

Exhibit D1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SARAH HILL and MONICA
O’ROURKE, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

CANIDAE CORPORATION,

Defendant.

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

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT,
PROVISIONALLY CERTIFYING A
NATIONWIDE CLASS, APPROVING
PROPOSED NOTICE, AND
SCHEDULING FAIRNESS HEARING**

The Honorable Jesus G. Bernal

1 Upon review and consideration of the Settlement and all Exhibits thereto that
2 have been filed with the Court, pursuant to Rule 23 of the Federal Rules of Civil
3 Procedure, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

4 1. The Court has carefully reviewed the Settlement, as well as the files,
5 records, and proceedings to date in this matter. The definitions in the Settlement are
6 hereby incorporated as though fully set forth in this Order, and capitalized terms shall
7 have the meanings attributed to them in the Settlement.

8 2. The Parties have agreed to settle the Action upon the terms and
9 conditions set forth in the Settlement that has been filed with the Court. The
10 Settlement, including all Exhibits thereto, is preliminarily approved as fair,
11 reasonable, and adequate. Plaintiffs, by and through their counsel, conducted a robust
12 investigation into the facts and law relating to the matters alleged in their Complaints,
13 including into marketing, advertising, and labeling of the products, as well as legal
14 research as to the strength and sufficiency of the claims and defenses thereto, and
15 appropriateness of class certification. The Settlement was reached as a extensive
16 arms'-length negotiations between the Parties and their counsel, facilitated by a full-
17 day mediation and multiple follow-up discussions with a respected mediator, the
18 Honorable Diane M. Welsh (Retired). During these mediation discussions, the
19 Parties had an arms'-length exchange of sufficient information to permit Plaintiffs
20 and their counsel to evaluate the claims and potential defenses and to meaningfully
21 conduct informed settlement discussions. The Settlement provides meaningful relief
22 to the Class (including cash payments), particularly in light of the modest damages
23 that Plaintiffs and Class Counsel believe are potentially recoverable or provable at
24 trial without the costs, uncertainties, delays, and other risks associated with continued
25 litigation, trial, and/or appeal.

26 3. The Court provisionally certifies, for settlement purposes only, a Class
27 of all persons residing in the United States and its territories who purchased the
28 Products in the United States and its territories for personal, family, or household

1 purposes, and not for resale, after July 9, 2016 and prior to and including the Notice
2 Date. Excluded from the Class are (a) all persons who are employees, directors,
3 officers, and agents of Canidae, or its subsidiaries and affiliated companies; (b)
4 persons or entities who purchased the Products primarily for the purposes of resale to
5 consumers or other resellers; (c) governmental entities; (d) persons who timely and
6 properly exclude themselves from the Class as provided in this Settlement; and (e)
7 the Court, the Court's immediate family, and Court staff.

8 4. The Court provisionally finds, for settlement purposes only and
9 conditioned upon the entry of this Order and subject to final findings and ratification
10 in the Final Order and Judgment, and the occurrence of the Effective Date, that the
11 prerequisites for a class action under Rule 23 of the Federal Rules of Civil Procedure
12 have been satisfied in that: (a) the number of Class Members is so numerous that
13 joinder of all Members thereof is impracticable; (b) there are questions of law and
14 fact common to the Class; (c) the claims of the Plaintiffs are typical of the claims of
15 the Class they seek to represent; (d) the Plaintiffs have fairly and adequately
16 represented the interests of the Class and will continue to do so, and the Plaintiffs
17 have retained experienced counsel to represent them; (e) the questions of law and fact
18 common to the Class Members predominate over any questions affecting any
19 individual Class Member; and (f) a class action is superior to the other available
20 methods for the fair and efficient adjudication of the controversy. All of these
21 findings are made for settlement purposes only.

22 5. The Court appoints Gregory F. Coleman, Lisa A. White, Alex R. Straus,
23 and Arthur Stock of Greg Coleman Law PC; Nick Suciu III of Barbat, Mansour,
24 Suciu & Tomina, PLLC; Daniel K. Bryson and J. Hunter Bryson of Whitfield
25 Bryson, LLP, and Gary E. Mason of Mason, Lietz, and Klinger LLP as counsel for
26 the Class ("Class Counsel"). For purposes of these settlement approval proceedings,
27 the Court finds that these attorneys are competent and capable of exercising their
28

1 responsibilities as Class Counsel. The Court designates named Plaintiffs Sarah Hill
2 and Monica O'Rourke as the representatives of the Class.

3 6. The Fairness Hearing shall be held before this Court on [DATE] at
4 [TIME], to determine whether the Settlement is fair, reasonable, and adequate, and
5 whether it should receive final approval. The Court will also address Class Counsel's
6 application for an award of Attorneys' Fees and Expenses and Incentive Awards for
7 the Plaintiffs (collectively, the "Fee Application") at that time. Papers in support of
8 final approval of the Settlement and the Fee Application shall be filed with the Court
9 according to the schedule set forth in Paragraph 18 below. The Fairness Hearing may
10 be postponed, adjourned, or continued by order of the Court without further notice to
11 the Class. After the Fairness Hearing, the Court may enter a Final Order and
12 Judgment in accordance with the Settlement that will adjudicate the rights of the
13 Class Members (as defined in the Settlement) with respect to the claims being settled.

14 7. Pending the Fairness Hearing, all proceedings in the Action, other than
15 proceedings necessary to carry out or enforce the terms and conditions of the
16 Settlement and this Order, are stayed.

17 8. The Court approves, as to form and content, the Long Form Notice of
18 Pendency and Settlement of Class Action ("Long Form Notice") and the Summary
19 Notice, attached as Exhibits "D" and "E," respectively, to the Settlement. The Court
20 further approves the Notice Plan set forth in the Declaration of the Settlement
21 Administrator, attached as Exhibit "H" to the Settlement.

22 9. The Court finds that the Long Form Notice, Summary Notice, and
23 Notice Plan are reasonable, that they constitute due, adequate, and sufficient notice to
24 all persons entitled to receive notice, and that they meet the requirements of due
25 process and Federal Rule of Civil Procedure 23(e). Specifically, the Court finds that
26 the manner of dissemination of the Long Form Notice and Summary Notice described
27 in the Declaration of the Settlement Administrator (Exhibit "H") complies with Rule
28 23(e), as it is also the best practicable notice under the circumstances, given the

1 manner in which Defendant sells the Products, and is reasonably calculated, under all
2 the circumstances, to apprise members of the class of the pendency of this Action, the
3 terms of the Settlement, and their right to object to the Settlement or exclude
4 themselves from the Class. Notice shall be issued no later than [DATE] (the “Notice
5 Date”). Notice shall include (a) a digital media component, to begin no later than the
6 Notice Date and to conclude no later than 30 days after the Notice Date; and (b) a
7 Press Release, to be issued on the Notice Date through PR Newswire.

8 10. Class Members will have 90 days total, beginning on the Notice Date, to
9 submit their Claim Forms, which the Court finds is adequate and sufficient time.

10 11. Each member of the Class who wishes to be excluded from (*i.e.*, opt out
11 of) the Class and follows the procedures set forth in this Paragraph shall be excluded.
12 Members of the Class wishing to exclude themselves from the Settlement must send
13 to the Settlement Administrator by U.S. mail (to the following address: Heffler
14 Claims Group, PO Box [NUMBER] Philadelphia, PA 19102-XXXX) a personally
15 signed letter including (a) their full name; (b) current address; (c) a clear statement
16 communicating that they elect to be excluded from the Class, do not wish to be a
17 Class Member, understand that they will not receive any monetary benefit under the
18 Settlement, and that they elect to be excluded from any judgment entered pursuant to
19 the Settlement; (d) their original signature; and (e) the case name and case number
20 (*Hill v. Canidae Corp.*, No. 5:20-cv-01374-JGB-SP). Any request for exclusion (*i.e.*,
21 to opt out) must be postmarked no later than [DATE]. All persons who properly
22 elect to opt out of the Settlement shall not be Class Members and shall relinquish
23 their rights and eligibility for Benefits under the Settlement, should it be finally
24 approved, and may not file an objection to the Settlement or appear at the Fairness
25 Hearing.

26 12. Any member of the Class who fails to submit a valid and timely request
27 for exclusion shall be bound by all terms of the Settlement and the Final Order and
28 Final Judgment.

1 13. Class Members may object to the terms and conditions of the Settlement,
2 the certification of the Class, the entry of the Final Order and Judgment, the amount
3 of Attorney’s Fees and Expenses requested by Class Counsel, and/or the amount of
4 the Incentive Awards requested by the Plaintiffs, by filing a written objection with the
5 Court and serving the written objection upon Class Counsel and Defense Counsel (as
6 defined in the Settlement) in the manner set forth in paragraph 14. Class Members
7 who fail to file with the Court and serve upon Class Counsel and Defense Counsel
8 timely written objections in the manner specified in the Settlement, the Long Form
9 Notice, and the Summary Notice shall be deemed to have waived all objections and
10 shall be foreclosed from making any objection (whether by appeal or otherwise) to
11 the Settlement. The Court will not consider written objections that are mailed to the
12 Court and not filed, or objections that are served on the Parties but not filed with the
13 Court.

14 14. Class Members who object must set forth (a) their full name; (b) current
15 address; (c) a written statement of their objection(s) and the reasons for each
16 objection; (d) a statement of whether they intend to appear at the Fairness Hearing,
17 and if so, whether they will appear with separate counsel; (e) their signature; (f) the
18 case name and case number (*Hill v. Canidae Corp.*, No. 5:20-cv-01374-JGB-SP); and
19 (g) a detailed list of any other objections submitted by the Class Member, or his/her
20 counsel, to any class actions submitted in any court, whether state, federal, or
21 otherwise, in the United States in the previous five (5) years. If the Class Member or
22 his/her counsel has not objected to any other class action settlement in any court in
23 the United States in the previous five (5) years, he/she shall affirmatively state so in
24 the written materials provided in connection with the Objection to this Settlement.
25 No Class Member shall be entitled to be heard at the Fairness Hearing (whether
26 individually or through separate counsel) or to object to the Settlement, and no
27 written objections or briefs submitted by any Class Member shall be received or
28 considered by the Court at the Fairness Hearing, unless copies of any written

1 objections and/or briefs, along with the Class Member's statement of intent to appear
2 at the Fairness Hearing, have been filed with the Court and served via fax, U.S. mail,
3 or email on the Settlement Administrator, as well as via U.S. mail or email to Class
4 Counsel and Defense Counsel at the addresses set forth below by **[DATE]**. Class
5 Members who intend to appear but do not object to the Settlement shall file a Notice
6 of Appearance at least fourteen (14) calendar days before the Fairness Hearing.

7 Objections must be served as follows:

8 Upon Settlement Administrator at:

9 Canidae Settlement Administrator
10 c/o Heffler Claims Group
11 1515 Market Street, Suite 1700
12 Philadelphia, PA 19102
13 E-mail: **[EMAIL]**

14 Upon Class Counsel at:

15 Alex R. Straus
16 GREG COLEMAN LAW PC
17 16748 McCormick Street
18 Los Angeles, CA 91436
19 Email: alex@gregcolemanlaw.com

20 Upon Defense Counsel at:

21 Timothy Loose
22 GIBSON, DUNN & CRUTCHER LLP
23 333 South Grand Avenue
24 Los Angeles, CA 90071
25 Email: tloose@gibsondunn.com

26 15. Class Counsel shall file their Fee Application on or before **[DATE]**.

27 16. Papers in support of final approval of the Settlement shall be filed with
28 the Court on or before **[DATE]**.

 17. Responses to objections to the Settlement or Fee Application shall be
filed with the Court on or before **[DATE]**.

1 18. In summary, the deadlines set by this Order are as follows:

2 (a) The Long Form Notice shall be published within thirty (30) days
3 after the entry of this Order;

4 (b) The Summary Notice shall be published within thirty (30) days
5 after the entry of this Order;

6 (c) Class Counsel shall file their Fee Application on or before
7 **[DATE]**;

8 (d) Papers in support of final approval of the Settlement shall be filed
9 with the Court no later than **[DATE]**;

10 (e) Members of the Class who desire to be excluded shall submit
11 requests for exclusion postmarked no later than **[DATE]**;

12 (f) All written objections to the Settlement, including written notices
13 of the objecting Class Member's intention to appear at the Fairness Hearing,
14 shall be filed with the Court and served on Class Counsel and Defense Counsel
15 no later than **[DATE]**;

16 (f) Class Members who intend to appear but do not object to the
17 Settlement shall file a Notice of Appearance by **[DATE]**;

18 (g) Responses to objections to the Settlement or the Fee Application
19 shall be filed with the Court no later than **[DATE]**; and

20 (h) The Fairness Hearing shall be held on **[DATE]** at **[TIME]**.

21 19. These deadlines may be extended by order of the Court, for good cause
22 shown, without further notice to the Class. Class Members must consult the
23 Settlement Website (**[WEBSITE]**) regularly for updates and further details regarding
24 extensions of these deadlines.

25 20. Pending final determination of whether the Settlement should be
26 approved, Plaintiffs and Class Members, or any of them, are prohibited from directly,
27 indirectly, derivatively, in a representative capacity, or in any other capacity,
28 commencing, prosecuting, or continuing any other action in any forum (state or

1 federal) against any of the Released Parties (as that term is defined in the Settlement)
2 in any court or tribunal asserting any of the Released Claims (as that term is defined
3 in the Settlement).

4 21. Heffler Claims Group is hereby appointed as Settlement Administrator
5 for this Settlement and shall perform all of the duties of the Settlement Administrator
6 set forth in the Settlement.

7 22. Class Counsel and Defense Counsel are hereby authorized to use all
8 reasonable procedures in connection with approval and administration of the
9 Settlement that are not materially inconsistent with this Order or the Settlement,
10 including making, without further approval of the Court, minor changes to the form
11 or content of the Long Form Notice, Summary Notice, and other Exhibits that they
12 jointly agree are reasonable or necessary.

13 23. In the event the Court does not grant final approval to the Settlement, or
14 if for any reason the Parties fail to obtain a Final Order and Judgment as
15 contemplated in the Settlement, or the Settlement is terminated pursuant to its terms
16 for any reason, or the Effective Date does not occur for any reason, then the
17 following shall apply:

18 a. All orders and findings entered in connection with the Settlement shall
19 become null and void and have no force and effect whatsoever, shall not be used or
20 referred to for any purposes whatsoever, and shall not be admissible or discoverable
21 in this or any other proceeding;

22 b. The provisional certification of the Class for settlement purposes
23 pursuant to this Order shall be vacated automatically, and the Action shall proceed as
24 though the Class had never been certified pursuant to this Settlement and the related
25 findings had never been made;

26 c. Nothing contained in this Order is, or may be construed as, a
27 presumption, concession, or admission by or against Defendant or Plaintiffs of any
28 default, liability, or wrongdoing as to any facts or claims alleged or asserted in the

1 Action, or in any actions or proceedings, whether civil, criminal or administrative,
2 including, but not limited to, factual or legal matters relating to any effort to certify
3 the Action as a class action;

4 d. Nothing in this Order or pertaining to the Settlement, including any of
5 the documents or statements generated or received pursuant to the claims process,
6 shall be used as evidence in any further proceeding in this Action, including, but not
7 limited to, motions or proceedings seeking treatment of the Action as a class action;
8 and

9 e. All of the Court's prior Orders having nothing whatsoever to do with the
10 Settlement shall, subject to this Order, remain in force and effect.

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12
13 DATED: _____

The Honorable Jesus G. Bernal