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10 *the Proposed Class, and*  
11 *the General Public*

ENDORSED  
FILED  
San Francisco County Superior Court

AUG 8 2007

GORDON PARK-LI, Clerk  
BY: CRISTINA E. BAUTISTA  
Deputy Clerk

CASEMANAGEMENT CONFERENCE SET

JAN 25 2008 - 9AM

DEPARTMENT 212

STATE OF CALIFORNIA

SUPERIOR COURT OF SAN FRANCISCO

0007-465924

Judith Quintana, on behalf of herself and  
all others similarly situated and the  
General Public,

Plaintiff,

v.

Binzhou Futian Biological Technology, Co.,  
Ltd., and Natural Balance Pet Foods, Inc.,  
and DOES 1 through 20,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT

Violations of The Law of the People's  
Republic of China on the Protection of  
the Rights and Interests of Consumers  
(Against Defendant Binzhou Futian  
Biological Technology, Co., Ltd., only) &  
Violations of The Law of the State of  
California (Consumer Protection)  
(Against All Defendants)

JURY TRIAL DEMANDED

Plaintiff, individually, and on behalf of all other persons similarly situated, brings this  
Class action against China-based Defendant Binzhou Futian Biological Technology, Co., Ltd.  
("Binzhou Futian") and California-based Defendant Natural Balance Pet Food, Inc. ("Natural  
Balance") for violations of the Law of the People's Republic of China and the Law of the State  
of California:

NATURE OF THE ACTION

1. This Class action complaint seeks relief against Defendant Binzhou Futian for  
violation of the Law of the People's Republic of China (Protection of the Rights and Interests of

1 Consumers (effective January 1, 1994)) and relief against Defendants Binzhou Futian and  
2 Natural Balance for violation of the Law of the State of California's Consumer Legal Remedies  
3 Act (Civil Code §§1750, *et seq.*, Business and Professions Code §§17200, 17500 and common  
4 law). This Complaint seeks damages (and other relief) arising out of Defendants' manufacture  
5 and distribution of dog and cat food containing melamine, an industrial chemical used in plastics  
6 and fertilizer. The Defendants manufactured and distributed the potentially dangerous pet food  
7 without disclosing the fact that it contained a known toxic chemical. The Plaintiff, a pet owner,  
8 brings the case against Defendants on behalf of hundreds of pet owners who purchased Natural  
9 Balance brand products labeled "Venison & Brown Rice" (dog food) or "Venison & Green Peas"  
10 (cat food). To date, the Defendants have failed to fully compensate class members for: (i) out-  
11 of-pocket costs incurred by members of the Class; and (ii) mental anguish suffered as a result of  
12 the death of Class members beloved pets.

#### 13 14 THE PARTIES

15 2. Plaintiff Judith Quintana ("Plaintiff") resides in Monterey, California. Plaintiff is  
16 a member of the Class. Plaintiff's much beloved cat, "Little Girl," ingested the Defendants'  
17 product (cat food) and died as a result of ingestion of the toxic pet food.

18 3. Defendant Binzhou Futian Biological Technology, Co., Ltd. is a China-based  
19 firm. Defendant Binzhou Futian provided, through a San Francisco, California-based company,  
20 the rice protein concentrate used in the pet food at issue to Co-Defendant Natural Balance.

21 4. Defendant Natural Balance Pet Foods, Inc., is a privately held corporation with its  
22 principal place of business and corporate headquarters located in California. Defendant Natural  
23 Balance marketed and distributed the pet food at issue in this case.

24 5. DOES 1 to 20 are persons whose identities are unknown to Plaintiff at this time.  
25 Defendants DOES 1 to 20 are business entities controlled by, and/or agents of and/or employees  
26 of and/or affiliated with Defendants. Plaintiff is ignorant of the true names and capacities of the  
27 Defendants sued herein under the fictitious names DOES 1 to 20. They are sued herein pursuant  
28 to C.C.P. §474. When Plaintiff becomes aware of the true names and capacities of the

1 Defendants sued as DOES 1 to 20, Plaintiff will amend this Complaint to state their true names  
2 and capacities.

3 6. Each Defendants sued herein was the principal, agent, or employee of the other,  
4 and was acting within the scope of such agency or employment. Each Defendants sued herein  
5 was the co-conspirator of the other and was acting within the course and scope of a conspiracy  
6 formed amongst each of them. Each Defendants sued herein aided and abetted the other with the  
7 intent that each would be successful in their mutual endeavors. Each Defendants sued herein  
8 received money or property as a result of the conduct described herein without consideration  
9 therefore and/or with knowledge that the money or property was obtained as a result of the  
10 wrongful conduct described herein. Defendants knowingly and/or recklessly conspired in,  
11 and/or aided and abetted, the common course of conduct set forth in this complaint. The acts of  
12 conspiracy and aiding and abetting included, among other things, designing, modifying, selling  
13 and supporting a product that does not perform as advertised and, in fact, causes serious harm to  
14 the pets that ingest it.

15  
16 **JURISDICTION AND VENUE**

17 7. This Court has jurisdiction over these claims pursuant to California Code of Civil  
18 Procedure §§25-29. The individual and representative Plaintiff brings this action as a class  
19 action on behalf of herself and all others similarly situated pursuant to California Code of Civil  
20 Procedure §382.

21 8. This Court has jurisdiction over Defendants pursuant to California Code of Civil  
22 Procedure §410.10.

23 9. The amount in controversy for the individual Plaintiff and for each Class member  
24 is less than \$75,000 per Class member. The Class damages are less than \$5,000,000.00.

25 10. Venue is proper in this Court under California Code of Civil Procedure §§395 and  
26 395.5 because at least one of the Defendants does business in this County. Venue is also proper  
27 in this County as Defendants is based here and conducts substantial business activity, including  
28 advertising, marketing, distribution, sale of the product at issue in this County. Additionally, the

1 product at issue was imported from a San Francisco-based company.  
2

### 3 CLASS ACTION ALLEGATIONS

4 11. Plaintiff brings this class action pursuant to Code of Civil Procedure Section 382  
5 and Civil Code Section 1781 on behalf of herself and all others similarly situated, with the Class  
6 being defined as follows:

7 All California residents who, between October 1, 2006 and the  
8 present time, purchased (not for resale) Natural Balance Pet Food,  
9 Inc.'s products labeled "Venison & Brown Rice" dog food or  
"Venison & Green Peas" cat food.

10 12. The Class excludes Defendants, its subsidiaries, affiliates, officers, directors,  
11 members of Defendants' affiliates, officers, dealers' and directors' immediate families, any  
12 entities in which Defendants has a controlling interest, and the officers, directors, affiliates, legal  
13 representatives, heirs, successors and/or assigns of any of the individuals or entities mentioned in  
14 this paragraph, and any judge assigned to hear this action.

15 13. This action has been brought and may properly be maintained as a class action  
16 pursuant to California Code of Civil Procedure § 382, Civil Code § 1781.

17 14. Numerosity (Code of Civil Procedure § 382; Civil Code § 1781(b)(1): The  
18 members of the Class are so numerous that joinder of all members would be impracticable.  
19 Plaintiff estimates that there are hundreds of purchasers of the products at issue.

20 15. Existence and Predominance of Common Questions of Fact and Law (Code of  
21 Civil Procedure § 382; and Civil Code § 1781(b)(2): There are questions of law and fact  
22 common to the members of the Class that predominate over any questions affecting only  
23 individual members, including:

- 24 a. Whether Defendants distributed product containing melamine;  
25 b. Whether Defendants made false and/or misleading statements of fact to  
26 the Class and the public;  
27 c. Whether Defendants concealed from the Plaintiff and the Class the fact  
28 that the product was defective and contained melamine;

- 1           d.     Whether Defendants were aware, or should have been aware, of the  
2                 defective nature of Venison brand products they were producing and  
3                 marketing;  
4           e.     Whether, by their misconduct as set forth herein, Defendants have  
5                 engaged in unfair, unlawful, and/or fraudulent business practices;  
6           f.     Whether, by their misconduct as set forth herein, Defendants have  
7                 engaged in false advertising with respect to the marketing, advertising, and  
8                 sale of Venison brand products; and  
9           g.     Whether, as a result of Defendants' misconduct, Plaintiff and the Class are  
10                entitled to damages, restitution, and other relief, and the amount and  
11                nature of such relief to be determined.

12           16.    Typicality (Civil Code § 1781(b)(3)): The claims of Plaintiff are typical of the  
13                claims of the members of the Class. Plaintiff has no interests antagonistic to those of the Class,  
14                and Defendants has no defenses unique to Plaintiff.

15           17.    Adequacy (Civil Code § 1781(b)(4)): Plaintiff will fairly and adequately protect  
16                the interests of the Class, and has retained attorneys experienced in class and complex litigation.

17           18.    Superiority (Code of Civil Procedure § 382): A class action is superior to other  
18                available methods for the fair and efficient adjudication of this controversy for the following  
19                reasons:

20                a.     A class action is the only available method for the fair and efficient  
21                adjudication of this controversy. The members of the Plaintiff Class are so numerous that  
22                joinder of all members is, at a minimum, impractical, and probably impossible.

23                b.     The damages suffered by individual Class members are relatively small  
24                compared to the expense and burden of prosecuting this complex case against a well-financed  
25                corporation. Consequently, this class action is the only way that every Class member can redress  
26                the harm and damage caused by Defendants' conduct.

27                c.     Should this Court require individual Class members to bring separate  
28                actions, this Court would face a multiplicity of lawsuits which would unduly burden both the

1 California court system and the litigants. The prosecution of separate actions will create a risk of  
2 inconsistent rulings and contradictory judgments which might dispose of other Class members'  
3 interests who are not parties to the adjudication, thereby impeding and impairing Class members'  
4 ability to protect their interests. Inconsistent results will magnify the delay and expense to all  
5 parties and to the California court system. By contrast, this class action presents far fewer  
6 management difficulties while providing unitary adjudication, economies of scale and  
7 comprehensive supervision by a single court.

8 19. In the alternative, this action is certifiable under the provisions of Rule  
9 23(b)(1)(2) and/or (b)(2) of the Federal Rule of Civil Procedure, which have been found  
10 applicable to the State of California, because:

- 11 a. The prosecution of separate actions by individual Class members will  
12 create a risk of inconsistent or varying adjudications with respect to  
13 individual Class members which would establish incompatible standards  
14 of conduct for Defendants;
- 15 b. The prosecution of separate actions by individual Class members will  
16 create a risk of adjudications with respect to the Class which might, as a  
17 practical matter, be dispositive of the interests of other Class members not  
18 parties to the adjudications, or substantially impair other Class members'  
19 ability to protect their interests; and
- 20 c. Defendants has acted or refused to act on grounds generally applicable to  
21 the Class thereby making appropriate final injunctive relief with respect to  
22 all Class members.

23 20. A class action will cause an orderly and expeditious administration of the claims  
24 of the Class. Economies of time, effort, and expense will be fostered and uniformity of decisions  
25 will be ensured.

26 21. Plaintiff does not anticipate any difficulty in the management of this litigation.  
27  
28



1 herein and further alleges as follows:

2 30. In violation of Chapter II, *et seq.*, of the Laws of the People's Republic of China  
3 on the Protection of the Rights and Interests of Consumers, Defendant Binzhou Futian failed to  
4 "make truthful" presentations or "clear warnings" to consumers regarding the melamine  
5 contained in the pet food manufactured by Defendant Binzhou Futian. Defendant also failed to  
6 provide "truthful" information regarding the pet food.

7 31. Under Chapter VII, the pet food at issue was defective and did not function as  
8 "expected."

9 32. Pursuant to Chapter VII, Defendant Binzhou Futian is obligated to compensate  
10 Class members for injuries suffered. Articles 41, 42 & 50.

11  
12 **SECOND CAUSE OF ACTION**

13 **Consumer Legal Remedies Act**

14 **[Against All Defendants]**

15 33. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth  
16 herein and further alleges as follows:

17 34. The Consumer Legal Remedies Act applies to Defendants' actions and conduct  
18 described herein because it extends to transactions that are intended to result, or which have  
19 resulted, in the sale or lease of goods or services to consumers.

20 35. Plaintiff and each member of the Class are "consumers" within the meaning of  
21 Civil Code Section 1761(d).

22 36. The products that Plaintiff and each other member of the Class purchased from  
23 Defendants are "goods" within the meaning of Civil Code Section 1761(a).

24 37. Defendants offers for sale and sells products, when at all relevant times,  
25 Defendants knew or should have known that such actions constitute omissions and concealment  
26 of material facts that are unfair, deceptive, and misleading business practices in violation of Civil  
27 Code §§1770(a)(5) and (7).

28 38. The conduct described herein is unlawful pursuant to California Civil Code

1 §§1770(a)(5) and (7).

2 39. Defendants' deceptive acts and omissions occurred in the course of selling a  
3 consumer product and have occurred continuously through the filing of this Complaint.

4 40. As a direct and proximate result of Defendants' violations of Civil Code Section  
5 1750, *et seq.*, Plaintiff and the other Class members have suffered irreparable harm and monetary  
6 damages. Plaintiff, on behalf of herself and on behalf of the Class, seeks all relief allowable  
7 under the CLRA.

8 41. Plaintiff has complied with the notice provisions of Civil Code §1782, and  
9 therefore seeks damages for herself pursuant to the CRLA.

10  
11 **THIRD CAUSE OF ACTION**

12 **Unfair Competition & False Advertising**

13 **[Against All Defendants]**

14 42. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth  
15 herein and further alleges as follows:

16 43. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class,  
17 and in her capacity as private attorney general.

18 44. Defendants has engaged in unfair, unlawful and fraudulent business acts and  
19 practices as set forth above. The unfair, unlawful and fraudulent business acts and practices of  
20 Defendants set forth above emanate from Defendants' California headquarters. Defendants'  
21 wrongful conduct originated from and thus occurred inside California.

22 45. Beginning on a date unknown to Plaintiff and continuing to the present,  
23 Defendants has engaged in, is engaged in, and proposes to engage in unfair competition, as that  
24 term is defined in Business and Professions Code §17200.

25 46. As used in this Complaint and in §17200, "unfair competition" means (1) an  
26 unlawful, unfair or fraudulent business act or practice; (2) unfair, deceptive, untrue or misleading  
27 advertising; and/or (3) an act prohibited by Chapter 1 (commencing with § 17500) of Part 3 of  
28 Division 7 of the Business and Professions Code. This conduct is actionable pursuant to

1 Business and Professions Code §§17200, 17203.

2 47. In engaging in conduct which constitutes unfair competition, Defendants have  
3 acquired money or property from members of the general public.

4 48. Specifically, Defendants have engaged in, are engaged in, and propose to engage  
5 in unlawful, unfair, and fraudulent business acts and practices, each of which independently  
6 constitute Unfair Competition.

7 49. Pursuant to Business and Professions Code §17203, the Court may impose  
8 injunctive relief against any conduct found to constitute unfair competition pursuant to Business  
9 and Professions Code §17200. The Court may also make such orders or judgments, including  
10 the appointment of a receiver, as may be necessary to prevent the use or employment by any  
11 person of any practice which constitutes unfair competition, or as may be necessary to restore to  
12 any person in interest any money or property, real or personal, which may have been acquired by  
13 means of such unfair competition.

14 50. Plaintiff, on behalf of herself, the Class, and the general public seeks restitution,  
15 and all other relief allowed under Section 17200, et seq.

16  
17 **FOURTH CAUSE OF ACTION**

18 **Failure to Warn**

19 **[Against All Defendants]**

20 51. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth  
21 herein and further alleges as follows:

22 52. Defendants are manufacturers and/or suppliers of Natural Balance Pet Food.

23 53. Defendants failed to perform adequate testing in that adequate testing would have  
24 shown that the that the pet food contained melamine.

25 54. As the proximate cause and legal result of the defective condition of pet food as  
26 manufactured and/or supplied by Defendants, and as a direct and legal result of the negligence,  
27 carelessness, other wrongdoing and action(s) of Defendants described here, Plaintiff and the  
28 Class have sustained economic loss and emotional distress, the exact amount of which is

1 presently unknown.

2  
3 **FIFTH CAUSE OF ACTION**

4 **Negligence**

5 **[Against All Defendants]**

6 55. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth  
7 herein and further alleges as follows:

8 56. Defendants had a duty to exercise reasonable care in the manufacture, sale and/or  
9 distribution of the pet food.

10 57. Defendants were negligent in the designing, manufacture, testing, advertising,  
11 warning, marketing and sale of the pet food.

12 58. Despite the fact that Defendants knew or should have known that the pet food  
13 caused dangerous side effects, Defendants continued to market pet food to consumers, including  
14 Plaintiff.

15 59. Defendants knew or should have known that consumers such as Plaintiff and their  
16 pets would foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care as  
17 described above.

18 60. Defendants' negligence was a proximate cause of Plaintiff and the Class's  
19 injuries, harm and economic loss to Plaintiff which they suffered and will continue to suffer as  
20 previously described.

21  
22 **SIXTH CAUSE OF ACTION**

23 **Breach of Express and Implied Warranty**

24 **[Against All Defendants]**

25 61. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth  
26 herein and further alleges as follows:

27 62. Defendants implicitly and explicitly warranted that the pet food was safe and  
28 effective for its intended use.



1 and the Class suffered injuries and damages as hereinafter set forth.

2  
3 **EIGHTH CAUSE OF ACTION**

4 **Unjust Enrichment**

5 **[Against All Defendants]**

6 73. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth  
7 herein and further alleges as follows:

8 74. Defendants have been unjustly enriched through overpayments by Plaintiff and  
9 Class members.

10 75. Under common law principles of unjust enrichment, Defendants should not be  
11 permitted to retain the benefits conferred via overpayments by Plaintiff and Class members.

12 76. Plaintiff seeks disgorgement of all overpayments and establishment of a  
13 constructive trust from which Plaintiff and Class members may seek restitution.

14  
15 **PRAYER FOR RELIEF**

16 WHEREFORE, the individual Plaintiff, on behalf of herself and all others similarly  
17 situated, prays for a judgment against Defendants as follows :

18 1. For an Order certifying the proposed Plaintiff Class herein under Code of Civil  
19 Procedure section 382 and Civil Code section 1781 and appointing Plaintiff and her undersigned  
20 counsel of record to represent the Class;

21 2. For an order requiring Defendants to provide an accounting of all moneys which  
22 it may have received as a result of the acts and practices found to constitute unfair competition  
23 under Business & Professions Code §17200 and/or false or deceptive advertising under Business  
24 & Professions Code §17500;

25 3. For damages as allowed under California law and the Law of the People's  
26 Republic of China (as against Defendant Binzhou Futian only);

27 4. For pre-judgment interest;

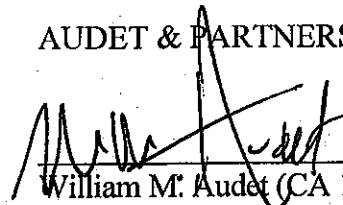
28 5. For costs of this suit; and

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6. For all other relief that this Court deems just and proper.

Dated: August 8, 2007

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