

CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement and Release, and its attached exhibits (“Settlement Agreement” or “Agreement”) is entered into by and between Class Representative Plaintiffs listed in paragraph 2 below (“Class Representatives” or “Plaintiffs”), entered into as of the ___ day of ___, 2020, individually and on behalf of Participating Settlement Class Members (together “Plaintiffs”), and Hill’s Pet Nutrition, Inc., Hill’s Pet Nutrition Sales, Inc. (collectively “Hill’s”) and Colgate-Palmolive Co. (“Colgate”) (collectively with Hill’s, the “Defendants,” and collectively with Plaintiffs, the “Parties”). This Settlement Agreement is intended by the Parties to resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, conditioned upon Court approval of the terms and conditions hereof.

RECITALS

WHEREAS, in August 2018, DSM Nutritional Products Inc., one of Hill’s longtime suppliers, delivered to Hill’s vitamin premix that included too much vitamin D.

WHEREAS, on January 31, 2019, and in coordination with the United States Food and Drug Administration, Hill’s announced its first voluntary recall of certain batches of Hill’s Prescription Diet and Science Diet canned dog food products due to potential excessive levels of vitamin D.

WHEREAS, on March 20, 2019, Hill’s expanded the recall to include additional lots of the products recalled in January, as well as eight additional products, and on May 15, 2019, Hill’s identified a single, additional lot that had been inadvertently omitted from the recall, recalling that lot as well.

WHEREAS, Hill’s expanded its existing consumer claims process and has addressed a number of alleged pet injuries, including by reimbursing certain alleged medical expenses, providing product refunds, and creating an additional veterinary claims process to enable consumers to have their pets screened for vitamin D toxicity without incurring out-of-pocket costs. Hill’s also directed consumers to their place of purchase for product refunds.

WHEREAS, following the recall, class action lawsuits were filed in courts across the country by plaintiffs alleging that they were harmed by purchasing pet food manufactured by Defendants.

WHEREAS, these lawsuits were transferred by the United States Judicial Panel on Multidistrict Litigation to the District of Kansas on June 7, 2019.

WHEREAS, Defendants deny any and all claims and theories of the case asserted by or on behalf of Plaintiffs.

WHEREAS, once the lawsuits were transferred to the District of Kansas, the Parties engaged the Honorable Wayne R. Andersen (Ret.) of JAMS to mediate and oversee settlement

negotiations in this Action. Judge Andersen conducted two, in-person, day-long mediation sessions in Chicago on October 29 and December 17, 2019. Following these sessions, the Parties diligently continued their arms' length settlement discussions with Judge Andersen for months. These adversarial discussions involved the exchange of extensive information regarding the claims at issue and the products sold by Defendants. Ultimately, the parties reached a settlement.

WHEREAS, the Parties believe that the interests of all concerned are best served by compromise, settlement, and dismissal of the claims and that the terms of this Settlement are fair, reasonable, adequate, and in the Parties' mutual best interests.

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, the Parties agree to a final settlement and resolution of certain claims pending in this Action, subject to Court approval, on the following terms and conditions:

I. DEFINITIONS

In addition to the terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. "Action" means the class claims raised in the Multi-District Litigation No. 2887, captioned *In Re: Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation*, Case No. 19-md-2887-JAR-TJJ (D. Kan.) ("MDL 2887"), on behalf of consumers who purchased Hill's Products. MDL 2887 includes all individual actions transferred to and coordinated with MDL 2887 by the Judicial Panel on Multi-District Litigation ("JPML"), (collectively, the Individual Actions"). Any action filed after the date of this Settlement Agreement that is transferred by the JPML to MDL 2887 shall be deemed to be included within the definition of Individual Action.

2. "Class Representatives" and "Plaintiffs" mean: Michelle Black, Toni Blanchard, Jack Blaser, Jeremiah Will Brigham, Stacey Caskey, Kathy Capron, Megan Carter, Kristina Centers, Linda Cole, Jennifer Cromwell, Kristin DeCroce, Molly McDowell Dunston, Sarah Ecton, Sandra Walker Evans, Jamie Fain, Beatrice Friedman, Maritza Galindo, Lafonda Guyton, Sally Hall, Marc Haughaboo, Leiann Hawley, Keith Heck, Janis Henderson, Melinda Hengel, Jessie Hollister, Sharon Hopkins, Claudia Hoyos, Janet Imfeld, Mary Ippisch, Brandy Jeter, Cara Kaufmann, Allison Kay, Kevin Kelly, Elizabeth Kemp, Marla King, Kathy Klaassen, TJ Knowland, Lisette Kra, Teresa Krage, Rosemary Lanctot, Janet Laurin, Tammy Lechner, Stephanie Lett, Sandra Lindquist, David Lovell, Dan Marcus, Michael Markiewicz, Lacey McCaskill, Marnie McCown, Cheryl McMurray, Melissa Mendoza, Jeffrey Morris, Jennifer Naeve, Robert Neve, Kay Okahashi, Mary Ponce, Robin Prebe, Susan Pyper, Vanessa Roberts, Karen Rohman, Taakena Ross, Cheri Rusinack, Michael Russell, Crystal Russell, Chuck Silveira, Nancy Simmons, Harmony Stidham, Kristal Summers, Catherine Teegarden, Andrew Tilles, Demetrios Tsiptsis, Luann Tyborski, Angela Wickham, and June Yoshinaga.

3. "Consumer Food Purchase Claims" means claims solely for reimbursement of the costs associated with the purchase of Hill's Products by Settlement Class Members who have not been reimbursed for such costs to date, including through return or exchange of the Hill's Products. Any Consumer Food Purchase Claim will specifically exclude any amounts that Hill's has already

paid to the Settlement Class Members or on their behalf as part of a Hill's Claims Process or amounts paid to Settlement Class Members by retailers following the recall.

4. "Court" means the United States District Court for the District of Kansas.

5. "Cy Pres Recipient" means Unleashed Pet Rescue. Unleashed Pet Rescue is a non-profit organization whose work is tethered to the nature of the Action and the interests of Settlement Class Members in this Action because it helps provide food and medical care to dogs and other pets. *See Exhibit 6 (Declaration of Unleashed Pet Rescue).*

6. "Defendants' Counsel" means Richard B. Goetz and Hannah Y. Chanoine of O'Melveny & Myers LLP, and Thomas P. Schult and Jennifer Wieland of Berkowitz Oliver LLP.

7. "Dog Injury Claims" means claims seeking damages allegedly incurred by Settlement Class Members whose dogs consumed any Hill's Products and where the Settlement Class Member incurred any economic loss related to their dog's ingestion of excess levels of vitamin D through the consumption of the Hill's Products, specifically excluding any amounts that Hill's has already paid to the Settlement Class Member or on his or her behalf as part of a Hill's Claims Process.

8. "Effective Date" means one business day following the latest of the following: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment ("Final Approval" or "Judgment") or one business day following entry of an order granting Final Approval of the Settlement if no parties have standing to appeal; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to attorneys' fees and reimbursement of expenses, the date of completion, in a manner that finally affirms and leaves in place the Judgment without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Judgment. If the Judgment is set aside, materially modified, vacated or reversed by the Court or by an appellate court, and is not fully reinstated on further appeal, then the Judgment does not become "Final" and the Effective Date cannot occur.

The sole exceptions to the predicate conditions for the Effective Date are if the Judgment is modified as to the amount of fees or costs payable to Plaintiffs' Counsel or a reduction in the Service Award Payments to Plaintiffs. A change in those amounts shall not preclude the Final Judgment from becoming Final. In the event the Final Judgment is modified in a manner that would preclude the Final Judgment from becoming Final, the Parties aggrieved by such modification – "aggrieved" meaning, for Plaintiffs, a material reduction in benefits available to Class Members, and for Defendants, an increase in their monetary obligations or a material modification in the definition of Released Claims or the scope of the Classes—shall have the option, at its or their sole discretion, to accept the modification and allow the Final Judgment as so modified to become Final. If such a Party wishes to exercise this option, that Party shall file a written notice of waiver with the Court within ten (10) days after such Party is notified by

applicable court process of the modification. The modified Judgment shall not become Final unless all aggrieved Parties file such a waiver. If all aggrieved Parties file waivers, then the Judgment shall become Final on the later of the date all such waivers are filed, or all of the conditions of this paragraph are satisfied.

9. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Settlement Class Counsel. Fees, costs, and expenses shall be distributed in the sole discretion of Settlement Class Counsel, in a manner consistent with counsel’s contribution to the benefit obtained for the Settlement Class.

10. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, and otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23.

11. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.

12. “Hill’s Products” means the Hill’s Prescription Diet and Science Diet canned dog foods listed in Exhibit 1 and sold to consumers in the United States from September 1, 2018 to May 31, 2019. The definition of Hill’s Products specifically excludes any cat foods, dry dog food products, treats, Ideal Balance products, or Healthy Advantage products, or other products produced by Hill’s that are not specifically listed in Exhibit 1.

13. “Hill’s Claims Processes” means (i) the veterinarian claims process in which Hill’s reimbursed veterinarians directly on a consumer’s behalf for allegations related to the Hill’s Products and/or (ii) the consumer claims process in which Hill’s reimbursed consumers for Dog Injury Claims upon an individual evaluation of each alleged claimant, or issued refunds for the purchase of Hill’s Products.

14. “Household” means all persons or entities who share a physical address. For all corporations, partnerships, business organizations or associations, or other type of legal entity, there can be only one physical address used even if there are multiple locations.

15. “Litigation Costs and Expenses” means costs and expenses incurred by counsel for Plaintiffs in connection with commencing, prosecuting, and settling the Action.

16. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses; (ii) expenses, if any, above \$5,000 associated with any notice that must be provided under the Class Action Fairness Act; (iii) Taxes and Tax-Related Expenses; and (iv) Fee Award and Costs approved by the Court.

17. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members, as approved by the Court in connection with its Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit 3.

18. “Notice Deadline” means the last day by which the Notice Program (described below in paragraph 47) must be launched.

19. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administrative Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

20. “Participating Settlement Class Member” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline.

21. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2), and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment. Such order will include the forms and procedure for providing notice to the Settlement Class, including notice of the procedure for Settlement Class Members to object to or to request exclusion from the Settlement, and will set a date for the Final Approval Hearing.

22. “Proof of Purchase” means acceptable documentation that provides proof of purchase of Hill’s Products. Such acceptable documentation will consist of receipts, copies of receipts, loyalty card records, cans bearing the SKU of Hill’s Products defined by paragraph 12 and listed in Exhibit 1 or other legitimate, documentary proof showing payment to an authorized retailer or a Defendant that were not used as proof for any other claim.

23. “Released Claims” means any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys’ fees, costs, interest or expenses) that the Releasing Parties had or have (including, but not limited to, assigned claims and any and all “Unknown Claims” as defined below) that have been or could have been asserted in the Action or in any other action or proceeding before any court, arbitrator(s), tribunal or administrative body (including but not limited to any state, local or federal regulatory body), regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, and regardless of whether they are known or unknown, brought or could have been brought, foreseen or unforeseen, suspected or unsuspected, or fixed or contingent, arising out of, or related or connected in any way with the claims or causes of action

of every kind and description that were brought, alleged, argued, raised or asserted in any pleading or court filing in the Action.

Specifically excluded from the definition of Released Claims are any and all claims involving Hill's cat foods, Hill's dry dog foods, Hill's treats, Hill's Ideal Balance products, and Hill's Healthy Advantage products not listed in Exhibit 1. In addition, the Released Claims excludes any and all claims asserted in the complaint captioned *Eichhorn-Burkhard v. Hill's Pet Nutrition, Inc.*, No. 19-2672-JAR-TJJ (D. Kan.), which purports to assert class claims on behalf of a proposed European Union Class and a proposed German Sub-Class. These claims are specifically excluded from this Settlement.

24. "Released Parties" means Defendants and DSM Nutritional Products, Inc. and each of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing. Each of the Released Parties may be referred to individually as a "Released Party."

25. "Releasing Parties" means the Class Representatives, Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns.

26. "Request for Exclusion" is the written communication by or on behalf of a putative Settlement Class Member in which they request to be excluded from the Settlement Class in the form and manner provided for in the Notice.

27. "Service Award Payment" means any award sought by application to and approved by the Court that is payable to the Class Representatives from the Settlement Fund, for their role in and contribution to the Action, separate and apart from their claims.

28. "Settlement" means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

29. "Settlement Administrator" means the third-party notice and administration provider agreed upon by the Parties and approved by the Court. Settlement Class Counsel and Defendants may, by agreement, substitute a different Settlement Administrator, subject to Court approval. The Parties agree that Heffler Claims Group shall be retained to implement the claims and settlement requirements of this Agreement.

30. "Settlement Class" means all persons and entities that purchased Hill's Products in the United States from September 1, 2018 to May 31, 2019. Excluded from this Settlement Class are: all persons and entities that have been provided compensation from any Defendant and have executed a release for the claims described herein; Defendants, any entity in which Defendants have a controlling interest, and their legal representatives, officers, directors, employees, assigns and successors; persons and entities that purchased Hill's Products for resale or resold Hill's Products, but persons or entities that purchased Hill's Products for direct use are not excluded; the

Judges to whom this case is assigned and any member of the Judges' staff or immediate family; Settlement Class Counsel; and putative Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

31. "Settlement Class Counsel" means Scott A. Kamber of KamberLaw LLC, Gary E. Mason of Mason Lietz & Klinger LLP, Michael Reese of Reese LLP and Rachel E. Schwartz of Stueve Siegel Hanson LLP.

32. "Settlement Class Member" means an individual who falls within the definition of the Settlement Class.

33. "Settlement Fund" means the sum of twelve million, five hundred thousand dollars (\$12,500,000.00) to be paid by Defendants as specified herein, including any interest accrued thereon after payment.

34. "Settlement Payment" or "Settlement Check" means the payment to be made to a Participating Settlement Class Member pursuant to Section IV.

35. "Settlement Website" means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to issuing Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, the Preliminary Approval Order, Plaintiffs' motion for an award of attorneys' fees, costs and expenses, and/or service awards, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

36. "Taxes and Tax-Related Expenses" means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Defendants with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

37. "Unknown Claims" means claims that could have been raised in the Action and that Plaintiff, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement.

38. "Unpaid Funds" means funds remaining in the Settlement Fund from Settlement Class Members' uncashed checks.

39. “Valid Claim Form” means a Claim Form submitted by a Settlement Class Member that is determined to be valid and not fraudulent by the Settlement Administrator and: (a) is submitted in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is accurately, fully and truthfully completed and executed under penalty of perjury with all of the information requested in the Claim Form by a Settlement Class Member on the initial submission, including whether and how much a Settlement Class Member has already been reimbursed for expenses or purchases being claimed in the Settlement; (c) is signed physically or by e-signature by a Settlement Class Member or Person with authority to sign for and bind a Settlement Class Member, subject to penalty of perjury; and (d) is returned via mail and post-marked by the Claims Deadline or received by mail or on-line submission by midnight of the Claims Deadline Eastern Standard Time.

II. SETTLEMENT CONSIDERATION

40. **Establishment of Settlement Fund.** Defendants shall make a payment of twelve million, five hundred thousand dollars (\$12,500,000.00) and deposit that payment into the Settlement Fund as follows: Defendants shall deposit the entire sum into the Settlement Fund within thirty (30) calendar days after the Court enters the Preliminary Approval Order.

41. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of Defendants in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated pursuant to the terms of this Agreement.

42. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, and that the Settlement Administrator shall be the “administrator,” within the meaning of Treasury Regulation § 1.468B-2(k)(3), and shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide a detailed accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

43. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with this Agreement.

44. **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Service Award Payments;

(iv) Fee Award and Costs; (v) Settlement Payments, and (vi) any distribution of Unpaid Funds. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.

45. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Participating Settlement Class Member shall be solely responsible for the federal, state, local, and other tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement. The Settlement Fund shall constitute a qualified settlement fund within the meaning of Treasury Regulation Sections 1.468B-1 through 1.468B-5, 26 C.F.R. §§ 1.468B-1 through 1.468B-5 (1992), and the Parties shall treat the Settlement Fund consistently therewith for all reporting purposes under the United States federal tax laws. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the Settlement Administrator shall be the “escrow agent.” As the escrow agent, the Settlement Administrator shall timely and properly file all required federal and state informational and other tax and informational returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulations Section 1.468B-2(k)). Such returns shall be consistent with this paragraph and in all events shall reflect that all taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the income earned by the Settlement Fund. Taxes and tax expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and paid without prior order from the Court. The Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from the income earned by the Settlement Fund any funds necessary to pay such taxes, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treasury Regulations Section 1.468B2(1)(2)). The Settlement Administrator shall maintain accurate records of all expenditures made pursuant to this paragraph, and shall provide the records upon request to Class Counsel and Defendants’ Counsel. None of the Parties, or any of their counsel, shall have any responsibility for the payment of taxes described in this paragraph (other than, in the case of each Class Representative and Participating Settlement Class Member, the payment of federal, state, local and other tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement). The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph. The Parties further agree that the costs of claims administration will be excluded from the Settlement Fund for tax purposes.

III. NOTICE

46. **CAFA Notice.** Within ten (10) days after Preliminary Approval by the Court, Defendants shall serve notices of the Settlement on state and federal regulatory authorities as

required by Section 3 of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notices”). Defendants shall simultaneously serve copies of the CAFA Notices on Settlement Class Counsel. In the event that a state or federal official raises concerns about the Settlement, the Parties and their counsel agree to work together in good faith to resolve those concerns. Defendants shall pay any costs associated with any CAFA Notices up to \$5,000. Costs associated with any CAFA Notices that exceed \$5,000, if any, will come solely out of the Settlement Fund.

47. **Notice Program.** Upon entry of Preliminary Approval, the Settlement Administrator shall implement the Notice Program provided herein as Exhibit 5, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of this Settlement; a date by which Settlement Class Members may object to this Settlement; a date by which Settlement Class Members may exclude themselves from this Settlement, the date upon which the Final Approval Hearing shall occur; and the address of the Settlement Website at which Settlement Class Members may access this Settlement and other related documents and information. Under Settlement Class Counsel’s supervision, the Settlement Administrator shall design and develop a Notice Program that is reasonably practicable under the circumstances, complies with due process, and as directed and/or approved by the Court.

IV. PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS

48. **Monetary Relief.** Settlement Class Members shall be eligible to receive monetary relief from the Settlement Fund by submitting a Valid Claim Form. Each Claim Form shall provide the opportunity for a Settlement Class Member to demonstrate eligibility for the payment of Dog Injury Claims and/or Consumer Food Purchase Claims. A Settlement Class Member may, but is not required to, submit both a Dog Injury Claim and a Consumer Food Purchase Claim.

49. **Claims Process.** Each Settlement Class Member shall be entitled to submit a Claim that will, if valid, entitle the Settlement Class Member to a cash payment as set forth below. The period for submitting such claims shall commence upon the Notice Date and continue for no less than 90 days (the “Notice Period”). The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by this Settlement by processing Claim Forms in a rational, responsive, cost effective and timely manner. All available monies in the Settlement Fund will be paid out to Settlement Class Members or, to the extent there are any residual Unpaid Funds after any additional distribution, paid on the Settlement Class’s behalf to the Cy Pres Recipient with no possibility of reversion to Defendants. Monies will be distributed to Settlement Class Members pro rata based on the amounts apportioned to each Settlement Class Member by the following claims process:

- a. **Settlement Class Members Who Have Dog Injury Claims.** Settlement Class Members asserting a Dog Injury Claim shall provide documentation showing screening or treatment of the dog for signs consistent with consumption of excess vitamin D as a result of the use or consumption of Hill’s Products. The Settlement Administrator is authorized (in conjunction with a veterinarian or other expert, if necessary, selected by Settlement Class Counsel) to review these documents, investigate, evaluate, and make

a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant. Acceptable forms of documentation of the veterinary treatment incurred include, but are not limited to: veterinary notes, veterinary records, test or laboratory reports, or statements from the veterinarian, hospital or clinic. By submitting a Dog Injury Claim, the Settlement Class Member is authorizing the Settlement Administrator, in its discretion, to contact the treating veterinarian of the Settlement Class Member's allegedly injured dog, to seek the input of Defendants' Counsel and Hill's Pet Nutrition, and to fully investigate and make a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant. The Settlement Administrator is under no obligation to rely solely on information provided by the Settlement Class Member in making its determination of payment for a Dog Injury Claim.

- i. Settlement Class Members who have already received reimbursement for their same claims or whose veterinarians already received reimbursement for their same claims on the Settlement Class Members' behalf are not eligible to receive duplicative payments for Dog Injury Claims.
- ii. Dog Injury Claims may also include claims for screening costs that were reasonably necessary based on concern for having a dog that consumed Hill's Products. Such test shall have been performed by or upon the recommendation or referral of the veterinarian to screen for illness from the consumption of the Hill's Products, provided that reimbursement will only be granted for the share of the veterinary bill, costs, tests, or examination that relate to the determination of whether the dog suffered injury from the use or consumption of a Hill's Product, and not for any other or unrelated portion of the veterinary bill.
- iii. For any Dog Injury Claim, the Settlement Administrator, Settlement Class Counsel, a mediator jointly selected by the Parties, or the Court may request additional proof, including testimony under oath. Any Dog Injury Claim submitted seeking reimbursement of an amount below \$500 per dog shall be resolved by the Settlement Administrator in its discretion, and in consultation with Settlement Class Counsel about such claims. Any Dog Injury Claim submitted seeking reimbursement for an amount greater than \$500 per dog will be paid only upon the recommendation of the Settlement Administrator and approval of Settlement Class Counsel. If Defendants' Counsel has a good faith belief that a particular claim seeking reimbursement above \$500 per dog requires additional review, Defendants' Counsel and Settlement Class Counsel shall meet and confer about the claim. If

the Parties are unable to agree after the meet and confer process, Settlement Class Counsel and/or Defendants' Counsel have the right to request that the claim be reviewed by a mediator jointly selected by the Parties, whose time will be paid from the Settlement Fund for making these determinations. While the Settlement Administrator and/or Settlement Class Counsel may, in their discretion, seek input from Hill's and Defendants' Counsel about a claim, neither Hill's nor Defendants' Counsel is obligated to review all claims.

- b. **Settlement Class Members Who Have Consumer Food Purchase Claims.** Settlement Class Members may submit a Consumer Food Purchase Claim for up to the full price of the purchased Hill's Products as further described below. Each Settlement Class Member must attest under penalty of perjury whether he or she has already received a payment or a refund for Hill's products, from where he or she received the refund, and in what amount. Each Settlement Class Member may elect to submit either a (i) Consumer Food Purchase Claim with Proof of Purchase; or (ii) Consumer Food Purchase Claim without Proof of Purchase, but may not submit both.
- i. **Consumer Food Purchase Claims With Proof of Purchase.** Settlement Class Members who complete the Claim Form and provide valid Proof of Purchase showing their actual purchase(s) of Hill's Products during the Settlement Class Period and the purchase price of the Hill's Products purchased shall receive the full price of the Hill's Products as set forth on their Proof of Purchase. The Settlement Administrator shall have the right to determine the validity of such claims and may investigate and request reasonable additional information in order to avoid fraud.
- ii. **Consumer Food Purchase Claims Without Proof of Purchase.** Settlement Class Members who complete the Claim Form and do not provide valid Proof of Purchase showing their actual purchase(s) of Hill's Products during the Settlement Class Period shall receive the MSRP for the Hill's Products claimed to have been purchased for up to a total value of \$20. The Settlement Administrator shall have the right to determine the validity of such claims and may investigate and request reasonable additional information in order to avoid fraud.
- iii. Settlement Class Members who have already received reimbursement for their food purchases are not eligible to receive duplicative payments for Consumer Food Purchase Claims, whether such reimbursement was from the Hills Claims Processes or otherwise.

50. **Plan of Allocation.** All payments of Settlement compensation to Settlement Class Members shall be made from the Settlement Fund after all costs of Settlement administration (including, but not limited to, costs related to Class Notice, the fees and expenses of the Settlement Administrator, as approved by the Court, the Fee and Expense Award, and the Service Award Payments, as approved by the Court), are deducted from the Settlement Fund. If the total of the timely, valid and approved Claims submitted exceeds the available relief, minus any covered costs and expenses, each eligible Settlement Class Member's award shall be reduced on a *pro rata* basis. If the total of the timely, valid and approved Claims is less than the available relief, minus any covered costs and expenses, each eligible Settlement Class Member's award shall be *pro rata* increased to no more than two-times the value of the timely, valid and approved Claim absent any further written agreement by the Parties. Settlement Class Counsel may make an application to the Court to seek approval for proposed additional distributions of the Unpaid Funds to Settlement Class Members if such distributions are economically feasible and will not exceed more than two-times the value of the timely, valid and approved Claim, absent any further written agreement by the Parties. If the costs associated with further distributions to all Settlement Class Members would constitute 30% or more of the Unpaid Funds, the additional distributions of the Unpaid Funds to Settlement Class Members shall go only to those Settlement Class Members who selected electronic payment or to Settlement Class Members who timely cashed their paper check. After such distribution(s), the Court may order any remaining residual Unpaid Funds, if any, shall be paid to the Cy Pres Recipient.

51. **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send by mail and if available an e-mail and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

52. **Residue of Settlement Fund.** No portion of the Settlement Fund shall revert or be repaid to Defendants after the Effective Date. All funds shall be distributed pursuant to the Plan of Allocation in Paragraph 50.

53. **Claims per Household.** Only one Dog Injury Claim Form and/or Consumer Food Purchase Claim Form per Household is eligible.

V. REQUESTS FOR EXCLUSION AND OBJECTIONS

54. **Request for Exclusion.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator prior to the deadline set by the Court for such action

and as described in the Notice and Summary Notice (the “Opt-Out Deadline”). A Request for Exclusion shall identify the Settlement Class Member’s type of claim (i.e., whether it is a Dog Injury Claim or Consumer Food Purchase Claim) and, if applicable, the name of the Settlement Class Member’s attorney. If a Settlement Class Member submits both a Claim and a Request for Exclusion, the Settlement Administrator will disregard the Request for Exclusion.

55. **Objections.** The Notice shall explain the procedure for Settlement Class Members who wish to object to the Settlement by submitting written objections to the Settlement Administrator, Settlement Class Counsel, and Defendants’ Counsel prior to the deadline set by the Court for such action and as described in the Notice and Summary Notice (the “Objection Deadline”). The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

VI. DUTIES OF THE SETTLEMENT ADMINISTRATOR

56. The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following: The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, and such records will be made available to Settlement Class Counsel and Defendants’ Counsel, the Parties and their representatives promptly upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Should the Court request or should it be reasonably advisable to do so, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator. Without limiting the foregoing, the Settlement Administrator shall:

- a. Create, administer, and oversee the Settlement Fund;
- b. Provide Notice to Settlement Class Members in accordance with the Notice Plan, attached as Exhibit 5, and the Press Release, attached as Exhibit 6;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- e. Respond to any mailed or emailed Settlement Class Member inquiries within one (1) business day;

- f. Upon request, promptly forward to Defendants' Counsel and Settlement Class Counsel, copies of all documents and other materials relating to the administration of the Settlement;
- g. Receive requests from Class Members to exclude themselves from the Settlement Class and promptly provide to Class Counsel and Defendants' Counsel a copy thereof upon receipt. If the Settlement Administrator receives any requests for exclusion from Class Members after the Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel;
- h. Provide reports and summaries, as requested, to Settlement Class Counsel and Defendants' Counsel, including without limitation, reports regarding the number of Claim Forms received and the identity of the Settlement Class Members;
- i. Employ reasonable procedures to screen Claims Forms for waste, fraud, and abuse and shall reject a Claim Form, or any part of a claim for a payment reflected therein, where the Settlement Administrator determines that there is evidence of fraud. The Settlement Administrator will review each Claim Form based upon the initial submission by a Settlement Class Member and ensure that each is complete, properly substantiated and, based on the substantiation, determine the appropriate benefit to be paid, if any, in accordance with the terms of this Agreement. The Settlement Administrator is empowered to pay legitimate and valid claims only;
- j. Issue Settlement Checks. All Settlement Checks issued pursuant to this Settlement shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a Settlement Check is not cashed within sixty (60) days after the date of issue, the Settlement Administrator is authorized to send by mail (and if available an e-mail) and/or place a telephone call to that Settlement Class Member reminding him/her of the deadline to cash such check. To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the check will be void;
- k. Only consider Claims submitted with a Claim Form and received by the Settlement Administrator or postmarked by the Claims Deadline. 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 a payment;
- l. Make Claim Form available on the Settlement Website. The Claim Form will be mailed to Settlement Class Members upon request by calling or writing to the Settlement Administrator. Settlement Class Members may submit their completed and signed Claim Forms to the Settlement

Administrator by such means as proscribed by the Notice on or before the Claims Deadline. Such Claim Form shall be submitted to the Court for approval substantially in the form as that attached hereto and made a part hereof as Exhibit 2;

- m. After the Effective Date, process and transmit Settlement Payments to Settlement Class Members and, if necessary, process and transmit any residual Unpaid Funds to the Cy Pres Recipient;
- n. In advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) identifies all Requests for Exclusion and/or objectors. Such declaration shall be provided to Defendants' Counsel and Settlement Class Counsel for filing with the Court no later than fourteen (14) days prior to the Final Approval Hearing; and
- o. Perform any function related to Settlement administration at the agreed-upon instruction of Settlement Class Counsel or Defendants' Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

57. **Limitation of Liability.** The Parties, Settlement Class Counsel, and Defendants' Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

58. **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Settlement Class Counsel, and Defendants' Counsel for (i) any act or omission or determination of the Settlement Administrator, or any of the Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

59. **Privacy.** The Settlement Administrator shall take reasonable measures to the extent permitted by law to assert and to protect the privacy rights of Settlement Class Members, including by maintaining the confidentiality and security of and preventing the unauthorized access or acquisition of any financial or personal information submitted in connection with any

claim for benefits pursuant to this Settlement Agreement. In the event of any unauthorized access to or acquisition of personal information concerning any Settlement Class Member as a direct result of the intentional or negligent acts or omissions of the Settlement Administrator, the Settlement Administrator shall be responsible for complying with any privacy, data security, or breach notification obligations under state or federal law, and will be solely responsible for directly providing notice to state agencies, affected Settlement Class Members, and/or other persons or entities.

60. **Discretion of Settlement Administrator.** Heffler Claims Group shall have the discretion to carry out the intent of the Settlement Agreement, subject to the terms of the escrow agreement described in paragraph 45 and applicable Orders of the Court.

VII. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

61. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. Should: (1) the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. Defendants reserve the right to contest class certification for all other purposes. The Parties further stipulate to designate the Class Representatives as the representatives for the Settlement Class.

62. **Preliminary Approval.** Promptly following execution of this Settlement, Plaintiffs shall submit this Settlement Agreement to the Court and shall apply to the Court for entry of the Preliminary Approval Order, which includes provisions that, among other things, will:

- a. Preliminarily approve the Settlement Agreement as being fair, reasonable, adequate and the product of good faith negotiations;
- b. Approve the Claim Form substantially in the form attached as Exhibit 2, and approve Heffler Claims Group as the Settlement Administrator;
- c. Approve the Long Form Notice and Short Form Notice substantially in the form attached as Exhibits 3 and 4;
- d. Order that the Short Form Notice be disseminated in the manner set forth in the Notice Program attached as Exhibit 4 and in accordance with the Preliminary Approval Order;
- e. Provide that any person falling within the definition of the Settlement Class who desires to be excluded from the Class must request exclusion by submitting a timely and valid Request for Exclusion in compliance with the instructions in the Long Form Notice, to the Settlement Administrator by the Opt-Out Deadline, which date shall fall not later than thirty (30) days before the Fairness Hearing;

- f. Provide that persons falling within the definition of the Settlement Class who do not file valid and timely Requests for Exclusion will be: (i) bound by the Final Judgment dismissing the Action on the merits and with prejudice; and (ii) permanently barred from commencing, prosecuting or participating in the recovery in any direct or representative action, or any action in any other capacity, and from asserting any of the Released Claims, as further described in this Settlement Agreement;
- g. Provide that, pending final determination of whether the Settlement Agreement should be approved, neither the Plaintiffs nor any Settlement Class Member, either directly, representatively, or in any other capacity, shall commence, continue to pursue, or prosecute any action or proceeding in any court or tribunal asserting or purporting to assert any of the Released Claims against Defendants or any other of the Released Parties;
- h. Find that the Long Form Notice to be given in accordance with the Preliminary Approval Order constitutes the best notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members, complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable law;
- i. Order that notice to persons falling within the definition of the Classes shall be structured to be as efficient as possible and to make maximum use of notice by electronic means and that such notice shall be undertaken by the Settlement Administrator;
- j. Schedule a Fairness Hearing, no earlier than the date permitted under the Class Action Fairness Act, 28 U.S.C. § 1715(d), to consider and determine whether the settlement proposed under the terms of this Settlement Agreement should be finally approved as fair, reasonable, and adequate, and whether the Final Judgment approving the Settlement Agreement and resolving the Settlement Class's claims should be entered, and to consider the request for an award of attorneys' fees and reimbursement of expenses;
- k. Provide that the Fairness Hearing on this Settlement Agreement and any request for an award of attorneys' fees and reimbursement of expenses may, from time to time and without further notice to the Classes other than Class Members who have timely submitted objections, be continued or adjourned by order of the Court;
- l. Provide that objections by any Class Member to (i) the proposed Settlement, (ii) entry of Final Judgment, (iii) entry of an order approving the Settlement Agreement, or (iv) any proposed award of attorneys' fees and reimbursement of expenses to Settlement Class Counsel shall be heard and

any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if such objector files with the Settlement Administrator, Settlement Class Counsel, and Defendants' Counsel a written notice of his, her, or its intention to appear, states the basis for the objections, and includes information identifying any prior class action objections filed by the objector or the objector's counsel by the Objection Deadline, which date shall be set forth in the Preliminary Approval Order and shall be no later than thirty (30) days before the Fairness Hearing;

- m. Provide that, on and after the Effective Date, all Settlement Class Members, whether or not they file a Claim Form or sign a release, shall be barred from asserting any Released Claims against any of the Released Parties, and each and all Settlement Class Members shall conclusively be deemed to have released and forever discharged any and all such Released Claims as against all of the Released Parties, in the manner described in Section IX of the Settlement Agreement; and
- n. Approve as fair, reasonable, and adequate the potential receipt of residual Unpaid Funds by the Cy Pres Recipient, which is an organization tethered to the nature of the Action and the interests of Settlement Class Members.

63. **Final Approval.** Settlement Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing; within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline; and at least ninety (90) days after Defendants notify the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

64. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

VIII. MODIFICATION AND TERMINATION

65. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

66. **Termination.** Settlement Class Counsel (on behalf of the Settlement Class Members) and Defendants' Counsel (on behalf of Defendants) shall have the right, but not the obligation, to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice") within seven (7) days of: (1) the Court's refusal to grant preliminary approval of the Settlement in any material respect; or (2) within fourteen (14) days of any of the following: (i) the Court's refusal to enter the Judgment in any material respect, or (ii) the date upon which the Judgment is modified or reversed in any material respect by any appellate or other court. As used in this paragraph, "material respect" means, for Plaintiffs, a material reduction in benefits available to Class Members, and for Defendants, an increase in their monetary obligations or a material modification in the definition of Released Claims or the scope of the Settlement Class.

67. Additionally, Defendants' Counsel (on behalf of Defendants) shall have the right, but not the obligation, to terminate this Agreement by providing written notice of their election to do so if the threshold contained in a separate agreement (which the Parties will seek leave to file under seal with the Court with access to the agreement limited to Settlement Class Counsel and Defendants' Counsel only) is exceeded.

68. **Effect of Termination.** In the event of a termination as provided in Paragraph 66, this Agreement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement, including the return of the \$12.5 million (plus interest) Defendants deposited into the Settlement Fund within thirty (30) days of termination, minus any funds the Parties jointly have authorized to be paid out of the Settlement Fund. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

IX. RELEASES

69. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Releasing Party shall be deemed to have released, acquitted, and forever discharged Defendants and each of the Released Parties from any and all Released Claims.

70. **Not a General Release.** This section should not be construed as a general release.

71. **Unknown Claims.** The Released Claims include the release of Unknown Claims. Upon the Effective Date, Plaintiffs, the Settlement Class, and any Releasing Party shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Class Representative, the Settlement Class, and the Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Settlement Agreement.

72. **Release of Class Representatives and Settlement Class Counsel.** As of the Effective Date, Defendants and their representatives, officers, agents, directors, affiliates, employees, insurers, and attorneys absolutely and unconditionally release and discharge the Class Representatives and Settlement Class Counsel from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to prosecution of the Action, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims by the Parties hereto to enforce the terms of the Settlement).

X. SERVICE AWARD

73. **Service Award.** At least twenty-one (21) days before the Opt-Out and Objection Deadlines, Settlement Class Counsel will file a motion seeking a service award payment only for the Class Representatives named in the contemporaneously filed consolidated, class action complaint in recognition for their contributions to this Action. Settlement Class Counsel's request for a service award will not exceed \$500 per Class Representative. The Settlement Administrator shall make the Service Award Payment to the Class Representatives from the Settlement Fund. Such Service Award Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than twenty-one (21) days after the Effective Date.

74. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of a service award in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service award shall constitute grounds for termination of this Agreement.

75. **Non-Disparagement.** Each Class Representative agrees that he or she will not directly or indirectly through a third party, make, issue or publish any statement to or in the media (or to any media representative), including but not limited to print, television, radio and the internet, that in connection with or related to the Action disparages the name, reputation, practices or operations of Hill's, Colgate, or any other Released Party. Settlement Class Counsel shall instruct each Class Representative that any violation of this paragraph could entitle Hill's, Colgate, or the Released Party, as the case may be, to pursue legal action against the Class Representative and seek, among other remedies, a refund of the Service Award in an amount that shall not exceed the value of the Service Award. Settlement Class Counsel will not be required to monitor Class Representatives to ensure compliance with this paragraph or to monitor any Class Representative's social media accounts or other communications on an ongoing basis. If Defendants' Counsel provides written notice to Settlement Class Counsel of a Class Representative's potential breach of this paragraph, Settlement Class Counsel has agreed to forward the written notice on to the Class Representative. The Parties agree that Settlement Class Counsel have no other responsibilities or potential liability for the breach of this paragraph by a Class Representative.

XI. ATTORNEYS' FEES, COSTS, EXPENSES

76. **Attorneys' Fees and Costs and Expenses.** At least twenty-one (21) days before the Opt-Out and Objection Deadlines, Settlement Class Counsel will file a motion for an award of attorneys' fees and litigation costs and expenses to be paid from the Settlement Fund. Fee Award and Costs (plus any interest accrued thereon) shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than twenty-one (21) days after the Effective Date.

77. **Allocation.** Unless otherwise ordered by the Court, Settlement Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Plaintiffs' counsel and any other attorneys for Plaintiffs. Defendants shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

XII. NO ADMISSION OF LIABILITY

78. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

79. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Defendants in the Actions or in any proceeding in any court, administrative agency or other tribunal.

XIII. MISCELLANEOUS

80. **Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

81. **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by subsequent Agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

82. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to “days” in this agreement shall refer to calendar days unless otherwise specified.

83. **Singular and Plurals.** As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

84. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

85. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and Defendants.

86. **Construction.** For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

87. **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

88. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

89. **Confidentiality/Public Statements.** To the extent Settlement Class Counsel or the Parties wish to issue any general or public communication about the settlement, any such public statement shall be limited to publicly available information, to the information contained in the Court-approved notice and/or the documents filed in this action. Any other general or public communication must be made in a form mutually agreed upon by Settlement Class Counsel and Defendants' Counsel and approval of any such general or public communication shall not be unreasonably withheld. This advance approval provision shall not apply to any legally compelled filings or disclosures (such as SEC disclosures).

90. **No Conflict Intended.** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

91. **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Kansas, without regard to the principles thereof regarding choice of law.

92. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically, by facsimile, or through e-mail of an Adobe PDF shall be deemed an original.

93. **Electronic Signatures Permitted.** This Agreement may be executed manually or using commonly accepted electronic signature software.

94. **Notices.** All notices to Settlement Class Counsel provided for herein, shall be sent by overnight mail and email to:

Scott A. Kamber
KAMBERLAW LLC
201 Milwaukee Street, Suite 200
Denver, CO 80206
Telephone: 303-222-9008
skamber@kamberlaw.com

Gary E. Mason
MASON LIETZ & KLINGER LLP
5101 Wisconsin Avenue NW | Ste 305
Washington, DC 20016
Tel: 202-640-1168
Fax: 202-429-2294
gmason@masonllp.com

Michael Robert Reese
REESE LLP
100 West 93rd Street, 16th floor
New York, NY 10025
Telephone: 212-643-0500
mreese@reesellp.com

Rachel E. Schwartz
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112
schwartz@stuevesiegel.com

All notices to Defendants provided for herein, shall be sent by overnight mail and email to:

Richard B. Goetz
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071-2899
rgoetz@omm.com

Hannah Y. Chanoine
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, New York 10036
hchanoine@omm.com

Thomas P. Schult
BERKOWITZ OLIVER LLP
4121 West 83rd Street, Suite 155
Prairie Village, Kansas 66208
tschult@berkowitzoliver.com

Jennifer Wieland
BERKOWITZ OLIVER LLP
4121 West 83rd Street, Suite 155
Prairie Village, Kansas 66208
jwieland@berkowitzoliver.com

The notice recipients and addresses designated above may be changed by written notice.

95. **Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

HILL'S PET NUTRITION, INC.

[TITLE]

Date

HILL'S PET NUTRITION SALES, INC.

[TITLE]

Date

COLGATE-PALMOLIVE CO.

[TITLE]

Date

Approved as to form and content:

By: _____
O'MELVENY & MYERS LLP
Richard B. Goetz
Hannah Y. Chanoine
BERKOWITZ OLIVER LLP
Thomas P. Schult
Jennifer Wieland

Counsel for Defendants Hill's Pet Nutrition, Inc., Hill's Pet Nutrition Sales, Inc., and Colgate-Palmolive Co.

CLASS REPRESENTATIVES

Michelle Black

Date:

Toni Blanchard

Date:

Jack Blaser

Date:

Jeremiah Will Brigham

Date:

Stacey Caskey

Date:

Kathy Capron

Date:

Megan Carter

Date:

Kristina Centers

Date:

Linda Cole

Date:

Jennifer Cromwell

Date:

Kristin DeCroce

Date:

Molly McDowell Dunston

Date:

Sarah Ecton

Date:

Sandra Walker Evans

Date:

Jamie Fain

Date:

Beatrice Friedman

Date:

Maritza Galindo

Date:

Lafonda Guyton

Date:

Sally Hall

Date:

Marc Haughaboo

Date:

Leiann Hawley

Date:

Keith Heck

Date:

Janis Henderson

Date:

Melinda Hengel

Date:

Jessie Hollister

Date:

Sharon Hopkins

Date:

Claudia Hoyos

Date:

Janet Imfeld

Date:

Mary Ippisch

Date:

Brandy Jeter

Date:

Cara Kaufmann

Date:

Allison Kay

Date:

Kevin Kelly

Date:

Elizabeth Kemp

Date:

Marla King

Date:

Kathy Klaassen

Date:

TJ Knowland

Date:

Lisette Kra

Date:

Teresa Krage

Date:

Rosemary Lanctot

Date:

Janet Laurin

Date:

Tammy Lechner

Date:

Stephanie Lett

Date:

Sandra Lindquist

Date:

David Lovell

Date:

Dan Marcus

Date:

Michael Markiewicz

Date:

Lacey McCaskill

Date:

Marnie McCown

Date:

Cheryl McMurray

Date:

Melissa Mendoza

Date:

Jeffrey Morris

Date:

Jennifer Naeve

Date:

Robert Neve

Date:

Kay Okahashi

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Date:

Vanessa Roberts

Date:

Karen Rohman

Date:

Taakena Ross

Date:

Cheri Rusinack

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Michael Russell

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Crystal Russell

Date:

Chuck Silveira

Date:

Nancy Simmons

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Harmony Stidham

Date:

Kristal Summers

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INDEX OF EXHIBITS

Exhibit 1	List of Hill's Products, as defined in Paragraph 12 of the Agreement
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EXHIBIT 1

List of Hill's Products (as defined in Paragraph 12 of the Agreement)

Product Name	SKU Number
Hill's® Prescription Diet® k/d® Canine Kidney Care with Lamb (13 oz.)	2697
Hill's® Science Diet® Adult Perfect Weight Chicken & Vegetable Entrée (12.8 oz.)	2975
Hill's® Prescription Diet® c/d® Multicare Canine Urinary Care Chicken & Vegetable Stew (5.5 oz.)	3388
*Hill's® Prescription Diet® i/d® Low Fat Canine Digestive Care Rice, Vegetable & Chicken Stew (5.5 oz.)	3391
*Hill's® Prescription Diet® r/d® Canine Weight Reduction Original Flavor (12.3 oz.)	7014
*Hill's® Science Diet® Adult Beef & Barley Entrée (13 oz.)	7039
*Hill's® Science Diet® Adult 7+ Healthy Cuisine Roasted Chicken, Carrots & Spinach Stew Dog food (12.5 oz.)	10449
*Hill's® Science Diet® Adult Healthy Cuisine Adult Braised Beef, Carrots & Peas Stew (12.5 oz.)	10451
Hill's® Prescription Diet® c/d® Multicare Canine Urinary Care Chicken & Vegetable Stew (12.5 oz.)	3384
Hill's® Prescription Diet® i/d® Canine Digestive Care Chicken & Vegetable Stew (12.5 oz.)	3389
Hill's® Prescription Diet® i/d® Canine Digestive Care Chicken & Vegetable Stew (5.5 oz.)	3390
Hill's® Prescription Diet® z/d® Canine Skin/Food Sensitivities Original Flavor (5.5 oz.)	5403
Hill's® Prescription Diet® g/d® Canine Aging Care Turkey Flavor (13 oz.)	7006
Hill's® Science Diet® Adult 7+ Savory Stew with Beef & Vegetables (12.8 oz.)	1434
Hill's® Science Diet® Puppy Savory Stew with Chicken & Vegetables (12.8 oz.)	1428
Hill's® Prescription Diet® i/d® Canine Digestive Care with Turkey (13 oz.)	7008
Hill's® Prescription Diet® j/d® Canine Joint Care with Lamb (13 oz.)	7009
Hill's® Prescription Diet® k/d® Canine Kidney Care with Chicken (13 oz.)	7010
Hill's® Prescription Diet® w/d® Canine Digestive/Weight/Glucose Management with Chicken (13 oz.)	7017
Hill's® Prescription Diet® z/d® Canine Skin/Food Sensitivities Original Flavor (13 oz.)	7018
Hill's® Prescription Diet® Metabolic + Mobility Canine Weight + Joint Care Vegetable & Tuna Stew (12.5 oz.)	10086
Hill's® Prescription Diet® w/d® Canine Digestive/Weight/Glucose Management Vegetable & Chicken Stew (12.5 oz.)	10129
Hill's® Prescription Diet® i/d® Low Fat Canine Digestive Care Rice, Vegetable & Chicken Stew (12.5 oz.)	10423
Hill's® Prescription Diet® Derm Defense® Canine Environmental Sensitivities Chicken & Vegetable Stew (12.5 oz.)	10509
Hill's® Science Diet® Adult 7+ Small & Toy Breed Chicken & Barley Entrée (5.8 oz.)	4969

Product Name	SKU Number
Hill's® Science Diet® Puppy Chicken & Barley Entrée (13 oz.)	7036
Hill's® Science Diet® Canine Adult Chicken & Barley Entrée (13 oz.)	7037
Hill's® Science Diet® Adult Turkey & Barley (13 oz.)	7038
Hill's® Science Diet® Adult Chicken & Beef Entrée (13 oz.)	7040
Hill's® Science Diet® Adult Light with Liver (13 oz.)	7048
Hill's® Science Diet® Adult 7+ Chicken & Barley Entrée (13 oz.)	7055
Hill's® Science Diet® Adult 7+ Beef & Barley Entrée (13 oz.)	7056
Hill's® Science Diet® Adult 7+ Turkey & Barley Entrée (13 oz.)	7057
Hill's® Science Diet® Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew (12.5 oz.)	10452
Hill's® Science Diet® Youthful Vitality Adult 7+ Chicken & Vegetable (12.5 oz.)	10763
Hill's® Science Diet® Adult Savory Stew with Chicken & Vegetables (12.8 oz.)	1430
Hill's® Science Diet® Adult Savory Stew with Beef & Vegetables (12.8 oz.)	1431
Hill's Science Diet Adult 7+ Savory Stew with Chicken & Vegetables (12.8 oz.)	1433
Hill's® Prescription Diet® i/d® Low Fat Canine Digestive Care Original Flavor (13 oz.)	1863
Hill's® Prescription Diet® Metabolic Canine Weight Management Chicken Flavor (13 oz.)	1957
Hill's® Science Diet® Adult Sensitive Stomach & Skin Salmon & Vegetable Entrée (12.8 oz.)	3045
Hill's® Prescription Diet® k/d® Canine Kidney Care Chicken & Vegetable Stew (12.5 oz.)	3395
Hill's® Prescription Diet® k/d® Canine Kidney Care Chicken & Vegetable Stew (5.5 oz.)	3396
Hill's® Prescription Diet® k/d® Canine Kidney Care Beef & Vegetable Stew (5.5 oz.)	3397
Hill's® Prescription Diet® k/d® Canine Kidney Care Beef & Vegetable Stew (12.5 oz.)	3398
Hill's® Prescription Diet® Metabolic Canine Weight Management Vegetable & Beef Stew (12.5 oz.)	3399
Hill's® Prescription Diet® Metabolic Canine Weight Management Vegetable & Chicken Stew (12.5 oz.)	3402
Hill's® Science Diet® Puppy Small & Toy Breed Chicken & Barley Entrée (5.8 oz.)	4965
Hill's® Science Diet® Adult Beef & Barley Entrée (5.8 oz.)	4966
Hill's® Science Diet® Adult Small & Toy Chicken & Barley Entrée (5.8 oz.)	4967
Hill's® Science Diet® Adult 7+ Beef & Barley Entrée (5.8 oz.)	4968
Hill's® Prescription Diet® a/d® Canine/Feline Urgent Care (5.5 oz.)	5670
Hill's® Prescription Diet® c/d® Multicare Canine Urinary Care Chicken Flavor (13 oz.)	7001
Hill's® Prescription Diet® d/d® Canine Skin/Food Sensitivities Duck Formula (13 oz.)	7003
Hill's® Prescription Diet® d/d® Canine Skin/Food Sensitivities Salmon Formula (13 oz.)	7004

Product Name	SKU Number
Hill's® Prescription Diet® h/d® Canine Heart Care with Chicken (13 oz.)	7007
Hill's® Prescription Diet® l/d® Canine Liver Care Original Flavor (13 oz.)	7011
Hill's® Prescription Diet® s/d® Canine Urinary Care Original Flavor (13 oz.)	7015
Hill's® Prescription Diet® u/d® Canine Urinary Care Chicken Flavor (13 oz.)	7016
Hill's® Science Diet® Adult Perfect Weight Hearty Vegetable & Chicken Stew (12.5 oz.)	10125
Hill's® Prescription Diet® w/d® Canine Digestive/Weight/Glucose Management Vegetable & Chicken Stew (5.5 oz.)	10128
Hill's® Prescription Diet® i/d® Stress Canine Digestive Care Rice, Vegetable & Chicken Stew (5.5 oz.)	10196
Hill's® Science Diet® Adult Healthy Cuisine Roasted Chicken, Carrots & Spinach Stew (12.5 oz.)	10450
Hill's® Science Diet® Youthful Vitality Adult 7+ Small & Chicken & Vegetable Stew (5.5 oz.)	10765
Hill's® Prescription Diet® k/d® + Mobility Canine Kidney + Joint Care Chicken & Vegetable Stew (12.5 oz.)	10853
Hill's® Science Diet® Puppy Small & Toy Breed Savory Stew with Chicken and Vegetables (3.5 oz.)	11122
Hill's® Science Diet® Adult Small & Toy Breed Savory Stew with Chicken and Vegetables (3.5 oz.)	11123
Hill's® Science Diet® Adult Small & Toy Breed Savory Stew with Beef & Vegetables (3.5 oz.)	11124
Hill's® Science Diet® Adult 7+ Small & Toy Breed Savory Stew with Chicken & Vegetables (3.5 oz.)	11125
Hill's® Science Diet® Adult Small & Toy Trays Savory Stew Can Variety Pack (3.5 oz.)	603490
Hill's® Science Diet® Adult Sensitive Stomach & Skin Chicken & Vegetable Entrée (12.8 oz.)	603772
Hill's® Science Diet® Adult Sensitive Stomach & Skin Tender Turkey & Rice Stew (12.5oz)	603957