



damages caused by Blue's false, deceptive, and misleading marketing and advertising and breach of express and implied warranties. Further, Plaintiffs seek to force Blue to market Pet Foods accurately and fairly.

Figure 1— Wilderness Chicken Recipe for Adult Dogs package; claims displayed on the package are shown to the right



## II. PARTIES

3. Plaintiff Nick Hutchison is a resident of Crawford County, Missouri.
4. Plaintiff Jason Davis is a resident of Phelps County, Missouri.
5. Defendant Blue Buffalo is a Delaware corporation headquartered at 444 Danbury Road, Wilton, Connecticut 06897. Defendant can be served through its registered agent, United Corporate Services, Inc., 1739 East Elm Street, Suite 101, Jefferson City, Missouri 65101.

## III. JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over this action pursuant to Title 28, United States Code, Section 1332, as amended by the Class Action Fairness Act of 2005, in that (i) the aggregate claims of Plaintiffs and the proposed Class members exceed the sum or value of \$5,000,000, exclusive of interest and costs; (ii) minimal diversity of citizenship exists between the proposed Class members and Defendant; and (iii) the Class consists of more than one hundred members.

7. This Court has supplemental jurisdiction with respect to the pendent state law claims under Title 28, United States Code, Section 1367.

8. Venue is proper in this District under Title 28, United States Code, Section 1391(b) because Defendant's improper conduct alleged in this complaint occurred in, was directed from, and/or emanated from this judicial district.

## IV. ALLEGATIONS OF FACT

### A. Plaintiffs

9. On multiple occasions during the Class Period (as defined below), Plaintiff Nick Hutchison purchased 4.5-pound bags of Blue Wilderness Chicken Recipe for Adult Dogs at a price of approximately \$19.99 each, not including sales tax at the Orscheln Farm & Home store

at 124 East South Service Road, Sullivan, Missouri 63080, and, at the same location, purchased a 24-pound bag of the same Pet Food at a price of approximately \$59.99 not including sales tax.

10. On multiple occasions during the Class Period (as defined below), Plaintiff Jason David purchased 24-pound bags of Blue Wilderness Chicken Recipe for Adult Dogs at a price of approximately \$59.99 each, not including sales tax, at the Orscheln Farm & Home store at 124 East South Service Road, Sullivan, Missouri 63080, at Country Feeds, 12550 County Road 2210, Saint James, Missouri 65559, and other stores.

11. Plaintiffs’ purchased the Pet Foods for personal, family, or household purposes.

**B. Defendant’s Pet Foods Contain Poultry By-Product Meal, Rice, or Corn, Despite Defendant’s Representations to the Contrary**

12. To induce consumers to purchase Pet Foods, Blue states on many of its Pet Food packages that the products contain *no* chicken or poultry by-product meals and, except for certain grain-disclosed recipes (*e.g.*, brown rice), no grains of any kind. *See Figure 2*, below.

13. Blue makes similar claims on product-specific web pages on *www.blue-buffalo.com*, its publicly available website. *See Figure 2*, below.

14. However, upon information and belief, Blue’s Pet Foods contain poultry by-product meal and/or rice and/corn, contrary to Blue’s representations. *See Figure 2*, below.

*Figure 2—Pet Foods that contain (i) poultry by-product meal and/or (ii) rice and/corn, compared to Blue’s packaging and website representations regarding those Pet Foods*

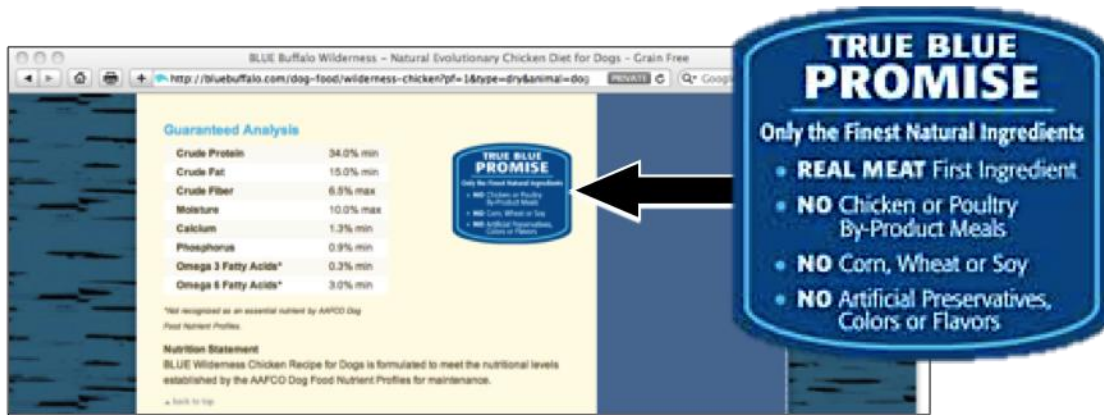
Pet Food	Contains Chicken or Poultry By-Product Meal	
	Package	Web Page Quotes* (emphases in original)
Basics Turkey and Potato Recipe for Adult Cats	✓	[L]ike all BLUE pet foods, BLUE Basics contains no chicken (or poultry) by-product meals and no artificial ingredients of any kind. [A]ll BLUE healthy cat foods contain NO chicken (or poultry) by-product meals, artificial colors, flavors or preservatives and NO corn, wheat or soy.

Pet Food	Contains Chicken or Poultry By-Product Meal		Web Page Quotes* (emphases in original)
	Contains Corn and/or Rice		
	Package		
Freedom Adult Grain Free Chicken Dog Food	✓	✓	No chicken or poultry by-product meals Some [cats/dogs] just don't do well with grain-based foods. That's why we created BLUE Freedom dry food for [indoor cats/adult dogs]. BLUE Freedom contains no grains, so it has no glutens. Glutens are known to trigger allergic reactions in some [cats/dogs].
Freedom Grain-Free Chicken Recipe for Indoor Cats	✓	✓	No corn, wheat or soy GRAIN-FREE NO chicken or poultry by-product meals, NO corn, wheat or soy and nothing artificial [A]ll BLUE healthy dog foods contain NO chicken (or poultry) by-product meals, artificial colors, flavors or preservatives and NO corn, wheat or soy.
Life Protection Formula Chicken & Brown Rice Recipe for Adult Dogs	✓		[A]ll BLUE healthy dog foods contain NO chicken (or poultry) by-product meals, artificial colors, flavors or preservatives and NO corn, wheat or soy.
Indoor Health Adult Chicken & Brown Rice Recipe for Cats	✓		[A]ll BLUE healthy cat foods contain NO chicken (or poultry) by-product meals, artificial colors, flavors or preservatives and NO corn, wheat or soy.
* Longevity for Adult Dogs	✓		Most pet parents with an overweight dog or cat will turn to a big name weight loss food—and there are virtually hundreds of them from which to choose.
* Longevity for Adult Cats	✓		But most of these foods contain ingredients like chicken by-product meal, soybean mill run and corn gluten meal—probably not the things you want to feed your dog or cat every day. <b>BLUE Longevity is an ideal weight, optimal calorie formula made with wholesome ingredients.</b>
Wilderness Chicken Recipe for Adult Cats	✓	✓	NO Poultry or Chicken By-product Meals Corn, Wheat or Soy 100% GRAIN FREE No Corn, Wheat or Soy And because BLUE Wilderness is made with no grains, it's also an ideal choice if you prefer to feed your cat a gluten-free diet. [A]ll BLUE healthy cat foods contain NO chicken (or poultry) by-product meals, artificial colors, flavors or preservatives and NO corn, wheat or soy.
Wilderness Chicken Recipe for Adult Dogs	✓	✓	NO Poultry or Chicken By-product Meals Corn, Wheat or Soy 100% GRAIN FREE No Corn, Wheat or Soy <b>Made with the finest natural ingredients – and no grains.</b> [A]ll BLUE healthy dog foods contain NO chicken (or poultry) by-product meals, artificial colors, flavors or preservatives and NO corn, wheat or soy.

\*In or about March 2014, Blue discontinued Longevity products. Plaintiffs' allegation of poultry by-product meal in Longevity Pet Foods is based upon information and belief, the source of which is allegations of test results set forth in the complaint filed in the matter of *Nestlé Purina Petcare Company v. The Blue Buffalo Company Ltd.*, Case No. 14cv00895 (E.D. Mo. May 16, 2014).

15. In addition, each Pet Food web page, except for the Longevity Pet Foods, displays the True Blue Promise: “**REAL MEAT** First Ingredient,” “**NO** Chicken or Poultry By-product Meals,” and “**NO** Corn, Wheat or Soy” (emphasis in original). See Figure 3, below.

Figure 3—True Blue Promise on product web page; expanded view at right



### C. Defendant’s Categorical Misrepresentations that Apply to the Pet Foods

16. In addition to Blue’s product-specific claims, Blue makes similar, general claims. For example, the Blue Dog and Cat Food FAQs include the following question and answer:

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

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

<http://www.bluebuffalo.com/health/faq#question5> (retrieved May 23, 2014).

17. Blue posts a “Blue Buffalo Nutrition and Ingredient Philosophy” web page that includes the following statements:

a. Under the heading, “What’s In Our Food and Why,” Blue states, “[R]eal chicken meat is a higher quality protein source than chicken or poultry by-product meals . . . .”

b. Under the heading, “High-Quality Protein Sources,” Blue states, “Some brands cut corners by using protein from chicken or poultry by-product meals, or even worse, from corn or soy—not BLUE.”

c. Under the heading, “What’s Not in BLUE and Why,” and Blue states:

Chicken or Poultry By-product Meals

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

Corn, Wheat or Soy Proteins (Glutens)

...

Many pet food companies use the less expensive glutens to increase protein levels without the complete amino acid benefits of using more expensive meat, poultry or fish proteins.

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

*http://www.bluebuffalo.com/nutrition* (retrieved May 22, 2014); *see also http://www.bluebuffalo.com/health/healthy-feeding* (retrieved May 23, 2014) (similar statements on Blue web page entitled “Feeding Your Pet Healthy—What You Need to Know”).

18. Blue’s website includes dog and cat versions of “The True Blue Test Results,” generally comparing its products to those of other manufacturers. As shown in *Figure 3*, below:

a. The middle column of the True Blue Test Results is labeled “NEVER Has Chicken (or Poultry) By-product Meals.” If a visitor to Blue’s website “mouses” over the column header, Blue displays the pop-up message shown in *See Figure 4(a)*, below, which states:

NEVER Has Chicken (or Poultry) By-product Meals

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

(Emphasis in original.)

b. The right-hand column of the True Blue Test Results is labeled “NEVER Has Corn, Wheat or Soy.” If a visitor to Blue’s website “mouses” over the column header, Blue displays the pop-up message shown in *See Figure 4(b)*, below, which states:

NEVER Has Corn, Wheat or Soy

All of **these fillers are incomplete sources of protein** and can trigger allergic reactions in some dogs. Grain proteins are used by some brands as inexpensive substitutes for meat protein. These grains do not contain the complete amino acid profiles specific for dogs and cats and are not as easily digestible as more nutritious meat-based proteins.

(Emphasis in original.)

c. In the shaded, first row of the True Blue Test Results chart, the check marks represent the score Blue gives itself, including check marks for not using poultry by-product meals or corn, wheat, or soy. *See Figure 4(c)*; *see also* <http://www.bluebuffalo.com/health/read-the-label> (“Read Any Good Pet Food Labels Lately?”) (retrieved May 23, 2014).

**D. Plaintiffs’ Damages**

19. Blue’s statements cited in paragraphs 17.b through 18.b, above, include Blue’s representations that other brands “cut corners,” using ingredients that are “cheaper,” “lower in cost,” “less expensive,” or “cost a lot less,” and that are “inexpensive substitutes” for the ingredients Blue claims to use in the Pet Foods.

20. Upon information and belief, the prices Blue charges for its Pet Foods include premiums for the cost of the ingredients Blue claims to use in place of chicken or poultry by-product meal and/or rice and/or corn.



Figure 3—True Blue Test Results for dogs.

The pop-ups shown in the first two screen captures are displayed by “mousing” over the column headings.

(a) This pop-up is labeled “NEVER Has Chicken (or Poultry) By-product Meals.”



(b) This pop-up is labeled “NEVER Has Corn, Wheat or Soy Proteins (Glutens).”



(c) The check marks in the first row are the scores Blue gives itself.

This screenshot shows the full comparison table. The first row, representing Blue Buffalo, has checkmarks in all five columns. The table compares Blue Buffalo against other brands: Beneful, Bil-Jac, Eagle Pack, Eukanuba, IAMS, MAX, NATURAL CHOICE, Purina, Royal Canin, Dog Chow, ONE, PRO PLAN, and ROYAL CANIN. The columns represent the test criteria: 'ALWAYS Has Real Meat as the First Ingredient', 'ALWAYS Includes Veggies and Fruit', 'NEVER Has Chicken (or Poultry) By-product Meals', 'NEVER Has Artificial Colors, Flavors or Preservatives', and 'NEVER Has Corn, Wheat or Soy'.

Brand	ALWAYS Has Real Meat as the First Ingredient	ALWAYS Includes Veggies and Fruit	NEVER Has Chicken (or Poultry) By-product Meals	NEVER Has Artificial Colors, Flavors or Preservatives	NEVER Has Corn, Wheat or Soy
Blue Buffalo	✓	✓	✓	✓	✓
Beneful	—	—	—	—	—
Bil-Jac	—	—	—	✓	—
Eagle Pack	—	—	✓	✓	—
Eukanuba	—	—	—	✓	—
IAMS	—	✓	—	✓	—
MAX	—	—	✓	✓	—
NATURAL CHOICE	—	—	✓	✓	—
Purina	—	—	—	—	—
Royal Canin	—	—	✓	✓	—
Dog Chow	—	—	—	—	—
ONE	✓	—	—	✓	—
PRO PLAN	—	—	—	✓	—
ROYAL CANIN	—	—	✓	✓	—
SCIENCE DIET	—	—	✓	✓	—

21. In addition, upon information and belief, Blue attempts to capitalize on increasing consumer awareness of gluten content in foods and interest in gluten-free products. *See, e.g.*, “A Big Bet on Gluten-Free,” Stephanie Strom, *New York Times*, Feb. 17, 2014, available at <http://www.nytimes.com/2014/02/18/business/food-industry-wagers-big-on-gluten-free.html> (retrieved May 27, 2014); “Shouldn’t Your Dog be Gluten-Free, Too?” Colleen Debaise, *New York Times*, Mar. 19, 2014, available at <http://boss.blogs.nytimes.com/2014/03/19/shouldnt-your-dog-be-gluten-free-too> (retrieved May 27, 2014).

22. In light of the Pet Foods’ actual ingredients and the prices Blue charges for the Pet Foods, Blue’s claims that its Pet Foods do not contain poultry by-product meal, rice, or corn are misleading, and Plaintiffs paid Blue undeserved premiums when they bought Pet Foods.

## V. CLASS ALLEGATIONS

23. This action is properly maintainable as a plaintiffs’ class action under Rule 23 of the Federal Rules of Civil Procedure and, as to the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.025.2.

24. The proposed “Class” is defined as: All persons in the United States who purchased any of the Pet Food products during the Class Period.

25. The proposed “Class Period” is defined as the period from five years prior to the date of the initial filing of the complaint through the date of class certification in this matter.

26. Excluded from the Class are: (i) Defendant, its assigns, successors, and legal representatives; (ii) any entities in which Defendant has controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (iv) all persons presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and

(v) any judicial officer presiding over this matter and person within the third degree of consanguinity to such judicial officer.

27. The Class consists of hundreds, if not thousands, of individuals and entities in the United States, making joinder impractical.

28. Plaintiffs' claims are typical of the claims of Class members.

29. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs have retained counsel with substantial experience prosecuting class actions and complex litigation and who have agreed to advance the expenses of prosecuting this matter and have the financial resources to do so. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class and have no interests adverse to those of the Class.

30. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Further, although the damages suffered by many individual members of the class may be distinct, the expense and burden of individual litigation may make pursuit of claims difficult, if not impossible, for all Class members, many of whom may be unaware that claims exist against Defendant.

31. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

32. Defendant has acted and failed to act on grounds generally applicable to Plaintiffs and the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the Class.

33. The factual and legal bases of Defendant's liability to Plaintiffs and other Class members are the same, resulting in injury to Plaintiffs and all of the other Class members.

Plaintiffs and the other Class members have all suffered harm and damages as a result of Defendant's wrongful conduct.

34. Many questions of law and fact are common to Plaintiffs and the Class and predominate over any questions that may affect only individual Class members. Common and predominant questions for the Class include but are not limited to the following:

- a. Were Blue's claims false?
- b. Were Blue's claims deceptive and misleading?
- c. Did Blue intend to make false, deceptive, or misleading claims?
- d. Did Blue omit disclosure of material facts?
- e. Did Blue intend Plaintiffs to rely on its representations or omissions?
- f. Did Blue breach express warranties regarding the Pet Foods?
- g. Did Blue breach implied warranties of merchantability of the Pet Foods?
- h. Was Blue's conduct vexatious or wanton?
- i. Have Plaintiffs suffered damages as a result of Blue's conduct?
- j. Have Plaintiffs incurred costs as a result of Blue's conduct?
- k. Does Blue's conduct injure or threaten injury to the consuming public?
- l. Has Blue been unjustly enriched by its conduct?

35. The questions of law and fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

36. Plaintiffs' claims for relief include those set forth below.

## VI. CLAIMS FOR RELIEF

### FIRST CLAIM FOR RELIEF

#### **(Violations of the Missouri Merchandising Practices Act, Mo. Rev. Stat § 407.020.43)**

37. The allegations of paragraphs 1 through 36 are incorporated as if fully set forth herein.

38. Missouri's Merchandising Practices Act prohibits the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. Mo. Rev. Stat § 407.020.43.

39. Defendant's conduct as described above constitutes the act, use, or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of material facts in connection with the sale or advertisement of any merchandise in trade or commerce. For example, Defendant misrepresents the ingredients in the Pet Foods, affirmatively and repeatedly claiming the Pet Foods do not contain poultry by-product meal and grains when, in fact, they do. Defendant's misstatements constitute material misrepresentations, for reasons that include: (i) Defendant, itself, stresses the pet health benefits of the absence of poultry by-product meal and grains in the Pet Foods; (ii) Defendant repeatedly and prominently touts the absence of those ingredients as major beneficial features of the Pet Foods and a competitive distinction; and (iii) the claimed absence of those ingredients and use of more costly ingredients is a basis of the premium Defendant charges for the Pet Foods. In addition, Defendant's failures to disclose the actual ingredients of the Pet Foods constitute material omissions in that: (i) as discussed in this paragraph, the presence of poultry by-product meal and grains are material product factors relating to advertised benefits and price; and (ii) the manufacture of the Pet Foods is controlled by Defendant and only

Defendant is in a position to know what the Pet Foods contain before consumers purchase them; and (iii) upon information and belief, Defendant purposefully withholds information about the Pet Foods actual ingredients from the consuming public.

40. Defendant's representations and omissions regarding the Pet Foods were deceptive and likely to deceive, Defendant knew or should have known that its representations and omissions were untrue and misleading, and it was Defendant's intent to deceive the consuming public regarding the Pet Foods so that consumers would purchase the Pet Foods.

41. Based on the foregoing, Defendant's practices were unlawful under Missouri Statutes Section 407.020.

42. In addition to the claims of Plaintiffs and those Class members residing in the State of Missouri and whose claims arise under the laws of the State of Missouri, Plaintiffs similarly assert claims on behalf of Class Members whose claims arise under unfair and deceptive acts and practices statutes of their respective states, including rights arising under:

- a. Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471, *et seq.*;
- b. Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1522, *et seq.*;
- c. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- d. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; California Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- e. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*;
- f. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, *et seq.*;
- g. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- h. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;

- i. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- j. Hawaii Unfair and Deceptive Practices Act, Haw. Rev. Stat. § 480 1, *et seq.*; Hawaii Uniform Deceptive Trade Practices Act, Hawaii Rev. Stat. §481A-1, *et seq.*;
- k. Idaho Consumer Protection Act, Idaho Code, § 48-601, *et seq.*;
- l. Kansas Consumer Protection Act, Kan. Stat. Ann. § 50 626, *et seq.*;
- m. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*;
- n. Maine Unfair Trade Practices Act, 5 M.R.S. § 205A, *et seq.*;  
Maine Uniform Deceptive Trade Practices Act, 10 M.R.S. § 1211, *et seq.*;
- o. Massachusetts Unfair and Deceptive Practices Act, Mass. Ann. L. ch. 93A, *et seq.*;
- p. Michigan Consumer Protection Act, M.C.L. § 445.901, *et seq.*;
- q. Minnesota Prevention of Consumer Fraud Act, Minn. Stat § 325F.68, *et seq.* ;
- r. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*;  
Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- s. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
- t. New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8 1, *et seq.*;
- u. New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*;
- v. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. L. § 349, *et seq.*;
- w. North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*;
- x. North Dakota Consumer Fraud Act, N.D. Cent. Code § 51 15 01, *et seq.*;
- y. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- z. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. L. § 6-13.1-1, *et seq.*;
- aa. Vermont Consumer Fraud Act, 9 Vt. Stat. Ann. § 2451, *et seq.*; and

bb. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*

43. Defendant's Pet Foods, as actually constituted, are worth less than as advertised and worth less than what Plaintiffs paid for them. As a result of Defendant's practices alleged herein, Plaintiffs were actually damaged, suffering ascertainable losses of money, including the difference between the actual value of the products they purchased and the value of the products had they been as represented.

44. Accordingly, Plaintiffs are entitled to be compensated for their actual damages, and to reasonable attorney's fees. Defendant's conduct was willful and without justification or excuse, and Defendant concealed facts affecting members of the public who were unable to ascertain those facts for themselves, and their pets, whom Defendant urged should be "treated like family." Therefore, Plaintiffs are entitled to punitive damages. Plaintiffs are informed and believe that unless this Court enjoins Defendant's conduct, Defendant will continue and expand the activities complained of herein, to the continued and irreparable injury of persons similarly situated to Plaintiffs, and Plaintiffs request that the Court enjoin Defendant from such further conduct.

**SECOND CLAIM FOR RELIEF**  
**(Breach of Express Warranty, Mo. Ann. Stat. § 400.2-313)**

45. The allegations of paragraphs 1 through 44 are incorporated as if fully set forth herein.

46. Defendant manufactured, advertised, marketed, sold, and distributed the Pet Foods, or caused the Pet Foods to be manufactured, advertised, marketed, sold, and distributed, with the affirmation of fact and promise on its label and on the company's website that certain of the Pet Foods were grain-free and all were free from poultry by-product meal.



47. These affirmations and promises were part of the basis of the bargain under which Plaintiffs' purchased the Pet Foods and were material factors inducing Plaintiffs' purchases.

48. Defendant breached these express warranties by promoting, distributing, and selling Pet Foods to Plaintiffs that did not conform to Defendant's promises or affirmations of fact made on the Pet Food packages and on Defendant's website. That is, Defendant affirmed that the Pet Foods are free of poultry by-product meal and except where specifically designated in a recipe, such as in recipes containing brown rice, are grain-free. However, the Pet Foods are not free of poultry by-product meal; further, the Pet Foods are not grain-free, in that some non-rice-recipe Pet Foods contain rice and/or corn.

49. In addition to the claims of Plaintiffs and those Class members residing the State of Missouri and whose claims arise under the laws of the State of Missouri, Plaintiffs similarly assert claims on behalf of Class Members whose claims arise under their respective states' statutes regarding breach of express warranty, including rights arising under:

- a. Ark. Code Ann. § 4-2-313;
- b. Cal. Comm. Code § 2313;
- c. Colo. Rev. St. § 4-2-313;
- d. 6 Del. C. § 2-313;
- e. Conn. Gen. Stat. Ann. § 42a-2-313;
- f. D.C. Stat. § 28:2-313;
- g. Florida Stat. § 672.313;
- h. Haw. Rev. Stat. § 490:2-313;
- i. Idaho Code Ann. § 28-2-313;
- j. Kan. Stat. Ann. § 84-2-313;

- k. Mich. Comp. Laws Ann. § 440.2313;
- l. Minn. Stat. Ann. § 336.2-313;
- m. Mont. Code Ann. § 30-2-313;
- n. Nev. Rev. Stat. §104.2313;
- o. N.J. Stat. Ann. § 12A:2-313;
- p. N.Y. U.C.C. Law § 2-313;
- q. N.C. Gen. Stat. Ann. § 25-2-313;
- r. Ohio Rev. Code Ann. § 1302.26
- s. Okla. Stat. Ann. Tit. 12A, § 2-313;
- t. Penn. Stat. Ann. Tit. 13, § 2313;
- u. S.C. Code Ann. § 36-2-313;
- v. Vt. Stat. Ann. § 2-313;
- w. Va. Code Ann. § 8.2-313;
- x. Wa. Ann. § 62A.2-313; and
- y. W. Va. Code § 46-2-313.

50. As a proximate result of Defendant's breach of its express warranty, Plaintiffs have sustained damages that include but are not limited to the purchase prices they paid for Pet Foods, the premiums they paid in those purchases, and/or the difference between the Pet Foods' actual values versus their values if they had been constituted as Defendant represented.

51. Accordingly, Plaintiffs are entitled to be compensated for their actual damages and to reimbursement; to costs, expenses, and attorney's fees, particularly in light of Defendant's wanton and vexatious conduct; and to such other legal and equitable relief as the Court may order.

**THIRD CLAIM FOR RELIEF**

**(Breach of Implied Warranty of Merchantability, Mo. Ann. Stat. § 400.2-314)**

52. The allegations of paragraphs 1 through 51 are incorporated as if fully set forth herein.

53. Defendant impliedly warranted to Plaintiffs that its Pet Foods were “merchantable” within the meaning of Missouri Statutes Section 400.2-314.

54. Defendant breached its implied warranty of merchantability because the Pet Foods: (i) would not pass without objection in the trade because they contain poultry by-product meal and/or grains that Defendant represented they did not have; (ii) the Pet Foods were not adequately contained, packaged and labeled, in that their labels are false and misleading regarding the poultry by-product meal and grain ingredients; and (iii) the Pet Foods did not conform to the promises or affirmations of fact made on their packaging labels, regarding the absence of poultry by-product meal and/or grains.

55. In addition to the claims of Plaintiffs and those Class members residing in the State of Missouri and whose claims arise under the laws of the State of Missouri, Plaintiffs similarly assert claims on behalf of Class Members whose claims arise under their respective states’ statutes regarding breach of express warranty, including rights arising under:

- a. Ark. Stat. § 7-2-314;
- b. Alaska St. § 45.02.314;
- c. Colo. Rev. Stat. § 4-2-314;
- d. Conn. Gen. Stat. Ann. § 42a-2-314;
- e. 6 Del. C. §§ 2-314, 2-315;
- f. D.C. Stat. § 28:2-314;
- g. Haw. Rev. Stat. § 490:2-314;

- h. Kan. Stat. Ann. § 50-639(b);
- i. 11 Maine Rev. Stat. Ann. § 2-314;
- j. Md. Com. Law Code Ann. § 2-314;
- k. Mass. Gen. Laws Ann. 106 § 2-314;
- l. Minn. Stat. Ann. § 336.2-314;
- m. Neb. Rev. Stat. § 2-314;
- n. Nev. Rev. Stat. § 104.2314;
- o. N.J. Stat. Ann. § 12A:2-314;
- p. Okla. Stat. Ann. tit. 12A, § 2-314;
- q. Penn. Stat. Ann. tit. 13, § 2314;
- r. S.C. §§ 36-2-314, 315; and
- s. W. Va. Code § 46-2-314.

56. As a proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiffs sustained damages, including but not limited to the purchase prices of the fraudulent products, the loss in value of the products, the loss in usefulness of the products, and/or the difference between the actual value of the products and the value of the products had they been merchantable.

57. Accordingly, Plaintiffs are entitled to be compensated for their actual damages and to reimbursement; to costs, expenses, and attorney's fees, particularly in light of Defendant's wanton and vexatious conduct; and to such other legal and equitable relief as the Court may order.

**FOURTH CLAIM FOR RELIEF**  
**(Common-Law Unjust Enrichment)**

58. The allegations of paragraphs 1 through 57 are incorporated as if fully set forth herein.

59. By purchasing Defendant Pet Foods, Plaintiffs conferred a benefit on Defendant in the form of the purchase price to which Defendant was not entitled.

60. Defendant appreciated the benefit because, were consumers not to purchase Defendant Pet Foods, Defendant would have no sales and make no money.

61. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations about Defendant Pet Foods.

62. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at the Plaintiffs' and Class members' expense and in violation of Missouri law, and therefore restitution and/or disgorgement of such economic enrichment is required.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the Class, respectfully request that the Court:

- A. Certify this action as a class action of affected persons in the United States;
- B. Appoint Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;
- C. Award Plaintiffs compensation and reimbursement for their damages and losses;
- D. Award Plaintiffs the disgorgement of Defendants' profits from its unlawful conduct;

- E. Grant Plaintiffs the equitable relief of the cessation of Defendant's conduct complained of herein;
- F. Grant Plaintiffs pre-judgment and post-judgment interest;
- G. Grant Plaintiffs costs associated with the prosecution of this action;
- H. Grant Plaintiffs attorney's fees;
- I. Award punitive damages; and
- J. Award such other and further relief as this Court deems just and proper.

Dated: June 9, 2014

Respectfully Submitted,

By: /s/ Stephen F. Gaunt

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and on behalf of all others similarly situated

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