

Alex R. Straus, SBN 321366
astraus@milberg.com
MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC
280 S. Beverly Drive
Beverly Hills, CA 90212
Telephone: (917) 471-1894
Facsimile: (310) 496-3176

**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

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

Judge: Hon. Judge Cormac J. Carney

1 **I. INTRODUCTION**

2 Plaintiffs Paul Gifford, Mary Lou Molina, and Randy Miland (“Plaintiffs”),
3 individually and on behalf of the proposed settlement Class, seek preliminary approval of
4 a proposed Settlement of their claims against Pets Global Inc. (“Pets Global”). The
5 Settlement Agreement, if approved, will provide for cash benefits for consumers who
6 purchased certain Zignature pet food products and will resolve all claims of Plaintiffs and
7 the members of the Class deriving from their purchase of Zignature limited ingredient diet
8 pet food products. *See* Declaration of J. Hunter Bryson (“Bryson Decl.”), Exhibit 1:
9 Settlement Agreement (“Agreement”).

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

20 **II. BACKGROUND**

21 **A. Plaintiffs’ claims regarding Pets Global’s Zignature Limited**
22 **Ingredient Diets.**

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

1 Agreement, Ex. A. Plaintiffs allege that Pets Global made false and misleading
2 representations about the qualities and ingredients of these Products. First Amended
3 Complaint (“FAC”), ECF No. 23, ¶¶ 44-49. Plaintiffs allege that Pets Global’s
4 misrepresentations regarding the ingredients in the Pets Global Limited Ingredient Diets
5 are false and are material to consumers who purchase the Products. *Id.* Specifically,
6 Plaintiffs allege the Products presence grain and chicken in the Products (the “defect”), as
7 detected by Plaintiffs’ expert in independent analyses of the ingredients of the Pets Global
8 Limited Ingredient Diets using the industry standard Q-PCR method of DNA testing. FAC
9 ¶ 47. Plaintiffs allege that they would not have purchased the Pets Global Limited
10 Ingredient Diets on the same terms, had they known that the Pets Global Limited
11 Ingredient Diets in fact contained non-conforming ingredients. FAC ¶¶ 124, 173.
12 Plaintiffs allege they would have either not purchased the Pets Global Limited Ingredient
13 Diets or would have paid less for the products, as result of the false and misleading
14 representations on the products’ labels, they suffered damages. *Id.*

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

16 On March 3, 2021, after extensive investigation and expert analyses of various Pets
17 Global Limited Ingredient Diets, Plaintiffs filed the above-captioned putative class action
18 lawsuit against Pets Global in this Court, Case No. 5:21-cv-02136-CJC-MRW (the
19 “Action”). In their complaint, Plaintiffs alleged that Pets Global violated California’s
20 Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) (the “UCL”),
21 California’s False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*) (the “FAL”),
22 California’s Consumer Legal Remedies Act (Cal. Civ. Code § 1750) (the “CLRA”),
23 Violations Of The Minnesota Uniform Deceptive Trade Practices Act (Minn. Stat. §
24 325d.43, Et Seq.), Violations Of The Illinois Consumer Fraud Act (815 ILCS 505/1, *et*
25 *seq.* And 510/2) *See, generally*, Complaint, ECF No. 1. In addition, Plaintiffs alleged
26 claims against Pets Global for breach of express warranty, breach of the implied warranty
27 of merchantability, and unjust enrichment—each of which is related to the sale,
28 advertising, marketing, labeling, distribution, and manufacturing of Pets Global’s

1 Zignature Limited Ingredient Diet pet food products. Plaintiffs brought these claims on
2 behalf of a putative nationwide class of consumers, as well as putative subclasses for
3 California and New York consumers (ECF No. 1, the “Initial Complaint”). On September
4 24, 2020, Pets Global filed a motion to dismiss Plaintiffs’ Initial Complaint (ECF No. 27).
5 Plaintiffs responded to the motion to dismiss by filing an amended class action complaint
6 on October 29, 2020, omitting the cause of action for violation of the MMWA. *See* FAC.
7 Pets Global denies all of Plaintiffs’ allegations and is posed to vigorously defend against
8 this Action. After filing the Initial Complaint, the parties discussed the idea of a mediation
9 rather than engaging in prolonged and expensive litigation.

10 On July 14, 2021, Plaintiffs and Defendant conducted a mediation with the
11 Honorable Wayne Andersen (Retired) of JAMS Chicago. Bryson Decl. ¶ 6. The parties
12 engaged in an all day mediation and the case did not settle. *Id.* Despite many conversations
13 by both parties individually with Judge Andersen following the mediation, the parties
14 were unable to come to an agreement. *Id.* As a last attempt to see if the parties would come
15 to an agreement, Judge Andersen made a mediator’s proposal that both parties ultimately
16 accepted. *Id.* The parties did not discuss attorneys’ fees and costs, or potential plaintiff
17 service awards until after they agreed on the material terms and structure of the settlement,
18 including the definition of the Class, the benefits to the Class, and the scope of released
19 claims. *Id.*

20 Over the next six-plus-week period, the parties have continued to negotiate
21 settlement details, resolve their differences, and solidify the notification plan to maximize
22 the reach of the settlement’s notice to potential class members, made much more difficult
23 by the lack of consumer names or purchase records, a problem that is inherent in any class
24 action related to expendable pet food products and which prevents sending direct notice
25 to the class. *Id.* at ¶ 7. Finally, on October 21, 2021, the parties’ Agreement was finalized.
26 *Id.* at ¶ 8.

27 Class Counsel has fully analyzed their clients’ facts, the information provided by
28 Pets Global concerning its products, and the applicable legal principles. After considering

1 the substantial risks of continued litigation and the likelihood that the Action, if not settled
2 now, would be protracted and expensive while offering no guarantee of success for the
3 Class, Class Counsel is satisfied that the Agreement is in the best interest of the Class. *Id.*
4 at ¶¶ 10-11. The terms of the Settlement Agreement are set forth below in Part III. Plaintiffs
5 respectfully ask this Court to certify the Class for the purposes of settlement and
6 preliminarily approve the Settlement Agreement as fair, reasonable and adequate.

7 **III. THE SETTLEMENT AGREEMENT**

8 **A. The Proposed Nationwide Settlement Class**

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

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

17 Bryson Decl., Ex. 1, Agreement Y. The products at issue are listed in Exhibit A to the
18 proposed Agreement. Agreement, Ex. A.

19 The Agreement's Class definition is tethered to the legal claims against Pets Global
20 in this action because the proposed Class includes only persons who purchased specific
21 Pets Global Limited Ingredient Diets within the Class Period, and is limited to only those
22 persons who purchased the pet food products for household use. It is narrowly tailored
23 because the Class specifically excludes (a) all persons who are employees, directors,
24 officers, and agents of Pets Global, or its subsidiaries and affiliated companies;
25 (b) persons or entities who purchased the Products primarily for the purposes of resale to
26 consumers or other resellers; (c) governmental entities; (d) persons who timely and
27 properly exclude themselves from the Class as provided in this Settlement; and (e) the
28 Court, the Court's immediate family, and Court staff. *Id.*

1 **B. Settlement Consideration**

2 **1. Cash Component.**

3 The Settlement Agreement provides monetary benefits available to every Class
4 member who submits a valid and timely claim form, regardless of whether the Class
5 member has retained a proof of purchase for the Zignature Limited Ingredient Diets. Each
6 Class member who submits a valid claim, as determined by the Settlement Administrator,
7 shall receive a monetary benefit which shall be paid after the Effective Date of the
8 Settlement as defined by the Settlement Agreement (IV.B.2.a), subject to the following
9 conditions and requirements:

- 10 a. Settlement Class Members who provide Proof of Purchase may be entitled
11 to recover up to ten dollars (\$10.00) for each purchase of a Product made
12 by the Class Member during the Class Period and may make up to ten (10)
13 Claims for a maximum of one hundred dollars (\$100.00). A cap of \$100
14 shall exist per Household.
- 15 b. Settlement Class Members who do not provide Proof of Purchase may be
16 entitled to recover a maximum total Settlement Benefit of five dollars
17 (\$5.00) for purchases of a Product made by the Class Member.

18 Class Members may make a claim for purchases with valid Proofs of Purchase that
19 collectively exceed fifty dollars (Option 1, above) OR may make a claim without
20 providing Proofs of Purchase or whose total purchases equal less than fifty dollars (Option
21 2, above), but may not make claims for both Option 1 and 2. Although the individual
22 Settlement Class members' claims are capped as shown in Options 1 and 2 above, **the**
23 **total settlement cash benefits are uncapped.**

24 The parties have agreed that a Class Member may provide one of several types of
25 evidence of their purchase to qualify for the larger monetary benefit. Proof of Purchase
26 means receipts, copies of receipts, or other documentation that reasonably establishes the
27 fact and date of the purchase of the Product during the Class Period in the United States
28 or its territories. Settlement Agreement U.

 The Parties have agreed to recommend that the Court appoint JND Legal

1 Administration as Settlement Administrator to design, consult on, and implement related
2 requirements of this Settlement, including for example, distributing the notice for
3 publication, creating and maintaining the settlement website, claims review, collection of
4 objections if any, and effecting other requirements of this Settlement, subject to the
5 Court's approval. (Agreement V.IIA). Pets Global has agreed to be responsible for paying
6 all fees and expenses incurred by the Settlement Administrator in administering claims.

7 Plaintiffs expert valued the cash component of the Settlement after being requested
8 to by the Court. Plaintiffs expert valued the proof of purchase case benefits secured for
9 class members of \$515,332 and without proof of purchase monetary amounts of \$231,900
10 for a total of \$747,232. Bernatowicz Dec. ¶ 25. Plaintiffs' expert assumed a 10% claims
11 rate for those amounts. *Id.* Plaintiffs expert also assumed that 90% of the claims received
12 would be non-proof of purchase claims and proof of purchase claims would account for
13 10% of the overall claim received. *Id.* These claims breakdowns are reflective of claim
14 breakdowns in similar pet food cases that Class Counsel has been involved in. A 15%
15 claims rate was valued by Plaintiffs' expert at \$772,998 for claims with proof of purchase
16 and without proof of purchase of \$347,849 for a total of \$1,120,848.

17 2. *Injunctive Relief.*

18 Further, as part of the Settlement, Pets Global agreed to implement significant
19 injunctive relief in this case. As part of the settlement, Pets Global has agreed to remove
20 any and all "chicken free" and "grain free" representations on all of its products.
21 Agreement IV.A.1. These representations were the representations at issue in this action
22 and the representations Plaintiffs alleged were false and misleading. Pets Global is
23 permitted to sell any products it has manufactured as of the date of implementation, which
24 is the date the Final Approval Order is entered. Agreement IV.A.3. Notably, there is no
25 end date in which Pets Global may resume using the representations at issue.

26 The Court noted in its prior order "Plaintiffs have also failed to provide any
27 estimation of the value of the injunctive relief sought under the Agreement". Dkt. 50 at
28 16. Plaintiffs' expert estimated the total value of the injunctive relief secured is

1 \$273,789,121. Bernatowicz Dec. ¶ 21. Within the four years following the Settlement,
2 Plaintiffs' expert calculated the value of the injunctive relief secured is \$68,995,648. See
3 Exhibit F to Bernatowicz Dec. at line 14.

4 Although the amount of the injunctive relief seems high at first blush, Plaintiffs'
5 expert used actual sales data from Defendant and actual market data to compute this
6 amount. First, Plaintiffs expert calculated the total amount of sales for the products at issue
7 from 2017 through 2021 as the Defendant only provided sales numbers in the format of
8 actual units sold rather as a dollar value. Plaintiffs' experts calculated that the total amount
9 of sales from the Defendant from 2017 through part of 2021 as \$479,416,230. See Exhibit
10 D to Bernantowicz Dec. Second, Plaintiffs' expert then used the 2020 sales data for
11 Defendant's actual sales data for the products at issue, to project the amount of sales
12 moving forward by product and the bag size. See Exhibit E to Bernantowicz Dec. Third,
13 Plaintiffs expert then calculated the price premium per bag of Defendant's products at
14 issue using competitors in the market with products that had the same protein content and
15 representations as the product at issue. For example, using products from Canidae,
16 Diamond pet foods, Nestle, and Wellness Pet Company, and comparing the price of their
17 grain free and products that contained grain, the price premium was calculated to be .48
18 cents per pound for the grain-free representation on the 4-5 pound bag size. See Exhibit
19 G.1 to Bernantowicz Dec. Doing the same for the other bag sizes at issue, Plaintiffs' expert
20 calculated .40 per pound for a 10-18 pound bag, and then .38 per pound for a 18-30 pound
21 bag. See Exhibits G.2-G.3 of Bernantowicz Dec. Then, using the projected sales figures
22 based on Defendant's actual 2020 sales amounts and using the calculated price premium
23 per pound, the value of the injunctive relief was calculated moving forward and then
24 adjusted using industry standard methods.

25 Using industry standard methods, Plaintiffs' expert then sought to determine the
26 actual value of the injunctive relief in today's dollars. For example, Plaintiffs' expert used
27 the WACC method, which is a calculation of a firm's cost of capital in which each category
28

1 of capital is proportionately weighted.¹ All sources of capital, including common stock,
2 preferred stock, bonds, and any other long-term debt, are included in a WACC calculation.
3 *Id.* This metric is a commonly used metric in injunctive relief valuation and lowers the
4 anticipated value of the injunctive relief over time due to these anticipated ongoing costs.

5 Further, Plaintiffs’ expert was extremely conservative in the Defendant’s growth in
6 the future when valuing the injunctive relief. For example, he assumed 0% in Defendant’s
7 terminal growth, and only 1% in premium growth. See Exhibit F to Bernatowicz Dec. at
8 line 14. Terminal growth is an estimate of a company’s future cash flow while premium
9 growth is the price growth over time. Many companies have significantly larger terminal
10 growth rates, often near 3-4% annually. To be very conservative in his approach, he gave
11 the terminal growth and premium growth numbers well below averages in the Untied
12 States, which can be up to 10% but are typically around 3% to 4%.²

13 In sum, all growth metrics that were forecasted were used using actual sales figures
14 by Defendant and all price premium calculations were done using actual competitor
15 products in the market that used the representations at issue. Plaintiffs’ expert has never
16 had his opinions excluded by a court. Bryson Dec. ¶ 24.

17 **3. Auditing of Suppliers.**

18 In addition, Pets Global agreed to audit all of the manufacturing plants of suppliers
19 for a period of 5 years following the Court’s Final Approval Order. The audits of Pets
20 Global’s suppliers will happen at least once a year and include the following: the visual
21 inspection of all manufacturing machines that process, store, or otherwise come into
22 contact with the petfood manufactured within said facility and purchased by Pets Global,

23 _____
24 ¹<https://www.investopedia.com/terms/w/wacc.asp#:~:text=The%20weighted%20average%20cost%20of%20capital%20%28WACC%29%20is,term%20debt%2C%20are%20included%20in%20a%20WACC%20calculation.> (last visited March
25 3, 2020).

26
27 ²<https://corporatefinanceinstitute.com/resources/knowledge/valuation/what-is-terminal-growth-rate/#:~:text=The%20terminal%20growth%20rates%20typically%20range%20between%20the,ecomy%20forever.%20Application%20of%20the%20Terminal%20Growth%20Rate> (last visited
28 March 3, 2022).

1 an audit of the manufacturer’s manufacturing process and sourcing records, to confirm the
2 accuracy of the ingredients being used in Pets Global’s products, and ensuring that all of
3 the manufacturing processes used by the manufacturing plant adhere to quality control
4 standards. Agreement IV.D.1-3.

5 **C. Proposed Notification Plan**

6 Pending this Court’s approval, JND Legal Services (“JND”) will serve as the Notice
7 and Settlement Administrator. JND will be responsible for administrating the Notice
8 Program and administering the claims process including determining and paying valid
9 claims to Settlement Class Members. The Notice Program consists of multiple
10 components, designed to reach approximately 70 percent of the target audience. See the
11 Declaration of Gina M. Intrepido-Bowden, Vice President at JND Legal Administration
12 at ¶ 33. The internet search campaign and the distribution of a press release nationwide
13 will extend reach further. *Id.* The provided reach is similar to that of other court approved
14 programs and meets the standard set forth by the Federal Judicial Center. *Id.*

15 To achieve this, JND will cause 343 million digital impressions to be delivered over
16 a 12-week campaign via GDN and Facebook. *Id.* at ¶ 26. The impressions will target adults
17 25 years of age or older (“Adults 25+”) with some focused targeting. *Id.* at ¶ 27. A portion
18 of the GDN impressions will be allocated towards Spanish language sites, as well as users
19 with an affinity for dogs, dog health information, dog pet care, and dog lovers segment.
20 *Id.* Likewise, a portion of the Facebook effort will be allocated towards users with an
21 interest in dog food, dog health, and dog lovers. *Id.* The digital activity will be served
22 across all devices (desktop, laptop, tablet and mobile), with a heavy emphasis on mobile
23 devices. *Id.* at ¶ 28. The digital ads will contain an embedded hyperlink to the Settlement
24 website, where Class Members may access more information about the Settlement,
25 including the long form notice, as well as file a claim electronically. *Id.*

26 To extend notice exposure, JND will implement a digital search campaign to assist
27 in directing Class Members to the Settlement website. *Id.* at ¶ 29. Web browsers frequently
28 default to a search engine page, making search engines a common source to get to a

1 specific website (i.e., as opposed to typing the desired URL in the navigation bar). *Id.*
2 When purchased keywords related to the Settlement are searched, a paid ad with a
3 hyperlink to the Settlement website may appear on the search engine results page. *Id.* JND
4 will also cause a press release to be distributed at the launch of the campaign that will
5 assist in publicizing the Settlement. *Id.* at ¶ 30. The Press Release will be distributed to
6 over 15,000 English and Spanish media outlets nationwide. *Id.*

7 JND will develop an informational, interactive Settlement website that will allow
8 Class Members to obtain more information about the Settlement. *Id.* at ¶ 31. The website
9 will have an easy-to-navigate design and will be formatted to emphasize important
10 information regarding Class Members' rights, deadlines to act, and provide answers to
11 frequently asked questions. *Id.* at ¶ 31. The Settlement website will host copies of relevant
12 Settlement documents including the Long Form Notice. *Id.* at ¶ 31. The Settlement website
13 will be optimized for mobile visitors so that information loads quickly on mobile devices
14 and will also be designed to maximize search engine optimization through Google and
15 other search engines. *Id.* at ¶ 32. Keywords and natural language search terms will be
16 included in the site's metadata to maximize search engine rankings. *Id.* Visitors to the
17 Settlement website will have the ability to download the Settlement Claim Form or submit
18 one electronically. *Id.* JND will establish and maintain a dedicated toll-free telephone line
19 for Class Members to call for information related to the Settlement. *Id.* at ¶ 33. The
20 Settlement telephone line will be available 24 hours day, seven (7) days a week. *Id.* JND
21 will also maintain a dedicated Post Office Box where Class Members may send their
22 Claim Forms and exclusion requests. *Id.* at ¶ 34.

23 The Notice Program is designed to reach as many Settlement Class members as
24 practicable, provide the Settlement Class with important information regarding the
25 Settlement and the members' rights, including a description of the material terms of the
26 Settlement; the date by which Settlement Class members are able to exclude themselves
27 from or "opt-out" of the Settlement Class; the date by which Settlement Class Members
28 may object to the Settlement, Class Counsel's fee application and/or the request for a

1 Service Award; give notice (and updates if necessary) about the date of the Final Approval
2 Hearing; and provide accessible information regarding the Settlement Website where
3 Settlement Class members may access the Agreement, and other case-related documents.

4 **D. Claims Process**

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

17 On each Claim Form, the Class Member must provide and certify the truth and
18 accuracy of the following information under the penalty of perjury, including by signing
19 the Claim Form physically or by e-signature, with the warning that any unsigned claim
20 will not be considered eligible for a benefit by the Settlement Administrator. Settlement
21 Agreement IV.B.4. Each claim will require:

- 22
- 23 a. The Settlement Class Member’s name and physical mailing address (no P.O.
24 Boxes);
 - 25 b. The Settlement Class Member’s email address (unless the Settlement Class
26 Member submits a claim form by U.S. mail, in which case an email address is
27 optional);
 - 28 c. That the claimed purchases were direct retail purchases by the claimant; and

- 1 d. That the claimed purchases were not made for purposes of resale, commercial
2 use or for any other purpose.
- 3 e. For all claimed purchases that are not supported by Proof of Purchase: the
4 Product name(s), the approximate date(s) of purchase, the approximate price(s),
5 the name of the retail store and the store location of each purchase.

6 Class members submitting valid claims will have the opportunity to select an
7 electronic payment option on the Claim Form for payment of the Claimant's Benefit.

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

9 Opt-outs: Settlement Class members who do not wish to participate in the
10 Settlement may opt-out of the Settlement by sending a written request to the Settlement
11 Administrator at the address designated in the Long Form Notice. Settlement Class
12 members who timely opt-out of the Settlement will preserve their rights to individually
13 pursue any claims they may have against Pets Global, subject to any defenses that Pets
14 Global may have against those claims. The Settlement Agreement Long Form Notice
15 details the requirements to properly opt-out of the Settlement Class; Agreement V.III.H.
16 Settlement Class members must opt-out of the Settlement Class by the
17 Objection/Exclusion Deadline or will be subject to all releases of the Settlement Class. *Id.*
18 Not later than fourteen days before the date of the Fairness Hearing, the Settlement
19 Administrator shall file a list of those persons who have opted out of the Class with the
20 Court. Agreement VIII.K.

21 Objections: Any Class Member who intends to object to the fairness,
22 reasonableness, and/or adequacy of the Settlement must file a written objection with the
23 Court and send the written objection to the Settlement Administrator, Class Counsel, and
24 Defense Counsel, emailed or postmarked no later than the date specified in the
25 Preliminary Approval Order. Agreement VIII.A. Class Members who object must provide
26 certain information, including a written statement of their objection(s) and the reasons for
27 each objection, as well as a detailed list of any other objections submitted by the Class
28

1 Member, or his/her counsel, to any class actions in any court, whether federal, state, or
2 otherwise, in the United States in the previous five (5) years. *Id.*

3 **F. Release of Claims**

4 In exchange for the Settlement consideration, Plaintiffs and each Settlement Class
5 Member, and each of their heirs, spouses, guardians, executors, administrators,
6 representatives, agents, attorneys, insurers, partners, successors, predecessors-in-interest,
7 and assigns, shall be deemed to have, and by operation of the Final Judgment shall have,
8 fully, finally, and forever released, relinquished, and discharged all Class Released Claims
9 against Pets Global as defined in the Settlement Agreement. Agreement VI.A. The
10 “Released Claims” are defined in Paragraph Agreement VI.A, and the release includes
11 those products named in Exhibit A to the Agreement. The released claims are those that
12 (1) were asserted or could have been asserted in this Action, and those that (2) arise out
13 of or are related in any way to any or all of the acts, omissions, facts, matters, transactions,
14 occurrences, or events that were or could have been directly or indirectly alleged or
15 referred to in the Action.

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

17 As a term of their Agreement, Class Counsel may make an application to the Court
18 for an award of Attorneys’ Fees and Expenses in this action which will be paid by Pets
19 Global and shall be the sole aggregate compensation received by Class Counsel. Pets
20 Global has agreed not to oppose Class Counsel’s request for an award of attorneys’ fees
21 and expenses of up to \$875,000 and have agreed not to undermine that request or solicit
22 others to do so. Agreement V.E. Likewise, Class Counsel has agreed not to seek or accept
23 fees or expenses in excess of this amount. Agreement V.A. The procedure for and the
24 allowance or disallowance by the Court of any application for Attorneys’ Fees and
25 Expenses or for Incentive Awards are not part of the settlement of the Released Claims as
26 set forth in this Settlement and are to be considered by the Court separately from the
27 Court’s consideration of the fairness, reasonableness, and adequacy of the settlement of
28 the Released Claims as set forth in this Settlement. Agreement V.A.

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

9 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL**

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

17 The purpose of a preliminary approval hearing is to ascertain whether to send out
 18 notice to putative class members and proceed with a fairness hearing. *See In re Tableware*
 19 *Antitrust Litig.*, 484 F. Supp. 2d at 1079. Notice should be disseminated where “the
 20 proposed settlement appears to be the product of serious, informed, non-collusive
 21 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment
 22 to class representatives or segments of the class, and falls within the range of possible
 23 approval.” *Id.* Preliminary approval does not require an answer to the ultimate question
 24 of whether the proposed settlement is fair and adequate—that determination occurs only
 25 after notice of the settlement has been given to the members of the settlement class. *Id.*

26 While the district court has discretion regarding the approval of a proposed
 27 settlement, it should give “proper deference to the private consensual decision of the
 28 parties.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Beyond the

1 public policy favoring settlements, the principal consideration in evaluating the fairness
2 and adequacy of a proposed settlement is the likelihood of recovery balanced against the
3 benefits of settlement. “Basic to this process in every instance, of course, is the need to
4 compare the terms of the compromise with the likely rewards of litigation.” *Protective*
5 *Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414,
6 424-25 (1968).

7
8 **V. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL**

9 Rule 23(e)(2) provides that “the court may approve [a proposed class action
10 settlement] only after a hearing and on finding that it is fair, reasonable, and adequate.”
11 When making this determination, the Ninth Circuit has instructed district courts to balance
12 several factors: (1) the strength of plaintiffs’ case; (2) the risk, expense, complexity, and
13 likely duration of further litigation; (3) the risk of maintaining class action status
14 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
15 completed and the stage of the proceedings; and (6) the experience and views of counsel.
16 *Hanlon*, 150 F.3d at 1026³; *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th
17 Cir. 2004). Here, the balance of these factors readily establishes that the Settlement should
18 be preliminarily approved.

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

20 When determining the likelihood of a plaintiff’s success on the merits of a class
21 action, “the district court’s determination is nothing more than an amalgam of delicate
22 balancing, gross approximations and rough justice.” *Officers for Justice*, 688 F.2d at 625
23 (internal quotations omitted). The court may “presume that through negotiation, the
24 Parties, counsel, and mediator arrived at a reasonable range of settlement by considering
25

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

1 Plaintiff's likelihood of recovery." *Garner v. State Farm. Mut. Auto. Ins. Co.*, No. CV 08
2 1365 CW (EMC), 2010 WL 1687832, at *9 (N.D. Cal. Apr. 22, 2010) (citing *Rodriguez*
3 *v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)). Here, the settlement negotiations
4 were hard-fought, requiring a mediation session with a retired judge who has a wealth of
5 experience with similar false labeling and misrepresentation cases, including others
6 involving pet foods, and is a retired federal court Judge. *See* Bryson Decl. ¶ 6. After
7 arriving at a preliminary settlement understanding, the parties participated in multiple
8 follow-up and mediator-advised communications over a period of several weeks. Both
9 parties and their counsel are thoroughly familiar with the applicable facts, legal theories,
10 and potential defenses on both sides. *Id.* Plaintiffs believe that the Settlement is an
11 outstanding result considering the risk of continued litigation and number of legal issues
12 that make success in action such as this far from certain. *Id.* at ¶ 10. The amounts derived
13 are commensurate with the calculated price premium Plaintiffs paid for the Zignature
14 Limited Ingredient Diets based on the allegations the products were not "grain free" or
15 contained "no chicken". *Id.* at ¶ 12. Therefore, even on Plaintiffs' best day at trial,
16 Plaintiffs contend they would not recover amounts more than the amounts secured in this
17 settlement. *Id.*

18 Although Plaintiffs believe that proving Pets Global's liability would be possible
19 here, there is no guarantee that a jury would agree. Here, Plaintiffs would have to prove
20 that Pets Global was responsible for making false and/or misleading representations and
21 that the non-conforming ingredients in the Limited Ingredient Diets would be material to
22 reasonable consumers. *Id.* at ¶ 10. This inquiry would undoubtedly devolve into an
23 expensive and uncertain "battle of experts." *Id.* In addition, if the case proceeded to trial,
24 Plaintiffs may be required to prove that every member of the class purchased products that
25 contained grain or chicken contaminants, which would likely be very difficult to do. *Id.*
26 In addition, Plaintiffs would have likely faced arguments from Pets Global that Plaintiffs'
27 testing methods were flawed, the products tested by Plaintiffs were not the products
28

1 actually purchased by Plaintiffs, the amounts of grain and chicken found within the
2 Zignature Limited Ingredient Diets was not material and Plaintiffs have no damages. *Id.*

3 Moreover, Plaintiffs would face a strong hurdle at class certification and summary
4 judgment to establish damages against Pets Global. Pets Global vigorously denies
5 Plaintiffs’ allegations and asserts that neither Plaintiffs nor the Class suffered any harm or
6 damages. In addition, Pets Global would no doubt present a vigorous defense at trial, and
7 there is no assurance that the Class would prevail – or even if they did, that they would be
8 able to obtain an award of damages significantly higher than achieved here absent such
9 risks. *Id* at ¶ 9. Finally, identification of the Class members for expendable food products
10 like in this case, is difficult at best, unlike an automobile case in which past and present
11 ownership records are readily available. Thus, in the eyes of Class Counsel, the proposed
12 Settlement provides the Class with an outstanding opportunity to obtain significant relief
13 at this early stage in the litigation, when those Class members who are able to access their
14 purchase records are in the best position to benefit most from the offered relief. *Id* at ¶¶
15 10-11.

16 **B. The Cumulative Benefits Offered in the Proposed Settlement Are**
17 **Significant.**

18 The Court noted in its prior order in this case “[i]f the premium is higher than \$5
19 per product, this would suggest that Plaintiffs are not being adequately compensated for
20 their injuries under the Agreement.” Dkt. 50 at 16. Plaintiffs’ expert calculated the price
21 premium on a per bag basis and concluded the price premiums are 9.4%, 10.6% and 12.6%
22 for (1) 4-5 pound bags, (2) 10-18 pound bags, and (3) 18-30 pound bags respectively.
23 Bernatowicz Dec. ¶ 17. In dollars, this equates to a premium average of \$1.92 for an 4-lb
24 bag, \$7.20 for an 18-pound bag, and \$11.40 for an 30-pound bag. See Exhibits G.1-G.3
25 of Bernatowicz Dec. At worst, a class member without proof of purchase is receiving 43%
26 of his damages (\$5 is 43% of 30 pound bag premium of \$11.4). At best, a class without
27 proof of purchase receives member is receiving 260% of its damages (\$5 is 290% of 4lb
28 bag premium of \$1.92).

1 Cases have received final approval with damage recoveries far below 43%. See,
2 e.g., *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008)
3 (approving settlement that constituted 6% of maximum potential damages); *In re Toys R*
4 *Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D.
5 438, 454 (C.D. Cal. 2014) (noting that award representing between 5% and 30% of
6 recovery “is not a de minimis amount” and “weighs in favor of approval”); *Downey*
7 *Surgical Clinic, Inc. v. Optuminsight, Inc.*, No. CV09-5457PSG (JCx), 2016 WL 5938722
8 at *5 (C.D. Cal. May 16, 2016) (granting final approval where recovery was as low as
9 3.21% of potential recovery at trial); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13- cv-
10 02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval
11 of a net settlement amount representing 7.3% of the plaintiffs’ potential recovery at trial);
12 *Shvager v. ViaSat, Inc.*, No. CV 12-10180 MMM (PJWx), 2014 WL 12585790, at *10
13 (C.D. Cal. Mar. 10, 2014) (approving settlement representing “2.8% of the recovery that
14 might have been obtained had the case continued”).

15 With proof of purchase, a Class Member is able to claim and receive 100% of their
16 out of pockets up to \$100. As discussed below, in two other similar pet food settlements,
17 over 3,500 class members made claims with proof of purchase.

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

27 Based on their careful evaluation of such factors, Class Counsel and Class
28 Representatives have determined that the Settlement Agreement is in the best interests of

1 the Class. Here, Pets Global has agreed to settle this matter without a setting a cap on the
2 cumulative number of claims it will honor or on its maximum cumulative payout. Bryson
3 Decl. ¶ 12. The value of Pets Global’s agreement to pay claims with an uncapped
4 cumulative maximum settlement payout far outweighs the risk of proceeding with
5 litigation in which the Class could ultimately receive nothing, or relief that is lower than
6 what is being offered by Defendant in the Settlement.

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

23 Further if there was any doubt the whether the cash component alone renders the
24 settlement fair, reasonable, and adequate, the injunctive relief and supplier auditing
25 secured under the Settlement erase that doubt. The injunctive relief is significant in this
26 case: removing the chicken free and grain free representations at issue across all of Pets
27 Global’s products. Bryson Decl. ¶ 13. In addition, Pets Global agreed to audit all of the
28 manufacturing plants of suppliers for a period of 5 years following the Court’s Final

1 Approval Order. *Id.* at ¶ 14. The audits of Pets Global’s suppliers will happen at least once
2 a year and include the following: the visual inspection of all manufacturing machines that
3 process, store, or otherwise come into contact with the petfood manufactured within said
4 facility and purchased by Pets Global, an audit of the manufacturer’s manufacturing
5 process and sourcing records, to confirm the accuracy of the ingredients being used in
6 Pets Global’s products, and ensuring that all of the manufacturing processes used by the
7 manufacturing plant adhere to quality control standards. *Id.*

8 Therefore, based on the significant benefits secured in the Settlement, preliminary
9 approval is warranted.

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

11 As referenced above, proceeding in this litigation in the absence of settlement poses
12 various risks such as failing to certify a class, having summary judgment granted against
13 Plaintiffs, or losing at trial. Such considerations have been found to weigh heavily in favor
14 of settlement. *See Rodriguez*, 563 F.3d at 966; *Curtis-Bauer v. Morgan Stanley & Co.,*
15 *Inc.*, No. C 06-3903 TEH, 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22, 2008) (“Settlement
16 avoids the complexity, delay, risk and expense of continuing with the litigation and will
17 produce a prompt, certain, and substantial recovery for the Plaintiff class.”). Even if
18 Plaintiffs are able to certify a class, there is also a risk that the Court could later decertify
19 the class action. *See In re Netflix Privacy Litig.*, No. 5:11-cv-00379 EJD, 2013 WL
20 1120801, at *6 (N.D. Cal. Mar. 18, 2013) (“The notion that a district court could decertify
21 a class at any time is one that weighs in favor of settlement.”) (internal citations omitted).
22 The Settlement eliminates these risks by ensuring Class Members a recovery that is
23 “certain and immediate, eliminating the risk that class members would be left without any
24 recovery ... at all.” *Fulford v. Logitech, Inc.*, No. 08-cv-02041 MNC, 2010 U.S. Dist.
25 LEXIS 29042, at *8 (N.D. Cal. Mar. 5, 2010). Therefore, preliminary approval should be
26 granted.

27 **D. The Extent of Discovery and Status of Proceedings**

1 Under this factor, courts evaluate whether class counsel had sufficient information
2 to make an informed decision about the merits of the case. *See In re Mego Fin. Corp. Sec.*
3 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). “[I]n the context of class action settlements,
4 ‘formal discovery is not a necessary ticket to the bargaining table’ where the parties have
5 sufficient information to make an informed decision about settlement.” *Dunleavy v.*
6 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (citing
7 *Linney*, 151 F.3d at 1239 (citing *In re Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th Cir.
8 1982))).

9 In the matter before the Court, Class Counsel conducted significant pre-litigation
10 research, including the retention of an expert to analyze the ingredients of multiple
11 Zignature Limited Ingredient Diets using the industry standard Q-PCR method of DNA
12 testing, ensuring the testing method was FDA complaint, which the FDA has a number of
13 very specific factors to ensure quality control testing is done properly for petfood. Bryson
14 Decl. ¶ 4. Likewise, as included in Plaintiffs’ complaints, they gathered scholarly research
15 on the pervasive problem of pet food mislabeling especially where manufacturers claim
16 to be using specific, limited ingredients or claim to have eliminated certain ingredients
17 from their Products. *Id.* In addition, the Plaintiffs consulted with an economist regarding
18 the calculation of damages related to misrepresentations about product ingredients,
19 including regarding calculating damages for paying a price premium for the inclusion or
20 exclusion of certain key ingredients. *Id.* This pre-litigation research ensured the case was
21 properly vetted, but helped Plaintiffs understand the complexity of proving wide-spread
22 liability and proving price premium damages. *Id.*

23 Once the parties decided to mediate this matter, prior to and during the course of
24 their mediation and subsequent months of negotiating the details of the proposed
25 settlement, the parties shared certain confirmatory discovery including sales figures and
26 product testing results. *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d
27 454, 459 (9th Cir. 2000). Finally, Class Counsel are actively involved in litigation against
28 similar pet food manufacturers and have gained perspective on this matter from counsels’

1 collective wealth of experience. Although each case, product, and manufacturer has
2 significant differences, the certainty of settlement and the costs and difficulties of
3 protracted litigation in these matters are known to both Class Counsel and Pets Global.

4 The Settlement is thus based upon sufficient information that enabled Class
5 Counsel to weigh the risks of litigation against making benefits immediately available to
6 the Class, and, thus, make an informed decision when negotiating with Pets Global.

7 **E. Experience and Views of Counsel**

8 “The recommendations of plaintiffs’ counsel should be given a presumption of
9 reasonableness.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal.
10 2008). Deference to Class Counsel’s evaluation of the Settlement is appropriate because
11 “[p]arties represented by competent counsel are better positioned than courts to produce a
12 settlement that fairly reflects each party’s expected outcome in litigation.” *Rodriguez*, 563
13 F.3d at 967. Here, the Settlement was negotiated by counsel with extensive experience in
14 consumer class action litigation, and more specifically in litigation related to mislabeling
15 and pet foods. *See* Bryson Decl. ¶¶ 15, 16 & Ex. 2 (firm resume of proposed Class
16 Counsel).

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

20 **F. Expected Claims Rate**

21 The Court in its most recent order noted “Plaintiffs have failed to offer any concrete
22 estimate of the size of the class or expected claims rate”. Dkt. 50 at 16. Plaintiffs’ Counsel
23 has been involved in two other pet food settlements involving non-conforming
24 ingredients. In both cases, the claims rates were fairly strong and were sufficient to warrant
25 final approval of both class action settlements.

26 In *Shaw et al v. Costco Wholesale Corporation et al*, 2:20-cv-01620-RAJ
27 (W.D.WA), at the conclusion of the claims period the claims the settlement received
28 22,520 without proof of purchase (\$5 per claim) and 1,562 claims with proof of purchase

1 (up to \$100) for a total of 24,082. Bryson Dec ¶ 18. In total, at final approval the amount
 2 claimed by class members was \$221,370. *Id.* Class Counsel never knew the exact number
 3 of estimated class members in that case, but the notice program provided for 83% reach.
 4 *Id.* Class Counsel requested, and was awarded, \$1,150,376 in attorneys' fees and \$49,624
 5 in costs. *Id.* The case settled prior to the filing of a motion to dismiss. *Id.*

6 In *Sarah Hill et al v. Canidae Corporation*, 5:20-cv-01374-JGB-SP, (C.D. Cal.) at the
 7 final approval hearing, the settlement had received 48,080 claims with time still remaining
 8 in the claims period. *Id.* ¶ 19. Of these 48,080 claims, 2,000 were filed with a proof of
 9 purchase (\$5 for every \$50 dollar spent up to \$125) and 46,080 were filed without proof
 10 of purchase (\$5). *Id.* The maximum payout the claimants would receive was \$480,400. *Id.*
 11 At the conclusion of the claims period after the settlement administrator reviewed the
 12 validity of the submitted claims, the settlement had 37,096 valid claims and paid \$189,660
 13 to class members. *Id.* Settlement Class Counsel never knew the exact number of estimated
 14 class members in that case, but the notice program provided for 75% reach. *Id.* Settlement
 15 Class Counsel requested fees of \$1,284,889 and \$15,100 in out-of-pocket costs. *Id.* The
 16 court approved Settlement Class Counsel's rates, but reduced Settlement Class Counsel's
 17 fees to \$953,740.00 by applying a 2.0 multiplier rather than the requested 2.9 multiplier.
 18 *Id.* The case settled prior to the filing of a motion to dismiss by the defendant. *Id.*

19 Class Counsel expects a similar claims rate in this case to other cases it has been
 20 involved in. ¶ 20. Defendant sold 9,892,719 bags of pet food over the span at issue. See
 21 Exhibit C of Bernatowicz Dec. Assuming a Class Member purchased one bag of dog food
 22 a month (a conservative estimate), that would render a class size of 824,393.⁴ Bryson Dec
 23 ¶ 20.

24 Claims rates often range from 1% to 10%, trending towards the lower end. *In re*
 25 *Myford Touch Consumer Litig.*, No. 13-CV-03072-EMC, 2018 WL 10539266, at *2 (N.D.
 26 Cal. June 14, 2018). See 4 Newberg § 12:17 (recognizing that claims rates are often very

27 _____
 28 ⁴ (9,892,719/12)

1 low when relief is small and process burdensome); *Allen v. Bedolla*, 787 F.3d 1218, 1221
2 (9th Cir. 2015) (approximately 7% claims rate); Tait, 2015 WL 4537463 at *6 (less than
3 3% claims rate); *Yeagley v. Wells Fargo & Co.*, Case No. 05-03403 CRB, 2008 WL
4 171083, at *2 (N.D. Cal. Jan. 18, 2008) (less than 1% claims rate); *LaGorden v.*
5 *Support.com, Inc.*, No. C 12-0609 JSC, 2013 WL 1283325, at *6 (N.D. Cal. Mar. 26,
6 2013) (0.17% claims rate); *In re Apple iPhone 4 Prods. Liab. Litig.*, No. 5:10-md-2188
7 RMW, 2012 WL 3283432, at *1 (N.D. Cal. Aug. 10, 2012) (0.16% to 0.28% claims rate).

8 Based on calculations from Defendant’s actual sales data, a 1% claims rate for this
9 case would be approximately 8,243 claims while a 10% claims rate would be
10 approximately 82,439 claims. Bryson Dec ¶ 20. Based on the number of claims received
11 in the other pet food settlements Class Counsel was involved in, Class Counsel is
12 confident that the claims rate will be similar in this case should the Court grant Plaintiffs’
13 Motion. *Id.*

14 **G. Class Counsel’s Fees Are Reasonable And Not Disproportionate To**
15 **Class Relief**

16 The Court noted in its prior order “Counsel also fails to offer any estimation of how
17 many hours have been spent on this case thus far nor what kind of attorney rates they
18 would seek.” Dkt. 50 at 17. Class Counsel submits they have spent over 500 hours on this
19 matter to date. Bryson Dec ¶ 21. Class Counsel believes a lodestar calculation in this
20 matter using industry accepted rates, as discussed further below, will further justify Class
21 Counsel’s fee should this Court grant this motion. *Id.*

22 In *Canidae*, Class Counsel sought rates comparable to prevailing market rates in
23 the relevant community. *Acosta v. GT Drywall*, No. EDMC170006JGBKKX, 2018 WL
24 1041412, at *2 (C.D. Cal. Jan. 22, 2018) (citing *Van Skike v. Dir., Office of Workers’*
25 *Comp. Programs*, 557 F.3d 1041, 1046 (9th Cir. 2009). The relevant community is that in
26 which the district court sits. *Acostal*, No. EDMC170006JGBKKX, 2018 WL 1041412, at
27 *2 (citing *Schwarz v. Sec’y of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995).

1 Courts in the Central District have approved rates of \$778.50 for partners with
2 almost thirty years of experience and \$495 for the most junior associate. *WB Music Corp.*
3 *v. Royce Int'l Broad. Corp.*, No. EDCV16600JGBDTBX, 2018 WL 6177237 (C.D. Cal.
4 July 9, 2018), *aff'd sub nom. WB Music Corp. v. Stolz*, 814 F. App'x 286 (9th Cir. 2020);
5 *Perfect 10, Inc. v. Giganews, Inc.*, 2015 WL 1746484, at *15, *19 (C.D. Cal. Mar. 24,
6 2014) (finding reasonable the billing rates between \$825 to \$930 per hour in 2011 to 2014
7 for a senior partner with twenty-nine years of experience, and rates between \$610 to \$750
8 per hour for junior partners).

9 In *Canidae*, Settlement Class Counsel requested rates of \$875 for Daniel K. Bryson,
10 \$875 for Greg Coleman, \$750 for Lisa White⁵, \$750 for Alex Straus, and \$575 for J.
11 Hunter Bryson. See Bryson Dec. ¶ 22. Daniel Bryson and Greg Coleman have over 30
12 years of practice, Alex Strauss has over 12 years of practice, Lisa White has over 14 years
13 of practice, and J. Hunter Bryson has over 5 years of practice. *Id.* The Honorable Jesus
14 Bernal approved the requested rates of Settlement Class Counsel. *Id.* Class Counsel would
15 ask for approval of rates in identical amounts should the Court grant Plaintiffs' Motion.
16 *Id.*

17 The Court also noted in its prior order “[t]hese outstanding questions add to the
18 Court’s concern that the amount of the attorneys’ fees and expenses sought will not be
19 proportional to the relief offered to the Class”. Dkt. 50 at 17. Within the four years
20 following the Settlement, Plaintiffs’ expert calculated the value of the injunctive relief
21 secured as \$68,995,648. See Exhibit F to Bernatowicz Dec. at line 14. In total, the
22 valuation of the injunctive relief is \$273,789,121. Bernatowicz Dec. ¶ 21.

23 At a 10% percent claims rate, Plaintiffs’ expert valued the cash component of the
24 Settlement at \$515,332 for proof of purchase claimants and \$231,900 for non-proof of
25 purchase claimants for a total of \$747,232. At a 15% claims rate, Plaintiffs’ expert valued
26

27 _____
28 ⁵ Lisa A. White is no longer with Milberg, Coleman, Bryson Phillips & Grossman PLLC.

1 the cash component of the Settlement at \$772,998 for proof of purchase claimants and
2 \$347,849 for non-proof of purchase claimants for a total of \$1,120,848.

3 In total, taking Plaintiffs' expert projections for the amount of value conferred in
4 the Settlement for class members, using a 10% claims rate, Plaintiffs have secured an
5 estimated \$69,742,880 in value for class members for up to four years following the
6 Settlement, and \$274,536,353 in total. Given Class Counsel's fee request is \$875,000,
7 Class Counsel submits it is reasonable and not disproportionate to class relief given it
8 represents only a small fraction of the total relief secured for class members.

9 Even if the Court were to examine the relief secured for class members in piecemeal
10 fashion, Class Counsel's fee request remains reasonable. For example, using Plaintiffs'
11 expert valuation of proof of purchase claims and non-proof of purchase claims of
12 \$747,232 at a 10% percent claims rate, one third of this value is \$249,077. The remaining
13 portion of Class Counsel's requested fee, \$625,923, could then calculated against the
14 injunctive relief secured in this case. Taking one year of the injunctive relief secured
15 (\$17,248,912) and comparing it to the \$625,923 remaining of Class Counsel's fee, Class
16 Counsel's remaining fee request is 3.6% of the amount of injunctive relief secured for one
17 year. In sum, Class Counsel submits their fee request is not disproportionate to the relief
18 secured for Plaintiffs and class members in this case.

19
20 **VI. THIS COURT SHOULD PROVISIONALLY CERTIFY THE CLASS
AND ENTER A PRELIMINARY APPROVAL ORDER**

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

22 The Ninth Circuit has recognized that certifying a settlement class to resolve
23 consumer lawsuits is a common occurrence. *Hanlon*, 150 F.3d at 1019. When presented
24 with a proposed settlement, a court must first determine whether the proposed settlement
25 class satisfies the requirements for class certification under Rule 23. In assessing those
26 class certification requirements, a court may properly consider that there will be no trial.
27 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request
28 for settlement-only class certification, a district court need not inquire whether the case,

1 if tried, would present intractable management problems . . . for the proposal is that there
2 be no trial.”). For the reasons below, the Class meets the requirements of Rule 23(a) and
3 (b).

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

5 1. Numerosity

6 Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is
7 impracticable.” See Rule 23(a)(1). “As a general matter, courts have found that
8 numerosity is satisfied when class size exceeds 40 members, but not satisfied when
9 membership dips below 21.” *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal.
10 2000). Defendant sold 9,892,719 bags of pet food over the span at issue. See Exhibit C of
11 Bernatowicz Dec. Assuming a Class Member purchased one bag of dog food a month (a
12 conservative estimate), that would render a class size of 824,393.⁶ Bryson Dec ¶ 20.
13 Therefore, the proposed Class easily satisfies the numerosity requirement and is so
14 numerous that joinder of their claims is impracticable.

15 2. Commonality

16 Rule 23(a)(2) requires the existence of “questions of law or fact common to the
17 class.” See Rule 23(a)(2). Commonality is established if plaintiffs and class members’
18 claims “depend on a common contention,” “capable of class-wide resolution . . . [meaning]
19 that determination of its truth or falsity will resolve an issue that is central to the validity
20 of each one of the claims in one stroke.” *WalMart Stores, Inc. v. Dukes*, 564 U.S. 338,
21 350 (2011). Because the commonality requirement may be satisfied by a single common
22 issue, it is easily met. Newberg & Conte, *Newberg on Class Actions* § 3.10, at 3-50 (1992).

23 There are ample issues of both law and fact here that are common to the members
24 of the Settlement Class. All Class Members’ claims arise from a common nucleus of facts
25 and are based on the same legal theories. Plaintiffs allege that Pets Global misrepresented
26 the actual ingredients of its Zignature Limited Ingredient Diets, namely by including grain

27 _____
28 ⁶ (9,892,719/12)

1 and chicken despite claiming those ingredients are not present in the products. These
2 alleged misrepresentations were made in a uniform manner to each of the class members.
3 Accordingly, commonality is satisfied by the existence of these common factual issues.
4 *See Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 474 (C.D. Cal. 2012)
5 (commonality requirement met because “claims of all prospective class members involve
6 the same alleged defect”); *McCrary v. Elations Co., LLC*, No. EDCV 13-00242, 2014
7 U.S. Dist. LEXIS 8443, at *30 (C.D. Cal. Jan. 13, 2014) (class members were exposed to
8 same labeling claims, creating a “common core of salient facts”).

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

18 3. Typicality

19 Rule 23(a)(3) requires that the claims of the representative plaintiffs be “typical of
20 the claims ... of the class.” *See* Rule 23(a)(3). “Under the rule’s permissive standards,
21 representative claims are ‘typical’ if they are reasonably coextensive with those of absent
22 class members; they need not be substantially identical.” *See Hanlon*, 150 F.3d at 1020.
23 In short, to meet the typicality requirement, the representative plaintiffs simply must
24 demonstrate that the members of the settlement class have the same or similar grievances.
25 *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 161 (1982).

26 The claims of the named Plaintiffs are typical of those of the Class. Like those of
27 the Class, their claims arise out of the purchase of the Zignature Limited Ingredient Diets
28 for personal or household use after relying on the representations on the labels of the

1 products. The named Plaintiffs have precisely the same claims as the Class and must
2 satisfy the same elements of each of their claims, as must other Class Members. Supported
3 by the same legal theories, the named Plaintiffs and all Class Members share claims based
4 on the same alleged course of conduct. The named Plaintiffs and all Class Members have
5 been injured in the same manner by this conduct. Therefore, Plaintiffs satisfy the typicality
6 requirement.

7 4. Adequacy

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

16 Class Counsel have vigorously and competently pursued the Class Members’
17 claims. The arm’s-length settlement negotiations that took place and the investigation they
18 undertook demonstrate that Class Counsel adequately represent the Class. Moreover, the
19 named Plaintiffs and Class Counsel have no conflicts of interests with the Class. Rather,
20 the named Plaintiffs, like each absent Class Member, have a strong interest in proving
21 Pets Global’s common course of conduct, and obtaining redress. In pursuing this litigation,
22 Class Counsel, as well as the named Plaintiffs, have advanced and will continue to
23 advance and fully protect the common interests of all members of the Class. Class Counsel
24 has extensive experience and expertise in prosecuting complex class actions. Class
25 Counsel are active practitioners who are highly experienced in class action and consumer
26 fraud and mislabeling litigation. *See* Bryson Decl. ¶¶ 15-16 & Ex. 2 (firm resume of
27 proposed Class Counsel). Accordingly, Rule 23(a)(4) is satisfied.

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

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

10 1. Common Questions of Law and Fact Predominate

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

19 In this case, common questions of law and fact exist and predominate over any
20 individual questions, including, in addition to whether this settlement is reasonable (*see*
21 *Hanlon*, 150 F.3d at 1026-27), *inter alia*: (1) whether Pets Global’s representations
22 regarding the actual ingredients of its Zignature Limited Ingredient Diets were false and
23 misleading or reasonably likely to deceive consumers; (2) whether Pets Global violated
24 applicable consumer fraud statutes; and (3) whether the Class has been injured by the
25 wrongs complained of, and if so, whether Plaintiffs and the Class are entitled to damages,
26 injunctive and/or other equitable relief, including restitution or disgorgement, and if so,
27 the nature and amount of such relief.

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

14 When claims revolve around a “common nucleus of facts,” the longstanding rule
15 about differing remedies does not preclude class certification applies. *Espinosa*, 926 F.3d
16 at 563. “[I]n deciding whether to certify a settlement-only class, ‘a district court need not
17 inquire whether the case, if tried, would present intractable management problems.’” *Id.*
18 at 558.

19 Here, Pets Global is not disputing the application of California law to this
20 settlement. In this settlement context, Pets Global has chosen not to undertake its burden
21 to demonstrate that a jurisdiction other than California’s law should apply. Consequently,
22 Pets Global is voluntarily subjecting itself to California law, including California’s
23 Consumer Legal Remedies Act, which provides greater protections to consumers than
24 other jurisdictions. Where, as here, Pets Global’s products were widely distributed and
25 there are significant contacts with California residents, and where Pets Global does not
26 oppose California law applying to the nationwide class, a *Mazza* analysis is unnecessary
27 because the interests of other states will not be impaired. Moreover, consistent with
28 Plaintiffs’ allegations under the laws described above and the parties’ settlement, the

1 Settlement Agreement releases all claims against Pets Global arising under state and
2 federal laws that arise from Pets Global’s alleged representations regarding the non-
3 conforming ingredients in its Zignature Limited Ingredient Diets at issue in this litigation.

4 For these reasons, predominance is satisfied.

5 2. A Class Action is the Superior Mechanism for Adjudicating this
6 Dispute.

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

17 **VII. THE PROPOSED NOTICE PROGRAM IS ADEQUATE AND SHOULD**
18 **BE APPROVED**

19 Once preliminary approval of a class action settlement is granted, notice must be
20 directed to class members. For class actions certified under Rule 23(b)(3), “the court must
21 direct to class members the best notice that is practicable under the circumstances,
22 including individual notice to all members who can be identified through reasonable
23 effort.” Rule 23(c)(2)(B). In addition, Rule 23(e)(1) applies to any class settlement and
24 requires the Court to “direct notice in a reasonable manner to all class members who would
25 be bound by the proposal.” Rule 23(e)(1). When a court is presented with class notice
26 pursuant to a settlement, both the class certification notice and notice of settlement may
27 be combined in the same notice. *Manual*, § 21.633 at 321-22 (“For economy, the notice
28 under Rule 23(c)(2) and the Rule 23(e) notice are sometimes combined.”). This notice

1 allows Class Members to decide whether to opt out of or participate in the class and/or to
2 object to the Settlement and argue against final approval by the Court. *Id.*

3 The Notices proposed in this matter accurately inform Class Members of the salient
4 terms of the Settlement, the Class to be certified, the final approval hearing and the rights
5 of all parties, including the rights to file objections or to opt-out of the Settlement Class.
6 The proposed Long Form Notice will provide concise directions on the requirements and
7 deadlines to submit claims, to request exclusion, or to object to the Settlement. The Parties
8 in this case have created and agreed to provide a variety of forms of notice, which
9 collectively will satisfy both the substantive and manner of distribution requirements of
10 Rule 23 and due process.

11 The proposed notice program includes the following components:

- 12 • Online display banner advertising specifically targeted to reach Class
13 members in both the U.S. and its Territories;
- 14 • Keyword Search targeting Class members in both the U.S. and its Territories;
- 15 • A press release;
- 16 • Social media through Facebook, and Google Display Network (“GDN”);
- 17 • An informational website, on which the notices and other important Court
18 documents will be posted, and will be optimized for mobile visitors so that
19 information loads quickly on mobile devices and will also be designed to
20 maximize search engine optimization through Google and other search
21 engines. Keywords and natural language search terms will be included in the
22 site’s metadata to maximize search engine rankings. Visitors to the
23 Settlement website will have the ability to download the Settlement Claim
24 Form or submit one electronically;
- 25 • A toll-free information line, by which Class members can call 24/7 for more
26 information about the Settlement, including, but not limited to, requesting
27 copies of the Long Form Notice or a Claim Form.

28 Intrepido-Bowden Decl. ¶¶ 19-35.

1 This proposed notice program provides a fair opportunity for Class Members to
 2 obtain full disclosure of the conditions of the Settlement and to make an informed decision
 3 regarding the Settlement. This notice program is designed to reach at least seventy percent
 4 of the targeted Class Members, on average two times each. *See id.*, Intrepido-Bowden
 5 Decl. ¶ 35. Thus, the parties’ notice plan and procedures satisfy the requirements of due
 6 process.

7 **VIII. PROPOSED SCHEDULE OF EVENTS**

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

EVENT	DEADLINE
Deadline for publishing Notice	Within ten (10) days after the entry of the Preliminary Approval Order
Filing an objection with the Court, or submitting a request for exclusion to the Settlement Administrator	21 days prior to the Final Approval Hearing (see Agreement U)
Filing of response to objections	No later than seven (7) days before the Fairness Hearing
Filing of papers in support of Final Approval and Class Counsel’s Application for Attorneys’ Fees and Expenses	As set by the District Court and Local Rules
Final Approval Hearing	150 days after the Following the Entry of the Preliminary Approval Order (see Agreement P)

Deadline for submitting claims forms	30 days after the date Final Approval Hearing is held (see Agreement H)
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IX. CONCLUSION

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

Dated: April 4, 2022.

Respectfully submitted,

/s/ Alex R. Straus

Alex R. Straus, SBN 321366
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**
280 S. Beverly Drive
Beverly Hills, CA 90212
Telephone: (917) 471-1894
Facsimile: (310) 496-3176
astraus@milberg.com

Arthur Stock*
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Tel: 865-247-0080
Fax: 865-522-0049
astock@milberg.com

Daniel K. Bryson*
J. Hunter Bryson*
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**
900 W. Morgan Street
Raleigh, NC, 27603
Tel: (919) 600-5000

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Fax: (919)600-5035
dbryson@milberg.com
hbryson@milberg.com

Attorneys for Plaintiffs
** by pro hac vice*