

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

NESTLÉ PURINA PETCARE COMPANY,

Plaintiff/ Counterclaim Defendant,

v.

THE BLUE BUFFALO COMPANY LTD.,

Defendant/ Counterclaim Plaintiff

v.

BLUE STATE DIGITAL INC.,
PRCG/HAGGERTY LLC and JOHN DOES 1-8

Counterclaim Defendants.

Case No. 4:14-cv-00859-RWS

**AMENDED ANSWER TO FIRST
AMENDED COMPLAINT WITH
AMENDED COUNTERCLAIM**

JURY TRIAL DEMANDED

Defendant Blue Buffalo Company Ltd. (“Blue Buffalo”), for its Answer to the Claims of Plaintiff Nestlé Purina Petcare Company (“Nestlé Purina”), states as follows:

1. Blue Buffalo admits that Nestlé Purina’s First Amended Complaint purports to assert claims for false advertising, commercial disparagement and unjust enrichment and seeks a declaratory judgment. Blue Buffalo further admits that it spends tens of millions of dollars on advertising, employs marketing staff, and has built a brand targeted at ingredient-conscious pet owners. Blue Buffalo denies that the purported testing conducted by Nestlé Purina provided a basis to draw conclusions about the ingredients in Blue Buffalo’s products. Blue Buffalo specifically denies that its products contain chicken or poultry by-product meals, corn, or artificial preservatives, or that its grain-free products contain grains. Blue Buffalo denies the remaining allegations of paragraph 1.

2. Blue Buffalo admits that it emphasizes its ingredients and nutritional claims throughout its website, product packaging, advertisements, and other promotional materials and that it spends substantial sums on advertising. Blue Buffalo denies that the purported testing conducted by Nestlé Purina provided a basis to draw conclusions about the ingredients in Blue Buffalo's products and denies that paragraph 2 accurately reflects the results of that testing. Blue Buffalo specifically denies that its products contain chicken or poultry by-product meals, corn or artificial preservatives or that its grain-free products contain grains. Blue Buffalo denies the remaining allegations of paragraph 2.

3. Blue Buffalo admits that it advertises and promotes its products as made with "only the finest natural ingredients" and that it does not use chicken or poultry by-product meal, corn or artificial preservatives. Blue Buffalo denies the remaining allegations of paragraph 3.

4. Blue Buffalo admits the National Advertising Division (NAD) of the Council of Better Business Bureaus issued a decision in a matter involving Blue Buffalo on March 11, 2014 and states that the decision speaks for itself. To the extent that paragraph 4 pleads legal conclusions, no answer is required. Blue Buffalo denies the remaining allegations of paragraph 4 and specifically denies Plaintiff's characterization of the findings of the NAD. Blue Buffalo further denies the relevance and admissibility of the NAD decision in these proceedings.

5. Denied.

6. Blue Buffalo admits that the National Advertising Division (NAD) of the Council of Better Business Bureaus issued a decision in a matter involving Blue Buffalo on March 11, 2014 and states that the decision speaks for itself. To the extent that paragraph 6 pleads legal conclusions, no answer is required. Blue Buffalo denies the remaining allegations of paragraph 6

and specifically denies Plaintiff's characterization of the findings of the NAD. Blue Buffalo further denies the relevance and admissibility of the NAD decision in these proceedings.

7. Denied.

8. Blue Buffalo admits that Nestlé Purina is a Missouri corporation with headquarters at 901 Chouteau Avenue, St. Louis, Missouri 63102 that makes and sells pet food, treats, and related products in the United States and worldwide in grocery stores, mass merchandisers, pet stores, and online. Blue Buffalo is without sufficient knowledge or information to answer the remaining allegations of paragraph 8, and therefore denies the same.

9. Blue Buffalo admits that it is a Delaware corporation with headquarters in Wilton, CT and is in the business of marketing and selling pet food, pet treats and related products. Blue Buffalo denies the remaining allegations of paragraph 9.

10. Blue Buffalo admits that the Amended Complaint purports to plead claims under the Lanham Act and the common law of the State of Missouri. To the extent Paragraph 10 pleads legal conclusions, no answer is required. Blue Buffalo denies the remaining allegations of paragraph 10.

11. Paragraph 11 pleads legal conclusions, to which no answer is required.

12. Blue Buffalo admits that it advertises and sells its products to retailers and consumers in Missouri, including through television commercials, in-person promotions, print advertisement and Internet advertisements accessible from Missouri. Blue Buffalo further admits that it employs "pet detectives" in Missouri to promote sales of Blue Buffalo products to consumers in various retail outlets in Missouri. And Blue Buffalo admits that it is building a factory in Joplin, Missouri, is recruiting employees to work in that factory, and maintains a

registered agent for service of process in Missouri. To the extent Paragraph 12 pleads legal conclusions no answer is required.

13. Paragraph 13 pleads legal conclusions, to which no answer is required.

14. Blue Buffalo admits that it provides nutritional and ingredient information on its website, in its product packaging, in print ads, television ads, and in other advertising materials. Blue Buffalo further admits that its products are sold at a price higher than certain competing brands. Blue Buffalo denies the remaining allegations in paragraph 14.

15. Blue Buffalo admits that it spent more than \$50 million on advertising in 2013. Blue Buffalo denies the remaining allegations in paragraph 15.

16. Blue Buffalo admits that it advertises a “TRUE BLUE PROMISE” stating that its products contain “NO chicken/poultry by-product meals” on its website, labels, and to consumers. Blue Buffalo further admits that paragraph 16 contains a graphic depicting the TRUE BLUE PROMISE that appeared on Blue Buffalos’ website. Blue Buffalo denies the remaining allegations in paragraph 16.

17. Blue Buffalo admits that paragraph 17 contains a graphic that appeared on its website. Blue Buffalo denies the remaining allegations in paragraph 17.

18. Denied.

19. Blue Buffalo denies that its products contain chicken or poultry by-product meals. Blue Buffalo further denies that the purported testing conducted by Nestlé Purina provided a basis to draw conclusions about the ingredients in Blue Buffalo’s products.

20. Blue Buffalo admits that it makes statements that consumers should “Choose BLUE” and that it advertises that its products contain “the finest natural ingredients for superior

nutrition.” Blue Buffalo further admits that paragraph 20 includes graphics that appeared on Blue Buffalo’s website. Blue Buffalo denies the remaining allegations of paragraph 20.

21. Blue Buffalo admits the National Advertising Division (NAD) of the Council of Better Business Bureaus issued a decision in a matter involving Blue Buffalo on March 11, 2014 and states that the decision speaks for itself. To the extent that paragraph 21 pleads legal conclusions, no answer is required. Blue Buffalo denies the remaining allegations of paragraph 21 and specifically denies Plaintiff’s characterization of the findings of the NAD. Blue Buffalo further denies the relevance and admissibility of the NAD decision in these proceedings.

22. Denied.

23. Blue Buffalo admits that its advertising features comparisons between Blue Buffalo products and those of its competitors and that Blue Buffalo encourages consumers to study product ingredient labels. Blue Buffalo further admits that paragraph 23 includes graphics that appeared on Blue Buffalo’s website. Blue Buffalo denies the remaining allegations of paragraph 23.

24. Admitted.

25. Blue Buffalo admits that it employs salespeople to inform consumers about the quality of Blue Buffalo’s products as compared to competitive products. Blue Buffalo further admits that it advertises that its products do not contain any chicken or poultry by-product meals and that Blue Buffalo honors the “True Blue Promise.” Blue Buffalo denies the remaining allegations of paragraph 25.

26. Blue Buffalo admits that its website offers a “True Blue Test,” which allows consumers to compare the ingredient contents of Blue Buffalo’s products with those of other leading brands, including those of Purina. Blue Buffalo further admits that paragraph 26

includes graphics that appeared on Blue Buffalo's website. Blue Buffalo denies the remaining allegations of paragraph 26.

27. Blue Buffalo admits that certain consumers of pet food are becoming increasingly ingredient conscious and rely upon ingredient content information. Blue Buffalo denies the remaining allegations of Paragraph 27.

28. Blue Buffalo admits that Blue Buffalo products include "LifeSource Bits" that include "vitamins, minerals and antioxidants" and are "cold-formed." Blue Buffalo further admits that paragraph 28 includes graphics that appeared on Blue Buffalo's website. Blue Buffalo denies the remaining allegations of Paragraph 28.

29. Denied.

30. Blue Buffalo admits that it included LifeSource Bits on the results page of its "True Blue Test." Blue Buffalo further admits that paragraph 30 includes graphics that appeared on Blue Buffalo's website. Blue Buffalo denies the remaining allegations of paragraph 30.

31. Denied.

32. Blue Buffalo admits that it makes statements that "other manufacturers process their foods with heat as high as 350° ... [which] can destroy the potency of many vitamins, minerals, antioxidants and important enzymes." Blue Buffalo further admits that paragraph 32 includes graphics that appeared on Blue Buffalo's website. Blue Buffalo denies the remaining allegations of paragraph 32.

33. Blue Buffalo admits that paragraph 33 includes graphics that appeared on Blue Buffalo's website. Blue Buffalo denies the remaining allegations in paragraph 33.

34. Blue Buffalo admits that its LifeSource Bits contain Taurine “for healthy eyes and heart,” Vitamin D for “healthy bones and tissue” and L-Carnitine for “endurance and fat metabolism.” Blue Buffalo denies the remaining allegations in paragraph 34.

35. Admitted.

36. Admitted.

37. Denied.

38. Admitted.

39. Blue Buffalo admits that certain consumers favor grain-free products for a variety of reasons. Blue Buffalo further admits that its grain-free products are beneficial to pets with grain allergies and that paragraph 39 includes graphics that appeared on Blue Buffalo’s website. Blue Buffalo denies the remaining allegations of paragraph 39.

40. Denied. Blue Buffalo specifically denies that its products contain ground corn and that rice hulls are a grain.

41. Denied.

42. Blue Buffalo admits that it has used the slogan “Love them like family. Feed them like family.” Blue Buffalo further admits that paragraph 42 includes graphics that appeared on Blue Buffalo’s website. Blue Buffalo denies the remaining allegations of paragraph 42.

43. Denied.

44. Blue Buffalo admits that it was challenged by a competitor before NAD in 2008, and that NAD issued a decision on July 31, 2008. The decision speaks for itself. To the extent paragraph 44 pleads legal conclusions, no answer is required. Blue Buffalo denies the remaining allegations of paragraph 44 and specifically denies Plaintiff’s characterization of the findings of

the NAD. Blue Buffalo further denies the relevance and admissibility of the NAD decision in these proceedings.

45. Blue Buffalo admits that it was challenged by a competitor before NAD in 2008, and that NAD issued a decision on July 31, 2008. The decision speaks for itself. To the extent paragraph 45 pleads legal conclusions, no answer is required. Blue Buffalo denies the remaining allegations in paragraph 45 and specifically denies Plaintiff's characterization of the findings of the NAD. Blue Buffalo further denies the relevance and admissibility of the NAD decision in these proceedings.

46. Denied.

47. Blue Buffalo admits that Nestlé Purina filed its original complaint on May 6 as part of an advertising campaign that included press releases, a website and additional related media statements. Blue Buffalo denies the remaining allegations in paragraph 47.

48. Admitted.

49. Admitted.

50. Paragraph 50 pleads a legal conclusion to which no answer is required.

COUNT I

(Alleged False Advertising Under The Lanham Act, 15 U.S.C. § 1125(A))

51. Blue Buffalo restates and incorporates by reference its responses to the allegations of Paragraphs 1-50, as if fully set forth here.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

COUNT II

(Alleged Commercial Disparagement Under The Lanham Act, 15 U.S.C. § 1125(A))

59. Blue Buffalo restates and incorporates by reference its responses to the allegations of Paragraphs 1-58, as if fully set forth here.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

COUNT III

(Alleged Common Law Unfair Competition)

67. Blue Buffalo restates and incorporates by reference its responses to the allegations of Paragraphs 1-66, as if fully set forth here.

68. Denied.

69. Denied.

70. Denied.

COUNT IV

(Alleged Common Law Unjust Enrichment)

71. Blue Buffalo restates and incorporates by reference its responses to the allegations of Paragraphs 1-70, as if fully set forth here.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

COUNT V
(Declaratory Judgment)

76. Blue Buffalo restates and incorporates by reference its responses to the allegations of Paragraphs 1-75, as if fully set forth here.

77. Paragraph 77 pleads a legal conclusion to which no answer is required.

78. Blue Buffalo admits that Purina seeks a declaration by this Court as detailed in Paragraph 78. Blue Buffalo denies that Purina is entitled to any such declaration.

79. Denied.

FIRST AFFIRMATIVE DEFENSE

Nestlé Purina's complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Nestlé Purina's complaint is barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Nestlé Purina's complaint is barred because Blue Buffalo has complied with all applicable regulations of the federal and state governments.

FOURTH AFFIRMATIVE DEFENSE

Nestlé Purina's complaint is preempted or precluded in whole or in part by federal law.

FIFTH AFFIRMATIVE DEFENSE

Nestlé Purina's complaint is barred by the doctrine of laches.

WHEREFORE, Blue Buffalo respectfully prays that the Amended Complaint be dismissed in its entirety, that Blue Buffalo be awarded its costs and attorney's fees, and that the Court order such other and further relief as it deems just and proper.

AMENDED COUNTERCLAIM

Plaintiff Blue Buffalo Company Ltd. ("Blue Buffalo" or "Plaintiff"), for its counterclaim against Counterclaim Defendants Nestlé Purina PetCare Company ("Nestlé Purina"), Blue State Digital Inc. ("Blue State"), PRCG/Haggerty LLC ("PRCG/Haggerty"), and John Does 1-8 (collectively with Nestlé Purina, "Defendants"), respectfully alleges as follows:

INTRODUCTION

1. Pet food manufacturer Blue Buffalo brings this lawsuit to stop a sophisticated and carefully orchestrated advertising campaign by its competitor Nestlé Purina—along with Nestlé Purina's marketing and public relations agencies PRCG/Haggerty LLC and Blue State Digital—that falsely attacks Blue Buffalo's honesty and the quality of its products. Since May 2014, Nestlé Purina has blanketed the media with ads that claim Blue Buffalo uses certain low-cost and unappealing ingredients—the same ingredients that Nestlé Purina admits are mainstays in many of its own products—and that Blue Buffalo is purposefully deceiving consumers when it states that it does not use those ingredients. In fact, it is Nestlé Purina's fabricated claims about Blue Buffalo's products, and malicious attacks on Blue Buffalo's integrity, that are blatantly false.

2. Nestlé Purina is a subsidiary of Nestlé S.A., which is the world's largest food company with over \$100 billion in annual sales and more than \$220 billion in market capitalization. Nestlé Purina is itself a corporate behemoth. It is the largest pet food company in the United States with a 33% market share, which is more than twice that of its next competitor.

A primary ingredient of many of Nestlé Purina’s pet-food products is poultry by-product meal, which is defined in governing regulations as “the ground, rendered, clean parts of the carcass of slaughtered poultry, such as necks, feet, undeveloped eggs, and intestines, exclusive of feathers, except in such amounts as might occur unavoidably in good processing practices.” Nestlé Purina’s ingredients also include significant amounts of corn and corn derivatives, numerous artificial color additives, and artificial preservatives.

3. Blue Buffalo was launched in the United States as a family company just over a decade ago to provide consumers with a different choice. Blue Buffalo understands that pet owners—or “pet parents,” as Blue Buffalo refers to them—do not want to feed their dogs and cats ground and rendered poultry necks, feet, undeveloped eggs and intestines. Nor do they want to feed them corn, artificial colors or artificial preservatives. Instead of these undesirable constituents, Blue Buffalo pet foods contain high-quality natural ingredients, including deboned chicken, lamb or fish as the *first* ingredient, wholesome whole grains, garden vegetables, and antioxidant-rich fruits. Blue Buffalo pet foods also include a proprietary blend of vitamins, minerals and antioxidants. Blue Buffalo pet foods contain *no* chicken or poultry by-product meals; *no* artificial flavors, colors, or preservatives; and *no* corn, wheat or soy.

4. Blue Buffalo is now the fastest-growing major pet food company in the United States, and has carved a leading position in the burgeoning natural-foods segment of the market. The company’s brand is built on a commitment to using natural, high-quality ingredients and on its transparency with consumers. This relationship-building approach has proven successful with pet owners. In recent years, consumers have flocked to Blue Buffalo’s products and away from the engineered, low-cost products manufactured by Nestlé Purina and other major companies.

5. Unable to compete on the merits of its ingredients or products, or for the hearts and minds of today's pet food consumers, Nestlé Purina has decided to wage a nationwide advertising smear campaign. Leveraging its massive advertising and public-relations apparatus, and accusing Blue Buffalo of a company-wide fraud on the consuming public, Nestlé Purina has set out to destroy Blue Buffalo's brand and the lynchpin of the strength of that brand: the consumers' faith in the integrity of Blue Buffalo as a company. Among other things, Nestlé Purina has set up a website at www.petfoodhonesty.com that accuses Blue Buffalo of "not being honest about the ingredients in their pet food." Nestlé Purina has promoted that site and repeated its attacks on Blue Buffalo's honesty in press releases, on social media platforms, on its brand-specific websites, in search-engine ads, and through direct emails to consumers and retailers. Nestlé Purina's campaign seeks to convince the public that Blue Buffalo's dry pet-food products contain poultry by-product meal and corn—the same ingredients that are the hallmark of Nestlé Purina's own brands—and that Blue Buffalo deliberately makes false representations to the contrary in order to cultivate the false belief that these ingredients are absent from Blue Buffalo's products. Nestlé Purina also claims that products that Blue Buffalo advertises as "grain-free" in fact contain grains.

6. Nestlé Purina's claims are false. Blue Buffalo never uses poultry by-product meal or corn in any of its formulas, in its manufacturing, or in any of its products. Blue Buffalo has never sourced or ordered these ingredients and its manufacturers are not permitted to use them. And there are no rice grains—or grains of any kind—in any of Blue Buffalo's "grain free" products.

7. Apparently conscious of the legal risks inherent in its smear campaign, Nestlé Purina has contemporaneously filed in this Court a spurious lawsuit in which it makes

many of the same false accusations. Nestlé Purina apparently hopes that its lawsuit will protect it from legal action by Blue Buffalo, since statements in court papers themselves typically enjoy a “litigation privilege.” But Nestlé Purina’s statements go well beyond its court filings. Nestlé Purina has employed a systematic advertising and public relations campaign to widely disseminate its false claims in press statements, emails and social media and on internet websites to consumers in Missouri and throughout the United States. Nestlé Purina cannot shield itself from accountability for its actions. Nestle Purina implores consumers to “Get the facts” and claims as a scientific fact that Blue Buffalo’s “pet food products actually contain substantial amounts of poultry by-product meal.” That is advertising. That is false. And that is a violation of the law. Bringing a baseless lawsuit that repeats the same false advertising claims is no defense.

8. Nestlé Purina’s position is not helped by its vague assertion that an unidentified laboratory, using undisclosed methods, somehow “detected” variable amounts of poultry by-product meal or corn on an inconsistent basis in several Blue Buffalo product samples, or by its misguided claims regarding grain in “grain-free” products. Indeed, Nestlé Purina’s testing consisted of nothing more than peering into a low-powered, rudimentary microscope and making a guess about the contents of Blue Buffalo’s products. Prior to filing this lawsuit, Blue Buffalo asked Nestlé Purina to disclose the laboratory testing it relies on, but Nestlé Purina flatly refused to do so. Nestlé Purina continues to maintain that its testing should not be subject to public scrutiny, which is a telling indicator of its lack of scientific basis for its claims.

9. Unless curtailed, Nestlé Purina's smear campaign will cause irreparable injury to the value of Blue Buffalo's brand. Blue Buffalo seeks injunctive relief, corrective advertising, and damages occasioned by Defendants' false and deceptive advertising campaign.

PARTIES

10. Counterclaim Plaintiff Blue Buffalo is a Delaware corporation with headquarters at 11 River Road, Wilton, Connecticut 06897. Blue Buffalo is in the business of developing, marketing and selling pet food, pet treats, and related products in the United States and Canada.

11. Counterclaim Defendant Nestlé Purina is a Missouri corporation with headquarters at 901 Chouteau Avenue, St. Louis, Missouri 63102. Nestlé Purina makes and sells pet food, treats, and related products in the United States and worldwide.

12. Defendant PRCG/Haggerty is a New York limited liability company with headquarters at 45 Broadway, Suite 3140 New York, New York 10006. PRCG/ Haggerty is a public relations and communications firm that designed and built the advertising campaign challenged herein. On information and belief, that campaign was designed with Nestlé Purina in Missouri and was intended to reach consumers throughout the United States.

13. Defendant Blue State is a Delaware corporation with headquarters at 101 Avenue of the Americas, New York, New York 10013. Blue State is a digital marketing agency and a division of WPP Plc, which upon information and belief is the world's largest advertising agency. Blue State developed the content of advertisements challenged herein and arranged for them to be disseminated to consumers throughout the United States. On information and belief, these advertisements were developed with Nestlé Purina in Missouri.

14. Upon information and belief, Defendants John Doe 1 through John Doe 8 are external advertising, marketing, and/or public relations firms, companies or individuals that orchestrated, designed, assisted, contributed, advised, and/or participated in the Nestlé Purina advertising campaign that is the subject of this Complaint.

JURISDICTION AND VENUE

15. This action for false advertising arises under the Trademark Act of 1946, 15 U.S.C. § 1051, et seq. (the “Lanham Act”), the common law of the states of Missouri and Connecticut, and the unfair competition or deceptive trade practices statutes of various states as detailed in this Complaint.

16. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the related state and common law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

17. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action have occurred and/or will occur within this District.

BACKGROUND FACTS

18. Blue Buffalo was founded in 2002 by Bill Bishop and his two sons. When their family dog was diagnosed with cancer, the Bishops began researching pet food ingredients and were disturbed to learn that many well-known brands contained things like chicken by-product meal and corn gluten meal (the dried residue from corn after the removal of the larger part of the starch and germ, and the separation of the bran), as well as artificial flavors and colors. Having discovered what they believed was a major disconnect between what pet owners wanted to feed their cats and dogs and what they were actually feeding them, the Bishops

founded Blue Buffalo with the mission to bring transparency to the pet food category by educating consumers about the ingredients in pet foods and offering them a better choice. Blue Buffalo developed and brought to market foods made with the high-quality wholesome ingredients that many owners desired for their pets but could not find in the cost-engineered mass-produced products made by major companies.

19. Blue Buffalo, like its competitors, makes both (1) “dry” pet food such as that typically sold in bags, which is known as kibble; and (2) “wet” pet food such as that typically sold in cans. The Nestlé Purina false advertising at issue in this lawsuit addresses only the ingredients in Blue Buffalo’s dry pet food.

20. Blue Buffalo products are designed to provide wholesome nutrition through high-quality natural ingredients, vitamins, minerals, and antioxidants. Blue Buffalo’s dry food formulas have four key characteristics. First, all Blue Buffalo products feature deboned chicken, lamb, fish or other high quality real meats such as bison or venison as the first ingredient, which means that there is more of that ingredient than any other in each recipe. Second, Blue Buffalo uses only whole grains, rather than the less expensive “fractionated” grains used in many pet foods. Third, each recipe contains garden vegetables and antioxidant-rich fruit. Fourth, all Blue Buffalo dog and cat dry foods contain LifeSource® Bits, which are a precise blend of vitamins, minerals and antioxidants.

21. Blue Buffalo foods are also distinguished by what they do not contain. Unlike many leading brands, Blue Buffalo products contain no chicken or poultry by-product meals; no corn, wheat, or soy proteins (less expensive grains that are widely used in cheaper pet foods—often as a substitute for meat proteins—and that have been associated with allergies in some pets); and no artificial colors, flavors, or preservatives.

22. Blue Buffalo has built its strong brand identity by establishing relationships of trust and transparency with pet owners. Blue Buffalo engages consumers by educating them on pet nutrition and ingredients, inviting factual comparisons between Blue Buffalo's products and competing products based on ingredient labels, and allowing consumers to make their own informed decisions about the composition of foods they want to feed their pets. The company employs this strategy of transparency and education across all of its points of contact with pet owners, from its website to its advertising to the one-on-one conversations that Blue Buffalo's representatives have with consumers at pet specialty stores across the United States and Canada each week.

23. Nestlé Purina takes a very different approach to making and selling its pet foods. Its products typically use lower-cost ingredients, including chicken and poultry by-product meals and corn as the primary ingredients; wheat and soy proteins; and artificial colors, flavors, and preservatives. Most of Nestlé Purina's products do not have real meat as the first ingredient, and many do not contain any vegetables or fruit.

24. For example, Nestlé Purina's flagship brand, Purina Dog Chow, lists corn as its first ingredient, along with corn gluten meal, soybean meal, poultry by-product meal, and numerous artificial color additives and preservatives. (*See Exhibit A.*)



Our Ingredient Statement

Purina® Dog Chow® Brand Dog Food Complete & Balanced

Ingredients:

Whole grain corn, meat and bone meal, corn gluten meal, animal fat preserved with mixed-tocopherols, soybean meal, poultry by-product meal, egg and chicken flavor, whole grain wheat, animal digest, salt, calcium carbonate, potassium chloride, dicalcium phosphate, choline chloride, zinc sulfate, Yellow 6, Vitamin E supplement, L-Lysine monohydrochloride, ferrous sulfate, Yellow 5, Red 40, manganese sulfate, niacin, Blue 2, Vitamin A supplement, copper sulfate, calcium pantothenate, garlic oil, pyridoxine hydrochloride, Vitamin B-12 supplement, thiamine mononitrate, Vitamin D-3 supplement, riboflavin supplement, calcium iodate, menadione sodium bisulfite complex (source of Vitamin K activity), folic acid, biotin, sodium selenite. B-4101

Manufactured by: Nestlé Purina PetCare Company, St. Louis, MO 63164 USA

25. The first three ingredients in Purina Puppy Chow—intended, according to its label, for “Growing Puppies”—are whole grain corn, corn gluten meal, and chicken by-product meal. (See Exhibit B.)



Our Ingredient Statement

Purina® Puppy Chow® Brand Puppy Food Complete & Balanced for Growing Puppies

Ingredients:

Whole grain corn, corn gluten meal, chicken by-product meal, animal fat preserved with mixed-tocopherols (form of Vitamin E), soybean meal, egg and chicken flavor, brewers rice, barley, animal digest, calcium phosphate, fish oil, calcium carbonate, dried yeast, salt, potassium chloride, choline chloride, L-Lysine monohydrochloride, zinc sulfate, Vitamin E supplement, Yellow 6, ferrous sulfate, DL-Methionine, Yellow 5, Red 40, manganese sulfate, niacin, Vitamin A supplement, Blue 2, copper sulfate, calcium pantothenate, garlic oil, pyridoxine hydrochloride, Vitamin B-12 supplement, thiamine mononitrate, Vitamin D-3 supplement, riboflavin supplement, calcium iodate, menadione sodium bisulfite complex (source of Vitamin K activity), folic acid, biotin, sodium selenite. Y-4001

Manufactured by: Nestlé Purina PetCare Company, St. Louis, MO 63164 USA

26. Notwithstanding the net impression from its packaging to the contrary, the first four ingredients in Purina’s popular Beneful Original dog food are ground yellow corn, chicken by-product meal, corn gluten meal, and wheat flour; the product also contains propylene glycol (a preservative that is also a key component in certain types of automotive antifreeze) and numerous artificial colors. (See Exhibit C.)



RECOMMENDED FEEDING

GUARANTEED ANALYSIS

INGREDIENTS

Ground yellow corn, chicken by-product meal, corn gluten meal, whole wheat flour, animal fat preserved with mixed-tocopherols (form of Vitamin E), rice flour, beef, soy flour, water, meat and bone meal, propylene glycol, sugar, tricalcium phosphate, phosphoric acid, salt, animal digest, potassium chloride, sorbic acid (a preservative), dried peas, dried carrots, calcium propionate (a preservative), choline chloride, L-Lysine monohydrochloride, Vitamin E supplement, zinc sulfate, Red 40, ferrous sulfate, manganese sulfate, niacin, Yellow 6, Yellow 5, Vitamin A supplement, Blue 2, calcium carbonate, copper sulfate, Vitamin B-12 supplement, brewers dried yeast, calcium pantothenate, thiamine mononitrate, garlic oil, pyridoxine hydrochloride, riboflavin supplement, Vitamin D-3 supplement, menadione sodium bisulfite complex (source of Vitamin K activity), calcium iodate, folic acid, biotin, sodium selenite.

J-4090

Manufactured by: Nestlé Purina PetCare Company, St. Louis, MO 63164 USA

27. Nestlé Purina uses the same type of ingredients in its cat foods as well.

The first three ingredients in Purina Friskies Indoor Delights cat food are corn, corn gluten meal, and chicken by-product meal. (See Exhibit D.)



Reviews

Nutrition

Ingredients

Guaranteed Analysis

Ingredients

Ground yellow corn, corn gluten meal, chicken by-product meal, meat and bone meal, soybean meal, beef tallow preserved with mixed-tocopherols (form of Vitamin E), turkey by-product meal, powdered cellulose, animal liver flavor, soybean hulls, malt extract, phosphoric acid, calcium carbonate, salt, choline chloride, potassium chloride, dried cheese powder, parsley flakes, added color, taurine, zinc sulfate, Vitamin E supplement, ferrous sulfate, Yellow 6, manganese sulfate, niacin, Yellow 5, Red 40, Vitamin A supplement, calcium pantothenate, thiamine mononitrate, Blue 2, copper sulfate, riboflavin supplement, Vitamin B-12 supplement, pyridoxine hydrochloride, folic acid, Vitamin D-3 supplement, calcium iodate, biotin, menadione sodium bisulfite complex (source of Vitamin K activity), sodium selenite. E-6002

28. Similarly, the first three ingredients in Purina Cat Chow Complete are poultry by-product meal, corn meal, and corn gluten meal. (See Exhibit E.)



Ingredients:

Poultry by-product meal, corn meal, corn gluten meal, ground whole wheat, brewers rice, soy flour, animal fat preserved with mixed-tocopherols (form of Vitamin E), fish meal, meat and bone meal, brewers dried yeast, phosphoric acid, animal digest, calcium carbonate, tetra sodium pyrophosphate, salt, potassium chloride, choline chloride, calcium phosphate, taurine, zinc sulfate, Vitamin E supplement, ferrous sulfate, manganese sulfate, niacin, Vitamin A supplement, calcium pantothenate, thiamine mononitrate, added color (Red 40), copper sulfate, riboflavin supplement, Vitamin B-12 supplement, pyridoxine hydrochloride, folic acid, Vitamin D-3 supplement, calcium iodate, biotin, menadione sodium bisulfite complex (source of Vitamin K activity), sodium selenite. F-4501

Manufactured by: Nestlé Purina PetCare Company, St. Louis, MO 63164 USA

29. The first three ingredients in Purina’s “gourmet” Fancy Feast Filet Mignon Flavor With Real Seafood & Shrimp cat food are brewers rice, poultry by-product meal, and corn gluten meal. The product also contains ground corn, soybean meal, and artificial flavors and colors. (See Exhibit F.)



INGREDIENTS

brewers rice, poultry by-product meal, corn gluten meal, beef tallow preserved with mixed-tocopherols (form of vitamin e), ground yellow corn, soybean meal, animal liver flavor, fish, shrimp, phosphoric acid, calcium carbonate, natural and artificial flavors, salt, potassium chloride, dried yeast, choline chloride, added color (yellow 6, yellow 5, red 40 and other color), natural filet mignon flavor, taurine, zinc sulfate, ferrous sulfate, manganese sulfate, vitamin e supplement, niacin, vitamin a supplement, calcium pantothenate, thiamine mononitrate, copper sulfate, riboflavin supplement, vitamin B-12 supplement, pyridoxine hydrochloride, folic acid, vitamin D-3 supplement, calcium iodate, biotin, menadione sodium bisulfite complex (source of vitamin k activity), sodium selenite.

A-8501

30. Given a choice between pet foods made with natural, high-quality ingredients and those like Nestlé Purina's products that are engineered using lower-cost ingredients, consumers have flocked to Blue Buffalo's products in increasing numbers. In the 12 years since its founding, Blue Buffalo has risen to become the number one natural pet food brand in the United States and the number one brand in pet specialty stores across the United States. During this time, the company has gone from having 0% of the overall pet food market to a 5% share of the U.S. market. Blue Buffalo is now the fastest growing major pet food company in the United States.

31. Blue Buffalo's market gains have come at the expense of other established brands, including Nestlé Purina's. Blue Buffalo's average weekly retail sales now surpass Nestlé Purina brands such as Purina Beneful, Purina Fancy Feast, and Purina ONE. Meanwhile, Nestlé Purina's own attempts to enter the natural pet foods market have largely failed, as sales of its Purina ONE beyOnd and Purina Cat Chow "Naturals" product lines have been modest and essentially flat for the past three years. Additionally, Nestlé Purina previously launched and subsequently discontinued other entries including Purine ONE Natural Blends, Pro Plan Selects,

and Pet Promise. Pet Promise was an especially noteworthy attempt to compete with natural pet foods, as Nestlé Purina concealed its ownership of the brand while providing it with an aggressive marketing platform with the tagline of “let byproducts be bygone” —while at the same time remaining one of the largest purveyors of pet foods filled with ingredients it was encouraging pet owners to stop buying. (See Exhibit G.)



NESTLÉ PURINA’S FALSE AND MISLEADING ADVERTISING CAMPAIGN

32. Having failed to keep pace with Blue Buffalo in the marketplace, Nestlé Purina has now launched an extensive false and disparaging advertising campaign designed to discredit the claims that stand at the core of the Blue Buffalo brand and its relationship of trust with consumers. Nestlé Purina’s advertising campaign is a sophisticated, extensive and multi-platform campaign that includes a purpose-built website, press releases, an aggressive social media presence, unattributed search-engine ads, and emails that, upon information and belief, have been sent to pet owners and pet food retailers across the country.

33. The centerpiece of Defendants' campaign is a website (the "Honesty Website") that was launched on or about May 6, 2014. PRCG/Haggerty designed and built the PetFoodHonesty.com webpage. Titled "Purina: Where Honesty Is Our First Ingredient," the Honesty Website can be accessed on the internet at www.petfoodhonesty.com. The masthead for the Honesty Website bears the Nestlé Purina brand name and symbol. Screenshots of the contents of the Honesty Website are attached hereto as Exhibit H.

34. The home page of the Honesty Website is styled as an open letter to pet owners from Nestlé Purina, describing supposedly deceptive marketing practices by Blue Buffalo. On the home page, Defendants make the following false or misleading statements regarding Blue Buffalo's products and marketing practices, including the following:

- a. "[T]esting conducted by an independent laboratory revealed that several of Blue Buffalo's top-selling 'Life Protection' pet food products actually contain substantial amounts of poultry by-product meal."
- b. "Independent testing also shows that Blue Buffalo's 'LifeSource Bits' contain poultry by-product meal and corn."
- c. "[S]everal Blue Buffalo products promoted as 'grain-free' actually contain rice hulls, despite Blue Buffalo stating on its website that its 'grain-free' products will 'free your pet from the grains and glutens that cause allergic reactions in some dogs.'"
- d. "Blue Buffalo is not being honest about the ingredients in its pet food."
- e. "99% of Purina pet food sold in the United States is manufactured at Purina's own plants in the United States. By contrast, 100% of Blue Buffalo pet foods is outsourced and made by third-party manufacturers."

35. Simultaneously with the launch of the Honesty Website, on May 6, 2014, Nestlé Purina filed a false-advertising complaint (the "Nestlé Purina Complaint") in this Court. The Nestlé Purina Complaint vaguely alleges that undisclosed "investigation and scientific testing" by an unnamed laboratory revealed that (1) a handful of Blue Buffalo product samples contained poultry by-product meal and corn, and (2) samples of certain Blue Buffalo products

advertised as “grain free” actually contain rice hulls. (*See* Case No. 4:14-cv-00859-RWS, Dkt. No. 1). Upon information and belief, Nestlé Purina filed the Nestlé Purina Complaint in an attempt to extend litigation privilege protection to their advertising smear campaign, so as to shield their false and misleading statements from liability.

36. Also on May 6, 2014, Defendants issued a press release (the “Press Release”) announcing the filing of the Nestlé Purina Complaint that reiterated many of the false and misleading claims from the Honesty Website. The Press Release repeated Nestlé Purina’s claims that testing by an independent laboratory showed that several of Blue Buffalo’s top-selling “Life Protection” pet food products contained significant percentages of poultry by-product meal, and that Blue Buffalo “LifeSource Bits” contain poultry by-product meal and corn. The Press Release also reiterated that “several Blue Buffalo products promoted as ‘grain-free’ actually contain rice hulls.” (*See* Exhibit I.)

37. Nestlé Purina has heavily promoted the Honesty Website on its Facebook page at <https://www.facebook.com/purina>. For example, on May 6, 2014 Nestlé Purina posted a link to the Honesty Website under the statement: “Honesty is the most important ingredient in the relationship between a pet food company and pet owners.” It also posted an image with overlaid text stating “Purina: Where our first ingredient is honesty.” Nestlé Purina reposted the link to the Honesty Website on May 7, 2014 under the statement: “Purina has always operated with the highest standards—including a commitment to honesty and integrity. Our pets deserve no less.” And reposted it yet again on May 8, 2014 under the statement: “Not all pet food companies are honest about the ingredients they use. Get the facts at www.Puri.na/Honesty.” That link—truncated for social media posting—takes readers to the Honesty Website. Nestlé

Purina has also engaged in numerous discussions with consumers on its Facebook page in which it has repeated its false claims. (*See* Exhibit J.)

38. Nestlé Purina has also promoted the Honesty Website on its Twitter account at <https://twitter.com/Purina>. For example, on May 8, 2014, Nestlé Purina tweeted a link to the Honesty Website with the text, “Is your pet food company being honest about its ingredients? Find out at Puri.na/Honesty.” The same day, Nestlé Purina tweeted another link to the Honesty Website with the statement, “Your pets trust you to feed them right. Shouldn’t you be able to trust the food you give them?” Between May 7 and May 13, 2014, Nestlé Purina sent 11 tweets linking to the Honesty Website. (*See* Exhibit K.) Blue State developed the content for these advertisements on Nestlé Purina’s Facebook and Twitter accounts and arranged for social media posts relating to PetFoodHonesty.com to be directed to the social media pages of pet food consumers on Facebook and Twitter.

39. Nestlé Purina has also advertised the Honesty Website on many of its brand-specific websites. For example, Nestlé Purina has used a masthead advertisement on the website for its Beneful line of products at www.beneful.com that leads consumers to the Honesty Website and states: “HONESTY IN PET FOOD. Purina believes that honesty is the most important ingredient in the relationship between pet owners and pet food manufacturers. Please visit www.petfoodhonesty.com to learn more about actions we are taking to stop false advertising aimed at pet owners.” Nestlé Purina has the same masthead advertisement on www.catchow.com and www.dogchow.com. (*See* Exhibit L.)

40. On information and belief, on or about May 7, 2014, Defendants sent out a mass e-mailing (the “Direct E-mails”) to consumers and pet food retailers nationwide. An

example of one of these e-mails is attached as Exhibit M. The Direct E-mails repeated the same text, and therefore the same false claims, as the “letter” to pet owners on the Honesty Website.

41. Defendants have also purchased false and misleading advertisements on Google.com (hereafter, the “Google Ads”) that are designed to appear when consumers search for Blue Buffalo or its products. Upon information and belief, Defendants have spent heavily to ensure that these advertisements appear above the Google search results for common terms relating to Blue Buffalo. (*See* Exhibit N.) For example, the third result of a May 12, 2014 search for the term “Blue Buffalo” was a paid advertisement linking to the Honesty Website. The link was accompanied by unattributed text stating, “A dog food company is lying about its ingredients. Learn the facts.” In a search for the terms “Blue Buffalo pet food,” the second result was a link to the Honesty Website with the title, “Dog food company honesty.” The link was accompanied by text reading, “Is your dog food company being honest about its ingredients?” And the third search result for the term “Blue Buffalo natural” was another link to the Honesty Website titled, “The facts about dog food,” again accompanied by the text, “A dog food company is lying about its ingredients. Learn the facts.” (*See* Exhibit O.) Because these statements appear alongside the search results for Blue Buffalo and its products, they assert that Blue Buffalo is lying about the ingredients in its products. Blue State arranged for these links to PetFoodHonesty.com to appear when Google.com users search for terms related to Blue Buffalo.

42. As set forth below, the statements made on the Honesty Website and reiterated in the Press Release, in Facebook and Twitter posts, on the individual product websites, in the Direct E-Mails, and in the Google Ads are false and misleading.

Nestlé Purina’s False Claim that Blue Buffalo Products Contain Poultry By-Product Meal

43. Defendants claim on the Honesty Website and in the Direct E-mails that (1) “testing conducted by an independent laboratory revealed that several of Blue Buffalo’s top-

selling ‘Life Protection’ pet food products actually contain substantial amounts of poultry by-product meal,” and (2) “[i]ndependent testing also shows that Blue Buffalo’s ‘LifeSource Bits’ contain poultry by-product meal.”

44. The Association of American Feed Control Officials, which establishes the definitions and descriptions of ingredients that are allowed to be used in pet foods, defines poultry by-product meal as “the ground, rendered, clean parts of the carcass of slaughtered poultry, such as necks, feet, undeveloped eggs and intestines, exclusive of feathers, except in such amounts as might occur unavoidably in good processing practices.” (AAFCO 2014 Official Publication at 355.)

45. Nestlé Purina’s claims are false. Blue Buffalo does not use poultry by-product meal in any of its products and none of its product formulas include poultry by-product meal as an ingredient. Moreover, Blue Buffalo provides its manufacturing contractors with detailed specifications, and often a limited list of ingredient suppliers, for all of the ingredients used in its products. Those specifications never allow for the use of poultry by-product meal. Blue Buffalo manufacturing contractors are not permitted to vary from Blue Buffalo recipes and do not use poultry by-product meal when manufacturing Blue Buffalo products. Blue Buffalo instead pays for and uses the high quality ingredients specified in its products formulas.

46. To the extent that laboratory tests commissioned by Nestlé Purina purport to show poultry by-product meal in Blue Buffalo’s products, those results are unreliable and false. Nestlé Purina refused to identify the laboratory that conducted the tests it relies upon or the method that the laboratory used to supposedly differentiate poultry by-product meal from other ingredients until forced to do so in this litigation.

47. Before filing its original complaint, Blue Buffalo asked Nestlé Purina to provide it with copies of the laboratory tests it relies upon, but Nestlé Purina refused and said it would provide the results at “the appropriate time.” (*See* Exhibits P and Q.) The reason for this stonewalling is self-evident: Nestlé Purina’s lab tests are bogus and do not support the false and misleading claims that Nestlé Purina is making. Indeed, Nestlé Purina ultimately admitted that its purported testing consisted of nothing more than looking at samples of Blue Buffalo’s products under a rudimentary, low-powered optical microscope and making a guess about the ingredients.

Nestlé Purina’s False Claim that Blue Buffalo’s “Grain-Free” Products Contain Grains

48. Defendants state in their advertising that “several Blue Buffalo products promoted as ‘grain-free’” actually contain quantities of “rice hulls.” The necessary implication of this claim—that these products contain grain—is false.

49. A rice hull is not a grain and contains no grain. The grain of a plant is its seed. A “rice hull” by definition is the hard covering that is left over after the rice grain has been removed. It is primarily composed of silica and is often used as a quality source of fiber. Rice hulls are used in Blue Buffalo products as a processing aid to deliver a blend of vitamin and mineral supplements. The actual inclusion level is typically less than 1/10th of what Nestlé Purina claims, and below the level that AAFCO requires to be listed as an ingredient. In short, Nestlé Purina’s assertion that Blue Buffalo’s use of rice hulls renders its “grain-free” claims false is itself a fiction. A rice hull is not a grain, and there is nothing remotely untrue about Blue Buffalo’s “grain-free” advertising.

Nestlé Purina’s False Claim that Blue Buffalo’s LifeSource Bits Contain Corn

50. Defendants state in ads including the Honesty Website and in the Direct E-mails that “Independent testing also shows that Blue Buffalo’s ‘LifeSource Bits’ contain . . . corn.” Defendants repeat substantially similar claims in the Press Release. These claims are false.

51. Blue Buffalo does not use corn in any of its products. None of Blue Buffalo’s product formulas or specifications it provides its manufacturers include corn as an ingredient. Blue Buffalo manufacturing contractors are not permitted to vary from Blue Buffalo recipes and do not use corn when manufacturing Blue Buffalo products.

Nestlé Purina’s False Claim that Blue Buffalo’s Products Are Subject to Quality Control Problems Because They are “Outsourced”

52. Defendants state on the Honesty Website and in the Press Release that “99% of Purina pet food sold in the United States is manufactured at Purina’s own plants in the United States. By contrast, 100% of Blue Buffalo pet foods is outsourced and made by third-party manufacturers.” This statement necessarily implies that Blue Buffalo’s pet foods are not made in the United States. Furthermore, the statement is likely to be understood by consumers to mean that Blue Buffalo’s pet foods are subject to the types of highly publicized quality control problems that have impacted other pet food manufacturers that have outsourced production to offshore manufacturers.

53. The claim that Blue Buffalo’s products are manufactured outside of the United States is categorically false. One hundred percent of Blue Buffalo’s products are manufactured in facilities in the continental United States.

54. Not only is Nestlé Purina’s statement false, it is intended to play on consumers’ concerns about recent incidents involving Chinese-manufactured pet foods that were

found to contain unapproved and potentially harmful ingredients. Nestlé Purina itself was at the center of these incidents. On January 9, 2013, Nestlé Purina withdrew two of its pet food product lines after New York state agricultural officials discovered that the products, manufactured in China, contained residues of prohibited antibiotics that are not approved for use in animal feeds in the United States. Several months later, in August 2013, Nestlé Purina voluntarily recalled bags of “Purina ONE beyOnd Our White Meat Chicken & Whole Barley Recipe Adult Dry Dog Food,” which is Purina’s “natural” line of adult dry dog food. The product was found to be contaminated with salmonella. These incidents were widely publicized both in the general press and in publications aimed at pet owners.

55. Defendants’ statement also makes the false representation that, because Blue Buffalo products are manufactured at third-party manufacturing facilities (referred to in the industry as co-packers), they are inherently susceptible to quality control problems. In fact, Blue Buffalo utilizes “industry best” Quality Assurance and Quality Control protocols in the formulation and manufacturing of its products, and demands that each of its co-packers strictly adhere to these protocols. The use of co-packers is a common industry practice, and the notion that their use entails quality control problems is baseless and false. Co-packers are similarly used by numerous industry participants, including major pet food retailers for the manufacture of pet food sold under their store brands. Indeed, Nestlé Purina’s parent company, Nestlé, itself makes extensive use of co-packers to manufacture foods for human consumption.

Nestlé Purina’s False Claim that Blue Buffalo is Dishonest About its Ingredients

56. The Honesty Website and the Direct E-mails state that Blue Buffalo “is not being honest about the ingredients in its pet food.” The Google Ads similarly claim that Blue Buffalo “is lying about its ingredients.” These and similar statements are false. As detailed above, Defendants have not reliably identified a single false statement in Blue Buffalo’s

advertising. Moreover, Defendants have not identified a scintilla of evidence to suggest Blue Buffalo intentionally misled any consumers about the ingredients of any of its products.

57. Defendants' claim is particularly pernicious because it is intended to attack not merely the truth of Blue Buffalo's advertising claims, but the integrity and brand identity of the company, which has been central to its success.

INJURY TO BLUE BUFFALO AND THE PUBLIC

58. Defendants' smear campaign is calculated to destroy the reputation and goodwill of the Blue Buffalo brand. By spreading false claims about product ingredients and maligning the credibility of the brand, Defendants seek to curtail the rapid growth of Blue Buffalo's business in the hope that this will stem the exodus of Nestlé Purina customers to Blue Buffalo, and divert sales toward Nestlé Purina's products.

59. Blue Buffalo and its owners have invested large sums of money to launch and grow the Blue Buffalo brand. Blue Buffalo is now the number one natural pet food and the number one specialty brand in pet specialty stores across the United States, as well as the fastest-growing major pet food company in the United States. The company's success and brand identity rest on its reputation for transparency and honesty, as well as its refusal to use the same type of low-cost, low-quality ingredients used by competitors such as Nestlé Purina. If Defendants' false advertising campaign continues unchecked, Blue Buffalo will lose sales and profits and will suffer a loss of reputation and goodwill that will destroy the considerable value of the company's brand equity and will not be fully compensable through monetary damages.

60. In addition to generating substantial sales and profits, Blue Buffalo's products currently provide American pet owners with healthy, natural, high-quality alternatives to the engineered, low-cost pet foods that constitute the majority of the market. Unless curtailed

by this Court, Defendants' false advertising campaign will induce consumers to make purchasing decisions and potentially incur costs based on Defendants' false and misleading representations about the composition and sourcing of Blue Buffalo's products.

FIRST CLAIM FOR RELIEF

Violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) against all Defendants

61. Blue Buffalo repeats and realleges each and every allegation contained above as if the same were set forth fully herein.

62. In connection with Blue Buffalo's products, which are offered in interstate commerce, Defendants have made false and misleading descriptions or representations of fact. These false or misleading statements misrepresent the nature, characteristics, or qualities of Blue Buffalo's products, manufacturing processes, and/or marketing practices. Defendants' statements are expressly false, impliedly false, or both.

63. Defendants' false and misleading statements have deceived, or have the tendency to deceive, a substantial portion of the intended audience about matters that are material to purchasing decisions.

64. Defendants' false and misleading statements are made in commercial advertising and promotion in interstate commerce and violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

65. Blue Buffalo is likely to suffer, has suffered, and will continue to suffer damages and irreparable injuries as a result of Defendants' wrongful acts.

SECOND CLAIM FOR RELIEF

False Advertising Under Missouri Common Law Against All Defendants

66. Blue Buffalo repeats and realleges each and every allegation contained above as if the same were set forth fully herein.

67. In connection with Blue Buffalo's products, which are offered in the State of Missouri, Defendants have made false and misleading descriptions or representations of fact. These false or misleading statements misrepresent the nature, characteristics, or qualities of Blue Buffalo's products, manufacturing processes, and/or marketing practices. Defendants' statements are expressly false, impliedly false, or both.

68. Defendants' false and misleading statements have deceived, or have the tendency to deceive, a substantial portion of the intended audience, about matters that are material to purchasing decisions.

69. Defendants' false and misleading statements are made in commercial advertising and promotion in the State of Missouri.

70. Blue Buffalo is likely to suffer, has suffered, and will continue to suffer damages and irreparable injuries as a result of Defendants' wrongful acts.

THIRD CLAIM FOR RELIEF

Unfair Competition Under Missouri Common Law Against All Defendants

71. Blue Buffalo repeats and realleges each and every allegation contained above as if the same were set forth fully herein.

72. By reason of the foregoing, Defendants have engaged in unfair competition and product disparagement in violation of the common law of the State of Missouri.

73. Defendants have engaged in deceptive marketing practices, including advertising their goods in a way likely to deceive or mislead prospective patrons to the detriment of Blue Buffalo. Such deceptive practices have caused harm to the commercial relations of Blue Buffalo.

FOURTH CLAIM FOR RELIEF

Injurious Falsehood Under Missouri Common Law Against All Defendants

74. Blue Buffalo repeats and realleges each and every allegation contained above as if the same were set forth fully herein.

75. Defendants have published false statements that are harmful to Blue Buffalo's commercial and reputational interests.

76. Defendants intended for the publication of these false statements to result in pecuniary harm to Blue Buffalo. Alternatively, Defendants recognized or should have recognized that publication of these false statements was likely to result in pecuniary harm to Blue Buffalo.

77. Defendants knew that their published statements were false, or acted in reckless disregard of the truth or falsity of the statements.

78. Blue Buffalo is likely to suffer, has suffered, and will continue to suffer damages and irreparable injuries as a result of Defendants' wrongful acts.

FIFTH CLAIM FOR RELIEF

Defamation Under Missouri Common Law Against All Defendants

79. Blue Buffalo repeats and realleges each and every allegation contained above as if the same were set forth fully herein.

80. Defendants have published false statements identifying Blue Buffalo that are harmful to Blue Buffalo's commercial and reputational interests.

81. Defendants intended for the publication of these false statements to result in reputational harm to Blue Buffalo. Alternatively, Defendants recognized or should have recognized that the publication of these false statements was likely to result in reputational harm to Blue Buffalo.

82. Defendants knew that their published statements were false, or acted in reckless disregard or negligence of the truth or falsity of the statements.

83. Blue Buffalo is likely to suffer, has suffered, and will continue to suffer damages and irreparable injuries, including injuries to Blue Buffalo's reputation, as a result of Defendant's wrongful acts.

SIXTH CLAIM FOR RELIEF

Unjust Enrichment Under Missouri Common Law Against All Defendants

84. Blue Buffalo repeats and realleges each and every allegation contained above as if the same were set forth fully herein.

85. Defendants have benefited by their false and misleading statements at Blue Buffalo's expense.

86. Defendants unjustly have not compensated or paid Blue Buffalo for the benefits of those false and misleading statements.

87. Defendants benefited from their failure to pay or compensate Blue Buffalo.

SEVENTH CLAIM FOR RELIEF

Unfair Competition Under Connecticut Common Law Against All Defendants

88. Blue Buffalo repeats and realleges each and every allegation contained above as if the same were set forth fully herein.

89. In connection with Blue Buffalo's products, which are offered in the State of Connecticut, Defendants have made false and misleading descriptions or representations of fact. These false or misleading statements misrepresent the nature, characteristics, or qualities of Blue Buffalo's products, manufacturing processes, and/or marketing practices. Defendants' statements are expressly false, impliedly false, or both.

90. Defendants' false and misleading statements have deceived, or have the tendency to deceive, a substantial portion of the intended audience about matters that are material to purchasing decisions.

91. Defendants' false and misleading statements are made in commercial advertising and promotion in the State of Connecticut.

92. Blue Buffalo is likely to suffer, has suffered, and will continue to suffer damages and irreparable injuries as a result of Defendants' wrongful acts.

EIGHTH CLAIM FOR RELIEF

Defamation Under Connecticut Common Law Against All Defendants

93. Blue Buffalo repeats and realleges each and every allegation contained above as if the same were set forth fully herein.

94. Defendants have published false and defamatory statements regarding Blue Buffalo and its products to third persons throughout the United States, including Connecticut. Those statements identified Blue Buffalo to third persons.

95. Blue Buffalo is likely to suffer, has suffered, and will continue to suffer reputational injuries as a result of Defendants' wrongful acts.

NINTH CLAIM FOR RELIEF

Violations of Trade Practice Statutes of the Several States Against All Defendants

96. Blue Buffalo repeats and realleges each and every allegation contained above as if the same were set forth fully herein.

97. Defendants have engaged in misleading, unfair or deceptive acts or practices in the conduct of trade or commerce throughout the United States. These wrongful acts have caused Blue Buffalo to suffer ascertainable loss of money or property.

98. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of ALA. CODE § 8.19-1 *et seq.*

99. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of ALASKA STAT. CODE § 45.50.470 *et seq.*

100. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of CAL.BUS. & PROF CODE § 17200, *et. seq.* & § 17500, *et seq.*

101. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of COLO. REV. STAT. § 6-1-101 *et seq.*

102. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of CONN. GEN. STAT. § 42-110a *et seq.*

103. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of DEL. CODE ANN. tit. 6, § 2511, *et seq.*

104. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of GA. CODE ANN. §10-1-392 *et seq.*

105. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of IDAHO CODE § 48-601 *et seq.*

106. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of IL. §815 ILCS 510/1 *et seq.*

107. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of IOWA CODE § 714.16, *et seq.*

108. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of LA. REV. STAT. § 51:1401 *et seq.*

109. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of ME. REV. STAT. tit. 5, § 205-A, *et seq.*

110. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of MASS. GEN LAWS ch. 93A, §1, *et seq.*

111. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of MINN. STAT. § 8.31, *et seq.*

112. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of NEB. REV. STAT. § 59-1601, *et seq.*

113. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of N.H. REV. STAT. ANN. § 358-A:1, *et seq.*

114. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of N.J.S.A. 56:8-1, *et seq.*

115. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of N.M. STAT. ANN. § 57-12-1, *et seq.*

116. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of N.Y. GEN. BUS. §349 *et seq.*

117. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of N.D. CENT. CODE § 51-15-01, *et seq.*

118. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of S.C. CODE § 39-5-10, *et seq.*

119. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of S.D. CODIFIED LAWS § 37-24-1, *et seq.*

120. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of TENN. CODE ANN. § 47-18-101, *et seq.*

121. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of VA. CODE ANN. § 59.1-196, *et seq.*

122. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of WASH. REV. CODE § 19.86.010, *et seq.*

123. Defendants have engaged in misleading, unfair or deceptive acts or practices in violation of W. VA. CODE § 46A-6-101 *et seq.*

WHEREFORE, Blue Buffalo demands judgment against Defendants and requests relief as follows:

A. That judgment be entered in Blue Buffalo's favor on each Claim in the Complaint.

B. Orders preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, attorneys, and all others in active concert or participation with them, from:

i. disseminating the Honesty Website (attached as Exhibit H), the Direct E-mails (an example of which is attached as Exhibit M), the Google Ads (examples of which are attached as Exhibit O) and any other advertisements substantially similar thereto;

ii. claiming, whether directly or by implication, in any advertising or promotional communication, that (1) any Blue Buffalo products contain poultry or chicken by-product meal; or (2) any Blue Buffalo products contain corn; or (3) any Blue Buffalo products promoted as "grain-free" contain

grain; or (4) any Blue Buffalo products are manufactured outside the United States; or (5) any Blue Buffalo products are unsafe, less healthy, or otherwise of lower quality by virtue of having been manufactured by third-party manufacturers.

iii. claiming, whether directly or by implication, in any advertising or promotional communication, that Blue Buffalo's advertising or labeling for its pet food products is false or misleading, or that consumers should disbelieve Blue Buffalo's statements concerning its or its competitors' pet food products.

C. An order directing an accounting of all gains, profits, savings and advantages realized by Nestlé Purina from its aforesaid acts of false advertising, unfair competition and other violations of law as detailed above;

D. An order directing Defendants to disseminate, in a form to be approved by the Court, advertising designed to correct the false and misleading claims made by Defendants in their advertising;

E. An award of Blue Buffalo's damages attributable to Defendants' false and deceptive advertising, in an amount to be determined at trial;

F. An award to Blue Buffalo of all profits earned by Nestlé Purina attributable to its false advertising, in an amount to be determined at trial;

G. A declaration that this is an "exceptional case" due to the wilful nature of Defendants' false advertising, and awarding enhanced damages and attorneys' fees to Blue Buffalo pursuant to 15 U.S.C. § 1117, and punitive damages and attorneys' fees to the full extent allowable under state statutory and common law;

H. An order pursuant to Section 34(a) of the Lanham Act, 15 U.S.C. § 1116(a) requiring Defendants to serve upon Blue Buffalo, within thirty (30) days after service on Defendants of an injunction or such extended period as the Court may direct, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;

I. Awarding Blue Buffalo prejudgment and post-judgment interest on any monetary award in this action;

J. An award of the costs and disbursements of this action; and

K. Such other and further relief as the Court may deem just and proper.

Dated: November 18, 2014

Respectfully submitted,

/s/ Steven A. Zalesin

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