

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Victoria Lyman, individually and on behalf)	Civil Action No. 5:15-2870-JMC
of all others similarly situated,)	
)	
Plaintiffs,)	
)	<u>Notice of Removal</u>
vs.)	
)	
The Blue Buffalo Company Ltd.,)	
)	
Defendant.)	
)	

NOTICE OF REMOVAL

Defendant, Blue Buffalo Company, Ltd. (“Blue Buffalo”), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removes to this Court the Class Action Complaint (“Complaint”) filed by the plaintiff, Victoria Lyman, individually and on behalf of all others similarly situated (“Plaintiff”), in the matter entitled “Victoria Lyman, individually and on behalf of all others similarly situated v. The Blue Buffalo Company Ltd.,” C.A. No. 2015-CP-38-00755, in the Court of Common Pleas, First Judicial District, County of Orangeburg, State of South Carolina (hereinafter referred to as the “State Court Action”). In support of this Notice of Removal, Blue Buffalo respectfully represents as follows:

1. On or about June 22, 2015, a Class Action Complaint was filed with the Clerk of Court for the Court of Common Pleas, First Judicial District, County of Orangeburg, State of South Carolina, bearing C.A. No. 2015-CP-38-00755 on the docket of said Court, which is within the United States District Court for the District of South Carolina, Orangeburg Division.¹

2. This action is one of several related putative class actions filed in multiple jurisdictions against Blue Buffalo, the others of which have been transferred to the United States

¹ See Class Action Complaint attached as Exhibit A.

District Court of the Eastern District of Missouri for “coordinated or consolidated pretrial proceedings.” *In re Blue Buffalo Co., Ltd., Mktg. & Sales Practices Litig.*, ___ F. Supp. 3d. ___, 2014 WL 5314606 (J.P.M.L. 2014).

I. THE PLAINTIFF’S ALLEGATIONS

3. In the Complaint, the Plaintiff alleges that Blue Buffalo “sells pet food for household pets, and has worked to build a brand targeted at ingredient-conscious pet owners”² and that Blue Buffalo’s “pet food is marketed, advertised, and sold by Defendant [Blue Buffalo] with material misrepresentations regarding the ingredients present in its products.”³

4. In the Complaint, the Plaintiff alleges that the “most important misrepresentation at issue, which is emphasized heavily in Defendant’s marketing and advertising, is a false claim that Defendant’s pet food contains ‘NO Chicken/Poultry By-Product Meals’”⁴ as well as other misrepresentations that Blue Buffalo’s “pet food contains no corn, no other grains, and no artificial preservatives, and that Defendant’s pet food contains superior nutrition as compared to those of competitor products.”⁵

5. In the Complaint, the Plaintiff alleges that Blue Buffalo’s “representation of the ingredients in its pet food are false, deceptive, misleading and materially incorrect because Defendant’s pet food does contain significant amounts of chicken/poultry by-product meals, corn other grains, and artificial preservatives, and does not have any superior nutritional value as compared to competitor products.”⁶

6. In the Complaint, the Plaintiff claims that Blue Buffalo “has violated the common law of this state, various statutes of this State, including, but not limited to The South Carolina

² See Complaint at ¶ 14.

³ See Complaint at ¶ 5.

⁴ See Complaint at ¶ 6.

⁵ See Complaint at ¶ 7.

⁶ See Complaint at ¶ 9.

Unfair Trade Practices Act (UTPA), S.C. Code Ann. § 39-5-10 and Defendant's deceptive conduct has resulted in Defendant becoming unjustly enriched to the detriment of the Plaintiff and the Class."⁷

II. THE PLAINTIFF'S CLASS ACTION ALLEGATIONS

7. According to the Complaint, "[t]his is a class action on behalf of all persons and entities statewide in the State of South Carolina who purchased Defendant's pet food" and it filed pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.⁸

8. Although the Plaintiff states that she seeks certification of a class action for the class for all counts "except those counts based on the S.C. Unfair Trade Practices Act, 39-5-10, *et seq.*,"⁹ she does seek certification of a class action for the Unfair Trade Practices claim.¹⁰ Consequently, it appears that the Plaintiff is seeking class certification for **all** claims in her Complaint.

9. In the Complaint, the Plaintiff asserts that although the precise number of putative class members is unknown "there are thousands of Class Members based upon the fact that the pet food is sold in several retail outlets in South Carolina...."¹¹

III. REMOVAL IS PROPER UNDER CAFA

10. The Class Action Fairness Act ("CAFA") grants district courts subject matter jurisdiction over any civil action: (1) which is a "class action," (2) in which the matter in controversy exceeds \$5,000,000 exclusive of interest and costs, (3) involving a proposed class of

⁷ See Complaint at ¶ 10.

⁸ See Complaint at ¶ 3. See also Complaint at ¶ 25.

⁹ See Complaint at ¶ 26.

¹⁰ See the title of the Plaintiff's Third Cause of Action located just prior to ¶¶ 55-59.

¹¹ See Complaint at ¶ 28.

at least 100 members, and (4) where “any member of a class of plaintiffs is a citizen of a State different from any defendant.”¹² Each of these requirements is satisfied here.

A. This Case is a Class Action.

11. CAFA defines a “class action” as

Any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.¹³

12. In the Complaint, the Plaintiff purports to bring this matter as a class action on behalf of all persons and entities statewide in the State of South Carolina who purchased Defendant’s pet food” and it is filed pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.¹⁴ Accordingly, the Plaintiff clearly seeks to bring this case as a “class action” within the meaning of CAFA.

B. This Case Satisfies CAFA’s Minimal Diversity Requirement.

13. In the Complaint, the named Plaintiff states she is a citizen of the State of South Carolina.¹⁵

14. In the Complaint, the Plaintiff seeks a putative class of citizens of South Carolina.¹⁶

15. In the Complaint, the Plaintiff states that Blue Buffalo “is a corporation existing pursuant to the laws of a state other than South Carolina and having its principal place of

¹² See 28 U.S.C. §1332(d).

¹³ See 28 U.S.C. §1332(d)(1)(B).

¹⁴ See Complaint at ¶ 3. See also Complaint at ¶ 25.

¹⁵ See Complaint at ¶ 1.

¹⁶ See Complaint at ¶ 3.

business in a state other than South Carolina.¹⁷ Blue Buffalo is incorporated under the laws of the State of Delaware, and its principal place of business is located in the State of Connecticut.¹⁸

16. At the time of the commencement of the State Court Action and now, Blue Buffalo is a corporation formed under the laws of the State of Delaware, and its principal place of business is located in the State of Connecticut.¹⁹ Thus, for the purposes of diversity jurisdiction, Blue Buffalo is a citizen of the states of Delaware and Connecticut,²⁰ and it is not a citizen of South Carolina.

17. CAFA's minimal diversity requirement is satisfied since "any member of a class of plaintiffs is a citizen of a State different from any Defendant."²¹ The only defendant, Blue Buffalo, is a citizen of a state different from any member of the class of plaintiffs.

C. The Proposed Class Has More than 100 Members.

18. CAFA requires that "the number of members of all proposed plaintiff classes in the aggregate" be greater than 100.²²

19. Since the Plaintiff asserts that "there are thousands of Class Members"²³ CAFA's numerosity requirement is satisfied.

D. The Amount in Controversy Exceeds \$5 Million in the Aggregate.²⁴

20. In the eight counts of the Complaint, the Plaintiff claims that Blue Buffalo has committed fraud and misrepresentation,²⁵ negligent misrepresentation,²⁶ and unfair trade

¹⁷ See Complaint at ¶ 2.

¹⁸ See the Declaration of Thomas Donovan at ¶ 6, which is attached as Exhibit B.

¹⁹ *Id.*

²⁰ See 28 U.S.C. §1332(c)(1).

²¹ See 28 U.S.C. §1332(d)(2)(A).

²² See 28 U.S.C. §1332(d)(5)(B).

²³ See Complaint at ¶ 28.

²⁴ Blue Buffalo denies that class certification is appropriate, and it denies that Plaintiff or any putative class members are entitled to any remedy or relief in this Action. However, the propriety of class certification and the merits of Plaintiff's claims (either individually or on a class-wide basis) are not subject to scrutiny at the removal stage.

practices;²⁷ has retained benefits unjustly and inequitably;²⁸ has acted negligently, grossly negligent, and recklessly;²⁹ has breached its contract, implied contract, and/or quasi-contract;³⁰ has breached its contract, implied contract, and/or quasi-contract accompanied by a fraudulent act;³¹ and Blue Buffalo should be enjoined from continuing these practices.³²

21. In the Complaint, for the fraud, misrepresentation, and negligent misrepresentation claims the Plaintiff seeks an unspecified amount of damages against Blue Buffalo “both actual, in an amount necessary to compensate Plaintiffs fully for all losses suffered herein, and punitive, in an amount sufficient to impress upon the Defendant the seriousness of its conduct and to deter such similar conduct in the future.”³³ In connection with the unfair trade practices claim, the Plaintiff is seeking treble damages and attorney’s fees.³⁴ With regard to the negligence and recklessness claim, the Plaintiff is seeking the difference in the price between Blue Buffalo’s pet food and the price of lesser or cheaper pet food, as well as other damages.³⁵ The Plaintiff does not describe the damages she seeks for the breach of contract claims.

22. In the claim for unjust enrichment, the Plaintiff asserts that Blue Buffalo “accepted or retained the benefits conferred by Plaintiff and Class despite Defendant’s deceptive advertising, material misrepresentations, omissions of material fact and/or fraudulent conduct

²⁵ See Complaint at ¶¶ 36-46.

²⁶ See Complaint at ¶¶ 47-54.

²⁷ See Complaint at ¶¶ 55-59.

²⁸ See Complaint at ¶¶ 60-65.

²⁹ See Complaint at ¶¶ 66-71.

³⁰ See Complaint at ¶¶ 72-76.

³¹ See Complaint at ¶¶ 77-81.

³² See Complaint at ¶¶ 82-85.

³³ See Complaint at ¶¶ 46 and 54.

³⁴ See Complaint at ¶ 59.

³⁵ See Complaint at ¶ 71.

with regard to the ingredients in, and quality of, the pet food.”³⁶ In other words, the Plaintiff is seeking disgorgement of all revenue from the sale of Blue Buffalo products in South Carolina.

23. The Plaintiff’s attempt to limit the sum or value of the claims by stating “Plaintiff is not claiming more than \$5,000,000 in total damages”³⁷ is without impact. *See Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 185 L. Ed. 2d 439 (2013).

24. The Plaintiff has not limited the sum or value of the claims to any time period. In other words, it appears that the Plaintiff has not placed any time period on how far in the past the Plaintiff believes that she is entitled to seek an order of restitution for the disgorgement of all benefits conferred upon Blue Buffalo by the Plaintiff and the putative class.³⁸

25. A three-year statute of limitations applies of each of Plaintiff’s claims. *See* S.C. Code Ann. § 15-3-530(1), (5), (7); S.C. Code Ann. § 39-5-150. Accordingly, the putative class period dates back to June 22, 2012.

26. As set forth in the accompanying Declaration of Thomas Donovan (“Donovan Decl.”),³⁹ Blue Buffalo’s Senior Vice President of Finance, Blue Buffalo has reviewed its sales records and confirmed that Blue Buffalo sold more than \$5,000,000 of the Blue Buffalo pet food products referenced in the Complaint to its retail partners in South Carolina from January 01, 2013 through today.⁴⁰ Additionally, those sales records reflect that Blue Buffalo’s retail partners in South Carolina sold more than \$5,000,000 of the Blue Buffalo pet food products referenced in the Complaint to consumers in South Carolina from January 01, 2013 through today.⁴¹

27. Accordingly, the amount in controversy exceeds \$5,000,000.

³⁶ *See* Complaint at ¶ 62.

³⁷ *See* Complaint at ¶ 12.

³⁸ *See* Complaint at ¶¶ 60-65.

³⁹ *See* Exhibit B.

⁴⁰ *See* Donovan Decl. at ¶ 4.

⁴¹ *See* Donovan Decl. at ¶ 5.

E. Blue Buffalo Has Satisfied All Procedural Requirements for Removal under 28 U.S.C. §1446.

28. Blue Buffalo was not been served yet. Thus, removal is timely under 28 U.S.C. § 1446(b) as less than thirty days have passed from the date of service of the citation and Complaint on Blue Buffalo.

29. Pursuant to 28 U.S.C. § 1446(a), a copy of all pleadings and orders in the state court record, which includes “all process, pleadings and orders served upon” Blue Buffalo are attached as Exhibit A.

30. Promptly upon filing this notice of removal, written notice thereof will be given to all adverse parties and a copy of this notice of removal will be filed with the clerk of the aforesaid state court to effect the removal of this civil action to this Honorable Court as provided by law.

IV. CONCLUSION

31. Blue Buffalo has established the necessary jurisdictional elements to assert federal jurisdiction under CAFA. For this reason, this Court has original jurisdiction over Plaintiff’s claims by virtue of CAFA, and this case is removable to this Court.

34. Blue Buffalo submits this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff, and without conceding that Plaintiff has pleaded claims upon which relief may be granted, that class certification is appropriate, or that Plaintiff or any putative class members are entitled to any remedy or relief in this Action.

WHEREFORE, Blue Buffalo Company, Ltd. prays that this Notice of Removal be accepted as good and sufficient, that the aforesaid Original Complaint for Damages Complaint be removed from state court to this Honorable Court for determination as provided by law, and that this Court enter such orders and issue such process as may be proper to bring before it copies

of all records and proceedings in said civil action from said state court, and thereupon proceed with this civil action as if it had originally been commenced in this Court.

RESPECTFULLY SUBMITTED,

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