

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

**SHAREL MAWBY, on behalf of herself  
And all others similarly situated,**

**Plaintiff,**

v.

**MILO’S KITCHEN, LLC, et al.,**

**Defendants.**

**Case No. 1616-CV03384**

**Division 12**

**SUGGESTIONS IN SUPPORT OF  
PLAINTIFF’S UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Sharel Mawby (“Plaintiff”) submits the following suggestions in support of her Unopposed Motion for Preliminary Approval of Class Action Settlement.

**Introduction**

This class action lawsuit involves claims against Defendants Milo’s Kitchen, LLC, Big Heart Pet Brands, and The J.M. Smucker Company (collectively, “Defendants”) for alleged violation of the Missouri Merchandising Practices Act (“MMPA”), Mo. Rev. Stat. § 407.010 *et seq.* Plaintiff alleges that Defendants falsely and deceptively marketed Milo’s Kitchen Brand Chicken Jerky and Chicken Grillers Homestyle dog treats to Missouri consumers as “wholesome” and “quality” products, when the dog treats actually were unfit for sale or consumption because they contained substandard and potentially hazardous ingredients. Defendants deny these allegations entirely and contend that the dog treats did not contain substandard and potentially hazardous ingredients and were not harmful or falsely or deceptively advertised.

After years of adversarial litigation, the parties have reached a proposed settlement of this case on a classwide basis to refund consumer purchases of the dog treat products up to a capped

per-claim amount. The proposed settlement is the result of extensive, arm's-length negotiations, including multiple formal mediation sessions and follow-up negotiations supervised by esteemed mediator Bill Sanders, Jr. of Sanders Warren Russell & Scheer, LLP. The proposed settlement is memorialized in a Settlement Agreement, a copy of which is attached as **Exhibit 1** and submitted to the Court for preliminary approval.

Following thorough investigation of the facts in this case and extensive analysis of the applicable law, Plaintiff and her counsel submit that the proposed settlement is fair, reasonable, adequate, and in the best interests of the proposed class. The proposed settlement provides meaningful and certain recovery for the class, while avoiding risks inherent in continued litigation of protracted and expensive trial and appellate proceedings involving highly complex and uncertain legal and factual issues related to class certification, liability and damages. Under these circumstances, the proposed settlement is the best means to ensure that class members receive significant compensatory relief in a prompt and efficient manner.

Under Missouri law, the proposed settlement requires approval from the Court to determine that the terms of the settlement are fair, reasonable, and adequate for the class. This process of approval typically involves three stages: (1) preliminary approval of the proposed settlement and certification of a temporary settlement class; (2) dissemination of notice to the class with an opt-out period; and (3) a formal fairness hearing to determine whether the Court should grant final approval of the proposed settlement.

This motion concerns the first stage of preliminary settlement approval. By this unopposed motion, Plaintiff requests that the Court enter an order:

1. Conditionally certifying a class for settlement purposes only, as defined herein;
2. Appointing Plaintiff Sharel Mawby as class representative;

3. Appointing the law firm of Shank & Moore, LLC as class counsel;
4. Determining preliminarily that the proposed settlement falls within the range of reasonableness meriting possible final approval following dissemination of class settlement notice and completion of the allotted time period for class members to file claims, make objections to, or exclude themselves from the proposed settlement;
5. Approving the form, substance, and requirements of the proposed claim form and class settlement notice, which are attached as Exhibits A and B, respectively, to the parties' Settlement Agreement;
6. Approving Atticus Administration, LLC as the settlement administrator for purposes of disseminating the class settlement notice and processing class members' claims;
7. Approving the proposed plan for disseminating notice of the settlement to class members, and directing that Atticus complete the notice campaign as directed in accordance with the approved notice plan;
8. Setting deadlines and procedures for people who fall within the class definition to exclude themselves or comment on the proposed settlement;
9. Setting a hearing to determine whether the proposed settlement should be granted final approval, and setting pre-hearing deadlines for the filing of papers necessary for final settlement approval and entry of final judgment;
10. Staying all proceedings in this action, other than those necessary to administer and evaluate the proposed settlement pursuant to Rule 52.08; and
11. Enjoining all Settlement Class Members, unless and until they have timely excluded themselves from the Settlement Class: (i) from filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, arising out of, or concerning, any of the claims and

causes of action or the facts and circumstances giving rise to the instant action and/or the Released Claims; (ii) from filing, commencing or prosecuting a lawsuit (other than the instant lawsuit) or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any Settlement Class Members who have not timely excluded themselves (including by seeking to amend a pending complaint or petition to include class allegations or seeking class certification in a pending action), based on, arising out of, or concerning, any of the claims and causes of action or the facts and circumstances giving rise to the instant action and/or the Released Claims; and (iii) from attempting to solicit other Settlement Class Members from excluding themselves from this settlement.

A proposed form of order is submitted for the Court's consideration as Exhibit A to Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement.

### **Factual and Procedural Background**

#### **I. Summary of the Claims, Defenses, and Proceedings in the Lawsuit**

Plaintiff filed a Class Action Petition against Defendants on February 12, 2016, and then filed her First Amended Class Action Petition on February 24, 2016. This pleading outlines the body of evidence that Plaintiff contends supports her claim that Defendants falsely and deceptively advertised their dog treats as "wholesome" and "quality" products, and attaches a number of published materials from the U.S. Food and Drug Administration ("FDA") and other sources that Plaintiff contends indicate that the dog treats are associated with illness and death when consumed.

Defendants removed the action to federal court in April 2016. The case was remanded to this Court in October 2016.

Following remand, Defendants filed an answer denying Plaintiff's allegations of unlawful conduct and asserting 28 different affirmative defenses. This included several complete defenses to liability based on lack of standing; first amendment protection for commercial speech; federal

preemption; and the doctrine of puffery. The JM Smucker Company also moved to dismiss the claims against it for failure to state a claim. The Court denied this motion to dismiss in an order entered March 16, 2017.

The parties then engaged in contested class certification proceedings, including submission of hundreds of pages of briefing and attached materials. The Court granted the motion for class certification in an order entered August 22, 2017. Defendants filed a petition for permission to take an interlocutory appeal of this order with the Missouri Court of Appeals for the Western District. That petition was denied.

The parties have conducted extensive discovery regarding the claims and defenses at issue here. Between this case and a related, earlier-filed action filed involving essentially the same claims and litigated by the same counsel, the parties have produced to each other and obtained from third parties tens of thousands of pages of pertinent documents. Discovery in this case also was supplemented by the FDA's ongoing investigation of Chinese-made dog treats. With these documents and information, Plaintiff and her counsel have been able to investigate and analyze all relevant factual and legal issues in the case, leading them to conclude that the proposed settlement is fair, reasonable, and adequate for the class as a whole.

## **II. Summary of the Settlement Negotiations**

The proposed settlement was reached after extensive arm's-length negotiations between the parties and their counsel. A first mediation conference was held with Bill Sanders<sup>1</sup> in Sep-

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<sup>1</sup> Mr. Sanders is the founder of Sanders Warren Russell & Scheer LLP. He has substantial litigation experience and his practice now focuses on mediation. He is one of the most highly sought after mediators in the area. He has been named as the Best of the Bar in the Kansas City Business Journal since 2002, is a Super Lawyer in Missouri and Kansas and was named in the Best Lawyers in America. He has also been named the Kansas City, Kansas Mediation Lawyer of the Year. He is a registered mediator with the National Academy of Distinguished Neutrals.

tember 2016. That mediation was unproductive, primarily because of uncertainty whether the case would be remanded to this Court and disagreement between the parties over the significance of the forum. In January 2018, the parties agreed to a second mediation conference after the issue of venue was resolved and the parties had conducted substantial additional discovery and motion practice. Although the case did not settle at that mediation, the parties remained engaged in settlement discussions supervised and brokered by Mr. Sanders. Eventually, the parties reached an agreement to resolve their dispute, which was first outlined in a detailed terms sheet and is now memorialized in the Settlement Agreement attached as **Exhibit 1**. The terms of the parties' proposed settlement are outlined in the next section.

### **III. Summary of Proposed Settlement Terms**

For the purposes of settlement, the parties agree to conditional certification of a proposed settlement class defined as follows:

All Persons who, for personal, household or family use, purchased in the State of Missouri from March 1, 2011 through January 31, 2013 Milo's Kitchen brand Chicken Jerky and Chicken Grillers Home-style Dog Treats manufactured in and/or imported from China. Excluded from the settlement class are: (a) Defendants, subsidiaries and affiliates of Defendants, directors and offices of Defendants, and members of their immediate family; (b) any Person who files a valid, timely Request for Exclusion; (c) federal, state, and local governments entities (including all agencies and subdivisions thereof, but excluding employees thereof); (d) any Persons who have previously settled and released their claims arising out of the purchase of the Products in the State of Missouri; and (e) any judicial officers presiding over this action, their judicial staff, and members of their immediate families.

(Settlement Agreement, Ex. 1, at 12, § II.A.45.)

The parties estimate that sales of the subject dog treats during the class period totaled \$1,871,000. The proposed settlement refunds consumer purchases of these products and will be paid on a claims-made basis, meaning all valid and approved claims will be compensated in full without any pro rata reduction up to the maximum per-claim amount. Valid and approved claims

submitted *with* proof of product purchase will receive a refund of the actual documented purchase price up to a limit of one hundred dollars (\$100.00) per household. (*Id.* at 18, § IV.B.1.b.) Valid and approved claims submitted *without* proof of product purchase will receive a refund of up to \$2.00 per 3.3-ounce bag of dog treats purchased, \$5.50 per 14-ounce bag of dog treats purchased, \$6.50 per 20-ounce bag of the dog treats purchased, \$9.50 per 23-ounce bag of dog treats purchased, and \$7.50 per 30-ounce bag of dog treats purchased, up to a limit of twelve dollars (\$12.00) per household. (*Id.* at 18, § IV.B.1.a.) The proposed settlement will completely resolve this lawsuit, permitting the Court to dismiss the case and enter judgment if the settlement is approved following the final approval hearing.

The proposed settlement establishes a claims-processing procedure administered by a neutral third party—Atticus Administration, LLC (“Atticus”)—responsible for disseminating notice of the settlement, receiving, reviewing and approving claims, and distributing settlement proceeds to approved claimants. (*Id.* at 18-24, § V.) The notice plan utilizes a digital campaign with targeted internet and social media notices to likely class members; it also makes settlement-related information available to class members through a dedicated settlement website. (*Id.* at 24-26, § VI.) The proposed timetable for notice and claims administration (detailed in the following section) is consistent with the schedules used in other class action settlements approved by the judges of this Court.

In addition to paying all sums required to compensate claimants for valid and approved claims according to the schedule outlined above, Defendants also will deposit \$600,000 into a qualified settlement fund to be used for payment of notice and claims administration expenses, attorneys’ fees, and a service award for Plaintiff. (*Id.* at 15-17, § IV.A.) The parties expect to incur notice and claims administration costs of approximately \$45,000. (*Id.* at 18-19, § V.A.) The

parties have agreed that Plaintiff's counsel may seek an award of attorneys' fees up to \$550,000 to compensate them for the time, risk and expense associated with prosecuting this lawsuit. (*Id.* at 30, § IX.A.) The parties also have agreed that Plaintiff may seek a service award up to \$5,000 to compensate her for time, risk and expense of participating in this lawsuit. (*Id.* at 31, § IX.B.) No amount paid for notice and claims administration expenses, attorneys' fees or a service award will reduce the amount of money available to class members for payment of valid and approved claims. Any amount remaining of this initial \$600,000 deposit after payment of notice and claims administration expenses, attorneys' fees and a service award may be utilized by Defendants for payment of valid and approved claims of class members.

#### **IV. Summary of Proposed Timetable**

“Courts have consistently held that 30 to 60 days between the mailing (or other dissemination) of class notice and the last date to object or opt out, coupled with a few more weeks between the close of objections and the settlement hearing, affords class members an adequate opportunity to evaluate and, if desired, take action concerning a proposed settlement.” 2 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 6:18 (15th ed. 2018). Mindful of the timeline described in this treatise, the parties are requesting that the Court schedule a final approval hearing no sooner than 90 days after dissemination of the notice. This and other proposed deadlines for settlement-related events are summarized as follows:

EVENT	TIME FOR COMPLIANCE
Deadline for disseminating settlement notice	15 days after entry of preliminary approval order
Deadline for class members to: <ul style="list-style-type: none"> <li>• submit requests for exclusion;</li> <li>• file objections to the proposed settlement; and/or</li> <li>• file notice of intention to appear at final approval hearing</li> </ul>	45 days after the deadline for disseminating settlement notice
Deadline for class members to submit claims	45 days after the deadline for disseminating settlement notice
Deadline for Plaintiff to file motion for final approval of the proposed settlement and motion for award of litigation expenses, attorneys' fees and a service award	No later than seven (7) days prior to the Final Approval Hearing
Deadline for Plaintiff and Defendant to file responses to any objections to the proposed settlement	No later than seven (7) days prior to the Final Approval Hearing
Final Approval Hearing	At least 90 days after the deadline for disseminating settlement notice

## Argument and Authorities

Plaintiff requests that the Court (I) certify the proposed settlement class; (II) preliminarily approve the proposed settlement; and (III) approve the proposed notice plan and appoint Atticus Administration, LLC as the settlement administrator for purposes of disseminating the settlement notice and processing claims.

### **I. The Court Should Certify the Proposed Class for Settlement Purposes**

Missouri courts recognize that the use of “temporary settlement classes is beneficial and has salutary effects on the resolution of class action litigation.” *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 377 (Mo. Ct. App. 1997). “[P]rior to certifying a temporary settlement class, the trial court should first conduct a preliminary examination of the record before it and make a preliminary determination as to whether it appears that a settlement class should be tentatively certified.” *Id.* at 383. The Court must conduct a “preliminary ‘probable cause’ review” to determine whether the temporary settlement class can meet the requirements of Supreme Court Rule 52.08. *Id.* The requirements for certifying a class for settlement purposes, however, are easier to satisfy than the requirements for certifying a class for trial. *See id.* at 377 (“[T]he requirements for certification may be easier to meet in the settlement context.”).

The proposed settlement class is largely the same as the litigation class already certified by this Court in its August 22, 2017 order, but makes more specific reference to the dog treat products at issue as being “manufactured in and/or imported from China” (as alleged in the Petition and defined in the Settlement Agreement) and adds to the categories of excluded individuals “any person who files a valid, timely Request for Exclusion” under the procedures outlined in the Settlement Agreement. In addition to these housekeeping purposes, certification of a settlement class has the procedural benefit of acknowledging “Defendant’s agreement to certification of a

class for settlement purposes only . . . without prejudice to its ability to contest certification of a class for litigation purposes in the event the court does not approve the settlement.” 2 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 6:3 (15th ed. 2018).

For the same reasons already determined by the Court in certifying a class for litigation purposes, the Court should readily certify the proposed settlement class under Rule 52.08. *See Rikos v. Proctor & Gamble Co.*, No. 1:11-cv-226, 2018 WL 2009681, at \*4 (S.D. Ohio Apr. 30, 2018) (“[T]he Court finds it appropriate to certify the Settlement Class for reasons similar to those stated in its previous certification order [regarding litigation classes].”). The proposed settlement class continues to satisfy the numerosity, commonality, typicality and adequacy prerequisites of Rule 52.08(a), and also continues to satisfy the predominance and superiority requirements of Rule 52.08(b)(3). Certification of a settlement class also is consistent with the express language of the MMPA authorizing class actions where alleged unlawful practices have “caused similar injury to numerous other persons.” Mo. Rev. Stat. § 407.025.2.

Accordingly, Plaintiff submits that the Court should certify the proposed settlement class, defined as follows:

All Persons who, for personal, household or family use, purchased in the State of Missouri from March 1, 2011 through January 31, 2013 Milo’s Kitchen brand Chicken Jerky and Chicken Grillers Home-style Dog Treats manufactured in and/or imported from China. Excluded from the settlement class are: (a) Defendants, subsidiaries and affiliates of Defendants, directors and offices of Defendants, and members of their immediate family; (b) any Person who files a valid, timely Request for Exclusion; (c) federal, state, and local governments entities (including all agencies and subdivisions thereof, but excluding employees thereof); (d) any Persons who have previously settled and released their claims arising out of the purchase of the Products in the State of Missouri; and (e) any judicial officers presiding over this action, their judicial staff, and members of their immediate families.

(*See* Settlement Agreement, Ex. 1, at 12, § II.A.45.)

## II. The Court Should Grant Preliminary Approval of the Proposed Settlement

Missouri courts recognize that public policy and the law favor the settlement of disputes. *See, e.g., Hilton v. Davita, Inc.*, 302 S.W.3d 157, 159 (Mo. Ct. App. 2009); *Morrow v. Hallmark Cards, Inc.*, 273 S.W.3d 15, 23 n.3 (Mo. Ct. App. 2008); *Collins v. Mo. Bar Plan*, 157 S.W.3d 726, 735 (Mo. Ct. App. 2005). This public policy is especially significant in complex litigation like this class action. 4 William B. Rubenstein, *Newberg on Class Actions* § 13:1 (5th ed. 2012) (“Settlement is attractive to all of the parties. The class secures some form of relief, the defendant secures finality, and the legal system conserves judicial resources. There is, accordingly, a strong judicial policy in favor of class action settlement.”); *see also In re Advanced Battery Techs., Inc. Secs. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014) (“the procedural and substantive fairness of a settlement should be examined in light of the strong judicial policy in favor of settlement of class action suits” (quotations omitted)); *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) (“The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” (quotation omitted)); *Austin v. Pa. Dep’t of Corrs.*, 876 F. Supp. 1437, 1455 (E.D. Pa. 1995) (“[T]he extraordinary amount of judicial and private resources consumed by massive class action litigation elevates the general policy of encouraging settlements to ‘an overriding public interest.’”) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)).

Missouri Rule of Civil Procedure 52.08(e) provides, in part, that “[a] class action shall not be dismissed or compromised without the approval of the court . . . .” The Missouri Court of Appeals for the Eastern District described the standard for court approval of a class action settlement as follows:

When determining if a settlement is fair, reasonable, and adequate, the court must consider: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members. Among these, the most important consideration in determining if a settlement is fair, reasonable, and adequate is the strength of the plaintiff's case on the merits balanced against the offered settlement.

*Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. Ct. App. 2011) (quoting *Ring v. Metro St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. Ct. App. 2000)).

Preliminary approval is the first step of a two-step process for judicial approval of a proposed class action settlement. In the first step, the Court simply determines whether the proposed settlement falls within the range of possible approval and whether it is reasonable to issue notice to the class members of the settlement's terms. *See* Manual for Complex Litigation § 13.14, at 173 (4th ed. 2004) ("First, the judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing."). "The trial court in effect has a 'gatekeeper' role in reviewing the proposed settlement before preliminarily approving it and sending out notice to the class." *Byrd*, 956 S.W.2d at 382. In ruling on preliminary approval of a class settlement, the court "is not making a determination as to whether the case could be maintained as a class action if the settlement fell through and litigation were required, nor is it making a final determination of certification for purposes of settlement." *Id.* at 384. After preliminary approval is given, notice is provided to the class and the class members are given an opportunity to object or otherwise be heard concerning the settlement, the Court will conduct the second step of the judicial approval process to determine whether it should grant final approval of the settlement as fair, reasonable, and adequate under Rule 52.08(e).

In determining whether preliminary approval is appropriate, the Court conducts “an initial evaluation . . . of the fairness of the proposed settlement, including a determination that there are no obvious deficiencies such as indications of a collusive negotiation, unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, all determined on the basis of written submissions and informal presentation by the settling parties.” 2 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 6:7 (15th ed. 2018). “Generally, a proposed settlement will be preliminarily approved unless there are obvious defects in the notice or other technical flaws, or the settlement is outside the range of reasonableness or appears to be the product of collusion, rather than arm’s-length negotiation.” *Id.*

As discussed in the following sections, the *Bachman* factors identified above favor preliminary approval of the proposed settlement, which is not deficient in any respect, is clearly not the product of collusion, and is within the range of reasonableness.

**A. The Settlement is Not the Product of Fraud or Collusion**

The proposed settlement is the product of a bona fide adversarial process. The case was vigorously litigated, and the settlement negotiations between the parties were conducted at arm’s length over a long period of time. Defense counsel have thoroughly and competently represented Defendants in this case, and the litigation has been hard fought at every stage. This supports the veracity and above-board nature of the proposed settlement. *See, e.g., In re Neustar, Inc. Sec. Litig.*, No. 1:14CV885 (JCC/TRJ), 2015 WL 5674798, at \*11 (E.D. Va. Sept. 23, 2015) (granting preliminary approval of proposed class action settlement because the record indicated “that the proposed settlement agreement is the product of a fair process of adversarial litigation and negotiation”).

The proposed settlement also was made with the input and supervision of a neutral, well-respected mediator who conducted two formal mediation sessions and participated in numerous subsequent settlement exchanges between the parties. These circumstances create a presumption in favor of granting preliminary approval of the proposed settlement because the involvement of “an experienced and well-known” mediator is “a strong indicator of procedural fairness,” *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012), and his participation in settlement negotiations “virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties,” *Hainey v. Parrott*, 617 F. Supp. 2d 668, 673 (S.D. Ohio 2007); *see also Satchell v. Fed. Express Corp.*, Nos. C03-2659SI, C03-2878SI, 2007 WL 1114010, at \*4 (N.D. Cal. Apr. 13, 2007) (“The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.”).

**B. The Complexity, Expense, and Likely Duration of Litigation Supports Preliminary Approval of the Settlement**

The factual and legal issues in this lawsuit are complex, including the disputed question whether Defendants’ representations of the dog treats might constitute non-actionable puffery. *See Hurst v. Nissan N. Am., Inc.*, 529 S.W.3d 322, 325 (Mo. 2017) (“The question of whether ‘puffery’ is actionable under the MMPA, as opposed to the common law in which such statements generally are not actionable, is an interesting question worthy of study. But that question need not be decided in this case.”). This complexity is borne out in the parties’ various pleadings and filings on a motion to remand, a motion to dismiss, a motion for class certification and motions on discovery-related issues. Although Plaintiff disputes Defendants’ positions on the many potentially dispositive issues that have been raised, it is uncertain that Plaintiff would prevail on all of these issues if litigation continued.

Given the complexity and uncertainty of factual and legal issues in the case, it is almost guaranteed that an appeal would follow trial, regardless of which party prevailed. This would add years and substantial expense to the litigation. The circumstances favor the proposed settlement, which alleviates the uncertainty associated with the resolution of the factual and legal issues and avoids additional expense and delay of continued litigation in the trial and appellate courts. *See, e.g.*, 2 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 6:9 (15th ed. 2018) (“The specter of a complex trial militates in favor of settlement.”); *Advanced Battery Techs.*, 298 F.R.D. at 175 (“Courts consistently recognize that the complexity, expense, and likely duration of litigation are critical factors in evaluating the reasonableness of a settlement, . . .”).

**C. The Parties Are Sufficiently Informed About the Factual and Legal Issues in the Case to Enter Into the Settlement Agreement**

The parties reached the proposed settlement after extensive litigation, including thorough discovery and substantial motion practice. Through counsel, Plaintiff has obtained and reviewed tens of thousands of pages of records from Defendants and the FDA concerning the manufacture, representation and alleged potential dangers of the subject dog treats. The pertinent record is sufficiently developed and the parties are sufficiently informed of the facts and legal issue to make proper and competent decisions on accepting the terms of the proposed settlement for the benefit of the class in light of the risks of continued litigation. This factor also favors preliminary approval of the proposed settlement.

**D. Plaintiff’s Probability of Success on the Merits is Commensurate with the Settlement**

Plaintiff believes that she has meritorious factual and legal arguments in this lawsuit, but she is mindful of the significant risks attendant with continued litigation. Defendant has asserted several complete defenses to liability, any one of which could bar or substantially limit recovery

for Plaintiff and the class. This includes the twenty-eight (28) affirmative defenses outlined in Defendants' answer and the numerous other arguments Defendants have made against liability in their various motions filed throughout this case. Even if Plaintiff prevailed at trial and obtained a substantial verdict, the potential exists for that verdict to be reduced significantly or reversed completely on appeal. These numerous potential obstacles to recovery via continued litigation favor the proposed settlement.

**E. The Settlement is Within the Range of Possible Recovery**

The proposed settlement falls within the range of possible recovery for the class at trial if this litigation continued. As noted above, any recovery at trial is highly uncertain and the amount of such potential recovery is speculative, especially in light of the asserted defenses to liability. The proposed settlement provides substantial—and potentially complete—monetary relief for all class members who file claims. In doing so, it gives the class immediate, certain, and substantial benefits that may not be available in continued litigation. Such relief is by no means certain, even if Plaintiff were to prevail at trial, given the likelihood that Defendants would appeal an adverse verdict. This factor favors approval of the proposed settlement. *See Doyle v. Fluor Corp.*, 400 S.W.3d 316, 322 (Mo. Ct. App. 2013) (affirming approval of class settlement because “if the case were to proceed to trial, there was no guaranty that the Plaintiffs would succeed or recover as much as the settlement offered them”).

**F. Plaintiff and Plaintiff's Counsel Support the Settlement.**

Plaintiff and her counsel have extensive knowledge of the factual and legal issues in this lawsuit and the risks attendant to continued litigation. They believe that the proposed settlement resulting from arm's-length negotiations reflects a fair, reasonable and adequate resolution of the matter that is in the best interests of the class. The reasoned judgment of Plaintiff and her experi-

enced trial counsel provides substantial support for preliminary approval of the proposed settlement. *See, e.g., Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D. Cal. 2014) (“The court gives considerable weight to class counsel’s opinions regarding the settlement due to counsel’s experience and familiarity with the litigation. Counsel’s assertion that the settlement is fair, adequate and reasonable is a factor supporting the court’s final approval of the settlement.”); *EEOC v. McDonnell Douglas Corp.*, 894 F. Supp. 1329, 1335 (E.D. Mo. 1995) (counsel’s opinion regarding fairness of proposed settlement is “entitled to considerable weight”).

Altogether, the factors indicate that the proposed settlement is not deficient or inequitable in any respect. The proposed settlement falls within the range of possible final approval because it provides immediate, certain and substantial relief for the class, and reflects a fair, adequate and reasonable compromise of the lawsuit. For these reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement.

### **III. The Court Should Approve the Class Settlement Notice and Plan of Dissemination, and Appoint Atticus Administration, LLC as the Settlement Administrator for Purposes of Disseminating the Notice and Processing Claims**

In addition to requiring court approval of the proposed settlement, Rule 52.08(e) states that “notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” “The principal purpose of [the class settlement notice] is to ensure that absentee class members, for whom a settlement will have preclusive effect, have an opportunity to review materials relevant to the proposed settlement and to be heard or otherwise take steps to protect their rights before the court approves or rejects the settlement.” 2 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 6:17 (15th ed. 2018).

### A. The Form and Content of the Settlement Notices Should be Approved

An adequate settlement notice must advise the class (1) that the Court will exclude all members who so request by a specified date; (2) that the judgment, whether favorable or not, will bind all class members who do not properly request exclusion; and (3) that class members who do not request exclusion may, if so desired, enter an appearance in the lawsuit through counsel. *Byrd*, 956 S.W.2d at 385. To satisfy due process, the proposed notice must also be “‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Id.* (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). In other words, “the notice must ‘fairly apprise the prospective members of the class of the terms of the settlement and of the options that are open to them in connection with the proceedings.’” *Id.* (quoting *Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995)).

The settlement notice in this case will be provided to class members initially through a digital campaign utilizing: (a) internet banner notices targeted to class members; (b) targeted social media banner notices; and/or (c) web-based notice using keyword searches displaying notice banners. (Settlement Agreement, **Ex. 1**, at 26, § VI.D.) The digital notice will advise class members of the proposed settlement and direct them to a dedicated website containing more detailed information about the settlement. Courts regularly approve this form of summary publication notice instructing class members on how to obtain more detailed information about the proposed settlement. 2 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 5:81 (15th ed. 2018) (“The Internet has quickly gained acceptance as a method of reinforcing the provision of class members with notice.”); *see also Byrd*, 956 S.W.2d at 385 (settlement notice “need only be general in nature” and may refer class members to other sources of information if necessary).

The settlement website will include a detailed settlement notice providing class members with answers to most common questions about the proposed settlement. The proposed long-form notice (attached as Exhibit B to the Settlement Agreement) satisfies the notice requirements outlined above. In particular, the process for requesting exclusion from the settlement class, and the implication of that decision, is explained in the answers to Questions 13 through 15 under the heading “EXCLUDING YOURSELF FROM THE SETTLEMENT.” Class members also are specifically advised in the answer to Question 14 that they will be bound by all judgments in the case if they do not request exclusion, and in the answers to Questions 17, 19 and 23 that they may retain their own counsel for purposes of objecting to the settlement and/or appearing at the final approval hearing.

The proposed detailed class settlement notice is modeled on the exemplar long-form notices provided by the Federal Judicial Center, which “are designed to illustrate how attorneys and judges might . . . concisely and clearly state in plain, easily understood language specific information about the nature and terms of a class action and how it might affect potential class members’ rights.” Federal Judicial Center, *Illustrative Forms of Class Action Notice: Overview*, available at: <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction>. Courts generally have accepted the Federal Judicial Center’s illustrative notices as a guidepost of legal sufficiency. *See, e.g., DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 303 (W.D. Tex. 2007) (approving notice because “the announcement is consistent with the illustrative notices promulgated by the Federal Judicial Center”); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 224 (D.N.J. 2005) (noting approval of class notices that “comply with the Federal Judicial Center’s illustrative class action notices”).

The proposed long-form notice satisfies due process by explaining to class members the details of the proposed settlement and their rights with respect to the settlement. Class members are advised on the first page and in the answer to Question 8 of the benefits to which they may be entitled under the proposed settlement. The notice includes a table summarizing the legal rights and options available to each class member—including filing a claim, making an objection, appearing at the final approval hearing, and/or requesting exclusion—and the respective deadlines for exercising those rights and options.

In addition to the summary table at the beginning of the proposed notice, the proposed notice also informs class members in greater detail of: (1) the process and deadline for filing a claim in the answer to Question 10; (2) the process and deadline for requesting exclusion in the answer to Question 13; (3) the amounts that Plaintiff's counsel will request the Court to award at the final approval hearing for attorneys' fees and a service award in the answer to Question 18; (4) the process and deadline for filing objections in the answer to Question 19; and (5) the date and location of the final approval hearing in the answer to Question 21.

A claim form will also be available on the settlement website. The proposed claim form (attached as Exhibit A to the Settlement Agreement) specifically instructs class members on the information and documentation that must be provided for claim validation. The form also clearly advises class members of the deadline for claim submission. Through settlement negotiations, and with the input of Atticus, the parties agree that this proposed claim form provides the best and most efficient means of claims administration.

The settlement website will instruct class members on how to contact the settlement administrator with questions about the proposed settlement. Significant settlement-related documents—including the parties' Settlement Agreement—also will be available for review on the

settlement website. This ensures that class members are given convenient access to the maximum amount of information regarding the proposed settlement.

Because the proposed digital and long-form notices, together with information available on the settlement website, will provide all information required under Missouri law and comport with due process by apprising class members of the essential terms of the proposed settlement, Plaintiff respectfully submits that the Court should approve the form and content of the proposed settlement notices.

**B. The Plan for Dissemination of the Settlement Notices Should be Approved**

With regard to the dissemination of settlement notice to the class, Missouri Rule of Civil Procedure 52.08(c)(2) provides in pertinent part that “the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” This Rule contemplates “individual notice to all those whose names and addresses are known” and “[a]s to those who are not known, publication is sufficient.” *State ex rel. Am. Family Mut. Ins Co. v. Clark*, 106 S.W.3d 483, 490-91 (Wolff, J., concurring). To satisfy due process, the method of dissemination “must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174 (1974).

Here, the proposed digital notice campaign is designed and intended to provide the best notice practicable to consumers throughout the State of Missouri whose identities are unknown. The proposed digital notice campaign takes into account demographics and known behaviors of dog owners in the State of Missouri to allow targeted notice to be delivered to likely members of the class through internet and social media channels. The reach of the digital notice campaign will exceed 70%, which is the generally accepted benchmark of reasonableness in providing no-

tice of settlement to the class. Federal Judicial Center, *Judge's Class Action Notice and Claims Process Checklist and Plain Language Guide*, at 3 (2010) (stating that a reach of at least 70% is reasonable); *see also Astiana v. Kashi Co.*, No. 11-cv-1967-H (BGS), 2014 WL 12789176, at \*6 (S.D. Cal. May 27, 2014) (approving media plan for class settlement notice “[b]ecause individual settlement class members cannot be identified through reasonable effort due to the nature of the consumer product at issue”).

The digital notice campaign is supplemented with availability of the long-form notice that can be provided directly to class members upon request and will also be available to them on the settlement website, along with the claim form, the settlement agreement, any orders of the Court pertaining to the settlement, and all other significant case-related documents that class members might find helpful in understanding the case and assessing the proposed settlement. *See Manual for Complex Litigation* § 21.311, at 288 (4th ed. 2004) (“Posting notices on dedicated Internet sites, likely to be visited by class members and linked to more detailed certification information, is a useful supplement to individual notice, might be provided at a relatively low cost, and will become increasingly useful as the percentage of the population that regularly relies on the Internet for information increases. . . . Similarly, referring class members . . . to an Internet site for further information can provide complete access to a wide range of information about a class settlement. Many courts include the Internet as a component of class certification and class settlement notice programs.”).

Because the proposed notice plan accomplishes the best notice practicable under the circumstances, Plaintiff respectfully submits that the Court should approve the plan for disseminating notice through the targeted digital campaign supplemented with the availability of detailed information through a dedicated settlement website.

### C. Atticus Should be Appointed as the Settlement Administrator

In an order granting preliminary approval of a class settlement, the Court “should include a provision approving the appointment of a competent and conflict-free Claims Administrator, typically selected and retained by class counsel.”<sup>2</sup> Joseph M. McLaughlin, *McLaughlin on Class Actions* § 6:& (15th ed. 2018). Here, Plaintiff proposes appointment of Atticus Administration, LLC, a leading notice and administration firm with particular expertise in design and execution of digital notice campaigns in settlements of claims involving allegations of consumer fraud.<sup>2</sup> Because Atticus is qualified and has no conflicts with the class, the Court should appoint that firm as the settlement administrator in this case for purposes of disseminating the settlement notice and managing the claims process that follows.

### Conclusion

For these reasons, Plaintiff respectfully submits that the Court should grant preliminary approval of the proposed class action settlement in this case. Plaintiff specifically requests that the Court enter an order:

1. Conditionally certifying a class for settlement purposes only, as defined herein;
2. Appointing Plaintiff Sharel Mawby as class representative;
3. Appointing the law firm of Shank & Moore, LLC as class counsel;

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<sup>2</sup> Atticus has been appointed as notice and claims administrator in a number of reported decisions of federal courts granting class settlement approval. *See, e.g., Pasini v. Fishs Eddy, LLC*, No. 1:16-cv-00354-PGG, 2018 WL 6843905, at \*2 (S.D.N.Y. Nov. 15, 2018); *Ahmed v. Beverly Health & Rehab. Servs., Inc.*, No. 2:16-1747 WBSKJN, 2018 WL 746393, at \*12 (E.D. Cal. Feb. 7, 2018); *Torres v. Pick-a-Part Auto Wrecking*, No. 1:16-cv-01915-DAD-BAM, 2018 WL 306287, at \*1, 11 (E.D. Cal. Jan. 5, 2018). More information on Atticus is available on the firm’s website ([www.atticusadmin.com](http://www.atticusadmin.com)) including a list of more than 350 cases in which Atticus currently is serving as the court-appointed notice and claims administrator.

4. Determining preliminarily that the proposed settlement falls within the range of reasonableness meriting possible final approval following dissemination of class settlement notice and completion of the allotted time period for class members to file claims, make objections to, or exclude themselves from the proposed settlement;
5. Approving the form, substance, and requirements of the proposed claim form and class settlement notice, which are attached as Exhibits A and B, respectively, to the parties' Settlement Agreement;
6. Approving Atticus Administration, LLC as the settlement administrator for purposes of disseminating the class settlement notice and processing class members' claims;
7. Approving the proposed plan for disseminating notice of the settlement to class members, and directing that Atticus complete the notice campaign as directed in accordance with the approved notice plan;
8. Setting deadlines and procedures for people who fall within the class definition to exclude themselves or comment on the proposed settlement;
9. Setting a hearing to determine whether the proposed settlement should be granted final approval, and setting pre-hearing deadlines for the filing of papers necessary for final settlement approval and entry of final judgment; and
10. Staying all proceedings in this action, other than those necessary to administer and evaluate the proposed settlement pursuant to Rule 52.08.
11. Enjoining all Settlement Class Members, unless and until they have timely excluded themselves from the Settlement Class: (i) from filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, arising out of, or concerning, any of the claims and causes of action or the facts and circumstances giving rise to the instant action

and/or the Released Claims; (ii) from filing, commencing or prosecuting a lawsuit (other than the instant lawsuit) or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any Settlement Class Members who have not timely excluded themselves (including by seeking to amend a pending complaint or petition to include class allegations or seeking class certification in a pending action), based on, arising out of, or concerning, any of the claims and causes of action or the facts and circumstances giving rise to the instant action and/or the Released Claims; and (iii) from attempting to solicit other Settlement Class Members from excluding themselves from this settlement.

A proposed order to this effect is submitted for the Court's consideration, attached as Exhibit A to the Motion for Preliminary Approval of Class Action Settlement.

Respectfully submitted,

SHANK & MOORE, LLC

By: /s/ Stephen J. Moore

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*Attorneys for Plaintiff Sharel Mawby*

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on this 15th day of February, 2019, a true and accurate copy of the foregoing document was served via the Court's eFiling system to the following counsel of record:

**Counsel for Defendants**

Gregory K. Wu  
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Richard Fama  
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F. Brenden Coller  
COZEN O'CONNOR  
1900 Market Street  
Philadelphia, Pennsylvania 19103

/s/ Stephen J. Moore  
Attorney for Plaintiff

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

<b>SHAREL MAWBY, on behalf of</b>	)	
<b>herself and all others similarly situated,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Civil Action No.: 1616-CV03384</b>
<b>v.</b>	)	
	)	<b>Division No. 12</b>
<b>MILO’S KITCHEN, LLC, et al.</b>	)	
	)	
<b>Defendants.</b>	)	

**SETTLEMENT AGREEMENT**

The undersigned parties (collectively, the “Parties,” and each separately a “Party”) have entered into the following Class Action Settlement Agreement (the “Agreement”), subject to approval of this Court and pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure.

This Agreement is made and entered into by plaintiff Sharel Mawby (“Plaintiff” or “Class Representative”) , on behalf of herself and each of the Settlement Class Members (as defined below, and collectively, the “Settlement Class”), and Defendants, Milo’s Kitchen, LLC, Big Heart Pet Brands, and The J. M. Smucker Company, (collectively, “Milo’s” or “Defendants”) (collectively with Plaintiff Mawby, the “Parties”). Capitalized terms used in this Agreement are defined in Section II of this Agreement or indicated in parentheses elsewhere in this Agreement. Subject to Court approval, as required by applicable provisions of the Missouri Rules of Civil Procedure and as provided in this Agreement, the Parties stipulate and agree that, in consideration for the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, this Action shall be settled and compromised upon the terms and conditions contained in this Agreement.



**I. RECITALS**

WHEREAS, the Class Representative has brought a class action, pending in the Circuit Court in Jackson County, Missouri before the Honorable Jennifer Phillips, asserting claims against Defendants based on the Class Representative’s alleged purchase of one or more of the “Dog Treat Products” (defined below), including that Defendants are liable for alleged economic damages under the Missouri Merchandising Practices Act (“MMPA”) as a result of alleged contamination in the Dog Treat Products;

WHEREAS, the Dog Treat Products were sold in the State of Missouri during the alleged Class Period;

WHEREAS, the Class Representative claims she sustained economic damages as a result of Defendants’ actions, and seeks damages and compensation, including the cost of purchasing the Dog Treat Products, on behalf of herself;

WHEREAS, the Class Representative, on behalf of the class, claims the class suffered economic damages as a result of Defendants’ actions, and seeks classwide damages and compensation, including the cost of purchasing the Dog Treat Products;

WHEREAS, Defendants deny any and all allegations of unlawful or improper conduct, damages, or other injuries;

WHEREAS, the Class Representative believes that her claims in the Action have substantial merit;

WHEREAS, in reaching this Agreement, the Parties have engaged in good faith, arms-length negotiations mediated under the auspices of independent mediator Bill Sanders of Overland Park, Kansas;

WHEREAS, the Class Representative and Class Counsel have investigated the facts and law relating to the allegations in the operative petition and conducted certain discovery into the

claims and defenses alleged in the Action, including Class Counsel's review of documents and retention of consulting experts;

WHEREAS, the discovery the Parties conducted has included the exchange of documents and information regarding, among other things, investigation and product testing conducted by the FDA and New York State Department of Agriculture and Markets regarding jerky pet treat products, contacts and/or complaints received by Defendants and the FDA from consumers regarding the Dog Treat Products; sales of Dog Treat Products by Defendants in the State of Missouri during the relevant time period; marketing of the Dog Treat Products; and the amounts of economic damages allegedly suffered by consumers as a result of their purchases and use of the Dog Treat Products;

WHEREAS, the Parties recognize that the outcome of their claims and defenses in the Action is uncertain, and that a final resolution through the lawsuit would require several years of protracted adversarial litigation and appeals; substantial risk and expense; the distraction and diversion of the Parties' time and resources; and the expense of any possible future litigation raising similar or duplicative claims;

WHEREAS, after taking into account the risks and uncertainties associated with protracted litigation and appeals, as well as the fair, efficient, and assured method of resolving the claims of the Settlement Class, Class Counsel and the Class Representative have concluded, after substantial inquiry and investigation of the facts and discovery conducted as part of the litigation, that the settlement is fair, reasonable, adequate and in the best interests of the Settlement Class;

WHEREAS, Defendants deny any wrongdoing or liability, or that Class Representative's claims have merit, but have concluded that they will enter into this Agreement, among other reasons, to avoid the further expense, inconvenience, burden, distractions, uncertainty, and risk

of litigation and any other present or future litigation arising out of the facts that gave rise to the litigation in the Action; and,

WHEREAS, the Parties acknowledge and agree that the Parties' respective claims in and defenses to the Action were made in good faith and in accordance with Rule 55.03 of the Missouri Rules of Civil Procedure, and all comparable state and federal laws and rules of professional responsibility, and the Parties will request that the Court enter a Final Approval Order and Judgment that reflects that the Parties and their respective counsel have conducted themselves in good faith throughout the litigation.

NOW, THEREFORE, without: (a) any admission or concession on the part of the Plaintiff of the lack of merit of the Action whatsoever, or (b) any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by any of the Defendants, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiff and the Settlement Class, and the Defendants, that all Claims be settled, compromised, released, and dismissed on the merits and with prejudice, subject to the Court's approval as required by Missouri Rule of Civil Procedure 52.08 on the following terms and conditions:

## **II. DEFINITIONS**

A. As used in this Agreement, the following capitalized terms have the meanings specified below:

1. "Action" means the civil action brought by Sharel Mawby, on behalf of herself and all others similarly situated, against Defendants in the Circuit Court of Jackson County, Missouri, styled Sharel Mawby v. Milo's Kitchen, LLC and Big Heart Pet Brands and The J. M. Smucker Company, Case No. 1616-CV03384, currently pending before the Honorable Jennifer M. Phillips.

2. “Agreement” or “Settlement Agreement” means this Settlement Agreement between Plaintiff Sharel Mawby and Defendants.

3. “Approved Claim” means a claim approved by the Claims Administrator according to the claims criteria in the Claim Administration protocols that will be agreed upon by the Parties and submitted to the Court in connection with the Motion for Preliminary Approval of Settlement.

4. “Authorized Claimant” means a Settlement Class Member who submits an Approved Claim.

5. “Award” means the monetary relief obtained by Settlement Class Members pursuant to Section IV of this Agreement.

6. “Balance of Approved Claims” means the additional monetary amount necessary to satisfy all Approved Claims determined by deducting the Settlement Fund Balance from the total monetary amount necessary to satisfy all Approved Claims.

7. “Claim” means a request for relief pursuant to Sections IV and V of this Agreement submitted by or on behalf of a Settlement Class Member on a Claim Form filed with the Claims Administrator in accordance with the terms of this Agreement.

8. “Claimant” means a Settlement Class Member who submits a Claim for benefits as described in V of this Agreement.

9. “Claim Form” means the form to be submitted by Settlement Class Members to the Claims Administrator substantially in the form of Exhibit A, subject to Court approval, by the Claims Deadline.

10. “Claims Administrator” means Atticus Administration, LLC, a third-party administrator agreed upon by the Parties and subject to approval by the Court to provide the Class Notice and to administer the claims process.

11. “Claims Administration Expenses” means all of the fees, costs, disbursements, and expenses charged or incurred by the Claims Administrator in implementing and administering the Notice Plan and processing all claims.

12. “Claims Deadline” means the date by which all Claim Forms must be postmarked or received by the Claims Administrator to be considered timely. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, the Final Approval Order, the Class Notice, on the Settlement Website, and on the front of the Claim Form, and shall be forty-five (45) calendar days following the Notice Date.

13. “Class Counsel” means Christopher S. Shank, David L. Heinemann, and Stephen J. Moore of Shank & Moore, LLC.

14. “Class Notice” means, collectively, the “Long-Form Notice” (Exhibit B) to be posted on the Settlement Website and all digital forms of notice to be distributed through appropriate media, substantially in the forms to be agreed upon by the Parties and that will be submitted to the Court in connection with the Motion for Preliminary Approval of Settlement, and that is discussed in Section VI.

15. “Class Representative” means Sharel Mawby.

16. “Court” means the Circuit Court of Jackson County, Missouri.

17. “Defendants” means Milo’s Kitchen, LLC, Big Heart Pet Brands, and The J. M. Smucker Company.

18. “Defendants’ Counsel” means Richard Fama and Brenden Coller of Cozen O’Connor and Gregory Wu of Shook, Hardy & Bacon.

19. “Effective Date” means either: (a) the date forty-five (45) calendar days after the entry of the Final Judgment and Order Approving Settlement, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that a motion for reconsideration or an appeal or other effort to

obtain review has been initiated, the date forty-five (45) calendar days after such motion, appeal or other effort has been finally concluded and is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing *en banc*, petitions for *writ of certiorari*, or otherwise.

20. “Fee Award” means the amount of attorneys’ fees and reimbursement of costs and expenses from the Settlement Fund, awarded by the Court to Class Counsel for all of the past, present, and future attorneys’ fees, costs (including but not limited to court costs), expenses, and disbursements incurred by them and their experts, staff, and consultants in connection with the Action.

21. “Final Approval Hearing” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence and to determine the Fee Award and any Incentive Awards. The Parties shall request the Court set the Final Approval Hearing no earlier than ninety (90) days after the Notice Date.

22. “Final Judgment and Order Approving Settlement” means an order and judgment entered by the Court:

- a. Giving final approval to the terms of this Agreement as fair, adequate, and reasonable;
- b. Providing for the orderly performance and enforcement of the terms and conditions of this Agreement;
- c. Discharging the Released Parties of and from any and all liability for the Released Claims to the Releasing Parties; and,
- d. Permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute,

directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them or any of them, or in any other capacity of any kind whatsoever, any action in any state court, any federal court, before any regulatory authority, or in any other tribunal, forum, or proceeding of any kind, against any or all of the Released Parties that asserts any Released Claims.

e. The actual form of the Final Judgment and Order Approving Settlement entered by the Court may include additional provisions as the Court may direct that are not inconsistent with this Agreement, and will be substantially in the form to be agreed upon by the Parties.

23. “Incentive Award” means any award sought by application to and approved by the Court that is payable to the Class Representative from the Settlement Fund to compensate her for her efforts in bringing the Action and achieving the benefits of this Agreement on behalf of the Settlement Class.

24. “Labeling” (or any variation of the word “Label”) means the display of written, printed or graphic matter upon the packaging of any Dog Treat Product, as well as written, printed, broadcast, or graphic matter designed for use in the promotion, advertising, marketing, distribution or sale of any Dog Treat Product including, but not limited to, information found on Defendants’ websites, and all other electronic forms, which supplements, describes, explains and/or promotes any Dog Treat Product.

25. “Motion for Preliminary Approval of Settlement” means the motion, to be filed by Plaintiff, for Preliminary Approval of this Agreement and includes all supporting papers.

26. “Notice Date” means the last date, set by the Court, on which notice is published (pursuant to the Notice Plan described in Section VI). The Notice Date shall be

no later than fifteen (15) calendar days after the Court enters the Preliminary Approval Order or such other date as the Court may order.

27. “Notice Plan” means the plan for dissemination of the Class Notice described in Section VI.

28. “Objection Deadline” means the date, to be set by the Court, by which Settlement Class Members must file objections, if any, to the Settlement in accordance with Section VI.

29. “Opt-Out Deadline” means the date, to be set by the Court, by which a Request For Exclusion must be filed with the Claims Administrator in order for a Settlement Class Member to be excluded from the Settlement Class in accordance with Section VII.

30. “Party” or “Parties,” unless otherwise specified, means one or more of the following: Sharel Mawby, Milo’s Kitchen, LLC, Big Heart Pet Brands, and The J. M. Smucker Company.

31. “Payment Distribution Date” means the deadline by which the Claims Administrator shall mail checks to Settlement Class Members as payment for Approved Claims, as set forth in Section V.B.7.

32. “Person” means a natural person, individual, corporation, partnership, limited liability company, association, or any other type of legal entity.

33. “Plaintiff” means Sharel Mawby.

34. “Preliminary Approval Order” means the Order to be entered by the Court, substantially in the form to be agreed upon by the Parties, conditionally certifying the Settlement Class, preliminarily approving the Settlement, setting the date of the Final Approval Hearing, appointing Class Counsel as counsel for the Settlement Class,

approving the Notice Plan, Class Notice, and Claim Form, setting dates for the Claims Deadline, Opt-Out Deadline, Objection Deadline, and Notice Date, and, pending the entry of the Final Judgment and Order Approving Settlement, barring and enjoining Plaintiff and all Settlement Class Members (except those who opt-out) from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims, either directly, representatively, derivatively, or in any capacity, against Defendants or any of the Released Parties.

35. “Product(s)” or “Dog Treat Products” means Milo’s Kitchen brand Chicken Jerky and Chicken Grillers Home-style Dog Treats manufactured in and/or imported from China.

36. “Proof of Purchase” means cash register receipts, loyalty card records, or other documentation specifically identifying and substantiating the purchase of one or more packages of the Dog Treat Products, the date(s) of each such purchase during the Class Period, the size(s) of package(s) purchased, and the amount(s) paid.

37. “Release” means the release set forth in Section VIII of this Agreement.

38. “Released Claims” means all claims, liabilities, rights, demands, suits, matters, obligations, damages, losses, actions, causes of action or judgments arising out of, relating to, or regarding the manufacture, testing, inspection, auditing, certification, purchase, distribution, licensing, transportation, marketing, advertising, donating, promotion, sale, Labeling, or use of the Dog Treat Products during the Class Period that have been brought or could have been brought, are currently pending or were pending, or are ever brought in the future, by any Settlement Class Member against any Defendant or Released Party, in any forum in the United States (including any forum in which a

Missouri State Court or United States Court sits), whether known or unknown, suspected or unsuspected, ripe or contingent, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity.

39. “Released Party” or “Released Parties” means Milo’s Kitchen, LLC, Big Heart Pet Brands, and The J. M. Smucker Company, and their past, present and future parents, subsidiaries, predecessors, successors, affiliates, agents, employees, officers, stockholders, directors, and assigns, and, to the maximum extent permitted by law, any Person that manufactured, tested, inspected, audited, certified, purchased, distributed, licensed, transported, marketed, advertised, donated, promoted, sold, or offered for sale at wholesale or retail any Dog Treat Products, or contributed to any Labeling, advertising, marketing, promotion, packaging, ingredient, or component thereof, including all of his, her or its respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of his, her or its past, present, and future officers, directors, managers, employees, owners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees, and assigns. It is expressly understood that, to the extent a Released Party is not a Party to the Agreement, all such Released Parties are intended third-party beneficiaries of this Agreement.

40. “Releasing Party” means Sharel Mawby and each Settlement Class Member and any Person claiming by or through any Settlement Class Member. For example, but without limitation, spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents, executors, administrators, predecessors, successors, assignees, representatives, owners, directors, officers, managers or affiliates, will be a Releasing Party to the extent they are claiming by or through any Settlement Class Member.

41. “Request For Exclusion” means the written communication that must be made with the Claims Administrator and postmarked on or before the Opt-Out Deadline by a Settlement Class Member who requests to be excluded from the Settlement Class.

42. “Residual Amount” means the amount remaining in the Settlement Fund after deducting: (a) all Claims Administration Expenses; (b) the Fee Award; (c) the Incentive Award; (d) all other fees, costs, expenses, disbursements, and assessments incurred by virtue of the settlement contemplated by this Agreement, other than the fees, costs expenses, disbursements, and assessments incurred by Defendants in their defense of the Action; and (e) Awards to Settlement Class Members, as a result of uncashed and returned checks for Approved Claims.

43. “Settlement” means the terms, transactions, rights, obligations, conditions, Release and other matters contemplated by, described in, or provided by this Agreement.

44. “Settlement Amount” means Six Hundred Thousand Dollars (\$600,000.00).

45. “Settlement Class” and “Settlement Class Member(s)” each means all Persons who, for personal, household or family use, purchased the Products in the State of Missouri from March 1, 2011 through January 31, 2013. Excluded from the Settlement Class are: (a) Defendants, subsidiaries and affiliates of Defendants, directors and offices of Defendants, and members of their immediate family; (b) any Person who files a valid, timely Request for Exclusion; (c) federal, state, and local governments entities (including all agencies and subdivisions thereof, but excluding employees thereof); (d) any Persons who have previously settled and released their claims arising out of the purchase of the Products in the State of Missouri; and (e) any judicial officers presiding over this action, their judicial staff, and members of their immediate families.

46. “Settlement Class Period” means the period from March 1, 2011 through January 31, 2013.

47. “Settlement Consideration” means the consideration to be provided or made available by Defendants to the Settlement Class as set forth in this Agreement.

48. “Settlement Fund” means the Six Hundred Thousand Dollars (\$600,000.00) that Defendants will pay or cause to be paid, pursuant to the terms of this Agreement, into a qualified settlement fund.

49. “Settlement Fund Balance” means the monetary balance of the Settlement Fund after deducting: (a) all Claims Administration Expenses; (b) the Fee Award; (c) the Incentive Award; and (d) all other fees, costs, expenses, disbursements, and assessments incurred by virtue of the settlement contemplated by this Agreement, other than Awards to Settlement Class Members and the fees, costs expenses, disbursements, and assessments incurred by Defendants in their defense of the Action.

50. “Settlement Fund Funding Date” means the last date, set by the Court, on which Defendants are to deposit the Settlement Amount into a qualified settlement fund. The Settlement Fund Funding Date shall be no later than thirty (30) calendar days after the Court enters the Preliminary Approval Order or such other date as the Court may order.

51. “Settlement Website” means the website to be created for the Settlement by the Claims Administrator that will include information about the Action, the Settlement, and relevant documents and electronic and printable forms relating to the Settlement, including the Claim Form, which can be submitted online or printed and mailed. The Settlement Website shall be activated no later than ten (10) calendar days after the entry of the Preliminary Approval Order and shall remain active until the

Effective Date or such later date as may be agreed to by Class Counsel and Defendants' Counsel. Under no circumstances shall the Settlement Website contain a trademark registered by Defendants.

B. All references herein to sections and paragraphs refer to sections and paragraphs of this Agreement, unless otherwise expressly stated in the reference.

### **III. THE PARTIES RECOMMEND COURT APPROVAL OF A SETTLEMENT CLASS**

A. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of: (1) the validity of any claim or allegation by Sharel Mawby or any Settlement Class Member, or of any defense asserted by Defendants in the Action or any other action or proceeding; (2) any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, Released Party, Settlement Class Member or their respective counsel; or (3) the propriety of class certification in the Action or any other action or proceeding.

B. For the sole and limited purpose of the Settlement only, the Parties stipulate to certify the Settlement Class, which stipulation is contingent upon the occurrence of the Final Judgment and Order Approving Settlement and the Effective Date. Should the Effective Date not occur, this Agreement shall be void and will not constitute, be construed as, or be admissible in evidence as, an admission of any kind or be used for any purpose in the Action or in any other pending or future action or proceeding. Moreover, the Court's certification of the Settlement Class shall not be deemed to be an adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Agreement, and shall not be considered the law of the case, *res judicata*, or collateral estoppel in the Action or any other action or proceeding unless and until the Court enters a Final Judgment and Order Approving Settlement and the

Effective Date occurs. The Parties' agreement to class certification for settlement purposes only (and any statements or submissions made by the Parties in connection with seeking the Court's approval of this Agreement) shall not be deemed to be a stipulation as to the propriety of class certification, or any admission of fact or law regarding any request for class certification, in this action or any other action or proceeding, whether or not involving the same or similar claims. In the event the Court does not enter a Final Judgment and Order Approving Settlement, or the Effective Date does not occur, or the Agreement is otherwise terminated or rendered null and void, the Parties' agreement to certification of the Settlement Class for settlement purposes shall be null and void. Nothing in this Agreement shall be argued as support for, or admissible in, an effort or opposition to decertify or certify any class in this Court or any other court if the Court does not enter a Final Judgment and Order Approving Settlement, or the Effective Date does not occur, nor shall anything herein be admissible in any action or proceeding to certify this or any other classes in any other court under any circumstances.

C. For purposes of this settlement only, Class Counsel will seek certification of the Settlement Class pursuant to Missouri Rule of Civil Procedure 52.08(a) and (b)(3).

D. Subject to Court approval and for settlement purposes only, Defendants consent to the appointment of Sharel Mawby as Class Representative of the Settlement Class and to the appointment of Christopher S. Shank, David L. Heinemann, and Stephen J. Moore of Shank & Moore, P.C. as Class Counsel.

E. Upon final approval of the Settlement by the Court, the Final Judgment and Order Approving Settlement, substantially in the form agreed by the Parties, will be entered by the Court, providing for the Final Approval Order and Judgment of the Action.

#### IV. SETTLEMENT CONSIDERATION

##### A. Monetary Benefits, Limitations and Claims Procedure:

1. Defendants agree to pay or cause to be paid into a non-interest bearing qualified Settlement Fund the Settlement Amount, subject to the terms and conditions of this Agreement.

2. All of the following shall be paid from the Settlement Fund: (a) all Claims Administration Expenses; (b) the Fee Award; (c) the Incentive Award; and (d) all other fees, costs, expenses, disbursements, and assessments incurred by virtue of the settlement contemplated by this Agreement, other than the fees, costs expenses, disbursements, and assessments incurred by Defendants in their defense of the Action.

3. On or before the Settlement Fund Funding Date, Defendants shall pay or cause to be paid to the Claims Administrator an amount equal to the Settlement Fund to be deposited into a qualified settlement fund to be used for the payment of all Claims Administration Expenses, the Fee Award and the Incentive Award and, to the extent not exhausted by such payments, the payment of Awards to Settlement Class Members.

4. Unless and until the Final Judgment and Order Approving Settlement and the Effective Date occurs, no portion of the Settlement Fund may be used for any purpose, except for Claims Administration Expenses. Under no circumstances shall the amount to be paid by Defendants in furtherance of the settlement contemplated by this Agreement, other than for valid and approved claims made by Settlement Class Members, exceed Six Hundred Thousand Dollar (\$600,000).

5. The Claims Administrator shall notify Defendants of the total monetary amount necessary to satisfy all Approved Claims and the Balance of Approved Claims upon request and, minimally, within five (5) calendar days after the Effective Date.

6. After the issuance of the Final Judgment and Order Approving Settlement and within forty-five (45) calendar days after the Effective Date, the Settlement Fund Balance, if any, shall be used to pay Approved Claims.

7. In the event that the Settlement Fund Balance is insufficient to satisfy payment of all Approved Claims, Defendants shall cause to be paid into the Settlement Fund the Balance of Approved Claims within thirty (30) calendar days after the Effective Date.

8. The Released Parties shall not be liable for any costs, fees, disbursements expenses and assessments of any of Plaintiff's or Settlement Class Members' respective attorneys, experts, advisors, agents or representatives, but all such costs, expenses and disbursements, as approved by the Court and not to exceed the lesser of Five Hundred Fifty Thousand Dollars (\$550,000) or the Settlement Fund after deducting the following, shall be paid out of the Settlement Fund: (a) all Claims Administration Expenses; (b) the Incentive Award; and (c) all other fees, costs, expenses, disbursements, and assessments incurred by virtue of the settlement contemplated by this Agreement, other than Awards to Settlement Class Members and the fees, costs expenses, disbursements, and assessments incurred by Defendants in their defense of the Action.. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Defendants' total financial commitment or obligation pursuant to the terms of this Agreement exceed Six Hundred Thousand Dollars (\$600,000.00) plus the Balance of Approved Claims.

B. Benefits Available:

1. Settlement Class Members who timely submit Claim Forms by the Claims Deadline, who provide all required proof and documentation, who comply with all other

conditions and requirements specified herein, and whose claims are approved by the Claims Administrator, shall be eligible to obtain relief as detailed below:

a. **WITHOUT PROOF OF PURCHASE.** Subject to the terms and conditions of this Agreement and approval of the Claims Administrator, Settlement Class Members who, in accordance with the terms of this Agreement, submit to the Claims Administrator a timely, valid, and approved Claim Form shall be eligible to receive a refund up to \$2.00 per 3.3-ounce bag of the Dog Treat Products purchased, \$5.50 per 14-ounce bag of the Dog Treat Products purchased, \$6.50 per 20-ounce bag of the Dog Treat Products purchased, \$9.50 per 23-ounce bag of the Dog Treat Products purchased, and \$7.50 per 30-ounce bag of the Dog Treat Products purchased, up to a limit of twelve dollars (\$12.00) per household.

b. **WITH PROOF OF PURCHASE.** Subject to the terms and conditions of this Agreement and the approval of the Claims Administrator, Settlement Class Members who, in accordance with the terms of this Agreement, submit a timely, valid, and approved Claim Form along with Proof of Purchase are eligible to receive a refund of their actual documented purchase price not to exceed one hundred dollars (\$100.00) per household.

2. Within two hundred forty (240) days after the Payment Distribution Date, the Claims Administrator shall calculate the Residual Amount, if any. Subject to Court approval and order, the Residual Amount shall be returned to Defendants.

## V. CLAIMS DEADLINE, CLAIM FORMS, AND CLAIMS ADMINISTRATION

A. Retention of Claims Administrator. The Parties have, subject to Court approval, retained Atticus Administration, LLC as Claims Administrator to help implement the terms and

conditions of the Agreement. The Parties agree that the Claims Administrator shall be approved by the Court, and shall be subject to the Court's supervision as circumstances may require. Defendants will cause to be paid all reasonable and approved Claims Administration Expenses due and owing out of the Settlement Fund, up to a maximum of forty five thousand one hundred three dollars and zero cents (\$45,103.00), regardless of whether the Settlement is finally approved. In no event shall Defendants be obligated to pay any Claims Administration Expenses that exceed forty five thousand one hundred three dollars and zero cents (\$45,103.00). The Claims Administrator shall assist with various administrative tasks, including, without limitation:

1. Arranging for and implementing the dissemination of the Class Notice pursuant to the Notice Plan agreed to by the Parties and approved by the Court;
2. Handling returned mail and/or electronic mail not delivered to Settlement Class Members;
3. Making any additional mailings and/or electronic mails required under the terms of this Agreement or by law;
4. Answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel;
5. Receiving and maintaining Requests for Exclusion;
6. Establishing the Settlement Website described in Section V.C.;
7. Establishing the toll-free informational telephone number described in Section V.D.;
8. Receiving and processing Claim Forms and distributing payments to Settlement Class Members in accordance with the terms and conditions of this Agreement and the claims protocol to be agreed upon by the Parties and approved by the Court;

9. Advising and keeping Defendants' Counsel and Class Counsel apprised of Claims Administration Expenses and monetary amounts of Approved Claims; and

10. Otherwise assisting with the administration of this Agreement.

B. Claims Process.

1. All Claims must be submitted with a Claim Form and received by the Claims Administrator through the interactive Settlement Website or postmarked by the Claims Deadline. The Claims Deadline shall be forty-five (45) calendar days following the Notice Date. The Claims Deadline shall be clearly set forth in the Class Notice, the Settlement Website, and on the Claim Form. Settlement Class Members who fail to submit a Claim Form by the Claims Deadline shall not be eligible for an Award but shall be considered a Releasing Party and subject to the Release contained within this Agreement for all purposes.

2. The Claim Form will be available on the Settlement Website. The Claim Form will be mailed to Settlement Class Members upon request by calling or writing to the Claims Administrator. Settlement Class Members may submit their completed and signed Claim Forms to the Claims Administrator by mail or online, postmarked or received through the Settlement Website, on or before the Claims Deadline.

3. Claim Forms must be signed by the Claimant by hand or electronically under penalty of perjury. The Claim Form shall be approved by the Court and will be substantially in the form to be agreed upon by the Parties and must include the following information and/or affirmations:

a. Claimant's name, address, and telephone number;

b. Identification of the quantity and type of Dog Treat Product(s) for which the Claim is made;

- c. The size(s) of the package(s) of Dog Treat Product(s) purchased;
- d. The location for each such purchase;
- e. The approximate price paid for each such purchase;
- f. The approximate date of each such purchase;
- g. Affirmation that the Dog Treat Product(s) was/were purchased in the State of Missouri during the Settlement Class Period for personal, household or family use; and
- h. Proof of Purchase as required by this Agreement if claimant is making a “With Proof of Purchase” Claim.

4. The Claim Form shall conspicuously notify Settlement Class Members that failure to include Proof of Purchase for a “With Proof of Purchase” Claim will result in the Claim being converted to a “Without Proof of Purchase” Claim and subject to the monetary limitations associated with a Without Proof of Purchase Claim, and that submission of a false or fraudulent Claim will result in the Claim being rejected in its entirety. Submission of multiple Claim Forms from the same household or by the same Settlement Class Member or Claimant will be subject to audit by the Claims Administrator for validity, as will any other Claims the Claims Administrator so chooses, in accordance with standard and reasonable claims administration procedures.

5. The Claims Administrator shall administer the monetary relief for Settlement Class Members provided by this Agreement by resolving Claims in a cost-effective and timely manner consistent with the terms of this Agreement and the orders of the Court. The Claims Administrator shall maintain records of all Claims submitted until at least three hundred sixty-five (365) calendar days after the Payment Distribution Date and such records will be made available upon request to Class Counsel and Defendants’

Counsel. Upon request by Class Counsel or Defendants' Counsel, the Claims Administrator shall provide reports totaling: (a) the number of Claims submitted; (b) the number of Dog Treat Products claimed; (c) the monetary amounts payable associated with all Approved Claims; (d) the number of individuals who properly and timely exercised their right to opt-out of the Settlement Class pursuant to the term of this Agreement, and; (e) such other information as reasonably required for Defendants' Counsel or Class Counsel to exercise their rights under this Agreement. Claim Forms and supporting documentation will be kept confidential by the Claims Administrator and will be provided only to the Court upon request, except that Class Counsel and Defendants' Counsel shall have access to the Claim Forms and supporting documentation upon request to the Claims Administrator. The Claims Administrator also shall provide such reports and such other information as the Court may require.

6. The Claims Administrator will use adequate and customary standards to prevent the payment of fraudulent and duplicative Claims and to pay only legitimate Claims. The Claims Administrator shall make all determinations concerning the eligibility and amount of payment for submitted Claims, and mail notice of rejection to Settlement Class Members whose Claims have been rejected in whole or in part. In the event a Settlement Class Member disagrees with the determination, the Settlement Class Member may send a letter or an e-mail to the Claims Administrator within ten (10) days of receipt of the rejection requesting reconsideration of the rejection, and the Claims Administrator shall reconsider such determination, which reconsideration shall include consultation with Class Counsel and Defendants' Counsel. The Parties shall meet and confer regarding resolution of those Claims and, if unable to agree, shall submit those Claims to the Court for determination. As to any Claims being determined by the Court

pursuant to this paragraph, the Claims Administrator shall send payment or a letter explaining the Court's rejection of the Claim, within thirty-five (35) days of the Court's determination but no earlier than the Payment Distribution Date.

7. Payment of Claims. Approved Claims will be paid from the Settlement Fund directly to Settlement Class Members by first class mail. All checks to Settlement Class Members under this Agreement shall be issued within forty-five (45) calendar days after the Effective Date (the "Payment Distribution Date") and will state that they must be cashed within one hundred twenty (120) calendar days from the date issued or they will become void. The amount of any checks that are not cashed within 120 calendar days from the date of issue or that are returned to the Claims Administrator as undeliverable after mailing to the Settlement Class Member at the address provided by the Settlement Class Member on the Claim Form, will cease to be the property of those Settlement Class Members and shall be added to the Residual Amount. Within 140 days of the Payment Distribution Date, the Claims Administrator shall provide Defendants' Counsel and Class Counsel with an identification of the checks returned as undeliverable or not cashed within 120 days of the date issued.

C. Settlement Website. The Claims Administrator shall cause the Settlement Website to be created, with the following domain name: [www.dogtreatsettlement.com](http://www.dogtreatsettlement.com). The Settlement Website shall contain information and relevant documents including, but not limited to, the Claims Deadline; the Opt-Out Deadline; the Objection Deadline; the Class Notice; a downloadable Claim Form; orders of the Court pertaining to the Settlement; this Agreement; and, a toll-free telephone number and address to communicate with the Claims Administrator by email and U.S. Mail. The Settlement Website shall also provide a means for Settlement Class Members to submit Claims online. The Settlement Website shall be rendered inactive within 120

calendar days after the Payment Distribution Date. The Parties shall use reasonable efforts to agree on all information and documents to be posted on the Settlement Website.

D. Toll-Free Informational Number. The Claims Administrator shall cause a toll-free telephone number to be created for Settlement Class Members to receive information about the Settlement. The Parties shall meet and confer regarding a set of frequently asked questions (“FAQs”) and answers to be used by the Claims Administrator when answering Settlement Class Members’ questions. Any disputes between the Parties as to those FAQs shall be resolved by the Claims Administrator.

## **VI. NOTICE TO THE SETTLEMENT CLASS**

A. No later than fifteen (15) calendar days after entry of the Preliminary Approval Order or such other date as the Court may order, the Claims Administrator shall cause the Class Notice to be disseminated to Settlement Class Members in accordance with the Notice Plan to be agreed upon by the Parties. The Parties acknowledge and agree that notice pursuant to the Notice Plan is the best notice that is reasonably practicable under the circumstances to effectuate notice to the Settlement Class Members and that the Notice Plan comports with the requirements of due process and Missouri Rule of Civil Procedure 52.08(c)(2).

B. Long-Form Notice. The Long-Form Notice shall be substantially in the form to be agreed upon by the Parties and approved by the Court, and shall be posted on the Settlement Website and shall remain available until the Effective Date or such later date as may be agreed to by Class Counsel and Defendants’ Counsel, but in no event later than 120 days after the Effective Date at which point the Settlement Website will be rendered inactive pursuant to Section V.C. above. The Long-Form Notice shall include the following information:

1. Inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive the relief under the proposed Settlement;
2. Contain a short, plain statement of the background of the Action and the Settlement;
3. Describe the Settlement Consideration outlined by this Agreement;
4. Explain the impact of the Settlement on any existing litigation, arbitration, or other proceeding, including entry of the interim injunction set forth in Section X.A.5;
5. State that any relief to Settlement Class Members is contingent upon the Court's final approval of the Settlement;
6. Inform Settlement Class Members that they may exclude themselves from the Settlement Class by submitting a Request for Exclusion postmarked no later than the Opt-Out Deadline;
7. State that any Settlement Class Member who has not submitted a Request for Exclusion by the Opt-Out Deadline may, if he or she desires, object to the proposed Settlement by filing and serving a written statement of objection postmarked no later than the Objection Deadline;
8. State that any Settlement Class Member who has filed and served written objections to the proposed Settlement may, if he or she so requests, appear at the Final Approval Hearing, either personally or through counsel at his/her sole expense;
9. State that any Final Judgment and Order Approving Settlement entered in the Action shall include, and be binding on, all Settlement Class Members who have not timely submitted a Request for Exclusion, even if they have objected to the proposed

Settlement and even if they have any other claim, lawsuit, or proceeding pending against Defendants regarding a Released Claim;

10. State the maximum Fee Award that will be sought by Class Counsel;

11. State that maximum Incentive Award that will be sought by Plaintiff through Class Counsel;

12. Explain the terms of the Release; and,

13. Provide other information necessary or judicially required for Settlement Class Members to exercise or choose not to exercise their due process rights.

C. Digital Notice. The Claims Administrator shall develop and implement a digital media plan that will be used to notify Settlement Class Members of this Settlement and advise them on how to obtain additional information about the Settlement and related matters. The digital media plan will include (a) internet banner notices targeted to Settlement Class Members; (b) targeted social media banner notices; and/or (c) web-based notice using keyword searches displaying notice banners.

D. The Claims Administrator shall provide the Court with a declaration attesting that the Class Notice was disseminated pursuant to the Notice Plan.

## **VII. OBJECTIONS AND REQUESTS FOR EXCLUSION**

A. Objections. Any Settlement Class Member who intends to object to the Settlement must do so no later than forty-five (45) calendar days after the Notice Date (the “Objection Deadline”). In order to object, the Settlement Class Member must file with the Court, and provide a copy to Class Counsel and Defendants’ Counsel, a document that includes:

1. The name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel;

2. Specify in writing, all objections;

3. Whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;

4. A statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and

5. A detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the objection to this Settlement.

B. Any Settlement Class Member who fails to file and serve timely a written objection and notice of his/her intent to appear at the Final Approval Hearing pursuant to this Section shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by any means, including but not limited to an appeal.

C. Requests for Exclusion.

1. Any Settlement Class Member may request to be excluded (or “opt-out”) from the Settlement Class. A Settlement Class Member who requests to opt-out of the Settlement Class must do so no later than forty-five (45) calendar days after the Notice Date (the “Opt-Out Deadline”). In order to opt-out, a Settlement Class Member must complete and mail to the Claims Administrator a Request for Exclusion that is postmarked no later than the Opt-Out Deadline.

2. Requests for Exclusion that are postmarked after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who untimely or improperly

submits a Request for Exclusion will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Judgment and Order Approving Settlement and the Release contemplated thereby. Except for those Persons who have properly and timely submitted Requests for Exclusion, all Settlement Class Members will be bound by this Agreement and the Final Judgment and Order Approving Settlement, including the Release contained herein, regardless of whether they submit a Claim or receive any monetary compensation.

3. Any Person who timely and properly submits a Request for Exclusion shall not: (a) be bound by any orders or the Final Judgment and Order Approving Settlement nor by the Release contained herein; (b) be entitled to any relief under this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of this Agreement.

4. Each Person requesting exclusion from the Settlement Class must personally sign his or her own individual Request for Exclusion. No Person may opt-out of the Settlement Class for any other Person, or be opted-out by any other Person, and no Person shall be deemed opted out of the Settlement Class through any purported “mass” or “class” opt-outs.

5. The Claims Administrator shall provide Class Counsel and Defendants’ Counsel with a final list of timely Requests for Exclusion received by the Claims Administrator within five (5) business days after the Opt-Out Deadline.

6. Excessive Opt-Outs. Defendants’ willingness to enter into this Agreement is conditioned upon this Agreement providing adequate protections that the Settlement will resolve all or substantially all of the Settlement Class Member’s claims against Defendants. Defendants retain the right to withdraw from this Agreement if the number

of Settlement Class Members who properly and timely exercise their rights under this Agreement to exclude themselves from the Settlement Class or opt-out exceeds two hundred fifty (250). In the event that Defendants intend to exercise their right to withdraw from this Agreement pursuant to this provision, Defendants must notify Class Counsel of its intention to withdraw from this Agreement and terminate this Agreement in writing within fifteen (15) calendar days after receipt of the Claims Administrator's report regarding "opt-out" Settlement Class Members which demonstrates opt-outs in excess of 250.

### **VIII. RELEASE**

A. The Parties agree to the following Release and waiver, which shall take effect upon the Effective Date.

B. In consideration for the benefits described in this Agreement, except for the rights and obligations created by this Agreement, upon the Effective Date, each Releasing Party shall be deemed to have released and forever discharged each Released Party of and from any and all liability for any and all Released Claims.

C. Plaintiff represents and warrants that she is the sole and exclusive owner of all claims that she is personally releasing under this Agreement. Plaintiff further acknowledges that she has not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the claims subject to the Release, including without limitation, the Released Claims and any claim for benefits, proceeds or value under the Action.

D. This Agreement shall be the sole and exclusive remedy for any and all Released Claims of all Releasing Parties against all Released Parties covering the Settlement Class Period. Upon the Effective Date, each and every Releasing Party shall be permanently barred and

enjoined from initiating, asserting, and/or prosecuting any Released Claim against any Released Party in any court or any forum whatsoever.

E. The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties, Settlement Class Members, and the Claims Administrator to interpret and enforce the terms, conditions, and obligations under this Agreement.

F. Plaintiff and Defendants hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included and referred to in any Final Judgment and Order Approving Settlement entered by the Court.

#### **IX. COUNSEL FEES, INCENTIVE AWARDS, AND COSTS**

A. Class Counsel will apply to the Court for a Fee Award in a total amount not to exceed the lesser of Five Hundred Fifty Thousand Dollars (\$550,000) or the Settlement Fund after deducting (a) all Claims Administration Expenses; (b) the Incentive Award; and (c) all other fees, costs, expenses, disbursements, and assessments incurred by virtue of the settlement contemplated by this Agreement, other than Awards to Settlement Class Members and the fees, costs expenses, disbursements, and assessments incurred by Defendants in their defense of the Action. Defendants will not object to Class Counsel's fee request, so long as it does not exceed Five Hundred Fifty Thousand Dollars (\$550,000). The Fee Award, which shall be paid out of the Settlement Fund within ten (10) calendar days after the Effective Date or on such other date thereafter as the Court may direct, shall constitute complete consideration for all work performed and all expenses, costs, and disbursements incurred by Class Counsel to date, and for all work to be performed and all expenses, costs, and disbursements to be incurred through the Effective Date with respect to the completion of the Action and the Settlement. The Court's refusal to award fees and expenses to Class Counsel, or award a lesser amount of fees and expenses, is not a sufficient reason to terminate this Agreement or the Settlement.

B. Class Counsel will apply to the Court for an Incentive Award on behalf of the Class Representative in an amount not to exceed Five Thousand Dollars (\$5,000.00). Class Counsel shall not request an Incentive Award above this amount. The Incentive Award, to the extent approved by the Court, shall be paid out of the Settlement Fund within ten (10) calendar days after the Effective Date, or on such other date thereafter as the Court may direct. The Court's award of a lesser, or no, Incentive Award is not a basis to terminate this Agreement or the Settlement.

#### **X. PRELIMINARY APPROVAL**

A. The Parties and their respective counsel agree that Plaintiff shall seek Preliminary and Final Approval of the Settlement as described herein. Within thirty (30) days after the full execution of this Agreement, Plaintiff shall submit a Motion for Preliminary Approval of Settlement, including this Agreement and all other necessary exhibits, and shall seek a Preliminary Approval Order from the Court, substantially in the form to be agreed upon by the Parties, which, by its terms shall:

1. Determine preliminarily that this Agreement and the Settlement set forth herein fall within the range of reasonableness meriting possible final approval and dissemination of Class Notice to the Settlement Class;
2. Determine preliminarily that Sharel Mawby is a member of the Settlement Class and that, for purposes of the Settlement, she satisfies the requirements of typicality, and that she adequately represents the interests of the Settlement Class Members, and appoint her as the representative of the Settlement Class;
3. Determine preliminarily that the Settlement Class meets all applicable requirements of Missouri Rule of Civil Procedure 52.08(a) and (b)(3) and conditionally certify the Settlement Class for purposes of this Agreement for settlement purposes only;

4. Appoint Class Counsel as counsel for the Settlement Class;
5. Pending the entry of the Final Judgment and Order Approving Settlement, barring and enjoining Plaintiff and all Settlement Class Members (except those who opt-out) from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims, either directly, representatively, derivatively, or in any capacity, against Defendants or any of the Released Parties.

6. Schedule the Final Approval Hearing to: (a) determine finally whether the Settlement Class satisfies the applicable requirements of Missouri Rule of Civil Procedure 52.08 and should be finally certified for settlement purposes only; (b) review objections, if any, regarding the Settlement; (c) consider the fairness, reasonableness, and adequacy of the Settlement; (d) consider Class Counsel's application for a Fee Award and Incentive Award consistent with the terms of this Agreement; (e) determine the validity of the Requests for Exclusion and exclude from the Settlement Class those Persons who validly and timely opt-out; and (f) consider whether the Court shall issue the Final Judgment and Order Approving Settlement approving the Settlement;

7. Set a briefing schedule for the Final Approval Hearing;
8. Approve the Class Notice and Notice Plan;
9. Approve the designation of the Claims Administrator;
10. Direct the Claims Administrator or its designee(s) to cause the Class Notice to be disseminated in the manner set forth in the Notice Plan on or before the Notice Date;
11. Determine that each of the Class Notice and Notice Plan: (a) meets the requirements of Missouri Rule of Civil Procedure 52.08(c)(2) and due process; (b) is the

best practicable notice under the circumstances; (c) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed Settlement or opt-out of the Settlement Class; and, (d) is reasonable and constitutes due, adequate, and sufficient notice to all those entitled to receive notice;

12. Require each Settlement Class Member who desires to opt-out of the Settlement Class to submit a timely written Request for Exclusion on or before the Opt-Out Deadline, as specified in Section VII.C. herein;

13. Rule that any Settlement Class Member who does not submit a timely Request for Exclusion will be bound by all proceedings, orders, and judgments in the Action and this Agreement;

14. Require any Settlement Class Member who objects to the fairness, reasonableness, or adequacy of the Settlement or to the Fee Award, to deliver to Class Counsel and Defendants' Counsel and to file with the Court, by the Objection Deadline, all of the information described in Section VII.A.; and,

15. Require that any Settlement Class Member who desires to submit a Claim herein to submit such Claim in writing on or before the Claims Deadline in the manner set forth in Section V.B. herein, or forever be barred from submitting a Claim under this Agreement.

## **XI. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT**

A. This Agreement is subject to and conditioned upon: (1) the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Settlement Class for purposes of settlement only, grants final approval of the Settlement, and provides the relief specified in this Agreement, which relief shall be subject to the terms and conditions of this Agreement and the Parties' performance of their continuing rights and obligations hereunder; (2)

the occurrence of the Effective Date; and (3) the Parties' performance of their continuing rights and obligations hereunder.

B. The Final Judgment and Order Approving Settlement shall be substantially in the form to be agreed upon by the Parties and shall:

1. Confirm the final certification, for settlement purposes only, of the Settlement Class;
2. Confirm the compliance of the Settlement Class with all requirements of Missouri Rule of Civil Procedure 52.08, including confirmation of the adequacy of Class Counsel and the representation of Class Representative as representative of the Settlement Class;
3. Confirm that the Notice Plan complied in all respects with the requirements of due process and Missouri Rule of Civil Procedure 52.08(c)(2) by providing due, adequate, and sufficient notice to the Settlement Class;
4. Determine that the Agreement is entered into in good faith, is reasonable, fair, and adequate, and is in the best interests of the Settlement Class;
5. Decree that neither the Final Judgment and Order Approving Settlement nor this Agreement constitutes an admission by Defendants of any liability or wrongdoing whatsoever;
6. Release each Released Party from the Released Claims as provided in the Agreement;
7. Bar and enjoin all Releasing Parties from asserting against any Released Party any Released Claim and bar and enjoin all Settlement Class Members who did not opt-out from initiating or pursuing any claim or action barred by this Settlement and Agreement and release contained herein;

8. Incorporate or refer to the Release set forth in this Agreement and make the Release effective upon the Effective Date;

9. Retain the Court's continuing and exclusive jurisdiction over the Parties to the Agreement, including all Settlement Class Members, to construe and enforce the Agreement in accordance with its terms for the mutual benefit of the Parties; and

10. Dismiss the Action with prejudice.

## **XII. REPRESENTATIONS AND WARRANTIES**

A. Defendants represent and warrant: (1) that they have the requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby; (2) that the execution, delivery, and performance of this Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Defendants; and (3) that this Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligation.

B. Sharel Mawby represents and warrants that she is entering into this Agreement on behalf of herself individually and as representative of the Settlement Class and the Releasing Parties, of her own free will and without the receipt of any consideration other than what is provided in this Agreement or disclosed to, and authorized by, the Court. Sharel Mawby represents and warrants that she has reviewed the terms of the Settlement in consultation with Class Counsel and believes those terms to be fair and reasonable, and covenants that she will not file a Request for Exclusion from the Settlement Class or object to the Settlement.

C. Except as set forth herein, the Parties represent and warrant that no other promise, inducement, or consideration for the Settlement has been made. No consideration, amount or sum paid, accredited, offered, or expended by Defendants in their performance of this Agreement

and the Settlement constitutes a fine, penalty, punitive damage, or other form of assessment for any claim against them.

### **XIII. TERMINATION OF THIS AGREEMENT**

A. Either Party may terminate this Agreement by providing written notice to the other Party within ten (10) calendar days of the occurrence of any of the following:

1. The Court does not enter a Preliminary Approval Order conforming in all material respects to Section X.A. and to the form agreed by the Parties;

2. The Court does not conditionally and finally certify the Settlement Class as defined herein or the Court's order certifying the Settlement Class is reversed, vacated, or modified in any material respect by another court;

3. The Court does not approve the Notice Plan or requires a plan of notice that will cause Claims Administration Expenses to exceed \$45,103.00 by more than (10) percent; or

4. The Court does not enter the Final Judgment and Order Approving Settlement conforming in all material respects to this Agreement, including Section XI.B. and to the form agreed by the Parties or, if entered, such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material respect by another court before the Effective Date.

B. It is expressly agreed that neither the failure of the Court to enter the Fee Award or the Incentive Award, nor the amount of any attorneys' fees and costs or Incentive Award that may be finally determined and awarded, shall provide a basis for termination of this Agreement.

C. Defendants may unilaterally withdraw from and terminate this Agreement on or before fifteen (15) calendar days before the Final Approval Hearing if any of the following events occur:

1. More than two hundred fifty (250) Settlement Class Members have submitted valid and timely Requests for Exclusion;

D. If Defendants elect to terminate this Agreement pursuant to Section XIII.C., all related documents exchanged or signed by the Parties or submitted to the Court shall be null and void and shall have no effect whatsoever upon the Action or its adjudication.

E. In the event of termination of this Agreement, the terminating Party shall cause the Claims Administrator to post information regarding the termination on the Settlement Website, if such website has been then established.

F. In the event this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement; however, upon termination, Sections III.A. and III.B. herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null and void.

#### **XIV. MISCELLANEOUS PROVISIONS**

A. Entire Agreement. This Agreement shall constitute the entire agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of this Agreement has been made or relied upon except as expressly set forth herein.

B. Execution by Counterparts. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or pdf signatures sent by email shall be deemed original signatures and shall be binding.

C. Notices. All notices to the Parties or counsel required by this Agreement shall be made in writing and delivered personally, by UPS, Federal Express, or similar overnight service, next business day delivery, or sent by certified mail, postage prepaid, to the following:

If to Plaintiff or Class Counsel:

Christopher S. Shank  
[Chris@shankmoore.com](mailto:Chris@shankmoore.com)  
S.J. Moore  
[SJM@shankmoore.com](mailto:SJM@shankmoore.com)  
SHANK & MOORE, LLC  
1968 Shawnee Mission Parkway, Suite 100  
Mission Woods, Kansas 66205

If to Defendants' Counsel:

Richard Fama  
[rfama@cozen.com](mailto:rfama@cozen.com)  
COZEN O'CONNOR  
45 Broadway, 16<sup>th</sup> Floor  
New York, New York 10006

and

Brenden Coller  
[bcoller@cozen.com](mailto:bcoller@cozen.com)  
COZEN O'CONNOR  
One Liberty Place, 1650 Market Street, Suite 2800  
Philadelphia, PA 19103

D. Good Faith. The Parties acknowledge that each of them intends to implement the Settlement. The Parties shall act in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement.

E. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of the Parties to this Agreement and the Released Parties.

F. Arms-Length Negotiations. The determination of the terms of, and the drafting of, this Agreement, has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. Accordingly, the rule of construction that any ambiguities are to be construed against the drafter shall have no application. All Parties agree that this Agreement was drafted by Class Counsel and Defendants' Counsel at arms' length, and that no parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their attorneys, or the circumstances under which this Agreement was negotiated, made, or executed.

G. Waiver. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

H. Modification in Writing Only. This Agreement and any and all parts of it may be amended, modified, changed, or waived only by an express instrument in writing signed by the Parties.

I. Agreement Constitutes a Complete Defense. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for, an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

J. Choice of law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Missouri without regard to its conflict of laws rules.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

SHAREL MAWBY, PLAINTIFF:

Sharel Mawby  
Sharel Mawby

2-15-19  
Date:

COUNSEL ON BEHALF OF SHAREL MAWBY  
AND THE PROPOSED SETTLEMENT CLASS:

[Signature]  
Name:

02/15/19  
Date:

Counsel  
ON BEHALF OF DEFENDANTS,  
MILO'S KITCHEN, LLC,  
BIG HEART PET BRANDS,  
AND THE J. M. SMUCKER COMPANY:

[Signature]  
Name: Richard Fama  
Title:

2/14/19  
Date:

~~COUNSEL ON~~ BEHALF OF DEFENDANTS,  
MILO'S KITCHEN, LLC,  
BIG HEART PET BRANDS,  
AND THE J. M. SMUCKER COMPANY:

Jackie Bryk Welch  
Name: Jackie Bryk Welch  
Title: Vice President - Litigation

February 5, 2019  
Date:



# CLAIM FORM

## THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI AT INDEPENDENCE

*Milo's Kitchen Chicken Jerky and Chicken Grillers Home-Style Dog Treats, Class Action Settlement, Civil Action No.: 1616-CV03384*

**YOUR CLAIM FORM MUST BE POSTMARKED OR COMPLETED ELECTRONICALLY ON THE SETTLEMENT WEBSITE NO LATER THAN [MONTH DAY, YEAR, 45 DAYS FROM NOTICE DATE].**

Please read the full Notice (available at [www.dogtreatsettlement.com](http://www.dogtreatsettlement.com)) carefully before filling out this Claim Form.

To be eligible to receive any money from the settlement obtained in this class action, you must either: (1) complete this Claim Form and mail it postmarked on or before [45 days from Notice Date] to: Dog Treat Settlement C/O Atticus Administration, PO BOX 1440, Minneapolis, MN 55440; or (2) submit your Claim Form online at [www.dogtreatsettlement.com](http://www.dogtreatsettlement.com) on or before [45 days from Notice Date]. Failure to submit your completed Claim Form on time by U.S. Mail (properly addressed) or to fill out an online Claim Form by the deadline will result in the rejection of your claim and you will not receive any money from this settlement.

### PART 1: CLAIMANT INFORMATION

Claimant Name: Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Phone Number: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Evening Phone Number: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email Address: \_\_\_\_\_

**PART 2: PURCHASE INFORMATION**

Please provide the information requested in the chart below for each purchase of Milo’s Kitchen Chicken Jerky and/or Milo’s Kitchen Chicken Grillers Home-style Treats made by you in the State of Missouri for personal, household, or family use between March 1, 2011 through January 31, 2013 (*attach additional pages if needed*).

Approximate date of purchase (mm/dd/yyyy)	Number of packages of Chicken Jerky purchased (put “NA” if none).	Size of packages of Chicken Jerky purchased in ounces (put “NA” if none purchased)*	Approximate price paid for Chicken Jerky (put “NA” if none purchased).	Number of packages of Chicken Grillers purchased (put “NA” if none).	Size of packages of Chicken Grillers purchased in ounces (put “NA” if none purchased) *	Approximate price paid for Chicken Grillers (put “NA” if none purchased).	Location of purchase (include name and address of store where purchased).	Do you have a proof of purchase? (Y/N)**

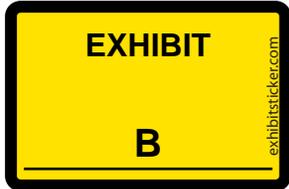
\* Milo’s Chicken Jerky and Chicken Grillers were sold in 3.3-ounce, 14-ounce, 20-ounce, 23-ounce, and 30-ounce packages.

\*\* If you are making a claim with proof of purchase (such as a receipt, loyalty card record or other similar documentation), you must provide the proof of purchase with your claim. Claims submitted *with* proof of purchase are paid differently than claims submitted *without* proof of purchase. Failure to include proof of purchase with your claim will result in your claim being treated as a “without proof of purchase” claim and subject to the monetary limitations associated with such claim. See Settlement Agreement, Class Notice and settlement website for more information. Submission of false or fraudulent claims may result in, among other things, your claim being rejected in its entirety.

**PART 3: SIGNATURE**

I declare under penalty of perjury under the laws of the State of Missouri that between March 1, 2011 through January 31, 2013 I purchased Milo’s Kitchen Chicken Jerky and/or Milo’s Kitchen Chicken Grillers Home-style Treats in the State of Missouri for personal, household, and/or family use, that the information contained in the above chart is correct, and that I am a member of the Settlement Class.

Signature: \_\_\_\_\_ Date (mm/dd/year): \_\_\_\_\_



**THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI**

**If you are a MISSOURI RESIDENT who  
PURCHASED MILO’S KITCHEN CHICKEN JERKY or CHICKEN GRILLERS  
HOME-STYLE DOG TREATS between March 1, 2011 and January 31, 2013,  
YOU COULD GET A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- There is a proposed class action settlement pending in *Mawby v. Milo’s Kitchen, LLC et al.*, Case No. 1616-CV03384 in the Circuit Court of Jackson County, Missouri (the “Lawsuit”).
- This proposed settlement relates to Milo’s Kitchen brand Chicken Jerky and Chicken Grillers Home-Style dog treats sold in Missouri between March 1, 2011 and January 31, 2013 (the “Dog Treat Products”). The Lawsuit alleges that Missouri consumers who purchased the Dog Treat Products were injured because those products were misrepresented as “wholesome” and “quality” products. The proposed settlement is with Defendants Milo’s Kitchen, LLC, Big Heart Pet Brands, and The J.M. Smucker Company, who deny the claims raised in the Lawsuit.
- Defendants have agreed to make certain cash payments to class members with valid and approved claims. The amount you may receive will depend on whether your claim is approved as valid, and whether you submit proof of purchase with your claim. Approved claimants who submit claims with proof of purchase may recover up to \$100 per household; approved claimants who submit claims without proof of purchase may record up to \$12 per household. As detailed below, Defendants have also agreed to payment of certain other sums for attorneys’ fees, a class representative service award, and settlement administration costs.

***Your Legal Rights Are Affected Even If You Do Not Act. Read This Notice Carefully.***

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS PROPOSED SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF</b>	Get no payment. This is the only option that may allow you to ever be part of any other lawsuit against Defendants (and certain other affiliated and related entities and individuals identified as “Released Parties” in the Settlement Agreement) about the legal and factual claims in this Lawsuit and the Labeling of the Dog Treat Products.
<b>OBJECT</b>	Write to the Court about why you don’t like the proposed settlement.
<b>GO TO A HEARING</b>	Ask to speak in court about the fairness of the proposed settlement.
<b>DO NOTHING</b>	If you do not submit a Claim Form or exclude yourself from the proposed settlement and the Court ultimately approves the proposed settlement, you will not obtain any payment from the Settlement Fund, you will waive your right to object to any portion of the proposed settlement, you will be bound by the terms of the Settlement Agreement, and will have released Defendants and the “Released Parties” from any and all claims as defined in the Settlement Agreement.

QUESTIONS? VISIT [www.dogtreatsettlement.com](http://www.dogtreatsettlement.com) OR CALL TOLL-FREE ###-###-####

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of the Lawsuit still has to decide whether to approve the proposed settlement. Payments will be made if the Court approves the proposed settlement and after appeals are resolved. Please be patient.

## **BASIC INFORMATION**

### **1. Why was this Notice issued?**

You have a right to know about the proposed settlement of this Lawsuit and about your options before the Court decides whether to give final approval to the proposed settlement. This Notice explains the lawsuit, the proposed settlement, your legal rights and options, what benefits are available, who is eligible for them, and how to get them.

The Lawsuit is supervised by Judge Jennifer Phillips in the Circuit Court of Jackson County, Missouri at Independence (the “Court”). The person who brought the suit (Sharel Mawby) is called the “Plaintiff” or the “Class Representative”. The Defendants are the parties who were sued. Sometimes the Plaintiff and Defendants are referred to in this Notice collectively as “Parties”.

The Court has not decided in favor of any side, and it has not been established that Defendants did anything wrong. This Notice is not an expression of any opinion by the Court about the merits of any claims or defenses by any of the Parties to this lawsuit or the fairness or adequacy of the proposed settlement. This Notice is provided so that you may decide what steps, if any, you wish to take in relation to the proposed settlement.

### **2. What is a class action?**

A class action is a lawsuit in which one or more individuals sue on behalf of other people who have similar claims. All of these people are collectively referred to as a “class” or “class members.” In a class action, the court resolves the legal issues, legal claims, and legal defenses for all class members in one lawsuit, except for those people who ask to be excluded from the class.

### **3. What is this lawsuit about?**

The Lawsuit is about Defendants’ alleged false and deceptive marketing of Milo’s Kitchen brand Chicken Jerky and Chicken Grillers Home-Style dog treats, which were sold nationwide through retail stores and online. The Lawsuit concerns only the Dog Treat Products sold between March 1, 2011 and January 31, 2013. Plaintiff alleges that Defendants misrepresented the treats as “wholesome” and “quality” products, when they actually were made with substandard ingredients and potentially harmful contaminants. Defendants deny all of these allegations and deny any liability in the case.

#### 4. Why is there a proposed Settlement?

The Parties reached a proposed settlement to resolve the Lawsuit and to avoid the expense and uncertainty of litigation. The Court has not decided in the favor of either Party, and there has been no trial. If the Court grants final approval of the proposed settlement, the class members in this lawsuit (“Class Members” or “Class”) (described more specifically in Question 5) may receive benefits described in this Notice if they are eligible according to the requirements of this proposed settlement. The Class Representative and Class Counsel (described more specifically in Question 16) believe that the proposed settlement is in the best interests of the Class.

### WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

#### 5. Am I part of this Settlement Class?

To participate in the proposed settlement if it is granted final approval by the Court, you must be a member of the Class. The Class includes anyone who purchased the Dog Treat Products in the State of Missouri for personal, household and/or family use between March 1, 2011 and January 31, 2013, subject to certain exceptions (described in Question 6).

#### 6. Are there exceptions to being included?

The proposed settlement class does not include:

- Defendants (including their subsidiaries and affiliates), or any directors and officers of Defendants and members of their immediate families;
- The judge presiding over the class action lawsuit, the Court staff, and members of their immediate families; and
- Any person who excludes himself or herself from the Class (*see* Question 13).

#### 7. What if I am still not sure if I am included?

If you are not sure whether you are a Class Member, or have any other questions about the proposed settlement, visit the website: [www.dogtreatsettlement.com](http://www.dogtreatsettlement.com).

### THE PROPOSED SETTLEMENT BENEFITS

#### 8. What does the proposed settlement provide?

The proposed settlement, if finally approved, provides the following benefits to Class Members:

Without proof of purchase, claimants are eligible to receive a refund of up to \$2.00 per 3.3-ounce bag of the Dog Treat Products purchased, \$5.50 per 14-ounce bag of the Dog Treat Products purchased, \$6.50 per 20-ounce bag of the Dog Treat Products purchased, \$9.50 per 23-ounce bag of the Dog Treat Products purchased, and \$7.50 per 30-ounce bag of the Dog Treat Products purchased, up to a limit of twelve dollars (\$12.00) per household.

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With proof of purchase, claimants are eligible to receive a refund of their actual documented purchase price not to exceed one hundred dollars (\$100.00) per household. Proof of Purchase means cash register receipts, loyalty card records, or other documentation specifically identifying and substantiating the purchase of one or more packages of the Milo's Kitchen Chicken Jerky and Milo's Kitchen Chicken Grillers Home-style Treats, the date(s) of each such purchase during the Class Period, the size(s) of package(s) purchased, and the amount(s) paid. Claims submitted without Proof of Purchase will be paid as described above.

### 9. How is the settlement funded and what happens if settlement funds are remaining?

All valid and approved claims will be paid in accordance with the per-claim limitations described in Question 8 above. No pro rata reduction will be made of any claims, and no payment of sums for other costs, fees or awards will reduce the funds available to the Class for payment of claims.

The proposed settlement is initially funded with a deposit by Defendants of \$600,000 into a settlement fund, which will be used for payment of costs associated with settlement notice and claims administration, as well as payment of court-approved attorneys' fees and a service award for the Class Representative (*see* Question 18 below). Any remaining portion of this initial deposit will be used to pay valid and approved claims of the Class. If the initial deposit is not sufficient to cover all valid and approved claims, Defendants will be required to pay into the settlement fund an additional amount of money required to pay all valid and approved claims. If any part of the initial deposit remains after payment of all claims, notice and administration costs, attorneys' fees and a service award, that portion of the settlement fund will be returned to Defendants.

## HOW TO GET A PAYMENT

### 10. How can I get a cash payment?

If you are a Class Member and want to participate in this proposed settlement, you must properly and timely submit a completed Claim Form. The Claim Form is available online from the Settlement website: [www.dogtreatsettlement.com](http://www.dogtreatsettlement.com). Be sure to read the instructions carefully, fill out the form fully, and provide all required documentation. You must fully complete the Claim Form and submit it by the deadline in order to receive benefits under the proposed settlement.

The Claim Form can be submitted online or by mail. If you choose to submit it online, you must do so by **[Claim Submission Deadline]**. If you choose to submit a hard copy by mail, it must be postmarked by **[Claim Submission Deadline]** and mailed to:

Dog Treat Settlement  
C/O Atticus Administration  
P.O. Box 1440  
Minneapolis, MN 55440

QUESTIONS? VISIT [www.dogtreatsettlement.com](http://www.dogtreatsettlement.com) OR CALL TOLL-FREE **###-###-####**

### 11. When will I get my cash payment?

Settlement benefits will be distributed only if the Court grants final approval of the proposed settlement and after any appeals are resolved. The Court has scheduled a Fairness Hearing on **[Fairness Hearing date]** to decide whether to grant final approval of the proposed settlement. If the Court grants final approval, there may be appeals. We do not know how much time it could take to resolve any appeals that may be filed. If the Court does not grant final approval of the proposed settlement or if the proposed settlement is successfully challenged in any appeal that may be filed, you will not receive any cash payment. Please check the settlement website for updates on the progress of the proposed settlement as these proceedings occur.

### 12. What happens if I do nothing at all?

If you do nothing, you will not receive any benefits from this proposed settlement, and you will not be able to sue Defendants or “Released Parties” based on the legal and factual issues involved in this Lawsuit and the “Labeling” (as defined in the Settlement Agreement) of the Dog Treat Products. You must submit a valid, timely, and complete Claim Form in order to receive benefits from the proposed settlement, or you must exclude yourself from the proposed settlement in order to sue Defendants or any of the “Released Parties” based on the legal and factual issues involved in this Lawsuit and the “Labeling” of the Dog Treat Products.

## EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

### 13. How can I get out of – or exclude myself from – the Proposed Settlement?

If you do not want to participate in this proposed settlement or receive the benefits provided by this proposed settlement, but you want to keep the right to sue Defendants or other “Released Parties” on your own concerning the legal and factual issues involved this Lawsuit and the “Labeling” of the Dog Treat Products, then you must take steps to exclude yourself or “opt out” of the Class. All Class Members who do not properly and timely exclude themselves from the Class will be bound by the terms of the Settlement Agreement, the releases set forth in the Settlement Agreement, and the Court’s Final Judgment and Order, if the Court grants final approval of the proposed settlement.

You can exclude yourself from the Class and the proposed settlement by submitting a Request for Exclusion, postmarked no later than **[opt-out deadline]**, to the Settlement Administrator at the following address:

Dog Treat Settlement  
C/O Atticus Administration  
P.O. Box 1440  
Minneapolis, MN 55440

A valid Request for Exclusion must state that you want to be excluded from the Class in *Mawby v. Milo’s Kitchen, LLC*, and must include your legal name, address, and telephone number. The Re-

quest must also be personally signed by you. You may not submit a request for exclusion on behalf of anyone other than yourself.

If you ask to be excluded from the Class, you will not be eligible to receive any benefits of the proposed settlement, and you cannot object to the proposed settlement. If you do not include the required information or do not mail a Request for Exclusion by the deadline, you will remain a Class Member and will not be able to sue Defendants or other “Released Parties” on your own concerning the legal and factual issues involved this Lawsuit and the “Labeling” of the Dog Treat Products.

#### **14. What am I giving up if I stay in the Class?**

If the proposed settlement is approved by the Court and you have not excluded yourself, you are part of the Class and cannot sue, continue to sue, or be part of any other lawsuit against Defendants or other “Released Parties” concerning the legal and factual issues involved in the Lawsuit and the “Labeling” of the Dog Treat Products. It also means that all of the Court’s orders will legally bind you.

#### **15. If I exclude myself, can I still get a cash payment?**

No. If you exclude yourself, then you are not entitled to submit a Claim Form or receive any benefits from the proposed settlement. If you request exclusion from the Class, then:

- You will not be eligible for a cash payment under the proposed settlement;
- You will not be allowed to object to the terms of the proposed settlement; and
- You will not be bound by any subsequent rulings entered in the Lawsuit if the proposed settlement is finally approved.

However, to the extent permitted by law, you may sue, continue to sue, or be part of a different lawsuit against Defendants and other “Released Parties” concerning the legal and factual issues involved in the Lawsuit.

### **THE LAWYERS REPRESENTING YOU**

#### **16. Do I have a lawyer in this Litigation?**

The Court has appointed the law firm of Shank & Moore, LLC of Mission Woods, Kansas, to represent you and the other Class Members in this lawsuit. The lawyers representing you and the other Class Members are called “Class Counsel.”

#### **17. Should I get my own lawyer?**

You do not need to hire your own lawyer in this Lawsuit because Class Counsel is working on your behalf. However, if you want to be represented by your own lawyer and have that lawyer appear in Court for you in the Lawsuit, you may hire one at your own expense. You also have the right to represent yourself before the Court without a lawyer.

### 18. How will the lawyers and class representative be paid?

Class Counsel are litigating this Lawsuit on a contingency fee basis and have not yet received any fees or reimbursement for the expenses associated with the case. If the Court grants final approval of the proposed settlement, Class Counsel will ask the Court to award them reasonable attorneys' fees, costs, and expenses of up to \$550,000 to compensate and reimburse them for their efforts and risks incurred in prosecuting the Lawsuit and obtaining settlement benefits for the Class. The Court may award a different amount. Defendants have agreed not to oppose Class Counsel's request for attorneys' fees, costs, and expenses in an amount not to exceed \$550,000.

Class Counsel will also request on behalf of the Class Representative a service award of \$5,000 to compensate the Class Representative for the substantial time and effort dedicated to her prosecution of this Lawsuit.

Class Counsel will file an application with the Court for approval of requested sums of attorneys' fees, expenses and a service award for the Class Representative. Nothing awarded or paid for fees, expenses or a service award will reduce the funds available to the Class for payment of valid and approved claims.

### OBJECTING TO THE PROPOSED SETTLEMENT

### 19. How do I object to the Proposed Settlement?

As a Class Member, you have the right to file written comments or objections with the Court if there is something about the proposed settlement you do not like. If you object, you also have the right to appear at the Court's Fairness Hearing, either in person or through your own counsel hired at your own expense, and tell the Court why you object to the proposed settlement.

To object to the proposed settlement, your written objections must be filed with the Court by **[the objection deadline]**, and mailed to each of the following three addresses, postmarked by that same date:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court Circuit Court of Jackson County Independence Courthouse 308 W. Kansas Independence, MO 64050	Christopher S. Shank Shank & Moore, LLC 1968 Shawnee Mission Parkway Suite 100 Mission Woods, KS 66205	Richard Fama Cozen O'Connor 45 Broadway Atrium Suite 1600 New York, NY 10006

In your written objections, you must include your legal name, address, and telephone number. You must also identify this Lawsuit (*Mawby v. Milo's Kitchen, LLC, et al.*, Case No. 1616-CV03384) and provide sufficient information to demonstrate your membership in the Class, including information verifying the approximate date(s) you purchased the Dog Treat Products and the location of your purchase(s) (e.g., store, city and state). You must also state the specific grounds for each objection asserted and include any legal support, papers, briefs, or evidence you wish to bring to the

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Court's attention. You must also provide a detailed list of all other objections submitted by you or on your behalf to any class action in any court, whether state, federal or otherwise, in the United States in the previous five (5) years. Your objection must be personally signed by you.

If you intend to appear at the Fairness Hearing either in person or through counsel, your objection must say so. If you hire a lawyer to represent you for purposes of making an objection, your lawyer must formally enter his or her appearance in the case by **[the objection deadline]**.

Even if you object to the proposed settlement, you may also submit a Claim Form to share in the benefits of the proposed settlement in the event the Court grants final approval notwithstanding any objections made by you or any other Class Member.

## **20. What is the difference between objecting and asking to be excluded?**

Objecting is telling the Court that you do not like something about the proposed settlement. You can object only if you stay in the Class.

Excluding yourself from the Class is telling the Court that you do not want to be part of the Class or participate in the proposed settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

## **THE COURT'S FAIRNESS HEARING**

### **21. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Fairness Hearing to decide whether to grant final approval of the proposed settlement as fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will also consider Class Counsel's request for an attorneys' fee award and for a service award to the Class Representative.

The Fairness Hearing is scheduled for **[date and time]** in the Circuit Court of Jackson County, Missouri at Independence, 308 W. Kansas, Independence, Missouri 64050. The Fairness Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the settlement website ([www.dogtreatsettlement.com](http://www.dogtreatsettlement.com)) for updates.

### **22. Do I have to come to the Fairness Hearing?**

No. Class Counsel will represent the interests of all Class Members who have not excluded themselves from the Class, and will answer any questions the Court may have at the Fairness Hearing. However, you are welcome to come at your own expense or pay your own lawyer to attend. If you send an objection, you do not have to come to the Court to talk about it. As long as you properly and timely mailed your objection, the Court will consider it.

### 23. May I speak at the Fairness Hearing?

Yes, you may ask the Court for permission to speak at the Fairness Hearing, if you have timely and properly filed a written objection. To ask for permission to speak at the Fairness Hearing, you must send a letter to the Court saying that it is your “Notice of Intention to Appear” in *Mawby v. Milo’s Kitchen, LLC, et al.*, Case No. 1616-CV03384, and telling the Court that you plan to attend the Fairness Hearing and would like permission to speak during the Hearing.

Your Notice of Intention to Appear letter must be postmarked no later than **the objection deadline**, and mailed to the Clerk of the Court, Class Counsel, and Defense Counsel, at the following addresses:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court Circuit Court of Jackson County Independence Courthouse 308 W. Kansas Independence, MO 64050	Christopher S. Shank Shank & Moore, LLC 1968 Shawnee Mission Parkway Suite 100 Mission Woods, KS 66205	Richard Fama Cozen O’Connor 45 Broadway Atrium Suite 1600 New York, NY 10006

The “Notice of Intention to Appear” letter must include your name, address, and your signature. You cannot speak at the Fairness Hearing if you do not timely file your objections or if you otherwise exclude yourself from the Class.

## GETTING MORE INFORMATION

### 24. Where do I get more information?

This Notice provides a summary of the proposed Settlement. More details are available at the Settlement website ([www.dogtreatsettlement.com](http://www.dogtreatsettlement.com)), where you will find the Settlement Agreement, the Petition filed by Class Counsel, the Claim Form, and the Court’s Order Granting Preliminary Approval of the Class Action Settlement. Updates regarding the case will be posted on the Settlement website for time to time. You may also call the Settlement Administrator at [REDACTED] or write with questions to the Settlement Administrator at

Dog Treat Settlement  
C/O Atticus Administration  
P.O. Box 1440  
Minneapolis, MN 55440

QUESTIONS? VISIT [www.dogtreatsettlement.com](http://www.dogtreatsettlement.com) OR CALL TOLL-FREE [REDACTED]