

THE HONORABLE RICHARD A JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BRADLEY SHAW, THOMAS MCCARTHY,
MICHELLE M. CHEVALIER-FLICK, MARK
SPIVEY, on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

SCHELL & KAMPETER, INC. d/b/a/
DIAMOND PET FOODS,

Defendant.

NO. 2:20-cv-01620-RAJ

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Upon review and consideration of Plaintiffs’ Motion for Preliminary Approval of Class Certification and Class Action Settlement, including the Parties’ Stipulation and Settlement Agreement (the “Settlement Agreement”) and all exhibits thereto, and having been fully advised in the premises, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. The Court has carefully reviewed the Settlement Agreement, as well as the files, records, and proceedings to date in this matter. The terms and conditions in the Settlement Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the meanings attributed to them in the Settlement Agreement.

2. The Court has conducted an evaluation of the settlement set forth in the Settlement Agreement for fairness, adequacy, and reasonableness. Based on this preliminary

1 evaluation, the Court finds that the Settlement Agreement meets all applicable requirements of
2 Fed. R. Civ. P. 23 for settlement purposes only. The Court further finds that: (i) there is good
3 cause to believe that the settlement is fair, reasonable, and adequate, (ii) the Settlement
4 Agreement has been negotiated at arm's length between experienced attorneys familiar with the
5 legal and factual issues of this case, and (iii) the Settlement Agreement warrants Notice of its
6 material terms to the Settlement Class for their consideration and reaction. Therefore, the Court
7 grants preliminary approval of the Settlement Agreement.

8 3. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), and for settlement purposes only,
9 the Court finds that: (a) The proposed Settlement Class is so numerous that joinder of all
10 members is impracticable; (b) There are questions of law or fact common to the members of the
11 Settlement Class; (c) The claims of the Plaintiffs are typical of the claims of the other members
12 of the Settlement Class; (d) Plaintiffs and their counsel are capable of fairly and adequately
13 protecting the interests of the members of the Settlement Class, in connection with the
14 Settlement Agreement; (e) Common questions of law and fact predominate over questions
15 affecting only individual members of the Settlement Class; (f) The Settlement Class is
16 ascertainable; and (g) Resolution of the claims in this Litigation by way of a class action is
17 superior to other available methods for the fair and efficient resolution of the claims of the
18 Settlement Class.

19 4. Pursuant to Fed. R. Civ. P. 23(b)(3), and for settlement purposes only, the Court
20 certifies the proposed "Settlement Class" consisting of: all persons residing in the United States
21 who purchased the Products primarily for personal, family or household purposes, and not for
22 resale, prior to the preliminary approval of the settlement, between the dates of four years prior
23 to the filing of the First Amended Complaint and the date of Preliminary Approval of the
24 Settlement by the Court. Excluded from the Settlement Class shall be jurists, mediators,
25 plaintiffs' or defense counsel and their employees, legal representatives, heirs, successors,
26 assigns, or any members of their immediate family; any government entity; Diamond, any
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1 entity in which Diamond has a controlling interest, any of Diamond’s subsidiaries, parents,
2 affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns,
3 or any members of their immediate family; Costco, any entity in which Costco has a controlling
4 interest, any of Costco’s subsidiaries, parents, affiliates, and officers, directors, employees,
5 legal representatives, heirs, successors, or assigns, or any members of their immediate family;
6 and any persons who timely opt out of the Settlement Class.

7 5. Pursuant to Fed. R. Civ. P. 23(g), for settlement purposes only, the Court hereby
8 approves the appointment of the following attorneys as Class Counsel and finds that they are
9 competent and capable of exercising the responsibilities of Class Counsel: Gregory C.
10 Coleman, Alex Straus, and Lisa A. White from Greg Coleman Law PC, J. Hunter Bryson from
11 Whitfield Bryson, LLP, Gary E. Mason from Mason Lietz & Klinger LLP, Charles E. Schaffer
12 from Levin, Sedran & Berman LLP, Philip Friedman from Friedman Law Offices, Beth E.
13 Terrell from Terrell Marshall Law Group PLLC, Jeffery S. Goldenberg from Goldenberg
14 Schneider L.P.A., Nick Suciu III from Barbat, Mansour, Suciu & Tomina PLLC, and Jonathan
15 Shub from Shub Law Firm, LLC.

16 6. For settlement purposes only, the Court hereby approves the appointment of
17 Plaintiffs Bradley Shaw, Thomas McCarthy, Michelle M. Chevalier-Flick, and Mark Spivey as
18 representatives of the Settlement Class.

19 7. A hearing regarding final approval of the Settlement (“Final Approval Hearing”)
20 will be held at **9:00 a.m., on Friday, August 20, 2021**, in Courtroom 13016, before the
21 Honorable Richard A. Jones, to determine, among other things: (i) whether final approval of
22 the Settlement Agreement should be granted and (ii) whether Class Counsel’s application for
23 attorney’s fees and expenses and an incentive award to the Class Representative should be
24 granted. No later than **July 16, 2021**, Plaintiffs must file their papers in support of Class
25 Counsel’s application for attorneys’ fees and expenses. No later than **August 6, 2021**, Plaintiffs
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1 must file their papers in support of final approval of the Settlement Agreement and in response
2 to any objections.

3 8. The Court approves the Notice in the Settlement Agreement, including the
4 manner and content of direct notice attached as Exhibits B-D to the Settlement Agreement
5 (“Direct Notice”) and the creation of the Settlement Website, as more fully described in the
6 Settlement Agreement. The Court finds that this is the best practicable notice under the
7 circumstances and is reasonably calculated, under all the circumstances, to apprise the
8 Settlement Class of the pendency of this Litigation, the terms of the Settlement Agreement, and
9 their right to object to the Settlement Agreement or exclude themselves from the Settlement
10 Class. The Court further finds that Direct Notice and the other forms of Notice in the
11 Settlement Agreement are reasonable, constitute due, adequate, and sufficient notice to all
12 persons entitled to receive notice, and meet the requirements of due process and Rule 23. The
13 Direct Notice shall be transmitted not less than ten (10) days after the entry of this Order.

14 9. Pursuant to the Settlement Agreement, Heffler Claims Group is hereby
15 appointed as Settlement Administrator and shall be required to perform all of the duties of the
16 Settlement Administrator as set forth in the Settlement Agreement and this Order.

17 10. Any Settlement Class Member who wishes to be excluded from the Settlement
18 Class must send a written request for exclusion to the Settlement Administrator, by first-class
19 mail, postage prepaid, to the address provided in the direct notice and Settlement Website.

20 11. (“Request for Exclusion”). If any Settlement Class Member wishes to be
21 excluded from (in other words, opt out of) this Settlement, the Settlement Class Member may
22 do so by completing the exclusion form at the Settlement Website; downloading and submitting
23 to the Settlement Administrator a completed exclusion form; or submitting a valid request to
24 exclude themselves, as described in the Notice, to the Settlement Administrator. Requests to
25 exclude themselves must be delivered (not just postmarked) by the Exclusion Deadline or they
26 shall not be valid. A Settlement Class Member who elects to exclude him or herself from this
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1 Settlement shall not be permitted to object to this Settlement or to intervene in any way. If the
2 proposed Settlement is approved, any Settlement Class Member who has not submitted a timely
3 and proper written Request for Exclusion from the Settlement Class shall be bound by all
4 subsequent proceedings, orders, and judgments in this Litigation, even if he or she has pending,
5 or subsequently initiates, litigation against Defendants relating to any of the released claims in
6 the Settlement Agreement.

7 12. Any Settlement Class Member who intends to intervene and object to this
8 Settlement must: (1) be in writing; (2) identify the case name "*Shaw et al., v. Schell &*
9 *Kampeter, Inc. d/b/a Diamond Pet Foods, Case No. 2:20-CV-01620-RAJ*" (3) state the name,
10 address and telephone number of the Person in the Settlement Class seeking exclusion; (4) be
11 physically signed by the individual(s) seeking exclusion and their attorney (if any); and (5) be
12 postmarked or received by the Settlement Administrator on or before the Objection/Exclusion
13 Deadline; (6) the name, address, and telephone number of all counsel (if any) who represent the
14 Objector, including any former or current counsel who may be entitled to compensation for any
15 reason if the objection is successful, and legal and factual support for the right to such
16 compensation; (7) documents or testimony sufficient to establish membership in the Settlement
17 Class; (8) a detailed statement of any objection asserted, including the grounds therefor; (9)
18 whether the Objector is, and any reasons for, requesting the opportunity to appear and be heard
19 at the Final Approval Hearing; (10) the identity of all counsel (if any) representing the objector
20 who will appear at the Final Approval Hearing and, if applicable, a list of all persons who will
21 be called to testify in support of the objection; (11) copies of any papers, briefs, or other
22 documents upon which the objection is based; (12) a detailed list of any other objections
23 submitted by the Settlement Class Member, or his/her counsel, to any class action settlement
24 submitted in any state or federal court in the United States in the previous five (5) years, or
25 affirmatively stating that no such prior objection has been made. Any Settlement Class Member
26 who has not filed a timely and proper written request for exclusion and who complies with the
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1 requirements of this Paragraph may comment in support of, or in opposition to, any aspect of
2 the proposed Settlement either on his or her own or through an attorney hired at his or her
3 expense. Any papers submitted in support of said objection shall be received by the Court at the
4 Final Approval Hearing, only if the Person making an objection files, on or before the
5 Objection/Exclusion Deadline approved by the Court and specified in the Notice, notice of his
6 or her intention to do so and at the same time (a) files copies of such papers he or she proposes
7 to submit at the Final Approval Hearing with the Clerk of the Court, (b) files copies of such
8 papers through the Court's CM/ECF system if the objection is from a Settlement Class Member
9 represented by counsel, who must also file an appearance, and (c) sends copies of such papers
10 via mail, hand, or overnight delivery service to both Class Counsel and Defense Counsel at the
11 following locations:

12 I. Class Counsel: J. Hunter Bryson, Esq. Whitfield Bryson LLP, 900 W. Morgan St.,
13 Raleigh, NC, 27603.

14 II. Settling Defendant's Counsel: David T. Biderman, Esq., Perkins Coie LLP, 1888
15 Century Park East Suite 1700, Los Angeles, CA 90067

16 13. Any Settlement Class Member who fails to timely file a written objection with
17 the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance
18 with the terms of this Order and as detailed in the Notice, and at the same time provide copies
19 to designated counsel for the Parties, shall not be permitted to object to the Settlement
20 Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of
21 the Settlement Agreement by appeal or other means and shall be deemed to have waived his or
22 her objections and be forever barred from making any such objections in this Litigation or any
23 other action or proceeding.

24 14. If the Settlement is finally approved, all Settlement Class Members who have
25 not filed a timely and proper request for exclusion shall release the Released Parties from all
26 Released Claims, as described in Section VI of the Settlement Agreement.

1 15. This Order shall become null and void, and shall be without prejudice to the
2 rights of the Parties, all of whom shall be restored to their respective positions in the Litigation
3 as of the date of the signing the Settlement Agreement, if (i) the proposed Settlement is not
4 finally approved by the Court, or does not become effective in accordance with the Settlement
5 Agreement's Effective Date (as defined in the Settlement Agreement), pursuant to the terms of
6 the Settlement Agreement; or (ii) the Settlement Agreement is terminated pursuant to the terms
7 of the Settlement Agreement for any reason. In such event, the certification of the Settlement
8 Class and any Final Judgment or other order entered by the Court in the Litigation in
9 accordance with the terms of the Settlement Agreement shall be deemed *nunc pro tunc*
10 and without prejudice to Defendants' right to contest class certification, and the Parties shall be
11 returned to the status quo ante with respect to the Litigation as if the Settlement Agreement had
12 never been entered into.

13 16. This Order shall be of no force and effect if the Settlement does not become
14 final and shall not be construed or used as an admission, concession, or declaration by or
15 against Defendants of any fault, wrongdoing, breach, or liability, or by or against Plaintiffs or
16 the Settlement Class Members that their claims lack merit or that the relief requested in the
17 class complaint in this Litigation is inappropriate, improper, or unavailable, or as a waiver by
18 any party of any defenses they may have.

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1 17. The Court authorizes the Parties to take all necessary and appropriate steps to
2 implement the Settlement Agreement.

3 IT IS SO ORDERED.

4 Dated this 23rd day of April, 2021.

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7 The Honorable Richard A. Jones
8 United States District Judge
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