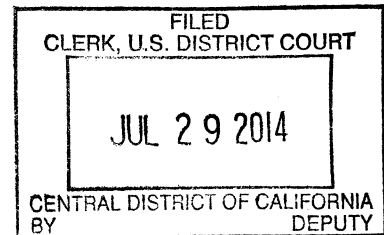


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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JONATHON FISHER, individually and
on behalf of all others similarly situated,

CASE NO. **14-cv-5937-FMO-SHx**
CLASS ACTION

Plaintiffs,

v.

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND RELATED
EQUITABLE RELIEF**

THE BLUE BUFFALO COMPANY,
LTD, a Delaware Corporation, and
DOES 1-10 , Inclusive,
Defendant.

1. VIOLATION OF CAL. BUS. & PROF. § 17200, ET SEQ. (Unlawful, Unfair, and Fraudulent Prongs)
2. VIOLATION OF CAL. BUS. & PROF. § 17500, ET SEQ. (False and Misleading Advertising)
3. VIOLATION OF CAL. CIV. CODE § 1750, ET SEQ. (Consumer Legal Remedies Act)

JURY TRIAL DEMANDED

1 Plaintiff Jonathon Fisher (“Plaintiff”), brings this action on behalf of himself
2 and all others similarly situated against The Blue Buffalo Company, Ltd. (“Blue
3 Buffalo” or “Defendant”), and Does 1 through 100, inclusive (hereinafter
4 “Defendants”) for unlawful, unfair, and deceptive business practices in violation of
5 California Business & Professions Code Section 17200 et seq., California Business &
6 Professions Code Section 17500 et seq., California Civil Code Section 1750 et seq.
7 and alleges as follows:

8 9 **JURISDICTION AND VENUE**

10 1. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).
11 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
12 of \$5,000,000 and is a class action in which there are in excess of 100 class members
13 and Defendant is a citizen of Delaware and Connecticut, and members of the Class
14 are citizens of California.

15 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b)
16 and California Civil Code § 1730(d), because a substantial part of the events or
17 omissions giving rise to Plaintiff’s claims occurred in this District, and the
18 transaction occurred in this District.

19 **THE PARTIES**

20 3. Plaintiff Jonathon Fisher is, and at all times relevant hereto was, an
21 individual residing in the State of California.

22 4. Defendant The Blue Buffalo Company Ltd. is a Delaware corporation,
23 with its principal place of business located at 444 Danbury Road, Wilton, Connecticut
24 06897. Blue Buffalo is in the business of manufacturing, marketing, and selling pet
25 food, pet treats, and related products nationwide, including individuals in California
26 such as Plaintiff and the proposed Class.

27 5. The true names and capacities, whether individual, corporate, associate or
28 otherwise of certain manufacturers, distributors and/or their alter egos sued herein as

DOES 1 through 100 inclusive are presently unknown to Plaintiff who therefore sues these Defendants by fictitious names. Plaintiff will seek leave of this Court to amend the Complaint to show the true names and capacities of said Doe Defendants when the same have been ascertained. Plaintiff is informed and believes and based thereon alleges that DOES 1 through 100 were authorized to do and did business in this District. Plaintiffs are further informed and believe and based thereon allege that DOES 1 through 100 were and/or are, in some manner or way, responsible for and liable to Plaintiff for the events, happenings and damages hereinafter set forth below.

6. Plaintiff is informed and believes and based thereon alleges that at all times relevant herein each of the Defendants was the agent, servant, employee, subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego or other representative of each of the remaining Defendants and was acting in such capacity in doing the things herein complained of and alleged.

7. In committing the wrongful acts alleged herein, Defendants planned and participated in and furthered a common scheme by means of false, misleading, deceptive and fraudulent representations to induce members of the public to purchase Products.

FACTUAL ALLEGATIONS

Background

1. Pets are a beloved member of American families. Currently, Americans own over 86.4 million cats and 78.2 million dogs. In fact, the number of households with pets tops the number with children.

2. To that end, research shows a growing trend for American families to think of pets as children. It is now considered socially acceptable to treat pets as members of the family and to express the love by spending lavishly on them. America's love affair with dogs and cats has produced everything from luxury pet spas to gourmet pet meals.

1 3. The current demand on pet goods has made the pet food industry a big
2 business. In 2013 alone, cat and dog food sales rose to over \$20 billion in the United
3 States.

4 4. For the past decade, the new craze in the pet industry has been “premium
5 pet food,” with pet food manufacturers and marketers capitalizing on America’s trend
6 of health and wellness. This big business pet industry is why ultra-premium pet food
7 brands are marked with labels like “human grade,” claiming to include only natural
8 and organic products.

9 5. Not surprisingly, this lucrative market has attracted a variety of hucksters
10 seeking to “cash in” on American’s current desire to pamper their pets, whom they
11 consider a part of the family.

12 6. Defendant Blue Buffalo takes advantage of the public’s desire to keep
13 its pets alive and healthy by creating a brand targeted at ingredient-conscious pet
14 owners. Defendant markets its pet food as providing “superior nutrition,” with Blue
15 Buffalo’s pet food containing “only the finest natural ingredients,” and most
16 importantly, without containing certain harmful ingredients such as “Chicken or
17 Poultry By-Product Meals,” “Corn, Wheat or Soy,” or “Artificial Preservatives,
18 Colors or Flavors.”

19 7. Chicken/poultry by-product, corn, wheat, soy, and artificial
20 preservatives, colors or flavors are all harmful for pet consumption due to their
21 adverse health effects. Defendant’s website acknowledges “[p]oultry (chicken) by-
22 product meal consists of the ground, rendered, clean parts of **the carcass of**
23 **slaughtered poultry**, such as necks, feet, undeveloped eggs, and intestines. These
24 ingredients are commonly lower in cost than fresh meat.” Further, Defendant states
25 corn, wheat and soy are “[a]ll of **these fillers are incomplete sources of protein** and
26 can trigger allergic reactions in some dogs. Grain proteins are used by some brands
27 as inexpensive substitutes for meat protein. These grains do not contain the complete
28 amino acid profiles specific for dogs and cats and are not as easily digestible as more

1 nutritious meat-based proteins.” Finally, Defendant claims artificial colors, flavors
2 or preservatives contain “preservatives like BHA, BHT, ethoxyquin and propylene
3 glycol that provide **no nutritional value** and have been associated with **possible**
4 **toxic side effects**. Many pet food brands resort to artificial colors and flavors in an
5 attempt to make food look and taste better.” *See* [www.bluebuffalo.com/true-blue-](http://www.bluebuffalo.com/true-blue-test/compare-dog-food/results/)
6 [test/compare-dog-food/results/](http://www.bluebuffalo.com/true-blue-test/compare-dog-food/results/).

7 8. Defendant sells its Products at an extraordinary premium price when
8 compared to other pet food brands. Defendant, however, rationalizes its cost by
9 stating “[a]t Blue Buffalo we think the cost is well worth it to know exactly what’s in
10 our food.” *See* www.bluebuffalo.com/why-choose-blue/nutrition-philosophy/.

11 9. Consumers, including Plaintiff and other members of the Class, do not
12 have specialized knowledge of the ingredients contained in Defendant’s pet food and
13 are forced to rely on Defendant’s representations.

14 10. In reality, Defendant’s advertising is false and misleading. Scientific
15 testing reveals Defendant’s Pet Food Products including its “Life Protection” line,
16 “Wilderness” line, “Freedom” line, and “Basics” line (hereinafter collectively
17 referred to as “Products”) contain chicken/poultry by-product meal, corn, rice, grains,
18 as well as artificial preservatives. *See* www.bluebuffalo.com/product-finder/dogs/.

19 11. As a result of the presence of these ingredients, the Products are not
20 worth the substantial price premium they command, and consumers, including
21 Plaintiff and the Class, would not have paid a premium had they known the truth
22 regarding the true ingredients present in the Products. As Defendant itself states on
23 its website “[p]oultry or chicken by-product meals cost a lot less than meals made
24 from whole meat.” Since scientific testing reveals the presence of chicken/poultry
25 by-products in the Products, as well as other inexpensive pet food “fillers,”
26 consumers are not receiving the value of the premium price for which they paid.

27 12. On July 31, 2008, the National Advertising Division (NAD) of the
28 Council of Better Business Bureaus instructed Blue Buffalo to “discontinue its ‘no

1 animal by-products' claims when made in reference to pet foods containing fish
2 meal, lame meal and/or liver." See Exhibit "A."

3 13. In response to the NAD's instruction to immediately discontinue
4 Defendant's misleading advertising, Blue Buffalo switched to new, but equally
5 misleading, claims that its Products "NEVER have Chicken (or Poultry) By-Product
6 Meals."

7 14. Throughout the Class Period, and despite being on notice, Defendant
8 has engaged in advertising and marketing campaigns with pet food nutrition claims
9 deceptive to consumers. The campaigns have been broadcast to the Class through a
10 broad range of media, including Product packaging, labeling, television, radio, print
11 and internet. The campaigns, in their entirety, are false and misleading.

12 15. As a result of its deceptive nutrition claims for the Products, Defendant
13 sells thousands of units of the Products nationally per month through retail stores and
14 online.

15 16. This action seeks to halt Defendant's deceptive advertising and
16 marketing of the Products.

17
18 **Defendant's Advertising and Marketing of Pet Food Products**

19 17. In the now ultra-competitive market for premium pet food, companies
20 make advertising claims for their respective products, which, based off extensive
21 consumer research, they know will differentiate their products from others in the
22 marketplace.

23 18. Based on information and belief, Defendant has expert knowledge of the
24 consumer market for pet food products and has designed coordinated, uniform
25 advertising and marketing for the Products, using a variety of deceptive nutrition
26 claims.

27 19. In line with its marketing strategy of preying on families' love for their
28 pets in order to reap financial reward, Blue Buffalo promotes its slogan: "Love them

1 like family. Feed them like family.”

2 20. Moreover, Defendant tells “The BLUE Story” in its advertising. “The
3 BLUE Story” is Defendant’s sad story of how and why Blue Buffalo came to be.
4 Tugging at consumer heartstrings, “The BLUE Story” tells a story of the health
5 struggles of the company’s founder’s dog named Blue, a large-breed Airedale, who
6 served as inspiration to create “commercially available food that would include
7 ingredients to nourish our companions.” “We don’t ‘own’ our dogs and cats; they are
8 family members and companions whom we treat with love and respect.” “Defendant
9 states “BLUE dog and cat foods contain no chicken or poultry by-product meals, and
10 no artificial preservatives, colors or flavors. And BLUE dog and cat foods contain no
11 corn, wheat or soy, which have all been known to trigger allergies in some pets.” See
12 www.bluebuffalo.com/why-choose-blue/blue-story/.

13 *The “TRUE BLUE PROMISE”*

14 21. Blue Buffalo’s guarantees its “TRUE BLUE PROMISE”, which states
15 the Products not only use “Only the Finest Natural Ingredients,” but also contain “NO
16 Chicken or Poultry By-Product Meals,” “NO Corn, Wheat or Soy,” and “NO Artificial
17 Preservatives, Colors, or Flavors.” The TRUE BLUE PROMISE is prominently
18 displayed on Product packaging as well as Product advertisements:



LifeSource Bits

22. Defendant touts its “nutritious” dry cat and dog food Products, claiming they contain “LifeSource Bits,” exclusive to Blue Buffalo, which are essentially small pieces of kibble.

23. Defendant advertises LifeSource Bits to be “a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now all BLUE Life Protection Formula dog foods feature LifeSource Bits that have been enhanced with our Super 7 package of antioxidant-rich ingredients.” Defendant further claims the ingredients in LifeSource Bits help support: immune system health, life stage requirements, and healthy oxidative balance. See www.bluebuffalo.com/true-blue-test/compare-dog-food/results/.

24. Defendant’s website provides detail for the nutrition it claims for its LifeSource Bits:

The Health Benefits of LifeSource Bits

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

Help dogs and cats maintain a healthy oxidative balance

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

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

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

Help support a pet's immune system.

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

- Alfalfa
- Flaxseed
- Parsley
- Vitamin C
- Cranberries

Help support a pet's specific life stage requirements.

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

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



1 See www.bluebuffalo.com/lifsource-bits/.

2
3 Comparative Advertising

4 25. Defendant's website goes so far as to feature comparisons between its
5 Products and other "less nutritious" brands. Defendant represents to consumers its
6 Products are healthier than other brands as a result of the quality ingredients
7 contained, and most importantly, the inferior ingredients not contained.

8 26. Defendant's website offers visitors to compare Blue Buffalo's Products
9 to popular pet food brands by using its "True Blue Test." This is yet another
10 marketing strategy to assure the potential consumer distinguishes Blue Buffalo from
11 other brands. The "True Blue Test" invites website visitors to compare the alleged
12 ingredients contained and excluded in Defendants Products, with those of other
13 leading brands. The "True Blue Test" webpage states Blue Buffalo's Products
14 "NEVER Ha[ve] Chicken (or Poultry) By-Product Meals," "NEVER Ha[ve] Corn,
15 Wheat or Soy," and "NEVER Ha[ve] Artificial Colors, Flavors or Preservatives."
16 Further, Defendant identifies competing brands it alleges to contain these undesirable
17 ingredients. See www.bluebuffalo.com/true-blue-test-/compare-dog-food/results/.

18 27. Defendant further hypes its "nutritional superiority" to other brands by
19 pointing to its LifeSource Bits, contained in its Products and *exclusive* to Blue
20 Buffalo:

21
22 "When you compare dog foods or compare cat foods, you will see that this
23 "cold-formed" process is an important difference between BLUE and other
24 brands that add antioxidants and vitamins. Other manufacturers process their
25 foods with heat as high as 350°. High heat can destroy the potency of many
26 vitamins, minerals, antioxidants and important enzymes. It's the same concept
27 as when you cook vegetables at high heat – the longer you do, the more heat-
28 sensitive nutrients are lost. LifeSource Bits are manufactured separately at a
lower temperature from the rest of our kibble to preserve greater potency of the
vitamins and antioxidants. This way, your pet can gain as many benefits as
possible from these valuable nutrients." See www.bluebuffalo.com/lifsource-bits/.

1 **Defendant's Advertising Claims For The Products Are False and Deceptive**

2 28. Defendant's advertising gives consumers the net impression the Pet Food
3 Products are superior to other pet foods because they do not contain certain
4 undesirable ingredients, *and* because they will provide the pet with nutritional benefits
5 it would not receive from other brands. As a result, the consumer is led to believe
6 Blue Buffalo is worth its premium price.

7 29. Unfortunately for consumers, Defendant's advertising claims, in their
8 entirety, are false and deceptive.

9 **Defendant's Products Contain the Harmful Ingredients It Claims to Exclude**

10 30. Despite Defendant's claims the Products "NEVER Ha[ve] Chicken (or
11 Poultry) By-Product Meals", "NEVER Ha[ve] Corn, Wheat or Soy," and "NEVER
12 Ha[ve] Artificial Colors, Flavors or Preservatives," independent testing confirms
13 Defendant's claims are patently false.

14 31. Nestle Purina Petcare Company hired an independent laboratory to
15 investigate and test Defendant's Products. The investigation revealed Defendant's
16 core statements about its Products' ingredients are materially false. *Nestle Purina*
17 *Petcare Company v. The Blue Buffalo Company LTD.*, Case No. 4:14-cv-00859, (E.D.
18 Mo., May 11, 2014), (Dkt. 9).

19 32. The April 2014 Blue Buffalo Product investigation revealed
20 chicken/poultry by-product meal to be found in amounts upwards of 20% of the
21 Product by weight. Chicken/Poultry by-product meal was also found in Blue
22 Buffalo's coveted LifeSource Bits.

23 33. The investigation also confirmed Defendant's Products also contain corn
24 and artificial preservatives, despite Defendant's claims the Products "never" contain
25 these ingredients.

26 34. Specifically, testing revealed the presence of rice and/or corn in
27 Defendant's "100% Grain Free" Products and its LifeSource Bits. Corn and/or rice
28 was found in the Products in one sample at 1% as well as in the LifeSource Bits

1 between 1% and 3%.

2 35. Further, testing found rice hulls to be used as an ingredient in
3 Defendant's "100% Grain Free" Products and LifeSource Bits.

4 36. Aside from having no nutritional value, as Defendant itself acknowledges
5 in its marketing, these ingredients it claims to exclude are potentially dangerous to pet
6 health as they are common pet allergens and potentially toxic. Not only does
7 Defendant not disclose the potentially harmful and toxic nature of its ingredients, it
8 asserts they pose no harmful threat as the ingredients are claimed to not be present.

9 37. Due to the presence of the undesirable ingredients in Blue Buffalo's
10 Products, Defendant's Products do not provide the nutritional benefit they attribute to
11 its premium price.

12 *LifeSource Bits*

13 38. Contrary to Defendant's claims, testing concludes chicken/poultry by-
14 product meal to be present in Defendant's LifeSource Bits in amounts as high as 11%.

15 39. Additionally, Defendant makes claims its LifeSource Bits contain certain
16 levels of vitamins, minerals, and nutrients to provide specific health benefits such as
17 "healthy skin and coat" and "healthy bones and tissues," when LifeSource Bits do not
18 contain the requisite levels of vitamins, minerals, or nutrients to provide those health
19 benefits. Moreover, Defendant advertises certain vitamins, minerals and nutrients
20 purportedly found in its LifeSource Bits provide health benefits for which there is no
21 scientific evidence.

22 ***Plaintiff's Purchase and Pet Consumption of Blue Buffalo Pet Food Products***

23 40. Plaintiff purchased Blue Buffalo Pet Food Products, including its Salmon
24 and Potato Recipe, Lamb and Brown Rice Recipe, and Chicken and Brown Rice
25 Recipe, on a monthly basis since 2013, in the State of California at retail Petco stores.
26 In doing so, Plaintiff relied upon advertising and other promotional materials,
27 including information on the product packaging, containing the misrepresentations
28 alleged herein, including the claims the Products do not contain certain ingredients

1 and will cause or assist in superior pet nutrition, as referenced above. Plaintiff fed his
2 dog the Products as directed and Plaintiff's dog thereby consumed the undesirable
3 ingredients contained in the Products. Plaintiff would not have purchased the
4 Products had he known Defendant's advertising claims were false.

5 **CLASS ACTION ALLEGATIONS**

6 41. Plaintiff brings this class action for injunctive and related equitable relief
7 on behalf of himself, and as a class action on behalf of the following putative class
8 (hereafter the "Class"):

9 All persons who purchased Blue Buffalo Pet Food Products for use and not for
10 resale, in the State of California since July 2010.

11 42. Excluded from the Class are Defendant's officers, directors, employees,
12 and any individual who received remuneration from Defendant to act as an endorser
13 of the Products. Plaintiff reserves the right to amend the Class definition if further
14 investigation and discovery indicates that the Class definitions should be narrowed,
15 expanded, or otherwise modified.

16 43. This action is maintainable as a class action under Rules 23(a) and (b)(3)
17 of the Federal Rules of Civil Procedure.

18 44. Numerosity: Plaintiff does not know the exact number of members of the
19 putative classes. Due to the nature of the trade and commerce involved, however,
20 Plaintiff is informed and believes that the total number of Class members is at least in
21 the tens of thousands, and that members of the Class are numerous and
22 geographically dispersed throughout California. While the exact number and
23 identities of the Class members are unknown at this time, such information can be
24 ascertained through appropriate investigation and discovery. The disposition of the
25 claims of the Class members in a single class action will provide substantial benefits
26 to all parties and to the Court.

27 45. Commonality: There is a well-defined community of interest in the
28 questions of law and fact involved affecting the plaintiff Class and these common

1 questions predominate over any questions that may affect individual Class members.

2 Common questions of fact and law include, but are not limited to, the following:

- 3 a. Whether Defendant falsely advertises and misrepresents the benefits of
4 the Products;
- 5 b. Whether Defendant's mass media advertising and/or the packaging for
6 the Products is misleading and deceptive;
- 7 c. Whether Defendant's labeling and/or packaging for the Products is
8 misleading, false and/or illegal;
- 9 d. Whether Defendant represents to consumers that the Products have
10 characteristics, uses, benefits or qualities that the Products do not have;
- 11 e. Whether Defendant knew or should have known that the Products do not
12 have the characteristics, uses, benefits or qualities for which Defendant
13 advertised the Products;
- 14 f. Whether Defendant represented that the Products are of a particular
15 standard, quality, or grade, when they are of another;
- 16 g. Whether Defendant advertised the Products with intent to sell them not as
17 advertised;
- 18 h. Whether Defendant engaged in unfair, unlawful and/or fraudulent
19 business practices in marketing and distributing the Products;
- 20 i. Whether Defendant engaged in false advertising with respect to the
21 Products;
- 22 j. Whether Defendant's representations, concealments and non-disclosures
23 concerning the Products are likely to deceive the reasonable consumer;
- 24 k. Whether Defendant's representations, concealments and non-disclosures
25 concerning the Products violate the CLRA, FAL and/or the UCL;
- 26 l. Whether the Class is entitled to injunctive relief prohibiting the
27 challenged wrongful practices and enjoining such practices in the future;
- 28 m. Whether the Class is entitled to restitution; and,

1 n. Whether Plaintiff and the Class are entitled to attorneys' fees and
2 expenses, and in what amount.

3 46. Typicality: Plaintiff's claims are typical of the claims of the members of
4 the Class in that Plaintiff and the putative class members each purchased the Products
5 during the Class Period, and the products purchased by Plaintiff and the putative class
6 members contained unfairly deceptive and misleading representations.

7 47. Adequacy of Representation: Plaintiff will fairly and adequately
8 represent and protect the interests of the Class in that Plaintiff is a typical purchaser of
9 the Products and has no conflicts of interest with any member of the proposed Class.
10 Additionally, Plaintiff has retained counsel with experience in handling complex class
11 action litigation who will fairly and adequately protect the interests of the putative
12 classes. Plaintiff and his counsel are committed to vigorously prosecuting this action
13 on behalf of the Class and Plaintiff's Counsel has the financial resources to do so.

14 48. Superiority: Plaintiff and the members of the Class suffered, and will
15 continue to suffer, harm as a result of Defendant's unlawful and wrongful conduct.
16 This class action is superior to the alternatives, if any, for the fair and efficient
17 adjudication of this controversy. The relief sought per individual member of the
18 putative class is small given the burden and expense of individual prosecution of the
19 potentially extensive litigation necessitated by the conduct of Defendant.
20 Furthermore, it would be virtually impossible for the putative class members to seek
21 redress on an individual basis. Even if the putative class members themselves could
22 afford such individual litigation, the court system could not. Individual litigation
23 magnifies the delay and expense to all parties in the court system of resolving the
24 controversies engendered by Defendant's common course of conduct. The class
25 action device allows a single court to provide the benefits of unitary adjudication,
26 judicial economy, and the fair and efficient handling of all class members' claims in a
27 single forum. The conduct of this action as a class action conserves the resources of
28 the parties and of the judicial system and protects the rights of the class members.

1 Furthermore, for many, if not most, a class action is the only feasible mechanism that
2 allows an opportunity for legal redress and justice.

3 49. Adjudication of individual class members' claims with respect to
4 Defendant would, as a practical matter, be dispositive of the interests of other
5 members not parties to the adjudication, and could substantially impair or impede the
6 ability of other class members to protect their interests.

7 50. If necessary, notice of this action may be affected to the proposed classes
8 through publication and through contact information maintained by Defendant.

9 51. Unless a classwide injunction is issued, Defendant will continue to
10 commit the violations alleged, and the members of the Classes will continue to be
11 misled.

12 **FIRST CAUSE OF ACTION**
13 **VIOLATION OF UNFAIR COMPETITION LAW**
14 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**
(Unlawful, Unfair, and Fraudulent Prongs of the Act)

15 52. Plaintiff incorporates by this reference the allegations contained in the
16 preceding paragraphs as if fully set forth herein.

17 53. Plaintiff brings this claim individually and on behalf of the proposed
18 Class against Defendants.

19 54. California Business and Professions Code § 17200 prohibits any "unfair,
20 deceptive, untrue or misleading advertising." For the reasons discussed above,
21 Defendant has engaged in unfair, deceptive, untrue and misleading advertising in
22 violation of California Business & Professions Code §17200.

23 55. As alleged herein, Plaintiff has standing to pursue this claim as Plaintiff
24 has suffered injury in fact and has lost money or property as a result of Defendant's
25 actions. Specifically, Plaintiff purchased the Products multiple times for his own
26 dog's consumption. In so doing, Plaintiff relied upon the false representations that the
27 Products do not contain certain undesirable ingredients and will cause or assist in
28 superior pet nutrition, as referenced above. Plaintiff fed his pet the Products as

1 directed and Plaintiff's dog thereby consumed the undesirable ingredients contained in
 2 the Products. Plaintiff would not have purchased the Products had he known
 3 Defendant's advertising claims were false.

4 56. **Unlawful Business Practices:** The actions of Defendant, as alleged
 5 herein, constitute illegal and unlawful practices committed in violation of the Business
 6 & Professions Code §17200.

7 57. Defendant has committed unlawful business practices by, *inter alia*,
 8 making the representations and omissions of material facts, as set forth more fully
 9 herein, and violating California Civil Code §§ 1709, 1710, 1711, 1770, Business &
 10 Professions Code § 17200 *et seq.*, and Business & Professions Code § 17500, *et seq.*

11 58. In addition, Defendant has unlawfully manufactured, packaged, labeled,
 12 advertised, and/or distributed the Products in violation of the California Health &
 13 Safety Code, which governs Defendant's conduct, in that Defendants have
 14 disseminated false advertisements of the Products, and that the product advertising
 15 and packaging contain false or misleading statements as to the purported benefits of
 16 the Products in violation of Bus. & Prof. Code § 17500, Civil Code §1750, which
 17 govern Defendant's conduct. Defendant also violated the unlawful prong of the UCL
 18 because their false advertising of the Products, as set forth above, violates the FTC
 19 Act (15 U.S.C. §45, *et seq.*).

20 59. Plaintiff and the Class reserve the right to allege other violations of law
 21 which constitute other unlawful business acts or practices. Such conduct is ongoing
 22 and continues to this date.

23 60. **Unfair Business Practices:** California Business & Professions Code §
 24 17200 also prohibits any "unfair ... business act or practice."

25 61. Defendant's acts, omissions, misrepresentations, practices and non-
 26 disclosures as alleged herein also constitute "unfair" business acts and practices within
 27 the meaning of Business & Professions Code § 17200 *et seq.* in that its conduct is
 28 substantially injurious to consumers, offends public policy, and is immoral, unethical,

1 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged
2 benefits attributable to such conduct.

3 62. There were reasonably available alternatives to further Defendant's
4 legitimate business interests, other than the conduct described herein.

5 63. **Fraudulent Business Practices**: California Business & Professions Code
6 § 17200 also prohibits any "fraudulent business act or practice."

7 64. Defendant's claims, nondisclosures and misleading statements with
8 respect to the Products, as more fully set forth above, were false, misleading and/or
9 likely to deceive the consuming public within the meaning of Business & Professions
10 Code § 17200.

11 65. Defendant's conduct caused and continues to cause injury to Plaintiff and
12 the other Class members. Plaintiff has suffered injury in fact and has lost money as a
13 result of Defendant's unfair conduct.

14 66. Pursuant to section 17203 of the California Business and Professions
15 Code, Plaintiff and the Class seek an order of this court enjoining Defendant from
16 continuing to engage in unlawful, unfair, or deceptive business practices and any other
17 act prohibited by law, including but not limited to: (a) selling, marketing, or
18 advertising the Products with false representations set forth above; (b) engaging in
19 any of the illegal, fraudulent, misleading, unlawful, unfair and/or deceptive conduct
20 described herein; and (c) engaging in any other conduct found by the Court to be
21 illegal, fraudulent, misleading, unlawful, unfair and/or deceptive conduct.

22 67. In addition, Plaintiff requests that this Court enter such orders or
23 judgments as may be necessary to restore to any person in interest any money which
24 may have been acquired by means of such illegal practices as provided in Bus. & Prof.
25 Code § 17203, and for such other relief as set forth below.

26 //

27 //

28 //

SECOND CAUSE OF ACTION
FALSE AND MISLEADING ADVERTISING
(CAL. BUS. & PROF. CODE § 17500, *et seq.*)

68. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

69. Plaintiff brings this claim individually and on behalf of the proposed Class against Defendant.

70. As alleged herein, Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's actions. Specifically, Plaintiff purchased the Products multiple times for his own dog's consumption. In so doing, Plaintiff relied upon the false representations that the Products do not contain certain undesirable ingredients and will cause or assist in superior pet nutrition, as referenced above. Plaintiff fed his dog the Products as directed and Plaintiff's dog thereby consumed the undesirable ingredients contained in the Products. Plaintiff would not have purchased the Products had he known Defendant's advertising claims were false.

71. Defendant violated *Business & Professions Code* § 17500 by publicly disseminating false, misleading, and unsubstantiated advertisements regarding the Products.

72. Defendant's false, misleading and unsubstantiated advertisements were disseminated to increase the sales of the Products.

73. Defendant knew or should have known that their advertisements for the Products were false and misleading.

74. Furthermore, Defendant publicly disseminated the false and misleading advertisements.

75. Plaintiff and the members of the Class have suffered harm as a result of these violations of the FAL because they have incurred charges and/or paid monies for the Products that they otherwise would not have incurred or paid.

76. Defendant is aware, or by the exercise of reasonable care should have been aware, that the representations were untrue or misleading.

77. Plaintiff and the members of the Class have suffered injury in fact and have lost money as a result of Defendant's false representations and false advertising.

78. Pursuant to Business & Professions Code § 17535, Plaintiff and the members of the putative Class seek an order of this Court enjoining Defendant from continuing to engage, use, or employ their practice of advertising the sale and use of the Products.

79. Likewise, Plaintiff and the members of the putative Class seek an order requiring Defendant to disclose such misrepresentations, and additionally request an order awarding Plaintiff and other members of the putative class restitution of the money wrongfully acquired by Defendant by means of responsibility attached to Defendant's failure to disclose the existence and significance of said misrepresentations.

THIRD CAUSE OF ACTION
VIOLATION OF CALIFORNIA LEGAL REMEDIES ACT
(CAL. CIV. CODE § 1750 et seq.)

80. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

81. Plaintiff brings this claim individually and on behalf of the proposed Class against Defendant.

82. As alleged herein, Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's actions. Specifically, Plaintiff purchased the Products multiple times for his own dog's consumption. In so doing, Plaintiff relied upon the material false representations that the Products do not contain certain undesirable ingredients and will cause or assist in superior pet nutrition, as referenced above. Plaintiff fed his dog the Products as directed and Plaintiff's dog thereby consumed the undesirable

1 ingredients contained in the Products. Plaintiff would not have purchased the
2 Products had he known Defendant's advertising claims were false.

3 83. Plaintiff has concurrently filed the declaration of venue required by Civil
4 Code §1780(d) with this complaint.

5 84. Defendant has violated and continues to violate the CLRA by engaging
6 in the following practices proscribed by California Civil Code §1770(a) in
7 transactions with Plaintiff and the Class which were intended to result in, and did
8 result in, the sale of the Products:

9 §1770(a) (5) Representing that [the Products have] ... characteristics, ...
10 uses [or] benefits ... which [it does] not have

11 §1770(a) (7) Representing that [the Products are] of a particular standard,
12 quality or grade ... if [it is] of another.

13 85. Plaintiff's counsel sent to Defendant a written notice letter via certified
14 mail as required by Civil Code Section 1782(a). If Defendant fails to rectify or agree
15 to rectify the problems associated with the actions detailed above and give notice to all
16 affected consumers within 30 days of the date of written notice pursuant to §1782 of
17 the Act, Plaintiff will amend this complaint to add claims for actual, punitive and
18 statutory damages, as appropriate.

19 86. Defendant's wrongful business practices constituted, and constitute, a
20 continuing course of conduct in violation of the CLRA. Pursuant to *Civil Code* §
21 1782(d), Plaintiff and the Classes seek a Court order enjoining the above-described
22 wrongful acts and practices of Defendant along with any other conduct found by the
23 Court to be illegal, fraudulent, misleading, unlawful, unfair and/or deceptive conduct.

24 87. Plaintiff engaged counsel to prosecute this action and is entitled to
25 recover costs and reasonable attorney's fees according to proof at trial.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, on behalf of herself and as a representative of all
28 other persons similarly situated, prays for judgment against Defendant, as follows:

1. An order certifying that the action may be maintained as a Class Action;
2. An order enjoining Defendant from pursuing the policies, acts, and practices complained of herein.
3. An order requiring Defendant to pay restitution to Plaintiff and all members of the Classes;
4. For pre-judgment interest from the date of filing this suit;
5. For reasonable attorneys' fees;
6. Costs of this suit; and,
7. Such other and further relief as the Court may deem necessary and appropriate.

DATED: July 29, 2014

MILSTEIN ADELMAN LLP

By: /s/ Gillian L. Wade

Gillian L. Wade
Allison R. Willett
Sara D. Avila
Attorneys for Plaintiffs, and the Proposed Class

DATED: July 29, 2014

HALUNEN & ASSOCIATES LLP

By: /s/ Melissa W. Wolchansky

Melissa W. Wolchansky
Attorneys for Plaintiffs, and the Proposed Class

EXHIBIT A

Case #4892 (07/31/08)

Blue Buffalo Company, LLC

BLUE pet food

Advertising Agency: *Undisclosed*

Challenger: *Hill's Pet Nutrition*

Product Type: *Pet Products*

Issues: *Health and Safety Claims*

Disposition: *Modified/Discontinued/Substantiated*

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

The following claims are representative of those at issue:¹

"NO Animal By-Products"

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

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

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

"Now you can feed your dog like you feed your family"

"Feed your pet like you feed your family."

Challenger's Position:

I. "No Animal By-Products" Claims

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Advertiser's Position:

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

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

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

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

³ The voluntarily discontinued claims include: (i) "And because the health of our dogs and cats is so important to us, we never use animal by-products"; (ii) "[m]ost pet foods contain animal by-products. . . Before you say 'my pet's food has no animal by-products,' take a minute to read the ingredients. You'll probably be surprised to learn that you're not feeding them as well as you thought you were"; (iii) "the nutrition in our formulas exceeds that of the leading pet food brands"; (iv) "By feeding your dog or cat BLUE, you can feel good knowing that LifeSource Bits are providing them with a level of protection they can't get with any other pet food"; (v) "It's this combination of higher level nutrition and breakthrough protection that sets BLUE apart from any other food you can feed your dog or cat"; (vi) "BLUE Life Protection Formula and BLUE Spa Select—it's higher level nutrition by providing the extra protection that dogs and cats need at a time when cancer and environmental toxins seem to be increasing at an alarming rate"; (vii) "BLUE's exclusive LifeSource Bits compliment our unsurpassed nutrition by providing the extra protection that dogs and cats need at a time when cancer and environmental toxins seem to be increasing at an alarming rate"; (viii) "BLUE's LifeSource Bits will. . . help protect them from the negative impact of environmental toxins [which] is particularly important these days because many veterinarians are now beginning to link the growing incidence of cancer with the increase in environmental toxins"; (ix) "All Natural, Healthy Pet Food with Human Grade Ingredients"; and (x) "ALL of BLUE's ingredients are human grade."

⁴ The advertiser argued that Hill's challenge to this claim is ironic, considering that Hill's itself, in advertising for its Nature's Best pet food, claims that "64% of natural consumers feed their pet as they would feed themselves."

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

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

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

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

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

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

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

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

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

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

III. "No animal by-products" claims

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

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

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

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

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

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

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

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

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

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

Decision:

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

I. “No animal by-products” claims

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

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

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

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

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

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

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

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

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

NAD noted that "mammal tissues" is a very broad category, which may include parts such as kidneys, intestines, spleens, and brains—all of which could be reasonably understood by consumers to be by-products. NAD was not persuaded by the advertiser's argument that if an ingredient meets AAFCO's definition of "meat meal," it by definition cannot contain "meat by-products." NAD acknowledged that AAFCO provides separate definitions for "meat meal" and "meat by-products." However, NAD noted that the broad definition of "meat meal" ("[t]he rendered product from mammal tissues," excluding certain items) encompasses meat by-products. While true—as noted by the advertiser—that "meat meal" as defined by AAFCO cannot contain blood, whereas "meat by-products" may contain blood, this fact does not undermine the fact that meat meal may contain many other kinds of by-products, such as kidneys, intestines, etc. Similarly, the fact that "meat by-products" on their own are defined as non-rendered does not mean that once these very by-products are included in "meat meal," they lose their status as by-products. NAD determined that such an understanding conflicts with reasonable consumers' expectations.

NAD came to the same conclusion regarding "fish meal." The "fish meal" in Blue Buffalo products includes whitefish meal and Menhaden fish meal, both of which are prepared from the whole fish. NAD noted that "whole fish" necessarily includes intestines, eyeballs, skin, bones, heads, tails, and other fish parts that could reasonably be considered by-products. The fact that AAFCO defines "fish by-products" as "non-rendered, clean undecomposed portions of fish (such as, but not limited to, heads, fins, tails, ends, skin, bone and viscera) which result from the fish processing industry," does not mean that these very parts, if added to a pet food individually, rather as packaged in a whole fish, cease to be by-products. In either case, the ingredients will be processed and the pet food will contain brains, eyeballs, spleens, and other parts that could be reasonably construed by consumers as by-products.

NAD also determined that the liver in Blue Buffalo products qualifies under AAFCO guidelines as a by-product. AAFCO defines "meat by-products" as including "livers." NAD was not persuaded that the status of liver as a by-product depends on the process by which the liver is obtained. NAD determined that to the extent ordinary consumers are concerned about the by-products in their pet foods, the concern is likely to be based on the presence or absence of

⁹ While NAD agreed with the advertiser that the AAFCO Guidelines are not binding and that they are technically labeling guidelines, NAD has historically found these guidelines to be helpful in reviewing pet food advertising claims. NAD therefore looked to these guidelines not as binding regulations, but as a relevant and persuasive third-party source.

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

Finally, NAD was not persuaded by the advertiser’s argument that because its pet food labels have not been rejected by state regulators, this proves that regulators support the advertiser’s interpretation of the AAFCO guidelines. NAD noted that mere lack of enforcement by such state regulators does not demonstrate that advertising claims are supported. As noted by the challenger, NAD has often found state regulator-approved pet food labeling to contain unsupported messages.¹¹

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

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

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

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

¹¹ See e.g. *Hill’s Pet Nutrition, Inc. (Hill’s Science Diet puppy and kitten products)*, Case # 4355, NAD/CARU Case Reports (July, 2005)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion:

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

Advertiser’s Statement:

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

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

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

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

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

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

UNITED STATES DISTRICT COURT

for the

Central District of California

JONATHON FISHER, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

THE BLUE BUFFALO COMPANY, LTD, a Delaware
Corporation, and DOES 1-10, Inclusive,

Defendant(s)

Civil Action No.

CV14-5937 FMO-SHx

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) THE BLUE BUFFALO COMPANY, LTD
444 Danbury Road
Wilton, CT 06897

A lawsuit has been filed against you.

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

Gillian L. Wade
Allison R. Willett
Sara D. Avila
MILSTEIN ADELMAN, LLP
2800 Donald Douglas Loop North
Santa Monica, CA 90405

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

JUL 29 2014

Date: _____

CLERK OF COURT



Signature of Clerk or Deputy Clerk

1184

Civil Action No. _____

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

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

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

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

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

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) JONATHON FISHER, individually and on behalf of all others similarly situated,	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) THE BLUE BUFFALO COMPANY, LTD, a Delaware Corporation,
(b) County of Residence of First Listed Plaintiff <u>Los Angeles</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Fairfield</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Gillian L. Wade/ Allison R. Willett 2800 Donald Douglas Loop North Santa Monica, CA 90405 Telephone: (310) 396-9600	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.) <div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <input type="checkbox"/> 1. U.S. Government Plaintiff </div> <div style="width:48%;"> <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <input type="checkbox"/> 2. U.S. Government Defendant </div> <div style="width:48%;"> <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III) </div> </div>	III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border: none;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multi-District Litigation
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V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ TBD at Trial

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Business and Professions Code §17500 et seq.

VII. NATURE OF SUIT (Place an X in one box only.)

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

CV14-5937

FOR OFFICE USE ONLY:

Case Number:

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CIVIL COVER SHEET

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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th align="center" colspan="2">STATE CASE WAS PENDING IN THE COUNTY OF:</th> <th align="center">INITIAL DIVISION IN CACD IS:</th> </tr> <tr> <td><input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo</td> <td></td> <td align="center">Western</td> </tr> <tr> <td><input type="checkbox"/> Orange</td> <td></td> <td align="center">Southern</td> </tr> <tr> <td><input type="checkbox"/> Riverside or San Bernardino</td> <td></td> <td align="center">Eastern</td> </tr> </table>	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:	<input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo		Western	<input type="checkbox"/> Orange		Southern	<input type="checkbox"/> Riverside or San Bernardino		Eastern	
STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:												
<input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo		Western												
<input type="checkbox"/> Orange		Southern												
<input type="checkbox"/> Riverside or San Bernardino		Eastern												
QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question C. If "yes," answer Question B.1, at right.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"> B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> → </td> <td style="width:50%;"> YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question B.2. </td> </tr> <tr> <td> B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> → </td> <td> YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there. </td> </tr> </table>	B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question B.2.	B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.									
B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question B.2.													
B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.													
QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question D. If "yes," answer Question C.1, at right.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"> C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> → </td> <td style="width:50%;"> YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question C.2. </td> </tr> <tr> <td> C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> → </td> <td> YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there. </td> </tr> </table>	C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question C.2.	C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.									
C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question C.2.													
C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.													
QUESTION D: Location of plaintiffs and defendants? Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.) Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th align="center">A. Orange County</th> <th align="center">B. Riverside or San Bernardino County</th> <th align="center">C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County</th> </tr> <tr> <td align="center"><input type="checkbox"/></td> <td align="center"><input type="checkbox"/></td> <td align="center"><input checked="" type="checkbox"/></td> </tr> <tr> <td align="center"><input type="checkbox"/></td> <td align="center"><input type="checkbox"/></td> <td align="center"><input type="checkbox"/></td> </tr> </table>	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County												
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>												
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	D.2. Is there at least one answer in Column B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓													
QUESTION E: Initial Division? Enter the initial division determined by Question A, B, C, or D above: →	INITIAL DIVISION IN CACD WESTERN													
QUESTION F: Northern Counties? Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No														

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed in this court?

☒ NO

☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any cases previously filed in this court?

☒ NO

☐ YES

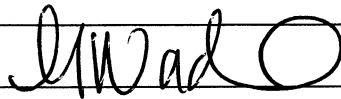
If yes, list case number(s): _____

Civil cases are related when they:

- ☐ A. Arise from the same or closely related transactions, happening, or event;
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Check all boxes that apply. That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

**X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT):**



DATE: July 29, 2014

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))