

# Exhibit D

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19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA

21 SARAH HILL and MONICA  
22 O'ROURKE, on behalf of themselves  
23 and all others similarly situated,

24 Plaintiffs,

25 v.

26 CANIDAE CORPORATION,  
27 Defendant.

28 CASE NO. 5:20-CV-01374-JGB-SP

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Hearing date: Monday, April 5, 2021  
Hearing time: 9:00 a.m.  
Judge: Hon. Jesus H. Bernal

1           **I. INTRODUCTION**

2           Plaintiffs Sarah Hill and Monica O’Rourke (“Plaintiffs”), individually and on  
3           behalf of the proposed settlement Class, seek preliminary approval of a proposed  
4           Settlement of their claims against Defendant Canidae Corporation (“Canidae”). The  
5           Settlement Agreement, if approved, will provide for cash benefits for consumers who  
6           purchased certain Canidae pet food products and will resolve all claims of Plaintiffs and  
7           the members of the Class deriving from their purchase of Canidae’s limited ingredient  
8           diet pet food products. *See* Declaration of Lisa A. White (“White Decl.”), Exhibit 1:  
9           Settlement Agreement (“Agreement”).

10           The proposed Settlement Agreement in this action is the product of extensive arms’-  
11           length negotiations between the Parties through their experienced and informed counsel,  
12           facilitated by the Honorable Diane M. Welsh (Retired), a respected retired judge and  
13           mediator, and this Settlement Agreement warrants approval as the terms are fair,  
14           reasonable, and adequate. Accordingly, Plaintiffs request that the Court (1) preliminarily  
15           approve the proposed Settlement, (2) certify the Class for settlement purposes only, (3)  
16           appoint Plaintiffs as the Class Representatives, (4) appoint Plaintiffs’ counsel as Class  
17           Counsel, (5) order that notice be distributed to the Class pursuant to the proposed Notice  
18           Plan, and (6) schedule a Final Approval Hearing. Canidae does not oppose the relief  
19           sought in this Motion.

20           **II. BACKGROUND**

21                   **A. Plaintiffs’ claims regarding Canidae’s Limited Ingredient Diet pet**  
22                   **food products.**

23           This case arises from the sale of pet food products that Canidae both manufactures  
24           and represents are suitable for limited ingredient diets, are “Grain Free,” and include only  
25           “Simple Ingredients.” Canidae makes these representations on its product labels, where  
26           consumers or purchasers see and rely on them before making their purchase. A complete  
27           list of the Canidae Limited Ingredient Diet Products (“Products” or “Limited Ingredient  
28           Diets”) at issue in this matter are included in Exhibit A to the parties’ proposed Settlement

1 Agreement. *See* Agreement, Ex. A. Plaintiffs allege that Canidae made false and  
2 misleading representations about the qualities and ingredients of these Products. First  
3 Amended Complaint (“FAC”), ECF No. 33, ¶¶ 39-40. Plaintiffs allege that Canidae’s  
4 misrepresentations regarding the ingredients in the Canidae Limited Ingredient Diets are  
5 false and are material to consumers who purchase the Products. *Id.* Specifically, Plaintiffs  
6 allege the Products presence soy and chicken in the Products (the “defect”), as detected  
7 by Plaintiffs’ expert in independent analyses of the ingredients of the Canidae Limited  
8 Ingredient Products using the industry standard Q-PCR method of DNA testing. FAC ¶  
9 40. Plaintiffs allege that they would not have purchased the Canidae Limited Ingredient  
10 Diets on the same terms, had they known that the Canidae Limited Ingredient Diets in fact  
11 contained non-conforming ingredients. FAC ¶ 79. Plaintiffs allege they would have either  
12 not purchased the Canidae Limited Ingredient Diets or would have paid less for the  
13 products (FAC ¶¶ 15, 21), as result of the false and misleading representations on the  
14 products’ labels, they suffered damages. *E.g.*, FAC ¶ 68.

### 15 **B. Procedural history of this matter.**

16 On July 9, 2020, after extensive investigation and expert analyses of various  
17 Canidae Limited Ingredient Products, Plaintiffs filed the above-captioned putative class  
18 action lawsuit against Canidae in this Court, Case No. 5:20-cv-01374-JGB-SP (the  
19 “Action”). In their complaint, Plaintiffs alleged that Canidae violated California’s Unfair  
20 Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) (the “UCL”), California’s  
21 False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*) (the “FAL”), California’s  
22 Consumer Legal Remedies Act (Cal. Civ. Code § 1750) (the “CLRA”), New York  
23 General Business Law §§ 349 and 350 (the “NY GBL”), and the Magnuson-Moss  
24 Warranty Act (15 U.S.C. § 2301, *et seq.*) (“MMWA”). *See, generally*, FAC. In addition,  
25 Plaintiffs alleged claims against Canidae for breach of express warranty, breach of the  
26 implied warranty of merchantability, and unjust enrichment—each of which is related to  
27 the sale, advertising, marketing, labeling, distribution, and manufacturing of Canidae’s  
28 Limited Ingredient Diet pet food products. Plaintiffs brought these claims on behalf of a

1 putative nationwide class of consumers, as well as putative subclasses for California and  
2 New York consumers (ECF No. 1, the “Initial Complaint”). On September 24, 2020,  
3 Canidae filed a motion to dismiss Plaintiffs’ Initial Complaint (ECF No. 27). Plaintiffs  
4 responded to the motion to dismiss by filing an amended class action complaint on  
5 October 29, 2020, omitting the cause of action for violation of the MMWA. *See* FAC.  
6 Canidae denies all of Plaintiffs’ allegations and is posed to vigorously defend against this  
7 Action.

8         Soon after Plaintiffs filed their First Amended Complaint, the parties met and  
9 conferred about the matter and discussed the possibility of early resolution of the Action,  
10 as is encouraged by this and other district courts. The parties’ preliminary informal  
11 discussions resulted in an agreement to mediate with a retired judge/mediator. On  
12 November 5, 2020, the parties participated in a productive yet contentious mediation of  
13 this dispute, assisted by the Honorable Diane M. Welsh (Retired). Through this initial  
14 mediation session, the parties were able to agree on a rough settlement structure and  
15 agreed to continue to work together to resolve the Action. Although the details of the  
16 proposed Settlement were not fully resolved at the mediation, on December 1, 2020, the  
17 parties filed a joint stipulation to extend the time for Canidae to respond to the FAC,  
18 during which time the resolution discussions would continue. ECF No. 36. With the on-  
19 going assistance of Hon. Welsh, the parties continued to negotiate at arms’-length through  
20 a multitude of follow-up communications, negotiating every aspect of the settlement. The  
21 parties did not discuss attorneys’ fees and costs, or potential plaintiff service awards until  
22 after they agreed on the material terms and structure of the settlement, including the  
23 definition of the Class, the benefits to the Class, and the scope of released claims. After  
24 hard-fought negotiations, on January 13, 2021, the parties jointly filed a Notice of  
25 Settlement in the Court (ECF No. 38). Over the next seven-plus-week period, the parties  
26 have continued to negotiate settlement details, resolve their differences, and solidify the  
27 notification plan to maximize the reach of the settlement’s notice to potential class  
28 members, made much more difficult by the lack of consumer names or purchase records,

1 a problem that is inherent in any class action related to expendable pet food products and  
2 which prevents sending direct notice to the class. Finally, on or about February 25, 2021,  
3 the parties' Agreement was finalized.

4 Class Counsel has fully analyzed their clients' facts, the information provided by  
5 Canidae concerning its Products, and the applicable legal principles. After considering the  
6 substantial risks of continued litigation and the likelihood that the Action, if not settled  
7 now, would be protracted and expensive while offering no guarantee of success for the  
8 Class, Class Counsel is satisfied that the Agreement is in the best interests of the Class.  
9 The terms of the Settlement Agreement are set forth below in Part III. Plaintiffs  
10 respectfully ask this Court to certify the Class for the purposes of settlement and  
11 preliminarily approve the Settlement Agreement as fair, reasonable and adequate.

### 12 **III. THE SETTLEMENT AGREEMENT**

#### 13 **A. The Proposed Nationwide Settlement Class**

14 The parties' Settlement Agreement contemplates certification of the following  
15 Class for settlement purposes only:

16 *All persons residing in the United States and its territories who purchased the*  
17 *Products in the United States and its territories for personal, family, or*  
18 *household purposes, and not for resale, after July 9, 2016 and prior to and*  
19 *including the Notice Date.*

20 White Decl., Ex. 1, Agreement ¶ 9. The Products at issue are listed in Exhibit A to the  
21 proposed Agreement. Agreement, Ex. A.

22 The Agreement's Class definition is tethered to the legal claims against Canidae in  
23 this action because the proposed Class includes only persons who purchased specific  
24 Canidae Limited Ingredient Diet pet food products within the Class Period, and is limited  
25 to only those persons who purchased the pet food products for household use. It is  
26 narrowly tailored because the Class specifically excludes (a) all persons who are  
27 employees, directors, officers, and agents of Canidae, or its subsidiaries and affiliated  
28 companies; (b) persons or entities who purchased the Products primarily for the purposes

1 of resale to consumers or other resellers; (c) governmental entities; (d) persons who  
2 timely and properly exclude themselves from the Class as provided in this Settlement; and  
3 (e) the Court, the Court’s immediate family, and Court staff. *Id.*

4 **B. Settlement Consideration**

5 The Settlement Agreement provides monetary benefits available to every Class  
6 member who submits a valid and timely claim form, regardless of whether the Class  
7 member has retained a proof of purchase for the Products. Each Class member who  
8 submits a valid claim, as determined by the Settlement Administrator, shall receive a  
9 monetary benefit which shall be paid after the Effective Date of the Settlement as defined  
10 by the Settlement Agreement (¶ 18), subject to the following conditions and requirements:

11 **Option 1:** A Class Member who provides valid Proofs of Purchase for qualifying  
12 products during the Class Period may recover five dollars (\$5.00) for every fifty  
13 dollars (\$50.00) spent, as reflected in the valid Proofs of Purchase, up to a maximum  
14 of one hundred and twenty-five dollars (\$125.00) per Household. Any amounts of  
15 less than fifty dollars (\$50.00) will neither be eligible for nor receive prorated  
16 Benefit amounts.

17 **Option 2:** A Class Member who does not provide valid Proof of Purchase (or a  
18 Class Member who provides Proofs-of-Purchase but whose total purchases during  
19 the Class Period fall below fifty dollars (\$50.00)) may recover exactly five dollars  
20 (\$5.00) per Household.

21 Class Members may make a claim for purchases with valid Proofs of Purchase that  
22 collectively exceed fifty dollars (Option 1, above) OR may make a claim without  
23 providing Proofs of Purchase or whose total purchases equal less than fifty dollars (Option  
24 2, above), but may not make claims for both Option 1 and 2. If more than one Valid Claim  
25 is submitted per Household, all such Valid Claims shall be combined and considered  
26 together for purposes of the limits set forth herein, and Benefits will be paid to the first  
27 “same household” Class Member in the chronological order in which the claims were  
28 received by the Settlement Administrator. Agreement ¶ 51. Although the individual

1 Settlement Class members' claims are capped as shown in Options 1 and 2 above, the  
2 total settlement is uncapped.

3 The parties have agreed that a Class Member may provide one of several types of  
4 evidence of their purchase to qualify for the larger monetary benefit. These Proofs of  
5 Purchase may include such documents as: credit card receipts, store receipts, and physical  
6 product packaging (*i.e.*, bar codes or UPCs), or other documentation that reasonably  
7 establishes the fact and date of purchase of the Product during the Class Period in the  
8 United States or its territories. Agreement ¶ 32.

9 The Parties have agreed to recommend that the Court appoint Heffler Claims Group  
10 as Settlement Administrator to design, consult on, and implement related requirements of  
11 this Settlement, including for example, distributing the notice for publication, creating and  
12 maintaining the settlement website, claims review, collection of objections if any, and  
13 effecting other requirements of this Settlement, subject to the Court's approval.  
14 (Agreement ¶ 38). Canidae has agreed to be responsible for paying all fees and expenses  
15 incurred by the Settlement Administrator in administering claims.

### 16 **C. Proposed Notification Plan**

17 Pending this Court's approval, Heffler Claims Group ("Heffler") will serve as the  
18 Notice and Settlement Administrator. Heffler will be responsible for administrating the  
19 Notice Program and administering the claims process including determining and paying  
20 valid claims to Settlement Class Members. The Notice Program consists of multiple  
21 components, designed to reach approximately 75 percent of the target audience, which is  
22 defined as "all consumers who purchase "other" brand dry pet food (*i.e.*, brands other than  
23 Alpo, Eukanuba, Pedigree, Purina, etc.). Agreement Exhibit H, Decl. of Jeanne C. Finegan  
24 ("Finegan Decl.") at ¶ 18. While the actual class is much smaller than the target audience  
25 population, the Notice Plan is calculated to reach the larger target audience population.  
26 *Id.* In addition, the Notice Plan will have an estimated minimum frequency (the average  
27 number of times each Class member will have the opportunity to see the message) of 2  
28 times. *Id.* ¶ 19. Thus, the Notice Plan is designed to reach approximately 75 percent of the



1 target audience using reach calculation methodology that is consistent with many  
2 nationwide court-approved class action notice programs. *Id.* As detailed further in the  
3 Declaration of the Settlement Administrator, the Notice Plan will include the following  
4 elements: (1) targeted online display banner advertising; (2) “Keyword Search” targeting  
5 class members; (3) a press release; (4) social media advertising on Facebook, Instagram,  
6 and Twitter; (5) a settlement informational website; and (6) a 24-hour, 7-day a week toll-  
7 free information telephone line. *Id.* ¶¶ 20-27.

8 The form of the proposed Long Form Notice and Summary Notice, as agreed upon  
9 by Class Counsel and Canidae and subject to this Court’s approval and/or modification,  
10 are attached to the Settlement Agreement as Exhibits D and E, respectively. The Notice  
11 Administrator will establish an official settlement website that will serve as a “landing  
12 page for the banner advertising,” provide detailed information about the Settlement  
13 (explained further at Finegan Decl. ¶ 31), how to obtain Notices, and how to submit Claim  
14 Forms. *Id.* The website will also provide forms for class members to exclude themselves  
15 from the Settlement; and related information, including the Settlement Agreement, Court  
16 orders, and Plaintiffs’ Motion for Approval of Fees, Expenses, and Incentive Awards. *Id.*  
17 The Settlement Administrator shall also establish a Toll-Free phone number with  
18 recordings of information about this Settlement, and will remain open and accessible  
19 through the Claim Deadline. Finegan Decl. ¶ 32.

20 The Notice Program is designed to reach as many Settlement Class members as  
21 practicable, provide the Settlement Class with important information regarding the  
22 Settlement and the members’ rights, including a description of the material terms of the  
23 Settlement; the date by which Settlement Class members are able to exclude themselves  
24 from or “opt-out” of the Settlement Class; the date by which Settlement Class Members  
25 may object to the Settlement, Class Counsel’s fee application and/or the request for a  
26 Service Award; give notice (and updates if necessary) about the date of the Final Approval  
27 Hearing; and provide accessible information regarding the Settlement Website where  
28 Settlement Class members may access the Agreement, and other case-related documents.

1                   **D. Claims Process**

2                   Class Members shall have access to the Claim Form via the Settlement’s website.  
3 Settlement, Ex. C (“Claim Form”). Class Members may choose to submit a Claim Form  
4 either by completing a paper Claim Form and submitting it to the Settlement  
5 Administrator via first class mail, or by submitting a Claim Form electronically online  
6 from the website. If mailed, the Claim Form must be postmarked or if submitted  
7 electronically, it must be submitted online no later than the claim form deadline. A Claim  
8 Form postmarked or submitted online after the Claim Form Deadline will not be  
9 considered a valid claim form. The Settlement Administrator may track Claim Forms  
10 with unique Class Member identifiers. For Claim Forms that are submitted online, every  
11 Class Member shall be provided the opportunity on the Claim Form to upload Proof of  
12 Purchase image files (e.g., .jpg, .tif, .pdf). Agreement ¶¶ 32, 49. Class Members  
13 submitting Claim Forms by mail should include hard copy Proof of Purchase with their  
14 Claim Form.

15                   On each Claim Form, the Class Member must provide and certify the truth and  
16 accuracy of the following information under the penalty of perjury, including by signing  
17 the Claim Form physically or by e-signature, with the warning that any unsigned claim  
18 will not be considered eligible for a benefit by the Settlement Administrator. Agreement  
19 ¶ 50. Each claim will require:

- 20                   a. The Class Member’s name and mailing address;
- 21                   b. The Class Member’s email address (unless the Class Member returns the claim  
22 form by mail, in which case an email address is optional);
- 23                   c. The number of Product packages purchased during the Class Period; and
- 24                   d. An express confirmation that the claimed purchases of the Product were not  
25 made for the purpose of resale. *Id.*

26                   Class members submitting valid claims will have the opportunity to select an  
27 electronic payment option on the Claim Form for payment of the Claimant’s Benefit  
28 pursuant to the procedures outlined in the Settlement Administrator Protocol, attached to

1 the Settlement Agreement as Exhibit G. All settlement checks issued will be valid and  
2 negotiable for a period of ninety (90) days. Agreement ¶ 53.

3 **E. Opt-Outs and Objection Procedures**

4 Opt-outs: Settlement Class members who do not wish to participate in the  
5 Settlement may opt-out of the Settlement by sending a written request to the Settlement  
6 Administrator at the address designated in the Long Form Notice. Settlement Class  
7 members who timely opt-out of the Settlement will preserve their rights to individually  
8 pursue any claims they may have against Canidae, subject to any defenses that Canidae  
9 may have against those claims. The Settlement Agreement Long Form Notice details the  
10 requirements to properly opt-out of the Settlement Class. Agreement ¶ 57; *see also* Ex. D,  
11 Long Form Notice ¶ 15. Settlement Class members must opt-out of the Settlement Class  
12 by the Objection/Exclusion Deadline or will be subject to all releases of the Settlement  
13 Class. *See* Agreement ¶ 98; Ex. D, Long Form Notice ¶¶ 15-17. Not later than seven days  
14 before the date of the Fairness Hearing, the Settlement Administrator shall file a list of  
15 those persons who have opted out of the Class with the Court. Agreement ¶ 92.

18 Objections: Any Class Member who intends to object to the fairness,  
19 reasonableness, and/or adequacy of the Settlement must file a written objection with the  
20 Court and send the written objection to the Settlement Administrator, Class Counsel, and  
21 Defense Counsel, emailed or postmarked no later than the date specified in the  
22 Preliminary Approval Order. Agreement ¶¶ 99-100. Class Members who object must  
23 provide certain information, including a written statement of their objection(s) and the  
24 reasons for each objection, as well as a detailed list of any other objections submitted by  
25 the Class Member, or his/her counsel, to any class actions in any court, whether federal,  
26 state, or otherwise, in the United States in the previous five (5) years. *Id.*

1 The Settlement Administrator will provide copies of all requests for exclusion,  
2 objections, and/or related correspondence from the Class to Class Counsel and Defense  
3 Counsel, including a complete opt-out list and copies of the opt-out requests, which will  
4 be filed with the Court no later than seven (7) days before the Fairness Hearing.  
5 Agreement ¶ 103.

6  
7 **F. Release of Claims**

8 In exchange for the Settlement consideration, Plaintiffs and each Settlement Class  
9 Member, and each of their heirs, spouses, guardians, executors, administrators,  
10 representatives, agents, attorneys, insurers, partners, successors, predecessors-in-interest,  
11 and assigns, shall be deemed to have, and by operation of the Final Judgment shall have,  
12 fully, finally, and forever released, relinquished, and discharged all Class Released Claims  
13 against Canidae as defined in the Settlement Agreement. Agreement ¶¶ 34, 35. The  
14 “Released Claims” are defined in Paragraph 34, and the Released Parties are defined in  
15 Paragraph 35 of the Settlement Agreement. *Id.* The release is narrowly tailored to include  
16 only claims against Canidae as related to the Products at issue in the Settlement, i.e., those  
17 products named in Exhibit A to the Agreement. The released claims are those that (1)  
18 were asserted or could have been asserted in this Action, and those that (2) arise out of or  
19 are related in any way to any or all of the acts, omissions, facts, matters, transactions,  
20 occurrences, or events that were or could have been directly or indirectly alleged or  
21 referred to in the Action.

22 **G. Class Counsel’s Fees and Expenses and Plaintiffs’ Service Awards**

23 As a term of their Agreement, Class Counsel may make an application to the Court  
24 for an award of Attorneys’ Fees and Expenses in this action which will be paid by Canidae  
25 and shall be the sole aggregate compensation received by Class Counsel. Canidae has  
26 agreed not to oppose Class Counsel’s request for an award of attorneys’ fees and expenses  
27 of up to \$1,300,000 and have agreed not to undermine that request or solicit others to do  
28 so. Agreement ¶ 64. Likewise, Class Counsel has agreed not to seek or accept fees or

1 expenses in excess of this amount. *Id.* The procedure for and the allowance or  
2 disallowance by the Court of any application for Attorneys’ Fees and Expenses or for  
3 Incentive Awards are not part of the settlement of the Released Claims as set forth in this  
4 Settlement and are to be considered by the Court separately from the Court’s consideration  
5 of the fairness, reasonableness, and adequacy of the settlement of the Released Claims as  
6 set forth in this Settlement. Agreement ¶ 67.

7 In addition, and in recognition of the time and effort Plaintiffs have expended in  
8 pursuing this matter, and for agreeing to fulfill their obligations and responsibilities as  
9 class representatives, overseeing that relief will be conferred on all Class Members by the  
10 Settlement, the parties have agreed that Class Counsel may ask the Court for the payment  
11 of an Incentive Award to each of the Plaintiffs. Agreement ¶ 61. Defendant agrees to pay  
12 up to a total of five thousand dollars for Incentive Awards to each Plaintiff, up to a total  
13 of ten thousand dollars. Plaintiffs and Class Counsel have agreed that they will not seek  
14 or accept Incentive Awards that exceed those amounts. *Id.*

#### 15 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL**

16 Approval of class action settlements is a multi-step process. *See Manual for*  
17 *Complex Litigation* (Fourth) §§ 21.632 (2012). First, the Court must make a preliminary  
18 determination whether the proposed settlement is “potentially fair, as the Court will make  
19 a final determination of its adequacy at the hearing on Final Approval.” *Acosta v. Trans*  
20 *Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (emphasis in original); see also  
21 *Woodard v. Labrada*, No. EDCV 16-00189 JGB (SPx), 2019 U.S. Dist. LEXIS 162782,  
22 at \*8 (C.D. Cal. Apr. 23, 2019).

23 The purpose of a preliminary approval hearing is to ascertain whether to send out  
24 notice to putative class members and proceed with a fairness hearing. *See In re Tableware*  
25 *Antitrust Litig.*, 484 F. Supp. 2d at 1079. Notice should be disseminated where “the  
26 proposed settlement appears to be the product of serious, informed, non-collusive  
27 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment  
28 to class representatives or segments of the class, and falls within the range of possible

1 approval.” *Id.* Preliminary approval does not require an answer to the ultimate question of  
2 whether the proposed settlement is fair and adequate—that determination occurs only after  
3 notice of the settlement has been given to the members of the settlement class. *Id.*

4 While the district court has discretion regarding the approval of a proposed  
5 settlement, it should give “proper deference to the private consensual decision of the  
6 parties.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Beyond the  
7 public policy favoring settlements, the principal consideration in evaluating the fairness  
8 and adequacy of a proposed settlement is the likelihood of recovery balanced against the  
9 benefits of settlement. “Basic to this process in every instance, of course, is the need to  
10 compare the terms of the compromise with the likely rewards of litigation.” *Protective*  
11 *Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414,  
12 424-25 (1968).

13  
14 **V. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL**

15 Rule 23(e)(2) provides that “the court may approve [a proposed class action  
16 settlement] only after a hearing and on finding that it is fair, reasonable, and adequate.”  
17 When making this determination, the Ninth Circuit has instructed district courts to balance  
18 several factors: (1) the strength of plaintiffs’ case; (2) the risk, expense, complexity, and  
19 likely duration of further litigation; (3) the risk of maintaining class action status  
20 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery  
21 completed and the stage of the proceedings; and (6) the experience and views of counsel.  
22 *Hanlon*, 150 F.3d at 1026<sup>1</sup>; *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th  
23 Cir. 2004). Here, the balance of these factors readily establishes that the Settlement should  
24 be preliminarily approved.

25  
26  
27 <sup>1</sup> In *Hanlon*, the Ninth Circuit also instructed district courts to consider “the reaction of  
28 the class members to the proposed settlement,” *Hanlon*, 150 F.3d at 1026, which must  
wait until the final approval.

1                   **A. The Strength of Plaintiffs’ Case**

2                   When determining the likelihood of a plaintiff’s success on the merits of a class  
3 action, “the district court’s determination is nothing more than an amalgam of delicate  
4 balancing, gross approximations and rough justice.” *Officers for Justice*, 688 F.2d at 625  
5 (internal quotations omitted). The court may “presume that through negotiation, the  
6 Parties, counsel, and mediator arrived at a reasonable range of settlement by considering  
7 Plaintiff’s likelihood of recovery.” *Garner v. State Farm. Mut. Auto. Ins. Co.*, No. CV 08  
8 1365 CW (EMC), 2010 WL 1687832, at \*9 (N.D. Cal. Apr. 22, 2010) (citing *Rodriguez*  
9 *v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)). Here, the settlement negotiations  
10 were hard-fought, requiring a mediation session with a retired judge who has a wealth of  
11 experience with similar false labeling and misrepresentation cases, including others  
12 involving pet foods. After arriving at a preliminary settlement understanding, the parties  
13 participated in multiple follow-up and mediator-advised communications over a period of  
14 several months. Both parties and their counsel are thoroughly familiar with the applicable  
15 facts, legal theories, and potential defenses on both sides. *See* White Decl. ¶¶ 6-9.  
16 Plaintiffs believe that the Settlement is an outstanding result considering the issues  
17 addressed below.

18                   Although Plaintiffs believe that proving Canidae’s liability would be possible here,  
19 there is no guarantee that a jury would agree. Here, Plaintiffs would have to prove that  
20 Canidae was responsible for making false and/or misleading representations and that the  
21 non-conforming ingredients in the Limited Ingredient Diets would be material to  
22 reasonable consumers. This inquiry would undoubtedly devolve into an expensive and  
23 uncertain “battle of experts.” In addition, if the case proceeded to trial, Plaintiffs may be  
24 required to prove that every member of the class purchased products that contained soy or  
25 chicken contaminants, which would likely be very difficult to do.

26                   Moreover, Plaintiffs would face a strong hurdle at class certification and summary  
27 judgment to establish damages against Canidae. Canidae vigorously denies Plaintiffs’  
28 allegations and asserts that neither Plaintiffs nor the Class suffered any harm or damages.

1 In addition, Canidae would no doubt present a vigorous defense at trial, and there is no  
2 assurance that the Class would prevail – or even if they did, that they would be able to  
3 obtain an award of damages significantly higher than achieved here absent such risks.  
4 White Decl. ¶ 10. Finally, identification of the Class members for expendable food  
5 products like the Products in this case, is difficult at best, unlike an automobile case in  
6 which past and present ownership records are readily available. Thus, in the eyes of Class  
7 Counsel, the proposed Settlement provides the Class with an outstanding opportunity to  
8 obtain significant relief at this early stage in the litigation, when those Class members who  
9 are able to access their purchase records are in the best position to benefit most from the  
10 offered relief.

11 **B. The Cumulative Amount of Benefits Offered in the Proposed Settlement**  
12 **are Uncapped.**

13 Class Counsel and the Class Representatives believe the proposed Settlement  
14 confers substantial benefits upon the Class, particularly as weighed against the risk  
15 associated with the inherent uncertain nature of a litigated outcome; the complex nature  
16 of the Action in which Class Counsel have reviewed internal and confidential documents;  
17 the difficulty and complexity of calculating actual economic harm attributable to allegedly  
18 false and misleading representations related to Canidae’s pet food products; and the length  
19 and expense of continued proceedings through additional fact discovery, depositions,  
20 expert depositions, third party document productions and depositions, class certification  
21 briefing, summary judgment briefing, a jury trial, and appeals.

22 Based on their careful evaluation of such factors, Class Counsel and Class  
23 Representatives have determined that the Settlement Agreement is in the best interests of  
24 the Class. Here, Canidae has agreed to settle this matter without a setting a cap on the  
25 cumulative number of claims it will honor or on its maximum cumulative payout. White  
26 Decl. ¶ 12. The value of Canidae’s agreement to pay claims with an uncapped cumulative  
27 maximum settlement payout far outweighs the risk of having to produce and defend  
28 evidence about: (a) whether or not the non-conforming ingredients in Canidae’s Limited



1 Ingredients Diets are uniformly present across the products; (b) whether or not non-  
2 conforming ingredients are even material to reasonable consumers, which is likely to be  
3 subject to an expensive and uncertain “battle of the experts”; (c) whether consumers  
4 frequently repeat purchase the same brands and product lines, with many purchasing the  
5 Products in a manner that would permit retrieval of Proofs of Purchase to claim the  
6 maximum permitted benefits; and (d) whether a capped settlement fund might unfairly  
7 preclude many Class members from recovering.

8 The Settlement is reasonable because it offers an uncapped cumulative benefit  
9 payout to the Class by Canidae. “[T]he uncapped nature of the proposed settlement . . .  
10 indicate[s] that class counsel and the named plaintiffs have attempted to serve the best  
11 interests of the class as a whole.” *Turner v. NFL (In re NFL Players’ Concussion Injury*  
12 *Litig.)*, 307 F.R.D. 351, 373 (E.D. Pa. 2015) (citing *Krell v. Prudential Ins. Co. of Am. (in*  
13 *Re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions)*, 148 F.3d 283, 317 (3d  
14 Cir. 1998). Further, “the Settlement accounts for uncertainty about the precise size of the  
15 Class by providing an uncapped guarantee” of settlement benefits. *Jabbari v. Wells Fargo*  
16 *& Co.*, No. 15-cv-02159-VC, 2018 U.S. Dist. LEXIS 239959, at \*17 (N.D. Cal. June 14,  
17 2018). Finally, the Settlement’s offer of a partial relief benefit that will be paid to Class  
18 members who have not retained proofs of purchase or those who have spent less than fifty  
19 dollars on the Products in the Class Period supports the Settlement’s reasonableness,  
20 especially in light of the difficulty in providing relief to consumers who cannot provide  
21 adequate proofs of purchase for a minor expendable purchase. *E.g., Pappas v. Naked Juice*  
22 *Co of Glendora, Inc.*, No. LA CV11-08276 JAK (PLAx), 2014 U.S. Dist. LEXIS 200645,  
23 at \*25-\*26 (C.D. Cal. Jan. 2, 2014). Therefore, preliminary approval is warranted.

### 24 **C. The Risk of Ongoing Litigation and Maintaining Class Action Status**

25 As referenced above, proceeding in this litigation in the absence of settlement poses  
26 various risks such as failing to certify a class, having summary judgment granted against  
27 Plaintiffs, or losing at trial. Such considerations have been found to weigh heavily in favor  
28 of settlement. *See Rodriguez*, 563 F.3d at 966; *Curtis-Bauer v. Morgan Stanley & Co.*,

1 *Inc.*, No. C 06-3903 TEH, 2008 WL 4667090, at \*4 (N.D. Cal. Oct. 22, 2008) (“Settlement  
 2 avoids the complexity, delay, risk and expense of continuing with the litigation and will  
 3 produce a prompt, certain, and substantial recovery for the Plaintiff class.”). Even if  
 4 Plaintiffs are able to certify a class, there is also a risk that the Court could later decertify  
 5 the class action. *See In re Netflix Privacy Litig.*, No. 5:11-cv-00379 EJD, 2013 WL  
 6 1120801, at \*6 (N.D. Cal. Mar. 18, 2013) (“The notion that a district court could decertify  
 7 a class at any time is one that weighs in favor of settlement.”) (internal citations omitted).  
 8 The Settlement eliminates these risks by ensuring Class Members a recovery that is  
 9 “certain and immediate, eliminating the risk that class members would be left without any  
 10 recovery ... at all.” *Fulford v. Logitech, Inc.*, No. 08-cv-02041 MNC, 2010 U.S. Dist.  
 11 LEXIS 29042, at \*8 (N.D. Cal. Mar. 5, 2010). Therefore, preliminary approval should be  
 12 granted.

#### 13 **D. The Extent of Discovery and Status of Proceedings**

14 Under this factor, courts evaluate whether class counsel had sufficient information  
 15 to make an informed decision about the merits of the case. *See In re Mego Fin. Corp. Sec.*  
 16 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). “[I]n the context of class action settlements,  
 17 ‘formal discovery is not a necessary ticket to the bargaining table’ where the parties have  
 18 sufficient information to make an informed decision about settlement.” *Dunleavy v.*  
 19 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (citing  
 20 *Linney*, 151 F.3d at 1239 (citing *In re Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th Cir.  
 21 1982))).

22 In the matter before the Court, Class Counsel conducted significant pre-litigation  
 23 research, including the retention of experts to analyze the ingredients of multiple Canidae  
 24 Limited Ingredient Products using the industry standard Q-PCR method of DNA testing.  
 25 Likewise, as included in Plaintiffs’ complaints, they gathered scholarly research on the  
 26 pervasive problem of pet food mislabeling especially where manufacturers claim to be  
 27 using specific, limited ingredients or claim to have eliminated certain ingredients from  
 28 their Products. ECF No. 1, ¶¶ 23-29. In addition, the Plaintiffs consulted with an

1 economist regarding the calculation of damages related to misrepresentations about  
2 product ingredients, including regarding calculating damages for paying a price premium  
3 for the inclusion or exclusion of certain key ingredients.

4 Once the parties decided to mediate this matter, prior to and during the course of  
5 their mediation and subsequent months of negotiating the details of the proposed  
6 settlement, the parties shared certain confirmatory discovery including sales figures and  
7 product testing results. *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d  
8 454, 459 (9th Cir. 2000). Finally, Class Counsel are actively involved in litigation against  
9 similar pet food manufacturers and have gained perspective on this matter from counsels'  
10 collective wealth of experience. Although each case, product, and manufacturer has  
11 significant differences, the certainty of settlement and the costs and difficulties of  
12 protracted litigation in these matters are known to both Class Counsel and Canidae.

13 The Settlement is thus based upon sufficient information that enabled Class  
14 Counsel to weigh the risks of litigation against making benefits immediately available to  
15 the Class, and, thus, make an informed decision when negotiating with Canidae.

#### 16 **E. Experience and Views of Counsel**

17 “The recommendations of plaintiffs’ counsel should be given a presumption of  
18 reasonableness.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal.  
19 2008). Deference to Class Counsel’s evaluation of the Settlement is appropriate because  
20 “[p]arties represented by competent counsel are better positioned than courts to produce a  
21 settlement that fairly reflects each party’s expected outcome in litigation.” *Rodriguez*, 563  
22 F.3d at 967. Here, the Settlement was negotiated by counsel with extensive experience in  
23 consumer class action litigation, and more specifically in litigation related to mislabeling  
24 and pet foods. *See* White Decl. ¶¶ 15, 16 & Ex. 2, 3, and 4 (firm resumes of proposed  
25 Class Counsel).

26 Based on their collective experience, Class Counsel concluded that the Settlement  
27 provides exceptional results for the class while sparing the class from the uncertainties of  
28 continued and protracted litigation.

1  
2 **VI. THIS COURT SHOULD PROVISIONALLY CERTIFY THE CLASS**  
3 **AND ENTER A PRELIMINARY APPROVAL ORDER**

4 **A. The proposed Settlement Class should be certified.**

5 The Ninth Circuit has recognized that certifying a settlement class to resolve  
6 consumer lawsuits is a common occurrence. *Hanlon*, 150 F.3d at 1019. When presented  
7 with a proposed settlement, a court must first determine whether the proposed settlement  
8 class satisfies the requirements for class certification under Rule 23. In assessing those  
9 class certification requirements, a court may properly consider that there will be no trial.  
10 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request  
11 for settlement-only class certification, a district court need not inquire whether the case, if  
12 tried, would present intractable management problems . . . for the proposal is that there be  
13 no trial.”). For the reasons below, the Class meets the requirements of Rule 23(a) and (b).

14 **B. The Class Satisfies Rule 23(a)**

15 1. Numerosity

16 Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is  
17 impracticable.” See Rule 23(a)(1). “As a general matter, courts have found that  
18 numerosity is satisfied when class size exceeds 40 members, but not satisfied when  
19 membership dips below 21.” *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal.  
20 2000). Here, the proposed Class easily satisfies the numerosity requirement and is so  
21 numerous that joinder of their claims is impracticable.

22 2. Commonality

23 Rule 23(a)(2) requires the existence of “questions of law or fact common to the  
24 class.” See Rule 23(a)(2). Commonality is established if plaintiffs and class members’  
25 claims “depend on a common contention,” “capable of class-wide resolution . . . [meaning]  
26 that determination of its truth or falsity will resolve an issue that is central to the validity  
27 of each one of the claims in one stroke.” *WalMart Stores, Inc. v. Dukes*, 564 U.S. 338,  
28 350 (2011). Because the commonality requirement may be satisfied by a single common

1 issue, it is easily met. 1H. Newberg & Conte, *Newberg on Class Actions* § 3.10, at 3-50  
2 (1992).

3 There are ample issues of both law and fact here that are common to the members  
4 of the Settlement Class. All Class Members' claims arise from a common nucleus of facts  
5 and are based on the same legal theories. Plaintiffs allege that Canidae misrepresented the  
6 actual ingredients of its Limited Ingredient Diet Products, namely by including corn,  
7 wheat and soy despite claiming those ingredients are not present in the Products. These  
8 alleged misrepresentations were made in a uniform manner to each of the class members.  
9 Accordingly, commonality is satisfied by the existence of these common factual issues.  
10 *See Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 474 (C.D. Cal. 2012)  
11 (commonality requirement met because "claims of all prospective class members involve  
12 the same alleged defect"); *McCrary v. Elations Co., LLC*, No. EDCV 13-00242, 2014  
13 U.S. Dist. LEXIS 8443, at \*30 (C.D. Cal. Jan. 13, 2014) (class members were exposed to  
14 same labeling claims, creating a "common core of salient facts").

15 Second, Plaintiffs' claims are brought under legal theories common to the Class as  
16 a whole. Alleging a common legal theory alone is enough to establish commonality. *See*  
17 *Hanlon*, 150 F.3d at 1019 ("All questions of fact and law need not be common to satisfy  
18 the rule. The existence of shared legal issues with divergent factual predicates is sufficient,  
19 as is a common core of salient facts coupled with disparate legal remedies within the  
20 class."). Here, all legal theories asserted by Plaintiffs are common to all Class Members.  
21 Given that there are virtually no issues of law which affect only individual members of  
22 the Class, common issues of law clearly predominate over individual ones. Thus,  
23 commonality is satisfied.

### 24 3. Typicality

25 Rule 23(a)(3) requires that the claims of the representative plaintiffs be "typical of  
26 the claims ... of the class." *See* Rule 23(a)(3). "Under the rule's permissive standards,  
27 representative claims are 'typical' if they are reasonably coextensive with those of absent  
28 class members; they need not be substantially identical." *See Hanlon*, 150 F.3d at 1020.

1 In short, to meet the typicality requirement, the representative plaintiffs simply must  
2 demonstrate that the members of the settlement class have the same or similar grievances.  
3 *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 161 (1982).

4 The claims of the named Plaintiffs are typical of those of the Class. Like those of  
5 the Class, their claims arise out of the purchase of Canidae's Limited Ingredient Diet  
6 Products for personal or household use after relying on the limited ingredient  
7 representations of Canidae which are on the labels of the products. The named Plaintiffs  
8 have precisely the same claims as the Class and must satisfy the same elements of each of  
9 their claims, as must other Class Members. Supported by the same legal theories, the  
10 named Plaintiffs and all Class Members share claims based on the same alleged course of  
11 conduct. The named Plaintiffs and all Class Members have been injured in the same  
12 manner by this conduct. Therefore, Plaintiffs satisfy the typicality requirement.

#### 13 4. Adequacy

14 The final requirement of Rule 23(a) is set forth in subsection (a)(4) which requires  
15 that the representative parties "fairly and adequately protect the interests of the class." *See*  
16 *Rule 23(a)(4)*. A plaintiff will adequately represent the class where: (1) plaintiffs and their  
17 counsel do not have conflicts of interests with other class members; and (2) where  
18 plaintiffs and their counsel prosecute the action vigorously on behalf of the class. *See*  
19 *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Moreover, adequacy is presumed  
20 where a fair settlement was negotiated at arm's length. *Newberg on Class Actions, supra*,  
21 §11.28, at 11-59.

22 Class Counsel have vigorously and competently pursued the Class Members'  
23 claims. The arm's-length settlement negotiations that took place and the investigation they  
24 undertook demonstrate that Class Counsel adequately represent the Class. Moreover, the  
25 named Plaintiffs and Class Counsel have no conflicts of interests with the Class. Rather,  
26 the named Plaintiffs, like each absent Class Member, have a strong interest in proving  
27 Canidae's common course of conduct, and obtaining redress. In pursuing this litigation,  
28 Class Counsel, as well as the named Plaintiffs, have advanced and will continue to

1 advance and fully protect the common interests of all members of the Class. Class Counsel  
2 have extensive experience and expertise in prosecuting complex class actions. Class  
3 Counsel are active practitioners who are highly experienced in class action and consumer  
4 fraud and mislabeling litigation. *See* White Decl. ¶¶ 15, 16 & Ex. 2, 3, and 4 (firm resumes  
5 of proposed Class Counsel). Accordingly, Rule 23(a)(4) is satisfied.

### 6 **C. The Class Satisfies Rule 23(b)(3)**

7 In addition to meeting the prerequisites of Rule 23(a), Plaintiffs must also meet one  
8 of the three requirements of Rule 23(b) to certify the proposed class. *See Zinser v. Accufix*  
9 *Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Under Rule 23(b)(3), a class  
10 action may be maintained if “the court finds that the questions of law or fact common to  
11 the members of the class predominate over any questions affecting only individual  
12 members, and that a class action is superior to other available methods for fairly and  
13 efficiently adjudicating the controversy.” *See* Rule 23(b)(3). Certification under Rule  
14 23(b)(3) is appropriate and encouraged “whenever the actual interests of the parties can  
15 be served best by settling their differences in a single action.” *Hanlon*, 150 F.3d at 1022.

#### 16 1. Common Questions of Law and Fact Predominate

17 The proposed Class is well-suited for certification under Rule 23(b)(3) because  
18 questions common to the Class Members predominate over questions affecting only  
19 individual Class Members. Predominance exists “[w]hen common questions present a  
20 significant aspect of the case and they can be resolved for all members of the class in a  
21 single adjudication.” *Id.* As the U.S. Supreme Court has explained, when addressing the  
22 propriety of certification of a settlement class, courts take into account the fact that if a  
23 trial becomes unnecessary through settlement, its manageability is no longer an issue.  
24 *Amchem*, 521 U.S. at 619-620.

25 In this case, common questions of law and fact exist and predominate over any  
26 individual questions, including, in addition to whether this settlement is reasonable (*see*  
27 *Hanlon*, 150 F.3d at 1026-27), *inter alia*: (1) whether Canidae’s representations regarding  
28 the actual ingredients of its Limited Ingredient Diet Products were false and misleading

1 or reasonably likely to deceive consumers; (2) whether Canidae violated the CLRA, UCL,  
2 FAL and NY GBL §§ 349-350; and (3) whether the Class has been injured by the wrongs  
3 complained of, and if so, whether Plaintiffs and the Class are entitled to damages,  
4 injunctive and/or other equitable relief, including restitution or disgorgement, and if so,  
5 the nature and amount of such relief.

6 Here, no concerns about certifying a nationwide settlement class are at issue under  
7 *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 590 (9th Cir. 2012). First, *Mazza* was  
8 certified for litigation, not settlement. *Espinosa v. Ahearn (In re Hyundai & Kia Fuel*  
9 *Econ. Litig.)*, 926 F.3d 539, 563 (9th Cir. 2019). Second, in *Mazza*, the Ninth Circuit held  
10 that, the burden is on the defendant to show that foreign law, rather than California law,  
11 should apply to class claims when certifying a nationwide class. *See also In re MDC*  
12 *Holdings Securities Litigation*, 754 F. Supp. 785, 803–04, 808 (S.D. Cal. 1990) (the “court  
13 presumes that California law controls unless and until defendants show that choice of law  
14 problems render the common law claims inappropriate for class treatment.”); *In re*  
15 *Seagate Technologies Sec. Litigation*, 115 F.R.D. 264, 269, 274 (N.D. Cal. 1987)  
16 (applying California law to nationwide class because “[a]bsent the defendant carrying [its]  
17 burden, California law would govern the foreign state plaintiffs’ claims” and noting  
18 several other decisions reaching this conclusion).

19 When claims revolve around a “common nucleus of facts,” the longstanding rule  
20 about differing remedies does not preclude class certification applies. *Espinosa*, 926 F.3d  
21 at 563. “[I]n deciding whether to certify a settlement-only class, ‘a district court need not  
22 inquire whether the case, if tried, would present intractable management problems.’” *Id.*  
23 at 558. Here, Canidae is not disputing the application of California law to this settlement.  
24 In this settlement context, Canidae has chosen not to undertake its burden to demonstrate  
25 that a jurisdiction other than California’s law should apply. Consequently, Canidae is  
26 voluntarily subjecting itself to California law, including California’s Consumer Legal  
27 Remedies Act, which provides greater protections to consumers than other jurisdictions.  
28 Where, as here, Canidae’s products were widely distributed and there are significant



1 contacts with California residents, and where Canidae does not oppose California law  
2 applying to the nationwide class, a *Mazza* analysis is unnecessary because the interests of  
3 other states will not be impaired. Moreover, consistent with Plaintiffs’ allegations under  
4 the laws described above and the parties’ settlement, the Settlement Agreement releases  
5 all claims against Canidae arising under state and federal laws that arise from Canidae’s  
6 alleged representations regarding the non-conforming ingredients in its Limited  
7 Ingredient Diet Products at issue in this litigation. *See* Agreement, Section VII. Releases,  
8 ¶¶ 69-75 and Agreement, Ex. A, List of Covered Products.

9 For these reasons, predominance is satisfied.

10  
11 2. A Class Action is the Superior Mechanism for Adjudicating this  
12 Dispute.

13 The class mechanism is superior to other available means for the fair and efficient  
14 adjudication of the claims of the Class Members. Each individual Class Member may lack  
15 the resources to undergo the burden and expense of individual prosecution of the complex  
16 and extensive litigation necessary to establish Canidae’s liability. Individualized litigation  
17 increases the delay and expense to all parties and multiplies the burden on the judicial  
18 system. Individualized litigation also presents a potential for inconsistent or contradictory  
19 judgments. In contrast, the class action device presents far fewer management difficulties  
20 and provides the benefits of single adjudication, economy of scale, and comprehensive  
21 supervision by a single court. Accordingly, common questions predominate, and a class  
22 action is the superior method of adjudicating this controversy.

23 **VII. THE PROPOSED NOTICE PROGRAM IS ADEQUATE AND SHOULD**  
24 **BE APPROVED**

25 Once preliminary approval of a class action settlement is granted, notice must be  
26 directed to class members. For class actions certified under Rule 23(b)(3), “the court must  
27 direct to class members the best notice that is practicable under the circumstances,  
28 including individual notice to all members who can be identified through reasonable

1 effort.” Rule 23(c)(2)(B). In addition, Rule 23(e)(1) applies to any class settlement and  
2 requires the Court to “direct notice in a reasonable manner to all class members who would  
3 be bound by the proposal.” Rule 23(e)(1). When a court is presented with class notice  
4 pursuant to a settlement, both the class certification notice and notice of settlement may  
5 be combined in the same notice. *Manual*, § 21.633 at 321-22 (“For economy, the notice  
6 under Rule 23(c)(2) and the Rule 23(e) notice are sometimes combined.”). This notice  
7 allows Class Members to decide whether to opt out of or participate in the class and/or to  
8 object to the Settlement and argue against final approval by the Court. *Id.*

9 The Notices proposed in this matter accurately inform Class Members of the salient  
10 terms of the Settlement, the Class to be certified, the final approval hearing and the rights  
11 of all parties, including the rights to file objections or to opt-out of the Settlement Class.  
12 Agreement, Section IX, ¶¶ 98-104. The proposed Long Form Notice will provide concise  
13 directions on the requirements and deadlines to submit claims, to request exclusion, or to  
14 object to the Settlement. Agreement, Ex. D. The Parties in this case have created and  
15 agreed to provide a variety of forms of notice, which collectively will satisfy both the  
16 substantive and manner of distribution requirements of Rule 23 and due process. *See*  
17 Agreement, Section VIII, and Exs. D, E, and H.

18 The proposed notice program includes the following components:

- 19 • Online display banner advertising specifically targeted to reach Class  
20 members in both the U.S. and its Territories;
- 21 • Keyword Search targeting Class members in both the U.S. and its Territories;
- 22 • A press release across PR Newswire’s US1 and Territorial Newslines;
- 23 • Social media through Facebook, Instagram, and Twitter;
- 24 • An informational website, on which the notices and other important Court  
25 documents will be posted; and
- 26 • A toll-free information line, by which Class members can call 24/7 for more  
27 information about the Settlement, including, but not limited to, requesting  
28 copies of the Long Form Notice or a Claim Form.

1 See Agreement, Ex. H, Finegan Decl. ¶¶ 20-32.

2 This proposed notice program provides a fair opportunity for Class Members to  
 3 obtain full disclosure of the conditions of the Settlement and to make an informed decision  
 4 regarding the Settlement. This notice program is designed to reach at least seventy-five  
 5 percent of the targeted Class Members, on average two times each. *See id.*, Finegan Decl.  
 6 ¶ 33. Thus, the parties’ notice plan and procedures satisfy the requirements of due process.

7  
 8  
 9 **VIII. PROPOSED SCHEDULE OF EVENTS**

10 In connection with Preliminary Approval of the Settlement, the Court should also  
 11 set a date and time for the Final Approval Hearing. Other deadlines in the Settlement  
 12 approval process, including the deadlines for requesting exclusion from the Settlement  
 13 Class or objecting to the Settlement, will be determined based on the date of the Final  
 14 Approval Hearing or the date on which the Preliminary Approval Order is entered. The  
 15 Parties respectfully propose the following schedule:

16

<b>EVENT</b>	<b>DEADLINE</b>
Deadline for publishing Notice	Within thirty (30) days after the entry of the Preliminary Approval Order
Filing an objection with the Court, or submitting a request for exclusion to the Settlement Administrator	45 days after the Notice Date (see Agreement ¶ 7)
Filing of response to objections	No later than seven (7) days before the Fairness Hearing
Filing of papers in support of Final Approval and Class Counsel’s Application for Attorneys’ Fees and Expenses	As set by the District Court and Local Rules

Final Approval Hearing	60 days after the Notice Date (see Agreement ¶ 7)
Deadline for submitting claims forms	90 days after the Notice Date (see Agreement ¶ 7)

**IX. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval, provisionally certify the Class, approve the proposed notice plan, and enter the Proposed Preliminary Approval Order.

Dated: March 5, 2021.

Respectfully submitted,

/s/ Lisa A. White

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