

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

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

**DECLARATION OF JOSEPH I. MARCHESE  
IN SUPPORT OF PLAINTIFFS’ OMNIBUS RESPONSE TO OBJECTIONS TO  
THE FINAL APPROVAL OF THE SETTLEMENT**

I, Joseph I. Marchese, declare as follows:

1. I am a partner at Bursor & Fisher, P.A., one of the court-appointed Supporting Counsel and member of Plaintiffs’ executive committee in this action. I am an attorney at law licensed to practice in the State of New York. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

2. I make this declaration in support of Plaintiffs’ Omnibus Response to Objections to the Final Approval of the Settlement filed herewith.

3. Between April 14, 2016 and May 12, 2016, Frederick J. Klorczyk III, Esq. (an associate attorney at Bursor & Fisher, P.A.) and I emailed and telephoned a number of the individuals who had filed timely objections or opt-outs to the Settlement, including Objectors Johnson, Nadola, Sibley, and Bacharach, and opt-out VanCampen.

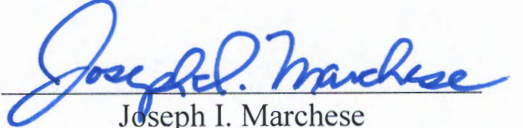
4. On April 22, 2016, Mr. Klorczyk and I called Ms. Johnson to discuss her objection to the settlement, *see* Dkt. No. 177. On our call with Ms. Johnson, I provided her with a detailed explanation of the nature of the legal claims asserted against Blue Buffalo as well as the settlement terms. I also informed Ms. Johnson about the claims process for the settlement.

5. Ms. Johnson told me that she did not understand the settlement terms when she drafted her objection, but after hearing my explanation of the settlement terms, that she wanted to submit a claim form with receipts and withdraw her objection via email to me communicating the withdrawal. Attached hereto as **Exhibit A** is a true and correct copy of Ms. Johnson's April 28, 2016 email communicating her withdrawal to myself and Mr. Klorczyk.

6. On April 22, 2016, Mr. Klorczyk and I also called Ms. Nadola and Mr. Sibley and left a message for each to return our call to discuss their respective objections. Neither Nadola nor Sibley returned our messages.

7. On April 22, 2016, Mr. Klorczyk and I called and emailed Objector N. Albert Bacharach ("Bacharach") to discuss his objection to the settlement, *see* Dkt. No. 190. Mr. Bacharach did not respond to either message. On April 27, 2016, Mr. Klorczyk issued and served a subpoena on Bacharach commanding the production of limited documents and his appearance at a deposition on May 10, 2016 in Jacksonville, FL. On Sunday, May 8, 2016, Mr. Bacharach informed me via email that he intended to seek a protective order from Judge Sippel instead of submitting to a deposition. On May 9, 2016, Scott A. Kamber, Esq. and I convened a call with Bacharach to discuss the settlement terms, his objection, and his intended motion. On that call, Plaintiffs ultimately agreed to postpone his deposition while Mr. Bacharach reconsidered his objection. On May 10, 2016, Mr. Bacharach informed Mr. Kamber that he would withdraw his objection. Attached hereto as **Exhibit B** is a true and correct copy of Bacharach's May 11, 2016 email confirming the withdrawal of his objection.

I declare under the penalty of perjury under the law of the State of New York that the foregoing is true and correct, executed on May 12, 2016 at New York, New York.



Joseph I. Marchese

**EXHIBIT A**



Fred Klorczyk <fklorczyk@bursor.com>

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## Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation -- My Exclusion And Objection

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**Jewel** <jewelonline@verizon.net>  
To: jmarchese@bursor.com, fklorczyk@bursor.com

Thu, Apr 28, 2016 at 7:12 PM

Joe and Fred,

Per our telephone conversation on 4/22/16, please let the court know that I hereby withdraw my exclusion and objection to the settlement which I indicated in my letter dated 4/6/16 that was mailed to you and the court.

Accordingly, please treat my timely exclusion and objection as my claim. Per your instruction, I have submitted a claim with the claims administrator.

Thank you for your time.

Sincerely,  
Jewel Johnson  
Jewel Johnson

Think Green - don't print this email unless you really need to!

**EXHIBIT B**

From: N.A.Bacharach@att.net  
Subject: Re: IN RE: BLUE BUFFALO COMPANY, LTD., MARKETING AND SALES PRACTICES LITIGATION  
Date: May 11, 2016 at 7:43 PM  
To: Scott A. Kamber, Esq. skamber@kamberlaw.com

N

Traveling today and tomorrow.

This is confirm I will withdraw my objection, you do not have to address my objection and you will not need to hold my DEPOSITION time.

N. Albert Bacharach, Jr.  
N. Albert Bacharach, Jr. PA  
4128 NW 13th Street  
Gainesville, FL 32609  
(352) 378-9859

----- Original Message -----

From:"Scott A. Kamber, Esq."  
Sent:Wed, 11 May 2016 09:20:15 -0400  
To:"N.A.Bacharach"  
Cc:Frederick Klorczyk ,Joseph Marchese ,PCD@nabjr.com,"ArchieB (Archie@nabjr.com)" ,Kravitz Deborah  
Subject:Re: IN RE: BLUE BUFFALO COMPANY, LTD., MARKETING AND SALES PRACTICES LITIGATION

Al,

Good speaking to you late yesterday. As you know I was moving my daughter home from college and had less time than I would have liked for our call.

I am glad that we had the opportunity to discuss the settlement in detail this past Monday. This will confirm your decision to withdraw your objection. I understand that you will be filing your withdrawal with the Court.

Since our opposition to objectors briefing is due tomorrow, please confirm that you will be able to file your withdrawal today so we can complete our brief without including your section. Further, this will also allow us to release the scheduled deposition time for next week.

Thank you again for taking the time to hear us out on this.

[Scott A. Kamber](#) | [KamberLaw LLC](#)  
100 Wall Street 23rd floor  
New York, NY 10005  
1.646.964.9600 (direct) | 1.212.920.3072 (firm) | 1.212.202.6364 (fax)  
[skamber@kamberlaw.com](mailto:skamber@kamberlaw.com) | [www.kamberlaw.com](http://www.kamberlaw.com)

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On May 9, 2016, at 7:46 PM, N.A.Bacharach <[N.A.Bacharach@att.net](mailto:N.A.Bacharach@att.net)> wrote:

Yes.

You are correct regarding St Louis and the 18th.

I left the language broader regarding the date and place in case sooner and elsewhere worked out better for everyone.

***N. Albert Bacharach, Jr.***

**N. Albert Bacharach, Jr**

**N Albert Bacharach Jr P A**

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**Gainesville, Florida 32609-1807**  
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On 5/9/2016 7:36 PM, Scott A. Kamber, Esq. wrote:

Al,

I was under the impression that you would make yourself available on May 18 in St. Louis if we notice you up for that day, subject to you obtaining a protective order/quashing subpoena. The certainty of availability on the alternative date is really what makes this whole arrangement work.

Scott A. Kamber | KamberLaw LLC  
100 Wall Street 23rd floor  
New York, NY 10005  
1.646.964.9600 (direct) | 1.212.920.3072 (firm) | 1.212.202.6364 (fax)  
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On May 9, 2016, at 7:17 PM, N.A.Bacharach <[N.A.Bacharach@att.net](mailto:N.A.Bacharach@att.net)> wrote:

Scott,



Per our last call, I am writing to confirm: that I will let you now by tomorrow at the close of business whether I am withdrawing my objections; that we are canceling my deposition tomorrow at 11:00 in Jacksonville, Florida; that the cancellation is without prejudice to class counsel to take my deposition at a latter time up to and including May 18, 2016 and without my waiver of any defense to the subpoena previously received, or my right to seek a proactive order from Judge Sippel; that any resetting of the deposition will be done by notice, as if I were a party.

Al  
--

**N. Albert Bacharach, Jr.**

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**N. Albert Bacharach, Jr. P.A.**

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