Brown Rice Recipe” Dog Food	30 lbs.	\$59.99	\$2.00 per lb.
Blue Buffalo “Wilderness Chicken Adult Dry Dog Food”	24 lbs.	\$59.99	\$2.50 per lb.
Purina “ONE Smartblend Chicken & Rice Formula Dog Food”	31.1 lbs.	\$39.99	\$1.29 per lb.

3. However, as a result of Defendant’s Misrepresentations, the Mislabeled Pet Foods are not worth the substantial price premium they command. Indeed, as Defendant itself acknowledges, “[p]oultry or chicken by-product meals cost a lot less than meals made from whole meat.” Since scientific testing reveals the presence of chicken/poultry by-products in the Mislabeled Pet Foods, consumers are not receiving the value for which they paid a substantial

price premium, namely, pet food made from superior ingredients to the exclusion of chicken/poultry by-product meals, corn, rice, and/or artificial preservatives.

4. Each of Defendant's Misrepresentations is false and misleading because the Mislabeled Pet Foods do, in fact, contain the exact inferior ingredients that Defendant claims on its product labeling that it "never use[s]." And Defendant's deception is intentional by nature because a manufacturer and seller of pet food does not unwittingly mislabel the ingredients and contents of its products – especially when the Misrepresentations relate to the very core of the brand and the marketing message.

5. Plaintiffs are purchasers of Defendant's Mislabeled Pet Foods and assert claims on behalf of themselves and similarly situated purchasers of the Mislabeled Pet Foods for violation of New York General Business Law § 349, violation of New York General Business Law § 350, unjust enrichment, and fraud.

#### **PARTIES**

6. Plaintiff Andacky is a pet-owning consumer who is a citizen of New York, residing in Hempstead, New York. In 2012, Plaintiff Andacky purchased Defendant's Mislabeled Pet Foods – a 24-pound bag of the BLUE Wilderness Chicken Recipe for Adult Dogs for approximately \$60 and a 12-pound bag of the BLUE Wilderness Chicken Recipe for Adult Cats for approximately \$40 – from Pet Supplies Plus in Hempstead, New York. Plaintiff Andacky purchased the bags of Mislabeled Pet Food for his pet dog and pet cat, respectively. Prior to his purchases of the Mislabeled Pet Foods, Plaintiff Andacky saw Defendant's television advertisements and reviewed the Mislabeled Pet Foods' packaging and labeling claims, including the ingredients and the "TRUE BLUE PROMISE" which promised that the Mislabeled Pet Foods contained "NO Chicken or Poultry By-Product Meals," "NO Corn, Wheat or Soy," and "NO Artificial Preservatives, Colors or Flavors." The front packaging labels also represented that the Mislabeled Pet Foods he purchased contained "NO" (a) "chicken or poultry by-product meals," (b) "corn, wheat or soy," and (c) "artificial flavors." The front labels also represented that the Mislabeled Pet Foods were "100% GRAIN FREE." Plaintiff Andacky saw these false representations prior to and at the time of purchase, and understood them as material

representations and claims that the Mislabeled Pet Foods he purchased did not contain any “Chicken or Poultry By-Product Meals,” “Grain,” “Corn, Wheat or Soy,” and/or “Artificial Preservatives, Colors or Flavors.” As a result, Plaintiff Andacky understood that the Mislabeled Pet Foods would provide superior nutrition and health benefits to his pets compared to other brands of pet food that contained these ingredients. He relied on these false representations in deciding to purchase the Mislabeled Pet Foods at a premium price. Accordingly, these representations were part of the basis of the bargain, in that he would not have purchased the Mislabeled Pet Foods at a premium price had he known that the Mislabeled Pet Foods contained chicken/poultry by-product meals, corn, rice, grain, and/or artificial preservatives.<sup>5</sup> Indeed, had he known, he would have instead purchased less expensive pet food products or another brand of pet food products that actually did not contain chicken/poultry by-products meals, grain, corn, rice, and/or artificial preservatives. In reliance on these representations, he paid a tangible increased cost for the Mislabeled Pet Foods, which were worth less than represented because the Mislabeled Pet Foods did, in fact, contain chicken/poultry by-product meals, corn, rice, and/or artificial preservatives – the very ingredients that Defendant expressly promised and represented they did not.

7. Plaintiff Baggett is a pet-owning consumer who is a citizen of New York, residing in Brooklyn, New York. In 2013, Plaintiff Baggett purchased Defendant’s Mislabeled Pet Food – a 30-pound bag of the Life Protection Formula Chicken & Brown Rice Recipe dog food – at a Petco store in Brooklyn, New York for approximately \$60. Subsequently in 2013, she purchased additional 30-pound bags of the Life Protection Formula Chicken & Brown Rice Recipe Mislabeled Pet Food from [www.chewy.com](http://www.chewy.com), an online retailer, for approximately \$53 per bag. Plaintiff Baggett purchased the bags of Mislabeled Pet Foods for her pet dog. Prior to her purchases of the Mislabeled Pet Foods, Plaintiff Baggett saw Defendant’s television

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<sup>5</sup> For example, scientific tests were performed on two samples each of Defendant’s Wilderness Adult Chicken Recipe Dog Food and Wilderness Adult Chicken Recipe Cat Food. The results showed that the LifeSource Bits in the tested dog food samples contained 9% and 11% chicken/poultry by-product meal and 3% and 1% corn or rice, respectively. The results also showed that the LifeSource Bits in the tested cat food samples contained 8% and 5% chicken/poultry by-product meal and 2.2% and 2.5% corn or rice, respectively.

advertisements and reviewed the Mislabeled Pet Foods' packaging and labeling claims, including the ingredients and the "TRUE BLUE PROMISE" which promised that the Mislabeled Pet Foods contained "NO Chicken or Poultry By-Product Meals," "NO Corn, Wheat or Soy," and "NO Artificial Preservatives, Colors or Flavors." The front package labels also represented that the Mislabeled Pet Foods she purchased contained "No chicken or poultry by-product meals • No corn, wheat or soy • No artificial flavors." The back labels also represented that Defendant "never use[s] any chicken or poultry by-product meals, and [their] recipes have no corn, wheat or soy, which can trigger allergic reactions." Plaintiff Baggett saw these false representations prior to and at the time of purchase, and understood them as material representations and claims that the Mislabeled Pet Foods she purchased did not contain any "Chicken or Poultry By-Product Meals," "Corn, Wheat or Soy," and/or "Artificial Preservatives, Colors or Flavors." As a result, Plaintiff Baggett understood that the Mislabeled Pet Foods would provide superior nutrition and health benefits to her pet compared to other brands of pet food that contained these ingredients. She relied on these representations in deciding to purchase the Mislabeled Pet Foods at a premium price. Accordingly, these representations were part of the basis of the bargain, in that she would not have purchased the Mislabeled Pet Foods at a premium price had she known that the Mislabeled Pet Foods contained chicken/poultry by-product meals, corn, rice, and/or artificial preservatives.<sup>6</sup> Indeed, had she known, she would have instead purchased a less expensive dog food or another brand of dog food that actually did not contain chicken/poultry by-products meals, grain, corn, rice, and/or artificial preservatives. In reliance on these representations, she paid a tangible increased cost for the Mislabeled Pet Foods, which was worth less than represented because the Mislabeled Pet Foods did, in fact, contain chicken/poultry by-product meals, corn, rice, and/or artificial preservatives – the very ingredients that Defendant expressly promised and represented it did not.

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<sup>6</sup> For example, a scientific test was performed on Defendant's Life Protection Formula Chicken & Brown Rice Recipe dog food. The result of that test showed that the kibble in the dog food contained 22% chicken/poultry by-product meal.

8. Defendant Blue Buffalo Company, Ltd., is a Delaware corporation with its corporate headquarters in Wilton, Connecticut 06897. Blue Buffalo is in the business of manufacturing, marketing, and selling pet food, pet treats, and related products nationwide. Last year alone, Defendant generated nearly \$600 million in revenue, mostly from the sale of its Mislabeled Pet Foods.<sup>7</sup>

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendant.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant does business throughout this District, Plaintiffs purchased the Mislabeled Pet Foods in this District, and Plaintiffs reside in this District.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

11. Defendant's promotional strategy for its Mislabeled Pet Foods centers around its false ingredient claims and related promises, namely that its Mislabeled Pet Foods provide superior nutrition and health benefits because they do not contain any chicken/poultry by-product meals, corn, rice, and/or artificial preservatives. Indeed, the value of Defendant's brand is built on such claims. False and misleading nutritional and ingredient claims pervade Defendant's website, the packaging of its Mislabeled Pet Foods, its print ads, its television ads, and other like advertising materials. Defendant's Misrepresentations are omnipresent and stated clearly and conspicuously to unwitting consumers. As a consequence of and in reliance on these false and misleading claims, consumers are willing to pay and have paid a substantial price premium for Defendant's Mislabeled Pet Foods.

12. Defendant's false and misleading advertising statements have wide consumer reach. For example, Defendant spent over \$50 million on advertising in 2013 – and is poised to

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<sup>7</sup> See <http://www.reuters.com/article/2014/03/12/us-bluebuffalo-ipo-idUSBREA2B14L20140312>

do so again in 2014 – comprised of a wide array of national print, television, and Internet ads. These advertisements include statements that are materially false and misleading, and were made with the intent to deceive consumers into purchasing Defendant’s Mislabeled Pet Foods. Consumers (including Plaintiffs) have relied on these false and misleading statements in making their decision to purchase Defendant’s Mislabeled Pet Foods.

**The “TRUE BLUE PROMISE”**

13. At the very core of Defendant’s false and misleading labeling, advertising, and marketing is the “TRUE BLUE PROMISE,” which unequivocally represents that the Mislabeled Pet Foods not only use “Only the Finest Natural Ingredients,” but that they also contain “NO Chicken or Poultry By-Product Meals,” “NO Corn, Wheat or Soy,” and “NO Artificial Preservatives, Colors, or Flavors:”



14. The “TRUE BLUE PROMISE” is on *every package* of *every Mislabeled Pet Food* currently sold by Defendant. For example, the Life Protection Formula Chicken & Brown Rice Recipe for Adult Dogs centrally displays the “TRUE BLUE PROMISE”:





So does the Life Protection Formula Chicken & Brown Rice Recipe for Indoor Adult Cats:



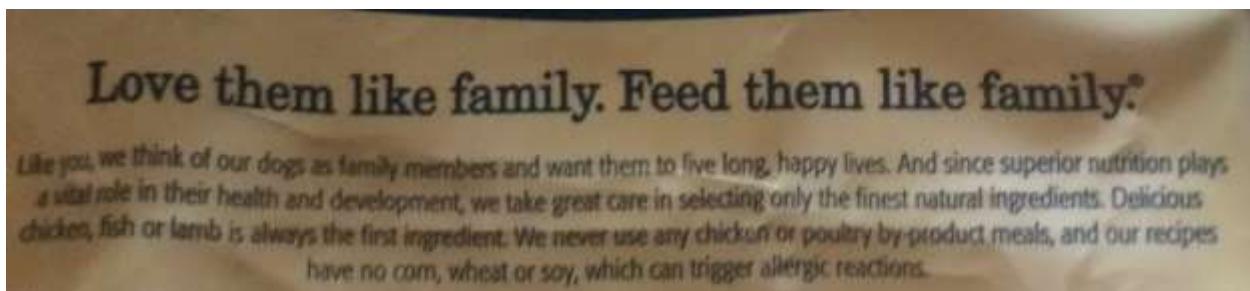
15. As shown by the packaging of the Life Protection Formula Chicken & Brown Rice Recipe for Adult Dogs, the false and misleading message of the “TRUE BLUE PROMISE” is underscored on the *front label of every Misleading Pet Food* which states “No chicken or poultry by-product meals • No corn, wheat or soy • No artificial flavors”:



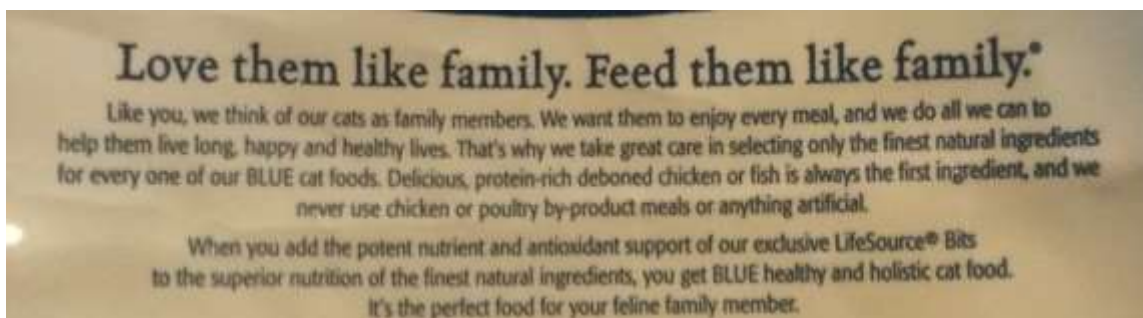
The packaging of the Life Protection Formula Chicken & Brown Rice Recipe for Indoor Adult Cats is substantially similar:



16. Unsurprisingly, the false and misleading message of the “TRUE BLUE PROMISE” is also reiterated on the *back label of every Mislabeled Pet Food*. For example, the back label of the Life Protection Formula Chicken & Brown Rice Recipe for Adult Dogs provides, “We never use any chicken or poultry by-product meals, and our recipes have no corn, wheat or soy, which can trigger allergic reactions”:



Similarly, the back label of the Life Protection Formula Chicken & Brown Rice Recipe for Indoor Adult Cats provides “we never use chicken or poultry by-product meals or anything artificial”:



17. The labeling of the Mislabeled Pet Foods, as well as Defendant's other advertisements, directs consumers to Defendant's website for additional information. Additionally, Defendant further includes a "QR Code" on the labeling of each Mislabeled Pet Food that directs consumers directly to Defendant's webpage for that specific variety of Mislabeled Pet Food:



For example, the "QR Code" on the labeling of the Indoor Health Chicken & Brown Rice Recipe for Indoor Adult Cats links directly to Defendant's webpage for that specific product.<sup>8</sup>

18. In addition to the Mislabeled Pet Foods' labels, the "TRUE BLUE PROMISE" is also found on Defendant's webpages for each individual Mislabeled Pet Food, as shown by the product page for Life Protection Formula Chicken & Brown Rice Recipe for Indoor Adult Cats:<sup>9</sup>

Guaranteed Analysis	
Crude Protein	32.0% min
Crude Fat	15.0% min
Crude Fiber	4.5% max
Moisture	10.0% max
Magnesium	0.08% min
Taurine	0.15% min
Omega 3 Fatty Acids*	0.5% min
Omega 6 Fatty Acids*	3.0% min

\*Not recognized as an essential nutrient by AAFCO Cat Food Nutrient Profiles

**TRUE BLUE PROMISE**  
Only the finest natural ingredients.

- 100% Chicken & Poultry
- 100% Natural Meat
- 100% Corn, Wheat or Soy
- 100% Artificial Preservatives, Colors or Flavors

**Nutrition Statement**  
BLUE Indoor Health Natural Chicken and Brown Rice Recipe Adult Cat Food is formulated to meet the nutritional levels established by the AAFCO Cat Food Nutrient Profiles for maintenance.

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<sup>8</sup> [http://www.bluebuffalo.com/cat-food/bc-indoor-health-chicken?utm\\_source=packaging&utm\\_medium=qr&utm\\_campaign=bfc-adult-indoor-health-chicken](http://www.bluebuffalo.com/cat-food/bc-indoor-health-chicken?utm_source=packaging&utm_medium=qr&utm_campaign=bfc-adult-indoor-health-chicken) (last visited May 7, 2014).

<sup>9</sup> <http://bluebuffalo.com/cat-food/bc-indoor-health-chicken?pf=1&type=dry&animal=cat> (last visited May 7, 2014).



19. The “TRUE BLUE PROMISE” is also found on other parts of Defendant’s website. For example, it is found on the “Why Choose BLUE” page:<sup>10</sup>

**Why Choose BLUE?**

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

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

**The Finest Natural Ingredients for Superior Nutrition**

All of our great-tasting, natural and holistic BLUE dog food and BLUE cat food recipes feature:

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

**Our Exclusive LifeSource Bits, Now Enhanced with Super 7 Antioxidants**

All BLUE dog and cat dry foods contain LifeSource Bits, a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now we've enhanced LifeSource Bits in our BLUE Life Protection Formula for dogs and BLUE for Cats dry food with our Super 7 package of powerful antioxidant-rich ingredients. "Cold-formed" to retain their potency, the ingredients in LifeSource Bits support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

**LEARN MORE**

**TRUE BLUE PROMISE**

Only the Finest Natural Ingredients

**REAL MEAT First Ingredient**

- NO Chicken / Poultry By-Product Meals
- NO Corn, Wheat or Soy
- NO Artificial Preservatives, Colors or Flavors

BLUE uses only the finest natural ingredients and:

- NO chicken (or poultry) by-product meals
- NO artificial flavors, colors, or preservatives
- NO corn, wheat or soy, as they have been linked to allergic reactions in some pets

See How BLUE Compares to Your Dog's or Cat's Food.

Take the True BLUE Test and see for yourself what's really in your furry friend's food, and how it measures up to BLUE. If you think BLUE is a better choice, we'll send you a coupon good on any bag of BLUE dry dog or cat food.

**Compare Dog Food**

**Compare Cat Food**

20. Defendant further reinforces the message of the “TRUE BLUE PROMISE” with detailed explanations and “Q&A” segments on its website. For example, Defendant’s “Nutrition Philosophy” page explains that, “At Blue Buffalo we [do not] use by-products. Poultry or chicken by-product meal costs a lot less than meals made from whole meat. At Blue Buffalo we think the cost is well worth it to know exactly what’s in our food.” It also states that corn, wheat, or soy proteins “are less complete and lower quality sources of protein and are common allergens in pets .... Simply put, these ingredients are cheaper, lower in nutrition, and things we would never include in a Blue recipe.” Finally, it represents that “Preservatives ... provide no

<sup>10</sup> <http://bluebuffalo.com/best-dog-food> (last visited May 7, 2014).

nutritional value and have been associated with possible side effects. Some pet food brands resort to artificial colors and flavors in an attempt to make food look and taste better. We don't.”<sup>11</sup>

### What's Not In BLUE and Why

While the high-quality ingredients we include in BLUE are the foundation of our healthy, holistic diet, what we choose not to include is of equal importance.

There are many ingredients that are considered less than desirable by pet parents who want to feed their dog or cat with the same care as a family member. Surprisingly, when you look at dog food and cat food labels, you'll see some of these ingredients in many of the leading pet food brands – but not in BLUE.

#### Chicken or Poultry By-Product Meals

The definition of Poultry By-Product Meals, as stated in the AAFCO (Association of American Feed Control Officials) Publication 2009 reads, “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, exclusive of feathers, except in such amounts as might occur unavoidably in good processing practices. If the product bears a name descriptive of its kind [i.e. “Chicken By-Product Meal”] the name must correspond thereto.”

At Blue Buffalo we use “Chicken Meal” or “Turkey Meal” made from the whole meat of the birds, not by-products. Poultry or chicken by-product meals cost a lot less than meals made from whole meat. At Blue Buffalo we think the cost is well worth it to know exactly what's in our food.

#### Corn, Wheat or Soy Proteins (Glutens)

All of these are less complete and lower quality sources of protein and are common allergens in pets. Grain proteins do not contain the complete amino acid profiles specific for dogs or cats and are not as easily digestible as meat-based proteins. Many pet food companies use the less expensive glutens to increase protein levels without the complete amino acid benefits of using more expensive meat, poultry or fish proteins.

Simply put, these ingredients are cheaper, lower in nutrition, and things we would never include in a BLUE recipe.

#### Artificial Colors, Flavors, or Preservatives

Preservatives like BHA, BHT, ethoxyquin, propylene glycol provide no nutritional value and have been associated with possible side effects. Some pet food brands resort to artificial colors and flavors in an attempt to make food look and taste better. We don't.

We hope this information helps you better understand what we do and why we do it at Blue Buffalo. We know we're not alone in our belief that these are the important factors that determine what makes up a truly healthy and nutritious pet food. The good thing is, BLUE dog and cat food was created with all of these things in mind—which means the decision about to what feed them just got a whole lot easier.

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<sup>11</sup> <http://bluebuffalo.com/nutrition> (last visited May 7, 2014).

Likewise, the “FAQ” page of Defendant’s website provides:<sup>12</sup>

**Does BLUE dog food or BLUE cat food contain chicken or poultry by-product meals?**

BLUE pet food contains no chicken or poultry by-product meals. What’s more, we do not use corn, wheat or soy in any of our recipes.

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**Why is it so important that there is no corn, wheat or soy in BLUE products?**

Corn, wheat and soy have all been identified as potential allergens for some dogs and cats.

▲ back to top

**Does BLUE pet food contain artificial flavors, preservatives or colors?**

No, we use only natural ingredients.\* This is why our food is considered an all natural dog food and cat food.

\*Fortified with vitamins and minerals

▲ back to top

21. The “TRUE BLUE PROMISE” and its related messages are, in fact, false and misleading because Defendant’s Mislabeled Pet Foods actually contain chicken/poultry by-product meals, corn, rice, and/or artificial preservatives in direct contrast to Defendant’s core promises and representations. First, Defendant’s promise that the Mislabeled Pet Foods contain “NO chicken/poultry by-product meals” are false because scientific tests reveal that Mislabeled Pet Foods actually contain significant – not merely trace – amounts of chicken/poultry by-product meals. In fact, upon information and belief, this testing revealed that in some of the Mislabeled Pet Foods, chicken/poultry by-product meals were actually the *most prevalent ingredient*, comprising upwards of 20% of those products by weight. Second, Defendant’s promise that the Mislabeled Pet Foods contain “NO Corn, Wheat or Soy” is also false because the same tests reveal the presence of significant amounts of rice and/or corn in the Mislabeled

<sup>12</sup> <http://www.bluebuffalo.com/health/faq> (last visited May 7, 2014).

Pet Foods. Finally, Defendant's promise that the Mislabeled Pet Foods contain "NO Artificial Preservatives, Colors or Flavors" is also false because the Mislabeled Pet Foods use chicken/poultry by-product meals that include artificial preservatives that are not present in chicken/poultry meal. In short, Defendant has broken every aspect of its "TRUE BLUE PROMISE" to consumers.

22. As a result of Defendant's broken promises, the Mislabeled Pet Foods are not worth the substantial price premium they command. Indeed, as Defendant itself acknowledges, "[p]oultry or chicken by-product meals cost a lot less than meals made from whole meat." Since scientific testing reveals the presence of chicken/poultry by-products in the Mislabeled Pet Foods, consumers are not receiving the value that they paid a substantial price premium for, namely, pet food made exclusively from whole meat and the finest natural ingredients, not by-products.

**"Superior Nutrition"**

23. Defendant also makes statements that consumers should "Choose BLUE" because the Mislabeled Pet Foods purportedly provide pets with "superior nutrition" compared to other brands. These "superior nutrition" claims are misleading because they are premised on Defendant's assertions that its Mislabeled Pet Foods do not contain certain ingredients such as chicken/poultry by-product meals, corn, wheat, and/or artificial preservatives.



**Why Choose BLUE?**

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

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



**The Finest Natural Ingredients for Superior Nutrition**

All of our great-tasting, natural and holistic BLUE dog food and BLUE cat food recipes feature:

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



**Our Exclusive LifeSource Bits, Now Enhanced with Super 7 Antioxidants**

All BLUE dog and cat dry foods contain LifeSource Bits, a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now we've enhanced LifeSource Bits in our **BLUE Life Protection Formula for dogs and BLUE for Cats dry food** with our Super 7 package of powerful antioxidant-rich ingredients. "Cold-formed" to retain their potency, the ingredients in LifeSource Bits support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

[LEARN MORE](#)



**BLUE uses only the finest natural ingredients and:**

- NO chicken (or poultry) by-product meals
- NO artificial flavors, colors, or preservatives
- NO corn, wheat or soy, as they have been linked to allergic reactions in some pets

**See How BLUE Compares to Your Dog's or Cat's Food.**

Take the True BLUE Test and see for yourself what's really in your furry friend's food, and how it measures up to BLUE. If you think BLUE is a better choice, we'll send you a coupon good on any bag of BLUE dry dog or cat food.

Compare  
Dog Food

Compare  
Cat Food

24. Defendant's "superior nutrition" claims are false and misleading because scientific tests reveal that the Mislabeled Pet Foods, in fact, contain chicken/poultry by-product meals, corn, rice, and/or artificial preservatives.

### **Comparative Advertising**

25. Defendant also utilizes advertising that features comparisons between its Mislabeled Pet Foods and other brands. This comparative advertising represents and conveys to consumers that the Mislabeled Pet Foods contain superior ingredients and that Defendant is honest about the ingredients it uses. Defendant even offers to give consumers information about



“How [] some brands categorize certain ingredients to make their food appear healthier,” thereby falsely implying that Defendant is honest and does not engage in such tactics.<sup>13</sup>



26. Defendant has aired, and continues to air, nationally-televised commercials featuring pet owners who alleged “switch to Blue Buffalo” after learning the “truth about big name dog foods.” For example, one of Defendant’s commercials states verbatim:<sup>14</sup>

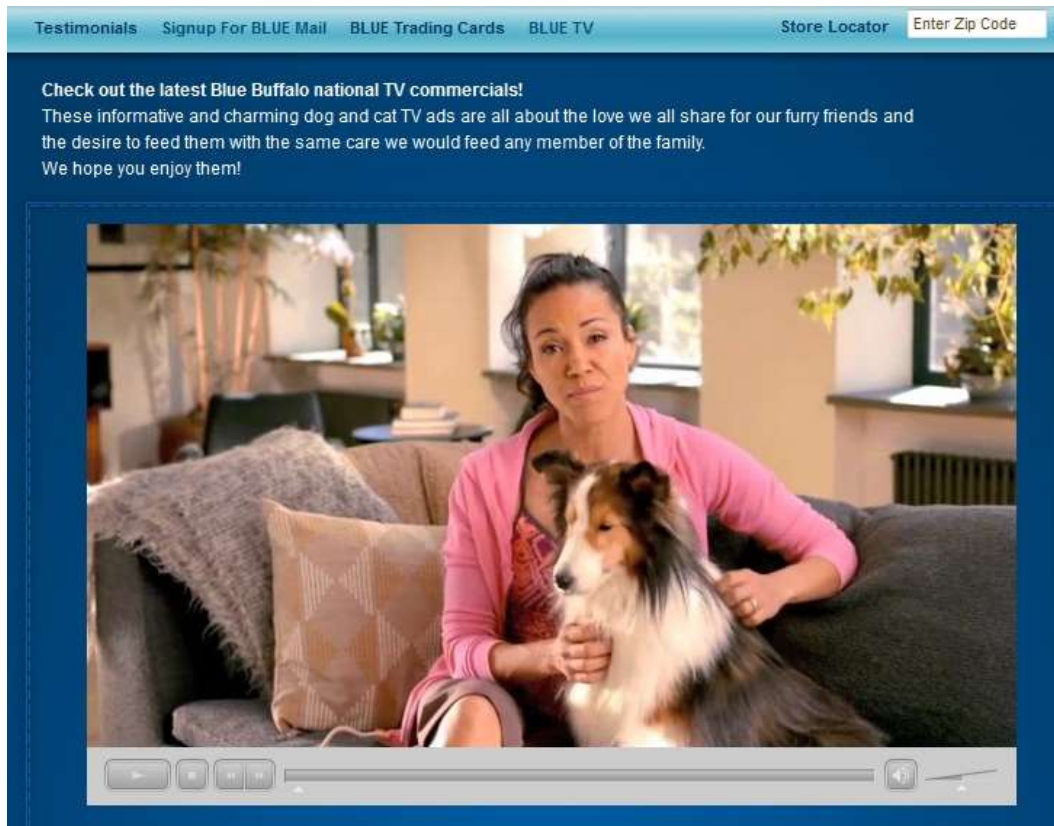
**When pet parents learn about big name dog foods, they switch to Blue Buffalo.** All Blue Life Protection foods are made with real meat first, plus wholesome grains, veggies, and fruit.

I didn’t know how my dog’s big name food stacked up, so I went to Blue’s website, and I took the True Blue Test. It was **clear**. Blue had everything I wanted and **none** of the stuff I didn’t want.

Only Blue has LifeSource Bits. A precise blend of beneficial nutrients. And now we’ve enhanced LifeSource Bits with powerful antioxidant rich ingredients, including pomegranate, pumpkin, spinach, apples, blackberries, blueberries and cranberries. We call it our Super 7 package. When you love them like family, you want to feed them like family. That’s why I feed him Blue. With Super 7 LifeSource Bits, Blue is better than ever. **Take the TrueBlue Test today, and see how your dog’s food compares to Blue.**

<sup>13</sup> <http://bluebuffalo.com/best-dog-food> (last visited May 7, 2014).

<sup>14</sup> <http://www.bluebuffalo.com/tv-commercials> (emphasis added) (last visited May 7, 2014).



27. Defendant even employs salespeople who dress similarly to pet store employees and approach consumers in pet store parking lots to inform consumers of the quality of Defendant's Mislabeled Pet Foods as compared to competitive products. These salespeople parrot the falsehood that the Mislabeled Pet Foods do not contain any chicken/poultry by-product meals and that Defendant honors its "TRUE BLUE PROMISE."

28. To help misleadingly differentiate itself from other pet foods, Defendant offers the "True Blue Test" on its website.<sup>15</sup> The "True Blue Test" allows consumers to compare the alleged ingredient contents of the Mislabeled Pet Foods with those of other leading brands. Among other claims, the "True Blue Test" falsely advocates that the Mislabeled Pet Foods "NEVER Ha[ve] Chicken (or Poultry) By-Product Meals" and identifies competing brands that, according to Defendant, do. These statements are materially false and misleading because Defendant's Mislabeled Pet Foods, as tested, contain chicken/poultry by-product meals in significant amounts. Further, the Mislabeled Pet Foods also contain corn and artificial

<sup>15</sup> <http://www.bluebuffalo.com/dog-food-comparison/test-results> (last visited May 7, 2014).

preservatives despite the express representation that the Mislabeled Pet Foods “NEVER” contain these ingredients.

**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**

Brand	Real Meat	Veggies and Fruit	Chicken/Poultry By-Product Meals	Artificial Colors, Flavors or Preservatives	Corn, Wheat or Soy
IAMS	✓	✓	✗	✓	✓
Purina MAX	—	—	✗	✓	—

29. Consumers of pet food and related products are becoming increasingly ingredient-conscious and are more selective and demanding than ever about the types of foods that they feed their pets. Indeed, consumers rely on ingredient claims and related statements about nutritional value and food quality when deciding which brand of pet food to feed their pets. Many consumers purchase – and a pay a substantial premium for – Defendant’s Mislabelled Pet Foods over other brands because of the false and misleading nutritional statements and promises made by Defendant, including, for example, statements that the Mislabelled Pet Foods (i) do not contain chicken/poultry by-product meals, and (ii) contain “none” of the ingredients that ingredient-conscious consumers would not want. However, as already discussed, the Mislabelled Pet Foods do, in fact, contain chicken/poultry by-product meals and other ingredients that Defendant itself advocates ingredient-conscious consumers do not want.

**LifeSource Bits**

30. Defendant's Misabeled Pet Foods also contain so-called "LifeSource Bits." According to Defendant, these are "vitamins, mineral and antioxidants" that are "cold-formed" into pieces of kibble. The labeling of the Misabeled Pet Foods represents these LifeSource Bits offer a number of special health benefits for pets and further invites consumers to learn more on Defendant's website:





31. The webpage referenced on the Mislabeled Pet Foods' labels provides even more detail:<sup>16</sup>

#### The Health Benefits of LifeSource Bits

LifeSource Bits include ingredients that help benefit dogs and cats in three ways.

##### Help dogs and cats maintain a healthy oxidative balance

Virtually every day, our dogs and cats are exposed to environmental factors that can negatively impact their oxidative balance. And if their biological systems are not able to rebalance this oxidative stress, it can lead to cellular destruction and other serious health issues.

As antioxidants can play an important role in reducing oxidative stress, an increasing number of veterinarians are recognizing their importance in helping pets maintain a healthy oxidative balance. This is the science that led our nutritionists to formulate BLUE's LifeSource Bits with ingredients that are rich in antioxidants. These include:

- Kelp
- Vitamin E
- Vitamin C
- Beta Carotene
- Vitamin A
- Blueberries
- Barley Grass

##### Help support a pet's immune system.

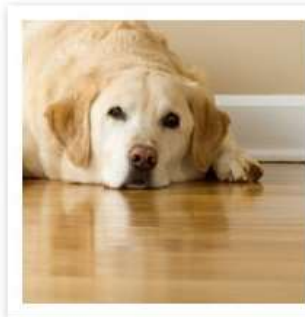
LifeSource Bits contain ingredients that help support a pet's immune system:

- Alfalfa
- Flaxseed
- Parsley
- Vitamin C
- Cranberries

##### Help support a pet's specific life stage requirements.

LifeSource Bits also contain ingredients that can help protect a pet's changing needs from youth through his mature years. These include:

- Omega 3 and Omega 6 Fatty Acids for healthy skin and coat
- Yucca Schidigera Extract for joint health
- Taurine for healthy eyes and heart
- L-Lysine for growth and development
- Vitamin D for healthy bones and tissue
- Vitamin B12 for growth
- L-Carnitine for endurance and fat metabolism

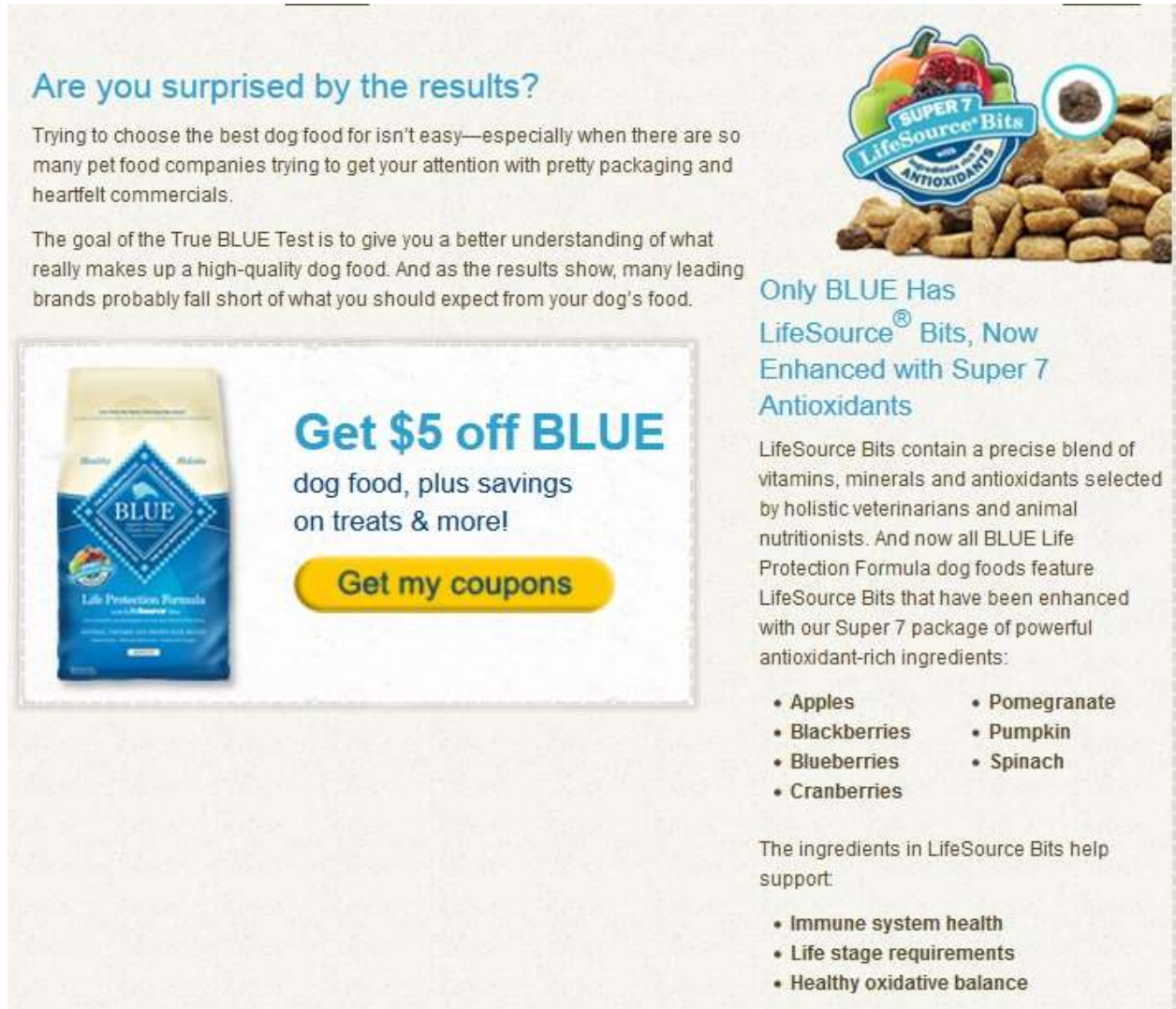


32. In reality, however, Defendant's LifeSource Bits do not contain enough nutrients to effectively deliver the claimed health benefits. Moreover, contrary to the "TRUE BLUE PROMISE," scientific testing reveals that the LifeSource Bits found in the Mislabeled Pet Foods also contain chicken/poultry by-product meals and corn. Similarly, these tests also show that the LifeSource Bits found in the "grain free" Mislabeled Pet Foods contain rice hulls.<sup>17</sup>

<sup>16</sup> <http://www.bluebuffalo.com/health/lifesource-bits> (last visited May 7, 2014).

<sup>17</sup> For example, scientific tests were performed on two samples each of Defendant's Wilderness Adult Chicken Recipe Dog Food and Wilderness Adult Chicken Recipe Cat Food. The results showed that the LifeSource Bits in the tested dog food samples contained 3% and 1% corn or

33. Defendant also continues its practice of falsely implying that its LifeSource Bits are nutritionally superior to the vitamins, minerals, antioxidants, and other ingredients found in other, less expensive, brands. For example, Defendant includes the LifeSource Bits on its “True Blue Test” results pages as one of the qualities that purportedly makes the Mislabeled Pet Foods superior to other brands while failing to acknowledge that other brands may and/or do contain similar ingredients.<sup>18</sup>



**Are you surprised by the results?**

Trying to choose the best dog food for isn't easy—especially when there are so many pet food companies trying to get your attention with pretty packaging and heartfelt commercials.

The goal of the True BLUE Test is to give you a better understanding of what really makes up a high-quality dog food. And as the results show, many leading brands probably fall short of what you should expect from your dog's food.

**Get \$5 off BLUE**  
dog food, plus savings  
on treats & more!

**Get my coupons**

**Only BLUE Has**  
**LifeSource® Bits, Now**  
**Enhanced with Super 7**  
**Antioxidants**

LifeSource Bits contain a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now all BLUE Life Protection Formula dog foods feature LifeSource Bits that have been enhanced with our Super 7 package of powerful antioxidant-rich ingredients:

- Apples
- Blackberries
- Blueberries
- Cranberries
- Pomegranate
- Pumpkin
- Spinach

The ingredients in LifeSource Bits help support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

rice, respectively. The results also showed that the LifeSource Bits in the two Wilderness cat food samples contained 2.2% and 2.5% rice or corn, respectively. Also tested were two samples each of Defendant's Freedom Adult Grain Free Chicken Recipe dog food and Freedom Adult Grain Free Chicken Recipe cat food. The results showed that the LifeSource Bits in the two samples of the Freedom dog food contained 3% and 1% corn or rice, respectively. The results also showed that the LifeSource Bits in the two samples of the Freedom cat food contained 2% and 2% corn or rice, respectively.

<sup>18</sup> <http://bluebuffalo.com/dog-food-comparison/test-results> (last visited May 7, 2014).

34. In reality, however, the low level of nutrients in Defendant's LifeSource Bits is insufficient to render them superior to less expensive competing brands.

35. Similarly, Defendant makes false and misleading statements that its LifeSource Bits contain certain levels of vitamins, minerals, and nutrients to provide specific health benefits such as a "healthy skin and coat" and "healthy bones and tissues," when, in fact, Defendant's LifeSource Bits do not contain the requisite levels of vitamins, minerals, or nutrients to provide those health benefits. Defendant also advertises that certain vitamins, minerals, and nutrients purportedly found in its LifeSource Bits provide health benefits for which there is no scientific evidence.<sup>19</sup>

**Help support a pet's specific life stage requirements.**

LifeSource Bits also contain ingredients that can help protect a pet's changing needs from youth through his mature years. These include:

- **Omega 3 and Omega 6 Fatty Acids** for healthy skin and coat
- **Yucca Schidigera Extract** for joint health
- **Taurine** for healthy eyes and heart
- **L-Lysine** for growth and development
- **Vitamin D** for healthy bones and tissue
- **Vitamin B12** for growth
- **L-Carnitine** for endurance and fat metabolism

36. Many other advertising claims made by Defendant with respect to the LifeSource Bits in the Mislabeled Pet Foods are false and misleading. For example, Defendant claims that the LifeSource Bits contain taurine for "health eyes and heat." The LifeSource Bits, however, contain little or no taurine. Likewise, Defendant touts vitamin d in the LifeSource Bits "for healthy bones and tissue" when in reality the LifeSource Bits contain less vitamin d than the kibble component of the Mislabeled Pet Foods. Similarly, Defendant cites l-carnitine in the LifeSource Bits "for endurance and fat metabolism." Here too, there is little or no l-carnitine in the LifeSource Bits. In short, Defendant has falsely advertised its LifeSource Bits as having many qualities and benefits that they simply do not have.

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<sup>19</sup> <http://www.bluebuffalo.com/health/lifesource-bits> (last visited May 7, 2014).



**“Natural Ingredients” / “NO Artificial Preservatives”**

37. Defendant has made, and is currently making, statements and “promises” to consumers that the Mislabeled Pet Foods contain “Only the Finest Natural Ingredients” and have “NO Artificial Preservatives.”



**BLUE uses only the finest natural ingredients and:**

- NO chicken (or poultry) by-product meals
- NO artificial flavors, colors, or preservatives
- NO corn, wheat or soy, as they have been linked to allergic reactions in some pets

**What's In Our Food and Why**

BLUE foods consist of the finest natural ingredients combined in perfect balance for superior nutrition. These delicious, high-quality ingredients are the foundation of all of our products along with intensively researched vitamins, minerals, and antioxidants – each combination specifically modified for dogs, cats, lifestages, weight conditions, taste preference, and personal feeding choice.

Like us, dogs and cats require a balanced diet that is a combination of six nutrient classes:

- Proteins
- Fats
- Carbohydrates
- Vitamins
- Minerals
- Water

38. These statements and promises are repeated throughout Defendant’s websites, its national television commercials, its Mislabeled Pet Foods' labels, and other advertising materials.

39. Defendant’s statements and promises that the Mislabeled Pet Foods contain “Only the Finest Natural Ingredients” and have “NO Artificial Preservatives” are false and misleading because, among other things, the Mislabeled Pet Foods contain chicken/poultry by-product meals that include artificial preservatives that are not present in chicken/poultry meal.

**“Grain-Free”**

40. Grain-free pet foods are desired by consumers who believe that dogs and cats should be fed as carnivores. Defendant attempts to capitalize on these consumers by not only



representing that all of its Misabeled Pet Foods contain “no corn, wheat or soy,” but by also representing that certain of its Misabeled Pet Foods – specifically the “Wilderness” and “Freedom” lines, as well as part of the “Basics” line – are “grain free.”

Life Protection Freedom Wilderness Basics Store Locator Enter Zip Code Go

## Introducing Grain-Free BLUE Freedom®

FOR DOGS FOR CATS

Some dogs and cats just do better on a diet without grains. That's why there's new BLUE Freedom. BLUE Freedom is made with the finest natural ingredients and none of the grains that contain gluten. It's grain-free at its finest!

Love Them Like Family. Feed Them Like Family.®

## Meat-rich BLUE Wilderness® for dogs or cats

FOR CATS FOR DOGS

Meat-rich BLUE Wilderness® for dogs or cats

FOR CATS FOR DOGS

- Inspired by their ancestors in the wild, BLUE Wilderness is made with more of the meat dogs and cats love.
- 100% grain-free.
- Includes only the finest natural ingredients and contains NO chicken (or poultry) by-product meals, artificial preservatives, corn, wheat or soy.
- Provides the enhanced supplementation of BLUE's exclusive LifeSource® Bits, a precise blend of vitamins, minerals and antioxidants.
- A sensible alternative to a raw diet.

Love Them Like Family. Feed Them Like Family.®



Available in 5 and 11 lb. Bags



+ Zoom



Share



## Basics™ Turkey and Potato Recipe for Adult Cats

BLUE Basics Turkey Recipe is a limited-ingredient diet formulated to minimize food sensitivities that some cats experience while maximizing the nutritional value they receive. BLUE Basics contains

- **Turkey** - A high-quality protein not commonly used in cat food.
- **Oatmeal, Potatoes and Brown Rice** - Three easily digestible carbohydrate sources.
- **A Precise Blend of Veggies, Fruit and Micronutrients** - Selected for their nutritional value and their capacity to help in the digestive process.
- **An Optimal Blend of Omega 3 and 6 Fatty Acids** - Helps maintain the immune system to help support skin and coat health.

For cats with food sensitivities, the ingredients they don't eat are just as important as the ones they do. BLUE Basics contains:

- **NO corn**
- **NO soy**
- **NO wheat**
- **NO eggs**
- **NO dairy**

And, like all BLUE pet foods, BLUE Basics contains no chicken (or poultry) by-product meals and no artificial ingredients of any kind.

41. However, Defendant's representations that its Mislabeled Pet Foods are "grain-free" and contain "no corn, wheat or soy" are false and misleading because, as testing reveals, these products do, in fact, contain these ingredients. Specifically, the scientific tests found grains (rice hulls and/or ground corn) in the LifeSource Bits that are found in each of the "grain-free" product lines. In fact, these grains were found in concentrations of up to 3% by weight.

42. By falsely advertising its Mislabeled Pet Foods as "grain-free" when the products in fact contain grains, Defendant is misleading and deceiving consumers who seek to purchase grain free products.

**“Human-Grade” Pet Food**

43. Defendant also makes statements that its products are human-grade and fit for human consumption. As shown above, *see supra* ¶¶ 15-16, Defendant uses the slogan “*Love them like family. Feed them like family.*” to convey this message to consumers.

44. However, these statements are also false and misleading because the Mislabeled Pet Foods contain ingredients such as chicken/poultry by-product meals that are not human grade.

**CLASS REPRESENTATION ALLEGATIONS**

45. Plaintiffs seek to represent a class defined as all persons in the United States who purchased Blue Buffalo Mislabeled Pet Foods (the “Class”). Excluded from the Class are persons who made such purchase for purpose of resale.

46. Plaintiffs also seek to represent a subclass of all Class members who purchased Blue Buffalo Mislabeled Pet Foods in the state of New York (the “New York Subclass”).

47. Members of the Class and Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and Subclass number in the millions. The precise number of Class and Subclass members and their identities are unknown to Plaintiffs at this time but may be determined through discovery. Among other things, Class and Subclass members may be notified of the pendency of this action by mail, e-mail, and/or publication through the distribution records of Defendant and third party retailers and vendors.

48. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to whether Defendant’s labeling, advertising, and marketing of the Mislabeled Pet Foods is false and misleading as complained of herein.

49. The claims of the named Plaintiffs are typical of the claims of the Class in that the named Plaintiffs were exposed to Defendant’s false and misleading advertising and marketing materials, including the Misrepresentations, purchased Mislabeled Pet Foods, and suffered a loss as a result of those purchases.

50. Plaintiffs are adequate representatives of the Class and Subclass because their interests do not conflict with the interests of the Class and Subclass members they seek to represent, they have retained competent counsel experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class and Subclass members will be fairly and adequately protected by Plaintiffs and their counsel.

51. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

### **COUNT I**

#### **(Deceptive Acts Or Practices, New York Gen. Bus. Law § 349)**

52. Plaintiffs repeat the allegations in the foregoing paragraphs as if fully set forth herein.

53. Plaintiffs bring this Count I individually and on behalf of the members of the New York Subclass against Defendant.

54. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by making the Misrepresentations.

55. The foregoing deceptive acts and practices were directed at consumers.

56. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics, ingredients, and benefits of the Mislabeled Pet Foods to induce consumers to purchase same.

57. Plaintiffs and members of the New York Subclass were injured because: (a) they would not have purchased the Mislabeled Pet Foods had they known that the products in fact contained chicken/poultry by-product meals, corn, rice, and/or artificial preservatives; (b) they paid a price premium for the Mislabeled Pet Foods based on Defendant's false and misleading statements; and (c) the Mislabeled Pet Foods did not have the characteristics and benefits promised because they contained chicken/poultry by-product meals, corn, rice, and/or artificial preservatives. As a result, Plaintiffs and the New York Subclass have been damaged in the amount of the difference in value between the Mislabeled Pet Foods as advertised and the Mislabeled Pet Foods as actually sold.

58. On behalf of themselves and other members of the New York Subclass, Plaintiffs seek to enjoin the unlawful acts and practices described herein, to recover their actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

## **COUNT II**

### **(False Advertising, New York Gen. Bus. Law § 350)**

59. Plaintiffs repeat the allegations in the foregoing paragraphs as if fully set forth herein.

60. Plaintiffs bring this Count II individually and on behalf of the members of the New York Subclass against Defendant.

61. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York General Business Law.

62. Defendant's false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, were and are directed to consumers.

63. Defendant's false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

64. Defendant's false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, have resulted in consumer injury or harm to the public interest.

65. Plaintiffs and members of the New York Subclass have been injured because: (a) they would not have purchased the Mislabeled Pet Foods had they known that the products in fact contained chicken/poultry by-product meals, corn, rice, and/or artificial preservatives; (b) they paid a price premium for the Mislabeled Pet Foods based on Defendant's false and misleading statements; and (c) the Mislabeled Pet Foods did not have the characteristics and benefits promised because they contained chicken/poultry by-product meals, corn, rice, and/or artificial preservatives. As a result, Plaintiffs and the New York Subclass have been damaged in the amount of the difference in value between the Mislabeled Pet Foods as advertised and the Mislabeled Pet Foods as actually sold.

66. As a result of Defendant's false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, Plaintiffs have suffered and continue to suffer economic injury.

67. Plaintiffs and members of the New York Subclass suffered an ascertainable loss caused by Defendant's Misrepresentations because they paid more for the Mislabeled Pet Foods than they would have had they known the truth about the product.

68. On behalf of themselves and other members of the Class and New York Subclass, Plaintiffs seek to enjoin the unlawful acts and practices described herein, to recover their actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

### **COUNT III**

#### **(Unjust Enrichment)**

69. Plaintiffs repeat the allegations of the foregoing paragraphs as if fully set forth herein.

70. Plaintiffs bring this Count III individually and on behalf of members of the Class and Subclass against Defendant.



71. Plaintiffs and members of the Class and Subclass conferred benefits on Defendant by purchasing the Mislabeled Pet Foods at a premium price.

72. Defendant has knowledge of such benefits.

73. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiffs' and Class and Subclass members' purchases of the Mislabeled Pet Foods. Retention of those moneys under these circumstances is unjust and inequitable because Defendant falsely and misleadingly represented that its Mislabeled Pet Foods contained no chicken/poultry by-product meals, corn, rice, and/or artificial preservatives when, in fact, the Mislabeled Pet Foods contained one or more of these ingredients, which caused injuries to Plaintiffs and members of the Class and Subclass because they would not have purchased (or paid a price premium) for the Mislabeled Pet Foods had the true facts been known.

74. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiffs and members of the Class and Subclass is unjust and inequitable, Defendant must pay restitution to Plaintiffs and members of the Class and Subclass for their unjust enrichment, as ordered by the Court.

#### **COUNT IV**

##### **(Fraud)**

75. Plaintiffs repeat the allegations of the foregoing paragraphs as if fully set forth herein.

76. Plaintiffs bring this Count IV individually and on behalf of members of the Class and Subclass against Defendant.

77. As discussed above, Defendant made false and misleading representations, including the Misrepresentations, and failed to disclose that the Mislabeled Pet Foods contain chicken/poultry by-product meals, corn, rice, and/or artificial preservatives. Defendant had a duty to disclose this information.

78. The false and misleading representations and omissions were made with knowledge of their falsehood.

79. The false and misleading representations and omissions were made by Defendant, upon which Plaintiffs and members of the Class and Subclass members reasonably and justifiably relied, and were intended to induce and actually induced Plaintiffs and Class and Subclass members to purchase the Mislabeled Pet Foods.

80. The fraudulent actions of Defendant caused damage to Plaintiffs and members of the Class and Subclass, who are entitled to damages and other legal and equitable relief as a result.

**RELIEF DEMANDED**

81. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek a judgment against Defendant, as follows:

- a. For an order certifying the nationwide Class and the New York Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Subclass and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;
- b. For an order declaring that Defendant's conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiffs, the nationwide Class, and the New York Subclass on all counts asserted herein;
- d. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper; and
- h. For an order awarding Plaintiffs and the Class and Subclass their reasonable attorneys' fees and expenses and costs of suit.

**JURY TRIAL DEMANDED**

Plaintiffs demand a trial by jury on all claims so triable.



Dated: May 8, 2014

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By:   
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*Attorneys for Plaintiffs*

## 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**

**BRIAN ANDACKY and MELISSA BAGGETT**, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Nassau County, NY  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
**Bursor & Fisher, P.A.**  
888 Seventh Avenue, New York, NY 10019  
646-837-7150

**DEFENDANTS**

**THE BLUE BUFFALO COMPANY, LTD.**

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

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

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 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 checked="" 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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <input checked="" 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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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 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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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):

Brief description of cause:

Defendant's marketing and sale of Blue Buffalo brand pet foods

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
5,000,001.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
05/08/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Joseph I. Marchese, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☒ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes
- b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? \_\_\_\_\_

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: \_\_\_\_\_

Joseph I. Marchese

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

UNITED STATES DISTRICT COURT

for the

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

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

**DOUGLAS C. PALMER**  
*CLERK OF COURT*

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

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

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

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

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

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

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

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

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

☐ Other *(specify)*: \_\_\_\_\_.

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

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

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

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

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

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

Additional information regarding attempted service, etc: