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

PAUL GIFFORD, MARY LOU
MOLINA, RANDY MILAND,
KAREN PERRI on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

PETS GLOBAL INC.,
a California Corporation,

Defendant.

Case No. 2:21-cv-02136-CJC-MRW

**PLAINTIFFS' NOTICE OF MOTION
AND UNOPPOSED MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

HEARING

Dated: November 21, 2022

Time: 1:30 pm

Courtroom: 9B

Judge: Hon. Judge Cormac J. Carney

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on Monday, November 21, 2022 at 1:30 pm., or
as soon thereafter as counsel may be heard by the above-captioned Court, located at
PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, EXPENSES,
AND SERVICE AWARDS

1 422 West Fourth Street, Courtroom 9 B, Santa Ana, CA 92701-4516, Plaintiffs Paul
2 Gifford, Mary Lou Molina, and Randy Miland (“Plaintiffs”), will hereby move for an
3 Order awarding (i) Attorneys’ Fees and expenses to Class Counsel in the amount of
4 \$875,000; and (ii) service awards of \$5,000 for each Representative Plaintiff. The
5 Motion is made following the conference of counsel pursuant to L.R. 7-3 which took
6 place at the mediation on July 14, 2021 and numerous dates thereafter. Defendant does
7 not object to this motion.

8 This motion is based upon this Motion, the Memorandum in support, the
9 accompanying individual declarations of Daniel K. Bryson and J. Hunter Bryson and
10 the exhibits attached thereto, the pleadings on file in this Action, and other such
11 matters and argument as the Court may consider at the hearing on this motion.

12

13

Dated: November 21, 2022.

Respectfully submitted,

14

/s/ Alex R. Straus

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Alex R. Straus, SBN 321366

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PAUL GIFFORD, MARY LOU
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Plaintiffs,

v.

PETS GLOBAL INC.,
a California Corporation,

Defendant.

Case No. 2:21-cv-02136-CJC-MRW

**PLAINTIFFS’ MEMORANDUM IN
SUPPORT OF PLAINTIFFS’ MOTION
FOR ATTORNEYS’ FEES, EXPENSES,
AND SERVICE AWARDS.**

Judge: Hon. Judge Cormac J. Carney

I. INTRODUCTION

Defendant is a nationwide manufacturer of various specialty pet foods. Specifically, Defendant sells under the Zignature brand “Grain Free” and “chicken free” petfood products. After conducting extensive testing of Defendant’s products, Plaintiffs alleged the “Grain Free” and “chicken free” representations were false. Defendant denies Plaintiffs’ allegations and has steadfastly defended its products —

1 and the truth of its advertising — throughout the course of this litigation and during
2 settlement negotiations with the Honorable Wayne Andersen (Ret.).

3 Settlement Class Counsel remain confident that Plaintiffs' claims are strong.
4 However, consumer class actions are risky to prosecute. Pets Global, a well-resourced
5 company, planned to vigorously defend itself but for the Settlement. During
6 settlement negotiations with an experienced mediator, Settlement Class Counsel could
7 not ignore the risk Plaintiffs would certainly face at class certification and at trial.
8 Plaintiffs asserted claims on behalf of consumers from California, Illinois, and
9 Minnesota.

10 At class certification, Plaintiffs would certainly face the lack of predominance
11 arguments pronounced by the Ninth Circuit in *Reitman v. Champion Petfoods USA,*
12 *Inc.*, 830 F. App'x 880, 881 (9th Cir. 2020). Further, Defendant would have argued
13 that Plaintiffs could not prove that all of its products contained a material amount of
14 grain or chicken, and even if they did contain grain or chicken, it would not cause their
15 pets any adverse health problems and they had no damages, and if they had any
16 damages, their damages model could not withstand *Comcast*. Plaintiffs also would
17 have been required to complete costly expert work to show that consumers paid a price
18 premium due to Defendant's alleged misrepresentations.

19 Well aware of these challenges, Settlement Class Counsel negotiated an
20 excellent settlement that requires Defendant to pay an uncapped amount to Settlement
21 Class members who purchased the products at issue in addition to significant non-
22 monetary relief. Settlement Class Counsel seek reasonable compensation for their
23 efforts on behalf of Plaintiffs and the Settlement Class. They request a fee award of
24 \$814,172, which is a 2.0 multiplier of the 591 hours they have spent on this matter to
25 date. Further, Settlement Class Counsel is seeking reimbursement of \$60,828 in out-
26 of-pocket costs they incurred prosecuting this action. Settlement Class Counsel also
27 seek approval of service awards of \$5,000 for the Class Representatives, which are
28

1 reasonable and in line with the Ninth Circuit’s requirements. For these reasons,
2 Settlement Class Counsel’s motion should be granted.

3 **II. AUTHORITY AND ARGUMENT**

4 **A. Settlement Class Counsel’s requested fees are reasonable.**

5 “Attorneys’ fees provisions included in proposed class action settlement
6 agreements are, like every other aspect of such agreements, subject to the
7 determination whether the settlement is ‘fundamentally fair, adequate, and
8 reasonable.’” *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed.
9 R. Civ. P. 23(e)). Rule 23(h) requires that class members have the opportunity to
10 object to the fee motion. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988,
11 993-94 (9th Cir. 2010). “Reasonableness is the goal, and mechanical or formulaic
12 application of either method, where it yields an unreasonable result, can be an abuse
13 of discretion.” *In re Coord. Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*,
14 109 F.3d 602, 607 (9th Cir. 1997).

15 “The most useful starting point for determining the amount of a reasonable fee
16 is the number of hours reasonably expended on the litigation multiplied by a
17 reasonable hourly rate.” *Uriarte-Limon v. Hundley*, No. EDCV20640JGBSPX, 2020
18 WL 7315085, at *6 (C.D. Cal. Oct. 30, 2020) (quoting *Hensley v. Eckerhart*, 461 U.S.
19 424, 433 (1983)). Once the court has calculated that amount, known as the lodestar,
20 “[t]here remain other considerations that may lead the district court to adjust the fee
21 upward or downward, including the important factor of the ‘results obtained.’”
22 *Uriarte-Limon*, No. EDCV20640JGBSPX, 2020 WL 7315085, at *6 (quoting *Hensley*
23 at 434).

24 1. Settlement Class Counsel’s Hours

25 Although, the Settlement was reached early within the litigation timeline,
26 Settlement Class Counsel devoted significant time and resources to investigating the
27 claims well before commencing the lawsuit. To date, Settlement Class Counsel spent
28

1 591 hours for a total \$405,960 (*Id.* ¶ 28.) The efficiency in which Settlement Class
2 Counsel obtained this settlement is itself a benefit to the Settlement Class. Courts
3 recognize that classes benefit from early resolution when “further litigation would
4 have delayed any potential recovery for the Class and have been costly and risky.”
5 *Perkins v. LinkedIn Corp.*, No. 13-cv-04303-LHK, 2016 WL 613255, at *2 (N.D. Cal.
6 Feb. 16, 2016); *see also In re Aftermarket Auto. Lighting Prods. Antitrust Litig.*, No.
7 09 MDL 2007, 2014 WL 12591624, at *4 (C.D. Cal. Jan. 10, 2014) (recognizing the
8 benefit of counsel’s “effective and efficient” prosecution). Settlement Class Counsel
9 submits the hours expended were required and necessary to make sure this case was
10 properly vetted and the absolute best relief was negotiated for the benefit of the
11 Settlement Class (*Id.* ¶ 33.)

12 2. Settlement Class Counsel’s Rates

13 For the reasonableness of fees, the rates are to be calculated according to the
14 prevailing market rates in the relevant community. *Acosta v. GT Drywall*, No.
15 EDMC170006JGBKKX, 2018 WL 1041412, at *2 (C.D. Cal. Jan. 22, 2018) (citing
16 *Van Skike v. Dir., Office of Workers’ Comp. Programs*, 557 F.3d 1041, 1046 (9th Cir.
17 2009). In making this showing, “affidavits of the plaintiffs’ attorney[s] and other
18 attorneys regarding prevailing fees in the community, and rate determinations in other
19 cases are satisfactory evidence of the prevailing market rate.” *Acostal*, No.
20 EDMC170006JGBKKX, 2018 WL 1041412, at *2 (quoting *Camacho v. Bridgeport*
21 *Fin., Inc.*, 523 F.3d 973, 979–80 (9th Cir. 2008) (internal citations and marks omitted).
22 The relevant community is that in which the district court sits. *Acostal*, No.
23 EDMC170006JGBKKX, 2018 WL 1041412, at *2 (citing *Schwarz v. Sec’y of Health*
24 *& Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995).

25 Courts within this District have approved partner rates of \$778.50 with almost
26 thirty years of experience and \$495 for the most junior associate. *WB Music Corp. v.*
27 *Royce Int’l Broad. Corp.*, No. EDCV16600JGBDTBX, 2018 WL 6177237 (C.D. Cal.

1 July 9, 2018), *aff'd sub nom. WB Music Corp. v. Stolz*, 814 F. App'x 286 (9th Cir.
2 2020); *Perfect 10, Inc. v. Giganews, Inc.*, 2015 WL 1746484, at *15, *19 (C.D. Cal.
3 Mar. 24, 2014) (finding reasonable the billing rates between \$825 to \$930 per hour in
4 2011 to 2014 for a senior partner with twenty-nine years of experience, and rates
5 between \$610 to \$750 per hour for junior partners).

6 “[A]n attorney's prior fee award may bear on the selection of a reasonable fee
7 in a later case, particularly when the award was for work performed in the relevant
8 community.” *Schwarz v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 908 (9th Cir.
9 1995) (citing *Valenzuela v. City of Anaheim*, No. SACV1700278CJCDFMX, 2020
10 WL 10574794, at *17 (C.D. Cal. Mar. 11, 2020), *aff'd*, 6 F.4th 1098 (9th Cir. 2021)).

11 Settlement Class Counsel has requested rates of \$875 for Daniel K. Bryson and
12 \$575 for J. Hunter Bryson. (D. Bryson Decl. ¶¶ 30-31.) Daniel Bryson and has over
13 thirty years experience and has been lead counsel in multiple cases that have been
14 consolidated into multi-district litigation, and has been named to Super Lawyers. (*Id.*)
15 (*Id.* ¶ 30.) Further, as detailed in Settlement Class Counsel's firm resumes, Settlement
16 Class Counsel has been named Class Counsel in numerous class action settlements.
17 (Dkt. No. 53, Exhibit 2) (resumé of Class Counsel). J. Hunter Bryson has been named
18 Class Counsel in a number of federal court and state court class action settlements.
19 (D. Bryson Decl. ¶ 31.) He was named a Super Lawyers Rising Star in 2020, 2021,
20 and 2022 and has only practiced in the area of product defect litigation in class action
21 lawsuits since he started practicing law in 2016. (*Id.*) He has been named Class
22 Counsel in 17 different actions in North Carolina state court and 3 different actions in
23 federal district court. (*Id.*)

24 The rates sought by Settlement Class Counsel in this case were approved by the
25 Honorable Jesus Bernal in *Hill v. Canidae Corp.*, No. EDCV201374JGBSPX, (C.D.
26 Cal. Sept. 28, 2021, Dkt. No. 29, p 16) (“Accordingly, the Court determines that the
27 hourly rates used to calculate the lodestar are reasonable”).

1 Settlement Class Counsel has provided the Court with declarations describing
2 their background and experience and set their rates for attorneys and staff members
3 based on a variety of factors, including, among others: the experience, skill and
4 sophistication required for the types of legal services typically performed; the rates
5 customarily charged in the markets where legal services are typically performed; and
6 the experience, reputation and ability of the attorneys and staff members. (*Id.* ¶¶ 30-
7 32.) Settlement Class Counsel submits the rates requested are justified and comparable
8 to other attorneys of similar experience and qualifications within the area in which
9 this case is pending. (*Id.*)

10 The hours and rates submitted by Settlement Class Counsel yield a lodestar of
11 \$405,960. (*Id.* ¶ 28.)

12 3. Settlement Class Counsel's Requested Multiplier

13 Settlement Class Counsel is requesting a lodestar multiplier of 2.0.

14 Plaintiffs bear the burden of establishing that a multiplier is
15 appropriate. See *Ketchum v. Moses*, 24 Cal. 4th 1122, 1138 (2001) (“Of course, the
16 trial court is not required to include a fee enhancement to the basic lodestar figure for
17 contingent risk, exceptional skill, or other factors ... moreover, the party seeking a fee
18 enhancement bears the burden of proof.”).

19 The lodestar approach captures the factors that courts have traditionally
20 considered in assessing the reasonableness of a fee award: “(1) the time and labor
21 required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite
22 to perform the legal service properly, (4) the preclusion of other employment by the
23 attorney due to the acceptance of the case, (5) the customary fee, (6) whether the fee
24 is fixed or contingent, (7) time limitations imposed by the client or the circumstances,
25 (8) the amount involved and the results obtained, (9) the experience, reputation, and
26 ability of the attorneys, (10) the ‘undesirability’ of the case; (11) the nature and length
27 of the professional relationship with the client, and (12) awards in similar
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1 cases.” *Morales*, 96 F.3d at 364 & n.9 (citing *Kerr v. Screen Guild Extras, Inc.*, 526
2 F.2d 67, 70 (9th Cir. 1975), *cert. denied*, 425 U.S. 951 (1976)).

3 a. The Time and Labor Required

4 Settlement Class Counsel has spent nearly 600 hours on this action to date. (D.
5 Bryson Decl. ¶ 28.) As a summary of the work in this matter, Settlement Class Counsel
6 spent substantial time investigating and litigating this case, including but not limited
7 to the following: reviewing all labelling and marketing of the Pets Global Products,
8 including all available public statements, becoming thoroughly grounded in the
9 relevant federal regulations and FDA testing guidance, retaining consulting experts,
10 retaining testing experts, working extensively with testing experts regarding the
11 testing method employed, testing ingredients to target, and products chosen to test,
12 researching relevant supplement case law and controlling state law, reviewing the
13 records in other relevant supplement cases; carefully crafting the complaints,
14 reviewing, preparing an Amended Complaint, preparing for and participating in a
15 mediation and extensive negotiations outside of the mediation, working on
16 preliminary approval motions, working with an expert to value components of the
17 Settlement, working with the settlement administrator to design an effective notice
18 program, overseeing the claims process; and responding to questions from Class
19 Representatives and Class Members regarding the Settlement and their claims. (*Id.* ¶
20 33.)

21 Settlement Class Counsel submits the work by attorneys and staff was required
22 and necessary to make sure this case was properly vetted and the best possible
23 settlement terms were secured for the benefit of the Settlement Class. (*Id.*) The
24 extensive time expended for this case weighs in favor of the fee request.

25
26 b. The Novelty And Difficulty Of The Questions Involved
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1 Product defect class actions are often found to present complex and novel issues
2 that warrant a multiplier. *Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936-LB,
3 2015 WL 758094, at *4 (N.D. Cal. Feb. 20, 2015) (“This case presents numerous
4 complex and novel issues, which almost certainly would have proved costly to litigate
5 and could have easily lead to protracted appellate litigation”); *Pelletz v. Weyerhaeuser*
6 *Co.*, 592 F. Supp. 2d 1322, 1328 (W.D. Wash. 2009) (“[t]he Court recognizes that
7 defective product class actions are complex and involve risk...[t]he Court finds that
8 the novelty and difficulty of the questions involved here supports Class Counsel's fee
9 request.”).

10 This is compared to other types of matters, such as wage and hour cases, that
11 have often been deemed “run of the mill” and “relatively straight forward”. See *Wang*
12 *v. Ehang Holdings Ltd.*, No. 20-CV-00569-BLF, 2022 WL 5264647 (N.D. Cal. Oct.
13 6, 2022); *Beltran v. Olam Spices & Vegetables, Inc.*, No. 118CV01676NONESAB,
14 2021 WL 2284465, at *18 (E.D. Cal. June 4, 2021), *report and recommendation*
15 *adopted*, No. 118CV01676NONESAB, 2021 WL 4318141 (E.D. Cal. Sept. 23, 2021)
16 “[t]his appears to be relatively straight forward wage and hour case and lacks a
17 complexity”).

18 Many mislabeled petfood cases have resulted in dismissal of the plaintiffs’
19 claims with prejudice. *Song & Wertkin, et al. v. Champion Petfoods USA*, No. 18-CV-
20 3205 (PJS/KMM) (D. Minn. Dec. 22, 2020) (affirmed by the 7th Circuit in *Weaver v.*
21 *Champion Petfoods USA Inc.*, No. 120-2235 (7th Cir. June 30, 2021); *Deluna v. Am.*
22 *Journey (PET), LLC*, No. 21-60483-CIV, 2021 WL 5149790 (S.D. Fla. Nov. 1, 2021);
23 *Cohen v. Ainsworth Pet Nutrition, LLC*, No. 2:20-CV-05289-MCS-AS, 2021 WL
24 8533417 (C.D. Cal. Jan. 21, 2021); *Sabater v. Am. Journey (PET), LLC*, 570 F. Supp.
25 3d 1160 (S.D. Fla. 2021).

26 Others petfood cases have had class certification motions denied and appellate
27 courts affirming that denial. In *Reitman v. Champion Petfoods USA, Inc.*, the Ninth
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1 Circuit upheld a denial of a district court’s denial of class certification over mislabeled
2 dogfood due to the need of “individualized bag-to bag- inquiries” that defeated
3 predominance.

4 The district court's conclusion that individualized inquiries
5 requiring bag-to-bag determinations predominate over
6 common questions applies whether the misrepresentations
7 are based on affirmative statements on, or omissions from,
8 the packaging. And Reitman does not explain how
9 creating subclasses based on diets would cure the need for
10 individualized bag-to-bag inquiries. Accordingly, the
11 district court correctly held that the predominance
12 requirement had not been satisfied and that creating
13 subclasses would be futile.

14 830 F. App'x 880, at 881

15 In *Reitman*, the Ninth Circuit also affirmed the district court’s conclusion that
16 plaintiffs damages models failed to satisfy the standard set out in *Comcast Corp. v.*
17 *Behrend*, 569 U.S. 27, 133 S.Ct. 1426, 185 L.Ed.2d 515 (2013).

18 Reitman's “price premium” model failed to measure the
19 price difference attributable to misleading statements on,
20 or omissions from, the packaging. In other words, the
21 model measured only the differing customer expectations
22 based on various corrective statements in the abstract and
23 failed to measure the “difference between what
24 the plaintiff paid and the value of what the plaintiff
25 received.” *In re Vioxx Class Cases*, 180 Cal.App.4th 116,
26 103 Cal. Rptr. 3d 83, 96 (2009); *see also Pulaski &*
27 *Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th
28 Cir. 2015).

Moreover, the district court correctly found that a full
refund model was inappropriate for Reitman's proposed
pentobarbital subclass because there were potential class
members who never purchased bags with contaminant.
Additionally, “[a] full refund *may* be available ... when the
plaintiffs prove the product had *no* value to them.” *In re*
Tobacco Cases II, 240 Cal.App.4th 779, 192 Cal. Rptr. 3d
881, 895 (2015). Thus, Reitman's failure to explain why a

1 risk of contamination renders the product completely
2 valueless for even those class members who did purchase
3 a contaminated bag was a sufficient basis for rejecting the
4 subclass they posited.

830 F. App'x 880, at 881-882

5 This case was not a “run of the mill” or “relatively straight forward” wage and
6 hour case, bur rather a complex product defect class action that encapsulated a number
7 of complex issues that Settlement Class Counsel navigated in order to achieve a
8 settlement in this action. First, Settlement Class Counsel had to convince the
9 Defendant this action was different from the litany of other similar actions that failed
10 to withstand a motion to dismiss or achieve class certification. As the above cases
11 illustrate, that was a tall task for Settlement Class Counsel. Second, as illustrated by
12 the *Reitman* action, the damages model in petfood cases is very complex and has
13 received negative treatment within the Ninth Circuit when viewed in light of *Comcast*.
14 Settlement Class Counsel had to convince Defendant its damages model would
15 withstand a *Comcast* inquiry. Third, Settlement Class Counsel had to convince the
16 Defendant its testing method would satisfy *Daubert* and any non-conforming
17 ingredient within the products at issue would be material to Settlement Class
18 members. None of these aforementioned issues were easy or run of the mill for
19 Settlement Class Counsel to navigate when negotiating at arms length with Defendant.

20 In sum, Settlement Class Counsel heard the arguments articulated by the
21 adverse caselaw cited herein during mediation and during negotiations that led up to
22 this Settlement. Settlement Class Counsel was able to secure the benefits of the
23 Settlement by relying on their thorough testing results, knowledge of petfood
24 mislabeling law within the Ninth Circuit, and knowledge of damages models that they
25 believe would withstand *Comcast*.

26 Given the novel and complex issues at play in this action, this factor weighs in
27 favor of the fee request.

28 c. The Skill Requisite To Perform The Legal Service Properly.

1 The Court does not mean to suggest that counsel should “receive a lesser fee
2 for settling a case quickly.” *Salamanca v. Sprint/United Mgmt. Co.*, No. 15-CV-
3 05084-JSW, 2018 WL 1989568, at *2 (N.D. Cal. Mar. 9, 2018) (quoting *Vizcaino*,
4 290 F.3d at 1050 n.1). see also *Williamson v. Microsemi Corp.*, No. 14-cv-01827-
5 LHK, 2015 WL 13650045, at *2 (N.D. Cal. Feb. 19, 2015) (“This Court will not
6 reward attorneys for unnecessary litigation nor punish them
7 for resolving matters quickly, when such quick resolution is, as here, highly
8 beneficial to the class.”).

9 Settlement Class Counsel drew on their experience in litigating consumer
10 mislabeling cases to develop the legal theories Plaintiffs asserted and then developed
11 evidence to support the Settlement Class’s claims. The quality of their representation
12 is reflected in the work they performed throughout the case and, ultimately, in the
13 favorable settlement for the Settlement Class. The biggest hurdle for Settlement Class
14 Counsel was negotiating favorable terms at such an early stage in the litigation. At
15 mediation, Settlement Class Counsel was able to convey to Pets Global that it would
16 be costly to litigate this case and a settlement was the best option for Pets Global.
17 Settlement Class Counsel’s skill in negotiating class action settlements led to an early
18 settlement with tangible benefits as opposed to drawn out litigation with a risk the
19 Settlement Class could receive nothing.

20 At mediation, Mr. LeClerc indicated Pets Global was more than willing, and
21 able, to litigate this case through trial if a settlement was not reached. Settlement Class
22 Counsel’s ability to negotiate a favorable settlement despite the vigorous opposition
23 of Defendant’s counsel also supports their fee request. *See, e.g., Lofton v. Verizon*
24 *Wireless LLC*, No. C 13-05665 YGR, 2016 WL 7985253, at *1 (N.D. Cal. May 27,
25 2016) (the “risks of class litigation against an able defendant well able to defend it
26 itself vigorously” support an upward adjustment in the fee award). This factor weighs
27 in favor of the fee request.

1 d. The Preclusion Of Other Employment By The Attorney Due To
2 Acceptance Of The Case, The Customary Fee, Whether The Fee
3 Is Fixed Or Contingent, Time Limitations Imposed By The Client
4 Or The Circumstances.

5 Attorneys also are entitled to a larger fee award when their compensation is
6 contingent in nature, as here. (C.D. Cal. Feb. 28, 2018). *Vizcaino*, 290 F.3d at 1048–
7 50. However, a contingent risk does not require the application of a fee multiplier.
8 *Boden v. Ford Motor Co.*, No. SACV2100973CJCDFMX, 2022 WL 2163849, at *4
9 (C.D. Cal. Apr. 6, 2022). Whether the case had a financial burden on Class Counsel
10 is a relevant circumstance. *Vizcaino*, 290 F.3d at 1043, 1050 (“the court found that
11 counsel's representation of the class—on a contingency basis—extended over eleven
12 years, entailed hundreds of thousands of dollars of expense, and required counsel to
13 forgo significant other work, resulting in a decline in the firm's annual income. These
14 burdens are relevant circumstances.”); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d
15 1370, 1377 (9th Cir. 1993) (considering counsel's bearing the financial burden of the
16 case); *Bebchick v. Washington Metro. Area Transit Comm'n*, 805 F.2d 396, 407(D.C.
17 Cir. 1986) (same).

18 Settlement Class Counsel litigated this case without any guarantee that they
19 would recover any fees, costs, or time. Further, Settlement Class Counsel’s work on
20 this case precluded filing other cases. (D. Bryson Decl. ¶ 36.) On behalf of Plaintiffs,
21 Settlement Class Counsel advanced \$60,828 in expert costs, mediation costs, and
22 testing costs without any assurance they would receive any of it back. (*Id.*) Although
23 Milberg is a well-funded, \$60,828 is not an insignificant amount of money for
24 Settlement Class Counsel to expend on behalf of the Class without any guarantee of
25 recovery.

26 Nearly every day, Settlement Class Counsel is proposed a new case idea. (*Id.* ¶
27 35.) However, during the pendency of this case to ensure Settlement Class Counsel is
28 able to do the absolute best job for the Settlement Class, many cases that were

1 proposed to Settlement Class Counsel were turned down. (*Id.*) This was done to ensure
2 the attorneys’ and staff of Settlement Class Counsel always have adequate time to
3 litigate a case to the highest degree. (*Id.*) Settlement Class Counsel turned away
4 significant work over the pendency of this case that could have been profitable for
5 Settlement Class Counsel’s law firm in order to litigate this case properly. (*Id.*)

6 At mediation, Pets Global contested its liability, asserting that Settlement Class
7 Members had suffered no injury and lacked standing to bring their claims, and planned
8 to file a motion to dismiss, an opposition to class certification, and a motion for
9 summary judgment. Absent the Settlement, Pets Global would have had the
10 opportunity to argue these motions, increasing the possibility Settlement Class
11 Members might recover nothing had litigation continued. The risk of little or no
12 recovery weighs in favor of the requested fee award. *See Destefano*, 2016 WL 537946,
13 at *17 (noting the “substantial” risk associated with “obtaining [and maintaining] class
14 certification”); *Bower v. Cycle Gear, Inc.*, No. 14-CV-02712-HSG, 2016 WL
15 4439875, at *7 (N.D. Cal. Aug. 23, 2016) (noting risks of obtaining class certification,
16 surviving summary judgment, prevailing at trial, and “withstanding a potential
17 appeal”); *Roberti v. OSI Sys., Inc.*, No. CV13-09174 MWF (MRWx), 2015 WL
18 8329916, at *6 (C.D. Cal. Dec. 8, 2015) (the defendant’s “vigorous opposition”
19 represented a “substantial” risk weighing in favor of the requested attorney’s fees).

20 In sum, since Settlement Class was precluded from obtaining other cases in
21 order to properly litigate this case, advanced significant costs without any guarantee
22 of recovery, and litigated this case on a contingency fee basis, this factor weights in
23 favor of the fee request.

24 e. The Amount Involved and The Results Obtained.

25 “The result achieved is a significant factor to be considered in making a fee
26 award.” *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *19
27 (C.D. Cal. June 10, 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)).
28

1 “The overall result and benefit to the class from the litigation is the most critical factor
2 in granting a fee award.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, at 1046.

3 Usually when attorneys’ fees are reduced, it is because there is no monetary
4 component to the settlement. *See Henderson v. J.M. Smucker Co.*, 2014 WL 2723876,
5 at *7 (C.D. Cal. 2014) (reducing attorneys’ fee request of \$3.25 million to \$72,297.90
6 where no monetary relief was obtained for the class); *see also In re Bluetooth Headset*
7 *Products Liability Litigation*, 654 F.3d 935, 949 (9th Cir. 2011) (remanding district
8 court’s approval of an \$800,000 attorneys’ fee award in settlement where no monetary
9 relief was obtained for the class); *Stathakos v. Columbia Sportswear Co.*, No. 15-CV-
10 04543-YGR, 2018 WL 1710075 (N.D. Cal. Apr. 9, 2018) (reducing an attorney fee
11 request by 35% because there was no monetary relief component in the settlement).

12 Here the Settlement provides great benefits to the Settlement Class on a
13 monetary and non-monetary basis. First, the monetary benefits to the class are
14 substantive: a purchase may receive up to \$10 dollars for each purchase up to \$100
15 with proof of purchase per household and \$5.00 without proof of purchase. Plaintiffs
16 expert valued the proof of purchase case benefits secured for class members of
17 \$515,332 and without proof of purchase monetary amounts of \$231,900 for a total of
18 \$747,232 using a 10% claims rate. (Dkt. No. 55 at ¶ 25). The monetary benefits that
19 Defendant must pay to all valid claimants is uncapped.

20 Further, the Defendant must cease using the “grain free” and “chicken free”
21 representations at issue. Plaintiffs’ expert estimated the total value of this injunctive
22 relief in perpetuity as \$273,789,121. (*Id.* at ¶ 33.) Within the four years following the
23 Settlement, Plaintiffs’ expert calculated the value of this injunctive relief secured is
24 \$68,995,648. (Exhibit F to Dkt. No. 55 at line 14.). In addition, the Defendant must
25 audit its suppliers annually for at least 5 years.

26 Plaintiffs and Settlement Class Counsel submit the relief secured here is a great
27 result for the Settlement Class. Past, present, and future purchasers will benefit greatly

1 from the work done by Plaintiffs and Settlement Class Counsel regarding the Pets
2 Global products at issue.

3 Given the substantial monetary and non-monetary benefits secured in the
4 Settlement, this factor weighs in favor of the fee request.

5 f. The experience, reputation and the ability of the attorneys, the
6 'undesirability' of the case, the nature and length of the
7 professional relationship with the client.

8 As discussed *infra*, Settlement Class Counsel has considerable experience in
9 litigating in class action cases. However, accepting and litigating this action was not
10 “undesirable” and the length of the professional relationship with the clients was not
11 prolonged or previously established. This factor is neutral.

12 g. Awards in similar cases.

13 In the Ninth Circuit, multipliers “ranging from one to four are frequently
14 awarded.” *Vizcaino*, 290 F.3d at 1051 n.6. *See Hopkins v. Stryker Sales Corp.*,
15 11CV2786-LHK, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013) (“Multipliers of 1
16 to 4 are commonly found to be appropriate in complex class action cases.”). Judge
17 Olguin held that a multiplier of 3.07 was “well within the range of reasonable
18 multipliers.” *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal.
19 2016); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1170 (C.D. Cal. 2010)
20 (observing that “multipliers may range from 1.2 to 4 or even higher”); *Steiner v. Am.*
21 *Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir.2007) (affirming award with multiplier
22 of 6.85); *Buccellato v. AT & T Operations, Inc.*, No. CV 10–00463 LHK, 2011 WL
23 3348055, at *2 (N.D. Cal. June 30, 2011) (finding a 4.3 multiplier “reasonable in light
24 of the time and labor required, the difficulty of the issues involved, the requisite legal
25 skill and experience necessary, the excellent and quick results obtained for the Class,
26 the contingent nature of the fee and risk of no payment, and the range of fees that are
27 customary.”); *Wershba v. Apple Computer, Inc.*, 91Cal. App. 4th 244, 255 (2001)
28 (“Multipliers can range from 2 to 4 or even higher.”).

1 In *Shaw et al v. Costco Wholesale Corporation et al*, 2:20-cv-01620-RAJ
2 (W.D.WA, Dkt. No. 64), Class Counsel requested, and was awarded, \$1,150,376 in
3 attorneys’ fees and \$49,624 in costs using a percentage of the fund method of
4 calculation. (*Id.*) The case settled prior to the filing of a motion to dismiss. (*Id.*)

5 In *Hill v. Canidae Corp.*, No. EDCV201374JGBSPX, (C.D. Cal. Sept. 28,
6 2021, Dkt. No. 29), the case settled prior to a motion to dismiss and the court awarded
7 a 2.0 multiplier. In reducing Class Counsel’s requested 2.9 multiplier to a 2.0
8 multiplier, the court stated that partner level attorneys “accounted for...57% of the
9 hours billed” and a 2.9 multiplier is not appropriate where “partner-level attorneys
10 completed a substantial amount of the work on the case, and Class Counsel is already
11 being overcompensated for their work”. (*Id.* at 17.) See *Broomfield v. Craft Brew All.,*
12 *Inc.*, 2020 WL 1972505, at *15 (N.D. Cal. Feb. 5, 2020). Further, the court determined
13 the fact that the litigation precluded Class Counsel from filing other cases and the case
14 was litigated on a contingent arrangement weighed in favor of awarding a multiplier.
15 (*Id.*) The court also held that since Class Counsel did not argue that the case involved
16 novel and complex questions of law, it did not consider that factor when evaluating
17 Class Counsel’s requested multiplier. (*Id.*)

18 Here, a substantial amount of the work was not done by “partner-level
19 attorneys” that would make Settlement Class Counsel “already overcompensated for
20 their work”. J. Hunter Bryson, a senior associate, billed nearly 60% of the total hours
21 billed to the case, the complete opposite breakdown of partner to associate workload
22 that was present in *Canidae*. Like in *Canidae*, Settlement Class Counsel has alleged
23 this case precluded other employment and is contingent in nature.

24 In addition, this case *does* involve novel and complex questions of law. The
25 validity of Plaintiffs’ scientific testing method was attacked heavily by Defendant
26 during mediation. The testing method employed by Plaintiffs was extremely time
27 consuming, complex, and expert focused. There are many methods of pet food testing,
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1 however in order to choose which method received the most respect from the petfood
2 manufacturers, Settlement Class Counsel had to engage in extensive research and
3 many conversations with its expert. The caselaw cited here in illustrates the
4 complexity of the issues at play in this action Settlement Class Counsel advanced a
5 complex theory that has not been well received within this District nor the Ninth
6 Circuit regarding liability, damages, and class certification. Therefore, this case does
7 involve complex questions of law that warrant a multiplier.

8 Further, the relief in this case is more significant than what was achieved in
9 *Canidae* or *Shaw*. First, in *Canidae*, no injunctive relief was secured as part of the
10 Settlement nor was there any requirement that the defendant audit its suppliers over a
11 certain time period. In *Shaw*, again there was no requirement the company audit its
12 suppliers over a certain time span and the injunctive relief secured was considerably
13 less significant than what was secured in this settlement. In *Shaw*, the defendant
14 agreed to state on all the affected products in small font on the bottom of the front of
15 the product label “[t]he facility in which this food is made also makes food that may
16 contain other ingredients, such as grains. Trace amounts of these other ingredients
17 may be present”. The defendant in *Shaw* was able to continue using the alleged
18 misrepresentations at issue with the small label modification described above that was
19 barely noticeable.

20 In both of those cases, the courts awarded the majority of Class Counsel’s
21 requested attorneys’ fees, with a reduction in *Canidae* for facts that are not present in
22 this case. Therefore, given the non-cash relief in this Settlement is more significant
23 than the non-cash relief secured in *Shaw* and *Canidae* and the cash benefits are nearly
24 identical, Settlement Class Counsel submits its requested 2.0 multiplier is reasonable.

25 In sum, awards in similar cases and the relevant factors support Settlement
26 Class Counsel’s requested multiplier. Settlement Class Counsel spent nearly 600
27 hours litigating this case to resolution because of the extensive investigative work
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1 done to ensure the case was properly vetted and to make sure Plaintiffs’ preliminary
2 approval motion was granted the second time. Further, Settlement Class Counsel took
3 on the case on a contingent basis and to the preclusion of a significant amount of other
4 work it was offered during the pendency of this lawsuit. In addition, Settlement Class
5 Counsel as able to achieve significant relief for the Settlement Class that is superior
6 to many other food and beverage mislabeling settlements, including two other pet food
7 settlements within the Ninth Circuit, despite the challenges presented by this litigation
8 and with great efficiency. Settlement Class Counsel has substantial experience in
9 litigating consumer class action cases and used that experience to efficiently litigate
10 this case and achieve an excellent settlement for the Settlement Class. Lastly,
11 Settlement Class Counsel litigated this case with significant risks due to the contingent
12 nature of their representation. There was no certainty Settlement Class Counsel would
13 ever be paid and could have litigated this case for over 19 months and not received
14 any compensation for their time and efforts and significant advanced expenses. In
15 sum, Settlement Class Counsel respectfully submits its requested multiplier of 2.0 is
16 reasonable.

17 h. Reaction of the Class.

18 The Court may also consider the reaction of the class to the proposed fee award.
19 *Carter v. San Pasqual Fiduciary Tr. Co.*, No. SACV151507JVSJCGX, 2018 WL
20 6174767, at *9 (C.D. Cal. Feb. 28, 2018) (citing *In re Omnivision Techs.*, 559 F. Supp.
21 2d at 1048); *In re Heritage Bond*, 2005 WL 1594389, at *15 (“The presence or
22 absence of objections from the class is also a factor in determining the proper fee
23 award.”).

24 The motion for preliminary approval and all of the supporting materials, which
25 included Settlement Class Counsel’s fee request, were posted on the settlement
26 website following their filing with the Court. (J. Bryson Decl. ¶ 10.) Despite there
27 being an estimated 824,393 Settlement Class Members and thousands of claims made,
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1 not a single Settlement Class Member objected to Settlement Class Counsel’s
2 requested fee. (Interpido Bowden Decl. ¶ 22, J. Bryson Decl. ¶ 14.) The lack of
3 objections to the fee request weighs in favor of the fee request.

4 **B. Settlement Class Counsel’s litigation costs were necessarily and**
5 **reasonably incurred.**

6 Settlement Class Counsel’s request includes reimbursement of \$60,828 in
7 litigation costs, which included expert report costs, mediation costs, filing fees, and
8 research costs. (D. Bryson Decl. ¶ 36.) These costs were necessary to the litigation,
9 reasonable in amount, and the type of costs typically billed to paying clients. *See*
10 *Dickey*, 2020 WL 870928, at *9 (approving “professional service fees (for experts and
11 investigators), travel fees, and discovery-related fees”); *In re Yahoo! Inc. Customer*
12 *Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *42 (N.D.
13 Cal. July 22, 2020) (approving reimbursement of costs for expert fees, travel,
14 transcripts, document management, copying, mailing and serving documents,
15 electronic research, and filing and court fees).

16 **C. Service awards for the Class Representatives are reasonable.**

17 Incentive awards are payments to class representatives for their service to the
18 class in bringing the lawsuit. *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157,
19 1163 (9th Cir. 2013). Courts routinely approve this type of award to compensate
20 representative plaintiffs for the services they provide and the risks they incur during
21 class action litigation. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir.
22 2009); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 499 (E.D. Cal. 2010).
23 In the Ninth Circuit, a \$5,000 incentive award is “presumptively
24 reasonable.” *See Bellinghausen*, 306 F.R.D. at 266. *See Becerra-S. v. Howroyd-*
25 *Wright Emp. Agency, Inc.*, No. CV1808348CJCFFMX, 2021 WL 606245, at *6 (C.D.
26 Cal. Jan. 25, 2021) (“[t]he Court finds that the requested \$5,000 award is reasonable
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1 in light of the time and effort that Plaintiff spent over the course of this case and the
2 actions that she took to protect the interests of the class.”).

3 Service awards of \$5,000 each will compensate the Class Representatives for
4 their time and effort in stepping forward to serve as proposed class representatives,
5 assisting in the investigation, keeping abreast of the litigation, and meeting and
6 communicating with Settlement Class Counsel on an ongoing basis over the 19 month
7 pendency of this case regarding the progress of the litigation, settlement efforts, and
8 settlement terms. (J. Bryson Decl. ¶ 16-17.) All of Class Representatives and all were
9 very dedicated to this litigation and take their fiduciary role as Class Representatives
10 seriously. (*Id.* ¶ 17.) All of the Class Representatives indicated a willingness to stay
11 apart of the litigation through a potential appeal or trial. (*Id.*)

12 **III. CONCLUSION**

13 **IV.** For the above reasons, Plaintiffs respectfully request the Court grant this
14 motion and award Settlement Class Counsel \$814,172 in attorneys’ fees and \$60,828
15 in litigation costs, and award service payments of \$5,000 each to Plaintiffs.

16
17 Dated: November 21, 2022.

Respectfully submitted,

18
19 /s/ Alex R. Straus

Alex R. Straus, SBN 321366

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** by pro hac vice*

1
2 **UNITED STATES DISTRICT COURT**
3 **CENTRAL DISTRICT OF CALIFORNIA**

4 PAUL GIFFORD, MARY LOU
5 MOLINA, RANDY MILAND,
6 KAREN PERRI on behalf of
7 themselves and all others similarly
8 situated,

9 Plaintiffs,

10 v.

11 PETS GLOBAL INC.,
12 a California Corporation,

13 Defendant.

Case No. 2:21-cv-02136-CJC-MRW

**DECLARATION OF DANIEL K.
BRYSON IN SUPPORT OF
PLAINTIFFS’ MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
ATTORNEYS’ FEES, EXPENSES, AND
SERVICE AWARDS.**

Judge: Hon. Judge Cormac J. Carney

14 I, Daniel K. Bryson, declare as follows:

15 1. I am Co-Lead Settlement Class Counsel for Plaintiffs in this action. I
16 make this Declaration in support of Plaintiffs’ Motion for Final Approval of Class
17 Action Settlement, Class Counsel’s Motion for Attorneys’ Fees, Expenses, and
18 Service Awards. I have actively participated in the conduct of this litigation, have
19 personal knowledge of the matters set forth herein, and if called to testify, could and
20 would testify competently thereto.

21 2. My firm, Milberg Coleman Bryson Phillips Grossman PLLC,
22 (“Milberg”) has principally litigated this case and have extensive experience in
23 prosecuting complex class actions across the country, including substantial
24 experience in litigating consumer fraud and defective product cases. (Dkt. No. 53,
25 Exhibit 2) (resumé of Class Counsel).

26 3. Class Counsel’s years of experience representing consumers in
27 complex class action cases contributed to an awareness of Counsel’s settlement
28 leverage, as well as the needs of the Plaintiffs and the Settlement Class. Settlement

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Class Counsel believed, and continue to believe, that our clients have claims that would ultimately prevail in the litigation on a class-wide basis. However, Settlement Class Counsel are aware that a successful outcome is uncertain and would be achieved, if at all, only after several years of prolonged, contentious litigation with the attendant risk of drawn-out interlocutory and final appeals. In my opinion, as well as the opinion of other Settlement Class Counsel, based on our substantial experience, the Class Settlement warrants the Court’s final approval.

4. The sections that follow explain the course of the litigation and the hard-fought negotiations that resulted in the Settlement Agreement now before the Court for final approval. As described below, the Settlement provides significant monetary relief to consumers throughout the country. The Class Settlement is, in the opinion of the undersigned and the other Class Counsel, fair, reasonable, and adequate, and worthy of final approval.

BACKGROUND AND RELEVANT LITIGATION HISTORY

5. Defendant Pet’s Global has marketed and sold a line of petfood under the Zignature brand that are labeled “Grain Free” and “Chicken Free”. The central theme in all of Defendant’s marketing and product labelling of the products is that they contain ingredients that are limited ingredient diet in nature to help pets with sensitive diets or sensitivities to grains and low quality meat, such as chicken.

6. Prior to initiating this litigation, Settlement Class Counsel spent substantial time in pre-suit investigation. Settlement Class Counsel performed extensive research into the products sold by Pets Global that contained the “Grain Free” and “Chicken Free” representations. Settlement Class Counsel retained an academic expert in New Mexico that tested the products using the industry standard Q-PCR method of DNA testing that is FDA complaint. Due to the number of conflicts that labs across the country had because they worked for petfood companies, it was difficult for Settlement Class Counsel to find an expert willing to

1 test the products at issue, which is why Settlement Class Counsel had to use an expert
2 not remotely affiliated with the petfood industry. However, after a considerable time
3 searching, Settlement Class Counsel found an expert in New Mexico who was
4 associated with an academic institution that was willing to create an FDA compliant
5 testing protocol and test the products at issue. Settlement Class Counsel personally
6 contacted dozens of labs that politely declined to test the petfood at issue due to
7 conflicts or an unwillingness to be involved in protracted litigation.
8

9 7. Settlement Class Counsel also carefully reviewed relevant state and
10 federal law, including federal regulations and relevant FDA guidance regarding
11 petfood testing. Class Counsel further reviewed the filings and court decisions in
12 similar litigation addressing comparable products in order to identify legal and
13 factual issues we needed to be prepared to address. Once we had class
14 representatives, we fully researched the law in California, Illinois, and Minnesota

15 8. Although Plaintiffs felt confident in the merits of their claims, they also
16 knew of the significant hurdles in litigating their claims to a successful adversarial
17 resolution. In the event litigation had continued, or were to continue, Defendant have
18 maintained they would continue to seek a Rule 12(b) dismissal of Plaintiffs' claims
19 and would aggressively oppose class certification, including arguing that no
20 common deception or reliance existed and opposing the ability of Plaintiffs to
21 represent purchasers of Pets Global Products that Plaintiffs had not purchased.
22 Settlement Class Counsel anticipates that if their motions for class certification were
23 granted, Defendant would undoubtedly seek an interlocutory appeal under Rule
24 23(f). The scope of discovery would likely be hotly contested, and the case could
25 become a costly and time-consuming battle of experts. Motion practice would
26 include not only motions for summary judgment but also *Daubert* motions by both
27 Plaintiffs and Defendant. In all likelihood, any favorable result at trial would lead to
28 lengthy appeals.

The Settlement Achieves an Excellent Result for the Settlement Class and is the Result of Extensive Investigation, Hard-Fought Litigation and Arm’s-Length Negotiations

A. History of Negotiations and Preliminary Approval

9. On July 14, 2021, Plaintiffs and Defendant conducted a mediation with the Honorable Wayne Andersen (Retired) of JAMS Chicago. The parties engaged in an all-day mediation and the case did not settle. Despite many conversations by both parties individually with Judge Andersen following the mediation, the parties were unable to come to an agreement. As a last attempt to see if the parties would come to an agreement, Judge Andersen made a mediator’s proposal that both parties ultimately accepted. The parties did not discuss attorneys’ fees and costs, or potential plaintiff service awards until after they agreed on the material terms and structure of the settlement, including the definition of the Class, the benefits to the Class, and the scope of released claims.

10. Over the next six-plus-week period, the parties have continued to negotiate settlement details, resolve their differences, and solidify the notification plan to maximize the reach of the settlement’s notice to potential class members, made much more difficult by the lack of consumer names or purchase records, a problem that is inherent in any class action related to expendable pet food products and which prevents sending direct notice to the class.

11. Finally, on October 21, 2021, the parties’ Agreement was finalized. The settlement was, at all times, negotiated at arm’s length by experienced counsel on both sides, who are well versed in complex class action litigation, particularly with respect to consumer fraud and product defect litigation. In the course of reaching the Settlement, the Parties concluded that a nationwide settlement, encompassing claims of similarly situated purchasers of Pets Global products from across the country was an appropriate resolution.

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12. On October 25, 2021, Plaintiffs filed their Notice of Motion For Preliminary Approval of Class Action Settlement and Memorandum. (ECF Nos. 45-48). On January 6, 2021 this Court denied Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. (Dkt. No. 50). On April 4, 2022, Plaintiffs’ refiled their Notice of Motion For Preliminary Approval of Class Action Settlement and Memorandum. (Dkt. Nos. 51-55). On June 24, 2022, this Court Granted Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. (Dkt.No. 58).

The Settlement Class is believed to comprise thousands of Settlement Class Members and is defined as follows:

All persons residing in the United States who purchased the Products primarily for personal, family or household purposes, and not for resale, prior to the preliminary approval of the settlement, between the dates of four years prior to the filing of the Amended Complaint and the date of Preliminary Approval of the Settlement by the Court during the Class Period.

Settlement Agreement ¶ 9.

13. Settlement Class Counsel negotiated the Settlement vigorously and at arm’s-length. Plaintiffs were represented by experienced counsel at these negotiations, which were informed by the experiences of counsel for both sides in the litigation. Settlement Class Counsel was well-positioned to evaluate and negotiate this settlement not only based on their years of experience litigating similar cases, but also due to their extensive pre- and post-suit investigatory work that involved an analysis of the Defendant’s marketing efforts, the consultation of eminently qualified experts, extensive review of scientific literature, thorough legal research, and informal discovery.

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B. Settlement Benefits

14. The settlement benefits are consistent with the goals of the Settlement Class based on their claims in this action, namely, to have the opportunity for monetary compensation for past product purchases.

15. Defendant agreed to pay up an uncapped amount in monetary relief for Settlement Class Members. While Settlement Class Members without Proof of Purchase may still receive compensation, a Settlement Class Member’s compensation amount will be dependent on whether they have Proof of Purchase. Settlement Class Members who have Proof of Purchase may recover \$10.00 for each purchase of a product and can make a claim of up to ten products for a maximum of \$100. Settlement Class Members who do not provide Proof of Purchase may recover \$5.00.

16. Further, as part of the Settlement, Pets Global agreed to implement significant injunctive relief in this case. As part of the settlement, Pets Global has agreed to remove any and all “chicken free” and “grain free” representations on all of its products. These representations were the representations at issue in this action and the representations Plaintiffs alleged were false and misleading. Pets Global is permitted to sell any products it has manufactured as of the date of implementation, which is the date the Final Approval Order is entered. There is no end date in which Pets Global may resume using the representations at issue.

17. In addition, Pets Global agreed to audit all of the manufacturing plants of suppliers for a period of 5 years following the Court’s Final Approval Order. The audits of Pets Global’s suppliers will happen at least once a year and include the following: the visual inspection of all manufacturing machines that process, store, or otherwise come into contact with the petfood manufactured within said facility and purchased by Pets Global, an audit of the manufacturer’s manufacturing process and sourcing records, to confirm the accuracy of the ingredients being used in Pets

1
2 Global’s products, and ensuring that all of the manufacturing processes used by the
3 manufacturing plant adhere to quality control standards.

4 **RISKS OF CONTINUED LITIGATION**

5 18. Plaintiffs and Settlement Class Counsel remain confident in the
6 strength of their case, but they are also pragmatic and aware of the various defenses
7 available to Defendant, which are complex. There is no doubt that continued
8 litigation here would be difficult, expensive, and time consuming. The risks and
9 obstacles in this case are as great if not greater than those in other food false
10 advertising class actions because of the materiality of the non-conforming
11 ingredients, and this case would likely have taken years to successfully prosecute,
12 with the risk that ultimately there would be no recovery at all. Recovery, if any, by
13 any means other than settlement would require additional years of litigation in the
14 district courts and on appeal.

15 19. If this action proceeded to trial, the parties would incur significant
16 expenses, including the further payment of expert witnesses and consultants, along
17 with substantial time devoted to briefing Plaintiffs’ motion for class certification,
18 *Daubert* motions, and summary judgment motions, preparing for and conducting
19 trial, post-trial motion practice, and likely appeals (both potentially interlocutory and
20 final). Absent a settlement, the final resolution of this litigation through the trial
21 process may require several more months or even years of protracted, adversarial
22 litigation and appeals, which would delay relief to Settlement Class Members.

23 20. Further, each of these risks of continued litigation could have impeded
24 the successful prosecution of these claims at trial and in an eventual appeal –
25 resulting in zero benefit to the Settlement Class. Under the circumstances, Plaintiffs
26 and Settlement Counsel appropriately determined that the Settlement reached with
27 Defendant outweighs the gamble of continued litigation.

1
2 21. Whether the action would have been tried as a class action is also
3 relevant in assessing the fairness of the Settlement. As the Court had not yet certified
4 a class at the time the Agreement was executed, it is unclear whether certification
5 would have been granted, given the nature of Defendant’s arguments. Litigating class
6 certification would alone have required the Parties to expend significant resources.
7 And a denial of class certification would have left the Settlement Class Members
8 without any compensation. Given the extensive body of caselaw within the Ninth
9 Circuit regarding class certification for mislabeled petfood, this was a risk
10 Settlement Class Counsel was acutely aware of if this case were to proceed to class
11 certification.

12 **Opinions of Class Counsel Regarding the Settlement**

13 22. It is the opinion of Settlement Class Counsel who achieved the
14 Settlement that, given the numerable risks of extended litigation, this Settlement is
15 fair, reasonable, and adequate to the members of the Settlement Class.

16 23. Settlement Class Counsel has significant experience in the litigation,
17 certification, trial, and settlement of national class actions, and have recovered
18 hundreds of millions of dollars for the classes they have represented. The
19 experience, resources, and knowledge that Settlement Class Counsel brings to this
20 action is extensive and formidable.

21 24. Settlement Class Counsel have devoted substantial time and resources
22 to this action, are qualified to represent the Settlement Class, and have, along with
23 the Class Representatives, vigorously protected the interests of the Settlement Class.

24 25. The proposed Settlement is the best vehicle for the Settlement Class to
25 receive the relief to which they are entitled in a prompt and efficient manner.

26 **MILBERG’S BILLING RATES**

27 26. The billing rates for each Milberg attorney involved in this matter are
28 Milberg’s standard billing rates for the periods of time in which the work was

1 performed. Our rates are based on our analysis of the market rate for attorneys with
2 comparable qualifications, background, experience, and reputation. I am informed
3 and believe that the rates requested for the time of Milberg’s attorneys are reasonable
4 in relation to the hourly rates prevailing in California for other attorneys of similar
5 experience and qualifications.
6

7 27. Attached as **Exhibit 1** is a true and correct copy of excerpts from a
8 report published by the National Law Journal providing the 2017 billing rates for
9 firms based in California with significant offices in California. According to the
10 survey, Milberg’s requested rates fall within the range of many of the firms that are
11 involved in complex litigation with sizable presence in California based on the
12 National Law Journal survey: Greenberg Traurig (Partners: \$625-\$1080, Associates:
13 \$450-\$475), Jones Day (Partners: \$700-\$1050, Associates: \$300 \$800), Kirkland &
14 Ellis (Partners: \$235-\$1,410, Associates: \$210-\$295), Pillsbury Winthrop Shaw
15 Pittman (Partners: \$790-\$1235, Associates: Average \$680), Reed Smith (Partners:
16 \$820-\$902, Associates: \$425-\$675), Sidley Austin (Partners: \$965-\$1,180,
17 Associates: not available), and Winston & Strawn (Partners: Average \$930,
18 Associates: \$560-\$750).

19 **WORK PERFORMED BY MILBERG**

20 28. Milberg’s work in connection with this matter began in January of
21 2021. To date, my firm has spent 591 hours for a total \$405,960.

22 29. As a matter of practice, each attorney prepares daily records of the time
23 he or she spends on each matter for each client and the work performed. These time
24 records are logged into our system and include descriptions of the tasks undertaken
25 for each time entry. In this matter, I am the billing attorney and reviewed all bills for
26 accuracy and reasonableness. To the extent I believe time was not appropriate billed,
27 it was written off and not included in the amounts submitted.
28

1
2 30. I have spent more than 33 years representing individuals in building
3 product and consumer class actions, mass torts, and various other types of litigation.
4 I obtained my undergraduate degree from the University of North Carolina at Chapel
5 Hill in 1983 and obtained an Masters in Business Administration in 1986 from the
6 University of North Carolina at Greensboro. In 1988, I graduated from Wake Forest
7 University School of law and started my career in Raleigh, North Carolina. I have
8 tried numerous cases, many of which have resulted in multi-million-dollar verdicts.
9 I have been appointed as Lead Counsel in multiple product cases consolidated into
10 multi-district litigation, and have served on several Plaintiffs’ Steering Committees
11 and in other leadership positions. Many of those class actions have likewise resulted
12 in multi-million-dollar settlement recoveries for consumers. Similarly, I have been
13 appointed as Class Counsel in numerous actions certified by courts. Consequently, I
14 am a frequent lecturer and writer on a variety of building product class action,
15 insurance, and mass tort related disputes. I have been quoted by a variety of media
16 outlets over the years, including the Wall Street Journal, Washington Post, New
17 York Times, Law360, and Lawyers Weekly to name a few. I have been named as a
18 member of the Legal Elite and Super Lawyers in North Carolina on numerous
19 occasions. I have been awarded the designation of one of the Top 25 lawyers in
20 Raleigh by Charlotte Magazine for a number of years including 2020. I am the
21 current president of Public Justice. Public Justice is a nationwide public interest law
22 firm that pursues high impact lawsuits to combat social and economic injustice,
23 protect the Earth’s sustainability, and challenge predatory corporate conduct and
24 government abuses. I am also an adjunct professor at Campbell Law School in
25 Raleigh, NC, where I teach “Introduction to Class Actions and Multi-district
26 litigation.” I recently finished my term as president of Public Justice, a non-profit
27 organization that provides legal advocacy tools to pursue social justice, economic
28 and race equity, and fundamental human rights for people who are struggling to

1
2 provide for their basic needs. My billing rate on this matter was \$875 for all time
3 incurred. Plaintiffs seek to recover 229 hours of my time on this case for a total
4 amount of \$200,375.

5 31. J. Hunter Bryson is a senior associate at Milberg. He has extensive
6 experience in class actions in federal and state court. He has been involved in a
7 number of class action settlements as co-lead counsel and was named a Super
8 Lawyers Rising Star in 2020, 2021, and 2022. Mr. Bryson graduated from the
9 University of North Carolina at Chapel Hill in 2012 with degrees in economics and
10 political science and graduated from Campbell University Norman Adrian School
11 of Law in Raleigh, North Carolina in 2016. Since his graduation from Campbell and
12 admission to the North Carolina bar, Mr. Bryson has only worked in the field of
13 product defects in class actions. He has been named Class Counsel in 17 different
14 actions in North Carolina state court and 3 different matters in federal district court.
15 Mr. Bryson's billing rate on this matter was \$575. Plaintiffs seek to recover 356
16 hours of his time for a total of \$204,700.

17 32. Cathy Bryant is a senior legal assistant with Milberg. Ms. Bryant's
18 billing rate was \$206 per hour. Plaintiffs seek to recover 5.3 hours of her time for a
19 total of \$885.8.

20 33. Settlement Class Counsel submits all of work done by attorneys and
21 staff in this action was required and necessary to make sure this case was properly
22 vetted. As a summary of the work in this matter, Settlement Class Counsel spent
23 substantial time investigating and litigating this case, including but not limited to the
24 following:

- 25 a. Reviewing all labelling and marketing of the Pet's Global
26 Products, including all available public statements;
27 b. Becoming thoroughly grounded in the relevant federal
28 regulations and FDA testing guidance;

- c. Retaining consulting experts;
- d. Retaining testing experts;
- e. Working extensively with testing experts regarding the testing method employed, testing ingredients to target, and products chosen to test.
- f. Researching relevant food mislabeling case law and controlling state law;
- g. Reviewing the records in other relevant petfood cases;
- h. Carefully crafting the complaints;
- i. Reviewing and researching Defendant's motions to dismiss;
- j. Preparing Amended Complaints;
- k. Preparing for and participating in a mediation and extensive negotiations outside of the mediation;
- l. Preparing briefing on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement;
- m. Working with an expert to value components of the Settlement following the need to re-file Plaintiffs' Motion for Preliminary Approval of Class Action Settlement;
- n. Working with the settlement administrator to design an effective notice program;
- o. Overseeing the claims process; and
- p. Responding to questions from Class Representatives and Class Members regarding the Settlement and their claims.

34. To date, Settlement Class Counsel has not received any compensation for the work performed to investigate, bring, and prosecute this Action.

35. Nearly every day, I am proposed a new case idea. However, during the pendency of this case to ensure myself and other members of my firm were able to

1 do the absolute best job for the Settlement Class, many cases that were proposed to
2 Settlement Class Counsel were turned down. This was done to ensure the attorneys’
3 and staff at my firm always have adequate time to litigate a case to the highest
4 degree. J. Hunter Bryson and I turned away significant work over the pendency of
5 this case that could have been profitable for Settlement Class Counsel’s law firm in
6 order to litigate this case properly.
7

8 36. In addition, Settlement Class Counsel has incurred a total of \$60,828 in
9 advanced litigation expenses. These expenses were reasonable and necessarily
10 incurred on behalf of the class and paid by Settlement Class Counsel, consisting of
11 consulting expert fees, filing fees, research, mediation, and other necessary
12 expenses. Settlement Class Counsel advanced this sum without receiving any
13 reimbursement. These expenses are reflected in the books of Settlement Class
14 Counsel’s firms, which are accurately maintained. Settlement Class Counsel request
15 reimbursement of their expenses as part of their attorneys’ fee request and not in
16 addition to it.

17 **CONCLUSION**

18 37. Settlement Class Counsel collectively have years of experience
19 representing consumers in prosecuting complex class action cases, including those
20 involving allegedly mislabeled foods. This experience provided, including during
21 settlement negotiations, an awareness both of the extent of Plaintiffs’ settlement
22 leverage and the needs of our clients and the Class. Settlement Class Counsel
23 believed, and continue to believe, that our clients had claims that would have
24 ultimately prevailed at the completion of the litigation and on a class-wide basis.
25 However, Settlement Class Counsel are aware that the outcome in each of our cases
26 was uncertain and that a favorable outcome would have been achieved, if at all, only
27 after prolonged, arduous litigation with the attendant risk of drawn-out appeals.
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38. In my opinion, as well as the opinion of the other Settlement Class Counsel, based on our substantial experience as outlined above, the Settlement warrants the Court’s final approval. Its terms are not only fair, reasonable, and adequate, but also are a favorable result for the Settlement Class. The Settlement provides substantial and concrete benefits to Class Members. Based on all of the foregoing factors, we respectfully request that the Court grant final approval of the Agreement.

39. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of November, 2022 in Raleigh, North Carolina.

/s/ Daniel K. Bryson

Daniel K. Bryson

EXHIBIT 1



2017 NLJ Billing Report

Source: National Law Journal

Category: National Law Journal

ALM Legal Intelligence collected 2017 hourly billing rates for partners, associates and of counsel from the published rates in the 20 largest federal bankruptcy jurisdictions. High, low and average attorney billing rates are reported for 948 firms, in 31 states and the U.S. Territory Puerto Rico.

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Year	Firm Name	Largest U.S. Office - City	State	NLJ 500 Rank 2017	Partner Billing Rate Low	Partner Billing Rate High	Partner Billing Rate Avg	Associate Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Avg	Counsel Billing Rate Low		Counsel Billing Rate Average
2017	Cooley LLP	Palo Alto	CA	39			\$1,100	\$595	\$835	\$735	\$850	\$1,065	\$998
2017	Gibson, Dunn & Crutcher LLP	New York	NY	17	\$925	\$1,195	\$1,150	\$250	\$875	\$685			
2017	Greenberg Traurig, LLP	New York	NY	8	\$625	\$1,080	\$790	\$450	\$475	\$475			\$795
2017	Jones Day	Washington	DC	5	\$700	\$1,050	\$950	\$300	\$800	\$525			\$850*
2017	Kirkland & Ellis LLP	Chicago	IL	12	\$235	\$1,410	\$1,115	\$210	\$955	\$735			
2017	Pillsbury Winthrop Shaw Pittman LLP	Washington	DC	73	\$790	\$1,235	\$830			\$680*			
2017	Reed Smith, LLP	New York	NY	15	\$820	\$902	\$880	\$425	\$675	\$528			
2017	Sheppard, Mullin, Richter & Hampton LLP	Los Angeles	CA	64			\$760*	\$585	\$630	\$608			
2017	Sidley Austin LLP	Chicago	IL	10	\$965	\$1,180	\$1,135						
2017	Winston & Strawn LLP	Chicago	IL	46			\$930*	\$560	\$750	\$655			

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

Case No. 2:21-cv-02136-CJC-MRW

PAUL GIFFORD, MARY LOU
MOLINA, RANDY MILAND,
KAREN PERRI on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

PETS GLOBAL INC.,
a California Corporation,

Defendant.

**DECLARATION OF J. HUNTER
BRYSON IN SUPPORT OF
PLAINTIFFS’ MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
ATTORNEYS’ FEES, EXPENSES, AND
SERVICE AWARDS.**

Judge: Hon. Judge Cormac J. Carney

I, J. Hunter Bryson, declare as follows:

1. I am a member of the law firm of Milberg Coleman Bryson Phillips & Grossman, PLLC (“MCBPG”), counsel of record for Plaintiffs in this matter. I am admitted pro-hac vice to this Court I am a member in good standing of the bars of the state of North Carolina. I respectfully submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and Motion For Attorneys’ Fees Expenses and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

A. Our work on the case.

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2. Prior to filing the lawsuit, we conducted an extensive investigation into Pet’s Global Zignature line of products. I retained an academic expert that tested the products using the industry standard Q-PCR method of DNA testing that is FDA complaint. Due to the number of conflicts that labs across the country had because they worked for petfood companies, it was difficult for myself to find an expert willing to test the products at issue. However, I found an expert in New Mexico who was associated with an academic institution that was willing to create an FDA compliant testing protocol and test the products at issue. I personally contacted dozens of labs that politely declined to test the petfood at issue due to conflicts from working previously with petfood manufacturers or an unwillingness to be involved in protracted litigation.

3. In January 2021, I personally took the lead on all of the testing and coordination with our testing expert for the Zignature product line at issue. The method of testing, choosing the products to test, and choosing which ingredients to test for was an extremely time consuming and complex task and done in lock step with Plaintiffs’ expert. Each ingredient using the Q-PCR method must be manually looked for within a particular food product. There are many methods in which to test petfood and Class Counsel had to ensure the testing method used was FDA compliant and would be recognized as industry standard by the Defendant.

4. Following the aforementioned extensive pre-filing investigation, Plaintiffs case commenced on March 3, 2021 when Plaintiffs filed a lawsuit alleging that Pets Global manufactured certain products within its Zignature line that were labeled “Grain Free” and “Chicken Free” but actually contained material amounts of grain and chicken. (Dkt. No. 1.) Plaintiffs’ asserted claims under California, Illinois, and Minnesota state law.

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5. On July 14, 2021, Plaintiffs and Defendant conducted a mediation with the Honorable Wayne Andersen (Retired) of JAMS Chicago. The parties engaged in an all-day mediation and the case did not settle. Despite many conversations by both parties individually with Judge Andersen following the mediation, the parties were unable to come to an agreement. As a last attempt to see if the parties would come to an agreement, Judge Andersen made a mediator’s proposal that both parties ultimately accepted. The parties did not discuss attorneys’ fees and costs, or potential plaintiff service awards until after they agreed on the material terms and structure of the settlement, including the definition of the Class, the benefits to the Class, and the scope of released claims.

6. Over the next six-plus-week period, the parties have continued to negotiate settlement details, resolve their differences, and solidify the notification plan to maximize the reach of the settlement’s notice to potential class members, made much more difficult by the lack of consumer names or purchase records, a problem that is inherent in any class action related to expendable pet food products and which prevents sending direct notice to the class.

7. Finally, on October 21, 2021, the parties’ Agreement was finalized. The settlement was, at all times, negotiated at arm’s length by experienced counsel on both sides, who are well versed in complex class action litigation, particularly with respect to consumer fraud and product defect litigation. In the course of reaching the Settlement, the Parties concluded that a nationwide settlement, encompassing claims of similarly situated purchasers of Pets Global products from across the country was an appropriate resolution.

8. I took the lead on preparing the two Motions for Preliminary Approval and memorandums and worked with defense counsel, Mr. LeClerc, in reviewing materials in support of our Motions for Preliminary Approval, which included the claim form

1
2 and long form notice, Proposed Final Judgment, Proposed Preliminary Approval
3 Order, and the expert materials prepared by Plaintiff's expert.

4 9. On October 25, 2021, Plaintiffs filed their Notice of Motion For
5 Preliminary Approval of Class Action Settlement and Memorandum. (Dkt. Nos. 45-
6 48.) On January 6, 2021 this Court denied Plaintiffs' Motion for Preliminary Approval
7 of Class Action Settlement. (Dkt. No. 50.) On April 4, 2022, Plaintiffs' refiled their
8 Notice of Motion For Preliminary Approval of Class Action Settlement and
9 Memorandum. (Dkt. Nos. 51-55.) On June 24, 2022, this Court Granted Plaintiffs'
10 Motion for Preliminary Approval of Class Action Settlement. (Dkt. No. 58.)

11 10. After receiving preliminary approval of the settlement, I worked with JND
12 Settlement Administration the settlement administrator, on development and
13 implementation of the notice plan. I also made sure all of the preliminary approval
14 materials were posted on the settlement website. JND commenced the notice program
15 by initiating an online notice campaign.

16 11. The notice program so far has been a success. The 25,996 claims with non-
17 proof of purchase and 1,414 claims with proof of purchase received by JND to date is
18 very comparable to amounts received in the other cases Settlement Class Counsel was
19 involved in. See *Shaw et al v. Costco Wholesale Corporation et al*, 2:20-cv-01620-
20 RAJ (W.D. Wash) (22,520 claims without proof of purchase and 1,562 claims with
21 proof of purchase); *Sarah Hill et al v. Canidae Corporation*, 5:20-cv-01374-JGB-SP,
22 (C.D. Cal.) (46,080 claims without proof of purchase and 2,000 claims with proof of
23 purchase). The claims deadline runs until December 21, 2022.

24 12. Class Counsel is requesting service awards of \$5,000 for the Class
25 Representatives. The Class Representatives helped with the investigating the claims
26 alleged in the complaint, spoke to Class Counsel regarding the factual support of their
27 claims and reviewed and approved the settlement. Further, all of the Class
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Representatives helped identify the lot number that corresponded with the petfood they purchased and provided other information to ensure their products were sufficiently identified. Each of the Class Representatives supports the Settlement.

13. I took the lead on vetting the Class Representatives and all were very dedicated to this litigation and take their fiduciary role as Class Representatives seriously. The Class Representatives indicated a willingness to stay apart of the litigation through a potential appeal or trial. The Class Representatives were willing to sit through a deposition, trial, and do anything else that was asked of them to aid in the litigation. The Class Representatives have been very responsive, dedicated, and attentive to this litigation throughout its 19-month span. I respectfully submit the \$5,000 award for the Class Representatives is warranted in this matter.

14. On October 28, 2022, JND received one objection to the Settlement and alerted Class Counsel. The objection submitted by the Settlement Class Member had nothing to do with the attorney fee requested by Settlement Class Counsel.

15. Executed on this 16 day of November, 2022 in Raleigh, North Carolina.

/s/ J. Hunter Bryson

John Hunter Bryson