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14 Attorneys for Plaintiff

15 UNITED STATES DISTRICT COURT  
 16 SOUTHERN DISTRICT OF CALIFORNIA

<p>17 VLADI ZAKINOV, Individually and on          18 Behalf of All Others Similarly Situated,          19          20 v.          21 BLUE BUFFALO PET PRODUCTS,          22 INC, a Delaware corporation,          23          24 Defendant.</p>	<p>) Case No. <u>'17CV1301 AJB WVG</u>          )          ) <u>CLASS ACTION COMPLAINT FOR:</u>          ) (1) NEGLIGENT          ) MISREPRESENTATION;          ) (2) VIOLATIONS OF THE          ) CALIFORNIA CONSUMER LEGAL          ) REMEDIES ACT;          ) (3) VIOLATIONS OF THE          ) CALIFORNIA FALSE          ) ADVERTISING LAW;          ) (4) VIOLATIONS OF THE          ) CALIFORNIA UNFAIR          ) COMPETITION LAW;          ) (5) BREACH OF EXPRESS          ) WARRANTY;          ) (6) BREACH OF IMPLIED          ) WARRANTY; AND          ) (7) NEGLIGENCE PER SE          ) <u>DEMAND FOR JURY TRIAL</u></p>
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1 Plaintiff Vladi Zakinov ("Plaintiff"), individually and on behalf of all others  
2 similarly situated, by and through his undersigned attorneys, as and for his Class  
3 Action Complaint against defendant Blue Buffalo Pet Products, Inc. ("Blue  
4 Buffalo" or "Defendant"), alleges the following based upon personal knowledge as  
5 to himself and his own actions and investigation by his counsel, including  
6 independent testing of the products, and as to all other matters, respectfully alleges,  
7 upon information and belief, as follows (Plaintiff believes that substantial  
8 evidentiary support will exist for the allegations set forth herein after a reasonable  
9 opportunity for discovery):

10 **NATURE OF THE ACTION**

11 1. Plaintiff, individually and on behalf of all others similarly situated, by  
12 and through his undersigned attorneys, brings this class action against Defendant to  
13 cause Blue Buffalo to disclose the presence of dangerous substances in its pet food  
14 sold throughout the United States and to restore monies to the consumers who  
15 purchased the Contaminated Dog Foods (as defined herein) during the time that  
16 Defendant failed to make such disclosures.

17 2. Defendant manufactures, markets, distributes, and sells Blue  
18 Wilderness Chicken Recipe for Small Breed Adult Dogs; Blue Freedom Grain-  
19 Free Chicken Recipe for Small Breed Adult Dogs; and Blue Basics Grain-Free  
20 Turkey & Potato Recipe for Adult Dogs (the "Contaminated Dog Foods").<sup>1</sup>

21 3. The Contaminated Dog Foods contain material and significant levels  
22 of lead, which is a carcinogen and developmental toxin known to cause health  
23 problems to consumers. Exposure to lead in food builds up over time. Buildup  
24 can and has been scientifically demonstrated to lead to the development of chronic  
25 poisoning, cancer, developmental, and reproductive disorders, as well as serious  
26 injuries to the nervous system, and other organs and body systems.

27 \_\_\_\_\_  
28 <sup>1</sup> Discovery may reveal additional products that also contain unsafe levels of heavy  
metals and Plaintiff reserves his right to include any such products in this action.

1           4. Defendant has advertised and sold the Contaminated Dog Foods  
2 without any label or warning indicating to consumers that these products contain  
3 lead, or these toxins can over time accumulate in the dog's body to the point where  
4 lead poisoning, injury, and disease can occur.

5           5. Defendant's omissions are false, misleading, and reasonably likely to  
6 deceive the public, especially in the light of Defendant's affirmative representations  
7 that imply that the Contaminated Dog Food is healthy and safe. For instance,  
8 Defendant claims that the Contaminated Dog Foods contains "LifeSource Bits®,"  
9 a claimed "precise blend of antioxidants, vitamins and minerals selected by holistic  
10 veterinarians and animal nutritionists that support: Immune system health; Life  
11 stage requirements; [and] Healthy oxidative balance." Moreover, each bag of the  
12 Contaminated Dog Food declares the food is "Healthy" and "Holistic."

13           6. Nothing could be further from the truth, as the Contaminated Dog  
14 Foods' inclusion of an unsafe amount of lead creates a health hazard for dogs.  
15 Notably, this is exactly what happened to Plaintiff's dog. Plaintiff's beloved pet  
16 dog developed a kidney disease and eventual failure after ingesting the  
17 Contaminated Dog Foods. This was a shocking occurrence since the dog was only  
18 approximately four years old. Defendant's statements and omissions are false,  
19 misleading, and reasonably likely to deceive the public, especially in the light of  
20 Defendant's affirmative representations that imply that the Contaminated Dog  
21 Foods are healthy and safe.

22           7. Moreover, a reasonable consumer, such as Plaintiff, would have no  
23 reason to not expect and anticipate that the Contaminated Dog Food is healthy,  
24 holistic, and safe as advertised and marketed by Defendant. Non-disclosure and  
25 concealment of lead in Contaminated Dog Foods plus the claims of a "precise  
26 blend of antioxidants, vitamins, and minerals" to support healthy pets by  
27 Defendant is intended to and does in fact cause consumers to purchase a product  
28 Plaintiff and members of the Class (as defined herein) would not have bought had

1 disclosure been made. As a result of Blue Buffalo's false statements, omissions,  
2 and concealment, Defendant has generated substantial sales of the Contaminated  
3 Dog Foods.

4 8. Plaintiff brings this action on behalf of himself and all other similarly  
5 situated consumers within the United States who purchased the Contaminated Dog  
6 Foods, in order to cause the disclosure of the presence of material and significant  
7 levels of lead in the Contaminated Dog Foods, to correct the false and misleading  
8 perception Defendant has created in the minds of consumers that the Contaminated  
9 Dog Foods are safe and healthy for themselves and their families, and to obtain  
10 redress for those who have purchased the Contaminated Dog Foods.

11 **JURISDICTION AND VENUE**

12 9. This Court has original jurisdiction over all causes of action asserted  
13 herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the  
14 matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest  
15 and costs and more than two-thirds of the Class reside in states other than the states  
16 in which Defendant is a citizen and in which this case is filed, and therefore any  
17 exemptions to jurisdiction under 28 U.S.C. §1332(d) do not apply.

18 10. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because  
19 Plaintiff resides and suffered injury as a result of Defendant's acts in this district,  
20 many of the acts and transactions giving rise to this action occurred in this district,  
21 Defendant conducts substantial business in this district, Defendant has  
22 intentionally availed itself of the laws and markets of this district, and Defendant is  
23 subject to personal jurisdiction in this district.

24 **THE PARTIES**

25 11. Plaintiff is, and at all times relevant hereto has been, a citizen of the  
26 state of California. Plaintiff purchased the Contaminated Dog Foods as the  
27 primary food source for his dog, a four-year-year old cocker spaniel-poodle mix  
28 named "Coco." Coco experienced kidney failure. Plaintiff spent a significant

1 amount of money on the Contaminated Dog Foods and treatments for Coco.  
2 Plaintiff suffered injury as a result of Defendant's actions.

3 12. As the result of Defendant's deceptive conduct as alleged herein,  
4 Plaintiff was injured when he paid the purchase price or a price premium for the  
5 Contaminated Dog Foods that did not deliver what it promised. He paid the above  
6 sum on the assumption that the labeling of the Contaminated Dog Foods was  
7 accurate and that it was safe to feed his dog the food. Plaintiff would not have paid  
8 this money had he known that the Contaminated Dog Foods contained an  
9 excessive degree of lead. Defendant promised Plaintiff pet food that was safe for  
10 his dog to eat but delivered something else entirely, thereby depriving him of the  
11 benefit of his bargain. Damages can be calculated through expert testimony at  
12 trial. Further, should Plaintiff encounter the Contaminated Dog Foods in the  
13 future, he could not rely on the truthfulness of the packaging, absent corrective  
14 changes to the packaging and advertising of the Contaminated Dog Foods.

15 13. Defendant is incorporated in Delaware with its headquarters located at  
16 11 River Road, Wilton, Connecticut. Through its wholly-owned operating  
17 subsidiary, Blue Buffalo Company, Ltd., Defendant operates as a pet food  
18 company in the United States, Canada, Japan, and Mexico. Blue Buffalo develops,  
19 produces, markets, and sells dog and cat food under the BLUE Life Protection  
20 Formula, BLUE Wilderness, BLUE Basics, BLUE Freedom, and BLUE Natural  
21 Veterinary Diet lines. It also produces and sells cat litter under the BLUE  
22 Naturally Fresh line. Blue Buffalo sells its products to retail partners and  
23 distributors in specialty channels, including national pet superstore chains, regional  
24 pet store chains, neighborhood pet stores, farm and feed stores, eCommerce  
25 retailers, military outlets, hardware stores, and veterinary clinics and hospitals.

26 14. Defendant formulates, develops, manufactures, labels, distributes,  
27 markets, advertises, and sells the Contaminated Dog Foods under the Blue Buffalo  
28 dog food products brand name throughout the United States. The advertising for

1 the Contaminated Dog Foods, relied upon by Plaintiff, was prepared and/or  
2 approved by Defendant and its agents, and was disseminated by Defendant and its  
3 agents through advertising and labeling that contained the misrepresentations  
4 alleged herein. The advertising and labeling for the Contaminated Dog Foods was  
5 designed to encourage consumers to purchase the Contaminated Dog Foods and  
6 reasonably misled the reasonable consumer, i.e., Plaintiff and the Class, into  
7 purchasing the Contaminated Dog Foods. Defendant owns, manufactures, and  
8 distributes the Contaminated Dog Foods, and created and/or authorized the  
9 unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising  
10 for the Contaminated Dog Foods.

11 15. The Contaminated Dog Foods, at a minimum, include:

12 (a) Blue Wilderness Chicken Recipe for Small Breed Adult Dogs:



25 (b) Blue Freedom Grain-Free Chicken Recipe for Small Breed  
26 Adult Dogs:  
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(c) Blue Basics Grain-Free Turkey & Potato Recipe for Adult Dogs:





1 **Blue Buffalo Falsely Advertises the Contaminated Dog Food as Healthy While**  
2 **Omitting Any Mention of Lead**

3 21. Defendant formulates, develops, manufactures, labels, distributes,  
4 markets, advertises, and sells its extensive Blue Buffalo lines of dry and wet pet  
5 food products in California and across the United States.

6 22. Based on Defendant's decision to advertise, label, and market its  
7 Contaminated Dog Foods as healthy and safe, it had a duty to ensure that the these  
8 statements were true. As such, Defendant knew or should have known that the  
9 Contaminated Dog Food included higher levels of lead.

10 23. The Contaminated Dog Foods are available at numerous retail and  
11 online outlets.

12 24. The Contaminated Dog Foods are widely advertised.

13 25. The official Blue Buffalo website displays the Contaminated Dog  
14 Foods' descriptions and full lists of ingredients for the Contaminated Dog Foods.  
15 The Defendant's webpages again and again repeat the misleading statements about  
16 the benefits of the Contaminated Dog Foods described above, without any mention  
17 of the lead they contain.

18 26. As a result of Defendant's omissions, a reasonable consumer would  
19 have no reason to suspect the presence of lead in the Contaminated Dog Foods  
20 without conducting his or her own scientific tests, or reviewing third party  
21 scientific testing of these products.

22 27. That is exactly what Plaintiff did here. Plaintiff's independent lab  
23 testing of the Contaminated Dog Foods found that Blue Wilderness Chicken  
24 Recipe for Small Breed Adult Dogs contains 200 ppb of lead; Blue Freedom  
25 Grain-Free Chicken Recipe for Small Breed Adult Dogs contains 140 ppb of lead;  
26 and Blue Basics Grain-Free Turkey & Potato Recipe for Adult Dogs contains a  
27 staggering 840 ppb of lead.

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1                   **DEFENDANT'S KNOWLEDGE AND NOTICE OF ITS BREACHES**  
2                   **OF ITS EXPRESS AND IMPLIED WARRANTIES**

3           34. Defendant had sufficient notice of its breaches of its express and  
4 implied warranties. Defendant had, and has, exclusive knowledge of the physical  
5 and chemical make-up of the Contaminated Dog Foods.

6                   **PRIVITY EXISTS WITH PLAINTIFF AND THE PROPOSED CLASS**

7           35. Defendant knew that consumers such as Plaintiff and the proposed  
8 Class would be the end purchasers of the Contaminated Dog Foods and the target  
9 of its advertising and statements.

10          36. Defendant intended that its statements and representations would be  
11 considered by the end purchasers of the Contaminated Dog Foods, including  
12 Plaintiff and the proposed Class.

13          37. Defendant directly marketed to Plaintiff and the proposed Class  
14 through statements on its website, labeling, advertising, and packaging.

15          38. Plaintiff and the proposed Class are the intended beneficiaries of the  
16 expressed and implied warranties.

17                   **CLASS ACTION ALLEGATIONS**

18          39. Plaintiff brings this action individually and on behalf of the following  
19 class pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil  
20 Procedure:

21                   All persons in the United States citizens who, from July 1, 2013 to the  
22 present, purchased the Contaminated Dog Foods for household use,  
23 and not for resale (the "Class").

24          40. In addition, Plaintiff brings this action individually and on behalf of  
25 the following subclass pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal  
26 Rules of Civil Procedure:

27                   All persons in California who, from July 1, 2013 to the present,  
28 purchased the Contaminated Dog Foods for household use, and not  
for resale (the "Subclass").

1           41. Excluded from the Class are the Defendant, any of its parent  
2 companies, subsidiaries, and/or affiliates, officers, directors, legal representatives,  
3 employees, co-conspirators, all governmental entities, and any judge, justice, or  
4 judicial officer presiding over this matter.

5           42. This action is brought and may be properly maintained as a class  
6 action. There is a well-defined community of interests in this litigation and the  
7 members of the Class are easily ascertainable.

8           43. The members in the proposed Class are so numerous that individual  
9 joinder of all members is impracticable, and the disposition of the claims of all  
10 Class members in a single action will provide substantial benefits to the parties and  
11 Court.

12           44. Questions of law and fact common to Plaintiff and the Class and  
13 Subclass include, but are not limited to, the following:

- 14           (a) whether Defendant owed a duty of care to the Class;
- 15           (b) whether Defendant knew or should have known that the  
16 Contaminated Dog Foods contained higher levels of lead;
- 17           (c) whether Defendant represented and continues to represent that  
18 the Contaminated Dog Foods are healthy and safe for consumption;
- 19           (d) whether Defendant failed to state that the Contaminated Dog  
20 Foods contained lead;
- 21           (e) whether Defendant's representations in advertising and/or  
22 labeling are false, deceptive, and misleading;
- 23           (f) whether those representations are likely to deceive a reasonable  
24 consumer;
- 25           (g) whether Defendant had knowledge that those representations  
26 were false, deceptive, and misleading;
- 27
- 28

1 (h) whether Defendant continues to disseminate those  
2 representations despite knowledge that the representations are false, deceptive, and  
3 misleading;

4 (i) whether a representation that a product is healthy and safe for  
5 consumption and do not contain lead is material to a reasonable consumer;

6 (j) whether Defendant's representations and claims that the  
7 Contaminated Dog Foods are healthy and safe for consumption and do not contain  
8 lead are likely to mislead, deceive, confuse, or confound consumers acting  
9 reasonably;

10 (k) whether Defendant violated California Business & Professions  
11 Code sections 17200, *et seq.*;

12 (l) whether Defendant violated California Business & Professions  
13 Code sections 17500, *et seq.*;

14 (m) whether Defendant violated California Civil Code sections  
15 1750, *et seq.*;

16 (n) whether Defendant was unjustly enriched;

17 (o) whether Plaintiff and the members of the Class are entitled to  
18 actual, statutory, and punitive damages; and

19 (p) whether Plaintiff and members of the Class are entitled to  
20 declaratory and injunctive relief.

21 45. Defendant engaged in a common course of conduct giving rise to the  
22 legal rights sought to be enforced by Plaintiff individually and on behalf of the  
23 other members of the Class. Identical statutory violations and business practices  
24 and harms are involved. Individual questions, if any, are not prevalent in  
25 comparison to the numerous common questions that dominate this action.

26 46. Plaintiff's claims are typical of Class members' claims in that they are  
27 based on the same underlying facts, events, and circumstances relating to  
28 Defendant's conduct.





1 (c) California Civil Code section 1770(a)(9), by advertising the  
2 Contaminated Dog Foods with intent not to sell them as advertised; and

3 (d) California Civil Code section 1770(a)(16), by representing that  
4 the Contaminated Dog Foods have been supplied in accordance with previous  
5 representations when they have not.

6 64. As a direct and proximate result of these violations, Plaintiff and the  
7 Class have been harmed, and that harm will continue unless Defendant is enjoined  
8 from using the misleading marketing described herein in any manner in connection  
9 with the advertising and sale of the Contaminated Dog Foods.

10 65. On June 23, 2017, counsel for Plaintiff and the proposed Class sent  
11 Defendant written notice (via U.S. certified mail, return receipt requested) that its  
12 conduct is in violation of the CLRA.

13 66. Plaintiff seeks an award of attorney's fees pursuant to, inter alia,  
14 California Civil Code section 1780(e) and California Code of Civil Procedure  
15 section 1021.5.

16 **COUNT III**

17 **(Violations of California False Advertising Law, California Business  
18 & Professions Code §§17500, *Et Seq.*, Against Defendant  
19 on Behalf of the Subclass)**

20 67. Plaintiff incorporates by reference and realleges each and every  
21 allegation contained above, as though fully set forth herein.

22 68. California's False Advertising Law prohibits any statement in  
23 connection with the sale of goods "which is untrue or misleading." Cal. Bus. &  
24 Prof. Code §17500.

25 69. As set forth herein, Defendant's claims that the Contaminated Dog  
26 Foods are healthy and safe for consumption are literally false and likely to deceive  
27 the public.

28



- 1           • The CLRA, California Business & Professions Code sections 1750, *et*  
2 *seq.*; and  
3           • The False Advertising Law, California Business & Professions Code  
4 sections 17500, *et seq.*

5 **Unfair**

6           78. Defendant's conduct with respect to the labeling, advertising,  
7 marketing, and sale of the Contaminated Dog Foods is unfair because Defendant's  
8 conduct was immoral, unethical, unscrupulous, or substantially injurious to  
9 consumers and the utility of its conduct, if any, does not outweigh the gravity of  
10 the harm to its victims.

11           79. Defendant's conduct with respect to the labeling, advertising,  
12 marketing, and sale of the Contaminated Dog Foods is also unfair because it  
13 violates public policy as declared by specific constitutional, statutory, or regulatory  
14 provisions, including, but not limited to, the False Advertising Law and the CLRA.

15           80. Defendant's conduct with respect to the labeling, advertising,  
16 marketing, and sale of the Contaminated Dog Foods is also unfair because the  
17 consumer injury is substantial, not outweighed by benefits to consumers or  
18 competition, and not one consumers, themselves, can reasonably avoid.

19           81. In accordance with California Business & Professions Code section  
20 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct  
21 business through fraudulent or unlawful acts and practices and to commence a  
22 corrective advertising campaign. Defendant's conduct is ongoing and continuing,  
23 such that prospective injunctive relief is necessary.

24           82. On behalf of himself and the Subclass, Plaintiff also seeks an order for  
25 the restitution of all monies from the sale the Contaminated Dog Foods, which  
26 were unjustly acquired through acts of fraudulent, unfair, or unlawful competition.

27

28

**COUNT V**

**(Breach of Express Warranty, California Commercial Code §2313, Against Defendant on Behalf of the Subclass)**

83. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

84. As set forth herein, Defendant made express representations to Plaintiff and the Subclass that the Contaminated Dog Foods were healthy and safe for consumption.

85. These promises became part of the basis of the bargain between the parties and thus constituted express warranties.

86. There was a sale of goods from Defendant to Plaintiff and the Subclass members.

87. On the basis of these express warranties, Defendant sold to Plaintiff and the Subclass the Contaminated Dog Foods.

88. Defendant knowingly breached the express warranties by including lead in the Contaminated Dog Foods.

89. Defendant was on notice of this breach as it was aware of the included lead in the Contaminated Dog Foods.

90. Privity exists because Defendant expressly warranted to Plaintiff and the Subclass that the Contaminated Dog Foods was healthy and safe for consumption.

91. Plaintiff and the Subclass reasonably relied on the express warranties by Defendant.

92. As a result of Defendant's breaches of its express warranties, Plaintiff and the Subclass sustained damages as they paid money for the Contaminated Dog Foods that were not what Defendant represented.

93. Plaintiff, on behalf of himself and the Subclass, seeks actual damages for Defendant's breach of warranty.

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**COUNT VI**

**(Breach of Implied Warranty, California Commercial Code §2314, Against Defendant on Behalf of the Subclass)**

94. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

95. As set forth herein, Defendant made affirmations of fact on the Contaminated Dog Foods' labels to Plaintiff and the Subclass that the Contaminated Dog Foods were healthy and safe for consumption and did not contain lead.

96. The Contaminated Dog Foods did not conform to these affirmations and promises as they contained lead at unsafe levels.

97. These promises became part of the basis of the bargain between the parties and thus constituted express warranties.

98. Defendant is a merchant engaging in the sale of goods to Plaintiff and the Subclass.

99. There was a sale of goods from Defendant to Plaintiff and the Subclass members.

100. Defendant breached the implied warranties by selling the Contaminated Dog Foods that failed to conform to the promises or affirmations of fact made on the container or label as each product contained lead.

101. Defendant was on notice of this breach as it was aware of the lead included in the Contaminated Dog Foods.

102. Privity exists because Defendant impliedly warranted to Plaintiff and the Subclass through the advertising, marketing, and labeling that the Contaminated Dog Foods were healthy and safe for consumption and by failing to make any mention of lead in the Contaminated Dog Foods that the no lead was contained in the products.





1 acquired by means of any act or practice declared by this Court to be an unlawful,  
2 unfair, or fraudulent business act or practice, untrue or misleading advertising, or a  
3 violation of the Unfair Competition Law, False Advertising Law, or CLRA, plus  
4 pre- and post-judgment interest thereon;

5 G. An order requiring Defendant to disgorge or return all monies,  
6 revenues, and profits obtained by means of any wrongful or unlawful act or  
7 practice;

8 H. An order requiring Defendant to pay all actual and statutory damages  
9 permitted under the counts alleged herein;

10 I. An order requiring Defendant to pay punitive damages on any count  
11 so allowable;

12 J. An order awarding attorneys' fees and costs to Plaintiff, the Class and  
13 the Subclass; and

14 K. An order providing for all other such equitable relief as may be just  
15 and proper.

16 **JURY DEMAND**

17 Plaintiff hereby demands a trial by jury on all issues so triable.

18 Dated: June 26, 2017

19 ROBBINS ARROYO LLP  
20 BRIAN J. ROBBINS  
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