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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**PAUL GIFFORD, *et al.*, on behalf of
himself and all others similarly situated,**

Plaintiffs,

v.

PETS GLOBAL, INC.,

Defendant.

Case No.: CV 21-02136-CJC(MRWx)

**ORDER GRANTING PLAINTIFFS’
UNOPPOSED RENEWED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
[Dkt. 51]**

I. INTRODUCTION

On March 9, 2021, Plaintiffs Paul Gifford, Mary Lou Molina, Randy Miland, and Karen Perri filed this putative consumer class action alleging that Defendant Pets Global, Inc. (“Pets Global”) misrepresented the kind of ingredients used in its Zignature Limited

1 Ingredient pet food line.¹ (Docket 1 [Class Action Complaint].) On June 2, 2021,
2 Plaintiffs filed their First Amended Class Action Complaint. (Dkt. 23 [hereinafter
3 “FAC”].) In their FAC, Plaintiffs allege claims for breach of express warranty under
4 California law, Minnesota law, and Illinois law, (Count I, II); breach of implied warranty
5 under California Law, Minnesota Law, and Illinois Law (III, IV, V); unjust enrichment
6 (Count VI); violations of California’s Consumer Legal Remedies Act (Count VII),
7 California’s False Advertising Law (Count VIII), and California’s Unfair Competition
8 Law (Count VIV); violations of Minnesota’s Uniform Deceptive Trade Practices Act
9 (Count X); and violations of Illinois’s Consumer Fraud Act (Count XI). (FAC ¶¶ 69–
10 184.) In January of 2022, this Court denied Plaintiffs’ first motion for preliminary
11 approval of the proposed class action settlement, finding that Plaintiff had failed to satisfy
12 Rule 23(a)’s numerosity requirement and the requirements of Rule 23(e). (Dkt. 50
13 [Court’s Order Denying Plaintiffs’ Unopposed Motion for Approval of the Class Action
14 Settlement].) The Court explained that though Plaintiffs had satisfied Rule 23(a)’s other
15 requirements and Rule 23(b)(3)’s requirements, the Court lacked sufficient information to
16 determine if the proposed settlement is fair, adequate, or reasonable or sufficiently
17 numerous such that a class action is warranted. (*Id.* at 15–17.) Now before the Court is
18 Plaintiffs’ renewed motion for preliminary approval of the proposed class action
19 settlement. (Dkt. 51 [hereinafter “Mot.”].) For the following reasons, Plaintiffs’ renewed
20 motion for preliminary approval of the proposed class action settlement is **GRANTED**.²
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25

26 ¹ Plaintiff Karen Perri voluntarily dismissed her claims against Defendant on October 12, 2021 and is no
27 longer a named plaintiff in this action. (Dkt. 42 [Karen Perri’s Notice of Voluntary Dismissal].)

28 ² Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for June 27, 2022 at 1:30 p.m. is hereby vacated and off calendar.

1 **II. BACKGROUND**

2
3 **A. Factual Allegations**

4
5 Defendant designs, manufactures, markets, and sells pet food products online and
6 through third-party retailers throughout the United States. (FAC ¶ 8.) Plaintiffs are
7 individuals who have each purchased Pets Global’s Zignature Limited Ingredient pet
8 food line because of certain representations Pets Global made about the products in this
9 line. (*Id.* ¶¶ 13–28.)

10
11 Specifically, Plaintiffs allege that Pets Global represents to its consumers that its
12 Zignature Limited Ingredient pet food line is “grain free” and “chicken free.” (*Id.* ¶ 53.)
13 Although pet foods vary in the quality of ingredients, formula, manufacturing processes,
14 and inspection quality, dog owners often choose to purchase products that have “limited
15 ingredients”—such as grain-free or chicken-free—at a premium because certain dog
16 breeds have allergies associated with dog foods that contain these ingredients or because
17 the owners believe that certain ingredients help (or hamper) their pets’ health, weight,
18 and overall well-being. (*Id.* ¶¶ 40, 50.) Plaintiffs allege that they were harmed because
19 they paid a premium for these products, but the products did not conform to
20 representations on their packaging nor to warranties Defendant made regarding their
21 quality. (*Id.* ¶¶ 13–28.)

22
23 **B. Proposed Settlement Terms**

24
25 After Plaintiffs filed their FAC, the parties participated in an all-day mediation
26 session with the Honorable Wayne Anderson (Ret.) of JAMS Chicago. (Dkt. 47
27 [Declaration of J. Hunter Bryson in Support of Motion for Preliminary Approval,
28 hereinafter “Bryson Decl.”] ¶ 6.) The case did not settle. However, conversations

1 between the parties continued, and Judge Anderson ultimately made a mediator's
2 proposal that both parties accepted. (*Id.*) The parties did not discuss attorneys' fees,
3 costs, or service awards until after they agreed on the material terms and structure of the
4 settlement. (*Id.*) Negotiations continued for an additional six weeks before the proposed
5 settlement was finalized on October 21, 2021. (*Id.* ¶¶ 7, 8.)

6
7 The proposed Settlement Agreement and Release (the "Settlement"), which is
8 made pursuant to California law, encompasses all "pet food products manufactured or
9 produced for Pets Global and marketed or labelled as 'grain free' or 'chicken free' or
10 with some similar designation claiming the absence of any grain or chicken, and
11 including without limitation all Zignature products manufactured by Pets Global and
12 those products listed in Plaintiffs' Amended Complaint" (the "Products"). (Dkt. 47-1
13 [Settlement Agreement and Release, hereinafter "Settlement Agreement"] § I(T).)

14 Plaintiffs define the nationwide Class as:

15
16 All persons residing in the United States who purchased the Products
17 primarily for personal, family or household purposes, and not for resale,
18 during the Class Period. Excluded from the Settlement Class shall be jurists,
19 mediators, plaintiffs' or defense counsel and their employees, legal
20 representatives, heirs, successors, assigns, or any members of their
21 immediate family; any government entity; Pets Global, any entity in which
22 Pets Global has a controlling interest, any of Pets Global's subsidiaries,
23 parents, affiliates, and officers, directors, employees, legal representatives,
24 heirs, successors, or assigns or any members of their immediate family.

25 (Settlement Agreement § I(Y).) The Class Period is defined as June 2, 2017 (four years
26 prior to the filing of the FAC) through the Preliminary Approval of the Settlement. (*Id.*
27 §I(L).)

28 The Settlement has two primary benefits for Class Members. Under the first, Class
Members may submit a claim for monetary relief. (Settlement Agreement § IV(B).)

1 There is no cap on the amount dedicated to this benefit. Those with valid claims are
2 eligible to recover up to \$10 for each purchase of a Product with proof of purchase, with
3 a \$100 cap per household. (*Id.* § IV(B)(2)(a).) Those without proof of purchase may be
4 entitled to recover a maximum of \$5 total. (*Id.* § IV(B)(2)(b).) The second benefit
5 provides injunctive relief to the Class. Defendant agrees to revise its product labels and
6 marketing references so that Product labels that make a “chicken free” and “grain free”
7 claim no longer contain those representations. (*Id.* § IV(A)(1).) Plaintiffs’ expert
8 estimates that the total value of the injunctive relief secured is \$273,789,121. (Dkt 55
9 [Declaration of Frank Bernatowicz, hereinafter “Bernatowicz Decl.”] ¶ 21.)
10

11 Under the Settlement Agreement, Pets Global also agrees to audit all of the
12 manufacturing plants of suppliers for a period of 5 years following the Court’s Final
13 Approval Order. The audits will be at least once a year, and will include (1) a visual
14 inspection of all manufacturing machines that process, store, or otherwise come into
15 contact with the petfood manufactured within said facility and purchased by Defendant;
16 (2) an audit of the manufacturer’s manufacturing process and sourcing records, to
17 confirm the accuracy of the ingredients being used in Defendant’s products; and (3)
18 ensure that all the manufacturing processes used by the manufacturing plant adhere to
19 quality control standards. (*Id.* § IV(D).)
20

21 Defendant also agrees that it will not oppose Class Counsel’s application to the
22 Court for attorneys’ fees, costs, and expenses in an amount not to exceed \$875,000. (*Id.*
23 §§ V(A), V(E).) This amount specifically includes all costs and fees incurred by Class
24 Counsel and Plaintiffs’ Counsel in connection with the action thus far, as well as ongoing
25 and future costs and fees through finalization of Settlement of this action. (*Id.*)
26 However, the exact amount of fees awarded shall be determined by the Court in its
27 discretion and the determination thereof will not impact the validity or fulfillment of the
28

1 Settlement Agreement. (*Id.*) Defendant has also agreed to pay service awards not to
2 exceed \$5,000 to each class representative. (*Id.* §§ V(C), V(E).)

3
4 The Settlement also proposes that JND Legal Administration act as Settlement
5 Administrator and offers a provisional plan for Class Notice. (*Id.* § I(W).) Upon
6 approval of the Court, JND will distribute notice to the class (i) via print, Internet and
7 social media notice; and (ii) via an established Settlement Website. (*Id.* § VII(A).) The
8 Settlement Administrator will also establish a toll-free number to provide information to
9 the Settlement Class, including on how to submit Claim forms. (*Id.*)

10 Class Members shall have access to the Claim Form via the Settlement's website.
11 (Settlement Agreement, Ex. B [Claim Form].) Claim Forms may be submitted via mail
12 or electronically on the website. Each claim will require the Class Member provide their
13 name and address, email address, and warrant that the claimed purchases were direct
14 retail purchases by the claimant, that the claimed purchases were not made for resale
15 purposes, the product names, the approximate date of purchase, the approximate price,
16 and the name of the retail store and the store location of each purchase.

17 Settlement Class members who do not wish to participate in the Settlement may
18 opt-out of the Settlement by sending a written request to the Settlement Administrator.
19 The notice will also provide information on how to object to the final approval of the
20 class action settlement.
21

22 In exchange for the Settlement consideration, Plaintiffs and each Settlement Class
23 Member, and each of their heirs, spouses, guardians, executors, administrators,
24 representatives, agents, attorneys, insurers, partners, successors, predecessors-in-interest,
25 and assigns, shall be deemed to have, and by operation of the Final Judgment shall have,
26 fully, finally, and forever released, relinquished, and discharged all Class Released
27 Claims against Pets Global as defined in the Settlement Agreement. (Settlement
28 Agreement VI(A).) The released claims are those that (1) were asserted or could have

1 been asserted in this Action, and those that (2) arise out of or are related in any way to
2 any or all of the acts, omissions, facts, matters, transactions, occurrences, or events that
3 were or could have been directly or indirectly alleged or referred to in the Action. (*Id.*,
4 Ex. A.)

6 **III. DISCUSSION**

8 **A. Class Certification Requirements**

9
10 When a plaintiff seeks provisional class certification for purposes of settlement, the
11 Court must ensure that the four requirements of Federal Rule of Civil Procedure 23(a)
12 and at least one of the requirements of Rule 23(b) are met. *Amchem Prods., Inc. v.*
13 *Windsor*, 521 U.S. 591, 620 (1997); *Staton v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir.
14 2003). Under Rule 23(a), the plaintiff must show the class is sufficiently numerous, that
15 there are questions of law or fact common to the class, that the claims or defenses of the
16 representative parties are typical of those of the class, and that the representative parties
17 will fairly and adequately protect the class’s interests. Under Rule 23(b), the plaintiff
18 must show that the action falls within one of the three authorized “types” of classes.
19 Here, Plaintiffs seek certification pursuant to Rule 23(b)(3). Rule 23(b)(3) allows
20 certification where (1) questions of law or fact common to the members of the class
21 predominate over any questions affecting only individual members, and (2) a class action
22 is superior to other available methods for the fair and efficient adjudication of the
23 controversy.

24
25 As explained in the Court’s prior Order, Plaintiffs’ have already satisfied Rule
26 23(a)’s requirements of typicality, commonality, and adequacy, in addition to the
27 requirements of Rule 23(b)(3). The Court adopts and incorporates that analysis into this
28

1 Order and also finds that Plaintiffs have now satisfied Rule 23(a)'s numerosity
2 requirement.

3
4 Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is
5 impracticable." "No exact numerical cut-off is required; rather, the specific facts of each
6 case must be considered." *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D.
7 Cal. 2009) (citing *Gen. Tel. Co. of Nw., Inc. v. E.E.O.C.*, 446 U.S. 318, 330 (1980)). "As
8 a general matter, courts have found that numerosity is satisfied when class size exceeds
9 40 members." *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590, 602–
10 03 (C.D. Cal. 2015); see *Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 473–74
11 (C.D. Cal. 2012). Plaintiffs now provides estimates that the class size would be
12 approximately 824,393 people. (Byrson Decl. ¶ 20.) Plaintiffs arrived at that figure by
13 reviewing sales data for the pet food products at issue over the proposed class period,
14 which totaled 9,892,719 bags. Plaintiffs then assumed that each Class Member
15 purchased one bag of dog food a month, arriving at the 824,393 figure. (*Id.*) Though the
16 precise class size is not known at this time, such a class size would make joinder
17 impracticable and proceeding as a class would promote the efficiency and economy of
18 this action. Accordingly, the Court finds that Plaintiffs have satisfied Rule 23(a)'s
19 numerosity requirement, along with the other requirements of 23(a) and 23(b)(3), and
20 certifies the class for settlement purposes.

21 22 **B. Class Settlement Agreement Requirements**

23
24 Approval of class action settlements is governed by Federal Rule of Civil
25 Procedure 23(e). A district court may approve class action settlements only when they
26 are "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Rule requires courts
27 to consider whether "(A) the class representatives and class counsel have adequately
28 represented the class[,] (B) the proposal was negotiated at arm's length[,] (C) the relief

1 provided for the class is adequate[,] and (D) the proposal treats class members equitably
2 relative to each other.” *Id.* 23(e)(2)(A–D). In determining whether the class’s relief is
3 “adequate,” courts must analyze “(i) the costs, risks, and delay of trial and appeal; (ii) the
4 effectiveness of any proposed method of distributing relief to the class, including the
5 method of processing class-member claims; (iii) the terms of any proposed award of
6 attorney’s fees, including timing of payment; and (iv) any agreement required to be
7 identified under Rule 23(e)(3).” *Id.* 23(e)(2)(C).

8
9 “[W]hether a proposed settlement comports with Rule 23(e)(2) is [also] guided by
10 the ‘*Churchill* factors,’”—which encompass some of the factors enumerated in Rule
11 23(e)—“viz., ‘(1) the strength of the plaintiff’s case; (2) the risk, expense, complexity,
12 and likely duration of further litigation; (3) the risk of maintaining class action status
13 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
14 completed and the stage of proceedings; (6) the experience and views of counsel; (7) the
15 presence of a governmental participant; and (8) the reaction of the class members of the
16 proposed settlement.’”³ *Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021) (quoting *In re*
17 *Bluetooth Headset Prods. Liab.*, 654 F.3d 935, 946 (9th Cir. 2011)); see also *Churchill*
18 *Vill. v. Gen. Elec.*, 361 F.3d 566 (9th Cir. 2004). “Only when the district court
19 ‘explore[s] these factors comprehensively’ can the settlement award ‘survive appellate
20 review.’” *Id.* (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir.
21 2000)); see also Fed. R. Civ. P. 23(e)(2) Adv. Cmt. Note to 2018 Amendment (the factors
22 identified in 23(e)(2) do not “displace” existing factors, but instead “focus the court and
23 the lawyers on the core concerns of procedure and substance”).

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27
28 ³ The *Churchill* factors are also known as the *Hanlon* factors and the *Staton* factors. See *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

1 When, as in this case, “a settlement agreement is negotiated *prior* to formal class
2 certification,” the settlement “must withstand an even higher level of scrutiny for
3 evidence of collusion or other conflicts of interest than is ordinarily required under Rule
4 23(e) before securing the court’s approval as fair.” *In re Bluetooth Headset Prod. Liab.*
5 *Litig.*, 654 F.3d at 946. Courts must be wary of “subtle signs” of collusion such as
6 “(1) when counsel receive a disproportionate distribution of the settlement; (2) when the
7 parties negotiate a ‘clear sailing’ arrangement (*i.e.*, an arrangement where defendant will
8 not object to a certain fee request by class counsel); and (3) when the parties create a
9 reverter that returns unclaimed [funds] to the defendant.” *Roes, 1-2 v. SFBSC Mgmt.,*
10 *LLC*, 944 F.3d 1035, 1049 (9th Cir. 2019).

11 12 **1. The Proposed Settlement Offers Class Members Meaningful** 13 **Benefits**

14 Plaintiffs have shown that Class Members will receive meaningful benefits under
15 the Settlement Agreement. The total monetary benefit for the class is uncapped, meaning
16 that the pool of resources to fund the claims is unlimited. Those with valid claims and
17 proof of purchase may be eligible to receive up to \$100 for purchased products at (\$10
18 per claim for a maximum of 10 claims), while those without proof of purchase will be
19 eligible to receive a total of \$5. Though there is a significant difference between a \$100
20 maximum benefit and a \$5 maximum benefit, Plaintiffs provide evidence that a claims
21 rate estimate of 10% would make the total monetary benefit \$515,332 for proof of
22 purchase claimants and \$231,900 for non-proof of purchase claimants for a total of
23 \$747,232. Though it is difficult to ascertain how many of each type of claim will
24 ultimately be filed and the total compensation each class member will receive, even each
25 class member who files a claim receives only \$5, they would receive compensation that is
26 commensurate with the calculated price premium Plaintiffs paid for the Zignature
27 Limited Ingredient products and the allegedly false representations made about the food
28 products.

1
2 Indeed, Plaintiffs' expert calculated that the price premium on a per bag basis
3 ranges between \$1.92 to \$11.40, depending on the size of the bag purchased.
4 (Bernatowicz Decl. ¶ 17.) Accordingly, a Class Member without proof of purchase
5 would, at worst, receive 43% of his or her damages and at best would receive 260% of its
6 damages depending again upon the size of the bag purchased. Though the settlement
7 offer may not make some class members whole, the \$5 compensation offered is a
8 reasonable compromise for a class that encompasses members who purchased the same
9 product in different size bags. And cases have received final approval when the
10 compensation offered class members less than 43% of their damages. *See, e.g., In re*
11 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving
12 settlement that constituted 6% of maximum potential damages); *In re Toys R Us-*
13 *Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D.
14 438, 454 (C.D. Cal. 2014) (noting that award representing between 5% and 30% of
15 recovery "is not a de minimis amount" and "weighs in favor of approval"); *Downey*
16 *Surgical Clinic, Inc. v. Optuminsight, Inc.*, 2016 WL 5938722 at *5 (C.D. Cal. May 16,
17 2016) (granting final approval where recovery was as low as 3.21% of potential recovery
18 at trial); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at *4 (N.D. Cal. June
19 17, 2015) (granting final approval of a net settlement amount representing 7.3% of the
20 plaintiffs' potential recovery at trial); *Shvager v. ViaSat, Inc.*, 2014 WL 12585790, at *10
21 (C.D. Cal. Mar. 10, 2014) (approving settlement representing "2.8% of the recovery that
22 might have been obtained had the case continued").
23

24 The proposed Settlement also confers substantial benefits upon the Class when
25 weighed against the risk associated with the inherent uncertain nature of litigation, the
26 complex nature of the action, the difficulty and complexity of calculating actual
27 economic harm attributable to allegedly false and misleading representations related to
28 Pets Global's pet food products, and the length and expense of continued proceedings

1 through additional fact discovery, depositions, expert depositions, third party document
2 productions and depositions, class certification briefing, summary judgment briefing, a
3 jury trial, and appeals.

4
5 Moreover, “the uncapped nature of the proposed settlement . . . indicate[s] that
6 class counsel and the named plaintiffs have attempted to serve the best interests of the
7 class as a whole.” *Turner v. NFL (In re NFL Players’ Concussion Injury Litig.)*, 307
8 F.R.D. 351, 373 (E.D. Pa. 2015) (citing *Krell v. Prudential Ins. Co. of Am. (in Re*
9 *Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions)*, 148 F.3d 283, 317 (3d Cir.
10 1998)). Simply put, “the Settlement accounts for uncertainty about the *precise* size of the
11 Class by providing an uncapped guarantee” of settlement benefits. *Jabbari v. Wells*
12 *Fargo & Co.*, 2018 U.S. Dist. LEXIS 239959, at *17 (N.D. Cal. June 14, 2018)
13 (emphasis added).

14
15 Additionally, the settlement benefits offer more than just a cash component but
16 injunctive relief and supplier auditing as well. The injunctive relief is significant in this
17 case, removing the chicken free and grain free representations at issue across all of Pets
18 Global’s products and is estimated to be valued in the hundreds of millions. (Bryson
19 Decl. ¶ 13.) Pets Global also agreed to audit all of the manufacturing plants of suppliers
20 for a period of 5 years following the Court’s Final Approval Order. (*Id.* at ¶ 14.) The
21 audits of Pets Global’s suppliers will happen at least once a year and includes: (1) the
22 visual inspection of all manufacturing machines that process, store, or otherwise come
23 into contact with the petfood manufactured within said facility and purchased by Pets
24 Global; (2) an audit of the manufacturer’s manufacturing process and sourcing records, to
25 confirm the accuracy of the ingredients being used in Pets Global’s products, and (3)
26 ensuring that all of the manufacturing processes used by the manufacturing plant adhere
27 to quality control standards. (*Id.*)

28

1 specific, limited ingredients or claim to have eliminated certain ingredients from their
2 Products. (*Id.*) Plaintiffs also consulted with an economist regarding the calculation of
3 damages related to misrepresentations about product ingredients and for paying a price
4 premium for the inclusion or exclusion of certain key ingredients. (*Id.*) This pre-
5 litigation research helps ensure that plaintiffs have a firm grasp of the complexity of
6 proving wide-spread liability in this action as well as proving price premium damages in
7 this case. Additionally, through their mediation efforts and negotiations, the parties
8 shared certain confirmatory discovery including sales figures and product testing results.
9 *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir.
10 2000). All of which ensures Plaintiffs understand the benefits the settlement agreement
11 proposed confers.

12 13 **5. The Experience and Views of Counsel Supports Preliminary** 14 **Approval**

15 Class counsel in this case also has significant experience in consumer class action
16 litigation, including in litigation related to mislabeling and pet foods. (See Bryson Decl.
17 ¶¶ 15, 16 & Ex. 2 [Firm Resume of proposed Class Counsel].) Based on their collective
18 experience, Class Counsel concluded that the Settlement provides exceptional results for
19 the class while sparing the class from the uncertainties of continued and protracted
20 litigation. Thus, this factor also weighs in favor of approval.

21 22 **6. The Expected Claims Rate Supports Preliminary Approval**

23
24 The expected claims rate in this action is also commensurate with other class
25 actions of similar caliber to the one presented here which received final approval.
26 Plaintiffs' Counsel has been involved in two other pet food settlements involving non-
27 conforming ingredients. In *Shaw et al v. Costco Wholesale Corporation et al*, at the
28 conclusion of the claims period the claims the settlement received 22,520 without proof

1 of purchase claims (\$5 per claim) and 1,562 claims with proof of purchase (up to \$100)
2 for a total of 24,082 claims. (Bryson Dec ¶ 18.) The total amount claimed by class
3 members was \$221,370. (*Id.*) In *Sarah Hill et al v. Canidae Corporation*, 5:20-cv-
4 01374-JGB-SP, (C.D. Cal.) there were 48,080 claims made. (*Id.* ¶ 19). Of these 48,080
5 claims, 2,000 were filed with a proof of purchase (\$5 for every \$50 spent up to \$125) and
6 46,080 were filed without proof of purchase (\$5). (*Id.*) The maximum payout the
7 claimants would receive was \$480,400. (*Id.*) There were ultimately 37,096 valid claims
8 and the defendant paid \$189,660 to class members. (*Id.*)

9
10 Class Counsel expects a similar claims rate in this case. (*Id.* ¶ 20.) Defendant sold
11 9,892,719 bags of pet food over the proposed class period. Assuming a Class Member
12 purchased one bag of dog food a month, that would make the class size approximately
13 824,393 people. (Bryson Decl. ¶ 20.) Claims rates often range from 1% to 10%,
14 trending towards the lower end. *In re Myford Touch Consumer Litig.*, 2018 WL
15 10539266, at *2 (N.D. Cal. June 14, 2018); *see* 4 Newberg § 12:17 (recognizing that
16 claims rates are often very low when relief is small and process burdensome); *Allen v.*
17 *Bedolla*, 787 F.3d 1218, 1221 (9th Cir. 2015) (approximately 7% claims rate); *Tait*, 2015
18 WL 4537463 at *6 (less than 3% claims rate); *Yeagley v. Wells Fargo & Co.*, 2008 WL
19 171083, at *2 (N.D. Cal. Jan. 18, 2008) (less than 1% claims rate); *LaGorden v.*
20 *Support.com, Inc.*, 2013 WL 1283325, at *6 (N.D. Cal. Mar. 26, 2013) (0.17% claims
21 rate). Based on calculations from Defendant's actual sales data, a 1% claims rate for this
22 case would be approximately 8,243 claims while a 10% claims rate would be
23 approximately 82,439 claims. (Bryson Dec ¶ 20.) Though it is difficult to determine
24 what the actual claims rate will be, the Court is satisfied at this stage of the litigation that
25 enough class members will file claims to seeking relief such that preliminary approval is
26 appropriate.

1 Parties in this case have also created and agreed to provide a variety of forms of notice,
2 which collectively will satisfy both the substantive and manner of distribution
3 requirements of Rule 23. Specifically, the proposed notice program includes the
4 following components:

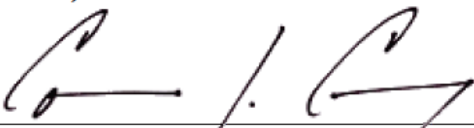
- 5 1. Online display banner advertising specifically targeted to reach Class
- 6 members in both the U.S. and its Territories;
- 7 2. Keyword search targeting class members in both the U.S. and its Territories;
- 8 3. A press release;
- 9 4. Social media through Facebook, and Google Display Network (“GDN”);
- 10 5. An informational website, on which the notices and other important Court
- 11 documents will be posted and will be optimized for mobile visitors so that
- 12 information loads quickly on mobile devices. Keywords and natural
- 13 language search terms will be included in the site’s metadata to maximize
- 14 search engine rankings. Visitors to the Settlement website will also have the
- 15 ability to download the Settlement Claim Form or submit one electronically;
- 16 6. A toll-free information line, which Class members can call 24/7 for more
- 17 information about the Settlement, including, but not limited to, requesting
- 18 copies of the Long Form Notice or a Claim Form. (Intrepido-Bowden Decl.
- 19 ¶¶ 19-35.)

20 This proposed notice program provides a fair opportunity for Class Members to obtain
21 full disclosure of the conditions of the Settlement and to make an informed decision
22 regarding the Settlement. (*See id.*, Intrepido-Bowden Decl. ¶ 35.)

23 **IV. CONCLUSION**

24 For the foregoing reasons, the Court preliminarily **APPROVES** Plaintiff’s
25 Settlement Agreement, conditionally certifies the proposed class for settlement purposes,
26 and approves Plaintiff’s notice plan. The parties may submit a motion for final approval
27 of the class settlement by **Monday, November 21, 2022**.

28 DATED: June 24, 2022



 CORMAC J. CARNEY
 UNITED STATES DISTRICT JUDGE