



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

8th Circ. Upholds Blue Buffalo \$32M Pet Food False Ad Deal

By **Rachel Graf**

Law360, New York (July 5, 2017, 6:18 PM EDT) -- An Eighth Circuit panel on Wednesday upheld a ruling that found a \$32 million settlement between Blue Buffalo Co. Ltd. and a class of consumers was fair, in a case alleging the pet food maker misrepresented its products as free of chicken or poultry by-product meal.

A three-judge panel said the four members of the settlement class who appealed the lower court's decision — Paul Lopez, Pamela McCoy, Caroline Nadola and Gary W. Sibley — failed to prove the settlement wasn't fair, reasonable and adequate. The court determined the \$8 million in attorneys' fees were fair as well, as they were in line with those awarded in previous cases.

Consumers filed the suit in 2015, claiming Blue Buffalo falsely advertised that its products didn't contain chicken or poultry by-product meal, violating the Magnuson-Moss Warranty Act, state consumer protection acts and warranty agreements, and unjustly enriching themselves, according to the filing.

The parties reached a **settlement** later that year, with Blue Buffalo agreeing to pay \$32 million to a settlement fund. From that total, \$8 million would go toward attorneys' fees and expenses, \$1.4 million would cover administrative costs and the remaining \$22.6 million would go to members of the settlement class.

The settlement objectors who launched appeals contended the district court failed to explain its reasoning for approving the settlement, the merits of the case weigh against approving the settlement and the settlement amount should have varied by state.

But the court countered Wednesday the lower court "had before it the information necessary to consider the fairness of the [settlement agreement]," and the settlement provides "substantial benefits" to the class while the outcome of the suit would have been uncertain.

The court also rejected Nadola's argument that the settlement amount should vary by state, saying that a lack of variation based on state laws doesn't make a settlement unfair. The court added that class members can opt out of the settlement to preserve their claims.

The objectors had further argued the attorneys' fees were excessive, and administrative costs should not have been included when calculating attorneys' fees.

But the court said the amount of attorneys' fees, representing 25 percent of the total settlement fund, is consistent with attorneys' fees the court has approved in similar cases. The district court didn't abuse its discretion by including administrative costs in its attorneys' fees calculations since a low claims rate isn't unusual and the fees weren't unreasonable, the filing noted.

Additionally, Sibley had contended that the lower court shouldn't have approved attorneys' fees without giving class members the chance to object, but the court countered Wednesday that, based on the objectors' appeals, they wouldn't have convincingly persuaded the court to lower the fees anyway.

"This settlement was a tremendous victory for consumers that resulted in the largest fund ever in a case of this type," Scott A. Kamber of KamberLaw LLC, who represents the class of consumers, said by email. "Further, as class counsel we are particularly gratified that the Eighth Circuit affirmed Judge [Rodney W.] Sippel and found the settlement and fee award was entirely consistent with applicable legal standards."

Counsel for Blue Buffalo and for the objectors didn't respond Wednesday to requests for comment.

U.S. Circuit Judges Raymond W. Gruender, Diana E. Murphy and Jane Kelly sat on the panel for the Eighth Circuit.

Blue Buffalo is represented by Steven A. Zalesin of Patterson Belknap Webb & Tyler LLP.

The consumers are represented by Scott A. Kamber of KamberLaw LLC.

Paul Lopez is represented by Ottsen Leggat & Belz and Gary W. Sibley, Caroline Nadola and Pamela McCoy each represented themselves.

The cases are Alexia Keil et al. v. Paul Lopez, case number 16-3159, Alexia Keil et al. v. Pamela McCoy, case number 16-3164, Alexia Keil et al. v. Caroline Nadola, case number 16-3167 and Alexia Keil et al. v. Gary W. Sibley, case number 16-3169, in the U.S. Court of Appeals for the Eighth Circuit.

--Editing by Kelly Duncan.

All Content © 2003-2017, Portfolio Media, Inc.