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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SARAH HILL and MONICA
O'ROURKE, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

CANIDAE CORPORATION,

Defendant.

CASE NO. 5:20-CV-01374-JGB-SP

**PROPOSED CLASS ACTION
SETTLEMENT**

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EXHIBIT LIST

- Exhibit A:** List of Covered Products
- Exhibit B:** [Proposed] Final Order and Judgment
- Exhibit C:** Claim Form
- Exhibit D:** Long Form Notice
- Exhibit E:** Summary Notice
- Exhibit F:** [Proposed] Preliminary Approval Order
- Exhibit G:** Settlement Administration Protocol
- Exhibit H:** Declaration of the Settlement Administrator

1 Plaintiffs Sarah Hill and Monica O’Rourke (“Plaintiffs”), and Defendant
2 Canidae Corporation (“Canidae” or “Defendant”), by and through their respective
3 counsel, in consideration for and subject to the promises, terms, and conditions
4 contained in this Settlement, hereby agree, subject to Court approval pursuant to
5 Federal Rule of Civil Procedure 23, as follows:

6 **I. RECITALS**

7 WHEREAS, on or about July 9, 2020, Plaintiffs filed a putative class action
8 lawsuit against Canidae in the United States District Court for the Central District of
9 California, captioned *Hill, et al. v. Canidae Corporation*, No. 5:20-cv-01374-JGB-SP
10 (the “Action”), which alleged violations of California’s Unfair Competition Law
11 (Cal. Bus. & Prof. Code § 17200 *et seq.*) (the “UCL”), California’s False Advertising
12 Law (Cal. Bus. & Prof. Code § 17500 *et seq.*) (the “FAL”), California’s Consumer
13 Legal Remedies Act (Cal. Civ. Code § 1750) (the “CLRA”), New York General
14 Business Law §§ 349 and 350 (the “NY GBL”), and the Magnuson-Moss Warranty
15 Act (15 U.S.C. § 2301, *et seq.*) (“MMWA”), as well as breach of express warranty,
16 breach of the implied warranty of merchantability, and unjust enrichment that related
17 to the sale, advertising, marketing, labeling, distribution, and manufacturing of
18 Canidae’s Limited Ingredient Diet pet food products on behalf of a putative
19 nationwide class of consumers, as well as putative subclasses for California and New
20 York consumers (the “Initial Complaint”);

21 WHEREAS, on or about September 24, 2020, Canidae filed a motion to
22 dismiss Plaintiffs’ Initial Complaint (ECF No. 27);

23 WHEREAS, on or about October 29, 2020, Plaintiffs responded to the motion
24 to dismiss by filing an amended class action complaint, omitting any cause of action
25 for violation of the MMWA (the “Amended Complaint”);

26 WHEREAS, on February 18, 2021, Plaintiffs filed a stipulation to amend the
27 operative complaint, identifying additional Canidae pet food products as falling
28 within the scope of Plaintiffs’ claims (the proposed “Second Amended Complaint”);

1 WHEREAS, Plaintiffs, by and through their counsel, conducted a robust
2 investigation into the facts and law relating to the matters alleged in their Complaints,
3 including into marketing, advertising, and labeling of the products, as well as legal
4 research as to the strength and sufficiency of the claims and defenses thereto, and
5 appropriateness of class certification;

6 WHEREAS, Defendant has vigorously defended against and denies all of
7 Plaintiffs' allegations;

8 WHEREAS, this Settlement was reached as a result of extensive arms'-length
9 negotiations between the Parties and their counsel, facilitated by a full-day mediation
10 and multiple follow-up discussions with a respected mediator, the Honorable Diane
11 M. Welsh (Retired). During these mediation discussions, the Parties had an arms'-
12 length exchange of sufficient information to permit Plaintiffs and their counsel to
13 evaluate the claims and potential defenses and to meaningfully conduct informed
14 settlement discussions;

15 WHEREAS, Plaintiffs, as class representatives, believe that the claims settled
16 herein have merit, but they and their counsel recognize and acknowledge the
17 significant risk and expense of continued proceedings necessary to prosecute the
18 claims through trial and appeal. Plaintiffs, and their counsel, have specifically taken
19 into account that if the claims asserted in the Action are not settled now by voluntary
20 agreement among the parties, future proceedings (including appeals) would be
21 protracted and expensive, involve highly complex legal and factual issues relating to
22 liability and damages, and would involve substantial uncertainties, delays, and other
23 risks inherent in litigation. In light of these factors, counsel for Plaintiff has
24 concluded that it is desirable and in the best interests of Plaintiff and the putative
25 members of the class to settle the claims asserted in the Action at this time;

26 WHEREAS, based upon their review, investigation, and evaluation of the facts
27 and law relating to the matters alleged in the pleadings, counsel for Plaintiff has
28

1 concluded that the settlement embodied in this Settlement Agreement is fair,
2 reasonable, adequate, and in the best interests of the putative class in the Action;

3 WHEREAS, Defendant has vigorously denied and continues to dispute all of
4 the claims and allegations in the Action, and denies any and all allegations of
5 wrongdoing, fault, liability or damage of any kind to Plaintiffs or the putative Class.
6 Defendant further denies that it acted improperly or wrongfully in any way and
7 believes that this action has no merit. Defendant has also considered the potential
8 risks and the cost of continued litigation of the Action, and has determined to settle
9 the Action upon the terms and conditions set forth in this Settlement; and

10 WHEREAS, Defendant has agreed not to oppose class action treatment of the
11 claims alleged in the Action solely for the purpose of effecting the compromise and
12 settlement of those claims on a nationwide class basis as set forth herein and not for
13 any other purpose.

14 NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and
15 between the Parties, through their respective counsel, that: (a) the Action be fully and
16 finally compromised, settled, and released upon final settlement approval by the
17 Court after the hearings as provided for in this Settlement; and (b) upon such
18 approval by the Court, a Final Order and Judgment, substantially in the form attached
19 hereto as Exhibit “B,” be entered upon the following terms and conditions.

20 **II. DEFINITIONS**

21 As used in this Settlement and the attached Exhibits, the following terms have
22 the following meanings, unless this Settlement specifically provides otherwise:

23 1. “Action” shall mean the class action lawsuit entitled *Hill, et al. v.*
24 *Canidae Corporation*, No. 5:20-cv-01374-JGB-SP, pending in the United States
25 District Court for the Central District of California.

26 2. “Attorneys’ Fees and Expenses” means such funds as may be awarded
27 by the Court to Class Counsel to compensate Class Counsel for their fees and
28 expenses in connection with the Action and the Settlement, as described in

1 Paragraphs 64 to 67 of this Settlement.

2 3. “Benefit” means the cash payment available to a Claimant who files a
3 Valid Claim under this Settlement. The specific Benefit paid is subject to review,
4 validation, and adjustments by the Settlement Administrator based upon the terms
5 and conditions of this Settlement.

6 4. “Canidae” means Canidae Corporation, and/or Canidae LLC.

7 5. “Claim Form” means the proof of claim substantially in the form
8 attached hereto as Exhibit “C,” which may be modified to meet the requirements of
9 the Settlement Administrator, and pursuant to which Class Members may apply for
10 recovery of the Benefit described in Paragraphs 48 to 52.

11 6. “Claim Form Deadline” means the final time and date by which a Claim
12 Form must be submitted to the Settlement Administrator in order for a Class Member
13 to be eligible for any Benefit available under the terms and conditions of this
14 Settlement.

15 7. “Claim Period” means the time period to be set by the Court as the
16 deadline for Class Members to submit Claims Forms, as described in Paragraphs 48
17 to 52 of this Settlement, and which shall be ninety (90) calendar days, beginning sixty
18 (60) days before the Fairness Hearing.

19 8. “Claimant” means a Class Member who files a Claim Form seeking a
20 Benefit under this Settlement.

21 9. “Class” means all persons residing in the United States and its territories
22 who purchased the Products in the United States and its territories for personal,
23 family, or household purposes, and not for resale, after July 9, 2016 and prior to and
24 including the Notice Date. Excluded from the Class are (a) all persons who are
25 employees, directors, officers, and agents of Canidae, or its subsidiaries and affiliated
26 companies; (b) persons or entities who purchased the Products primarily for the
27 purposes of resale to consumers or other resellers; (c) governmental entities;
28 (d) persons who timely and properly exclude themselves from the Class as provided

1 in this Settlement; and (e) the Court, the Court’s immediate family, and Court staff.

2 10. “Class Counsel” means Gregory F. Coleman, Lisa A. White, Alex R.
3 Straus, and Arthur Stock of Greg Coleman Law PC; Nick Suciu III of Barbat,
4 Mansour, Suciu & Tomina, PLLC; Daniel K. Bryson and J. Hunter Bryson of
5 Whitfield Bryson, LLP, and Gary E. Mason of Mason, Lietz, and Klinger LLP.

6 11. “Class Member(s)” means any member of the Class who does not elect
7 exclusion (*i.e.*, opt out) from the Class pursuant to the terms and conditions for
8 exclusion set out in this Settlement and the Class Notice.

9 12. “Class Notice” shall mean the Long Form Notice and Summary Notice
10 provided to the Class substantially in the form attached hereto as Exhibits “D” and
11 “E,” as directed by the Court.

12 13. “Class Period” shall mean any date between July 9, 2016 (*i.e.*, four years
13 before the Plaintiffs’ complaint was filed in this Court) and the “Notice Date” as
14 defined below.

15 14. “Complaints” shall mean, collectively, the (i) Initial Complaint filed by
16 Plaintiffs on July 9, 2020, (ii) the Amended Complaint filed by Plaintiffs on October
17 29, 2020, and (iii) the Second Amended Complaint filed by Plaintiffs on February 18,
18 2021.

19 15. “Court” means the United States District Court for the Central District of
20 California and the Judge assigned to the Action (the Honorable Jesus G. Bernal).

21 16. “Defendant” means Canidae Corporation.

22 17. “Defense Counsel” means the law firm of Gibson, Dunn & Crutcher
23 LLP.

24 18. “Effective Date” means the first business date after all of the following
25 conditions have been satisfied:

- 26 a. the Final Order and Judgment have been entered; and
27 b. (i) if reconsideration and/or appellate review is not sought from
28 the Final Order and Judgment, the expiration of the time for the filing or noticing of

1 any motion for reconsideration, appeal, petition, and/or writ has expired; or (ii) if
2 reconsideration and/or appellate review is sought from the Final Order and Judgment:
3 (A) the date on which the Final Order and Judgment are affirmed and are no longer
4 subject to judicial review, or (B) the date on which the motion for reconsideration,
5 appeal, petition, or writ is dismissed or denied and the Final Order and Judgment are
6 no longer subject to judicial review.

7 19. "Event of Termination" means any event terminating the Settlement
8 Agreement, including but not limited to: (1) mutual written agreement of the parties
9 to terminate the Settlement Agreement; (2) the Court denying any motion for
10 preliminary or final approval of the Settlement; (3) any reviewing court reversing the
11 Court's orders approving preliminary or final approval of the Settlement; or (4) any
12 other event set forth in this Settlement Agreement according to which the Settlement
13 Agreement would be terminated. Upon an Event of Termination, the parties shall
14 return to the status quo ante as it existed on the date this Settlement Agreement was
15 signed.

16 20. "Fairness Hearing" means the hearing that is to take place after the entry
17 of the Preliminary Approval Order and after the Notice Date for purposes of:
18 (a) determining whether the Settlement should be approved as fair, reasonable, and
19 adequate; (b) ruling upon an application for Incentive Awards by the Plaintiffs;
20 (c) ruling upon an application by Class Counsel for Attorneys' Fees and Expenses;
21 (d) entering the Final Order and Judgment; and (e) entering any final order awarding
22 Attorney's Fees and Expenses and Incentive Awards.

23 21. "Final Order and Judgment" means the Court's order and judgment fully
24 and finally approving the Settlement, substantially in the form attached hereto as
25 Exhibit "B."

26 22. "Household" means a single mailing address, regardless of the number
27 of Class Members residing there.

28 23. "Incentive Award(s)" means such funds as may be awarded by the Court

1 to the named Plaintiffs to compensate them for their services to the Class, as
2 described in Paragraphs 61 to 63 of this Settlement.

3 24. “Long Form Notice” means the long form notice of settlement,
4 substantially in the form attached hereto as Exhibit “D.”

5 25. “Notice Date” means the first date upon which the Class Notice is
6 disseminated by the Settlement Administrator.

7 26. “Notice of Missing or Inaccurate Information” means the notice sent by
8 the Settlement Administrator to a Class Member who has submitted a Claim Form
9 with inaccurate, disqualifying, incomplete, or missing information that is required for
10 the Claimant to be considered eligible for the Settlement Benefit provided by this
11 Settlement.

12 27. “Notice Plan” refers to the methods designed at the request of the
13 Settlement Administrator to disseminate the Class Notice, as set forth in Exhibit “H.”

14 28. “Parties” means Plaintiffs and Defendant, collectively, as each of those
15 terms is defined in this Settlement.

16 29. “Plaintiffs” (or “named Plaintiffs”) means Sarah Hill and Monica
17 O’Rourke.

18 30. “Preliminary Approval Order” means the order preliminarily approving
19 the Settlement and proposed Class Notice and Notice Plan, substantially in the form
20 attached hereto as Exhibit “F.”

21 31. “Product” or “Products” shall mean the products listed in Exhibit “A.”

22 32. “Proof of Purchase” means a receipt, product packaging (i.e. bar codes
23 or UPCs), or other documentation that reasonably establishes the fact and date of
24 purchase of the Product during the Class Period in the United States or its territories.
25 This includes, but is not limited to credit card receipts, store receipts, and physical
26 product packaging.

27 33. “Release” means the release and waiver set forth in Paragraphs 69 to 75
28 of this Settlement and in the Final Order and Judgment (Exhibit “B”).

1 34. “Released Claims” means and includes any and all claims, demands,
2 rights, damages, obligations, suits, debts, liens, and causes of action under common
3 law or statutory law (federal, state, or local) of every nature and description
4 whatsoever, ascertained or unascertained, suspected or unsuspected, existing or
5 claimed to exist, including known and unknown claims (as described in Paragraph 71
6 below) as of the Claim Form Deadline by all of the Plaintiffs and all Class Members
7 (and, to the extent on behalf of Plaintiffs and Class Members, their respective heirs,
8 guardians, executors, administrators, representatives, agents, attorneys, partners,
9 successors, predecessors-in-interest, and assigns) that (1) were asserted or could have
10 been asserted in this Action against Defendant relating to the Products (including, but
11 not limited to, the naming of the Product(s) as “PURE” and/or “Limited Ingredient,”
12 additional labeling representations including, but not limited to that any Product is
13 “Grain Free,” and any other claims regarding the labeling and marketing of, and/or
14 ingredients in, the Product(s)), and (2) arise out of or are related in any way to any or
15 all of the acts, omissions, facts, matters, transactions, occurrences, or events that were
16 or could have been directly or indirectly alleged or referred to in the Action
17 (including but not limited to alleged violations of state consumer protection, unfair
18 competition, and/or false or deceptive advertising statutes, breach of express or
19 implied warranty, fraud, negligence, product liability, conspiracy, unjust enrichment,
20 restitution, declaratory or injunctive relief, and other equitable claims or claims
21 sounding in contract or tort). “Released Claims” shall be construed as broadly as
22 possible to effect complete finality over all claims regarding the development,
23 creation, sale, labeling, marketing, advertising, composition, formulation,
24 manufacturing, and/or distribution of the Products as alleged in the Action or as could
25 have been asserted in the Action and as set forth herein.

26 35. “Released Parties” shall be defined and construed broadly to effectuate a
27 complete and comprehensive release, and means:

28 a. Canidae and each of its past, present, and future employees,

1 assigns, attorneys, agents, advertising agencies, consultants, officers, and directors;
2 and

3 b. All of Canidae’s past, present and future parents, subsidiaries,
4 divisions, affiliates, predecessors, and successors, and each of their respective
5 employees, assigns, attorneys, agents, officers, and directors.

6 36. “Releasing Parties” means Plaintiffs and all Class Members and, to the
7 extent on behalf of Plaintiffs or Class Members, each of their heirs, guardians,
8 executors, administrators, representatives, agents, attorneys, partners, successors,
9 predecessors-in-interest, and assigns.

10 37. “Settlement” means the terms and conditions embodied in this settlement
11 agreement, including all attached Exhibits (which are an integral part of this
12 Settlement and are incorporated in their entirety by reference).

13 38. “Settlement Administrator” means the qualified third-party administrator
14 and agent agreed to by the Parties and approved and appointed by the Court in the
15 Preliminary Approval Order to administer the Settlement, including providing the
16 Class Notice. The Parties agree to recommend that the Court appoint Heffler Claims
17 Group as Settlement Administrator to: (a) design, consult on, and implement the
18 notice and related requirements of this Settlement; and (b) implement the notice, the
19 Settlement Website, claim review, and related requirements of this Settlement,
20 subject to the Court’s approval.

21 39. “Settlement Administration Protocol” means the protocol attached hereto
22 as Exhibit “G,” which relates to the manner in which the Settlement Administrator
23 will administer the Class Notice, Claim Forms, and Benefits.

24 40. “Settlement Website” refers to the Internet website to be created for
25 purposes of administering this Settlement.

26 41. “Summary Notice” means the summary notice of the proposed class
27 action settlement, substantially in the form attached hereto as Exhibit “E.”

28 42. “Unit” means a single package of the Product.

1 Class for settlement purposes only have been satisfied, appointing Plaintiffs as the
2 representatives of the Class and Class Counsel as counsel for the Class, and
3 preliminarily approving the Settlement as being within the range of possible approval
4 as fair, adequate, and reasonable, such that the Class Notice should be provided
5 pursuant to this Settlement;

6 c. Scheduling the Fairness Hearing on a date ordered by the Court,
7 provided in the Preliminary Approval Order, and in compliance with applicable law,
8 to determine whether the Settlement should be approved as fair, reasonable, and
9 adequate, and to determine whether a Final Order and Judgment should be entered;

10 d. Determining that the Class Notice, as set forth in this Settlement,
11 complies with all legal requirements, including but not limited to the Due Process
12 Clause of the United States Constitution;

13 e. Preliminarily approving the form of the Final Order and
14 Judgment;

15 f. Appointing the Settlement Administrator;

16 g. Directing that Class Notice shall be given to the Class as provided
17 in Paragraphs 56 to 60 of this Settlement;

18 h. Providing that Class Members will have until the Claim Form
19 Deadline to submit Claim Forms;

20 i. Providing that members of the Class wishing to exclude
21 themselves from the Class will have until the deadline specified in the Preliminary
22 Approval Order to submit a valid written request for exclusion (*i.e.*, to opt out) to the
23 Settlement Administrator;

24 j. Providing a procedure for members of the Class to request
25 exclusion from the Settlement;

26 k. Providing that any objections by any Class Member to the
27 certification of the Class, the proposed terms and conditions contained in this
28 Settlement, and/or the entry of the Final Order and Judgment, shall be heard and any

1 papers submitted in support of said objections shall be considered by the Court at the
2 Fairness Hearing only if, on or before the date(s) specified in the Class Notice and
3 Preliminary Approval Order, such objector files with the Court a written objection
4 and notice of whether the objector intends to appear, and otherwise complies with the
5 requirements in Paragraphs 98 to 101 of this Settlement;

6 l. Establishing dates by which the Parties shall, subject to
7 Defendant's approval of the form and substance of Class Counsel's motion for final
8 approval, file and serve all papers in support of the motion for final approval of the
9 Settlement and/or in response to any valid and timely objections;

10 m. Providing that all Class Members will be bound by the Final
11 Order and Judgment;

12 n. Directing the Parties, pursuant to the terms and conditions of this
13 Settlement, to take all necessary and appropriate steps to implement the Settlement;

14 o. Pending the Fairness Hearing, staying all proceedings in the
15 Action, other than proceedings necessary to carry out or enforce the terms and
16 conditions of this Settlement and the Preliminary Approval Order; and

17 p. Pending the Fairness Hearing, enjoining Plaintiffs and the Class,
18 collectively or individually, from commencing or prosecuting, either directly or
19 indirectly, any action in any forum (state or federal) asserting any of the Released
20 Claims.

21 46. Following the entry of the Preliminary Approval Order, the Class Notice
22 shall be given and published by the Settlement Administrator within thirty (30) days
23 in the manner directed and approved by the Court.

24 47. Based upon the Declaration of the Settlement Administrator, attached
25 hereto as Exhibit "H," the Parties agree that the Notice Plan contemplated by this
26 Settlement, as described in Paragraphs 56 through 60 below, is valid and effective,
27 that if effectuated, it would provide reasonable notice to the Class, and that it
28 represents the best practicable notice under the circumstances.

1 **IV. THE SETTLEMENT CONSIDERATION**

2 **A. Settlement Benefits and Claims Administration**

3 48. Subject to the rights and limitations set forth in this Settlement, every
4 Class Member shall have the right to submit a claim for a Benefit. A claim shall be a
5 Valid Claim only if submitted on the Claim Form pursuant to and in compliance with
6 the procedures set forth herein during the Claim Period. Submission of a claim,
7 regardless of whether it is determined to be a Valid Claim, shall confer no rights or
8 obligations on any Party, any Class Member, or any other person, except as expressly
9 provided herein.

10 49. Class Members shall have access to the Claim Form via the Settlement
11 Website. At the election of the Class Member, a Claim Form may be submitted in
12 paper via first class mail or online at the Settlement Website. A Claim Form must be
13 postmarked to the Settlement Administrator or submitted online no later than the
14 Claim Form Deadline. A Claim Form postmarked or submitted online after the
15 Claim Form Deadline will not be eligible to be a Valid Claim. The Settlement
16 Administrator may track Claim Forms with unique Class Member identifiers. For
17 Claim Forms that are submitted online, every Class Member shall be provided the
18 opportunity on the Claim Form to upload Proof of Purchase image files (*e.g.*, .jpg,
19 .tif, .pdf). Class Members submitting Claim Forms by mail should include hard copy
20 Proof of Purchase with their Claim Form.

21 50. On the Claim Form, the Class Member must provide and certify the truth
22 and accuracy of the following information under the penalty of perjury, including by
23 signing the Claim Form physically or by e-signature, or the claim will not be eligible
24 to be considered a Valid Claim by the Settlement Administrator:

- 25 a. The Class Member's name and mailing address;
26 b. The Class Member's email address (unless the Class Member
27 returns the claim form by mail, in which case an email address is
28 optional);

- c. The number of Units purchased during the Class Period; and
- d. That the claimed purchases of the Product were not made for the purpose of resale.

51. Each Class Member who submits a Valid Claim, as determined by the Settlement Administrator, shall receive a Benefit to be paid after the Effective Date. In consideration for the Settlement and Releases given herein and subject to the rights, terms, and conditions of this Settlement, Defendant will pay or cause to be paid Valid Claims as follows: Class Members who provide a valid Claim Form shall recover subject to the following conditions:

Option 1: A Class Member who provides valid Proofs of Purchase for qualifying products during the Class Period may recover five dollars (\$5.00) for every fifty dollars (\$50.00) spent, as reflected in the valid Proofs of Purchase, up to a maximum of one hundred and twenty-five dollars (\$125.00) per Household. Any amounts of less than fifty dollars (\$50.00) will neither be eligible for nor receive prorated Benefit amounts.

Option 2: A Class Member who does not provide valid Proof of Purchase (or a Class Member who provides Proofs-of-Purchase but whose total purchases during the Class Period fall below fifty dollars (\$50.00)) may recover exactly five dollars (\$5.00) per Household.

Class Members may make a claim for purchases with valid Proofs of Purchase that collectively exceed fifty dollars (Option 1, above) OR may make a claim without providing Proofs of Purchase or whose total purchases equal less than fifty dollars (Option 2, above), but may not make claims for both Option 1 and 2. If more than one Valid Claim is submitted per Household, all such Valid Claims shall be combined and considered together for purposes of the limits set forth herein, and Benefits will be paid to the first “same household” Class Member in the chronological order in which the claims were received by the Settlement Administrator.

1 52. No deductions for taxes will be taken from any Benefit at the time of
2 distribution. Class Members are responsible for paying all taxes due on such
3 Benefits. All Benefit checks shall be deemed to be paid solely in the year in which
4 the Benefit is disbursed to claimants by Defendant through the Settlement
5 Administrator. The Parties do not purport to provide legal advice on tax matters to
6 each other or Class Members. To the extent this Settlement, or any of its Exhibits or
7 related materials, is interpreted to contain or constitute advice regarding any U.S.
8 federal or any state tax issue, such advice is not intended or written to be used, and
9 cannot be used, by any person for the purpose of avoiding penalties under the Internal
10 Revenue Code or any state’s tax laws.

11 53. Claimants will have the opportunity to select an electronic payment
12 option by submitting their claim form online as outlined in the Settlement
13 Administrator Protocol, attached hereto as Exhibit “G.” All settlement checks issued
14 to Claimants will be valid and negotiable for a period of ninety (90) days.

15 54. Defendant shall be responsible for paying all fees and expenses incurred
16 by the Settlement Administrator in administering claims and performing the other
17 tasks set forth in Section VIII.

18 **B. Modifications**

19 55. Nothing in this Settlement shall require Defendant to change or modify
20 the Products’ labeling, marketing, distribution, or composition.

21 **V. NOTICE TO THE CLASS**

22 56. The Parties shall jointly recommend and retain Heffler Claims Group to
23 be the Settlement Administrator. Following the Court’s preliminary approval of this
24 Settlement and the Court’s appointment of the proposed Settlement Administrator,
25 the Settlement Administrator shall disseminate the Class Notice as provided for in the
26 Declaration of the Settlement Administrator, attached hereto as Exhibit “H,” as
27 specified in the Preliminary Approval Order and in this Settlement, and in order to
28 comply with all applicable laws, including, but not limited to, the Due Process Clause

1 of the United States Constitution.

2 57. The Long Form Notice: The Long Form Notice shall be in a form
3 substantially similar to the document attached to this Settlement as Exhibit “D” and
4 shall comport to the following:

5 a. General Terms: The Long Form Notice shall contain a plain and
6 concise description of the nature of the Action and the proposed Settlement, including
7 information regarding the definition of the Class, the identity of members of the
8 Class, how the proposed Settlement would provide relief to Class Members, what
9 claims are released under the proposed Settlement, eligibility requirements for
10 receiving a Benefit, and other relevant information.

11 b. Opt-Out Rights: The Long Form Notice shall inform the Class
12 that any member of the Class has the right to seek exclusion from (*i.e.*, opt out of) the
13 Settlement. The Long Form Notice shall provide the deadlines and procedures for
14 exercising this right.

15 c. Objection to Settlement: The Long Form Notice shall inform the
16 Class that any member of the Class has the right to object to the Settlement and
17 appear at the Fairness Hearing. The Class Notice shall provide the deadlines and
18 procedures for exercising these rights.

19 d. Fees and Expenses: The Long Form Notice shall inform the Class
20 about responsibility for the fees and expenses related to the Settlement Administrator,
21 as well as provide information about the Attorneys’ Fees and Expenses and Incentive
22 Awards sought by Class Counsel and Plaintiffs.

23 e. Claim Process: The Long Form Notice shall inform the Class
24 about how to file a Valid Claim prior to the Claim Form Deadline in order to be
25 eligible to obtain a Benefit under the terms and conditions of the Settlement.

26 58. The Summary Notice: The Settlement Administrator shall have the
27 publication of the Summary Notice completed pursuant to and as described in the
28 Declaration of the Settlement Administrator, attached hereto as Exhibit “H,” on

1 online media outlets, no later than thirty (30) days following entry of the Preliminary
2 Approval Order. The form of Summary Notice agreed upon by the Parties is in the
3 form substantially similar to the one attached hereto as Exhibit “E.”

4 59. Settlement Website: Before the dissemination of the Class Notice, the
5 Settlement Administrator shall establish an Internet website that will inform the Class
6 of the terms and conditions of this Settlement, their rights, important dates and
7 deadlines, and related information. The Settlement Website shall include, in .pdf
8 format, materials agreed upon by the Parties and/or required by the Court, including
9 but not limited to the Long Form Notice, the Claim Form, the Preliminary Approval
10 Order, this Settlement (including all of its Exhibits), and the Amended Complaint.

11 60. Within fifteen (15) days after the entry of the Preliminary Approval
12 Order, the Parties will coordinate with the Settlement Administrator to provide notice
13 to the Class by publishing, on or before the Notice Date as specified in the
14 Preliminary Approval Order, the Long Form Notice on the Settlement Website and
15 the Summary Notice as set forth in the Declaration of the Settlement Administrator,
16 attached hereto as Exhibit “H.”

17 **VI. ATTORNEYS’ FEES AND EXPENSES AND CLASS**
18 **REPRESENTATIVE INCENTIVE AWARDS**

19 61. In recognition of the time and effort the Plaintiffs expended in pursuing
20 this Action and in fulfilling their obligations and responsibilities as class
21 representatives, and of the relief conferred on all Class Members by the Settlement,
22 Class Counsel may ask the Court for the payment of an Incentive Award to each of
23 the Plaintiffs. Defendant agrees to pay up to a total of five thousand dollars and zero
24 cents (\$5,000.00) for Incentive Awards to each Plaintiff, up to a total of ten thousand
25 dollars and zero cents (\$10,000.00). Plaintiffs and Class Counsel agree that they will
26 not seek, or accept, Incentive Awards that exceed a total of \$5,000.00 each.

27 62. The Settlement Administrator shall issue an IRS Form 1099-MISC to
28 Plaintiffs solely for the amount awarded by the Court for each Incentive Award.

1 Plaintiffs shall be solely and legally responsible to pay all applicable taxes, penalties,
2 or interest arising as a result of the Incentive Awards.

3 63. Payment by Defendant of the Incentive Award is separate from, and in
4 addition to, the other relief afforded to the Class Members in the Settlement and is
5 separate from, and in addition to, any Attorneys' Fees and Expenses awarded.

6 64. Class Counsel may make an application to the Court for an award of
7 Attorneys' Fees and Expenses in the Action to be paid by Defendant, which shall be
8 the sole aggregate compensation received by Class Counsel. Defendant agrees not to
9 oppose the application for Attorneys' Fees and Expenses by Class Counsel or
10 undermine that request or solicit others to do so to the extent Class Counsel does not
11 request a total of more than one million three hundred thousand dollars and zero cents
12 (\$1,300,000.00). Class Counsel shall file a motion for a Fee Award and Incentive
13 Awards on a date to be set by the Court. The amount of the Attorneys' Fees and
14 Expenses will be determined by the Court and is payable within 10 days after the
15 Effective Date; however, Class Counsel agrees not to seek, or accept, more than
16 \$1,300,000.00 for Attorneys' Fees and Expenses.

17 65. Any Attorneys' Fees and Expenses awarded by the Court will be in lieu
18 of statutory fees Plaintiffs and/or their attorneys might otherwise have been entitled to
19 recover from Defendant. The Attorneys' Fees and Expenses awarded by the Court
20 shall be inclusive of all fees and costs of Class Counsel to be paid by Defendant in
21 the Action. Plaintiffs and Class Counsel agree that Defendant shall not pay, or be
22 obligated to pay, Class Counsel in excess of any award of Attorneys' Fees and
23 Expenses authorized by the Court and as further addressed in Paragraphs 64 and 65.

24 66. Defendant shall have no liability or other responsibility for allocation of
25 any such Attorneys' Fees and Expenses or Incentive Awards awarded, and, in the
26 event that any dispute arises relating to the allocation of Attorneys' Fees and
27 Expenses or Incentive Awards, Class Counsel agree to hold Defendant harmless from
28 any and all such liabilities, costs, and expenses of such dispute.

1 injuries or damages, including all rights of action thereunder. Plaintiffs and Class
2 Members hereby expressly, knowingly, and voluntarily waive the provisions of
3 Section 1542 of the California Civil Code, which provides as follows:

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

11 Plaintiffs and Class Members expressly waive and relinquish any and all rights or
12 benefits that they may have under, or that may be conferred upon them by, the
13 provisions of Section 1542 of the California Civil Code, or any other law of any state
14 or territory that is similar, comparable, or equivalent to Section 1542, to the fullest
15 extent that they may lawfully waive such rights or benefits pertaining to the Released
16 Claims. In connection with such waiver and relinquishment, Plaintiffs and the Class
17 Members hereby acknowledge that they are aware that they or their attorneys may
18 hereafter discover claims or facts in addition to or different from those that they now
19 know or believe exist with respect to the Released Claims, but that it is their intention
20 to hereby fully, finally, and forever settle and release all of the Released Claims
21 known or unknown, suspected or unsuspected, that they have or may have against the
22 Released Parties. In furtherance of such intention, the Release herein given by
23 Plaintiffs and the Class Members to the Released Parties shall be and remain in effect
24 as a full and complete release notwithstanding the discovery or existence of any such
25 additional different claims or facts. Each of the Parties expressly acknowledges that
26 he/she/it has been advised by his/her/its attorney of the contents and effect of Section
27 1542, and with knowledge, each of the Parties hereby expressly waives whatever
28 benefits he/she/it may have had pursuant to such section (or comparable or similar
provisions under the laws of other states or jurisdictions).

1 72. Plaintiffs acknowledge, and the Class Members shall be deemed by
2 operation of the Final Order and Judgment to have acknowledged, that the foregoing
3 waiver was separately bargained for and a material element of the Settlement of
4 which this Release is a part.

5 73. Upon entry of a Final Order and Judgment in the Action, the Action
6 shall be dismissed with prejudice. Class Counsel shall have the responsibility for
7 ensuring that the Action is timely dismissed with prejudice in accordance with the
8 terms of this Settlement Agreement.

9 74. The Court shall retain jurisdiction over the Parties to this Settlement
10 Agreement with respect to the future performance of the terms of this Settlement
11 Agreement. In the event that any applications for relief are made, such applications
12 shall be made to the Court.

13 75. Upon the Effective Date: (a) this Settlement shall be the exclusive
14 remedy for any and all Released Claims of Plaintiffs and Class Members; and
15 (b) Plaintiffs and the Class Members stipulate to be and shall be permanently barred
16 and enjoined by Court order from initiating, asserting, or prosecuting against the
17 Released Parties in any federal or state court or tribunal all Released Claims.

18 **VIII. ADMINISTRATION OF THE SETTLEMENT**

19 76. Because the names of Class Members and other personal information
20 about them will be provided to the Settlement Administrator for purposes of
21 providing Benefits to Class Members and processing opt-out requests, the Settlement
22 Administrator will execute a confidentiality and non-disclosure agreement with
23 Defendant and Class Counsel and will take all reasonable steps to ensure that any
24 information provided to it by Class Members will be used solely for the purpose of
25 effecting its obligation under the terms and conditions of this Settlement.

26 77. In fulfilling its responsibilities in providing Class Notice, the Settlement
27 Administrator, without limitation, shall be responsible for: (a) arranging for the
28 publication of the Summary Notice and dissemination of the Class Notice as set forth

1 in the Declaration of the Settlement Administrator attached hereto as Exhibit “H” and
2 pursuant to the requirements of this Settlement; (b) designing and implementing
3 notice to the Class by various electronic media as set forth in the Declaration of the
4 Settlement Administrator attached hereto as Exhibit “H” and pursuant to the
5 requirements of this Settlement; (c) responding to requests from Class Counsel and/or
6 Defense Counsel; and (d) otherwise implementing and/or assisting with the
7 dissemination of the notice of the Settlement as set forth in the Declaration of the
8 Settlement Administrator attached hereto as Exhibit “H” and pursuant to the
9 requirements of this Settlement.

10 78. The Settlement Administrator also shall be responsible for implementing
11 the terms of the claim process and related administrative activities that include
12 communications with the Class concerning the Settlement, the claim process, and
13 their options thereunder. In particular, the Settlement Administrator shall be
14 responsible for: (a) printing, e-mailing, mailing, or otherwise arranging for the
15 distribution of the Claim Forms in response to requests by members of the Class;
16 (b) making any electronic or physical mailings required under the terms of this
17 Settlement; (c) establishing the Settlement Website that contains the Claim Form that
18 can be completed and submitted online; (d) receiving and maintaining any
19 correspondence from the Class regarding requests for exclusion and objections to the
20 Settlement; (e) forwarding inquiries from the Class to Class Counsel or their designee
21 for a response, if warranted; (f) maintaining an address for the receipt of Claim
22 Forms, exclusion requests, objections, and any correspondence from the Class;
23 (g) reviewing Claim Forms according to the review protocols agreed to by the Parties
24 and set forth in this Settlement and the Settlement Administration Protocol, attached
25 hereto as Exhibit “G”; and (h) otherwise implementing and/or assisting with the claim
26 review process and payment of Valid Claims.

27 79. The Settlement Administrator shall administer the Settlement in
28 accordance with its terms and conditions (including, but not limited to, the Settlement

1 Administration Protocol attached as Exhibit “G”) and, without limiting the foregoing,
2 shall:

3 a. Treat any and all documents, communications and other
4 information and materials received in connection with the administration of the
5 Settlement as confidential and shall not disclose any or all such documents,
6 communications, or other information to any person or entity except as provided for
7 in this Settlement or by Court order;

8 b. Receive correspondence from members of the Class to exclude
9 themselves from the Class. If the Settlement Administrator receives any exclusion
10 (*i.e.*, opt-out) requests from members of the Class after the deadline for the
11 submission of such requests, the Settlement Administrator shall promptly provide
12 Class Counsel and Defense Counsel with copies thereof;

13 c. Receive copies of objections from members of the Class who are
14 objecting to any aspect of the Settlement; and

15 d. Receive and maintain all other correspondence from any Class
16 Member regarding the Settlement.

17 e. Provide weekly reports about the number of claims received.

18 80. The Settlement Administrator shall be reimbursed by Defendant for
19 reasonable costs, fees, and expenses of providing notice to the Class and
20 administering this Settlement.

21 81. Each Class Member may submit a Claim Form pursuant to the
22 instructions set forth therein. The Claim Form shall include an attestation,
23 substantially in the following form: “I declare or affirm, under penalty of perjury, that
24 the information in this Claim Form is true and correct to the best of my knowledge,
25 and that I purchased the amount of the Product(s) claimed above prior to the [Notice
26 Date]. I understand that my Claim Form may be subject to audit, verification, or
27 Court review.” Claim Forms will be: (a) included on the Settlement Website to be
28 designed and administered by the Settlement Administrator; and (b) made readily

1 available from the Settlement Administrator.

2 82. Any Class Member who does not submit a Valid Claim in accordance
3 with the terms and conditions of this Settlement will not be entitled to receive any
4 Benefit or any other monetary relief pursuant to this Settlement, but will in other
5 respects be bound together with all Class Members by all of the terms of this
6 Settlement, including the terms of the Final Order and Judgment to be entered in the
7 Action and the Release provided for herein, and will be barred from bringing any
8 action in any forum (state or federal) against any of the Released Parties concerning
9 any of the Released Claims.

10 83. Claim Forms that do not meet the requirements set forth in this
11 Settlement and in the Claim Form instructions shall be rejected. Where a good faith
12 basis exists, the Settlement Administrator may reject a Class Member's Claim Form
13 for, among other reasons, the following:

- 14 a. The Class Member purchased products that are not covered by the
15 terms of this Settlement;
- 16 b. The Class Member did not purchase covered products during the
17 Class Period;
- 18 c. Failure to fully complete and/or sign the Claim Form (which
19 signature may be accomplished through online verification);
- 20 d. Illegible Claim Form;
- 21 e. The Product(s) purchased by the Class Member is (are) not
22 reasonably identifiable as the Product from the Proof of Purchase submitted by the
23 Class Member (if Proof of Purchase is required pursuant to this Settlement or
24 requested by the Settlement Administrator);
- 25 f. Failure to provide adequate Proof of Purchase if the same is
26 required pursuant to this Settlement or requested by the Settlement Administrator;
- 27 g. The Claim Form is fraudulent;
- 28 h. The Claim Form is duplicative of another Claim Form;

1 i. The Claim Form is not submitted on behalf of a Class Member;
2 j. The person submitting the Claim Form requests that payment be
3 made to a person or entity other than the Class Member for whom the Claim Form is
4 submitted;

5 k. Failure to submit a Claim Form by the Claim Form Deadline;
6 and/or

7 l. The Claim Form otherwise does not comply with the requirements
8 of this Settlement.

9 84. The Settlement Administrator shall determine whether a Claim Form
10 meets the requirements set forth in this Settlement. Each Claim Form shall be
11 submitted to and reviewed by the Settlement Administrator, who shall determine (in
12 accordance with this Settlement and the Settlement Administration Protocol, attached
13 hereto as Exhibit “G”) the extent, if any, to which each claim shall be allowed. The
14 Settlement Administrator shall use all reasonable efforts and means to identify and
15 reject duplicate and/or fraudulent claims, including, without limitation, indexing all
16 funds provided to Class Members. If any fraud is detected or reasonably suspected,
17 the Settlement Administrator can require information from Class Members or deny
18 claims, subject to the supervision of the Parties and ultimate oversight by the Court.

19 85. Claim Forms that do not meet the terms and conditions of this
20 Settlement shall be promptly rejected by the Settlement Administrator, except if the
21 Claim Form is rejected for containing incomplete or inaccurate information, and/or
22 omitting required information or proof, the Settlement Administrator shall send a
23 Notice of Missing or Inaccurate Information explaining what information is missing
24 or inaccurate. The Settlement Administrator shall notify the Class Member using the
25 contact information provided in the Claim Form.

26 86. Class Members shall have until the end of the Claim Period, or forty-five
27 (45) calendar days from when the Notice of Missing or Inaccurate Information was
28 postmarked, whichever is later, to reply to the Notice of Missing or Inaccurate

1 Information, and provide the required information.

2 87. If a Class Member fails to respond by the end of the Claim Period or
3 within forty-five (45) calendar days from when the Notice of Missing or Inaccurate
4 Information was mailed, whichever is later, or the Settlement Administrator is unable
5 to provide a Notice of Missing or Inaccurate Information as a result of the omitted
6 information, the Settlement Administrator will reject such Claimant's claim and will
7 not be obligated to make any payment on such claim.

8 88. The Settlement Administrator shall have thirty (30) days from the end of
9 the Claim Period to exercise the right of rejection based on findings of fraud or
10 duplication. A request for additional information shall not be considered a rejection
11 for purposes of this Paragraph. If a claim is rejected for fraud or duplication, the
12 Settlement Administrator shall notify the Class Member using the contact information
13 provided in the Claim Form. Class Counsel and Defense Counsel shall be provided
14 with copies of all such notifications to Class Members. The Settlement
15 Administrator's determination as to whether to approve or deny a claim shall be final
16 and binding, except that, if any Claimant whose Claim Form has been rejected, in
17 whole or in part, desires to contest such rejection, the Claimant must, within fifteen
18 (15) business days from receipt of the rejection, transmit to the Settlement
19 Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the
20 Claimant's grounds for contesting the rejection, along with any supporting
21 documentation, and requesting further review by the Settlement Administrator, in
22 consultation with Class Counsel and Defense Counsel, of the denial of the claim. If
23 Class Counsel and Defense Counsel cannot agree on a resolution of the Claimant's
24 notice contesting the rejection, the disputed claim shall be presented to the Court or a
25 referee appointed by the Court for summary and non-appealable resolution.

26 89. No person shall have any claim against Defendant, Defense Counsel,
27 Plaintiffs, the Class, Class Counsel, and/or the Settlement Administrator based on any
28 eligibility determinations, distributions, or awards made in accordance with this

1 Settlement. This provision does not affect or limit in any way the right of review by
2 the Court or referee of any disputed Claim Forms as provided in this Settlement.

3 90. A Claim Form may be submitted by mail or electronically at the
4 Settlement Website to be designed and administered by the Settlement Administrator.
5 Where the Claim Form is submitted by mail and does not require Proof of Purchase,
6 the Claim Form will be deemed to have been submitted when the Claim Form is
7 posted, if received with a postmark, or equivalent mark by a courier company
8 indicated on the envelope or mailer and if mailed with pre-paid postage and
9 addressed in accordance with the instructions set out in the Claim Form. Where
10 Proof of Purchase is required to be submitted as part of the Claim Form, the Claim
11 Form will be deemed to have been submitted when the Proof of Purchase is posted, if
12 received with a postmark, or equivalent mark by a courier company indicated on the
13 envelope or mailer and if mailed with pre-paid postage and addressed in accordance
14 with the instructions set out in the Claim Form. In all other cases, the Claim Form
15 shall be deemed to have been submitted when it is actually received by the Settlement
16 Administrator. The web-based Claim Form shall include necessary disclaimers to
17 comply with California's Uniform Electronic Transactions Act, Civil Code § 1633.1
18 *et seq.* (or comparable or similar provisions under the laws of other states or
19 jurisdictions).

20 91. Class Counsel and Defense Counsel shall have the right to inspect the
21 Claim Forms and supporting documentation received by the Settlement Administrator
22 at any time upon reasonable notice.

23 92. Not later than seven (7) days before the date of the Fairness Hearing, the
24 Settlement Administrator shall file with the Court: (a) a list of those persons who
25 have requested exclusion from (*i.e.*, opted out of) the Class; and (b) the details
26 regarding the number of Valid Claims received and processed by the Settlement
27 Administrator to date.

28 93. The Settlement Administrator may retain one or more persons to assist in

1 the completion of its responsibilities.

2 94. The Settlement Administrator shall distribute Benefits no later than
3 ninety (90) days after the Effective Date to eligible Class Members who submit a
4 Valid Claim.

5 95. If the Settlement is not approved, or for any reason the Effective Date
6 does not occur, no payments or distributions of any kind shall be made pursuant to
7 this Settlement, except for the costs and expenses of the Settlement Administrator,
8 which shall be paid by Defendant, and for which Plaintiffs and/or Class Counsel are
9 not responsible.

10 96. In the event the Settlement Administrator fails to perform its duties,
11 and/or makes a material or fraudulent misrepresentation to, or conceals requested
12 material information from, Plaintiffs, Class Counsel, Defendant, and/or Defense
13 Counsel, then the Party to whom the misrepresentation is made shall, in addition to
14 any other appropriate relief, have the right to demand that the Settlement
15 Administrator immediately be replaced. No Party shall unreasonably withhold
16 consent to remove the Settlement Administrator. The Parties will attempt to resolve
17 any disputes regarding the retention or dismissal of the Settlement Administrator in
18 good faith, and, if they are unable to do so, will refer the matter to the Court for
19 resolution.

20 97. Defendant and the Released Parties are not obligated to (and will not be
21 obligated to) compute, estimate, or pay any taxes on behalf of any Plaintiff, any Class
22 Member, Class Counsel, and/or the Settlement Administrator.

23 **IX. OBJECTIONS AND OPT-OUTS**

24 98. Class Members who fail to file with the Court and serve upon the
25 Settlement Administrator, Class Counsel, and Defense Counsel timely written
26 objections in the manner specified in this Settlement and the Class Notice shall be
27 deemed to have waived all objections and shall be foreclosed from making any
28 objection (whether by appeal or otherwise) to the Settlement. Any member of the

1 Class who submits a timely request for exclusion (*i.e.*, to opt out) may not file an
2 objection to the Settlement and shall have no rights or entitlement to Benefits under
3 this Settlement.

4 99. Any Class Member who intends to object to the fairness, reasonableness,
5 and/or adequacy of the Settlement must, in addition to timely filing a written
6 objection with the Court, send the written objection to the Settlement Administrator
7 by U.S. mail (at the mailing address to be included in the Long Form and Summary
8 Notices, substantially in the form attached as Exhibits D and E) or by e-mail, along
9 with a copy by U.S. mail or e-mail to Class Counsel and Defense Counsel (at the
10 addresses set forth below) postmarked no later than the date specified in the
11 Preliminary Approval Order. Class Members who object must set forth: (a) their full
12 name; (b) current address; (c) a written statement of their objection(s) and the reasons
13 for each objection; (d) a statement of whether they intend to appear at the Fairness
14 Hearing, and if so, whether they will appear with separate counsel; (e) their signature;
15 (f) the case name and case number (*Hill, et al. v. Canidae Corporation*, No. 5:20-cv-
16 01374-JGB-SP); and (g) a detailed list of any other objections submitted by the Class
17 Member, or his/her counsel, to any class actions in any court, whether federal, state,
18 or otherwise, in the United States in the previous five (5) years. If the Class Member
19 or his/her counsel has not objected to any other class action settlement in any court in
20 the United States in the previous five (5) years, he/she shall affirmatively state so in
21 the written materials provided in connection with the objection to this Settlement.
22 Objections must be served on the Settlement Administrator (at the mailing address to
23 be included in the Long Form and Summary Notices, substantially in the form
24 attached as Exhibits D and E, or by email), as well as Class Counsel and Defense
25 Counsel as follows:

26 Upon Class Counsel at:

27 Alex R. Straus
28 GREG COLEMAN LAW PC

1 16748 McCormick Street
2 Los Angeles, CA 91436
3 Email: alex@gregcolemanlaw.com

4 Upon Defense Counsel at:

5 Timothy Loose
6 GIBSON, DUNN & CRUTCHER LLP
7 333 South Grand Avenue
8 Los Angeles, CA 90071
9 Email: tloose@gibsondunn.com

10 100. No Class Member shall be entitled to object to the Settlement, and no
11 written objections or briefs submitted by any Class Member shall be received or
12 considered by the Court at the Fairness Hearing, unless written notice of the objecting
13 Class Member's intention to appear (or not appear) at the Fairness Hearing and
14 copies of any written objections and/or briefs, shall have been filed with the Court
15 and served on the Settlement Administrator, Class Counsel, and Defense Counsel on
16 or before the date specified in the Preliminary Approval Order. Objections that are
17 mailed to the Court (and not filed with the Court), or objections that are served on the
18 Parties but not filed with the Court, shall not be received or considered by the Court
19 at the Fairness Hearing.

20 101. The Parties shall request that the Court allow any interested party to file
21 a response to any objection, as described in Paragraphs 99 to 101, no later than seven
22 (7) days before the Fairness Hearing, or as the Court may otherwise direct.

23 102. Members of the Class may elect to exclude themselves from (*i.e.*, opt out
24 of) the Class, relinquishing their rights to monetary relief or Benefits hereunder.
25 Members of the Class who opt out of the Settlement will not release their claims
26 pursuant to this Settlement. Members of the Class wishing to opt out of the
27 Settlement must send to the Settlement Administrator by U.S. mail (at the mailing
28 address to be included in the Long Form and Summary Notices, substantially in the
form attached as Exhibits "D" and "E") a personally signed letter including (a) their
full name; (b) current address; (c) a clear statement communicating that they elect to

1 be excluded from the Class, do not wish to be a Class Member, understand that they
2 will not receive any monetary benefit under the Settlement and that they elect to be
3 excluded from any judgment entered pursuant to the Settlement; (d) their signature;
4 and (e) the case name and case number (*Hill, et al. v. Canidae Corporation*, No. 5:20-
5 cv-01374-JGB-SP). Any request for exclusion must be postmarked on or before the
6 exclusion deadline provided in the Court's Preliminary Approval Order. The date of
7 the postmark on the return-mailing envelope shall be the exclusive means used to
8 determine whether a request for exclusion has been timely submitted. Members of
9 the Class who fail to submit a valid and timely request for exclusion on or before the
10 date specified in the Court's Preliminary Approval Order shall be bound by all terms
11 of this Settlement and the Final Order and Judgment, regardless of whether they have
12 requested exclusion from the Settlement. If a Class Member submits both a Claim
13 Form and a request for exclusion, the Claim Form shall take precedence and be
14 considered binding, and the opt-out request shall be deemed to have been sent by
15 mistake and rejected.

16 103. The Settlement Administrator shall promptly provide copies of all
17 requests for exclusion, objections, and/or related correspondence from the Class to
18 Class Counsel and Defense Counsel. Not later than three (3) business days after the
19 deadline for submission of requests for exclusion (*i.e.*, to opt out), the Settlement
20 Administrator shall provide to Class Counsel and Defense Counsel a complete opt-
21 out list, which shall also be filed with the Court no later than seven (7) days before
22 the Fairness Hearing, together with copies of the opt-out requests.

23 104. On the date set forth in the Preliminary Approval Order, a Fairness
24 Hearing shall be conducted to determine final approval of the Settlement. Class
25 Members who wish to be heard at the Fairness Hearing (whether individually or
26 through separate counsel) and are objecting to the Settlement shall comply with the
27 provisions of this Settlement (including Paragraphs 99 to 101). Class Members who
28 wish to be heard at the Fairness Hearing (whether individually or through separate

1 counsel) and are not objecting to the Settlement shall file a notice of appearance with
2 the Court, and serve the notice upon Class Counsel and Defense Counsel at the
3 addresses indicated above at least fourteen (14) calendar days before the Fairness
4 Hearing.

5 **X. SCOPE AND EFFECT OF CONDITIONAL CERTIFICATION OF THE**
6 **CLASS SOLELY FOR PURPOSES OF SETTLEMENT**

7 105. For purposes of settlement only, the Parties agree to seek provisional
8 certification of the Class. The Parties further agree that the Court should make
9 preliminary findings and enter the Preliminary Approval Order (substantially in the
10 form attached at Exhibit “F”) granting provisional certification of the Class subject to
11 final findings and ratification in the Final Order and Judgment, and appointing the
12 Plaintiffs as the representatives of the Class and Class Counsel as counsel for the
13 Class.

14 106. Defendant does not consent to certification of the Class for any purpose
15 other than to effectuate this Settlement. Defendant’s agreement to conditional
16 certification does not constitute an admission of wrongdoing, fault, liability, or
17 damage of any kind to Plaintiffs or any members of the Class.

18 107. If this Settlement is terminated pursuant to its terms, disapproved by any
19 court (including any appellate court), and/or not consummated for any reason, or the
20 Effective Date for any reason does not occur, the order certifying the Class for
21 purposes of effectuating this Settlement, and all preliminary and/or final findings
22 regarding that class certification order, shall be automatically vacated upon notice of
23 the same to the Court; the Action shall proceed as though the Class had never been
24 certified pursuant to this Settlement and such findings had never been made; and the
25 Action shall return to the procedural status quo as of the date this Settlement was
26 signed by the parties, in accordance with this Paragraph. Class Counsel shall not
27 refer to or invoke the vacated findings and/or order relating to this Settlement in this
28 Action or any future proceeding in the event this Settlement is not consummated and

1 the Action, including the appropriateness of class certification, is later litigated and
2 contested by Defendant.

3 **XI. MODIFICATION OR TERMINATION OF THE SETTLEMENT**

4 108. The terms and provisions of this Settlement may be amended, modified,
5 or expanded by written agreement of the Parties and approval of the Court; provided,
6 however, that, after entry of the Final Order and Judgment, the Parties may by written
7 agreement effect such amendments, modifications, or expansions of this Settlement
8 and its implementing documents (including all Exhibits hereto) without further notice
9 to the Class or approval by the Court if such changes are consistent with the Court's
10 Final Order and Judgment and do not materially alter, reduce or limit the rights of
11 Class Members under this Settlement.

12 109. In the event that more than 100 individuals submit timely and valid
13 requests to exclude themselves from the Class, within seven (7) days of its receipt of
14 a final list of individuals requesting exclusion as provided in Paragraph 103,
15 Defendant shall have the option, within its sole discretion, to void this Settlement. In
16 such event, Defendant shall still be responsible for any costs incurred by the
17 Settlement Administrator until and including the date of voiding.

18 110. In the event any of the terms or conditions of this Settlement are
19 materially modified by any court, either Party in its sole discretion may, within
20 fourteen (14) days after such a material modification, declare this Settlement null and
21 void. For purposes of this Paragraph, material modifications include but are not
22 limited to any modifications to the definitions of the Class, Class Members, the
23 Benefit, or Released Claims; substantive changes to the Notice Plan described in
24 Paragraphs 56 to 60 or any Exhibit hereto; and/or any modifications to the terms of
25 the settlement consideration described in Paragraphs 48 to 55 or the terms of the
26 Attorney's Fees and Expenses and Incentive Awards described in Paragraphs 61 to
27 67. In the event that a Party exercises his/her/its option to withdraw from and
28 terminate this Settlement, then the Settlement proposed herein shall become null and

1 void and shall have no force or effect, the Parties shall not be bound by this
2 Settlement, and the Parties in the Action will be returned to their respective positions
3 existing immediately before the execution of this Settlement. Notwithstanding the
4 foregoing, in the event this Settlement is not approved by any court, or is declared
5 null and void, or in the event that the Effective Date does not occur, Class Members,
6 Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any
7 costs of notice and administration associated with this Settlement, except that each
8 Party shall bear its own attorneys' fees and costs and Defendant's future payment
9 obligations to Class Counsel or Class Members shall cease.

10 **XII. SETTLEMENT NOT EVIDENCE AGAINST PARTIES**

11 111. The Parties expressly acknowledge and agree that this Settlement and its
12 Exhibits, along with all related drafts, motions, pleadings, conversations,
13 negotiations, and correspondence, constitute a compromise within the meaning of
14 Federal Rule of Evidence 408 and any equivalent federal or state law or rule. In no
15 event shall this Settlement, any of its provisions or any negotiations, statements or
16 court proceedings relating to its provisions in any way be construed as, offered as,
17 received as, used as, or deemed to be evidence of any kind in the Action, any other
18 action, or in any judicial, administrative, regulatory or other proceeding, except in a
19 proceeding to enforce this Settlement, or to enforce the rights of the Parties or their
20 counsel under the terms and conditions of this Settlement. Without limiting the
21 foregoing, neither this Settlement nor any related negotiations, statements, or court
22 proceedings shall be construed as, offered as, received as, used as or deemed to be
23 evidence or an admission or concession of any liability or wrongdoing whatsoever on
24 the part of any person or entity, including, but not limited to, Defendant, the Released
25 Parties, Plaintiffs, or the Class, or as a waiver by Defendant, the Released Parties,
26 Plaintiffs, or the Class of any applicable privileges, claims or defenses.

27 112. The provisions contained in this Settlement are not and shall not be
28 deemed a presumption, concession, or admission by Defendant of any fault, liability

1 or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any
2 actions or proceedings, nor shall they be interpreted, construed, deemed, invoked,
3 offered, or received in evidence or otherwise used by any person in the Action, or in
4 any other action or proceeding, whether civil, criminal or administrative.

5 **XIII. BEST EFFORTS**

6 113. Class Counsel shall take all necessary actions to accomplish approval of
7 the Settlement, the Class Notice, and entry of Final Order and Judgment in the
8 Action. The Parties (including their counsel, successors, and assigns) agree to
9 cooperate fully and in good faith with one another and to use their best efforts to
10 effectuate the Settlement, including without limitation in seeking preliminary and
11 final Court approval of this Settlement, carrying out the terms of this Settlement, and
12 promptly agreeing upon and executing all such other documentation as may be
13 reasonably required to obtain final approval by the Court of the Settlement. In the
14 event that the Court does not approve the Settlement or does not issue the Final Order
15 and Judgment, the Parties agree to use all reasonable efforts, consistent with this
16 Settlement, to cure any defect identified by the Court.

17 114. The Parties shall cooperate in connection with effectuating the
18 Settlement or the administration of claims thereunder. Any requests for cooperation
19 shall be narrowly tailored and reasonably necessary for the requesting Party to
20 recommend the Settlement to the Court, and to carry out its terms.

21 **XIV. MISCELLANEOUS PROVISIONS**

22 115. The Parties agree that the recitals are contractual in nature and form a
23 material part of this Settlement.

24 116. This Settlement and its accompanying Exhibits set forth the entire
25 understanding of the Parties. No change or termination of this Settlement shall be
26 effective unless in writing and signed by Class Counsel and Defense Counsel. No
27 extrinsic evidence or parol evidence shall be used to interpret this Settlement.

28 117. Any and all previous agreements and understandings between or among

1 the Parties regarding the subject matter of this Settlement, whether written or oral, are
2 superseded and hereby revoked by this Settlement. The Parties expressly agree that
3 the terms and conditions of this Settlement will control over any other written or oral
4 agreements.

5 118. All of the Parties warrant and represent that they are agreeing to the
6 terms of this Settlement based upon the legal advice of their respective attorneys, that
7 they have been afforded the opportunity to discuss the contents of this Settlement
8 with their attorneys, and that the terms and conditions of this Settlement are fully
9 understood and voluntarily accepted.

10 119. The waiver by any Party of a breach of any term of this Settlement shall
11 not operate or be construed as a waiver of any subsequent breach by any Party. The
12 failure of a Party to insist upon strict adherence to any provision of this Settlement
13 shall not constitute a waiver or thereafter deprive such Party of the right to insist upon
14 strict adherence.

15 120. The headings in this Settlement are inserted merely for the purpose of
16 convenience and shall not affect the meaning or interpretation of this document.

17 121. This Settlement may be executed in counterparts, each of which shall be
18 deemed an original and all of which, when taken together, shall constitute one and the
19 same instrument. The date of execution shall be the latest date on which any Party
20 signs this Settlement.

21 122. This Settlement has been negotiated among and drafted by Class
22 Counsel and Defense Counsel. Plaintiffs, Class Members, and Defendant shall not be
23 deemed to be the drafter of this Settlement or of any particular provision, nor shall
24 they argue that any particular provision should be construed against its drafter or
25 otherwise resort to the *contra proferentem* canon of construction. Accordingly, this
26 Settlement should not be construed in favor of or against one Party as to the drafter,
27 and the Parties agree that the provisions of California Civil Code § 1654 and common
28 law principles of construing ambiguities against the drafter shall have no application.

1 All Parties agree that counsel for the Parties drafted this Settlement during extensive
2 arms' length negotiations. No parol or other evidence may be offered to explain,
3 construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or
4 the circumstances under which this Settlement was made or executed.

5 123. Except as specifically provided in this Settlement Agreement, the Parties
6 and/or their counsel will not issue any press release or make other public statements
7 regarding the Settlement or the Action without the prior written approval of all
8 Parties, other than to state that the Action "has been resolved." Plaintiffs and Class
9 Counsel agree not to make disparaging public statements about Defendant, the
10 Products, and/or Defense Counsel out-of-court. Plaintiffs and Class Counsel are free
11 to (a) respond in a truthful and non-disparaging manner to inquiries regarding the
12 Action and/or Settlement from the Class; and (b) state they served as legal counsel in
13 this Action and reference the terms and amount of the Settlement on their firm
14 websites, biographies, or similar marketing materials, and in connection with future
15 applications to serve as interim-class or lead counsel, or as otherwise required by law.
16 Defendant and Defense Counsel agree not to make disparaging public statements
17 about Plaintiffs, Class Counsel, or the Settlement.

18 124. Defendant represents and warrants that the individual(s) executing this
19 Settlement are authorized to enter into this Settlement on behalf of Defendant.

20 125. Whenever this Settlement requires or contemplates that one of the
21 Parties shall or may give notice to the other, notice shall be provided by e-mail and/or
22 next-day (excluding Saturdays, Sundays and legal holidays) express delivery service
23 as follows:

24 Upon Class Counsel at:

25 Alex R. Straus
26 GREG COLEMAN LAW PC
27 16748 McCormick Street
28 Los Angeles, CA 91436
Email: alex@gregcolemanlaw.com

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Upon Defense Counsel at:

Timothy Loose
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Email: tloose@gibsondunn.com

126. The Parties reserve the right, subject to the Court’s approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement.

127. This Settlement may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

128. The Parties believe that this Settlement is a fair, adequate, and reasonable settlement of the Action, and they have arrived at this Settlement through arms’-length negotiations, taking into account all relevant factors, present and potential.

IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys, and intending to be legally bound hereby, have duly executed this Settlement as of the date set forth below.

PLAINTIFFS

Dated: March 4, 2021


Sarah Hill (021 13:17 PST)

Sarah Hill
Plaintiff

Dated: March __, 2021


Monica O'Rourke (Mar 2, 2021 13:54 EST)

Monica O’Rourke
Plaintiff

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DEFENDANT

Dated: March __, 2021

Canidae Corporation

By:

CLASS COUNSEL

Dated: March 1_, 2021

GA7m... (Mar 1, 2021 10:23 EST)

By:

Greg Coleman Law PC
Attorneys for Plaintiffs and the Class

DEFENSE COUNSEL

Dated: March __, 2021

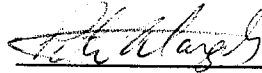
By: Timothy Loose

Gibson, Dunn & Crutcher LLP
Attorneys for Canidae Corporation

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DEFENDANT

Dated: March 2nd, 2021



Canidae Corporation

By: PETER MARGETIS
CHIEF FINANCIAL STRATEGY OFFICER

CLASS COUNSEL

Dated: March __, 2021

By:

Greg Coleman Law PC

Attorneys for Plaintiffs and the Class

DEFENSE COUNSEL

Dated: March 4, 2021



By: Timothy Loose

Gibson, Dunn & Crutcher LLP

Attorneys for Canidae Corporation