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ADRIENNE FRASER

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 ADRIENNE FRASER on behalf of herself and all
others similarly situated,
17
18 Plaintiffs,
vs.
19 WYSONG CORPORATION and DOES 1-25,
20 inclusive,
21 Defendants.

CASE NO.
COMPLAINT
AMOUNT DEMANDED EXCEEDS \$10,000
DEMAND FOR JURY TRIAL
CLASS ACTION

22
23 **CLASS ACTION COMPLAINT**

24 This is a California statewide class action seeking redress for the mislabeling of pet food and pet
25 treats. Defendant Wysong Corporation (“Wysong”), labeled its pet food as “Made in USA,” when in fact
26 it contained ingredients sourced from foreign countries. This is a violation of the California Unfair
27 Competition Law (“UCL”) as well as the California Consumer Legal Remedies Act (“CLRA”). Plaintiff
28 seeks, on her own behalf as well as on behalf of a statewide class of similarly situated consumers,

1 injunctive relief to stop Defendant’s use of false country-of-origin labels, as well as restitution under the
2 UCL. Plaintiff also seeks injunctive relief under the CLRA, and requests that Plaintiff be allowed to
3 amend this complaint to seek actual damages subject to the \$1,000 statutory minimum for class action
4 damages, restitution, punitive damages and attorneys’ fees under the CLRA thirty days after the service
5 of this complaint in compliance with the notice requirements of the CLRA. In support of this complaint,
6 Plaintiff states as follows:

7 **PARTIES, JURISDICTION, AND VENUE**

8 1. Plaintiff Adrienne Fraser is an adult citizen of California residing in San Francisco
9 County, which is within this district. Plaintiff purchased Defendant’s products, the marketing of which
10 violates California law, in this district and division.

11 2. Defendant Wysong is a corporation formed under and existing pursuant to the laws of
12 the state of Michigan. Defendant’s principal place of business is Midland, Michigan.

13 3. This Court has diversity jurisdiction over this case under 28 U.S.C. § 1332, as modified by
14 the Class Action Fairness Act of 2005, because Plaintiff and Defendant are citizens of different states,
15 and in this class action the aggregate amount in controversy is greater than \$5,000,000.00 (five million
16 dollars), exclusive of interest and costs.

17 4. Venue is proper in this court because the purchases were made by, and deliveries were
18 made to, the Plaintiff in this district and division.

19 **FACTS RELATING TO THE SPECIFIC PLAINTIFF**

20 5. On multiple occasions prior to January 1, 2016, Plaintiff Adrienne Fraser purchased
21 Defendant’s Epigen Canine/Feline Diet food at two San Francisco retailers, the Animal House and
22 Village Pets, as well as online.

23 6. The pet food that Plaintiff purchased from Defendant was labeled “Made in USA.”
24 Plaintiff made these purchases relying on the labels on Defendant’s products stating that they were
25 “Made in USA.”

26 7. The value of the product received by Plaintiff was less than the value she paid, because
27 the “Made in USA” labeling was untrue.

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FACTUAL ALLEGATIONS COMMON TO THE STATEWIDE CLASS

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2 8. Defendant manufactures and sells pet food in stores all over the United States, including
3 California. Among other places, it sells its products in the San Francisco area at the following locations:
4 The Animal House, located at 157 Fillmore St., San Francisco, CA 94117, and Village Pets, located 1036
5 Hyde St., San Francisco, CA 94109. Additionally, Defendant’s products are sold over the internet and
6 shipped throughout the United States, including California.

7 9. Defendant’s pet food displays on its bags, in all capital letters, “MADE IN USA,” along
8 with an American flag and “SINCE 1979.”

9 10. These labels stating that Defendant’s pet food is made in the United States are false,
10 because Defendant’s pet food contains ingredients that are sourced from foreign countries. Specifically,
11 the vitamin, mineral, and amino acid packs in defendant’s products contain ingredients from non-USA
12 sources.

13 11. Defendant continues to sell pet food bearing the label “Made in USA.”

14 12. The buying public’s preference for pet foods and treats that are made exclusively in the
15 United States stems in part from the widely-publicized and widespread recall of pet foods in 2007, when
16 hundreds, and perhaps thousands, of dogs and cats died of kidney failure after eating pet food that
17 contained a toxic chemical called melamine. This ingredient was placed in the pet food at manufacturing
18 facilities in China and was mislabeled as “wheat gluten” or “rice protein.” This increased consumer’s
19 preference for both fully American-made pet food and grain-free pet food.

20 13. For this and other reasons, the buying public generally believes that “Made in the U.S.A.”
21 products are safer to feed their animals than foreign-sourced ingredients.

22 14. The Plaintiff and the class received products from Defendant that were worth less than
23 what the Plaintiff and the class paid for the products.

24 **CLASS ACTION REQUIREMENTS**

25 15. Plaintiff brings this case on her own behalf, and on behalf of all others similarly situated,
26 pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class consists of all residents of the
27 state of California who, within the applicable statute of limitations period, bought pet food products
28 from Defendant that were sold with labels bearing “Made in USA.” Excluded from the class are

1 Plaintiff's counsel and any employee of the court.

2 16. Pursuant to Rule 23(a)(1), numerosity is satisfied because the members of the Class are so
3 numerous and geographically dispersed that joinder of all Class members is impracticable. There are
4 thousands of members of the Class located in the State of California.

5 17. Common questions of fact and law exist here, satisfying the requirement of Rule 23(a)(2),
6 including but not limited to:

- 7 a. whether Defendant participated in or committed the wrongful conduct alleged
8 herein;
- 9 b. whether Defendant's acts, transactions, or course of conduct constitute the
10 violations of law alleged herein;
- 11 c. whether the members of the Class sustained and/or continue to sustain injury by
12 reason of Defendant's conduct, and, if so, the proper measure and appropriate
13 formula to be applied in determining restitution for such injury; and
- 14 d. whether the members of the Class are entitled to injunctive or other equitable
15 relief.

16 18. Plaintiff's claims are typical of the claims of all other members of the Class and involve
17 the same violations of law by Defendant as other Class members' claims. Plaintiffs and members of the
18 Class also sustained injury arising out of Defendant's common course of conduct complained of herein.
19 Accordingly, Plaintiff satisfies the "typicality" requirements of Fed. R. Civ. P. 23(a)(3) with respect to the
20 Class.

21 19. Plaintiff will fairly and adequately protect the interests of the other members of the Class,
22 and have no interests that are antagonistic to those of the Class, pursuant to Rule 23(a)(4). Plaintiff is
23 interested in vigorously prosecuting claims on behalf of the Class, and Plaintiff has retained experienced
24 and competent class action counsel to represent them and the Class.

25 20. Plaintiff seeks to certify a statewide class pursuant to Rule 23(b)(2) and 23(b)(3).

26 21. Pursuant to Rule 23(b)(2), Defendant has "acted or refused to act on grounds that apply
27 generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate
28 respecting the class as a whole."

1 codified at California Civil Code §§ 1750, et seq.

2 31. Defendant’s pet food and treats are “goods” as defined in Civil Code Section 1761(a).

3 32. Plaintiff, and each of the Class members, is a “Consumer” as defined in Civil Code
4 Section 1761(d).

5 33. Each of Plaintiff’s and Class members’ purchases of Defendant’s products constituted a
6 “transaction” as defined in Civil Code Section 1761(e).

7 34. Plaintiff and each class member suffered an injury in fact because they received a product
8 from Defendants that had less value than they paid for it, due to the false labeling.

9 35. Defendant’s violations of the Consumer’s Legal Remedies Act set forth herein were done
10 with awareness of the fact that the conduct alleged was wrongful and were motivated solely for increased
11 profit. Defendant did these acts knowing the harm that would result to Plaintiff and similarly situated
12 persons, and Defendant continues to commit these acts notwithstanding that knowledge.

13 **PRAYER FOR RELIEF**

14 Based on the foregoing, Plaintiff prays for the following relief:

- 15 A. An order certifying this as a California statewide class action pursuant to Rule 23 of the
16 Federal Rules of Civil Procedure;
- 17 B. An order appointing Plaintiff’s counsel as Class Counsel to represent the interests of the
18 class;
- 19 C. After trial, an injunction ordering Defendant to stop its violations of California law as
20 alleged herein;
- 21 D. An award of monetary relief for the Class in the amount by which Defendant has been
22 unjustly enriched by its illegal conduct as alleged herein;
- 23 E. An award of costs, including reasonable attorney’s fees;
- 24 F. Pre and post judgment interest in the highest amount permitted by law; and

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G. Such further or different relief as the Court may deem appropriate.

Dated: January 5, 2016

Respectfully submitted,

RAINS LUCIA STERN, PC

/s/ Eustace de Saint Phalle

By: Eustace de Saint Phalle

Attorneys for Plaintiff ADRIANNE FRASER

DEMAND FOR JURY TRIAL

As to the matters complained of herein against Defendants WYSONG CORPORATION and DOES 1-25, and each of them, Plaintiff ADRIANNE FRASER, demands a trial by jury.

Dated: January 5, 2016

Respectfully submitted,

RAINS LUCIA STERN, PC

/s/ Eustace de Saint Phalle

By: Eustace de Saint Phalle

Attorneys for Plaintiff ADRIANNE FRASER