

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

B. HARDWICK

Plaintiff

- and -

BLUE BUFFALO COMPANY, LTD. AND BLUE BUFFALO PET PRODUCTS, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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

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

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: February 5, 2016

Issued by (S) Signature
Local Registrar

Address of court office: 161 Elgin Street
2nd Floor
Ottawa, ON K2P 2K1

TO: Blue Buffalo Company, Ltd.
11 River Road
Wilton, Connecticut 06897
U.S.A.

Tel: 1 (203) 762-9751
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AND: Blue Buffalo Pet Products, Inc.
11 River Road, Suite 103
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DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Blue Buffalo Pet Food Products**” and/or “**Pet Food Products**” means the **Defendants’** ultra-premium lines of dog and cat food products which include, but are not limited to: (a) “Basics”, (b) “Blue”, (c) “Freedom”, (d) “Longevity”, (e) “Organics”, and (f) “Wilderness” [See Appendix A hereto for a detailed list];
- (b) “**Class**” or “**Class Members**” means all residents in Canada who have purchased any of the **Blue Buffalo Pet Food Products**;
- (c) “*Courts of Justice Act*” means the *Ontario Courts of Justice Act*, RSO 1990, c. C-43, as amended;
- (d) “*Class Proceedings Act*” means the *Class Proceedings Act*, 1992, SO 1992, c. 6, as amended;
- (e) “*Sale of Goods Act*” means the *Sale of Goods Act*, R.S.O. 1990, c. S.1, as amended;
- (f) “*Consumer Packaging and Labelling Act*” means the *Consumer Packaging and Labelling Act*, R.S.C. 1985, c. C-38, as amended;
- (g) “*Competition Act*” means the *Competition Act*, RSC 1985, c. C-34, as amended;

- (h) “**Consumer Protection Act**” means the *Consumer Protection Act, 2002*, SO 2002, c. 30, Schedule A, as amended;
- (i) “**Consumer Protection Legislation**” means:
- (i) *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;
 - (ii) *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23;
 - (iii) *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14;
 - (iv) *The Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13;
 - (v) *The Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219, 228, 253 & 272;
 - (vi) *The Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10, 12, 15-18, 23 & 27;
 - (vii) *The Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26 & 28A;
 - (viii) *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4; and
 - (ix) *The Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65;
- (j) “**Defendants**” or “**Blue Buffalo**” means Blue Buffalo Company, Ltd. and Blue Buffalo Pet Products, Inc.;
- (k) “**Plaintiff**” means B. Hardwick;

(l) “**Representation**” means the **Defendants’** false, misleading or deceptive representations that their **Blue Buffalo Pet Food Products** (a) have uses, ingredients, benefits and/or qualities which they did not possess, (b) are of a particular standard, quality, and/or grade that they are not, (c) are available for a reason that does not exist; and the **Defendants’** (d) use of exaggeration, innuendo and ambiguity regarding their quality, composition, and ingredients;

(m) “**Health Benefits**” and/or the “**TRUE BLUE PROMISE**” means the benefits and assurances that the **Defendants** represent their **Blue Buffalo Pet Food Products** to possess, namely as containing only the finest natural ingredients with (i) “NO Chicken/Poultry By-Product Meals¹”, (ii) “NO Corn, Wheat or Soy”, (iii) “NO Artificial Preservatives, Colors or Flavors”, and (iv) superior nutrition as compared to those of standard competitor pet food products;

THE CLAIM

¹ Poultry by-product meal is a high-protein commodity used as a major component in some pet foods. It is made from grinding clean, rendered parts of poultry carcasses and can contain bones, offal and undeveloped eggs, but only contains feathers that are unavoidable in the processing of the poultry parts.

2. The proposed Representative Plaintiff, B. Hardwick, claims on his own behalf and on behalf of the members of the Class of persons as defined in defined in paragraph 4 below (the “Class”) as against Blue Buffalo Company, Ltd. and Blue Buffalo Pet Products, Inc. (the “Defendants”):

- (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
- (b) A declaration that the Defendants breached their express warranties to Class Members;
- (c) A declaration that the Defendants breached their implied warranty of merchantability;
- (d) A declaration that the Defendants committed the tort of civil fraud;
- (e) A declaration that the Defendants committed the tort of fraudulent concealment;
- (f) A declaration that the Defendants were negligent in the marketing, advertising and sale of the Pet Food Products;
- (g) A declaration that the Defendants committed the tort of negligent misrepresentation;
- (h) A declaration that the Defendants breached the *Sale of Goods Act* when they breached the implied condition as to quality or fitness for a particular purpose;

- (i) A declaration that the Defendants breached the *Consumer Packaging and Labelling Act* when they packaged, labelled, sold, imported into Canada, and/or advertised the Pet Food Products with false or misleading representations;
- (j) A declaration that the Defendants made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;
- (k) A declaration that the present Statement of Claim is considered as notice given by the Plaintiff on his own behalf and on behalf of “person similarly situated” and is sufficient to give notice to the Defendants on behalf of all Class Members;
- (l) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (m) General damages in an amount to be determined in the aggregate for the Class Members for, *inter alia*, pain, suffering, stress, trouble, and inconvenience;
- (n) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, the purchase price of the Defendants’ Pet Food Products or, in the alternative, the overpayment of the purchase price of the Pet Food Products (i.e. the diminished value of the Pet Food Products);

- (o) Punitive, aggravated, and exemplary damages in the aggregate in an amount to be determined as this Honourable Court deems appropriate;
- (p) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (q) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (r) An order that Class Members are entitled to a refund of the purchase price of the Pet Food Products based *inter alia* on revocation of acceptance and rescission or, in the alternative, the diminished value of the Pet Food Products;
- (s) In the alternative, an order for an accounting of revenues received by the Defendants resulting from the sale of their Pet Food Products;
- (t) A declaration that any funds received by the Defendants through the sale of their Pet Food Products as a result of the Representation are held in trust for the benefit of the Plaintiff and Class Members;
- (u) Restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Pet Food Products to members of the Class on the basis of unjust enrichment;

- (v) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Pet Food Products to members of the Class on the basis of *quantum meruit*;
- (w) A permanent injunction restraining the Defendants from continuing any actions taken in contravention of the law, whether tortious, statutory, and/or equitable;
- (x) A permanent injunction restraining the Defendants from continuing any actions taken in contravention of the Consumer Protection Legislation, the *Sale of Goods Act*, the *Consumer Packaging and Labelling Act*, the *Consumer Protection Act* and the *Competition Act*;
- (y) An order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (z) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (aa) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (bb) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;

- (cc) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and

- (dd) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

THE PARTIES

The Representative Plaintiff

3. The Plaintiff, B. Hardwick, is an individual residing in the City of Toronto, in the Province of Ontario. For approximately two years between 2012 and 2014, Mr. Hardwick purchased several Blue Buffalo Pet Food Products including, but not limited to Blue Buffalo Freedom – Adult Grain Free Chicken (Dog) and Blue Buffalo Wilderness – Adult Chicken Recipe (Dog) after being exposed to and in reliance upon the Defendants’ Representation.

The Class

4. The Plaintiff seeks to represent the following class of which he is a member (the “Proposed Class”):

All residents in Canada who have purchased any of the Blue Buffalo Pet Food Products.

The Defendants

5. The Defendant, Blue Buffalo Pet Products, Inc. (“Blue Buffalo, Inc.”), is an American corporation with its head office in Wilton, Connecticut. It is the parent company of Defendant Blue Buffalo Company, Ltd. (“Blue Buffalo, Ltd.”).

6. The Defendant, Blue Buffalo, Ltd., is an American corporation with its head office in Wilton, Connecticut. It is a wholly-owned subsidiary of Defendant Blue Buffalo, Inc. It is also the registrant of the following trade-marks in Canada:

- a) “BLUE” & Buffalo Design (TMA780866) which was filed on December 20, 2007,
- b) “BLUE” & Buffalo Design (TMA771413) which was filed on October 27, 2008,

- c) “BLUE BASICS” (TMA923391) which was filed on May 5, 2014;
- d) “BLUE FREEDOM” (TMA914547) which was filed on May 5, 2014;

In addition, Defendant Blue Buffalo, Ltd. is in the process of registering the following trademarks, both of which have been allowed:

- e) “BLUE NATURALLY FRESH” & Design (Application Number 1675622) which was filed on May 5, 2014, and
- f) “BLUE WILDERNESS” & Design (Application Number 1675625) which was filed on May 5, 2014.

7. The Defendants produce, distribute, package, label, advertise, market, promote, and/or sell Blue Buffalo Pet Food Products throughout Canada, including within the province of Ontario.

8. The Defendants are residents in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

9. The Defendants are jointly and severally liable for the acts and omissions of each other.

THE NATURE OF THE CLAIM

10. The Defendants are and, have been at all relevant times, engaged in the business of producing, distributing, packaging, labelling, advertising, marketing, promoting, representing, and/or selling the Pet Food Products by positioning them in the minds of ingredient-conscious pet owners as a healthy alternative to other competing pet food brands.

11. Specifically, the Defendants’ Pet Food Products were falsely, deceptively and prominently packaged, labelled, advertised, marketed, promoted, represented, and/or sold using the TRUE

BLUE PROMISE; i.e. as containing only the finest natural ingredients with (i) “NO Chicken/Poultry By-Product Meals”, (ii) “NO Corn, Wheat or Soy”, (iii) “NO Artificial Preservatives, Colors or Flavors”, and as providing superior nutrition as compared to those of standard competitor pet food products (“Health Benefits”).



12. The TRUE BLUE PROMISE prominently appears on all Blue Buffalo Pet Food Products. By way of example, it appears on the Blue Wilderness Natural Evolutionary Diet Chicken Recipe for Adult Dogs, the Blue Wilderness Rocky Mountain Recipe with Bison for Adult Dogs, the Blue Wilderness Rocky Mountain Recipe With Red Meat for Adult Dogs, the Blue Wilderness Trail Treats Duck Biscuits for Adult Dogs, and the Blue Wilderness Salmon & Chicken Grill for Adult Dogs (as is depicted below).



13. As appears on the top right-hand corner of the Blue Wilderness Pet Food Products and as is reproduced larger below, the Defendants' Pet Food Products are all represented to contain "NO Chicken/Poultry By-Product Meals, Corn, Wheat or Soy, Artificial Preservatives, Colors or Flavors." In addition, the TRUE BLUE PROMISE diamond appears on the backside of every Blue Buffalo Pet Food Product.



14. The Defendants' market positioning was consistent regardless of the advertising medium; whether it be on the product labelling itself, on their websites (including, but not limited to www.bluebuffalo.com), or other mediums. Below is a small random sample of the advertisements that the Defendants disseminated to the public, which reinforce the TRUE BLUE PROMISE and the purported Health Benefits.





15. The Defendants' TRUE BLUE PROMISE is false and misleading and has no scientific basis. In fact, scientific testing has revealed that that Blue Buffalo Pet Food Products actually do contain substantial amounts of chicken/poultry by-product meal contrary to the Defendants' widespread representations. Independent scientific testing has also revealed that the Blue Buffalo Pet Food Products contain corn, rice, grains, soy and/or artificial preservatives in contrast to the Representation. The Blue Buffalo Pet Food Products simply fail to meet the Defendants' TRUE BLUE PROMISE and/or the Health Benefits as advertised.

Background – Evolving Trend

16. Approximately fifty-seven percent of Canadian households own pets, equalling 7.5 million households. Overall, Canadians own roughly 5.9 million dogs and 7.9 million cats. Eighty-six percent of dog owners and 89% of cat owners consider their pets to be part of the family.

17. Canadian pet owners are more likely to gravitate towards products that offer natural formulations and enhanced health benefits for their pets. They agree that natural ingredients means healthier foods and they prefer foods that are less processed and have fewer ingredients.

18. Consumers treat their pets like members of the family and this “humanization” is leading to a stronger demand and preference for natural and nutritional pet food ingredients in order to increase their pets’ longevity and overall health. In turn, when reading the labelling on pet food products, consumers seek out ingredients that are recognizable and that resemble those that they themselves are consuming.

19. The dog and cat food industry in Canada is quite large, with much growth, generating a sizeable amount of money each year. Premium pet foods have seen the fastest growth rate of any pet food product due to health-conscious pet owners who want to extend the lifespan of their beloved pets by feeding them healthier and more nutritious food. In 2013, the overall value of premium food grew by almost 4% equalling close to 1.7 billion dollars in retail sales. This trend is projected to continue growing due to the fact that Canadian’s disposal income is also on the rise.

20. The Defendants have built their Blue Buffalo brand by taking advantages of consumers’ desire to keep their pets alive longer and in good health. To this end, the Defendants have been

engaging in a massive, uniform marketing and advertising campaign replete with false statements and misrepresentations about the ingredients and the quality of their Pet Food Products.

21. The Defendants' scheme to exploit consumer demand for premium pet food by falsely advertising the ingredients used in their Pet Food Products has been extremely successful. In 2013, the Defendants generated a revenue of nearly \$600 million, the majority of which derived from sales of the Blue Buffalo Pet Food Products.

22. Simply put, the ingredients that are labelled, advertised, marketed, promoted, and represented to be in the Blue Buffalo Pet Food Products, including the TRUE BLUE PROMISE are false. The purported Health Benefits are merely misrepresentations. Whilst the TRUE BLUE PROMISE states that the Pet Food Products do not contain "Chicken/Poultry By-Product Meals", this has been proven to be wholly inaccurate.

Independent Testing and the Purina Complaint

23. In February 2014, a competitor company, Nestlé Purina Petcare Company ("Purina"), hired Windsor Laboratories², to conduct "blind" testing of samples of multiple formulas of Blue Buffalo Pet Food Products³. This testing revealed that the core claims and statements about the ingredients contained in the Defendants' Blue Buffalo Pet Food Products were materially false

² Windsor Laboratories is a leading laboratory specializing in microscopic analysis for the agricultural and related industries.

³ The Pet Food Products tested were: Blue Buffalo Life Protection - Adult Chicken and Brown Rice (Dog), Blue Buffalo Freedom - Adult Grain Free Chicken (Dog), Blue Buffalo Wilderness - Adult Chicken Recipe (Dog), Blue Buffalo Basics - Adult Turkey & Potato (Dog), Blue Buffalo Longevity - Longevity for Adult Dogs (Dog), Purina Pro Plan SELECT Adult Grain Free Formula (Dog), Purina ONE beyOnd White Meat Chicken & Whole Barley Recipe (Dog), Blue Buffalo Life Protection - Indoor Health Chicken & Brown Rice Recipe (Cat), Blue Buffalo Freedom - Grain Free Chicken for Indoor Cats (Cat), Blue Buffalo Wilderness - Adult Chicken Recipe (Cat), Blue Buffalo Basics - Adult Turkey & Potato (Cat), Blue Buffalo Longevity - Longevity for Adult Cats (Cat), Purina ONE beyOnd White Meat Chicken & Whole Oat Meal Recipe (Cat), Purina ONE beyOnd Salmon & Whole Brown Rice Recipe (Cat).

and that several of the Blue Buffalo Pet Food Products tested contain measurable amounts of chicken/poultry by-product meal or grains.

24. The independent testing revealed that contrary to the Defendants' representation the Pet Food Products contain the following ingredients:

Blue Buffalo Product Claimed to Contain No Poultry By-Products	Percentage Poultry By-Product Meal in Kibble (Two Samples)	Percentage Poultry By-Product Meal in LifeSource Bits (Two Samples)
Life Protection Indoor Health Chicken & Brown Rice Recipe	25%, 24%	2%, 2%
Life Protection Adult Chicken & Brown Rice Dog Food	22%, 0%	
Wilderness Adult Chicken Recipe Dog Food		9%, 11%
Wilderness Adult Chicken Recipe Cat Food		8%, 5%
Longevity for Adult Cats		3%, 0%
Freedom Adult Grain Free Chicken Dog Food		2%, 2%
Basics Adult Turkey & Potato Cat Food		2%, 2%
Freedom Grain-Free Chicken for Indoor Cats		2%, 1%
Longevity for Adult Dogs		2%, 1%

Blue Buffalo Product Claimed to Contain No Grains	Percentage Rice and/or Corn in Kibble (Two Samples)	Percentage Rice and/or Corn in LifeSource Bits (Two Samples)
Wilderness Adult Chicken Recipe Cat Food	0%, 1%	2.2%, 2.5%
Freedom Adult Grain Free Chicken Dog Food		3%, 1%
Wilderness Adult Chicken Recipe Dog Food		2.2%, 1.5%
Freedom Grain-Free Chicken for Indoor Cats		2%, 2%

25. Not only did the Blue Buffalo Pet Food Products contain chicken/poultry by-product meals, but in one sample, they were found to be 25% of the ingredients, and all the while, the Defendants claim to never use such an ingredient. Furthermore, the testing revealed chicken/poultry by-product meals at a range of between 0% to 11% in the LifeSource Bits, an ingredient present in the dry Pet Food Products.

26. The presence of corn, rice and/or rice hulls⁴ was found in the Defendants' 100% Grain Free products, including in its LifeSource Bits. All of these findings render the Respondent's statements concerning its Grain Free products materially false and misleading.

27. On May 11, 2014, Purina instituted legal proceedings against Blue Buffalo⁵ alleging, *inter alia*, that they had committed "false advertising, commercial disparagement, and unjust enrichment" (the "Purina Complaint").

28. The Defendants have a history of false and misleading advertising practices. For example, the United States National Advertising Review Board confirmed the National Advertising Division's⁶ determination that Blue Buffalo (among others) are misleading their customers by (a) actively concealing the truth about the ingredients in their products and (b) representing their products as being of high quality when they are not because they include lesser quality ingredients

⁴ Rice hulls (or rice husks) are the hard protecting coverings of grains of rice.

⁵ In the U.S. District Court for the Eastern District of Missouri in Case No. 4:14-cv-00859, entitled *Nestle Purina Petcare Company v. The Blue Buffalo Company Ltd.*

⁶ The National Advertising Division (NAD) is charged with monitoring and evaluating truth and accuracy in national advertising in the United States. Its cases often originate through a challenge filed by one advertiser against the advertising claims made by a competing advertiser. NAD examines advertising to determine whether the evidence provided by the advertiser fully supports the advertising claims at issue in an NAD review.

such as chicken by-product and corn gluten. It was recommended that Blue Buffalo modify its advertisements because their products include chicken/meat by-product meal.

29. Although the Defendants make immense efforts to convince the public that they are honest and transparent with regards to the content of ingredients found in their Blue Buffalo Pet Food Products, scientific testing reveals otherwise. Similarly, throughout its advertising campaign and marketing schemes, the Defendants imply that their Pet Food Products contain superior ingredients as compared to the other leading pet food brands; however, the findings of the investigation make it evident that such statements and claims are false, misleading, and simply inaccurate.

The TRUE BLUE PROMISE

30. Every single package of the Blue Buffalo Pet Food Products sold by the Defendants displays the True Blue Symbol and/or reiterates the TRUE BLUE PROMISE on the front and back.





31. The TRUE BLUE PROMISE represents that the Blue Buffalo Pet Food Products contain “NO Corn, Wheat or Soy”, which has equally been proven to be inaccurate as the presence of both rice and corn has been discovered in the products. This is particularly troubling given the fact that that the Defendants market their “Wilderness” and “Freedom” brands as being “grain-free”.

32. The Defendants’ website reinforces the TRUE BLUE PROMISE, as each product page contains a True Blue Symbol. Moreover, the TRUE BLUE PROMISE is clearly depicted throughout the entire website, appearing not only on specific product pages, but also in the “Why Feed Blue” and “Frequently Asked Questions” sections. For example, under the “Why Feed Blue” section, there is a page dedicated to “Nutrition Philosophy”. Here, it is claimed that “BLUE recipes always start with high-quality proteins such as deboned chicken, lamb, or fish” and that “[s]ome brands cut corners by using protein from chicken or poultry by-product meals, or even worse, from corn, corn gluten meal, soy or soybean meal—not BLUE”. The philosophy goes on to state that corn, wheat and soy are never put into the Pet Food Products because they “are less complete and lower quality sources of protein and are common allergens in pets”. In other words, “these ingredients are cheaper, lower in nutrition, and things we would never include in a BLUE recipe”. Finally, the Respondent explains that preservatives “provide no nutritional value and have been associated with possible side effects” and that while “[s]ome pet food brands resort to artificial colors and flavors in an attempt to make food look and taste better. We don’t.”

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.

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.

[▲ back to top](#)

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](#)

33. The Defendants have actually even admitted that their Blue Buffalo Pet Food Products contain ingredients that the TRUE BLUE PROMISE, which is prominently displayed on the websites, advertisements and on the product labelling itself, assures that they do not. On October 14, 2014, Defendant Blue Buffalo Ltd.'s Founder and Chairman Bill Bishop posted a letter on the Defendants' website that admitted that the Defendants broke their TRUE BLUE PROMISE because poultry by-product meal was present in Blue Buffalo Products:

Dear Pet Parents,

Blue Buffalo has recently learned from Wilbur-Ellis, a major U.S. Company that supplies ingredients to us and many other well-known brands of pet foods, that a Texas pet food ingredient processing plant they own had mislabeled some of the ingredients they shipped to their customers. So while their customers were ordering and paying for 100% chicken meal, at times they were receiving shipments that contained poultry by-product meal.

34. Today, this letter is no longer available on the Defendants' website and all traces of its existence seem to have disappeared.

35. Contrary to the above-quoted letter, in emails between Blue Buffalo's suppliers and itself it is clear that the Defendants had actually contracted to purchase "Chicken Meal Blend and Turkey Meal Blend" and were quite aware of it. On May 13, 2014 the following email was sent from the suppliers to the Defendants:

In conversations we have had over the past week, you have asked me to ship you chicken meal and turkey meal. Our current contracts are for Chicken Meal Blend and Turkey Meal Blend and as you are aware, both of these contain some by-product meal...

36. In another email dated May 15, 2014 the Defendants wrote to their suppliers:

I think if we work together, we can band-aid this situation. ... If you are not going to fill these contracts for any reason, then I'm going to have to go to Blue to address the breach of contract and undoubtedly divulge the details of what was shipped and the possibility that Rosser's material is the smoking gun for their problems. That I do not want to do. If the finger is pointed in that direction and then later verified to have been the cause, then Diversified and Wilbur will both have to answer to this in litigation with Blue. The liabilities in this could be enormous. You are talking about massive product recalls, potential market share loss, etc. That would undoubtedly be in the several million dollars range...

37. In addition, these emails also show that the Blue Buffalo Pet Food Products contain soy, contrary to the TRUE BLUE PROMISE:

Doug is correct. Naturox has to be added in the ingredient deck as "*sunflower oil, natural mixed* tocopherols (preservative), Lecithin, Rosemary extract (natural flavor)" by request of State regulators (especially Texas). Kemin has informed us that the lecithin they use for Naturox is soy based. There are alternatives without "soy-based" lecithin that we could use if this ends up being

an issue. Switch in or having an alternative will require additional management and controls at the site.

38. The Defendants have broken every aspect of the TRUE BLUE PROMISE as scientific testing shows that the Blue Buffalo Pet Food Products contain significant amounts of chicken/poultry by-products meals, rice and/or corn, and therefore also contained artificial preservatives (seeing as artificial preservatives are found in chicken/poultry by-product meals). The Defendants are using ingredients that they admits are “cheaper”, “lower in nutrition” and cause “common allergens in pets”.

Price Premium

39. Blue Buffalo Pet Food Products are sold across Canada in a variety of retailers including, but not limited to Global Pet Foods, Pet Valu, PetSmart, Pet View, Pet Uno, and Mondou as well as through online retailers including, but not limited to Homes Alive Pet Centre, PetSmart, Petland, Mondou, and Ren’s PETS Depot.

40. The Defendants are able to charge a premium price for their Blue Buffalo Pet Food Products as a result of their false and misleading representations, including the Health Benefits and the TRUE BLUE PROMISE. For example, at PetSmart, the Defendants’ Blue Wilderness Grain Free Chicken Adult Dog Food charges between a 67% and a 90% premium over other competing brands and the Defendants’ BLUE Life Protection Chicken & Brown Rice Adult Dog Food charges between a 40% and a 61% premium over other competing brands.

Brand	Quantity	Price	Unit Price
Blue Wilderness Grain Free Chicken Adult Dog Food	10.89 kg (24 lb)	\$64.99	\$5.97 / kg

BLUE Life Protection Chicken & Brown Rice Adult Dog Food	13.6 kg (30 lb)	\$68.99	\$5.07 / kg
Purina ONE SMARTBLEND Advanced Nutrition Chicken & Rice Dog Food	14.02 kg (30.9 lb)	\$43.99	\$3.14 / kg
Eukanuba Adult Dog Food – Chicken	13.6 kg (30 lb)	\$52.99	\$3.60 / kg
Iams ProActive Health Chinks Adult Dog Food	13.2 kg (29.1 lb)	\$42.99	\$3.26 / kg

41. Independent testing has revealed that the Defendants’ Pet Food Products actually do contain certain ingredients contrary to their express Representation, which has a significant effect on the value of the product. The presence of certain unhealthy ingredients in the Pet Food Products makes their actual worth substantially less than the premium prices charged therefor. On the Defendants’ website, under “Nutrition Philosophy” they state the following:

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.

...

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.

42. The Defendants have misled and continue to mislead the Class by fabricating and/or exaggerating the Health Benefits and the quality of the ingredients of their Pet Food Products in their supposed comparisons with other competing pet food products and by pragmatically failing

to disclose their true composition. And all this, in an effort to generate more revenues and profits at the expense of consumers.

43. The Defendants prominently represent that their Pet Food Products are superior to standard pet food products. For example, the Defendants' website is clustered with advertisements and representations designed to induce consumers into believing that their products provide specific Health Benefits in accordance with the TRUE BLUE PROMISE.

More Misleading Marketing

44. The Defendants have been engaging in an extensive marketing and advertising campaign that is full of false statements and misrepresentations concerning the alleged Health Benefits and the TRUE BLUE PROMISE that appear throughout the Defendants' website, product packaging, print advertisements, television advertisements, and in-store, point-of-purchase displays.

45. Central to the Defendants' deceptive marketing campaign is its "Nutrition Philosophy", which highlights that "BLUE foods consist of the finest natural ingredients combined in perfect balance for holistic nutrition", represents that its first ingredient is high quality protein, and that its products contain the best sources of fats, quality whole grains, and natural vitamins, minerals and fibres. By way of example, the Defendants' marketing includes the following:

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

...

BLUE recipes always start with high-quality proteins such as—deboned chicken, lamb, or fish.

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

...

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.

46. These messages are embodied in the Defendants' TRUE BLUE PROMISE, which as discussed hereinabove, appears prominently in all of their marketing materials including packaging, labelling, on their website and in all advertisements for Blue Buffalo Pet Food Products.

47. The Defendants misrepresent that the Blue Buffalo Pet Food Products contain “no chicken/poultry by-product meals” in the TRUE BLUE PROMISE, in the Nutrition Philosophy and on the products themselves.

48. Many of the Blue Buffalo advertisements include its “True BLUE Test” where the Defendants encourage consumers to visit their website to “see how the ingredients in your dog or cat food brand compare to the ones in BLUE”. Once there, customers may select a competitor’s pet food, and receive a comparison of its ingredients with those of Blue Buffalo Pet Food Products. For example, the ingredient comparison results between the Defendants’ Life Protection Adult Chicken & Brown Rice Formula and Purina’s Dog Chow include assertions that Blue Buffalo Products contain “Deboned Chicken” and “Chicken Meal,” in comparison to Purina’s use of corn and meat and bone meal. The Defendants also specifically state that their Blue Buffalo Pet Food Product “DOESN’T contain chicken (or poultry) by-product meals”:

Love them like family.  Feed them like family.®

The True BLUE Test Results

BLUE Life Protection Formula®
Adult Chicken & Brown Rice



VS.

Purina Dog Chow®
Complete & Balanced



TOP 5 INGREDIENTS		TOP 5 INGREDIENTS
Deboned Chicken	↔	Whole Grain Corn
Chicken Meal	↔	Meat and Bone Meal
Brown Rice	↔	Corn Gluten Meal
Barley	↔	Animal Fat (Preserved with Mixed Tocopherols)
Oatmeal	↔	Soybean Meal

More Formula Facts

<p>BLUE Life Protection Formula®</p> <ul style="list-style-type: none"> STARTS with real chicken CONTAINS veggies & fruit CONTAINS chelated minerals for easier absorption DOESNT contain chicken (or poultry) by-product meals DOESNT contain corn, wheat or soy DOESNT contain artificial colors, flavors or preservatives 	<p>Purina Dog Chow®</p> <ul style="list-style-type: none"> CONTAINS poultry by-product meal (6th ingredient) CONTAINS corn (1st & 3rd ingredients), wheat (8th ingredient) and soy (5th ingredient) CONTAINS artificial colors (16th, 20th, 21st, & 24th ingredients) CONTAINS meat and bone meal from unidentified origin (2nd ingredient) CONTAINS animal fat from unidentified origin (4th ingredient) DOESNT contain chicken meat DOESNT contain fruits and veggies DOESNT contain chelated minerals
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And the best news is, switching from Purina Dog Chow® to BLUE costs less than 60¢ extra a day!*

More Formula Facts

<p>BLUE Life Protection Formula®</p> <ul style="list-style-type: none"> CONTAINS veggies & fruit CONTAINS chelated minerals for easier absorption DOESN'T contain chicken (or poultry) by-product meals DOESN'T contain corn, wheat or soy 	<p>Iams®</p> <ul style="list-style-type: none"> CONTAINS chicken by-product meal (4th ingredient) CONTAINS corn (2nd ingredient) DOESN'T contain fruits and veggies DOESN'T contain chelated minerals
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And the best news, switching from Iams® to BLUE costs less than 50¢ extra a day!*

The True BLUE Test Results

BLUE Life Protection Formula®
Adult Chicken & Brown Rice



VS.

Iams®
Proactive Health Adult Chunks



TOP 5 INGREDIENTS		TOP 5 INGREDIENTS
Deboned Chicken	↔	Chicken
Chicken Meal	↔	Corn Meal
Brown Rice	↔	Ground Whole Grain Sorghum
Barley	↔	Chicken By-Product Meal
Oatmeal	↔	Dried Beet Pulp

49. The Defendants make available on their website an equally misleading True BLUE Test comparison chart whereby Blue Buffalo Pet Food Products are compared to the other major pet food companies' pet food products, not only giving the impression that Blue Buffalo Pet Food Products offer the Health Benefits represented, but that all the other brands are inferior in this regard:

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

Save on BLUE dog food and treats! Scroll down to learn more.

	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
BLUE	✓	✓	✓	✓	✓
Beneful	—	—	—	—	—
Eukanuba	—	—	—	✓	—
IAMS	—	✓	—	✓	—
Dog Chow	—	—	—	—	—
ONE	✓	—	—	✓	—
PRO PLAN	—	—	—	✓	—
SCIENCE DIET	—	—	✓	✓	—

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

- Natural Ingredients / NO Artificial Preservatives Representation

50. The Defendants have made and continue to make false and misleading statements and “promises” to consumers that the Blue Buffalo Pet Food Products contain “Only the Finest 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

51. However, contrary to the Defendants' Representation to this effect, the Blue Buffalo Pet Food Products do contain chicken/poultry by-product meals that include artificial preservatives that are not present in chicken/poultry meal.

- Grain-Free Representation

52. Consumers who believe that dogs and cats should be fed as carnivores seek out grain-free pet foods as a result. The Defendants, being well-aware of this market segment, exploit these consumers by not only representing that all of its Blue Buffalo Pet Food Products contain “no corn, wheat or soy,” but by also representing that certain of its Blue Buffalo Pet Food Products,

namely, the “Wilderness”, “Freedom”, and “Basics” product lines, as well as part of the “Basics” line are “grain free.”





Available in 5 and 11 lb. Bags



+ Zoom



Like



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.



BLUE Wilderness®

Meat-Rich Diet

Inspired by the diet of wolves, true omnivores whose endurance is legendary, BLUE Wilderness is a protein-rich, grain-free food that contains more of the delicious meat dogs love.





53. The Defendants representations that their Blue Buffalo Pet Food Products are grain-free and contain non corn, wheat or soy, including the above examples, are false and misleading as the products do in fact contain these ingredients. Specifically, independent testing has shown that there are grains (i.e. rice hulls and/or ground corn) in the LifeSource Bits that are found in the grain-free product lines in concentrations of up to 3% by weight.

- LifeSource Bits

54. The dry Blue Buffalo Pet Food Products contain “LifeSource Bits” – small, dark “kibbles” that are mixed in with the pet food as is depicted below.



55. Contrary to the TRUE BLUE PROMISE, scientific testing has revealed that these LifeSource Bits contain chicken/poultry by-product meal and corn. In addition, these tests have revealed that that these LifeSource Bits contain rice hulls contrary to the grain-free representations. For example, scientific tests were performed on two samples each of Defendants' Wilderness Adult Chicken Recipe Dog Food and Wilderness Adult Chicken Recipe Cat Food. The results indicated that the LifeSource Bits in the tested dog food samples contained 3% and 1% corn or 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 Defendants' 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 indicated that the LifeSource Bits in the two samples of the Freedom cat food contained 2% and 2% corn or rice, respectively.

56. In sum, and despite various inconsistencies, the Defendants' clear message is that their Pet Food Products are healthier than standard pet food products. The Defendants tout their TRUE BLUE PROMISE and the alleged health benefits to health-conscious consumers who are willing to pay a price premium for a healthier product for their pets. This price premium is unjustified as the ingredients in the Pet Food Products are inconsistent with the representations on the labelling

or in any of the Defendants' marketing materials. This is a clear case of false and misleading representations.

The Defendants' Misrepresentations and Omissions are Material to Consumers

57. As described herein, the Defendants market their Blue Buffalo Pet Food Products as an ultra-premium pet food which has higher quality protein sources, no artificial dyes, and added antioxidants and vitamins.

58. Proteins are essential nutrients for all animals, including dogs and cats. They are the primary building blocks of body tissue, including brain, muscle, fur, and skin. They affect metabolism, regulate body pH, and are used in the production of enzymes, antibodies, and hormones. Proteins can be converted into fat and stored or they can be burned like calories. When an animal's body does not receive enough protein or if the nutrients are not absorbed properly, its immune system will be weakened.

59. Protein comes from a variety of sources, some much healthier than others. Meat protein is an ideal source of essential amino acids and as such, consumers of ultra-premium pet foods look for protein derived from quality meat and poultry sources.⁷ In contrast, many pet foods, especially the economy brands, use corn, wheat, gluten, soy, meat and bone meal as a major source of protein, which are inferior sources of protein to meat. Consumers of premium pet foods tend to seek out

⁷ In addition, the nutritional value "per kibble" is higher than most economy brands, meaning a pet will have to eat less of a premium brand to get the same nutrition. Moreover, because pets need to eat less of a premium brand pet food to get the nutrition they need, pets on a diet of premium brand pet foods produce less excrement than pets on a diet of lower quality economy brands.

quality meat or poultry sources making up at least 3 or 4 of the first 6 ingredients listed on product packaging.

60. Many lower quality, economy pet food products are made with chicken/poultry by-product meals because they are less expensive to produce. By-product meals contain animal necks, heads, feet, intestines, and other undesirable internal organs that are not quality sources of protein for animals.

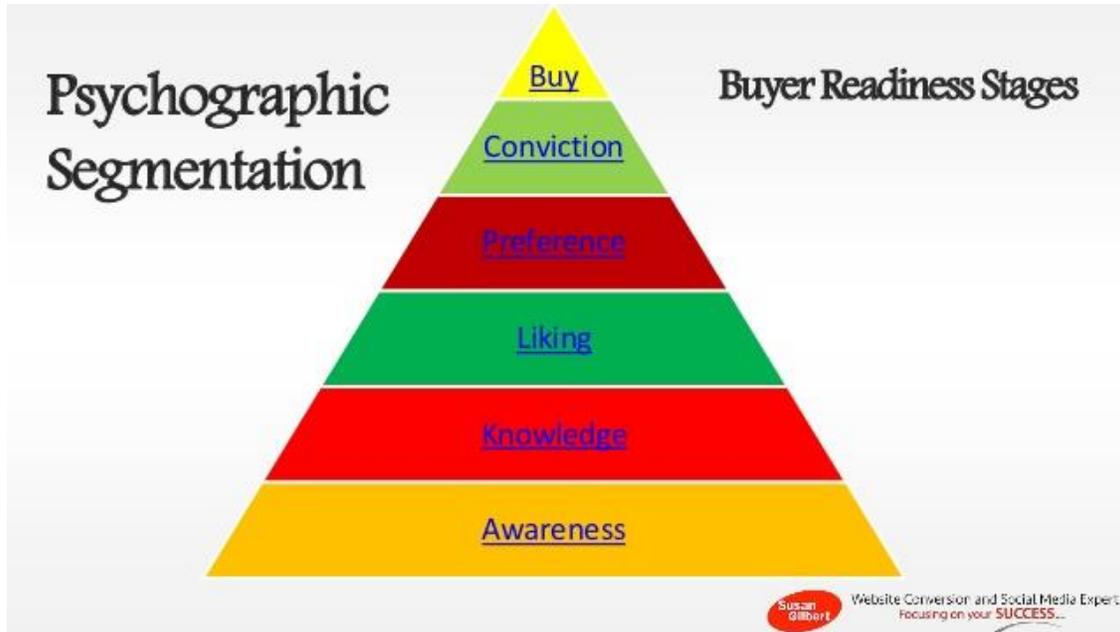
61. Consumers of ultra-premium pet foods, such as the Plaintiff and Class Members purchase products that contain named meat, such as chicken or turkey, as the first ingredient, rather than the understandably less desirable “chicken/poultry by-product meal”. As it is more expensive to produce, there is a significant price premium on these ultra-premium pet foods, such as the Blue Buffalo Pet Food Products. As the Defendants recognize, “[p]oultry or chicken by-product meals cost a lot less than meals made from whole meat.” Blue Buffalo represents to consumers that it “is well worth it to know exactly what’s in our food.”

62. As described herein, “what’s in” the Blue Buffalo Pet Food Products are far inferior ingredients than what is represented and the price premium paid is wholly unjustified.

63. Despite acknowledging that their Blue Buffalo Pet Food Products contain ingredients contrary to the TRUE BLUE PROMISE, the Defendants have continued to market and advertise their TRUE BLUE PROMISE and the alleged Health Benefits.

64. In fact, and as alleged hereinabove, the Defendants include the TRUE BLUE PROMISE on the labelling of all their Pet Food Products as well as in their marketing materials so as to create

awareness of it, in order to ultimately convince consumers to purchase their products at a premium over other similar more economical pet food brands.



65. The Defendants’ ongoing practice of producing, distributing, packaging, labelling, advertising, marketing, promoting, representing, and/or selling their Blue Buffalo Pet Food Products as ultra-premium when in fact, they are equal to lower grade, economical pet food products – is likely to deceive ordinary consumers who reasonably understood the labelling of the Pet Food Products to mean what it says – that Blue Buffalo Pet Food Products are more healthy and are specifically and qualitatively superior to standard pet food.

66. In reliance upon the Defendants’ promises and claims that their Pet Food Products contain superior ingredients, Class Members sought out and were willing to pay more for the ultra-premium Pet Food Products than similar products that do not claim to contain superior ingredients, and in fact did purchase said Pet Food Products and did pay a premium price.

67. Even though the Pet Food Products do not provide the promised Health Benefits, they have been a huge commercial success for the Defendants through the false and misleading advertisement.

68. The advertisements and representations made by the Defendants as set forth herein were, and are, false and/or misleading. The acts and practices of the Defendants as alleged herein constitute unfair or deceptive acts or practices and the making of false statements.

69. As a result of the Defendants' deceptive claims, consumers have purchased a product that is substantially different than advertised. Moreover, the Defendants have been able to charge a significant price premium for their Pet Food Products over other traditional, comparable pet food products that do not make deceptive Health Benefits claims.

70. Consumers were induced into purchasing the Defendants' Pet Food Products through the use of false and misleading representations, thereby vitiating their consent and entitling them to claim a refund for the purchase price of the product(s).

71. The Pet Food Products were intended to be placed into the stream of commerce, to be distributed, offered for sale and sold to the Plaintiff and to the public in Ontario and in other Provinces and Territories within Canada.

72. Blue Buffalo knew or ought to have known that purchasers of these Pet Food Products would not be reasonably able to protect their interests, that such purchasers would be unable to receive a substantial benefit from the Pet Food Products and that consumers would be relying on the Defendants' untrue statements to their detriment.

73. The Representation was made for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendants. The Representation was made knowingly or recklessly. The Representation was made to the public. The Representation was false or misleading in a material respect, namely as to the Health Benefits of the Defendants' Pet Food Products.

74. The Class Members have suffered and will suffer injuries, losses or damages as a result of the Defendants' conduct.

75. The Defendants know or understand that the promotion and advertising of their Pet Food Products in part targets consumers and customers in Canada.

THE REPRESENTATIVE PLAINTIFF

76. For approximately two years between 2012 and 2014, Mr. Hardwick purchased several Blue Buffalo Pet Food Products including, but not limited to Blue Buffalo Freedom – Adult Grain Free Chicken (Dog) and Blue Buffalo Wilderness – Adult Chicken Recipe (Dog) after being exposed to and in reliance upon the Defendants' Representation from various pet food stores including Global Pet foods at 2100 Bloor Street West, in Toronto, Ontario.

77. The Plaintiff purchased the Pet Food Products based on the Defendants' marketing and after having read the dog food product's labelling. Specifically, he believed that the Blue Buffalo Freedom – Adult Grain Free Chicken (Dog) and Blue Buffalo Wilderness – Adult Chicken Recipe (Dog) products were superior to standard pet food products in that they were produced with superior ingredients, were grain free, and would provide the Health Benefits as marketed, including the TRUE BLUE PROMISE.

78. The Plaintiff fed the Blue Buffalo Pet Food Products to his dog, Hailey, in an effort to improve her overall health and to increase her longevity. Unfortunately, Mr. Hardwick did not notice any improvements in his dog's health and he opted to switch to another premium brand of dog food, Acana, in the summer of 2014.

79. Since then, Mr. Hardwick has noticed a discernably shinier fur coat, more consistent bowel movements, an improved physique, and better energy levels in his pet.

80. The Plaintiff was unaware that the Blue Buffalo Pet Food Products contained (i) chicken/poultry by-product meals, (ii) corn, wheat or soy, and (iii) artificial preservatives, colors or flavors contrary to the TRUE BLUE PROMISE. Mr. Hardwick believed that he was purchasing pet food with superior nutrition as compared to those of standard, economical competitor pet food products.

81. The Plaintiff recently discovered (on or about December 2015), while online, that in May 2014, Purina instituted legal proceedings against Blue Buffalo and also that several class actions have been instituted in the United States due to this issue. The U.S. class actions were subsequently settled out-of-court, which is what drew the Plaintiff's attention to the subject matter as set out in this proceeding.

82. In consequence, the Plaintiff now realizes that he has been misled by the Defendants; had he known the true facts, the Plaintiff would not have purchased the Blue Buffalo Pet Food Products and would certainly not have paid such a high price for them.

83. The Plaintiff has suffered damages as a result of purchasing the Pet Food Products, including the costs of purchasing these expensive Pet Food Products or, at the very least, the premium price thereof.

CAUSES OF ACTION

A. Breach of Express Warranty

84. The Defendants are “merchants” in the business of selling Blue Buffalo Pet Food Products to foreseeable consumers such as Plaintiff and the members of the Class.

85. The Plaintiff and the members of the Class purchased Defendants’ Pet Food Products.

86. The Defendants expressly represented in their marketing, advertising, and promotion of the Pet Food Products that those products would provide the Health Benefits as promised in the TRUE BLUE PROMISE. Specifically, they expressly warranted that the Pet Food Products contain only the finest natural ingredients with (i) “NO Chicken/Poultry By-Product Meals”, (ii) “NO Corn, Wheat or Soy”, (iii) “NO Artificial Preservatives, Colors or Flavors”, and that they provide (iv) superior nutrition as compared to those of standard competitor pet food products. These express representations become a basis of the bargain between the Defendants and Class Members, implicating the Defendants’ liability for breach thereof.

87. The Pet Food Products do not conform to these express representations because they do not provide these Health Benefits and do in fact contain chicken/poultry by-product meals, corn, rice, soy, and/or artificial preservatives and thus, the Defendants breached their express warranties.

88. The Defendants made this Representation in order to induce the Plaintiff and Class Members to purchase their Blue Buffalo Pet Food Products.

89. The Plaintiff and the Class Members did rely on the express warranties and promises of the Defendants.

90. The Defendants knew or should have known that, in fact, said Representation and warranties were false, misleading, and untrue.

91. As a direct and proximate result of the foregoing acts and/or omissions, the Plaintiff and the Class Members have suffered damages in that they did not receive the product as specifically warranted and/or paid a premium for the product(s) entitling them to compensatory damages, punitive damages and, in the alternative, equitable and declaratory relief as elaborated further below.

92. Further, and or in the alternative, the Defendants breached their implied warranties of fitness for a particular purpose, i.e. the Health Benefits and/or committed intentional misrepresentations of material fact which induced the Plaintiff and Class Members to purchase the Pet Food Products in reliance.

93. Class Members were unable to receive a substantial benefit from the Pet Food Products to their detriment.

B. Breach of Implied Warranty Of Merchantability

94. The Defendants sold, and the Class Members purchased the Blue Buffalo Pet Food Products.

95. When sold by Defendants, the Blue Buffalo Pet Food Products were not merchantable, did not pass without objection in the trade under the label description, were not of fair average quality within that description, were not fit for the ordinary purposes for which such goods are used (i.e. as a premium or ultra-premium pet food product with Health Benefits for pets), and did not conform to the promises or affirmations of fact made on the container or label.

96. The Pet Food Products were substandard at the time they left the Defendants' possession. The Pet Food Products, when sold and at all times thereafter, were not in merchantable condition or quality and are not fit for their ordinary intended purpose.

97. The Defendants had actual knowledge of, and received timely notice regarding the falsity of its Representation at issue in this Statement of Claim and, notwithstanding such notice, failed and refused to offer an effective remedy.

98. Consequently, the Defendants breached the implied warranty of merchantability.

99. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, the Class Members have suffered financial loss and other damages.

C. Tort of Civil Fraud

100. The Defendants represented to the Plaintiff and to the Class Members that their Pet Food Products contained or did not contain specific ingredients, i.e. the Health Benefits.

101. Blue Buffalo knew that the Representation was false at the time that it made it. Specifically, Blue Buffalo knew that the Pet Food Products did not provide the Health Benefits.

102. Blue Buffalo made the Representation herein alleged with the intention of inducing the Plaintiff and the Class Members to purchase their Pet Food Products. Blue Buffalo made these misrepresentations with the intention of depriving the Plaintiff and the Class Members of property or otherwise causing injury.

103. The Plaintiff and the Class Members relied upon Blue Buffalo's Representation and, in reliance thereupon, purchased such Pet Food Products. Said reliance was reasonable. The Plaintiff and the Class Members were without the ability to determine the truth of these statements on their own and could only rely on Blue Buffalo's statements as well as the Representation on its packaging and labelling.

104. The Plaintiff and Class Members suffered damages as a result of purchasing the Pet Food Products.

D. Tort of Fraudulent Concealment

105. The Defendants made material omissions as well as affirmative misrepresentations regarding the Blue Buffalo Pet Food Products.

106. The Defendants knew that the representations were false at the time that they were made.

107. The Defendants fraudulently concealed and/or intentionally failed to disclose to the Plaintiff and the Class the true nature of the Pet Food Products, which is that they do not conform

to the TRUE BLUE PROMISE and that they are not a premium or ultra-premium pet food product as advertised.

108. The Defendants had a duty to disclose material facts regarding the true nature of the Pet Food Products because the Defendants had exclusive knowledge of the true properties of the Pet Food Products at the time of sale. Neither the Plaintiff, nor Class members could, in the exercise of reasonable diligence, have discovered independently that the Pet Food Products did not conform to the TRUE BLUE PROMISE prior to purchase.

109. The Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to the Defendants who have superior knowledge and access to the facts and the Defendants knew they were not known to or reasonably discoverable by the Class members. These omitted facts were material because they directly impact the value of the Pet Food Products.

110. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce the Class Members to purchase the Pet Food Products at a higher price, which did not match the Pet Food Products' true value.

111. The Class Members were unaware of these omitted material facts and would not have acted as they did had they known of the concealed and/or suppressed facts. The Class Members' actions were reasonable and justified. The Defendants were in exclusive control of the material facts concerning the Pet Food Products and such facts were not known to the public or to the Class Members.

112. The facts concealed and/or not disclosed by the Defendants to the Plaintiff and Class Members are material facts in that a reasonable person would have considered them important in deciding whether to purchase the Pet Food Products.

113. Class Members relied on the Defendants' Representation in relation to the Pet Food Products that they were purchasing and they purchased such Pet Food Products. Said reliance was reasonable. The Class members were without the ability to determine the truth on their own and could only rely on the Defendants' statements and representations.

114. As a result of the concealment and/or suppression of facts, the Class Members have sustained and will continue to sustain damages arising from the difference between the price that the Class paid and the actual value that they received.

E. Tort of Negligence

115. The Tort of Negligence can easily be made out as:

- (a) A false representation was made by the Defendants; i.e. the Representation;
- (b) The Defendants had knowledge of and/or were reckless as to the falsehood of the Representation;
- (c) The false Representation caused the Plaintiff and the Class to act; and
- (d) The Plaintiff's and the Class Member's actions resulted in a loss.

116. The Defendants had a positive legal duty to use reasonable care to perform its legal obligations to the Plaintiff and Class Members.

117. The Defendants were aware that their customers (including Plaintiff and the Class) relied on them to provide truthful and accurate information about their Blue Buffalo Pet Food Products.

118. It was certainly reasonably foreseeable that if the Defendants were negligent in its duty to provide accurate information about its Pet Food Products, that customers would sustain injury and damages.

119. By its acts described herein, the Defendants failed to take reasonable care to ensure that their Representation was accurate and to ensure that its Pet Food Products contained and/or did not contain the ingredients as advertised.

120. Blue Buffalo's conduct in prominently displaying the TRUE BLUE PROMISE and the Health Benefit claims in its marketing and on the product packaging for the purpose of increasing sales offends established public policy, and is oppressive and substantially injurious to consumers.

121. The Defendants breached their duty of care to the Plaintiff and to the Class Members by offering for sale Pet Food Products that were not fit for the particular purpose for which they were purchased, i.e. the purported Health Benefits. The Defendants produced, distributed, packaged, labelled, advertised, marketed, promoted, and/or sold the Blue Buffalo Pet Food Products to the Class Members who purchased said products in reliance upon the Defendants' untrue Representation. Class Members were unable to receive a substantial benefit from the Pet Food Products to their detriment.

122. This breach was a direct and proximate result of the Defendants' failure to use reasonable care in its marketing and advertising campaign.

123. By virtue of the acts and omissions described above, the Defendants were negligent and caused damage to the Plaintiff and to the Class Members.

F. Tort of Negligent Misrepresentation

124. The tort of negligent misrepresentation can easily be made out as:

- (a) There was a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the Plaintiff and to the Class;
- (b) The Defendants made a Representation that was untrue, inaccurate and/or misleading;
- (c) The Defendants acted negligently in making the Representation;
- (d) The Representation were relied upon by the Plaintiff and by the Class reasonably;
and
- (e) The Plaintiff and the Class sustained damages as a result of their reliance.

125. Blue Buffalo represented to the Plaintiff and the Class Members by means of its marketing and promotion, including its product packaging that its Pet Food Products contained and/or did not contain specific ingredients (as previously alleged). Blue Buffalo's Representation was untrue as set forth herein.

126. At the time Blue Buffalo made the misrepresentations herein alleged, it had no reasonable grounds for believing the Representation to be true.

127. Blue Buffalo made the Representation herein alleged with the intention of inducing the Plaintiff and the Class Members to purchase its Pet Food Products.

128. Plaintiff and the Class Members relied upon Blue Buffalo's Representation and, in reliance upon it, purchased such Pet Food Products. Said reliance was reasonable.

129. Plaintiff and the Class Members were without the ability to determine the truth of these statements on their own and could only rely on Blue Buffalo's statements.

130. Had the Plaintiff and the Class Members known the true facts about the ingredients in the Pet Food Products, they would not have purchased the products and/or certainly would not have paid as high a price.

131. By reason of the foregoing, Plaintiff and each member of the Class are entitled to recover damages and other relief from Defendants.

STATUTORY REMEDIES

132. The Defendants' producing, distributing, packaging, labelling, advertising, marketing, promoting, representing, and/or selling practices violate the *Sale of Goods Act*, the *Consumer Packaging and Labelling Act*, the *Consumer Protection Act*⁸ and the *Competition Act*.

⁸ While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216,

133. The Plaintiff pleads and relies upon consumer protection and trade legislation and common law, as it exists in this jurisdiction and the equivalent/similar legislation and common law in other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially-contributed to by the Defendants' unfair business practices.

A. Breach of the *Sale of Goods Act*

134. At all times relevant to this action, the Plaintiff and Class Members were “buyer[s]” within the meaning of that term as defined in s. 1 of the *Sale of Goods Act*.

135. At all times relevant to this action, the Defendants were “seller[s]” within the meaning of that term as defined in s. 1 of the *Sale of Goods Act*.

136. The transactions by which the Plaintiff and Class Members purchased their “goods” from the Defendants were “sale[s]” within the meaning of those terms as defined in s. 1 of the *Sale of Goods Act*.

137. The Defendants were aware that consumers purchased the Pet Food Products for the particular purpose of the alleged Health Benefits based on their marketing and advertising and there is therefore an implied warranty or condition that the goods will be reasonably fit for such purpose.

218, 219, 220(a), 221(g), 228, 239, 253, 270 & 272; the *Fair Trading Act*, RSA 2000, c F-2 at ss. 5-7, 7.2, 7.3, 9 & 13; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at ss. 4-9, 171 & 172; *The Business Practices Act*, CCSM, c B120 at ss. 2-9 & 23; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 and the *Trade Practices Act*, RSNL 1990, c T-7 at ss. 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at ss. 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at ss. 5-8, 14, 16 & 23-25; the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 10-13, 15, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c 92 at ss. 26-29.

138. The Defendants committed a fault or wrongful act by breaching the implied condition as to quality or fitness for a particular purpose. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, as per s. 15 of the *Sale of Goods Act*, the Defendants are liable. The Class is entitled to maintain an action for breach of warranty under ss. 51 and 55 of the *Sale of Goods Act*.

B. Breach of the *Consumer Packaging and Labelling Act*

139. At all times relevant to this action, the Defendants were “dealer[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

140. At all times relevant to this action, the Pet Food Products were “prepackaged product[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

141. At all times relevant to this action, the Representation, including the TRUE BLUE PROMISE and the Health Benefits that were made to the public on the Blue Buffalo Pet Food Product packaging, were “label[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

142. At all times relevant to this action, the Representation that was made to the public on the Defendants’ website and otherwise, were “advertise[ments]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

143. The Defendants packaged, labelled, sold, imported into Canada, and/or advertised the Pet Food Products with false or misleading representations relating to the products in that they used expressions, words, figures, depictions, and/or symbols that imply or may reasonably be regarded

as implying that their Blue Buffalo Pet Food Products contain (i) “NO Chicken/Poultry By-Product Meals”, (ii) “NO Corn, Wheat or Soy”, (iii) “NO Artificial Preservatives, Colors or Flavors”, and (iv) superior nutrition as compared to those of standard competitor pet food products.

144. In addition, the Defendants packaged, labelled, sold, imported into Canada, and/or advertised the Pet Food Products with false or misleading representations relating to the products in that they used descriptions and/or illustrations of the type, quality, and/or origin that may reasonably be regarded as likely to deceive the Plaintiff and Class Members.

145. In addition, the Defendants packaged, labelled, sold, imported into Canada, and/or advertised the Pet Food Products which were packaged and/or labelled in such a manner that the Plaintiff and Class Members might be, and were, reasonably be misled with respect to the quality of the product.

146. As such, the Defendants breached ss. 7 and 9 of the *Consumer Packaging and Labelling Act* and are liable to pay damages resulting therefrom.

C. Breach of the *Consumer Protection Act*

147. At all times relevant to this action, the Plaintiff and Class Members were “consumer[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

148. At all times relevant to this action, the Defendants were “supplier[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

149. The transactions by which the Plaintiff and Class Members purchased their Pet Food Products from the Defendants were “consumer transaction[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

150. The Defendants have engaged in an unfair practice by making a Representation to Class Members which was and is “false, misleading or deceptive” and/or “unconscionable” within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

- (a) Representing that the Pet Food Products have uses, ingredients, benefits and/or qualities, which they did not possess;
- (b) Representing that the Pet Food Products are of a particular standard, quality, and/or grade that they are not;
- (c) Representing that the Pet Food Products are available for a reason that does not exist; i.e. Health Benefits; and
- (d) Using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding their regarding their quality, composition, and ingredients.

151. The Plaintiff and the Class Members relied on the Representation.

152. The reliance upon the Representation by the Plaintiff and Class Members is established by his or her purchase and/or use of the Pet Food Products. Had the Plaintiff and Class Members known that the Representation was false and misleading they would not have purchased the Pet Food Products and/or would not have paid such a high price.

153. The Representation was and is unconscionable because *inter alia* the Defendants know or ought to know that consumers are unable to receive a substantial benefit from the subject-matter of the Representation.

154. The Plaintiff states that the Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Plaintiff and the Class to purchase the Pet Food Products as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

D. Breach of the *Competition Act*

155. At all times relevant to this action, the Defendants' production, marketing, and selling business was a "business" and the Pet Food Products were "product[s]" within the meaning of that term as defined in s. 2 of the *Competition Act*.

156. The Defendants' acts are in breach of s. 52 of Part VI of the *Competition Act*, were and are unlawful, and render the Defendants liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*.

157. The Defendants made the Representation to the public and in so doing breached s. 52 of the *Competition Act* because the Representation:

- (a) Was made for the purpose of promoting, directly or indirectly, the use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendants;

- (b) Was made to the public;
- (c) Was false and misleading in a material respect; and
- (d) Stated uses, benefits, ingredients, and/or qualities of the Pet Food Products that were false and not based on adequate and proper testing and represented that the Pet Food Products are available for a reason that does not exist, i.e. the Health Benefits.

158. The Plaintiff and Class Members relied upon the Representation by buying and/or using the Pet Food Products and suffered damages and loss.

159. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages which resulted from the breach of s. 52.

160. Pursuant to s. 36 of the *Competition Act*, the Plaintiff and Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

161. The Plaintiff and Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.

CAUSATION

162. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendants directly and proximately caused the Plaintiff's and Class Members' damages.

163. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendants, including damages, consequential damages, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

DAMAGES

Compensatory Damages (Economic Losses)

164. By reason of the acts, omissions and breaches of legal obligations of the Defendants, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include the purchase price of the Pet Food Products and other damages as described herein.

Punitive, Exemplary and Aggravated Damages

165. The Defendants has taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members.

166. At all material times, the conduct of the Defendants as set forth was deliberate and oppressive towards their customers and the Defendants conducted itself in a wilful, wanton and reckless manner.

167. It is imperative to avoid any perception of evading the law without impunity. Should the Defendants only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive, aggravated and exemplary damages are necessary in the case at

hand to be material in order to have a general deterrent effect on other corporations as well as a specific deterrent to the Defendants themselves.

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

168. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of any of the *Sale of Goods Act*, *Consumer Packaging and Labelling Act*, the *Consumer Protection Act*, and/or the *Competition Act* constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

169. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendants or the net income received by the Defendants or a percent of the sale of the Pet Food Products as a result of the Defendants' unfair practices and false representations which resulted in revenues and profit for the Defendants.

170. Further, the Defendants has been unjustly enriched as a result of the revenues generated from the sale of the Pet Food Products and as such, *inter alia*, that:

- (a) The Defendants has obtained an enrichment through revenues and profits from the sale of the Pet Food Products;
- (b) The Plaintiff and other Class Members have suffered a corresponding deprivation including the price of the Pet Food Products; and

- (c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members have occurred without juristic reason. Since the monies that were received by the Defendants resulted from the Defendants' wrongful acts, there is and can be no juridical reason justifying the Defendants retaining any portion of such monies.

171. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendants were unjustly enriched by receipt of the monies paid for the Pet Food Products;
- (b) The Class Members suffered a corresponding deprivation by purchasing the Pet Food Products;
- (c) The monies were acquired in such circumstances that the Defendants may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the market would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

172. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits which accrued to the Defendants.

COMMON ISSUES

173. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Do the Blue Buffalo Pet Food Products contain chicken or poultry by-product meals?
- (b) Do the Blue Buffalo Pet Food Products contain corn, wheat, and/or soy?
- (c) Do the Blue Buffalo Pet Food Products contain artificial preservatives, colors, and/or flavors?
- (d) Did the Defendants advertise, represent or hold itself out as producing or manufacturing Pet Food Products that contained and/or did not contain certain ingredients?
- (e) Did the Defendants engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing and sale of its Pet Food Products?
- (f) Is the Defendants' TRUE BLUE PROMISE false, misleading, and/or deceptive?
- (g) Did the Defendants expressly and/or impliedly warrant that the Blue Buffalo Pet Food Products would conform to the TRUE BLUE PROMISE?
- (h) Did the Defendants breach their express or implied warranties?

- (i) Did the Defendants commit a civil fraud when they represented that their Pet Food Products to the TRUE BLUE PROMISE and the alleged Health Benefits?
- (j) Did the Defendants commit the tort of fraudulent concealment in failing to disclose the true ingredients in the Pet Food Products?
- (k) Do the Defendants owe the Class members as duty to use reasonable care?
- (l) Did the Defendants act negligently in failing to use reasonable care to perform its legal obligations?
- (m) Did the Defendants commit the tort of negligent misrepresentation when they made the Representation?
- (n) Did the Defendants intend that the Pet Food Products be purchased by the Plaintiff and/or Class Members?
- (o) Did the Defendants intend or foresee that the Plaintiff and/or other Class Members would purchase the Pet Food Products based on the Representation regarding the Health Benefits?
- (p) Did the Defendants' negligence proximately cause loss or injury and damages?
- (q) Did the Defendants' acts or practices breach the *Sale of Goods Act*, the *Consumer Packaging and Labelling Act*, the *Consumer Protection Act*, the *Competition Act* and/or other similar/equivalent legislation?

- (r) Were the Defendants unjustly enriched by making the Representation and omissions above?
- (s) Have Class Members been damaged by the Defendants' conduct and, if so, what is the proper measure of such damages?
- (t) Are the Defendants liable to the Class Members for reimbursement of the full purchase price of the Pet Food Products or otherwise for the premium price paid for the Pet Food Products?
- (u) Should the Defendants be required to make restitution, disgorge profits, reimburse losses, pay damages, and pay punitive, aggravated, and/or exemplary damages as a result of the above described practices and in what amount?
- (v) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?

EFFICACY OF CLASS PROCEEDINGS

174. The members of the proposed Class potentially number in the hundreds of thousands. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

175. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants. Even if the Class members themselves could afford such individual litigation, the court system could not as it would be overloaded.

Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.

176. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the Class.

177. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice.

178. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to his counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

LEGISLATION

179. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Courts of Justice Act*, the *Sale of Goods Act*, the *Consumer Packaging and Labelling Act*, the *Consumer Protection Act*, the *Negligence Act*, the *Competition Act* and other Consumer Protection Legislation.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

180. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) The Defendants engage in business with residents of Ontario;
- (b) The Defendants derive substantial revenue from carrying on business in Ontario;
and
- (c) The damages of Class Members were sustained in Ontario.

181. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

DEFENDANTS' JOINT AND SEVERAL LIABILITY

182. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to himself and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common advertising and business plan to produce, distribute, package, label, advertise, market, promote, represent, and/or sell the Blue Buffalo Pet Food Products;

- (d) Each owed a duty of care to the other and to each Class Member by virtue of the common business plan to produce, distribute, package, label, advertise, market, promote, represent, and/or sell the Pet Food Products; and
- (e) The Defendants intended that their businesses be run as one global business organization.

183. The Plaintiff and the other Class Members are entitled to legal and equitable relief against the Defendants, including damages, consequential damages, attorneys' fees, costs of suit and other relief as appropriate.

184. The Plaintiff and Class Members are entitled to recover damages and costs of administering the plan to distribute the recovery of the action in accordance with the *Consumer Protection Act*.

SERVICE OUTSIDE ONTARIO

185. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02 (a));
- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));

- (c) In respect of a tort committed in Ontario (rule 17.02 (g));
- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02 (h));
- (e) The claim is authorized by statute, the *Competition Act* and the *Consumer Protection Act* (rule 17.02 (n)); and
- (f) Against a person carrying on business in Ontario (rule 17.02 (p)).

Date: February 5, 2016

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Court File No. 16-67441
**BLUE BUFFALO COMPANY, LTD. AND
BLUE BUFFALO PET PRODUCTS, INC.**
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED IN OTTAWA

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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