# UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

CATHY GOODMAN, et. al., on behalf of herself and all others similarly situated,

Plaintiffs,

V.

INTERVET, INC. d/b/a MERCK ANIMAL HEALTH d/b/a HOME AGAIN,

Defendant.

Civil Action No. 2:22-cv-02926-WJM-CLW

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement" or "Agreement") is entered into, subject to Court approval as required herein and under Federal Rule of Civil Procedure 23, as of this 7<sup>th</sup> day of August 2024 to be effective on the Effective Date, by and between Plaintiffs, on behalf of themselves and as proposed class representatives in the Action, by and through Class Counsel, and Defendant.

#### **RECITALS**

**WHEREAS**, on May 19, 2022, Cathy Goodman filed a Complaint in the above action ("the Action") and some or all Plaintiffs have filed several amended Complaints in this Action, with the Third Amended Complaint as the most recent as of the time this Agreement is filed with the Court;

WHEREAS, Plaintiffs allege on behalf of themselves and the Settlement Class that Defendant Intervet Inc. d/b/a Merck Animal Health ("Defendant") made alleged

misrepresentations and omissions regarding its HomeAgain membership or premium service. The lawsuit does not allege that the micro-chips are unsafe or ineffective or that HomeAgain's pet recovery services are ineffective;

WHEREAS, Defendant has denied, and continues to deny, that it made any such misrepresentations or omissions or otherwise engaged in any deceptive or unlawful conduct of any kind and believes that the claims asserted against it in the Action are without merit;

WHEREAS, the Court has concluded that the New Jersey Consumer Fraud Act cannot apply to the claims of non-New Jersey residents and, as a result, Plaintiffs no longer seek certification of a nationwide class in the Action;

**WHEREAS**, the Court dismissed Plaintiffs' claims for injunctive relief and also dismissed certain claims based on particular categories of alleged misrepresentations and/or omissions;

**WHEREAS**, the Parties have engaged in extensive arms-length settlement negotiations, including an in-person mediation before the Honorable Diane M. Welsh (Ret.) in December 2023;

WHEREAS, Plaintiffs and Class Counsel have concluded, after extensive factual examination and investigation and after careful consideration of the circumstances, including the claims asserted by Plaintiffs and the possible legal and factual defenses thereto – both on the merits and to any motion(s) for class certification, that it would be in Plaintiffs and the Settlement Class' best interests to enter into this Agreement to avoid the uncertainties, burdens, risks, and delays inherent in litigation and subsequent appeals and to assure that the substantial benefits reflected in this Agreement are obtained for the Settlement Class in an expeditious manner; and, further, that this Agreement is fair, reasonable, and adequate and in the bests interests of Plaintiffs and the Settlement Class; and

WHEREAS, Defendant believes that it has strong defenses to the claims asserted against it in the Action on the merits and also to any attempt at class certification for those claims, but it has agreed to enter into this Agreement to reduce and avoid the further expense, burden, risks, and inconveniences of protracted litigation and subsequent appeals and to resolve finally and completely Plaintiffs and Settlement Class Members' claims on the terms set forth in this Agreement;

**NOW, THEREFORE,** subject to the Court's approval as required herein and under Federal Rule of Civil Procedure 23, and in consideration of the mutual promises set forth below, the Parties agree as follows:

## I. <u>DEFINITIONS</u>

- 1. "Action" shall mean the litigation captioned above *Goodman, et. al. v. Intervet Inc.*, Civil Action No. 2:22-cv-02926-WJM-CLW in the United States District Court for the District of New Jersey.
- 2. "Claims Deadline" means the final time and date by which a Claim Form must be postmarked or received by the Settlement Administrator in order for an eligible Settlement Class Member to be entitled to an Individual Payment (defined in §IV herein). The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form. The Parties agree that the Claims Deadline will be 90 days following the Notice Date.
- 3. "Claim Form" means the document attached hereto as **Exhibit A**, pursuant to which eligible Settlement Class Members can seek an Individual Payment.
- 4. "Claim Period" means the time period from the Notice Date through the Claims Deadline, which is the time period that Settlement Class Members will have to submit a Claim Form.

- 5. "Class Counsel" means Sophia Gold of KalielGold PLLC; Edwin E. Elliott and Andrew J. Shamis of Shamis & Gentile, P.A.; Scott Edelsberg of Edelsberg Law, P.A.; and Rachel Dapeer of Dapeer Law, P.A.
  - 6. "Class Representatives" means the Plaintiffs in the Action.
- 7. "Court" means the United States District Court for the District of New Jersey and the Judge assigned to the Action.
  - 8. "Defendant" or "MAH" means Intervet Inc. d/b/a Merck Animal Health.
- 9. "Defense Counsel" or "Defendant's Counsel" means the law firm of McCarter & English LLP.
- 10. "Effective Date" means the date on which the Final Order and Judgment (defined below) in the Action becomes "Final." As used in this Agreement, "Final" means ten (10) business days after all of the following conditions have been satisfied:
  - a. the Final Order and Judgment has been entered; and
- b. (i) if reconsideration, post-judgment motion and/or appellate review is not sought from the Final Order and Judgment, the expiration of the time for the filing or noticing of any motion for reconsideration, appeal, petition, and/or writ; or
- (ii) if reconsideration, post-judgment motion and/or appellate review is sought from the Final Order and Judgment, then: (A) the date that is ten (10) business days after the date on which the Final Order and Judgment is affirmed and is no longer subject to review, or (B) the date on which the motion for reconsideration, post-judgment motion, appeal, petition, or writ is dismissed or denied and the Final Order and Judgment is no longer subject to judicial review, provided that such motion, appeal, petition or writ shall have been finally determined in a manner permitting the consummation of the Settlement in accordance with the terms of this Agreement.

- 11. "Escrow Account" means the separate, interest-bearing escrow account to be established by the Settlement Administrator under a written contract between Defendant, Class Counsel and the Settlement Administrator that is acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation or a federally insured credit union insured by the National Credit Union Share Insurance Fund. The Escrow Account shall be maintained by the Settlement Administrator. Neither Defendant nor Defendant's Counsel shall have any responsibility for supervising, managing or controlling the Escrow Account. Defendant and Defendant's Counsel shall face no liability arising out of any matters relating in any way to the Escrow Account and the written contract between Defendant, Class Counsel and the Settlement Administrator will provide for full indemnification and defense of Defendant and Defendant's Counsel for any matters relating in any way to the Escrow Account.
- 12. "Fairness Hearing" or "Final Approval Hearing" means the hearing before the Court that is to take place after the entry of the Preliminary Approval Order and after the Notice Date for purposes of: (a) entering the Final Order and Judgment and dismissing the Action with prejudice; and (b) determining whether the Settlement should be finally approved as fair, reasonable, adequate and in the best interests of the Settlement Class Members.
- 13. "Final Order and Judgment" means an order fully and finally approving the Settlement and dismissing the Action with prejudice, substantially in the form attached hereto as **Exhibit H**.
- 14. "Notice" means collectively the notices of this proposed Settlement, substantially in the form attached hereto as **Exhibits B, C, D, E,** and **F**.

- 15. "Notice Date" means the date by which the Notice attached as **Exhibit B** must be initially e-mailed to members of the Settlement Class. The Parties agree that the Notice Date shall be forty-five (45) days after entry of the Preliminary Approval Order.
- 16. "Plaintiffs" means Cathy Goodman, Matthew Inman, Dennis Canetty, Belinda Young, Ellen Berris, Gongjun Peng, Lyncia Sirmans, Kristi Schaller, Rachel Lesser, Kathryn Lyell, CJ Ferry, Lydia Gomez, Larhonda Majied, Amy Crawford, Gail Hes, Carolyn Shepardson, Erin Radcliffe, Alison Barnum, and Kimberly Amacher.
- 17. "Preliminary Approval Order" means the order preliminarily approving the Settlement, conditionally certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, substantially in the form attached hereto as **Exhibit G**.
- 18. "Objection Deadline" means the date by which a written objection to this Settlement Agreement must be filed with the Court and served upon Class Counsel, Defendant's Counsel and the Settlement Administrator as agreed upon by the Parties and ordered by the Court. The Parties agree that the Objection Deadline will be 45 days before the Final Approval Hearing.
- 19. "Exclusion Deadline" means the date by which a request for exclusion must be post-marked by a member of the Settlement Class as agreed upon by the Parties and ordered by the Court. The Parties agree that the Exclusion Deadline shall be 60 days after the Notice Date.

#### 20. "Released Claims"

a. "Released Claims" means and includes any and all claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims (as described in §VII(2) below) as of the Effective Date by all Plaintiffs and all Settlement Class Members (and Plaintiffs and Settlement Class Members' respective heirs,

executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-ininterest, and assigns) that:

- (i) were brought or that could have been brought against the Released Parties (as hereinafter defined), or any of them, and that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged or referred to in the Action (including but not limited to alleged violations of state consumer protection, unfair competition, and/or false or deceptive advertising statutes; breach of contract; breach of express or implied warranty; fraud; unjust enrichment, restitution; declaratory or injunctive relief, and other equitable claims or claims sounding in contract and tort); and
- (ii) relate in any way to Defendant's statements or omissions about the HomeAgain premium or membership service or the HomeAgain basic service or recovery database.
- b. The Parties intend for the term "Released Claims" to be construed as broadly as possible and permitted by law.

#### 21. "Released Parties" means:

- a. Defendant and each of its employees, assigns, attorneys, agents, and all of its past, present, and future officers and directors;
- b. All of Defendant's parents, subsidiaries, divisions, affiliates, predecessors, and successors, including without limitation Merck & Co., Inc., and each of their respective employees, assigns, attorneys, agents, resellers and past, present and future officers and directors; and
- c. Any and all persons, entities, or corporations involved in any way in the operation, marketing or advertisement of Defendant's HomeAgain program.

- 22. "Releasing Parties" means Plaintiffs and all Settlement Class Members, and each of their predecessors, successors, assigns, heirs, or executors.
  - 23. "Settlement" means the settlement embodied in this Agreement.
- 24. "Settlement Administration Expenses" means the expenses incurred by the Settlement Administrator in distributing the Notice, processing claims, responding to inquiries from members of the Settlement Class, distributing payments for approved claims, administering the Settlement and related services.
- 25. "Settlement Administrator" means the qualified third party selected by the Parties and approved by the Court in the Preliminary Approval Order to administer the Settlement, including distributing the Notice and receiving Claim Forms. The parties agree to recommend that the Court appoint Angeion Group, LLC ("Angeion") as Settlement Administrator.
- 26. "Settlement Class" means all persons or entities who are members of any of the "Statewide Settlement Classes." Excluded from the Settlement Class are all persons who are employees, directors, officers, and agents of Defendant or its parents, subsidiaries or affiliated companies, as well as the Court and its immediate family and staff.
  - 27. "Statewide Settlement Classes" means:
- a. All residents of Alabama who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- b. All residents of Alaska who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- c. All residents of Arizona who paid Defendant for a HomeAgain premium service membership between May 19, 2021, and entry of the Preliminary Approval Order;

- d. All residents of Arkansas who paid Defendant for a HomeAgain premium service membership between May 19, 2017, and entry of the Preliminary Approval Order;
- e. All residents of California who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- f. All residents of Colorado who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- g. All residents of Connecticut who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- h. All residents of Delaware who paid Defendant for a HomeAgain premium service membership between May 19, 2017, and entry of the Preliminary Approval Order;
- i. All residents of the District of Columbia who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- j. All residents of Florida who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- k. All residents of Georgia who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- l. All residents of Hawaii who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- m. All residents of Idaho who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- n. All residents of Illinois who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;

- o. All residents of Indiana who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- p. All residents of Iowa who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- q. All residents of Kansas who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- r. All residents of Kentucky who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- s. All residents of Louisiana who paid Defendant for a HomeAgain premium service membership between May 19, 2021, and entry of the Preliminary Approval Order;
- t. All residents of Maine who paid Defendant for a HomeAgain premium service membership between May 19, 2016, and entry of the Preliminary Approval Order;
- u. All residents of Maryland who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- v. All residents of Massachusetts who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- w. All residents of Michigan who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- x. All residents of Minnesota who paid Defendant for a HomeAgain premium service membership between May 19, 2016, and entry of the Preliminary Approval Order;
- y. All residents of Mississippi who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;

- z. All residents of Missouri who paid Defendant for a HomeAgain premium service membership between May 19, 2017, and entry of the Preliminary Approval Order;
- aa. All residents of Montana who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- bb. All residents of Nebraska who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- cc. All residents of Nevada who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- dd. All residents of New Hampshire who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- ee. All residents of New Jersey who paid Defendant for a HomeAgain premium service membership between May 19, 2016, and entry of the Preliminary Approval Order;
- ff. All residents of New Mexico who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- gg. All residents of New York who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- hh. All residents of North Carolina who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- ii. All residents of North Dakota who paid Defendant for a HomeAgain premium service membership between May 19, 2016, and entry of the Preliminary Approval Order;
- jj. All residents of Ohio who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;

- kk. All residents of Oklahoma who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- ll. All residents of Oregon who paid Defendant for a HomeAgain premium service membership between May 19, 2021, and entry of the Preliminary Approval Order;
- mm. All residents of Pennsylvania who paid Defendant for a HomeAgain premium service membership between May 19, 2016, and entry of the Preliminary Approval Order;
- nn. All residents of Rhode Island who paid Defendant for a HomeAgain premium service membership between May 19, 2012, and entry of the Preliminary Approval Order;
- oo. All residents of South Carolina who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order;
- pp. All residents of South Dakota who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- qq. All residents of Tennessee who paid Defendant for a HomeAgain premium service membership between May 19, 2017, and entry of the Preliminary Approval Order;
- rr. All residents of Texas who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- ss. All residents of Utah who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- tt. All residents of Vermont who paid Defendant for a HomeAgain premium service membership between May 19, 2016, and entry of the Preliminary Approval Order;
- uu. All residents of Virginia who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;

- vv. All residents of Washington who paid Defendant for a HomeAgain premium service membership between May 19, 2018, and entry of the Preliminary Approval Order;
- ww. All residents of West Virginia who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order;
- xx. All residents of Wisconsin who paid Defendant for a HomeAgain premium service membership between May 19, 2019, and entry of the Preliminary Approval Order; and
- yy. All residents of Wyoming who paid Defendant for a HomeAgain premium service membership between May 19, 2020, and entry of the Preliminary Approval Order.
- 28. "Settlement Class Member(s)" means any member of the Settlement Class who does not elect exclusion or opt out from the Settlement Class pursuant to the terms and conditions for exclusion set out in this Agreement and the Notice and as ordered by the Court.
- 29. "Settlement Fund" or "Settlement Payment" means the non-reversionary cash fund that shall be established by or on behalf of Defendant in the total amount of three million five hundred thousand dollars (\$3,500,000.00 USD) to be deposited into the Escrow Account, according to the schedule and under the terms set forth herein, plus all interest earned thereon, and as further described in \$II(B)(1) herein. From the Settlement Payment, the Settlement Administrator shall pay all approved Claims made by Settlement Class Members, Settlement Administration Expenses, any incentive/stipend awards to the Class Representatives, and any fee award to Class Counsel. The Settlement Payment shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as all payments required under this Agreement are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Payment and the

payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of Defendant's monetary obligations under this Agreement. In no event shall Defendant's total monetary obligation with respect to this Agreement or the matters released herein exceed three million five hundred thousand dollars (\$3,500,000.00 USD).

## II. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR REVIEW

- 1. As soon as reasonably practicable following full execution of this Agreement by all Parties, and on a date that is mutually agreeable to all Parties, Plaintiffs and Class Counsel shall apply to the Court for entry of the Preliminary Approval Order (substantially in the form attached as **Exhibit G**), for the purpose of, among other things:
- a. Finding that the requirements for provisional certification of the Settlement Class have been satisfied, appointing Plaintiffs as the representatives of the Settlement Class, and Class Counsel as counsel for the Settlement Class, and preliminarily approving the Settlement as being within the range of reasonableness such that the Notice should be provided to the Settlement Class pursuant to this Agreement;
- b. Approving the Notice, substantially in the form set forth at **Exhibits B, C, D, E,** and **F**, and finding that the Notice constitutes due, adequate, and sufficient notice to the Settlement Class and fully satisfies the requirements of Due Process and the Federal Rules of Civil Procedure;
- c. Scheduling the Final Approval Hearing for not earlier than 120 days following the entry of the Preliminary Approval Order, or on such later date as is practicable given the Court's calendar, to determine whether the Settlement should be finally approved as fair, reasonable, adequate and in the best interests of the Settlement Class, and to determine whether the Final Order and Judgment should be entered dismissing the Action with prejudice;

- d. Preliminarily approving the form of the Final Order and Judgment;
- e. Directing that the Settlement Administrator provide notice of the Settlement by e-mailing, on or before the Notice Date as specified in the Preliminary Approval Order, a Notice substantially in the form attached as **Exhibit B** hereto, to the last known e-mail addresses of members of the Settlement Class to the extent such e-mail address information exists in Defendant's HomeAgain customer database ("Database") and are valid e-mail addresses;
- f. Providing that Settlement Class Members will have until the Claims

  Deadline to submit Claim Forms;
- g. Providing that any objections by any Settlement Class Member to the certification of the Settlement Class and the proposed Settlement contained in this Agreement, and/or the entry of the Final Order and Judgment, shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Final Approval Hearing only if, on or before the date(s) specified in the Notice and Preliminary Approval Order, such objector files with the Court a notice of the objector's intention to appear, and otherwise complies with the requirements in §XIII(1–6) of this Agreement;
- h. Establishing dates by which the Parties shall file and serve all papers in support of the application for final approval of the Settlement and/or in response to any valid and timely objections;
- i. Providing that all members of the Settlement Class will be bound by the Final Order and Judgment dismissing the Action with prejudice unless such members of the Settlement Class timely submit valid written requests for exclusion or opt out in accordance with this Agreement and the Notice;

- j. Providing that members of the Settlement Class wishing to exclude themselves from the Settlement will have until the Exclusion Deadline specified in the Notice and the Preliminary Approval Order to submit a valid written request for exclusion or opt out to the Settlement Administrator;
- k. Providing a procedure for requesting exclusion or opt out from the Settlement;
- Pending the Final Approval Hearing, staying all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of this Agreement and the Preliminary Approval Order; and
- m. Pending the Final Approval Hearing, enjoining Plaintiffs and Settlement Class Members, or any of them, from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims.
- 2. At the same time Plaintiffs and Class Counsel apply to the Court for entry of the Preliminary Approval Order, they shall file a Third Amended Complaint with Defendant's consent for the sole purpose of adding those Plaintiffs to the Action who were not already named plaintiffs in the Second Amended Complaint.
- 3. Defendant consents to the entry of the Preliminary Approval Order and the filing of the Third Amended Complaint solely for the purpose of effectuating the Settlement and for no other reason. In the event this Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur, the Third Amended Complaint and any Preliminary Approval Order entered by the Court shall be automatically vacated upon notice of the same to the Court and the Action will return to the procedural status quo that existed prior to the execution of this Agreement.

- 4. Following entry of the Preliminary Approval Order, the Notice shall be given by the Settlement Administrator in the manner directed and approved by the Court.
- 5. The Parties agree that the notice plan contemplated by this Agreement is valid and effective, that it provides reasonable notice to the Settlement Class and that it represents the best practicable notice under the circumstances.

## III. THE SETTLEMENT CONSIDERATION

## A. <u>Injunctive Relief.</u>

- 1. Subject to the exceptions provided in § III(A)(2) below, not later than 90 business days after the Effective Date, Defendant will, to the extent necessary, revise all materials visible to either actual or potential HomeAgain customers that describe the HomeAgain membership or premium service, including Defendant's HomeAgain website and the Check Your Status tool and FAQs contained therein, to include at least one of the following disclosures:
- a. "If you choose not to renew your membership benefits, your pet's recovery information remains in the HomeAgain Recovery Database and you have the ability to maintain and update your profile;" or
- b. "If you choose not to renew your membership benefits, your pet's recovery information remains in the HomeAgain Recovery Database and you have the ability to maintain and update your profile for free;" or
- c. "In case you didn't know . . . Your pet's microchip number and your contact information will remain in the HomeAgain Recovery Database forever. You can update your contact information at HomeAgain.com at any time for free;" or

- d. "Upon initial registration your pet's microchip ID is permanently registered in the HomeAgain National Pet Recovery Database. Free unlimited updates can be made online or by phone to your pet's profile and your contact information;" or
- e. In a footnote to a reference to "<u>basic</u>\* pet recovery" service that provides: "\*Basic service: Your pet's microchip number and your contact information will remain in the HomeAgain Recovery Database forever. You can update your contact information at www.HomeAgain.com at any time."
- 2. Where the space or other restrictions for a particular advertisement or communication about the HomeAgain membership or premium service do not provide sufficient room for one of the disclosures identified above, Defendant is not required to use one of those disclosures; provided, however, that Defendant must, either by express statement in that advertisement or communication or by link to another communication, disclose that it is not necessary for HomeAgain customers to pay for the premium or membership service in order to maintain and update for free his/her and his/her pet's information in the HomeAgain Recovery Database.
- 3. For any social media account owned by Defendant referring to the HomeAgain membership or premium service, Defendant shall not be required to post one of the above disclosures every day. Instead, Defendant will comply with its obligations under this Agreement by posting one of the above disclosures on a monthly basis.
- 4. Each disclosure used by Defendant shall be at least as large in font or print size as the text surrounding it.
- 5. Plaintiffs and Class Counsel agree that each of the above disclosures is truthful, accurate and a fair and reasonable statement to potential or actual HomeAgain customers.

- 6. If Defendant ceases to offer its premium or membership service, it shall not be required to include any of the disclosures in its marketing or advertising materials after the point at which it ceases to offer the premium or membership service.
- 7. Plaintiffs and Class Counsel agree, on behalf of the Settlement Class, that this Agreement does not preclude Defendant from making any accurate representations, including more detailed representations, in any form whatsoever, whether or not about any part of the HomeAgain program. Further, Defendant is not responsible for any representations about any part of the HomeAgain program made by any third-parties.

#### **B.** Settlement Payment

1. Subject to the conditions, representations and warranties set forth herein, Defendant shall pay or cause to be paid into the Escrow Account a total of \$3,500,000 (three million five hundred thousand dollars and no cents) pursuant to the terms and schedule set forth herein in total and complete resolution of any liability owing under this Agreement, whether individually or collectively to Plaintiffs, the Settlement Class, Settlement Class Members, Class Counsel or any other person or entity in respect to this Agreement and any matters released by this Agreement ("Settlement Payment" or "Settlement Fund"). No later than thirty (30) days after entry of the Preliminary Approval Order, Defendant shall pay or cause to be paid into the Escrow Account \$250,000 (two hundred fifty thousand dollars and no cents) (the "Initial Administration Payment"). Defendant shall pay or cause to be paid into the Escrow Account the remainder of the Settlement Payment,\$3,250,000 (three million two hundred fifty thousand dollars and no cents) ("Remaining Fund Payment"), within thirty (30) days after the Effective Date. In the event the Effective Date does not occur for any reason, Defendant shall be under no obligation to make the Remaining Fund Payment.

- 2. The Settlement Payment shall be made by wire transfer to the Escrow Account based on instructions from the Settlement Administrator.
- 3. Under no circumstances, whether for compensation to Settlement Class Members, attorneys' fees, expenses, costs of administration or notice of the Settlement, or otherwise, will Defendant or any of the Released Parties owe any obligation to any of the Releasing Parties or any of their counsel, including Class Counsel, or any other person or entity beyond the Settlement Payment of \$3,500,000 in respect to this Agreement, the Action or any matter released by this Agreement. No Settlement Class Member shall receive any payment from the Settlement Payment prior to the Effective Date.
- 4. Plaintiffs and Class Counsel are responsible for submitting to the Court and obtaining approval for an allocation of the Settlement Payment among compensation to Settlement Class Members, compensation to Plaintiffs, payment to Class Counsel for attorneys' fees, costs and expenses and the cost of notice and administration of the Settlement. Class Counsel assumes all responsibility of any kind regarding any such allocation, including without limitation all responsibility in connection with any disputes of any kind arising out of such allocation. Defendant and the Released Parties will not be involved in, or responsible for, or face liability in connection with, any such allocation.
- 5. The Court's determination regarding how much of the Settlement Payment shall be allocated to each of (i) compensation to Settlement Class Members; (ii) compensation to Plaintiffs; (iii) payment to Class Counsel for attorneys' fees, costs and expenses; and (iv) the cost of notice and administration of the Settlement shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the Settlement but denies, in whole or in part, Class Counsel's requested allocation, the Settlement Agreement shall nevertheless be binding on

the Parties and Settlement Class Members. Any separate appeal from the Court's order approving or rejecting, in whole or in part, Class Counsel's requested allocation of the Settlement Payment shall not operate to terminate or cancel this Agreement or otherwise affect or delay the finality of the Final Order and Judgment or the Settlement.

6. The Court's entry of an order regarding the allocation of the Settlement Payment among the categories identified above that is different from Class Counsel's proposed allocation shall not be grounds to void the Settlement. The only remedy in the event that the Court approves an allocation of the Settlement Payment contrary to Class Counsel's proposed allocation shall be a separate appeal permitted by law, if any, by any person permitted to take such an appeal and that such appeal shall be severable from the Final Order and Judgment.

## IV. <u>SETTLEMENT CLASS MEMBER COMPENSATION</u>

- 1. Each Settlement Class Member may, during the Claim Period, submit a valid and timely Claim Form to request a single and one-time payment of \$20.00 (twenty dollars) from the Settlement Payment ("the Individual Payment") to be paid beginning no sooner than thirty (30) business days after the Effective Date. No Settlement Class Member shall receive an Individual Payment sooner than thirty (30) business days after the Effective Date.
- 2. If the aggregate value of the Individual Payments to be awarded to Settlement Class Members pursuant to valid Claim Forms exceeds the amount allocated to Settlement Class Member financial compensation from the Settlement Payment by the Court, then the value of the Individual Payment to be provided to each Settlement Class Member shall be reduced on a *pro rata* basis, such that the aggregate value of the Individual Payments does not exceed the amount allocated to Settlement Class Member financial compensation from the Settlement Payment approved by the Court.

- 3. If the aggregate value of the Individual Payments to be awarded to Settlement Class Members pursuant to valid Claim Forms does not reach the amount allocated to Settlement Class Member financial compensation from the Settlement Payment approved by the Court, after the deduction of Settlement Administration Expenses, any fee award, and any incentive awards, then the value of the Individual Payment to be provided to each Settlement Class Member shall be increased to an amount equal to the total amount of the Settlement Payment allocated to Settlement Class Member financial compensation by the Court divided by the number of valid and timely submitted Claim Forms submitted by Settlement Class Members.
- 4. Under no circumstances, whether for compensation to Settlement Class Members, attorneys' fees, expenses, costs of administration or notice of the Settlement, or otherwise, will Defendant or any of the Released Parties owe any obligation to any of the Releasing Parties or any of their counsel, including Class Counsel, or any other person or entity beyond the Settlement Payment of \$3,500,000 in respect to this Agreement, the Action or any matter released by this Agreement.
- 5. The Court's determination regarding how much of the Settlement Payment shall be allocated to compensation for Settlement Class Members shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the Settlement but denies, in whole or in part, Class Counsel's requested allocation for compensation to Settlement Class Members, the Settlement Agreement shall nevertheless be binding on the Parties and Settlement Class Members. Any separate appeal from the Court's order approving or rejecting, in whole or in part, Class Counsel's requested allocation of the Settlement Payment for compensation to Settlement Class Members shall not operate to terminate or cancel this Agreement or otherwise affect or delay the finality of the Final Order and Judgment or the Settlement.

- 6. Settlement Class Members seeking the Individual Payment must complete and submit to the Settlement Administrator a timely, valid and complete Claim Form. No Settlement Class Member will receive an Individual Payment who has not submitted a complete, valid and timely Claim Form to the Settlement Administrator.
- 7. Claim Forms seeking the Individual Payment must be submitted by the Claims Deadline as approved by the Court and agreed upon by the Parties.

## V. PLAINTIFFS' REPRESENTATIVE AWARDS

- 1. In recognition of the time and effort Plaintiffs expended in pursing the Action and in fulfilling their obligations and responsibilities as representatives of the Settlement Class, for taking on the risks of litigation, and of the benefits conferred on the Settlement Class by the Settlement, Class Counsel will ask the Court for payment of an incentive payment or stipend from the Settlement Payment for each Plaintiff in the amount of \$2,500 (two thousand five hundred dollars), for a total of \$47,500 (forty-seven thousand five hundred dollars) for all Plaintiffs collectively. Defendant does not oppose this request by Plaintiffs and Class Counsel for incentive payments or stipends totaling no more than \$47,500 (forty-seven thousand five hundred dollars) collectively for all Plaintiffs.
- 2. Any Court approved incentive payments or stipends to Plaintiffs will be taken from the Settlement Payment. Under no circumstances, whether for compensation to Plaintiffs or Settlement Class Members, attorneys' fees, expenses, costs of administration or notice of the Settlement, or otherwise, will Defendant or any of the Released Parties owe any obligation to any of the Releasing Parties or any of their counsel, including Class Counsel, or any other person or entity beyond the Settlement Payment of \$3,500,000 in respect to this Agreement, the Action or any matter released by this Agreement.

- 3. The Court's incentive or stipend award to Plaintiffs shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the Settlement but denies, in whole or in part, Plaintiffs' incentive or stipend requests, the Settlement Agreement shall nevertheless be binding on the Parties and Settlement Class Members. Any separate appeal from the Court's order approving or rejecting, in whole or in part, Plaintiffs' incentive or stipend request shall not operate to terminate or cancel this Agreement or otherwise affect or delay the finality of the Final Order and Judgment or the Settlement.
- 4. The Settlement Administrator shall pay any Court-approved stipend amounts to Plaintiffs from the Settlement Payment no later than thirty (30) business days after the Effective Date

## VI. CLASS COUNSEL ATTORNEYS' FEE AND EXPENSE AWARD

- 1. Class Counsel may submit an application to the Court for an award of attorneys' fees totaling up to one-third of the Settlement Payment (\$1,166,667.00 USD), in addition to their reasonably incurred expenses to be paid separately from the Settlement Payment. Defendant does not oppose Class Counsel's request for attorneys' fees, from the Settlement Payment up to \$1,166,667.00, in addition to their reasonably incurred expenses to be paid separately from the Settlement Payment.
- 2. Any Court approved payment to Class Counsel for attorneys' fees, costs and expenses will be taken from the Settlement Payment no later than thirty (30) business days after the Effective Date. Under no circumstances, whether for compensation to Settlement Class Members, attorneys' fees, expenses, costs of administration or notice of the Settlement, or otherwise, will Defendant or any of the Released Parties owe any obligation to any of the Releasing Parties or any of their counsel, including Class Counsel, or any other person or entity beyond the

Settlement Payment of \$3,500,000 in respect to this Agreement, the Action or any matter released by this Agreement.

- 3. Class Counsel's receipt of any Court-approved payment for attorneys' fees, costs and expenses from the Settlement Payment will be in lieu of statutory fees Plaintiffs and/or their attorneys, including Class Counsel, might otherwise have been entitled to recover.
- 4. Class Counsel shall have discretion to allocate any Court-approved payment of attorneys' fees, costs and expenses from the Settlement Payment amongst Class Counsel as they may see fit subject to the applicable rules of professional responsibility. Defendant shall have no liability or other responsibility for allocation of any such attorneys' fees, costs and expenses awarded and, in the event that any dispute arises relating to the allocation of fees, expenses or costs, Class Counsel agree to hold Defendant and all Released Parties harmless from any and all such liabilities, costs (including attorneys' fees), and expenses of such dispute.
- 5. The Court's fee, expense and cost award to Class Counsel shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the Settlement but denies, in whole or in part, the fee, expense and cost request by Class Counsel, the Settlement Agreement shall nevertheless be binding on the Parties and Settlement Class Members. Any separate appeal from the Court's order approving or rejecting, in whole or in part, Class Counsel's fee, expense and cost request shall not operate to terminate or cancel this Agreement or otherwise affect or delay the finality of the Final Order and Judgment or the Settlement.

#### VII. RELEASES AND DISMISSAL OF ACTION

1. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally and forever released, relinquished, and discharged all Released Claims against the Released Parties.

2. The Released Claims include known and unknown claims relating to the Action, and this Agreement is expressly intended to cover and include all such injuries or damages, including all rights of action thereunder. Settlement Class Members hereby expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

Settlement Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Settlement Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Settlement Class Members to the Released Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Parties expressly acknowledges that it has been advised by its attorney of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits it may have had pursuant to such section.

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

- 3. From and after the Effective Date, for the consideration provided herein and by operation of the Final Order and Judgment, Plaintiffs and all Settlement Class Members, on behalf of the Releasing Parties, and each of them, covenant, promise, and agree that they will not assert, prosecute, file, initiate, institute, assist in instituting or cause to be instituted (i) any Released Claim against any of the Released Parties in any forum, whether court, arbitration, regulatory agency, or otherwise; or (ii) any challenge to the validity of the releases contained in this Agreement.
- 4. Members of the Settlement Class who have opted out of the Settlement by the Exclusion Deadline do not release the Released Claims and will not obtain any benefits of the Settlement.
- 5. No later than five (5) business days after the Effective Date, the Action shall be dismissed with prejudice. Class Counsel shall have the responsibility for ensuring that the Action is dismissed with prejudice in accordance with the terms of this Agreement.
- 6. The Court shall retain jurisdiction over the Parties to this Agreement and Settlement Class Members with respect to future performance of the terms of this Agreement. In the event any application for relief is made related to this Agreement, it shall be made to the Court.
- 7. Upon the Effective Date: (a) this Agreement shall be the exclusive remedy for any and all Released Claims of Settlement Class Members; and (b) the Settlement Class Members shall be permanently barred and enjoined from initiating, asserting, or prosecuting against the Released Parties in any federal or state court or other tribunal any and all Released Claims.

## VIII. PLAINTIFFS/CLASS COUNSEL'S REPRESENTATIONS AND WARRANTIES

- 1. Class Counsel represent and warrant that Plaintiffs are the only persons who (i) they represent or (ii) have contacted any or all of Class Counsel regarding any potential Released Claim against any of the Released Parties.
- 2. Class Counsel represent and warrant that they are not presently aware of any person who may have a potential Released Claim against any of the Released Parties other than Plaintiffs.
- 3. Plaintiffs represent and warrant that they have not, and will not, assign any actual or potential Released Claim to any other person or entity.

## IX. NOTICE TO THE SETTLEMENT CLASS

- 1. Settlement Class List. Within twenty-one (21) days after the entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator with the names, last known e-mail addresses, and mailing addresses, to the extent available, for persons within the Settlement Class for the sole purpose of the Settlement Administrator providing the Notice to the Settlement Class. This electronic document shall be called the "Settlement Class List." Defendant will use information from its HomeAgain customer database reflecting the names and last known e-mail and mailing addresses of the Settlement Class, to the extent such information is available, for purposes of the Settlement Administrator providing notice pursuant to the Settlement.
- 2. Because the names, e-mail addresses, mailing addresses, and other personal information about the Settlement Class will be provided to the Settlement Administrator for purposes of providing the Notice to the Settlement Class, the Settlement Administrator will execute a non-disclosure agreement with Defendant and will take all reasonable steps to ensure that any information provided to it by the Settlement Class will be used solely for the purpose of

effecting this Settlement. Any such information provided to the Settlement Administrator, including the Settlement Class List, will not be provided to Plaintiffs or Class Counsel.

- 3. *CAFA Notice*. Not later than ten (10) days after this Agreement is filed with the Court, Defendant at its expense shall send or cause to be sent to the Attorney General of the United States and the attorneys general of each State notice of the Settlement pursuant to 28 U.S.C. § 1715. The content of any such notice is the sole purview of Defendant and is not subject to approval by Plaintiffs, Class Counsel, the Settlement Administrator or any other person or entity.
- 4. Direct Notice. Following entry of the Preliminary Approval Order and no later than the Notice Date, the Settlement Administrator shall send the Notice via e-mail substantially in the form attached as Exhibit B, along with an electronic link to the Claim Form and Settlement Website, to all members of the Settlement Class for whom a valid email address is available in the Settlement Class List, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. In the event transmission of email notice results in any "bounce-backs," the Settlement Administrator shall, where reasonable: (i) correct any issues that may have caused the "bounce-back" to occur and make a second attempt to re-send the email notice; and (ii) send the member of the Settlement Class for whom it received any "bounce-back" that was not corrected by a second email the Notice substantially in the form attached as Exhibit C via First Class U.S. Mail.
- 5. Reminder Notice. Fourteen (14) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email substantially in the form attached as **Exhibit E**, along with an electronic link to the Claim Form, to all members of Settlement Class for whom a valid email address is available in the Settlement Class List and who did not opt out or unsubscribe from receiving emails from the Settlement Administrator.

- 6. Final Reminder Notice. Seven (7) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email substantially in the form attached as **Exhibit F**, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Settlement Class List and who did not opt out or unsubscribe from receiving emails from the Settlement Administrator. With the prior approval of Defense Counsel and Class Counsel, the Settlement Administrator may make minor modifications to the Final Reminder Notice to improve deliverability.
- 7. Settlement Website. Prior to the Notice Date, on a date mutually agreeable to Defense Counsel and Class Counsel, Notice shall be provided on a website which shall be administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms on-line. The Notice provided on the Settlement Website shall be substantially in the form of **Exhibit C** hereto. All content on the Settlement Website shall be mutually agreed upon between Defendant and Defendant's Counsel on the one hand and Plaintiffs and Class Counsel on the other hand. The Settlement Website shall be removed/taken down within three (3) business days after the Effective Date.
- 8. Contact from Class Counsel. Class Counsel, in their capacity as counsel to Settlement Class Members, may from time-to-time be contacted by members of the Settlement Class regarding the Settlement. Class Counsel is permitted to provide information to members of the Settlement Class and answer questions about the Settlement; provided, however that neither Class Counsel, Plaintiffs, Defendant nor Defendant's Counsel shall encourage or solicit members of the Settlement Class or Settlement Class Members to object to or exclude themselves from the Settlement. Defendant retains the right to communicate with and respond to inquiries from members of the Settlement Class and Settlement Class Members orally and/or in writing within

the normal course of business. Defendant will instruct its relevant employees and relevant agents to direct inquiries about the Settlement to the Settlement Administrator.

- 9. The Notice shall advise members of the Settlement Class of their rights, including the right to be excluded from or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection Deadline approved by the Court and specified in the Notice, the Settlement Class Member making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel, Defendant's Counsel, and the Settlement Administrator.
- 10. Any Settlement Class Member who wishes to object to the Settlement must do so in writing in the form and manner described in \$XIII(1–6) below.

## X. <u>ADMINISTRATION OF THE SETTLEMENT</u>

- 1. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Agreement and, without limiting the foregoing, shall:
- a. Treat any and all documents, communications and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications or other information to any person or entity except as provided for in this Agreement or by Court order;
- b. Provide weekly reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received, the number

of Claim Forms approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator;

- c. Receive opt out and other requests from members of the Settlement Class to exclude themselves from the Settlement and provide to Class Counsel and Defense Counsel a copy thereof within three (3) business days of receipt. If the Settlement Administrator receives any exclusion forms or other requests from members of the Settlement Class to exclude themselves from the Settlement after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide Class Counsel and Defense Counsel with copies thereof.
- 2. The Settlement Administrator shall be paid from the Settlement Fund in an amount approved by the Court for its work in administering the Settlement and distributing the Notice. Under no circumstances, whether for compensation to Settlement Class Members, attorneys' fees, expenses, costs of administration or notice of the Settlement, or otherwise, will Defendant or any of the Released Parties owe any obligation to any of the Releasing Parties or any of their counsel, including Class Counsel, the Settlement Administrator, or any other person or entity beyond the Settlement Payment of \$3,500,000 in respect to this Agreement, the Action or any matter released by this Agreement.
- 3. Any Settlement Class Member who, in accordance with the terms and conditions of this Agreement, neither seeks exclusion from the Settlement Class nor files a Claim Form will not be entitled to an Individual Payment, but will be bound together with all Settlement Class Members by all of the terms of Agreement, including the terms of the Final Order and Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any of the Released Claims against any of the Released Parties.

- 4. Claim Forms that do not meet the requirements set forth in this Agreement and in the Claim Form instructions shall be rejected. Where a good faith basis exists, the Settlement Administrator may reject a Settlement Class Member's Claim Form for, among other reasons, the following:
  - a. The claimant is not a Settlement Class Member;
  - b. Failure to fully complete and/or sign the Claim Form;
  - c. Illegible Claim Form;
  - d. The Claim Form is fraudulent;
  - e. The Claim Form is duplicative of another Claim Form;
  - f. Failure to submit a Claim Form by the Claims Deadline; and/or
- g. The Claim Form otherwise does not meet the requirements of this Agreement.
- 5. The Settlement Administrator shall determine whether a Claim Form meets the requirements set forth in this Agreement. Each Claim Form shall be submitted to and reviewed by the Settlement Administrator, who shall determine in accordance with the terms and conditions of this Agreement the extent, if any, to which each claim shall be allowed.
- 6. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, without limitation, employing reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud, including by cross-referencing approved claims with the Settlement Class List. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an approved claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement,

or (b) provide full and complete information as requested on the Claim Form. The Settlement Administrator will have the discretion to undertake, or cause to be undertaken, further verification and investigation, including the nature and sufficiency of any Claim Form. The Settlement Administrator may contact any person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

- 7. Claim Forms must be submitted by the Settlement Class Member. Except for claims submitted by an authorized individual on behalf of a Settlement Class Member that is a minor, an incapacitated person, a deceased individual, or those expressly permitted by the terms of this Agreement, Claim Forms not submitted by the Settlement Class Member will be rejected without opportunity to provide additional information or challenge the Settlement Administrator's determination.
- 8. Claim Forms that do not meet the terms and conditions of this Agreement shall be promptly rejected by the Settlement Administrator. The Settlement Administrator shall have thirty (30) days from the Claims Deadline to exercise the right of rejection. The Settlement Administrator shall notify the Settlement Class Member through the email address provided in the Claim Form of the rejection. Class Counsel and Defense Counsel shall be provided with copies of all such notifications to Settlement Class Members. If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within ten (10) business days from receipt of the rejection, transmit to the Settlement Administrator by email or U.S. mail a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Settlement Administrator, in consultation with Class Counsel and Defense Counsel, of the denial of the claim. If Class Counsel and Defense Counsel cannot agree on a resolution of claimant's notice contesting

the rejection, the disputed claim shall be presented to the Court or a referee appointed by the Court for summary and non-appealable resolution.

- 9. No person shall have any claim against Defendant, Defense Counsel, Plaintiffs, Plaintiffs' counsel, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or Individual Payments made in accordance with this Agreement. This provision does not affect or limit in any way the right of review by the Court or referee of any disputed Claim Forms as provided in this Agreement.
- 10. Any Settlement Class Member who fails to submit a Claim Form by the Claims Deadline shall be forever barred from receiving any benefit pursuant to this Agreement, but shall in all other respects be bound by all of the terms of this Agreement, including the terms of the Final Order and Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against any of the Released Parties concerning any of the Released Claims.
- 11. Class Counsel and Defense Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.
- 12. The Settlement Administrator shall distribute Individual Payments to eligible Settlement Class Members on a date that occurs only after the Effective Date as provided in §IV(1).
- 13. If the Settlement is not approved or for any reason the Effective Date does not occur, no payments or distributions of any kind shall be made pursuant to this Agreement.
- 14. Defendant and the Released Parties are not and will not be obligated to compute, estimate, or pay any taxes on behalf of any Plaintiff, any Settlement Class Member, Plaintiffs' counsel, Class Counsel, and/or the Settlement Administrator.

## XI. <u>EFFECT OF CERTIFICATION OF THE SETTLEMENT CLASS</u>

- 1. For purposes of settlement only, Plaintiffs, Class Counsel and Defendant agree that the Court should make preliminary findings and enter the Preliminary Approval Order (substantially in the form attached at **Exhibit G**) granting provisional certification of the Settlement Class subject to final findings and ratification in the Final Order and Judgment, and appointing Plaintiffs as the representatives of the Settlement Class and Class Counsel as counsel for the Settlement Class.
- 2. Defendant does not consent to certification of the Settlement Class for any purpose other than to effectuate the Settlement of the Action. If this Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur, any order certifying the Settlement Class for purposes of effectuating this Agreement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the Settlement Class had never been certified pursuant to this Agreement and such findings had never been made, and the Action shall return to the procedural status quo as it existed before execution of this Agreement in accordance with this paragraph.
- 3. In the event the terms or conditions of this Agreement are materially modified by any court, Defendant reserves the right, in its sole discretion to be exercised within fourteen (14) days after such a material modification, to declare this Agreement null and void. For purposes of this paragraph, material modifications include but are not limited to any modifications to the definitions of the Settlement Class, Settlement Class Members, Releasing Parties, Released Parties or Released Claims, material changes to the notice plan described in §IX, and/or any modifications to the terms of the settlement consideration described in §III.

### XII. <u>SETTLEMENT NOT EVIDENCE AGAINST PARTIES</u>

- 1. The provisions contained in this Agreement are not and shall not be deemed a presumption, concession or admission by Defendant of any default, liability or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any actions or proceedings, nor shall they be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal or administrative; provided, however, nothing in this Agreement shall be interpreted to prevent Defendant from introducing this Agreement where necessary to enforce its terms.
- 2. Defendant does not admit that it or any of the Released Parties has engaged in any illegal or wrongful activity or that any person has sustained any damage by reason of any of the facts complained of in the Action. Defendant does not consent to certification of the Settlement Class for any purpose other than to effectuate the Settlement of the Action. Notwithstanding any other provision in this Agreement, nothing in this Agreement shall be interpreted to preclude Defendant from offering this Agreement in any action or proceeding that seeks to prosecute or continue with a Released Claim.

#### XIII. OBJECTIONS AND OPT OUTS

1. Objections. Only Settlement Class Members may object to the Settlement. A Settlement Class Member who wishes to object to the Settlement must do so in writing and by filing any such objection with the Court by the Objection Deadline. All written objections and supporting papers must: (1) clearly identify the case name and number; and (2) be submitted to the Settlement Administrator at the addresses listed in the Notice. Written objections must also contain: (1) the full name, address, email and telephone number of the objecting Settlement Class Member; (2) a written statement of all grounds for the objection accompanied by any legal support for the

objection (if any); (3) copies of any papers, briefs or other documents upon which the objection is

based; (4) a list of all persons who will be called to testify in support of the objection (if any); (5)

a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; (6)

proof of membership in the Settlement Class; (7) a list of all objections filed by the objector and

his or her counsel to class action settlements in the last ten years; and (8) the signature of the

Settlement Class Member and her or his counsel, if any. No Settlement Class Member shall be

entitled to be heard at the Fairness Hearing (whether individually or through separate counsel)

unless written notice of the Settlement Class Member's intention to appear at the Fairness Hearing,

and copies of any written objections or briefs, have been timely submitted to the Court.

2. Settlement Class Members who fail to timely submit a written objection by the

Objection Deadline and in the manner specified in the Notice shall be deemed to have waived any

objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to

the Settlement. Class Counsel shall, at least fourteen (14) calendar days (or such other number of

days as the Court shall specify) before the Fairness Hearing, file any responses to any written

objections submitted to the Court by Settlement Class Members in accordance with this Agreement.

3. Objections must be served upon Class Counsel at:

Sophia G. Gold

Kaliel Gold PLLC

1100 15<sup>th</sup> Street, NW, 4<sup>th</sup> Floor

Washington, D.C. 20005

4. Objections must be served upon Defense Counsel at:

Kristofor T. Henning

McCarter & English, LLP

1600 Market St., Suite 3900

Philadelphia, PA 19103

- 5. Objections must be served upon the Settlement Administrator at the addresses provided in the Notice;
- 6. Objecting Settlement Class Members must state in writing all objections and the reasons for each objection, and state whether he/she intends to appear at the Final Approval Hearing either with or without separate counsel. No member of the Settlement Class shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any member of the Settlement Class shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the objecting class member's intention to appear at the Final Approval Hearing and copies of any written objections and/or briefs shall have been filed with the Court and served on Class Counsel, Defense Counsel, and the Settlement Administrator on or before the Objection Deadline specified in the Preliminary Approval Order. Members of the Settlement Class who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.
- 2. Exclusion or "Opt Out." Members of the Settlement Class may elect to request exclusion or "opt out" of the Settlement. To do so, they must submit a written statement to the Settlement Administrator by the Exclusion Deadline. Members of the Settlement Class who opt out of the Settlement will not release their claims pursuant to this Agreement. The opt-out right must be exercised individually by a member of the Settlement Class, and not as a member of a group, and except in the case of a deceased minor or incapacitated member of the Settlement Class, not by the act of another person acting or purporting to act in a representative capacity. To be valid, each request for exclusion must: (1) state the person's name, address, email, and phone

number; (2) be personally signed by the member of Settlement Class and not his/her attorney or anyone acting on his/her behalf; and (3) include the statement "I request to be excluded from the class settlement in *Goodman et al v. Intervet, Inc.*, Case No. 2:22-cv-02926-WJM-CLW" Requests for exclusion or opt-out that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective.

- 8. Any request for exclusion or opt out must be postmarked on or before the Exclusion Deadline provided in the Court's Preliminary Approval Order. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Members of the Settlement Class who fail to submit a valid and timely request for exclusion on or before the Exclusion Deadline shall be bound by all terms of this Agreement and the Final Order and Judgment.
- 9. Any member of the Settlement Class who submits a timely request for exclusion or opt out may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Agreement.
- Administrator shall provide to Class Counsel and Defense Counsel a complete opt out list together with copies of the opt out requests. Notwithstanding any other provision of this Agreement, if more than one-thousand (1,000) members of the Settlement Class opt out of the Settlement, Defendant, in its sole discretion, may rescind and revoke the entire Agreement, thereby rendering the Settlement null and void in its entirety, by sending written notice that Defendant revokes the settlement pursuant to this paragraph to Class Counsel within ten (10) business days following the date the Settlement Administrator informs Defense Counsel of the number of Settlement Class members who have requested to opt out of the Settlement pursuant to the provisions set forth above.

11. On the date set forth in the Preliminary Approval Order, a Final Approval Hearing shall be conducted to determine final approval of the Settlement. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties shall present the Final Order and Judgment, substantially in the form attached to this Settlement Agreement as **Exhibit H**, to the Court for approval and entry.

### XIV. MISCELLANEOUS PROVISIONS

- 1. The Parties agree that the recitals are contractual in nature and form a material part of this Agreement.
- 2. This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective successors, assigns, heirs, agents, employees, attorneys, representatives, officers, parents, affiliates and subsidiaries.
- 3. This Agreement and its accompanying Exhibits set forth the entire understanding of the Parties. No change or termination of this Agreement shall be effective unless in writing and signed by Plaintiffs, Class Counsel, Defendant, and Defense Counsel. Any and all previous agreements and understandings between or among the Parties regarding the subject matter of this Agreement, whether written or oral, are superseded by this Agreement.
- 4. This Agreement and the Settlement contemplated herein shall be governed by, and construed in accordance with, the laws of the State of New Jersey, without regard to conflict of laws principles.
- 5. The Parties shall use their best efforts to cause the Court to enter the Final Order and Judgment as promptly as possible and to take all other steps contemplated by this Agreement to effectuate the Settlement. The Parties shall not take any action intended or reasonably likely to encourage any member of the Settlement class to object to, or opt-out from, the Settlement.

- 6. All of the Parties warrant and represent that they are agreeing to the terms of this Agreement based solely upon the legal advice of their respective attorneys not any representation or omission from any Party or their counsel that they have been afforded the opportunity to discuss the contents of this Agreement with their attorneys and that the terms and conditions of this document are fully understood and voluntarily accepted.
- 7. The waiver by any Party of a breach of any term of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party. The failure of a Party to insist upon strict adherence to any provision of this Agreement shall not constitute a waiver or thereafter deprive such Party of the right to insist upon strict adherence.
- 8. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this document.
- 9. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The date of execution shall be the latest date on which any Party signs the Agreement.
- 10. This Agreement has been negotiated among and drafted by Class Counsel and Defense Counsel. To the extent there is any uncertainty or ambiguity in this Agreement, none of the Parties will be deemed to have caused any such uncertainty or ambiguity.
- 11. Except as specifically provided in this Agreement, the Parties and/or their counsel will not issue any press releases or make other public statements regarding the Settlement or the Action without prior approval of all Parties. If the Parties are ever asked by third parties (excluding their counsel or tax advisors (only to the extent that it is required for the rendering of professional services), or as required by any governmental agency or to comply with a lawfully-issued subpoena or court order) about the resolution of this matter, they may only say, in words or substance, that

the Action "has been resolved" or "is over." Nothing in this paragraph is intended or will be interpreted to inhibit or interfere with the ability of Class Counsel or Defendant's Counsel to communicate with the Court, their clients or Settlement Class Members and/or their counsel, if any.

12. The parties believe that this Agreement 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.

# **SCHEDULE OF EVENTS**

EVENT	PROPOSED DUE DATE
Initial Administration Payment	30 days after Preliminary Approval
Notice Date	45 days after Preliminary Approval
Reminder Notice	14 days prior to the Claims Deadline
Final Reminder Notice	7 days prior to the Claims Deadline
Exclusion Deadline	105 days after Preliminary Approval
Objection Deadline	105 days after Preliminary Approval
Plaintiffs' Application for Attorneys' Fees and Costs, and for Service Awards for the Named Plaintiffs	110 days after Preliminary Approval
Plaintiffs' Motion for Final Approval	120 days after Preliminary Approval
Claims Deadline	90 days after Notice Date
Plaintiffs' Response to any timely, valid Objections	14 days prior to Final Approval Hearing
Final Approval Hearing	150 days after Preliminary Approval (or such other date set by the Court)
Effective Date	As defined herein in §I(10)
Remaining Fund Payment	30 days after Effective Date
Distribution of Attorneys' Fees and Incentive Awards	30 business days after Effective Date
Distribution of Individual Payments	30 business days after Effective Date

**IN WITNESS WHEREOF**, the Parties hereto, intending to be legally bound hereby, have duly executed this Agreement as of the date set forth below.

# IT IS SO AGREED TO BY THE PARTIES:

Dated: 08 / 05 / 20	O24 C.	ATHY GOODMAN
		By: Cathy Goodman, individually and as representative of the Class
Dated: 08 / 05 / 20	24 <b>M</b>	IATTHEW INMAN
		By: Matthew Inman, individually and as representative of the Class
Dated: 08 / 05 / 20	D24 D	ENNIS CANETTY
		By:
Dated: 08 / 05 / 20	24 Bi	ELINDA YOUNG
		By:Belinda Young, individually and as representative of the Class
Dated: 08 / 05 / 20	)24 E	LLEN BERRIS
		By: Ellen Berris Ellen Berris, individually and as representative of the Class
Dated: 08 / 06 / 2	2024 G	ONGJUN PENG
		By: Gongjun Peng, individually and as representative of the Class

Dated:	08 / 05 / 2024	Lyncia Sirmans
		By:  Lyncia Sirmans, individually and as representative of the Class
Dated:	08 / 05 / 2024	KRISTI SCHALLER
		By: K. Schaller, individually and as representative of the Class
Dated:	08 / 05 / 2024	RACHEL LESSER
		By: Rachel Lesser Rachel Lesser, individually and as representative of the Class
Dated:	08 / 05 / 2024	KATHRYN LYELL
		By: Kathryn J. Lyell Kathryn Lyell, individually and as representative of the Class
Dated:	08 / 05 / 2024	CJ FERRY
		By:
Dated:	08 / 05 / 2024	Lydia Gomez
		By: didn L

Lydia Gomez, individually and as representative of the Class

Dated:	08 / 05 / 2024	LARHONDA MAJIED
		Lakhonda Majied By:
		Larhonda Majied, individually and as representative of the Class
Dated:	08 / 06 / 2024	AMY CRAWFORD
		By:
		Amy Crawford, individually and as representative of the Class
Dated:	08 / 05 / 2024	GAIL HES
		By: <b>Sail E Hes</b> Gail Hes, individually and as representative
		of the Class
Dated:	08 / 05 / 2024	CAROLYN SHEPARDSON
		Carolyn Shepardson  By:  Carolyn Shepardson, individually and as
		Carolyn Shepardson, individually and as representative of the Class
Dated:	08 / 05 / 2024	ERIN RADCLIFFE
		<sub>By:</sub> Erin Radcliffe
		Erin Radcliffe, individually and as representative of the Class
Dated:	08 / 05 / 2024	ALISON BARNUM
		By: Min Share

Alison Barnum, individually and as representative of the Class

Dated: 08 / 06 / 2024	KIMBERLY AMACHER
	By: Kimberly Amacher, individually and as
	representative of the Class
Dated:	INTERVET INC. D/B/A MERCK ANIMAL HEALTH
	By:
	Name:
	Title:
IT IS SO STIPULATED BY COUNSEL:	
Dated: 08 / 06 / 2024	KalielGold, PLLC  By: /s/ Sophia Gold
	Sophia Gold
Dated: 08 / 06 / 2024	EDELSBERG LAW, P.A.
	By: /s/ Scott Edelsberg
Dated: 08 / 06 / 2024	SHAMIS & GENTILE, P.A.
	By: /s/ Laborated By: /s/ Edwin E. Elliott
Dated: 08 / 06 / 2024	DAPEER LAW, P.A.
	By: /s/ Rachel Dapeer
	Class Counsel

Dated:	McCarter & English LLP
	By: /s/ Kristofor Henning
	Defense Counsel

Alison Barnum, individually and as representative of the Class

Dated:	KIMBERLY AMACHER
	By:
Dated:	INTERVET INC. D/B/A MERCK ANIMAL HEALTH  By:  Name: Scott Bormann  Title: SYP North America
IT IS SO STIPULATED BY COUNSEL:	
Dated:	KALIELGOLD, PLLC
· · · · · · · · · · · · · · · · · · ·	By: /s/ Sophia Gold
Dated:	EDELSBERG LAW, P.A.
	By: /s/ Scott Edelsberg
Dated:	SHAMIS & GENTILE, P.A.
	By: /s/ Edwin E. Elliott
Dated:	DAPEER LAW, P.A.
	By: /s/ Rachel Dapeer
	Class Counsel

Dated: 8/7/24

McCarter & English LLP

Kristofor Henning

Defense Counsel