

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

IN RE: BLUE BUFFALO)
COMPANY, LTD. MARKETING)
AND SALES PRACTICES) Case No.: 4:14 MD 2562 RWS
LITIGATION)
)
)

AFFIDAVIT OF MICHAEL DAVID PAKTER

1. I, MICHAEL DAVID PAKTER, do solemnly swear upon oath if called to testify in the above captioned matter I would be able to attest to the following facts based on my personal knowledge and belief. Under penalty of perjury as provided in 28 U.S.C. 1746, the undersigned affiant declares and certifies that the following is true and correct.

QUALIFICATIONS

2. As described in additional detail in this Affidavit and my accompanying professional profile, I have more than 35 years of experience in accounting, forensic accounting, financial analysis, financial forensics, business economics, and fraud examinations and investigations, including more than 15 years of experience in economic damages and business valuations.

3. I am a Certified Public Accountant (“CPA”), registered and licensed in the State of Illinois. The American Institute of Certified Public Accountants (“AICPA”) has recognized me as additionally Certified in Financial Forensics (“CFF”) and Management Accounting (“CGMA”).
4. I earned the National Association of Certified Valuators and Analysts (“NACVA”) Certified Valuation Analyst (“CVA”) designation having completed its business valuation specialty program and its Master Analyst in Financial Forensics (“MAFF”) designation having completed its business and intellectual property damages specialty program.
5. The Association of Insolvency and Restructuring Advisors (“AIRA”) has awarded me its Certified Insolvency and Restructuring Advisor (“CIRA”) certificate, recognizing knowledge and proficiency related to situations involving distressed and/or insolvent entities, and its Certification in Distressed Business Valuation (“CDBV”), a certification uniquely and specifically formulated for the performance of services encompassing valuation of underperforming assets, including distressed and/or bankrupt companies.
6. I am a Certified Fraud Examiner (“CFE”), which credentials denote proven expertise in fraud prevention, detection and deterrence. I earned a Chartered Accountant (“CA”) credential and my undergraduate academic education was in accounting, auditing, commerce and business economics.

7. I have participated in public hearings and alternative dispute resolutions, submitted expert reports in several jurisdictions and testified in arbitrations, regulatory proceedings and State, Federal and Bankruptcy Courts. Courts and arbitral bodies have recognized me as an expert in accounting, financial analysis, financial forensics, economic damages, business valuations and business economics.
8. I am a Managing Member of Gould & Pakter Associates, LLC (“G&P”), a certified public accounting firm, located at 205 West Wacker Drive, Suite 918, Chicago, IL. 60606. G&P’s Managing Members are members of the Forensic and Valuation Services Section of the American Institute of Certified Public Accountants (“AICPA”).

SCOPE OF ENGAGEMENT

9. Gould & Pakter Associates, LLC (“G&P”) and I were engaged by KamberLaw, LLC in its capacity as Class Counsel and Chair of the Plaintiff’s Executive Committee (“Counsel”) on behalf of Plaintiffs Alexia Keil, Nick Hutchinson, Rachael D. Stone, Maja Mackenzie, Jonathon Fisher, David Delre, Beth Cox, Lori Canale, and Derek McCusker, and all other similarly situated Plaintiffs, in the matter of In Re: Blue Buffalo Marketing and Sales Practices Litigation (collectively referred to as “Plaintiffs”).

10. Counsel engaged me to opine (i) on the relationship between the proposed settlement payment of \$32 million and the maximum award that could be achieved at trial; and (ii) the relationship between the recoveries of individual class members who submitted claims in the claims process with the maximum recovery they could have reasonably obtained after trial if the maximum award could be achieved at trial.
11. Under my supervision and direction, G&P professional associates, assisted me with the procedures listed in this Affidavit.

BACKGROUND AND ASSUMPTIONS REGARDING DAMAGE ANALYSIS

12. Counsel provided the following information and/or documentation, which I reviewed and relied on in preparing this Affidavit:
 - a. First Amended Consolidated Class Action Complaint and other documents found on the Docket;
 - b. The Stipulation of Settlement, including all exhibits;
 - c. Memorandum In Support Of Motion For Preliminary Approval Of Class Settlement, Certification Of Settlement Class, And Permission To Disseminate Class Notice;
 - d. Documents containing information that I requested that had been produced in the litigation by Defendant and/or third parties that had been designated as confidential.

In addition, I had access to Counsel who provided all information that I required to perform my analysis. Where I relied upon information provided by Counsel I specifically reference that fact.

13. Based on my review of the Complaint, review of source documents and/or representations from Counsel, it is my understanding and I have assumed that:
- a. Blue Buffalo is a publicly traded company.
 - b. Blue Buffalo purported to sell pet food that comported with all aspects of the “True Blue Promise” and claims made on its packaging and website.
 - c. Blue Buffalo was a premium brand of pet food and charged a premium for its food, in part as a result of its True Blue Promise.
 - d. The litigation centered on the veracity and accuracy of the True Blue Buffalo Promise and, specifically, whether Blue Buffalo Pet Foods contained chicken byproduct meal in violation of the True Blue Promise that its chicken formula products contained only chicken meal with no byproduct meal. I understand that this action involves any and all claims that may arise from the True Blue Promise and Blue Buffalo packaging.
 - e. Testing by a Blue Buffalo Competitor found chicken byproduct in certain Blue Buffalo products. In addition, independent testing performed by Plaintiffs found chicken byproduct in certain Blue Buffalo products.

- f. Consumers filed class actions against Blue Buffalo regarding the violations of the True Blue Promise. These actions were consolidated in the above-captioned action and Plaintiffs filed a single Consolidated Class Action Complaint and a subsequent First Amended Consolidated Class Action Complaint asserting claims against Blue Buffalo.
- g. Class members suffered damages as a result of Blue Buffalo's deceptive and/or unfair practices.
- h. Blue Buffalo has agreed to pay a settlement of \$32 million while denying liability. This settlement amount will pay all settlement related expenses including benefits to Class Members, notice and administration costs, and Plaintiffs' attorneys' fees and expenses.
- i. Counsel has asked me to assume that the attorneys' fees and settlement related expenses, including notice and administration costs would be in the same proportion to the total recovery at trial as it would be for settlement.
- j. Under the terms of the settlement, Blue Buffalo will provide both monetary and non-monetary benefits to the Settlement Class. I make no effort herein to value the injunctive relief.
- k. Settlement Class Members must complete a Claim Form, available online from the website petfoodsettlement.com, in order to obtain compensation.

- l. Pursuant to the terms of the Stipulation of Settlement and the Notice, Settlement Class Members who do not provide a valid proof of purchase may receive back an estimated 10% of their purchase price in the form of a cash payment in increments of \$5.00, up to a total amount of purchases of \$100.00, .i.e., \$10.00. Counsel has represented to me that the claims administrator has estimated that the actual claims experience will result in a payment of at least 100% of the purchase price for up to \$100.00 of purchases for Settlement Class members who do not have a valid proof of purchase
 - m. Also pursuant to the Stipulation of Settlement and the Notice, Settlement Class Members who do provide a valid proof of purchase may receive back an estimated 10% of their purchase price in the form of a cash payment in increments of \$5.00, up to a total amount of purchases of \$2,000.00, i.e. \$200.00. Counsel has represented to me that the claims administrator has estimated that the actual claims experience will result in a payment of at least 100% of the purchase price for up to \$2,000.00 of purchases for Settlement Class members who do have a valid proof of purchase
14. Counsel has represented to me that the following assumptions are true based on documents and/or their own analysis:
 - a. The estimated maximum price premium for all aspects of the True Blue Promise as a whole was 30%;

- b. The estimated maximum price premium for the Blue Buffalo “no chicken byproduct meal” representation was approximately one-third of the premium for the True Blue Promise, thus accounting for approximately 10% of the cost of Blue Buffalo pet food. I am informed that Blue Buffalo disputes that figure and would argue that any premium associated with the “no chicken byproduct meal” claim was less than 10%. However, Counsel instructed me not to further discount the estimated premium for purposes of my analysis;
- c. Counsel asked me to assume that the estimated total gross sales of the products that were tested either by third-parties or Plaintiffs and found to contain chicken by-products were \$1.5 billion. I am informed that Blue Buffalo disputes that figure and would argue that estimated gross sales of such products were less than \$1.5 billion. However, Counsel instructed me not to further discount the estimated total gross sales for purposes of my analysis;
- d. If the case were to go to trial and result in a verdict in favor of Plaintiffs, it is likely that such verdict would be appealed by Blue Buffalo. Accordingly, the estimated date of payment after verdict and appeal would be no earlier than June 1, 2018.

- e. Because of the time entailed by the claims administration process, the actual distributions to class members would take no less than an additional four months, meaning class members would likely not receive their distribution of proceeds after trial until on or after October 1, 2018.
- f. The distribution of monies that may be obtained after trial would have to be through a claims process and that such claims process would likely be similar if not identical to the one approved by the Court in preliminary approval and detailed in the Order of Preliminary Approval.

FINDINGS AS TO AMOUNT OF TOTAL RECOVERY

- 15. Based on the information and/or documentation provided to me, I reached the conclusions and findings listed in this Affidavit.
- 16. In applying the 10% price premium on the “no chicken byproduct meal” representation to the total sales, the total price premium on the chicken byproduct representation is estimated to be \$150 million. The \$150 million reflects the total damages available to the Class after a successful verdict after a full trial and any appeals.
- 17. The damage analysis does not require me to isolate the elements of settlement-related expenses since I assumed that they are likely to be in the same proportion to the total amount recovered whether by settlement or trial and therefore I do not need to subtract such expenses from either the recovery at settlement or the potential settlement at trial since it has no material impact on the analysis.

18. I was not provided any percentage that reflected Blue Buffalo's ability to pay and I took into account the ability of Blue Buffalo to pay in my selection of the appropriate discount rate below.

19. I selected a 12% discount rate to appropriately represent the time value of money through the expected date of all appeals and the claims administration process in this case of twenty-eight months.

20. After applying the 12% discount rate to the \$150 million in ¶16, the present value of a full verdict at the end of a trial, all appeals, and the claims administration process, is approximately \$115 million. Stated another way, in these circumstances, a rational economic actor who had a 100% chance of recovery at trial would take \$115 million today versus \$150 million at the end of a twenty-eight month period at the end of a trial and following completion of both the appeal and claims administration process.

21. Accordingly, the \$32 million settlement amount as a percentage of a maximum possible full verdict at trial of \$115 million is 27% (\$32 million/\$115 million).

FINDINGS AS TO AMOUNT OF RECOVERY FOR EACH CLASS MEMBER

22. Based on the information and/or documentation provided to me, I reached the conclusions and findings listed in this Affidavit.

23. I applied the above-analysis demonstrating a maximum undiscounted recovery of \$150 million after trial to the amount that an individual class member (which I understand to be anyone who purchased the Blue Buffalo pet food products identified in the Stipulation of Settlement) could recover.
24. For illustrative purposes only, I performed this analysis for a purchaser of two large bags of Blue Buffalo food with a retail cost of \$50.00 each for a total purchase of \$100.00. Counsel has confirmed that this is consistent with the purchases of an average consumer. This quantity of purchase is not impacted whether the purchasing class member has or has not retained purchase receipts.
25. Applying the 10% price premium on the no chicken byproduct meal representation to the total purchase in my illustration, the total price premium is \$10.00. The \$10.00 reflects the amount to which a Class Member who purchased two bags of food after a successful verdict after a full trial and any appeals would be entitled.
26. As before, I selected a 12% discount rate to present value of the time value of money through the expected date of the completion of all appeals and the claims administration process in this case of twenty-eight months.

27. After applying the 12% discount rate, the present value of an award based on a full verdict at the end of a trial and all appeals is approximately \$7.65, to the hypothetical purchaser described in ¶24. Stated another way, in these circumstances, a rational economic actor who had a 100% chance of recovery at trial would take \$7.65 today, versus \$10.00 at the end of twenty-eight months at the end of a trial, all appeals, and the claims administration process.
28. Irrespective of which option a Class Member who submitted a claim for \$100.00 in purchases would select, in actual practice in this settlement, that Class Member would receive \$100.00. That \$100.00 receipt reflects 100% of that Class Member's total purchase price, which is ten times the price premium that Class Member paid for the no chicken byproduct representation and well more than ten times what that Class Member would be entitled to after trial after the application of the appropriate discount rate.
29. Assuming that a Class Member had the same claims experience in October 2018 that they had today (except for the likelihood that fewer people would have receipts available), they would receive the exact same amount today than they would receive after a successful trial and appeal, even before taking into account the time value of money and the appropriate discount rate.

GENERALLY APPLICABLE CONCLUSIONS AND REFERENCES

30. In completing this Affidavit, I reviewed, extracted and analyzed information and/or documentation assembled by and/or provided to me. I retained in my files the information and/or documentation I reviewed, extracted and/or analyzed and will make my files available on a proper request.
31. References to information and/or documentation in certain sections of this Affidavit serve as a frame of reference and/or as examples of support for the observations I made and the conclusions I reached. They are not, necessarily, the only support for the observations I made and the conclusions I reached.
32. Absent indications to the contrary, I believe the information and/or documentation gathered and/or referred to in this Affidavit are of the type reasonably relied on by experts in the field of financial analysis. Unless and until shown to the contrary, I accepted the representations, information and/or documentation provided to me or gathered at my direction without independent verification thereof and assume it correctly reflects information and/or documentation that will be accepted as evidence by the Court.

33. I relied on certain representations made to me, as disclosed in this Affidavit. To the extent any representations, information, documentation and/or understanding of such is inaccurate and/or incomplete, if requested and if permitted by the Court, I reserve the right to update and/or supplement my financial analysis and/or conclusions upon receipt of additional representations, information, documentation and/or understanding.

34. I attach to this Affidavit the financial analyses and calculations that I described in this Affidavit in narrative form.

FURTHER AFFIDAVIT SAYETH NOT.

THIS ENDS MY AFFIDAVIT.



Michael D. Pakter, CPA
205 West Wacker Drive,
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____ May 10, 2016 _____

Date