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— SINCE 1893 —

S.F. Attorney's Pet Food Action Uses China Law

By Donna Domino
Daily Journal Staff Writer

SAN FRANCISCO — In a first of its kind lawsuit brought under Chinese law, a San Francisco lawyer filed a local class action Wednesday against a China-based company that produced pet food containing a toxic chemical that allegedly sickened and killed thousands of dogs and cats this spring.

The suit seeks damages from Binzhou Futian Biological Technology, based in Binzhou, China, and Pacoima-based Natural Balance Pet Foods, stemming from injuries to pet owners whose animals became sick or died from ingesting melamine, an industrial chemical used in plastics and fertilizer. *Quintana v. Binzhou Futian Biological Technology and Natural Balance Pet Foods*, 465924.

The Chinese company provided the tainted wheat gluten, which Natural Balance used to make the pet food.

Monterey resident Judith Quintana's pet cat, Little Girl, died in April and another cat, Sammy, suffered kidney damage after eating Natural Balance brand pet food, according to the suit.

Plaintiff's attorney William Audet of San Francisco's Audet & Partners estimated that more than 10,000 pets got sick or died after eating the contaminated food.

"It's time to hold all companies, regardless of the location of the business, financially and legally accountable for distributing toxic materials into the United States stream of commerce," Audet said.

His firm's research found that Chinese law provides for potential liability for distributing "impure or fake materials" in products, and Audet said he will argue that the China-based company is liable under both California and Chinese law.

In addition to violating California laws, the suit cites a law adopted by the Chinese government in 1993 to protect consumers in what appears to be the first suit using Chinese law to pursue a claim against one of the country's businesses.

The Binzhou Futian company was shut down by the Chinese government earlier this year after news reports that the industrial



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San Francisco attorney William M. Audet filed a class action under Chinese law against the supplier of a tainted pet food ingredient that injured and killed U.S. animals.

chemical was found in wheat gluten from China.

Audet said he decided to cite Chinese law because many foreign-based companies challenge the jurisdiction of U.S. courts when they are sued.

Several suits have already been filed against pet food manufacturers in Canada and the United States seeking compensation for the deaths of cats and dogs who ate food with Chinese wheat or rice protein concentrate that had been spiked with the poisonous chemical melamine.

The suit does not specify a dollar amount for the alleged damages, but it estimates it will be less than \$5 million.

The suit accuses Natural Balance of continuing to distribute the tainted pet food after other companies recalled their products and not notifying pet owners or compensating them for veterinary expenses.

But Natural Balance President Joey Herrick disputed that, asserting his company pulled the contaminated product within 24 hours after getting complaints.

Herrick also said he has voluntarily paid the veterinary bills of several customers whose animals became sick and produced receipts showing he paid two pet owners more than \$15,000 to cover vet bills.

"Somebody called from the vet's office and said they had no money so I gave the vet my credit card," Herrick said. "I've done everything I possibly could to make this right



Audet supplied this drawing of a cat related to his suit against China-based Binzhou Futian Biological Technology and Pacoima-based Natural Balance Pet Foods.

for my customers. I couldn't sleep at night if I didn't."

He said that his company produced only a relatively small amount of pet food with the tainted chemical and about 400 customers filed claims.

Herrick said manufacturers now are being forced to import the necessary ingredients for products, citing reports that America produces 40 million tons of wheat gluten but uses 150 million tons.

"It's not a matter of cheaper ingredients," Herrick said. "It's a matter of just getting them at all."