

EXHIBIT 1
SETTLEMENT AGREEMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES FILARDI, COURTNEY ANDERSEN,
LISA BURMEISTER, KENNETH LEONARD,
DOROTHY PETERSEN, STEPHANIE
RANEY, IRENE NUNEZ, CONRADO
MOREIRA, KIARA REED, NACOLE
HOUSTON, MONIKA BENNETT, JASON
JARRELL, ALISON BARNHILL,
KIMBERLEE FERRIS, JEFFREY GOULD,
MELISSA SWARINGEN-ORTON,
MICHELLE RUBIANO, and COLEMAN
STEPHENS on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

MID AMERICA PET FOOD, LLC,

Defendant.

Case No. 7:23-cv-11170-NSR

**CLASS ACTION SETTLEMENT
AGREEMENT**

This Settlement Agreement, dated November [], 2024, is made and entered into by and among Plaintiffs and Class Representatives James Filardi, Courtney Andersen, Lisa Burmeister, Kenneth Leonard, Dorothy Petersen, Stephanie Raney, Irene Nunez, Conrado Moreira, Kiara Reed, Nacole Houston, Monika Bennett, Jason Jarrell, Alison Barnhill, Kimberlee Ferris, Jeffrey Gould, Melissa Swaringen-Orton, Michelle Rubiano, and Coleman Stephens (“Plaintiffs”) (on behalf of themselves and each Class Member) and Defendant Mid America Pet Food, LLC (“MAPF” or “Defendant”) (Plaintiffs and Defendant, collectively, the “Parties”) by and through their undersigned counsel of record, which provides for the settlement and final resolution of the Action defined below¹ subject to the approval of the Court.

WHEREAS, Plaintiffs are named plaintiffs and proposed class representatives in the Action, which is a proposed class action lawsuit against Defendant in the Southern District of New York, No. 23-cv-11170 before Judge Nelson S. Román;

WHEREAS, the Plaintiffs in the Action and their counsel have worked together cooperatively to prosecute the action on their own behalf and on behalf of proposed class members;

WHEREAS, the nature of the action is detailed in the Consolidated Class Action Complaint (ECF No. 16), which alleges, among other things, that Defendant marketed and sold pet food products contaminated with Salmonella, which can cause pets to become sick;

WHEREAS, Plaintiffs assert various claims for negligence, negligent misrepresentation, breach of express and implied warranties, fraudulent concealment, violations of relevant state consumer protection acts, and unjust enrichment;

WHEREAS, Defendant denies that Plaintiffs’ claims are meritorious, denies that Plaintiffs or anyone was damaged as a result of its conduct, and denies that it is liable to Plaintiffs or any member of the Settlement Class for any of the matters asserted in the Action;

WHEREAS, the Parties engaged the Honorable Diane M. Welsh (Ret.) of JAMS to mediate and oversee settlement negotiations in this action. The Parties met with Judge Welsh for a full-day mediation session on August 16, 2024.

WHEREAS, as part of the mediation process and prior to finalizing this proposed Settlement, Plaintiffs requested and Defendant provided substantial and highly relevant information;

WHEREAS, with Judge Welsh’s assistance, the Parties reached an agreement in principle on August 16, 2024, to resolve the Action, and subsequently memorialized the terms of their settlement in this Agreement, including the attached exhibits; the Parties’ negotiations have at all times been adversarial and at arms-length;

WHEREAS, Plaintiffs, by and through Class Counsel, have (a) made a thorough investigation of the facts and circumstances surrounding the allegations in the Action; (b) investigated the claims asserted in the Action, including but not limited to (i) researching, reviewing, and analyzing industry data, information, and public reports; (ii) reviewing and analyzing documents produced by Defendant and third parties; and (iii) investigating the law

¹ Except as otherwise specified, all capitalized terms shall have the meanings set forth in this Agreement.

applicable to the claims asserted in the Action, including the defenses that would likely be asserted; and (c) reviewed and assessed Defendant's mediation statement and attachments;

WHEREAS, Defendant, in order to avoid possible future expenses, burdens, or distractions of litigation, has concluded that settlement is desirable to resolve, finally and completely, all pending and potential claims of Plaintiffs and all Settlement Class Members relating to the allegations at issue;

WHEREAS, Class Counsel are experienced in this type of litigation, recognize the costs and risk of continued prosecution of the Action, and believe that this Agreement offers significant benefits to Settlement Class Members and is fair, reasonable, adequate, and in the best interest of Class Members; and

WHEREAS, by executing this Agreement, the Parties intend to settle and dispose of, fully and completely, both individually and on a class-wide basis, all claims, demands, and causes of action alleged in the Action, as more fully set forth in this Agreement.

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the Parties, as follows:

I. DEFINITIONS

As used throughout this Agreement, the following words and terms shall have the meaning set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

1. "Action" means *Filardi, et al. v. Mid America Pet Food, LLC*, Case No. 23-cv-11170-NSR, which is pending in the United States District Court for the Southern District of New York.
2. "Agreement" means this Settlement Agreement and its attached exhibits.
3. "Claim Forms" means the forms attached as Exhibit A, which Class Members can access on the Settlement Website and which can be completed in hardcopy form or electronically on the Settlement Website. Claim Forms include the form attached to the mailed Class Notice.
4. "Class Notice" refers to the notice campaign designed and implemented by the Settlement Administrator which shall include a digital notice campaign, direct mail and email notices for those Class Members whose contact information is reasonably available through Defendant (including Defendant's agents involved in any prior claim processing) or through Class Counsel, and publication notice each of which shall be substantially in the form attached hereto as Exhibit B (the "Notice Plan").
5. "Class Counsel" means Jeffrey Goldenberg, Goldenberg Schneider, LPA; Charles Schaffer, Levin Sedran Berman, LLP; Jason Sulzer and Jeremy Francis, Sultz & Lipari, PLLC; Michael Reese and Carlos Ramirez, Reese LLP; Andrew Tate, Peiffer Wolf; Randy Pulliam and Sam Jackson, Carney Bates & Pulliam, PLLC; Stuart Cochran, Condon Tobin Sladek Thornton Nerenberg; and Greg Love, Steckler Wayne & Love.
6. "Court" refers to the judge presiding over this Action, which is Judge Nelson S. Román of the United States District Court for the Southern District of New York.

7. “Consumer Food Purchase Claims” or “Food Purchase Claims” means claims solely for reimbursement of the costs associated with the purchase of Mid America Pet Food Products by Settlement Class Members who have not been reimbursed for such costs to date, including through return or exchange of Defendant’s pet food products. Any Consumer Food Purchase Claim will specifically exclude any amounts that Defendant has already paid to the Settlement Class Members or on their behalf as part of the Mid America Claims Process or amounts paid to Settlement Class Members by retailers following the recall.

8. “Cy Pres Recipient” means the charitable organization(s) jointly selected by Defendant and Class Counsel, and as approved by the Court, to receive any funds remaining from the Net Settlement Fund after the payment of all Valid Claim Forms pursuant to the Plan of Allocation.

9. “Date of Finality” means the first date after the Court enters a Final Approval Order and all appellate rights with respect to that order have expired or been exhausted in such a manner as to affirm the order; provided, however, that any appeal shall not delay, impair, or preclude the Date of Finality to the extent it pertains solely to (i) the Plan of Allocation (while not changing the Settlement Fund), or (ii) any application for attorneys’ fees and expenses.

10. “Defendant” means Mid America Pet Food, LLC.

11. “Defendant’s Counsel” means Jordan Weiss, Nicole Chessari, and Katherine McKenney, Goodwin Procter LLP.

12. “Escrow Account” means an account to be established at Huntington National Bank for the deposit of the Settlement Fund and amounts relating to it, such as income earned on the investment of the Settlement Fund.

13. “Final Approval Hearing” means the hearing at which the Court evaluates whether to enter a Final Approval Order.

14. “Final Approval Order” means the Court order, substantially in the form of Exhibit C, entered under Federal Rule of Civil Procedure 23(e)(2) approving this Agreement and the Parties’ Settlement, certifying the Settlement Class under Rule 23(a) and (b)(3), appointing Class Counsel under Rule 23(g), and dismissing the Action against Defendant with prejudice.

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

16. “Lead Class Counsel” means Jeffrey Goldenberg, Goldenberg Schneider, LPA; Charles Schaffer, Levin Sedran Berman, LLP; Jason Sultz, Sultz & Lipari, PLLC; and Carlos F. Ramirez, Reese LLP.

17. “Mid America Claims Process” means the claims process in which Defendant reimbursed consumers directly for Consumer Food Purchase Claims or Pet Injury Claims upon an individual evaluation of information provided by each alleged claimant or issued refunds for the purchase of Mid America Pet Food Products.

18. “Mid America Pet Food Products” means the pet foods listed in Exhibit D sold to consumers in the United States that were included in Defendant’s recalls announced on September 3, October 30, or November 9, 2023. The definition of Mid America Pet Food Products specifically

excludes other food products produced by Defendant that are not specifically listed in Exhibit D, including food products with a "Best By" date after October 31, 2024.

19. "Mid America Released Parties" means (i) Defendant; (ii) its past, present, and future parents, subsidiaries, affiliates, partners, members, insurers, divisions, predecessors, successors, successors-in-interest, and assigns; and (iii) for each of Defendant and the entities listed in (ii), their respective officers, directors, investors, members, employees, attorneys, controlling persons, advisors, consultants, accountants, auditors, and agents.

20. "Net Settlement Fund" means the Settlement Fund less all of the following: (i) the reasonable costs incurred for the administration of the Settlement, including dissemination of Class Notice and evaluating and processing claims ("Notice and Administration Expenses"), (ii) Class Counsel's attorneys' fees as approved by the Court, (iii) reimbursement of Class Counsel's litigation expenses as approved by the Court, (iv) the service award payments to the Class Representatives as approved by the Court, and (v) any federal or state tax owed, if any, on any income earned by the Settlement Fund after it is deposited into the Escrow Account.

21. "Notice Date" means the date the Settlement Administrator begins to issue the Class Notice and to implement the Notice Plan as described above in paragraph 4. The Settlement Administrator shall complete the process of issuing Class Notice and implementing the Notice Plan no more than 45 days after the Notice Date.

22. "Pet Injury Claims" means claims seeking damages allegedly incurred by Settlement Class Members whose pets consumed any of the Mid America Pet Food Products and where the Settlement Class Member incurred any economic loss related to their pet's ingestion of the Mid America Pet Food Products, specifically (a) payments for illness, injuries, or death to pets and related losses including payments for the purchase price of deceased pets or replacement pets; (b) payments for medical expenses, including ongoing treatment or ongoing special diets; (c) payments for funeral/cremation costs; and (d) payment for losses to breeders related to injured, sick, or dead breeding animals.

23. "Plaintiffs" and "Class Representatives" mean James Filardi, Courtney Andersen, Lisa Burmeister, Kenneth Leonard, Dorothy Petersen, Stephanie Raney, Irene Nunez, Conrado Moreira, Kiara Reed, Nacole Houston, Monika Bennett, Jason Jarrell, Alison Barnhill, Kimberlee Ferris, Jeffrey Gould, Melissa Swaringen-Orton, Michelle Rubiano, and Coleman Stephens.

24. "Plan of Allocation" means the allocation of the Net Settlement Fund to reimburse for various types of losses, including: (a) refunds for Mid America Pet Food Products; and (b) Pet Injury Claims. The Plan of Allocation is described below in Section V, paragraph 12. Any funds remaining from the Net Settlement Fund after the payment of all Valid Claim Forms pursuant to the Plan of Allocation shall be paid to the Cy Pres Recipient. The Plan of Allocation includes a process for Settlement Class Members to appeal claim valuations. Defendant and the Mid America Released Parties shall not have any responsibility with respect to, or liability arising from, the Plan of Allocation or claim valuations.

25. "Preliminary Approval Order" means the order, substantially in the form of Exhibit E, that the Court enters under Federal Rule of Civil Procedure 23(e)(1), directing Notice to all Settlement Class Members based on Plaintiffs' showing that the Court will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the Settlement Class for purposes of judgment on the proposal.

26. “Proof of Purchase” means acceptable documentation that provides proof of purchase of Mid America Pet Food Products. Acceptable documentation includes receipts, copies of receipts, loyalty card records, packaging bearing the SKU of Mid America Pet Food Products listed in Exhibit D or other legitimate, documentary proof showing payment to a retailer for Mid America Pet Food Products.

27. “Released Claims” means any and all claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, costs, and expenses, whether known or unknown (including Unknown Claims as defined below) to the fullest extent permitted by law against Defendant and the Mid America Released Parties for economic losses and physical injuries to pets relating to in any way Defendant’s recalls of Mid America Pet Food Products due to the presence of *Salmonella*, that were alleged or could have been alleged in any of the complaints filed in *Filardi, et al. v. Mid-America Pet Food, LLC*, Case No. 23-cv-1170 or in the Texas Actions, or otherwise arise out of, relate to, are based on, or have any connection to the allegations, acts, omissions, representations, misrepresentations, facts, events, transactions, or occurrences asserted in the Action or the Texas Actions. This Release also includes claims that would be barred by *res judicata* based on the Court’s entry of the Final Approval Order. This Release includes equitable, injunctive, and monetary claims.

28. “Relevant Time Period” means from October 31, 2022 through February 29, 2024.

29. “Settlement” means the complete resolution of this Action as provided for and effectuated by this Agreement.

30. “Settlement Administrator” means the third-party notice and administration provider selected by Class Counsel, subject to Defendant’s approval which shall not be unreasonably withheld, and as approved by the Court. Class Counsel and Defendant may, by agreement, substitute a different Settlement Administrator, subject to Court approval. The Parties agree that Angeion Group shall be retained to implement the claims and settlement requirements of this Agreement.

31. “Settlement Fund” means the amount of five million, five hundred thousand U.S. dollars (\$5,500,000.00). The Settlement Fund shall be deposited into an interest bearing account to be administered and monitored by the Settlement Administrator.

32. “Settlement Class” means all persons and entities residing in the United States who purchased one or more of the Mid America Pet Food Products. Excluded from this Settlement Class are persons or entities whose claims are solely based upon the purchase of Mid America Pet Food Products for resale; corporate officers, members of the board of directors, and senior management of Defendant; persons or entities who otherwise meet the definition of Settlement Class Members, but who previously contacted Defendant prior to and during the pendency of this Action and/or the Texas Actions, signed a release and in exchange received financial compensation from Defendant; any and all judges and justices assigned to hear or adjudicate any aspect of this Action or the Texas Actions; any members of the Settlement Class that opt out prior to the opt out deadline; any entity in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns and successors; and Class Counsel.

33. “Settlement Class Member” refers to any person who falls within the definition of the Settlement Class and who does not validly exclude themselves from the Settlement Class pursuant to the procedure set forth in Section V below and the Preliminary Approval Order.

34. "Texas Actions" refers to the actions previously pending in the U.S. District Court for the Eastern District of Texas, captioned *Andersen et al. v. Mid-America Pet Food, LLC*, No. 5:23-cv-00140-RWS, *Jackson et al. v. Mid-America Pet Food, LLC*, No. 5:23-cv-00153-RWS, and *Barnhill et al. v. Mid-America Pet Food, LLC*, No. 5:24-cv-00046-RWS, which were dismissed in order to facilitate the settlement of this consolidated action.

35. "Unknown Claims" means (i) any and all of the Released Claims which Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Mid America Released Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the release of the Mid America Released Parties, or might have affected his, her, or its decision(s) to enter into the Settlement Agreement or not to object to this Settlement Agreement. With respect to any and all of the Released Claims, the Parties stipulate and agree that upon the Date of Finality, Plaintiffs and the Settlement Class Members shall be deemed to have waived, and by operation of the entry of the Final Approval Order shall have expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

The Parties acknowledge, and Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of the Released Claims was separately bargained for and was a material and necessary element of the Settlement.

36. "Valid Claim Form(s)" means a Claim Form submitted by a Settlement Class Member that is determined to be valid and not fraudulent by the Settlement Administrator and: (a) is submitted in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is accurately, fully and truthfully completed and executed under penalty of perjury with all of the information requested in the Claim Form by a Settlement Class Member on the initial submission; (c) is signed physically or by e-signature by a Settlement Class Member or Person with authority to sign for and bind a Settlement Class Member, subject to penalty of perjury; and (d) is returned via mail and postmarked by the Claims Deadline or received by mail or on-line submission by midnight of the Claims Deadline Eastern Standard Time.

II. CERTIFICATION OF SETTLEMENT CLASS

1. As part of the settlement approval process contemplated in Federal Rule of Civil Procedure 23(e), Plaintiffs shall seek certification of the Settlement Class under Federal Rule of Civil Procedure 23(a) and (b)(3), including the appointment of Class Counsel under Federal Rule of Civil Procedure 23(g). Defendant shall not oppose certification of the Settlement Class or appointment of Class Counsel.

2. In entering into this Agreement, Defendant does not concede that certification of a litigation class would have been appropriate in this Action.

3. In the event that the Court does not enter a Final Approval Order (or if a Final Approval Order is reversed on appeal), Plaintiffs and Class Counsel will be precluded from using the provisions of this Section or the Court's certification of the Settlement Class to suggest that a litigation class should be certified.

III. APPOINTMENT OF SETTLEMENT ADMINISTRATOR AND SETTLEMENT ADMINISTRATOR DUTIES

1. As part of the settlement approval process contemplated in Federal Rule of Civil Procedure 23(e), Plaintiffs shall request that the Court appoint the Settlement Administrator.

2. The Settlement Administrator will be required to agree to all of the terms and conditions of this Agreement relating to the administration of the Settlement.

3. The Settlement Administrator will be responsible for administering the Settlement, which will include, among other tasks:

a. Maintaining reasonably detailed records of its activities under this Settlement as are required by applicable law in accordance with its normal business practices, and such records will be made available to Class Counsel and Defendant's Counsel promptly upon request;

b. Providing reports and other information to the Court as the Court may require, including, should the Court request or should it be reasonably advisable to do so, a timely report to the Court summarizing the work performed by the Settlement Administrator;

c. Creating, administering, and overseeing the Escrow Account and Settlement Fund, which includes overseeing the claim appeal process as contained in the Plan of Allocation;

d. Providing Notice to Settlement Class Members in accordance with the Notice Plan, attached as Exhibit B;

e. Establishing and maintaining the Settlement Website which shall, at a minimum, contain important dates and deadlines, frequently asked questions, important pleadings, claim forms, class notices, and permit Class Members to file their claims electronically;

f. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries;

g. Responding to any mailed or emailed Settlement Class Member inquiries;

h. Forwarding to Defendant's Counsel and Class Counsel, upon request, copies of all documents and other materials relating to the administration of the Settlement, including claim review and claim valuation;

i. Receiving requests from Class Members to exclude themselves from the Settlement Class and providing to Class Counsel and Defendant's Counsel a copy thereof

promptly upon receipt. If the Settlement Administrator receives any requests for exclusion from Class Members after the Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

j. Providing reports and summaries, as requested, to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number and type of Claim Forms received and the identity of the Settlement Class Members;

k. Employing reasonable procedures and anti-fraud measures to screen Claim Forms for waste, fraud, and abuse and rejecting a Claim Form, or any part of a claim for a payment reflected therein, where the Settlement Administrator determines that there is evidence or indicia of fraud. The Settlement Administrator will review each Claim Form based upon the initial submission by a Settlement Class Member and ensure that each is complete, properly substantiated and, based on the substantiation, determine the appropriate benefit to be paid, if any, in accordance with the terms of this Agreement. The Settlement Administrator may consult with experts, as necessary, to evaluate claims, claimed damages, and supporting documentation. Claim Forms determined to be fraudulent or evidencing indicia of fraud shall be excluded by the Settlement Administrator. To preserve the value of the Net Settlement Fund, the Settlement Administrator shall not provide notice of claim rejection status to claimants whose Claim Form has been determined to be fraudulent;

l. Issuing Settlement Checks. All checks issued pursuant to this Settlement shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a check is not cashed within sixty (60) days after the date of issue, the Settlement Administrator is authorized to send by mail (and if available an e-mail) and/or place a telephone call to that Settlement Class Member reminding him/her of the deadline to cash such check. To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the check will be void, and the amount of any such voided check shall revert back to the Net Settlement Fund and will be distributed to the Cy Pres Recipient;

m. Considering and evaluating claims submitted with a Claim Form and received by the Settlement Administrator or postmarked by the Claims Deadline. The Claims Deadline shall be clearly set forth in the Class Notice, the Settlement Website, and on the Claim Form. Settlement Class Members who fail to submit a Valid Claim Form by the Claims Deadline shall not be eligible for a payment but will be bound by the terms of this Agreement, including the releases set forth herein;

n. Making the Claim Forms available on the Settlement Website. In addition to making Claim Forms available on the Settlement Website, the Claim Forms will be mailed to Settlement Class Members upon request by calling or writing to the Settlement Administrator. Settlement Class Members may submit their completed and signed Claim Forms to the Settlement Administrator by such means as proscribed by the Notice on or before the Claims Deadline. The Settlement Website shall be configured such that Claim Forms and supporting documentation can be submitted electronically;

o. Processing and transmitting payments to Settlement Class Members who submitted Valid Claim Forms and, if necessary, process and transmit to the Cy Pres Recipient any funds remaining from the Net Settlement Fund after the payment of all Valid Claim Forms pursuant to the Plan of Allocation;

p. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; (ii) identifies all Requests for Exclusion and/or objectors; and (iii) attests to the number of Claim Forms submitted. Such declaration shall be provided to Defendant's Counsel and Class Counsel for filing with the Court no later than fourteen (14) days prior to the Final Approval Hearing; and

q. Performing any function related to Settlement administration at the agreed-upon instruction of Class Counsel or Defendant's Counsel, including, but not limited to, verifying that payments for Valid Claim Forms have been distributed.

4. Limitation of Liability. The Parties, the Mid America Released Parties, Class Counsel, and Defendant's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the Notice Plan and the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes and tax-related expenses.

5. Indemnification. The Settlement Administrator shall indemnify and hold harmless the Parties, the Mid America Released Parties, Class Counsel, and Defendant's Counsel for (i) any act or omission or determination of the Settlement Administrator, or any of the Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes and tax-related expenses.

6. Privacy. The Settlement Administrator shall take reasonable measures to the extent permitted by law to assert and to protect the privacy rights of Settlement Class Members, including by maintaining the confidentiality and security of and preventing the unauthorized access or acquisition of any financial or personal information submitted in connection with any claim for benefits pursuant to this Settlement Agreement. In the event of any unauthorized access to or acquisition of personal information concerning any Settlement Class Member as a direct result of the intentional or negligent acts or omissions of the Settlement Administrator, the Settlement Administrator shall be responsible for complying with any privacy, data security, or breach notification obligations under state or federal law, and will be solely responsible for directly

providing notice to state agencies, affected Settlement Class Members, and/or other persons or entities.

7. **Discretion of Settlement Administrator.** The Settlement Administrator shall have the discretion to carry out the intent of the Settlement Agreement, subject to the terms of the escrow agreement described in Paragraph V.4 and applicable Orders of the Court.

IV. SETTLEMENT CONSIDERATION

1. **Establishment of Settlement Fund.** Defendant shall pay or cause to be paid five million, five hundred thousand U.S. dollars (\$5,500,000.00) for deposit into the Escrow Account as follows: Defendant shall deposit into the Escrow Account as directed by the Settlement Administrator an initial funding amount equal to the amount of the Settlement Fund not to be paid by Defendant's insurers within 20 days of the later of (a) entry of the Preliminary Approval Order, or (b) Defendant's receipt of payment instructions and a completed Form W-9 for the Escrow Account, if required. Within ten days following the Date of Finality, Defendant, directly or indirectly, shall pay the remaining amount of the Settlement Fund not previously paid (\$5,500,000 minus the initial payment made within 20 days of entry of the Preliminary Approval Order) into the Escrow Account as directed by the Settlement Administrator.

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

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

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

5. Use of the Settlement Fund. As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) taxes and tax-related expenses, if any; (iii) service award payments as approved by the Court; (iv) attorneys' fee award and cost reimbursement as approved by the Court; (v) settlement payments, and (vi) any payments to the Cy Pres Recipients as approved by the Court. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.

6. Taxes and Representations. Taxes and tax-related expenses relating to the Settlement Fund, if any, shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court up to \$200,000. Prior to the Date of Finality, any Notice and Administrative Expenses in excess of \$200,000 shall be paid from the Settlement Fund subject to prior approval from the Court. After the Date of Finality, any Notice and Administrative Expenses shall be paid as incurred, without the approval of Defendant or the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties, the Mid America Released Parties, and their Parties' counsel for taxes and tax-related expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member who receives a payment for a Valid Claim Form and Cy Pres Recipient shall be solely responsible for the federal, state, local, and other tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement. The Settlement Fund shall constitute a qualified settlement fund within the meaning of Treasury Regulation Sections 1.468B-1 through 1.468B-5, 26 C.F.R. §§ 1.468B-1 through 1.468B-5 (1992), and the Parties shall treat the Settlement Fund consistently therewith for all reporting purposes under the United States federal tax laws. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the Settlement Administrator shall be the "escrow agent." As the escrow agent, the Settlement Administrator shall timely and properly file all required federal and state informational and other tax and informational returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulations Section 1.468B-2(k)). Such returns shall be consistent with this paragraph and in all events shall reflect that all taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the income earned by the Settlement Fund. Taxes and tax expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and paid without prior order from the Court. The Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from the income earned by the Settlement Fund any funds necessary to pay such taxes, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treasury Regulations Section 1.468B2(1)(2)). The Settlement Administrator shall maintain accurate records of all expenditures made pursuant to this paragraph and shall provide the records upon request to Class Counsel and Defendant's Counsel. None of the Parties, or any of their counsel, shall have any responsibility for the payment of taxes described in this paragraph (other than, in the case of each Class Representative and Settlement Class Member, the

payment of federal, state, local and other tax consequences to him, her or it due to the receipt of funds from the Settlement Fund pursuant to this Agreement). The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph. The Parties further agree that the costs of issuing notice and claims administration will be excluded from the Settlement Fund for tax purposes.

7. Enhancements to Defendant's Safety Protocols. As part of this Settlement, Defendant has represented to Plaintiffs that since the recalls and the institution of this litigation, Defendant has implemented a number of food safety related enhancements. Specifically, MAPF represents and agrees that it has spent approximately \$7 million dollars to implement certain business practice changes and capital improvements to its food safety programs including engaging third-party sanitization professionals and food safety and operational consultants, hiring a Chief Supply Chain Officer and Vice President of Manufacturing, Maintenance and Sanitation, and completing numerous facility repairs and capital improvements to improve food safety. Class Counsel has, through informal discovery, confirmed that MAPF has implemented or is in the process of implementing these business practice changes and capital improvements. MAPF agrees that the Action (and the Texas Actions) were a catalyst for those improvements and changes. The Parties agree that the value of the business practice changes and improvements is approximately \$7 million.

V. PAYMENTS TO SETTLEMENT CLASS MEMBERS

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

2. Claims Process. Each Settlement Class Member shall be entitled to submit a Claim that will, if valid, entitle the Settlement Class Member to a cash payment consistent with the Plan of Allocation as approved by the Court. The period for submitting such claims shall commence upon the Notice Date and continue for no less than 90 days (the "Notice Period"). The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by this Settlement by processing Claim Forms in a rational, responsive, cost effective and timely manner and employ all reasonable fraud prevention practices it deems appropriate, in consultation with Class Counsel and Defendant's counsel. All available monies in the Net Settlement Fund will be paid out to Settlement Class Members who submitted Valid Claim Forms or, to the extent there are any residual unpaid funds due to uncashed settlement payments, paid on the Settlement Class's behalf to the Cy Pres Recipient. Monies will be distributed to Settlement Class Members pursuant to the claims process described below, consistent with the Plan of Allocation. All Class Members who fail to timely or validly submit a Claim Form within the time set forth in the Notice, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments pursuant to this Agreement and the Settlement set forth herein, but will in all other respects be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Final Approval Order, unless they opt out pursuant to Section VII.

3. Settlement Class Members Who Previously Contacted Defendant. Settlement Class Members who previously contacted Defendant prior to and during the pendency of this litigation, did not sign a release, and either received no compensation or received partial financial compensation from Defendant as a result of that contact will be considered for additional compensation but only if they have not already been compensated fully in a manner consistent with the Plan of Allocation.

4. Requests for Additional Proof and Claim Review Process. The Settlement Administrator may contact the Settlement Class Member to obtain more information, to verify certain facts or to seek answers to questions, or to obtain more documentation concerning or relating to a Pet Injury Claim or a Food Purchase Claim. If a Settlement Class Member fails to respond to multiple communications from the Settlement Administrator made for the purpose of verifying the validity of a Claim Form, the Settlement Administrator may deny the Claim Form on that basis. Any such Settlement Class Member will still be bound by the terms of this Agreement. For any Pet Injury Claim or Food Purchase Claim, the Settlement Administrator or Class Counsel may request additional proof, including a sworn statement or testimony under oath. Any Pet Injury Claim or Food Purchase Claim seeking reimbursement or the payment of an amount greater than \$5,000 will be paid only upon the recommendation of the Settlement Administrator and approval of Class Counsel.

5. Settlement Class Members Who Have Documented Pet Injury Claims. Settlement Class Members asserting a Pet Injury Claim shall provide documentation showing injury or death, screening or treatment of the pet for signs consistent with consumption of Salmonella as a result of the use or consumption of Mid America Pet Food Products. Acceptable forms of documentation include, but are not limited to: veterinary notes, veterinary records, test or laboratory reports, letters, emails, or statements from the veterinarian, hospital or clinic, funeral records, cremation records, disposal records and pictures of deceased pets.

6. Documented Pet Injury Claims. Settlement Class members who submit valid Documented Pet Injury Claims showing injury or death, screening or treatment of the pet for signs consistent with consumption of Salmonella as a result of the use or consumption of Mid America Pet Food Products will be eligible to receive payments for, including but not limited to, the following: (1) documented payments for illness, injuries or death to pets and related losses including payments for the purchase price of deceased pets or replacement pets; (2) documented payments for medical expenses, including ongoing treatment or special diets; (3) documented payments for funeral/cremation costs; and (4) documented payments for losses related to injured, sick or dead breeding animals. Documented Pet Injury Claims also include claims for screening costs that were reasonably necessary based on concern for having a pet that consumed Mid America Pet Food Products. Documented Pet Injury Claims seeking payments for the purchase price of deceased pets or replacement pets; payments for medical expenses, including ongoing treatment; payments for funeral/cremation costs; and payments for losses related to injured, sick or dead breeding animals, must include valid documentation sufficient to establish the damages sought. All Claim Forms seeking damages related to breeding operations must include valid business records and documentation establishing, at a minimum a prior history (prior to the recalls at issue in this Settlement) of selling puppies and must include current email, address and phone

information. Settlement Class members seeking to recoup damages for Documented Pet injury Claims must provide valid and current contact information and verify, under penalty of perjury, that the documentation provided is accurate and legitimate. Acceptable forms of documentation include receipts, invoices, contracts, breeding business records (e.g., sales records including payment records, profit and loss statements or other similar reports), declarations, and tax documents. Class members seeking payments for losses related to injured, sick or dead pets used for profit (breeding) must also provide a copy of their commercial license or other state or federal permit (if required) that was valid at the time the breeding pet(s) died or became injured or sick. Documented Pet Injury Claims shall be paid in accordance with the Court-approved Plan of Allocation.

7. Undocumented Pet Injury Claims. Undocumented Pet Injury Claims must be supported by a detailed declaration under oath provided by the pet owner describing the details of the Mid America Pet Food Product purchased and the ailments and/or injuries to their pets. The detailed declaration may be incorporated into the Claim Form. Undocumented Pet Injury Claims will be approved only if substantial detail is provided by the Settlement Class member. Valid Undocumented Pet Injury Claims will be paid at a capped amount as required by the Plan of Allocation (no more than \$50 for an injured pet and no more than \$100 for a deceased pet). Undocumented Pet Injury Claims are limited to one pet per Household.

8. Pet Injury Claim Review. The Settlement Administrator is authorized (in conjunction with a veterinarian or other expert, if necessary, selected by Class Counsel and approved by Defendant) to review the documents and declarations submitted in connection with Pet Injury Claims and to investigate, evaluate, and make a determination as to the validity of the claim based on the documentation or declaration submitted and any other materials determined to be relevant and obtained during the claim evaluation process. By submitting a Pet Injury Claim, the Settlement Class Member is authorizing the Settlement Administrator, in its discretion, to contact the treating veterinarian of the Settlement Class Member's allegedly injured or dead pet, to verify payments the Settlement Class Member seeks to recoup, to seek the input of Class Counsel and/or Defendant's Counsel, and to fully investigate and make a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant.

9. Food Purchase Claims. Settlement Class Members may submit a Consumer Food Purchase Claim for up to the full price of the purchased Mid America Pet Food Products as further described below. Each Settlement Class Member may elect to submit either a (i) Consumer Food Purchase Claim with Proof of Purchase (Documented Food Purchase Claim); or (ii) Consumer Food Purchase Claim without Proof of Purchase (Undocumented Food Purchase Claim).

10. Documented Food Purchase Claim. Settlement Class Members who complete the Claim Form and provide valid documentation establishing Proof of Purchase(s) of Mid America Pet Food Products during the Relevant Time Period and the purchase price of the Mid America Pet Food Products purchased during the Relevant Time Period shall receive a refund of the full price of the Mid America Pet Food Products as set forth on their Proof of Purchase consistent with the Plan of Allocation as approved by the Court. The Settlement Administrator

shall have the right to determine the validity of such claims and may investigate and request reasonable additional information in order to avoid fraud.

11. Undocumented Food Purchase Claim. Settlement Class Members who complete the Claim Form and do not provide valid Proof of Purchase showing their actual purchase(s) of Mid America Pet Food Products during the Relevant Time Period shall receive \$20 per bag for up to two (2) bags of Mid America Pet Food Products claimed to have been purchased. The Settlement Administrator shall have the right to determine the validity of such claims and may investigate and request reasonable additional information in order to avoid fraud.

12. Plan of Allocation. All proposed payments for Valid Claim Forms shall be made from the Net Settlement Fund and shall be calculated consistent with this Plan of Allocation as approved by the Court. Any orders with respect to the Plan of Allocation shall not be a ground for nullification of the Settlement, or for the Settlement not becoming final.

(a) Payment of Documented Pet Injury Claims and Documented Food Purchase Claims. The payment amounts for valid Documented Pet Injury Claims and Documented Food Purchase Claims shall be calculated first. \$1,500,000 from the Net Settlement Fund shall be set aside to pay approved Documented Pet Injury Claims and Documented Food Purchase Claims, up to 100% of the total approved values.

If the \$1,500,000 set aside for this purpose is not fully exhausted after the full payment of all approved Documented Pet Injury Claims and Documented Food Purchase Claims, the remaining funds shall then be used to pay Undocumented Pet Injury Claims and Undocumented Food Purchase Claims.

If the value of all approved Documented Pet Injury Claims and Documented Food Purchase Claims exceeds \$1,500,000, then each approved Documented Pet Injury Claim and Documented Food Purchase Claim shall receive from the \$1,500,000 a percentage of their claim's valuation equal to \$1,500,000 divided by the value of all approved Documented Pet Injury Claims and Documented Food Purchase Claims. The unpaid remainder of the Documented Pet Injury Claims and Documented Food Purchase Claims shall then be paid pursuant to subparagraph (b) below.

(b) Pro Rata Reduction. If the total proposed payment for all Valid Undocumented Pet Injury Claims and Valid Undocumented Food Purchase Claims (and the unpaid remainder of Documented Pet Injury Claims and Documented Food Purchase Claims, if any) exceeds the amount available in the remaining Net Settlement Fund, minus any covered costs and expenses, each Valid Claim Form shall be reduced pro rata.

(c) Pro Rata Increase. If the total proposed payment for all Valid Claim Forms does not exceed the amount available in the Net Settlement Fund, then those excess funds shall be paid pro rata to each claimant who submitted a Valid Claim Form.

(d) Caps on Each Undocumented Claim. Subject only to the potential pro rata increase discussed above in subparagraph (c), each Valid Claim Form seeking benefits for an undocumented claim is subject to the following caps:

- (i) Undocumented Pet Injury Claim - \$50 (1 pet per Household)
- (ii) Undocumented Pet Death Claim - \$100 (1 pet per Household)
- (iii) Undocumented Food Purchase Claim - \$20 per bag up to two bags (1 claim per Household)

(e) **Cap on Each Documented Claim.** Each individual Documented Claim is subject to a \$100,000 cap.

(e) **Residual to Cy Pres Recipient.** Sixty (60) days after the settlement payment checks become stale (including after any returned checks are reissued and become stale), any remaining residual amounts in the Net Settlement Fund be paid to the Court approved Cy Pres Recipient.

(f) **Appeal Process.** Any Class Member who submitted a Documented Pet Injury Claim or Documented Food Purchase Claim may appeal the Settlement Administrator's claim determination by submitting in writing their appeal explaining why the determination is incorrect and providing all documentation supporting their appeal. All such appeals must be postmarked no later than 30 days from the date posted on each Class Member's claim determination letter. All appeals shall be adjudicated by an independent third party selected by Class Counsel and approved by Defendant. The determinations made by the appeal adjudicator shall be final and binding. The appeal adjudicator shall be reasonably compensated for his or her time from the Net Settlement Fund.

13. **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administer is authorized to send by mail and if available an e-mail and/or place a telephone call to that Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued shall remain valid and negotiable for ninety (90) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Settlement Class Members within that time.

14. **Residue of Settlement Fund.** No portion of the Settlement Fund shall revert or be repaid to Defendant after the Effective Date. All funds shall be distributed pursuant to the Plan of Allocation.

15. **Claims per Household.** Only one Pet Injury Claim Form and one Food Purchase Claim Form per Household is eligible. Each documented Claim Form may include multiple bags of Mid America Pet Food Products and multiple pets.

VI. NOTICE TO THE SETTLEMENT CLASS

1. **CAFA Notice.** Within ten (10) days after Preliminary Approval by the Court, Defendant shall serve notices of the Settlement on state and federal regulatory authorities as required by Section 3 of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notices”). Defendant shall simultaneously serve copies of the CAFA Notices on Class Counsel. In the event that a state or federal official raises concerns about the Settlement, the Parties and their counsel agree to work together in good faith to resolve those concerns. The costs associated with any CAFA Notices shall be paid from the Settlement Fund.

2. **Notice Plan.** Upon entry of Preliminary Approval, the Settlement Administrator shall implement the Notice Plan provided herein as Exhibit B, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice Plan shall include, among other information: a description of the material terms of this Settlement; a date by which Settlement Class Members may object to this Settlement; a date by which Settlement Class Members may exclude themselves from this Settlement, the date and location for the Final Approval Hearing; and the address of the Settlement Website at which Settlement Class Members may access this Settlement and other related documents and information and file claims. Under Class Counsel’s supervision, the Settlement Administrator shall design and develop a Notice Plan that is reasonably practicable under the circumstances, complies with due process and the requirements of Rule 23, and complies with the directions and guidance from the Court. At a minimum, the Notice Plan shall include direct mail and/or email notice to Settlement Class Members whose contact information is reasonably available, reminder notices as necessary, a digital ad campaign designed to maximize Settlement Class Member participation in the Settlement, publication notice, and a user-friendly settlement website.

VII. REQUESTS FOR EXCLUSION

1. The provisions of this section shall apply to any request for exclusion from the Settlement Class by any person or entity who falls within the defined Settlement Class.

2. Any such person or entity may request exclusion by submitting such request in writing as set forth in the Class Notice. Requests for exclusion must be submitted individually in connection with a Settlement Class Member, i.e., one request is required for every Settlement Class Member seeking exclusion; so-called “mass” or “class” opt outs shall not be allowed.

3. Any request for exclusion must be received by the Settlement Administrator not later than the date specified in the Preliminary Approval Order, which date shall be no earlier than sixty (60) days after the Settlement Administrator begins to mail and email notices.

4. Any request for exclusion shall (i) state the person or entity’s full name, current address, and email address or telephone number; (ii) specifically and clearly state his/her/its desire to be excluded from the Settlement and from the Settlement Class; and (iii) provide sufficient proof that they are a Settlement Class Member.

5. Any member of the Settlement Class who does not submit a timely and valid written request for exclusion from the Settlement Class (i.e., become an Opt-Out) will be bound by the terms of the Settlement Agreement and all proceedings, orders and judgments in the Action, even if such Settlement Class Member has previously initiated or subsequently initiates individual

litigation or other proceedings encompassed by the Released Claims. Any purported request for exclusion or other communication sent to the Settlement Administrator that is unclear or internally inconsistent with respect to the Settlement Class Member's desire to be excluded from the Settlement Class will be deemed invalid unless determined otherwise by the Court. Requests for exclusion signed only by counsel or another representative shall not be permitted.

6. Any person or entity who submits a timely request for exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Agreement.

7. The Settlement Administrator shall provide to Lead Class Counsel and Defendant's Counsel each request for exclusion received within three days of receipt and a complete list of the requests for exclusion received no later than seven (7) days after the opt out deadline.

VIII. PROCEDURE FOR OBJECTIONS

1. Any Settlement Class Members who do not exclude themselves and wish to comment on or object to the Settlement or the award of fees and expenses as requested by Class Counsel must do so in accordance with the terms of this Section VIII and the Preliminary Approval Order.

2. Settlement Class Members who fail to submit written objections that are both timely and in full compliance with the requirements of this Section will be deemed to have waived their objections to the Settlement and will be foreclosed and barred forever from making any objection (whether by appeal or otherwise) to the Settlement.

3. The Settlement Class Member must mail a letter that is postmarked no later than the date specified in the Preliminary Approval Order which date shall be no earlier than sixty (60) days after the Settlement Administrator begins to mail and email notices and the comment or objection must contain the following:

- a. The name and case number of this lawsuit, *Filardi, et al. v. Mid-America Pet Food, LLC*, Case No. 23-cv-1170.
- b. The Settlement Class Member's full name, mailing address, and email address or telephone number;
- c. If objecting, the Settlement Class Member must state whether the objection applies only to the objector, or to a specific subset of the Settlement Class, or to the entire Settlement Class;
- d. All reasons for the objection or comment and sufficient proof that they are a Settlement Class Member;
- e. A statement identifying the number of class action settlements the Settlement Class Member or their attorney has objected to or commented on in the last five years;
- f. Whether the Settlement Class Member intends to personally appear at the Final Approval Hearing;
- g. The name and contact information of any and all attorneys representing, advising, or assisting the Settlement Class Member, including any counsel who may be entitled to compensation for any reason related to the objection or comment;

- h. Whether any attorney will appear on the Settlement Class Member's behalf at the Final Approval Hearing, and if so the identity of that attorney; and
- i. The Settlement Class Member's signature.

4. Any lawyer representing or assisting an objecting Settlement Class Member must: (a) file a notice of appearance with the Court by the date set forth in the Preliminary Approval Order; (b) file a sworn declaration attesting to representation of each Settlement Class Member on whose behalf the lawyer has acted or will be acting; and (c) comply (and ensure their client's compliance) with each of the above requirements.

5. No Settlement Class Member will be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel), unless their timely objection or comment states their intention to appear at the Final Approval Hearing.

IX. ATTORNEY'S FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

1. Class Counsel will file with the Court an application for an award of attorneys' fees in an amount not to exceed 33.33% of the Settlement Fund as well as reimbursement of the reasonable litigation expenses incurred in the prosecution of the Action, not to exceed \$35,000. Class Counsel's application for an award of attorneys' fees and/or litigation expenses is not the subject of any agreement between Defendant and Plaintiffs other than what is set forth in this Stipulation. Attorneys' fees and/or expenses awarded to Class Counsel (including taxes thereon, as applicable) shall be paid solely out of, and shall not be in addition to, the Settlement Fund.

2. Any award of attorneys' fees and reimbursement of litigation expenses that the Court approves will be paid from the Settlement Fund twenty (20) business days following the Date of Finality or the entry of the order awarding fees and litigation expenses, whichever is later, by means of a wire transfer by the Settlement Administrator to Goldenberg Schneider, LPA's IOLTA.

3. Attorneys' fees and expenses awarded by the Court shall be allocated among Class Counsel in a manner that, in Lead Class Counsel's opinion, fairly compensates them for their respective contribution to the progress of and results obtained in the Action.

4. Class Counsel will file with the Court an application for approval of service awards to each of the Plaintiffs who are serving as class representatives in an amount up to \$5,000 per Plaintiff. However, for those Plaintiffs who received a prior individual settlement offer from Defendant during the pendency of the Action and who rejected that offer, Class Counsel will request a service award at the amount previously offered by Defendant to settle their claims, not to be less than \$5,000. The service awards will be paid from the Settlement Fund.

5. The Settlement Administrator will pay any such Court-approved service awards no later than twenty (20) business days following the Date of Finality or the entry of the order awarding the service awards, whichever is later, by mailing via first class United States mail a check in the approved amount payable to the recipient. The Settlement Administrator will include a Form 1099 to the extent such form is required.

6. Any orders with respect to the request for attorneys' fees and expenses or the service awards shall not be a ground for nullification of the Settlement, or for the Settlement not becoming final.

X. MOTION FOR PRELIMINARY APPROVAL

1. The Parties acknowledge that prompt approval, consummation, and implementation of this Settlement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement, shall promptly perform their respective obligations hereunder, and shall promptly take all actions and execute and deliver any and all additional documents and all other materials and information reasonably necessary or appropriate to carry out the terms of this Settlement and the transactions contemplated hereby.

2. Plaintiffs will file a motion requesting the Court enter a Preliminary Approval Order, which will accomplish the following, among other matters:

- a. Find that the requirements of the Federal Rule of Civil Procedure 23(e)(1) have been satisfied such that the Court will likely be able to approve the Settlement under Rule 23(e)(2) and certify the Settlement Class for purposes of judgment on the proposal;
- b. Find that the procedures set forth in Section VII of this Agreement, including the dissemination of Class Notice, satisfy the requirements of due process, Rule 23, and applicable law and procedure, and approve that manner of providing notice to the Settlement Class;
- c. Set a deadline for requesting exclusion from or objecting to the Settlement; and
- d. Set a date and time for the Final Approval Hearing at which the Court will finally determine the fairness, reasonableness, and adequacy of the proposed Settlement.

3. Defendant will cooperate with Plaintiffs in the preparation and filing of the motion seeking a Preliminary Approval Order.

XI. FINAL APPROVAL HEARING AND FINAL APPROVAL ORDER

1. A Final Approval Hearing will be held on a date approved by the Court and on a date no earlier than ninety (90) days from the date notice is given pursuant to the Class Action Fairness Act.

2. The date, time, and place of the Final Fairness and Approval Hearing will be set forth in the Notice and the Preliminary Approval Order, which will both further note that the date and time are subject to change, and that any change will be noted on the Settlement Website.

3. Class Counsel shall move, before the Final Approval Hearing, for entry of a Final Approval Order that, among other things, will:

- a. Approve this Agreement without modification (except insofar as agreed upon by the Parties) as fair, reasonable, and adequate to, and in the best interest of, the Settlement Class, and direct its implementation according to its terms;
- b. Find that the form and manner of class notice implemented pursuant to this Agreement (i) constitutes reasonable and the best practicable notice; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement

Class Members of the pendency of the Action, the terms of the proposed Settlement, the right to object to or exclude themselves from the proposed Settlement, and the right to appear at the Final Approval Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meets the requirements of federal due process, the Federal Rules of Civil Procedure, and any other applicable state and/or federal laws including the Class Action Fairness Act;

- c. Find that all Settlement Class Members except those who have properly excluded themselves will be bound by this Settlement and Agreement, including the release provisions and covenants not to sue;
- d. Direct that judgment be entered immediately dismissing with prejudice all individual and class claims asserted in the Action and ruling that no costs or fees be assessed on any Party beyond the attorneys' fees and expenses provided for in Section X of this Agreement;
- e. Incorporate the releases and covenants not to sue and forever bar any claims, causes of action, or liabilities by Settlement Class Members that have been released by reason of this Agreement;
- f. Approve the payments provided for in this Agreement to the Settlement Class Members consistent with the Plan of Allocation and the Service Awards to Plaintiffs and make any necessary findings with regard to these approvals;
- g. Approve the award of attorneys' fees and reimbursement of litigation costs to be paid to Class Counsel and make any necessary findings with regard to those approvals; and
- h. Retain jurisdiction of all matters relating to the interpretation, administration, implementation, and enforcement of this Agreement.

XII. RELEASE

1. The Release. Upon the Date of Finality, and in consideration of the Settlement benefits described herein, the Class Representatives and all Settlement Class Members shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Mid America Released Parties from any and all Released Claims.

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

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

Upon the Effective Date, each of the Class Representatives and Settlement Class Members shall be deemed to have, and shall have, waived any and all provisions, rights and benefits

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

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

XIII. MISCELLANEOUS

1. **No admission.** Defendant denies any and all claims alleged in the Action and all wrongdoing whatsoever. This Agreement is neither a concession nor an admission, and will not be used against Defendant as an admission or indication with respect to any claim of any fault, liability, concession, or omission by Defendant.

2. **Jurisdiction and Choice of Law.** The Parties hereby irrevocably submit to the jurisdiction of the Court for any dispute arising out of or relating to this Agreement, the applicability of this Agreement, or the enforcement of this Agreement. All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties will be governed by the laws of the State of New York.

3. **Good faith.** The Parties, their successors and assigns, and their counsel will cooperate fully with one another and undertake all steps necessary to effectuate the terms and conditions of this Agreement. The Parties agree to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement. The Parties and their respective attorneys will not seek to solicit or otherwise encourage any person to exclude himself or herself from the Settlement Class, object to the Settlement, or appeal from any order or judgment of the Court that is consistent with the terms of this Agreement.

4. **No waivers.** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Agreement.

5. **Notice of breach.** If one Party to this Agreement considers the other to be in breach of its obligations under this Agreement, that Party must provide the allegedly breaching Party written notice of the alleged breach and reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.

6. **Nullification.** If (a) the Court does not enter the Preliminary Approval Order or the Final Approval Order, (b) the Settlement does not become final for any other reason, or (c) Defendant elects to exercise its right to terminate the Settlement as set forth in Paragraph 6(a), this Agreement will be null and void and any order or judgment entered by the Court in furtherance of this Settlement will be treated as void *ab initio*. In such event, the entire amount paid or caused to be paid by Defendant—but less the Notice and Administration Expenses already incurred—shall promptly be returned to Defendant, and the Parties will proceed in all respects as if this Agreement had not been executed, including being restored to their respective litigation positions in the Action as of September 10, 2024 and providing Defendant with at least thirty (30) days to respond to the Consolidated Class Action Complaint (ECF No. 16). Under such circumstances, the Action shall proceed in all respects as if this Agreement and related orders had not been executed and without prejudice in any way from the negotiation, terms, or existence of this Settlement, including without waiving any rights or arguments by entering into this Agreement, including any arguments and/or defenses with respect to liability or damages.

- a. Defendant shall have the right to terminate the Settlement if the number of Settlement Class members opting out reaches a level that, in Defendant's judgment, threatens to frustrate the essential purpose of this Agreement. Defendant shall not take into account pending lawsuits of which it is aware in determining whether the number of opt outs reaches such a level.
- b. If Defendant chooses to exercise its right to terminate the Settlement pursuant to subparagraph (a) above, it must do so no later than ten (10) days after receiving the complete opt out list from the Settlement Administrator as required by Section VII, paragraph 7. Prior to exercising this right to terminate, Defendant agrees to confer in good faith with Lead Class Counsel to attempt to address any concerns identified by Defendant.

7. An order denying the Preliminary Approval Motion without prejudice will not constitute a ground for nullifying or terminating the Settlement. Nor will a change in the law constitute a ground for nullifying or terminating the Settlement. Any orders with respect to the request for attorneys' fees and expenses, the service awards, or the Plan of Allocation shall not be a ground for nullification of the Settlement, or for the Settlement not becoming final.

8. **Representations and Warranties.** Class Counsel represents that: (1) they are authorized by the Plaintiffs to enter into this Agreement; and (2) they are seeking to protect the interests of the Settlement Class. Defendant represents and warrants that the individual(s) executing this Agreement are authorized to enter into this Agreement on behalf of Defendant.

9. **Own Counsel.** Each Party acknowledges that it has been represented by attorneys of its own choice throughout all of the negotiations that preceded the execution of this Agreement and in connection with the preparation and execution of this Agreement.

10. **Notice.** All notices, requests, demands, and other communications required or permitted to be given pursuant to this Agreement (other than notice of settlement to Settlement Class Members) will be in writing and will be delivered by email and/ or by next-day express mail (excluding Saturday, Sunday, and federal holidays):

If to Class Counsel then: Jeffrey S. Goldenberg
Goldenberg Schneider, LPA
445 Lake Forest Drive, Suite 490
Cincinnati, Ohio 45249
jgoldenberg@gs-legal.com

If to Defendant then: Jordan D. Weiss
Goodwin Procter LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
jweiss@goodwinlaw.com

11. **Exhibits.** The exhibits attached to this Agreement are hereby incorporated by reference as though set forth fully herein and are a material part of this Agreement. Any notice, order, judgment, or other exhibit that requires approval of the Court must be approved without material alteration from its current form in order for this Agreement to become effective.

12. **Confidentiality.** The Parties agree to keep the terms of the Settlement confidential until they are submitted to the Court, except as necessary with third parties who are assisting in finalizing the Agreement. Defendant and/or the Mid America Released Parties may file this Agreement and/or the Final Approval Order from this Action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, statute of limitations, statute of repose, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate any liability protection under any applicable insurance policy. The Parties may file this Agreement and/or the Final Approval Order in any action that may be brought to enforce the terms of this Agreement and/or the Final Approval Order. All agreements made, and orders entered during the course of the Action relating to the confidentiality of information shall survive this Agreement.

13. **Stay of Proceedings.** Pending Final Court Approval, the Parties shall not seek relief in any forum, and all proceedings in the Action or otherwise shall be stayed and suspended, except that the Parties shall take all such action and file such papers as are necessary and appropriate to effect the consummation and approval of the Settlement. Pending Final Court Approval, all Class Members shall be barred and enjoined from prosecuting any of the Released Claims against any of the Mid America Released Parties.

14. **Entire Agreement.** This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written agreements and discussions, except as otherwise specified herein. Each Party covenants that it has not entered in this Agreement as a result of any representation, agreement, inducement, or coercion, except to the extent specifically provided herein. Each Party further covenants that the consideration recited herein is the only consideration for entering into this Agreement and that no promises or representations of another or further consideration have been made by any person. This Agreement may be amended only by an agreement in writing duly executed by all Parties; provided, however, that after entry of the Final Approval Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents

(including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary and Final Approval Orders and do not limit the rights of Settlement Class Members under this Agreement.

15. **Drafting.** Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same will not be construed against any Party as drafter of this Agreement.

16. **Counterparts.** This Agreement may be executed with an electronic or facsimile signature and in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

17. **Headings.** The headings contained in this Agreement are for reference only and are not to be construed in any way as a part of the Agreement.

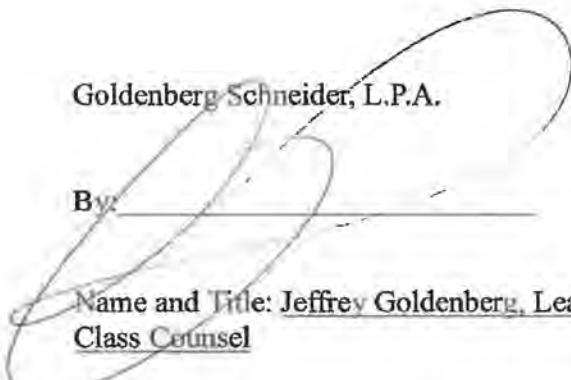
18. **Binding Effect.** This Agreement is binding upon and will inure to the benefit of the Parties and their respective heirs, assigns and successors-in-interest.

WHEREFORE, Plaintiffs, through Lead Class Counsel, and Defendant have executed this Agreement as of the dates set forth below.

FOR PLAINTIFFS:

Dated: November 14, 2024

Goldenberg Schneider, L.P.A.

By: 

Name and Title: Jeffrey Goldenberg, Lead Class Counsel

Dated: November 14, 2024

Levin Sedran & Berman, LLP

By: 

Name and Title: Charles Schaffer, Lead Class Counsel

Dated: _____, 2024

Sultzner & Lipari, PLLC

By: _____

Name and Title: Jason Sultzner, Lead Class Counsel

Dated: _____, 2024

Reese LLP

By: _____

Name and Title: Carlos Ramirez, Lead Class Counsel

FOR PLAINTIFFS:

Dated: Nov. 14, 2024

Goldenberg Schneider, L.P.A.

By:

Name and Title: Jeffrey Goldenberg, Lead Class Counsel

Dated: _____, 2024

Levin Sedran & Berman, LLP

By: _____

Name and Title: Charlie Schaffer, Lead Class Counsel

Dated: 11/14, 2024

Sultzzer & Lipari, PLLC

By: _____

Name and Title: Jason Sultzzer, Lead Class Counsel

Dated: Nov. 14, 2024

Reese LLP

By: Carlos

Name and Title: Carlos Ramirez, Lead Class Counsel

FOR DEFENDANT

Dated: November 20, 2024

Mid America Pet Food, LLC

By: Nicole Chessari

Name and Title: Nicole Chessari, Partner,
Goodwin Procter LLP

EXHIBIT A
CLAIM FORM

Your claim must
be submitted
online or
postmarked by:
[DEADLINE]

Filardi v. Mid-America Pet Food, LLC, Case No. 23-cv-11170-NSR

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MAPF
CLAIM

MID AMERICA PET FOOD SETTLEMENT CLAIM FORM

This Claim Form relates to the settlement of lawsuits alleging that certain Mid America Pet Food Products contained or may have contained excessive levels of Salmonella.

By signing and submitting this form, you are attesting to the accuracy and truthfulness of the facts and documents provided. All claims submitted are subject to audit and review by the Settlement Administrator, veterinary experts, the Court, and the attorneys for the parties. You may be contacted to clarify or verify certain information.

All information submitted will be kept confidential except as noted elsewhere in this document. This Claim Form and any accompanying information will be used solely by the Settlement Administrator to process claims under the Settlement and may be reviewed by Settlement Class Counsel, a veterinarian or other expert (if necessary), Mid America Pet Food ("Defendant"), the Court, and/or a mediator.

Please note that simply filling out this form does not guarantee reimbursement and/or payment.

Each Household is only eligible to submit one Pet Injury Claim per pet and/or one Consumer Food Purchase Claim. A "Household" means all persons or entities who share a physical address. For all corporations, partnerships, business organizations or associations, or other type of legal entity, there can be only one physical address used even if there are multiple locations. Persons or entities who bought Mid America Pet Food Products listed in Exhibit 1 for resale are not eligible to make a claim. Additionally, persons who already received compensation from and signed a release with Mid America Pet Food are not eligible to make a claim.

IMPORTANT INFORMATION REGARDING REIMBURSEMENT

If you have been reimbursed previously by Mid America Pet Food or a retailer for expenses associated with the Mid America Pet Food Products covered by this Settlement, but did not sign a release of claims, then the already reimbursed amount will be deducted from the total amount provided to you as part of this Settlement. If the total amount of your previous reimbursement or payment from Defendant or a retailer is greater than the total amount that you are entitled to as part of this Settlement, then you will not receive any further reimbursement or payment as part of this Settlement, but you will be bound by the Settlement Agreement, including the releases set forth therein.

If you would like to receive your benefit electronically, you must complete the Claim Form electronically on the website: www.MidAmericasettlement.com.

I. HOW YOU CAN QUALIFY FOR AND RECEIVE A PAYMENT

You are eligible to file a claim if you purchased one or more of the Mid America Pet Food Products listed on Exhibit [REDACTED] to the Settlement Agreement that were recalled on September 3, October 30, or November 9, 2023.

In order to be eligible for any compensation from the Settlement, you must:

- complete Part II of this form, Part III for Consumer Food Purchase Claims, and/or Part IV for Pet Injury Claims;
- sign the verification statement in Section VI; and
- return the Claim Form either by mailing it by U.S. Mail to the address below, along with your supporting documentation, if any, postmarked on or before [INSERT DATE], 2025, or by submitting it online (www.MidAmericasettlement.com) on or before [INSERT TIME] on [INSERT DATE], 2025.

This Claim Form will be used solely by the Settlement Administrator to process claims for this Settlement. Go to www.MidAmericasettlement.com to submit your Claim Form online. If you cannot submit your claim online, you should complete, sign, and return this Claim Form to: MID AMERICA PET FOOD SETTLEMENT, c/o Settlement Administrator, [INSERT ADDRESS].

Please read the Full Notice (available at www.MidAmericasettlement.com) carefully before filling out this Form. All claims must be submitted with a fully executed Verification to be considered valid.

Your claim must
be submitted
online or
postmarked by:
[DEADLINE]

MID AMERICA PET FOOD SETTLEMENT CLAIM FORM**II. YOUR INFORMATION**

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this Claim Form.

First Name

Last Name

Street Address

City

State

Zip Code

Email Address

Daytime Phone Number

Evening Phone Number

Contact information for treating veterinarian, if any:

Veterinarian Name

Veterinarian Facility Name

Veterinarian Facility Address

Phone Number

III. CONSUMER PET FOOD PURCHASE CLAIM INFORMATION

You may submit either (1) a claim for reimbursement for purchases of Mid America Pet Food Products if you have proof of purchase or (2) a claim for reimbursement for purchases of Mid America Pet Food Products if you do not have proof of purchase. You may NOT submit both.

If you have proof of your Mid America Pet Food Product purchases, such as a receipt showing these purchases, please continue to Section A ("Proof of Purchase").

If you do NOT have proof of your purchase, please continue to Section B ("No Proof of Purchase").

A. Proof of Purchase

Please provide the information requested in the chart below regarding your Mid America Pet Food Product purchases and attach documentation showing your purchases between October 31, 2022 and February 29, 2024 of Mid America Pet Food Products that were recalled on September 3, October 30, or November 9, 2023. Acceptable proof of purchase includes receipts, copies of receipts, retailer loyalty card records, or other legitimate, documentary proof showing payment to an authorized retailer. Fully Documented claims under this Section will be paid at a rate of 100%, subject to pro rata decrease as set forth in more detail in the Plan of Allocation located in the Settlement Agreement.

Your claim must
be submitted
online or
postmarked by:
[DEADLINE]

Filardi v. Mid-America Pet Food, LLC, Case No. 23-cv-11170-NSR

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MAPF
CLAIM

MID AMERICA PET FOOD SETTLEMENT CLAIM FORM

Date of Purchase (mm/dd/yyyy)	Place of Purchase (Store/City/State or website)	Product Name	Number of Bags Bought	Price Paid

B. No Proof of Purchase

If you do not have proof of your purchase of Mid America Pet Food Products, you will receive \$20 reimbursement per bag of food purchased for up to two bags, subject to a pro rata decrease as set forth in more detail in the Plan of Allocation located in the Settlement Agreement. Please provide the information requested below regarding your Mid America Pet Food Product purchases.

Product Name Purchased	
Name of Retailer	
Retailer Location (city, state)	
Dates of Purchase	
Price Paid Per Bag	
Number of Bags Purchased	

IV. REIMBURSEMENTS AND PAYMENTS FOR LOSSES AND EXPENSES RELATING TO THE TESTING, TREATMENT, SICKNESS, OR DEATH OF YOUR PET

You may be eligible to receive money from the Net Settlement Fund if your pet became sick or died and showed signs of illness from Salmonella after consuming any of the Mid America Pet Foods Products covered by this Settlement (pet food recalled on September 3, October 30, or November 9, 2023).

If your pet died and showed signs of Salmonella contamination after consuming any of the Mid America Pet Food Products, you are eligible to recover related costs, such as costs for veterinarian care or treatment, costs of burial or cremation, the cost paid to purchase the pet, or the cost of a new pet. If your pet became ill and showed signs of Salmonella poisoning after consuming any of the products covered by this Settlement, you are eligible to recover related costs, such as costs for veterinarian care, treatment, medication, or screening provided that you submit supporting documentation.

If your pet died or became sick and showed signs of Salmonella illness after consuming any of the Mid America Pet Food Products covered by this Settlement, but you do not have any supporting documentation, you may submit a claim along with a declaration under penalty of perjury for \$50 for pets that became ill but did not die and \$100 for pets that died. Please see Part A below. Pet Injury Claims supported solely by declaration(s) and which are not credible as determined by the Settlement Administrator will be rejected. The payment of

Your claim must
be submitted
online or
postmarked by:
[DEADLINE]

Filardi v. Mid-America Pet Food, LLC, Case No. 23-cv-11170-NSR

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MAPF
CLAIM

MID AMERICA PET FOOD SETTLEMENT CLAIM FORM

these claims may also be subject to a pro rata decrease as set forth in the Plan of Allocation contained in the Settlement Agreement.

To make a valid Pet Injury Claim supported by documentation, you **MUST** submit documents showing screening, diagnosis, or treatment of your pet with signs consistent with the consumption of Salmonella resulting from the use or consumption of the Mid America Pet Food Products covered by this Settlement. The types of documents acceptable include, but are not limited to, receipts, invoices, contracts, and veterinarian records. Settlement Class Members seeking reimbursement for losses related to sick, injured, or deceased pets used for profit (breeding) must also provide business records (e.g., sales records, profit and loss statements, tax records, or similar documentation) and a copy of their commercial license or other state or federal permit (if required) that was valid at the time the breeding animal(s)/pet(s) was sick, injured, or deceased. Simply submitting a claimed expense without documentation or support is not a guarantee that the expense will be reimbursed.

By submitting a Pet Injury Claim, you are authorizing the Settlement Administrator, in its discretion, to fully investigate the validity of the Pet Injury Claim, including contacting the treating veterinarian who treated the Settlement Class Member's allegedly injured pet and by seeking the input of Settlement Class Counsel, and Defendant's Counsel. For any Pet Injury Claim, the Settlement Administrator, Class Counsel, the claim appeal adjudicator, or the Court may request additional proof, including testimony under oath. Each Pet Injury Claim supported by documentation is subject to a cap of \$100,000.00. Please see Notice for further details. Any Pet Injury Claim or Food Purchase Claim seeking reimbursement or the payment of an amount greater than \$5,000 will be paid only upon the recommendation of the Settlement Administrator and approval of Class Counsel.

A. Pet Injury Claim with no supporting documentation

Product Name Purchased	
Name of Retailer	
Retailer Location (city, state)	
Dates of Purchase	
Price Paid Per Bag	
Describe Pet's Illness	
Describe Losses/Damages	

B. Pet Injury Claim with Documentation

Please list the losses and expenses you incurred in the chart below. Remember to attach proof of these expenses, including invoices, payment records, business records, veterinary notes, veterinary records, test or laboratory reports, or a statement(s) from the veterinarian, hospital, or clinic. If you already received reimbursement for these losses from the Defendants and signed a release of your claims, you are not entitled to additional compensation.

Your claim must be submitted online or postmarked by: **DEADLINE**

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MAPF CLAIM

MID AMERICA PET FOOD SETTLEMENT CLAIM FORM

Each expense listed above must be related to the screening or treatment of your pet with signs consistent with the use or consumption of Salmonella resulting from the use or consumption of Mid America Pet Food Products covered by this Settlement that were recalled on September 3, October 30, or November 9, 2023.

While it is not necessary to be eligible to receive money for your Pet Injury Claim, please feel free to provide an explanation for any of the above expenses if you wish to do so.

V. PAYMENT SELECTION

Please select **one** of the following payment options.

PayPal - Enter your PayPal email address: _____

Venmo - Enter the mobile number associated with your Venmo account: _____ - _____ - _____

Zelle - Enter the mobile number or email address associated with your Zelle account:

Mobile Number: - - - - - or Email Address:

Virtual Prepaid Card - Enter your email address:

Physical Check - Payment will be mailed to the address provided in Section II above.

Your claim must
be submitted
online or
postmarked by:
[DEADLINE]

Filardi v. Mid-America Pet Food, LLC, Case No. 23-cv-11170-NSR

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MAPF
CLAIM

MID AMERICA PET FOOD SETTLEMENT CLAIM FORM

VI. VERIFICATION

I declare under penalty of perjury that the above information is true and correct to the best of my recollection. I understand that the above information I provided to support my claim(s) may be reviewed and verified by the Settlement Administrator, the Court, and counsel for the parties. I hereby authorize the Settlement Administrator, in its discretion, to contact me and/or my pet(s)' treating veterinarian, seek the input of Settlement Class Counsel, Defendant's Counsel, and/or Mid America Pet Food, and to fully investigate and make a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant. I also authorize the Settlement Administrator (in conjunction with a veterinarian or other expert, if necessary) to review these documents, investigate, evaluate, and make a determination as to the validity and value of my claim.

Signature: _____ Dated: ____ / ____ / ____

VII. DEADLINE TO SUBMIT YOUR CLAIM FORM

Submit the Claim Form and your supporting documentation, if any, using one of the methods described below by the deadline listed below.

Online: (must be submitted on or before [INSERT TIME] on [INSERT DATE], 2023)	www.MidAmericasettlement.com
By Mail: (must be postmarked on or before [INSERT DATE], 2023)	MID AMERICA PET FOOD SETTLEMENT c/o Settlement Administrator [INSERT ADDRESS HERE]

Please keep a copy of your completed Claim Form and copies of any attached documentation for your records.

Additional copies of the Full Notice and this Claim Form are available at www.MidAmericasettlement.com. If you have any questions about the Full Notice or Claim Form, please contact the Settlement Administrator at 1-[xxx-xxx-xxxx](tel:xxx-xxx-xxxx) or visit www.MidAmericasettlement.com. Inquiries should **NOT** be directed to Mid America Pet Food, Mid America Pet Food's Counsel, the Court, or the Clerk of the Court.

EXHIBIT B
NOTICE FORMS

Email Notice

To: <>Class Member Email>>

From: Settlement Administrator <XXXXXX@MidAmericasettlement.com>

Subject: Mid America Pet Food Class Action Settlement

If you purchased certain pet food products made by Mid America Pet Food you may be entitled to monetary benefits under a Class Action Settlement.

Si desea recibir esta notificación en español, llámenos 1-XXX-XXX-XXXX o visite nuestra página web www.MidAmericasettlement.com.

A Settlement has been reached in a class action lawsuit against Mid America Pet Food LLC (“Defendant”) that alleged Defendant marketed and sold pet food products contaminated with Salmonella, which can make pets sick or die. Defendant denies the allegations in the lawsuit, and the Court has not decided who is right. The case is *Filardi v. Mid-America Pet Food*, Case No. 23-cv-11170-NSR and is pending in Federal Court for the Southern District of New York.

You are receiving this notice because you may be a Settlement Class Member. You are a Settlement Class Member if you purchased one or more of the Mid America Pet Food Products in the United States that were included in Defendant’s recalls announced on September 3, October 30 or November 9, 2023, including Victor Super Premium Dog Food, Wayne Feeds Dog Food, Member’s Mark Dog Food, Eagle Mountain Dog Pro Balance Dog Food, Dog Food Victor Super Premium Cat Food, and Wayne Feeds Cat Food. For a full list of the Pet Foods Products covered by this Settlement, visit www.MidAmericasettlement.com.

What does the Settlement Provide? Defendant has agreed to create a \$5,500,000 Settlement Fund to be used to pay cash benefits to Settlement Class Members, class notice and settlement administration costs, attorneys’ fees and expense reimbursements, and service awards to the Class Representatives. If you are a Settlement Class Member and submit a valid claim, you will receive a payment from the Settlement Fund consistent with the Plan of Allocation approved by the Court. Settlement Class Members can recover money by submitting valid Pet Injury Claims (e.g., payments for pet illness or death and related losses; breeder losses) and/or Consumer Food Purchase Claims (e.g., refunds for pet food purchase price). Generally, claims supported by documentation will be paid at higher amounts. For more information about the cash benefits available and to file Claims online, go to www.MidAmericasettlement.com.

Your Options. Settlement Class Members seeking monetary benefits must complete and submit a Claim Form to the Claims Administrator by **Month Day, 20YY**. Claim Forms can be submitted online at www.MidAmericasettlement.com or by mail. If by mail, the Claim Form must be postmarked by **Month Day, 20YY**. You can also exclude yourself from, or object to the Settlement on or before **Month Day, 20YY**. If you do not exclude yourself from the Settlement, you will remain in the Settlement Class and will give up the right to sue the Defendant about the legal issues in this litigation. **A summary of your rights under the Settlement and instructions regarding how to submit a claim, exclude yourself, or object are available at www.MidAmericasettlement.com.**

The Court will hold a Final Approval Hearing on **Month Day, 20YY, at X:XX X.m.** At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and

consider Class Counsel's request for attorneys' fees (not to exceed 33.33% of the Settlement Fund), expense reimbursement, and service awards for each Class Representative. The Court will also listen to people who have asked to speak at the hearing. You may attend the Hearing at your own expense, or you may also pay your own lawyer to attend, but it is not necessary.

This notice is a summary. The Settlement Agreement and more information about the lawsuit and Settlement are available at www.MidAmericasettlement.com or by calling toll-free **1-XXX-XXX-XXXX**. Inquiries should **NOT** be directed to Defendant, Defendant's Counsel, the Court, or the Clerk of the Court.

FILARDI V. MID-AMERICA PET FOOD, LLC

CASE NO. 23-cv-11170-NSR

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

A Federal Court authorized this notice.
This is not a solicitation from a lawyer.

You are receiving this notice because you requested it or because records indicate that you may have bought pet food products that Mid America Pet Food, LLC (“Defendant”) marketed and sold that may have been contaminated with Salmonella which can cause serious illness or death to pets (“Mid America Pet Food Products”).

You may be eligible to receive certain monetary benefits from a class action settlement. Settlement Class Members can recover money by submitting valid Pet Injury Claims and/or Consumer Food Purchase Claims. Fully Documented Pet Injury Claims are to be paid at 100% of approved documented losses.¹ Pet Injury Claims Documented Solely By Declaration are to be paid at \$50 for pets that became ill but did not die and \$100 for pets that died. In addition, Settlement Class Members who submit valid Consumer Food Purchase Claims shall have their claims valued and paid as follows:

- a. Documented Claims: 100% of approved submitted losses (e.g., the purchase price paid for Mid America Pet Food Products) if losses are supported by documentation (e.g., receipts; invoices; shipping order forms; confirmation emails; proof of payment; etc.).
- b. Undocumented Claims: \$20 for each bag of Mid America Pet Food Products purchased, up to two (2) bags. Each Undocumented Claim is capped at \$40.

All Documented and Undocumented Claims are subject to pro rata decrease as set forth in more detail in the Plan of Allocation located in the Settlement Agreement and on the settlement website (www.MidAmericasettlement.com).

You MUST submit a Claim Form (enclosed) to receive a benefit under this settlement. Claim Forms may be submitted via U.S. Mail or online through the Settlement Website, www.MidAmericasettlement.com.

Your legal rights are affected whether you act or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
SUBMIT A CLAIM FORM	<p>The only way for you to get reimbursement for Pet Injury Claims and Food Purchase Claims is to timely submit a valid Claim Form.</p> <p>If you <u>timely</u> submit a valid Claim Form along with the required documentation, [The period for submitting such claims shall commence upon the Notice Date and continue for no less than 90 days (the “Notice Period”)] you can obtain reimbursement of eligible expenses and losses.</p>

¹ Each Valid Claim Form submitted by a Settlement Class Member that seeks compensation for Pet Injury Claims is capped at \$100,000.

**Questions? Visit www.MidAmericaSettlement.com or
call toll free** 

ASK TO BE EXCLUDED	Receive no reimbursement. Get out of this lawsuit but keep your individual right to sue. If you ask to be excluded, you will not be eligible for benefits from this settlement, but you will maintain your right to pursue an individual claim against Defendant about the claims in this lawsuit.
OBJECT	Comment in writing about why you like or don't like the proposed settlement. You may comment in writing about why you like or dislike the proposed settlement by sending a letter to the Settlement Administrator. In order to comment or object to the proposed settlement, you must remain a member of the Settlement Class (<i>i.e.</i> , you cannot ask to be excluded).
DO NOTHING	Receive no reimbursement. Give up your rights to sue. By doing nothing, you will not be eligible for reimbursement for Pet Injury Claims and/or Consumer Food Purchase Claims. You will also give up any rights to sue Defendant on an individual basis separately about the claims in this lawsuit.

These rights and options—and the deadlines to exercise them—are explained in this Notice.

- The Court in charge of this case still has to decide whether to approve the proposed settlement. Claim Forms will be processed and approved, and benefits and payments will be issued after the proposed settlement has been approved by the Court and becomes in all respects Final.

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BASIC INFORMATION

1. What is the purpose of this Notice?

You are receiving this notice because you requested the notice or because you have been identified as a possible Settlement Class Member in a proposed settlement of a federal class action lawsuit pending in the United States District Court for the Southern District of New York (*Filardi v. Mid-America Pet Food, LLC*, Case No. 23-cv-11170-NSR (the “Litigation”)). You are a Settlement Class Member if you are a person or entity residing in the United States who purchased one or more of the Mid America Pet Food Products.²

As a possible member of the proposed Settlement Class, you have a right to know about the Litigation and proposed settlement. The judge who is overseeing the case authorized this Notice which explains the Litigation, the proposed settlement, your legal rights, what benefits are available, who is eligible for them, and how to obtain them. You have various options that you may exercise before the Court decides whether to approve the proposed settlement. If the Court approves the proposed settlement and the settlement becomes final in all respects, then the Settlement Fund will provide certain benefits to the Settlement Class Members who filed a valid claim form for Pet Injury Claims and/or Consumer Food Purchase Claims.

2. What is this lawsuit about?

Plaintiffs allege that Defendant marketed and sold pet food products contaminated with dangerous levels of *Salmonella*, which can cause serious injury and death. Defendant denies that Plaintiffs’ claims are meritorious and denies that it is liable to Plaintiffs or any member of the Settlement Class for any of the matters asserted in the Action.

You can read all of Plaintiffs’ allegations in the Consolidated Amended Complaint, available at www.MidAmericasettlement.com.

3. What is a class action lawsuit and who is involved?

In a class action lawsuit, one or more persons, called “Named Plaintiffs” sue on behalf of other people who are alleged to have similar claims (“Proposed Class”). The Named Plaintiffs and the Proposed Class are collectively called the “Plaintiffs,” and their attorneys are referred to as “Class Counsel.” The company that has been sued (Mid America Pet Food, LLC) is called the “Defendant.” In a class action lawsuit, all factual questions and legal issues are resolved for all

²“Mid America Pet Food Products” means the pet foods listed in Exhibit D to the Settlement Agreement sold to consumers in the United States that were included in Defendant’s recalls announced on September 3, 2023, October 30, 2023, and November 9, 2023. The definition of Mid America Pet Food Products specifically excludes other food products produced by Mid America Pet Food that are not specifically listed in Exhibit D, including food products with a “Best By” date after October 31, 2024. [Click Here](#) to view the list of Mid America Pet Food Products covered by this Settlement.

Plaintiffs, except for those people who choose to exclude themselves from the Class. Judge Nelson S. Román is presiding over this class action.

4. Why is there a proposed settlement?

The Court has not decided in favor of Plaintiffs or Defendant. Instead, both sides agreed to a proposed settlement on behalf of everyone in the proposed Settlement Class. By agreeing to a proposed settlement, all parties avoid the cost of a trial, and Settlement Class Members are eligible to receive certain agreed-upon benefits which will be provided if the proposed settlement is approved and becomes Final. The Class Representatives and Class Counsel believe the proposed settlement is in the best interests of Settlement Class Members.

WHO IS IN THE SETTLEMENT?

5. Am I part of this Settlement Class?

The Court preliminarily approved the following class for settlement purposes only:

“All persons and entities residing in the United States who purchased one or more of the Mid America Pet Food Products.”

For a complete list of the Mid America Pet Food Products covered by this Settlement, **click here** (include link to Exhibit D to the Settlement Agreement). Excluded from the class are: persons or entities whose claims are solely based upon the purchase of Mid America Pet Food Products for resale; corporate officers, members of the board of directors, and senior management of Defendant; persons or entities who otherwise meet the definition of Settlement Class Members, but who previously contacted Defendant prior to and during the pendency of this litigation, signed a release and in exchange received financial compensation from Defendant; any and all judges and justices assigned to hear or adjudicate any aspect of this litigation; any members of the Settlement Class that opt out prior to the opt out deadline; any entity in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns and successors; and Class Counsel.

6. I’m still not sure if I am included.

If you are still not sure whether you are included, you can get free help at www.MidAmericasettlement.com, by calling **XXX**, or by writing to Class Counsel at the address listed in response to Question 25, below.

7. What Pet Food Products are covered by this Settlement.

For a complete list of the Pet Food Products covered by this Settlement, click here (include link to Exhibit D to the Settlement Agreement)

SETTLEMENT BENEFITS – WHAT YOU GET

8. What benefits are available and for whom?

Questions? Visit www.MidAmericaSettlement.com or call toll free **XXX**

As part of this settlement, Defendant has agreed to create a \$5,500,000 Settlement Fund, which is to be used to pay benefits to Settlement Class Members, class notice and settlement administration costs, attorneys' fees and expense reimbursements, and service awards to the Class Representatives. Settlement Class Members who submit valid claims are eligible to receive payments from the Settlement Fund calculated pursuant to the Plan of Allocation ([click here](#) to review the Plan of Allocation) for the following Benefits:

1. Pet Injury Claims - Settlement Class Members who submit valid Pet Injury Claims shall have their claims valued and paid as follows:
 - a. Fully Documented Pet Injury Claims – Paid at 100% of approved documented losses. Documentation includes invoices, receipts, cancelled checks, veterinarian records, business records, pet purchase records, and other similar evidence of actual out of pocket expenses or losses or anticipated future expenses (e.g., medications or special foods necessary because of the exposure to recalled pet foods). Pet Injury Claims supported solely by a declaration will not qualify. Each Valid Claim Form submitted by a Settlement Class Member that seeks compensation for Pet Injury Claims is capped at \$100,000.
 - b. Pet Injury Claims Documented Solely By Declaration - Paid at \$50 for pets that became ill but did not die and \$100 for pets that died. Pet Injury Claims supported solely by declaration(s) and which are not credible as determined by the Settlement Administrator will be rejected. An example Declaration is available on the settlement website under the “Important Documents” link.
 - c. Breeder Claims - Each Valid Claim Form submitted by a Settlement Class Member who is or was a breeder that seeks compensation for Pet Injury Claims related to the breeding business and/or operation and is properly supported by documentation (proper documentation must be more than solely a declaration) is subject to the \$100,000 cap described above in subpart (a).
 - d. \$1,500,000 from the Net Settlement Fund will be used to pay valid Documented Pet Injury Claims and Valid Consumer Pet Food Claims. If funds from this \$1,500,000 amount remain after all valid Documented Pet Injury Claims and valid Documented Consumer Pet Food Claims are paid at 100%, then those remaining funds will be used to pay undocumented claims.
2. Consumer Food Purchase Claims – Settlement Class Members who submit valid Consumer Food Purchase Claims shall have their claims valued and paid as follows:
 - a. Documented Claims: 100% of approved submitted losses if losses are supported by documentation (e.g., receipts; invoices; shipping order forms; confirmation emails; proof of payment; etc.)
 - b. Undocumented Claims: \$20 for each bag of Mid America Pet Food Products purchased, up to two (2) bags. Each Undocumented Claim is capped at \$40.
3. What Happens If All Valid Claims Are Fully Funded and Money Remains in the Net Settlement Fund

Questions? Visit www.MidAmericaSettlement.com or
call toll free 

- a. If there are adequate funds available in the Net Settlement Fund (defined as the Settlement Fund minus payments for class notice, settlement administration, attorneys' fees and expense reimbursements, and service awards to the Class Representatives) after the valuation of all valid claims at their full value, then each valid claim will be increased proportionally (e.g., claim value / total value of all approved claims = proportional increase).
4. What Happens If There is Not Enough Money in the Net Settlement Fund to Fully Fund All Valid Claims
 - a. If the value of the Net Settlement Fund is not adequate to fully fund the initial valuation of all valid claims at their full value, then each valid claim (Pet Injury Claims and Consumer Food Purchase Claims) will be decreased on a pro-rata basis pursuant to the Plan of Allocation in the Settlement Agreement.

10. How do I get reimbursed?

To receive reimbursement, you must do 4 things:

- (1) Complete the Claim Form by providing all requested information;
- (2) Enclose a copy of all required documentation/ proof of expense for each eligible reimbursement;
- (3) Sign and date your Claim Form; and
- (4) Mail the Claim Form to the Settlement Administrator or submit your claim electronically at www.MidAmericasettlement.com by the claim deadline.

Your Claim Form(s) must be postmarked or submitted electronically by _____.

The Claim Form is enclosed with this Notice, and you can obtain additional copies to print at www.MidAmericasettlement.com.

11. What if I don't submit my Claim Form by the deadline?

If you fail to submit the Claim Form by the required deadline (_____), your Claim will be denied as untimely. Submitting a Claim Form late will be the same as doing nothing (see Question 25).

12. When do I get reimbursed or paid for damages?

The Court will hold a hearing (the "Final Approval Hearing") on _____ at _____ at The Hon. Charles L. Brieant Jr. Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, NY 10601-4150, Courtroom 218, to decide whether the settlement is fair, reasonable, and adequate. The Net Settlement Fund will be allocated to members of the Class pursuant to the Plan of Allocation as soon as possible after the Court grants final approval of the Settlement (and the exhaustion of any appeals). Any appeal of the final approval may delay distribution. Please be patient. Information about the progress of the case will be available on the settlement website: www.MidAmericasettlement.com.

**Questions? Visit www.MidAmericaSettlement.com or
call toll free _____**

If the Settlement Administrator determines your claim should not be paid or should be paid only in part, you will be mailed a letter telling you the amount you are to receive, if any, and explaining how you can appeal the decision, if you wish to do so.

13. What am I giving up in order to receive the benefits of the settlement?

Unless you exclude yourself, you will remain a member of the Settlement Class. That means that you will not be able to sue, continue to sue, or be a part of any other lawsuit against Defendant about the legal issues in this Litigation (the “Released Claims”). It also means that all of the Court’s orders in this Litigation will apply to you and legally bind you.

“Released Claims” means any and all claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, costs, and expenses, whether known or unknown (including Unknown Claims) to the fullest extent permitted by law against Defendant and Mid America Released Parties for economic losses and physical injuries to pets relating to in any way Defendant’s recalls of Mid America Pet Food Products due to the presence of *Salmonella*, that were alleged or could have been alleged in any of the complaints filed in *Filardi, et al. v. Mid-America Pet Food, LLC*, Case No. 23-cv-1170 or in the Texas Actions, or otherwise arise out of, relate to, are based on, or have any connection to the allegations, acts, omissions, representations, misrepresentations, facts, events, transactions, or occurrences asserted in the Action or the Texas Actions. This Release also includes claims that would be barred by res judicata based on the Court’s entry of the Final Approval Order. This Release includes equitable, injunctive, and monetary claims.

EXCLUDING YOURSELF FROM THE SETTLEMENT

14. How do I get out of this settlement?

If you want to keep the right to sue Defendant, on your own as an individual, about the legal issues in this Litigation, then you must take steps to exclude yourself from the Settlement Class and the settlement. This is sometimes referred to as “opting out.” To exclude yourself from the settlement, you must:

1. Submit the Exclusion Request in writing to the Settlement Administrator by (insert opt out date). Requests for exclusion should be mailed to:

Settlement Administrator
 Angeion Group
 PO Box -----
 -----, -----

2. Any Exclusion Request shall (i) state the person or entity’s full name and current address, (ii) specifically and clearly state his/her/its desire to be excluded from the Settlement and from the Settlement Class for *Filardi v. Mid-America Pet Food, LLC*, Case No. 23-cv-11170-NSR; and (iii) provide sufficient proof that they are a Settlement Class Member.

15. If I don’t exclude myself, can I sue Defendant later?

No. If you do not timely submit a valid Exclusion Request, you will remain a part of the Settlement Class and you will not be able to sue Defendant for the legal claims that are released as part of the Settlement.

**Questions? Visit www.MidAmericaSettlement.com or
 call toll free **

16. If I exclude myself, can I get money from this Settlement?

No. If you submit a valid Exclusion Request, you will not receive benefits of the settlement, and you cannot object to the proposed settlement. If you exclude yourself, you should not submit a Claim Form seeking reimbursement or damages. You cannot both exclude yourself and seek any benefits of the settlement. If you want to receive benefits under the proposed settlement, you cannot exclude yourself from the proposed settlement.

THE LAWYERS REPRESENTING YOU**17. Do I have a lawyer in this case?**

The following law firms are qualified to represent you and all Settlement Class Members for purposes of this proposed settlement:

- (1) Jeffrey S. Goldenberg of Goldenberg Schneider, L.P.A.
- (2) Charles Schaffer of Levin Sedran & Berman, LLP
- (3) Carlos Ramirez of Reese LLP
- (4) Jason Sultzer of Sultzer & Lipari, PLLC

Together these law firms are called “Lead Class Counsel.” More information about these law firms, their practices, and their lawyers’ experience is available at www.gs-legal.com; www.lfsblaw.com; www.sultzerlipari.com; and www.reesellp.com.

18. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want to hire your own lawyer, you may do so at your own expense.

19. How will the lawyers be paid?

Class Counsel has not received any fees or reimbursement for any of their expenses associated with this case. As part of the proposed settlement, Class Counsel will seek reasonable attorneys’ fees not to exceed a total of \$1,833,150. In addition, Class Counsel will seek reasonable litigation expenses not to exceed \$35,000. Class Counsel will file an application with the Court requesting that the Court award Class Counsel Fees and Expenses. Class Counsel’s fee application will be posted on the settlement website at least 21-days before the objection deadline.

Class Counsel’s application will also ask the Court to approve Service Awards for each Named Plaintiff listed in the Consolidated Amended Complaint to compensate them for their time and effort litigating this case on behalf of the Settlement Class.

Once filed, Class Counsel’s application for fees and expenses and the Named Plaintiffs’ Service Awards will be available on the Settlement Website, www.MidAmericasettlement.com.

OBJECTING TO THE SETTLEMENT**20. How do I tell the Court that I like or do not like the proposed settlement?**

Questions? Visit www.MidAmericaSettlement.com or
call toll free [1-800-333-1117](tel:18003331117)

You can tell the Court that you do or do not agree with the proposed settlement or some part of it.

If you remain a Settlement Class Member (that is, if you do not exclude yourself (opt-out) from the settlement), then you can tell the Court that you like the proposed settlement and it should be approved, or you can object to all or part of the proposed settlement. The Court will consider all comments from Settlement Class Members.

To object to or comment about the settlement, a Settlement Class Member must mail a letter that is received no later than [DATE] and the comment or objection must contain the following:

- a. The name and case number of this lawsuit, *Filardi v. Mid-America Pet Food LLC*, Case No. 23-cv-11170-NSR;
- b. The Settlement Class Member's full name, mailing address, and email address or telephone number;
- c. If objecting, the Settlement Class Member must state whether the objection applies only to the objector, or to a specific subset of the Settlement Class, or to the entire Settlement Class;
- d. All reasons for the objection or comment and sufficient proof establishing that they are a Settlement Class Member;
- e. A statement identifying the number of class action settlements the Settlement Class Member or their attorney has objected to or commented on in the last five years;
- f. Whether the Settlement Class Member intends to personally appear at the Final Approval Hearing;
- g. The name and contact information of any and all attorneys representing, advising, or assisting the Settlement Class Member, including any counsel who may be entitled to compensation for any reason related to the objection or comment;
- h. Whether any attorney will appear on the Settlement Class Member's behalf at the Final Approval Hearing, and if so the identity of that attorney; and
- i. The Settlement Class Member's signature.

Any lawyer representing or assisting an objecting Settlement Class Member must:

- (a) file a notice of appearance with the Court by the date set forth in the Preliminary Approval Order;
- (b) file a sworn declaration attesting to representation of each Settlement Class Member on whose behalf the lawyer has acted or will be acting; and
- (c) comply (and ensure their client's compliance) with each of the above requirements.

No Settlement Class Member will be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel), unless their timely objection or comment states their intention to appear at the Final Approval Hearing.

You must mail your comment or objection to the Court, Settlement Administrator, Class Counsel and Defendant's Counsel at the following addresses, postmarked no later than ____:

Clerk of Court
The Hon. Charles L. Brieant Jr. Federal Building and U.S. Courthouse

Questions? Visit www.MidAmericaSettlement.com or
call toll free _____

300 Quarropas Street
White Plains, NY 10601-4150

Settlement Administrator
Angeion Group
PO Box xxxx

-----, -----

Defendant's Counsel:

Katherine G. McKenney
Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210

Class Counsel:

Jeffrey S. Goldenberg
Goldenberg Schneider, LPA
4445 Lake Forest Drive, Suite 490
Cincinnati, OH 45242

21 What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the proposed settlement. You can object only if you stay in the Settlement Class as a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

FINAL APPROVAL HEARING

22. When and where will the Court decide to approve the settlement?

The Court will hold a hearing to decide whether to grant final approval of the settlement. You may attend and you may ask to speak, but you do not have to attend or speak. The Court will hold a hearing (the "Final Approval Hearing") on at am/pm at The Hon. Charles L. Brieant Jr. Federal Building and U.S. Courthouse, 300 Quarropas Street, White Plains, NY 10601-4150 to decide whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who have asked to speak at the hearing. The Court might also decide how much Class Counsel should be paid for representing the Class and whether Service Awards should be paid to Named Plaintiffs for their time and effort in representing the Settlement Class. After the hearing, the Court will decide whether to approve the settlement. We do not know how long it will take for the Court to make its decision.

23. Do I have to come to the Final Approval Hearing?

No, but you are welcome to come at your own expense if you do not exclude yourself from the settlement. Class Counsel will answer questions that the Court might have. If you send a comment or objection, you do not have to come to the Final Approval Hearing to talk about it. As long as you sent your comment or objection such that it was timely, the Court will consider it. If you decide to hire your own attorney, they may also attend the Final Approval Hearing, but it is not necessary.

24. May I speak at the Final Approval Hearing?

If you do not exclude yourself, you may ask the Court's permission to speak at the Final Approval Hearing concerning the proposed settlement or Class Counsel's request for attorneys' fees and expenses or the Service Awards for the Named Plaintiffs. To do so, you must send a letter to the Court, and provide a copy to Class Counsel and Defendant's Counsel indicating that you intend to appear at the Final Approval Hearing in *Filardi v. Mid-America Pet Food, LLC*, Case No. 23-cv-11170-NSR. You must send your notice to the Clerk of the Court, Class Counsel, and Defendant's Counsel at the three addresses listed under Question 19 above, postmarked no later than _____. You may combine this notice and your comment or objection (described under Question 19) in a single letter. You cannot speak at the Final Approval Hearing if you exclude yourself from the proposed settlement.

IF YOU DO NOTHING

25. What happens if I do nothing at all?

If you do nothing, you will remain a member of the Settlement Class, but you will not receive reimbursement for eligible out-of-pocket expenses or damages. Furthermore, you will not be permitted to appear and speak at the Final Approval Hearing.

ADDITIONAL INFORMATION

26. Are there more details available?

You can obtain more information by visiting the Settlement Website, www.MidAmericasettlement.com, which contains important dates and deadlines, frequently asked questions, important pleadings, claim forms, class notices, and permits Class Members to file their claims electronically. You can also call the Settlement Administrator toll free at XXX.

You may also call or write Class Counsel at:

GOLDENBERG SCHNEIDER, LPA

Jeffrey S. Goldenberg

4445 Lake Forest Drive, Suite 490

Cincinnati, Ohio 45242

Telephone: (513) 345-8291

Regarding: Mid America Pet Food Settlement

Inquiries should **NOT** be directed to Defendant, Defendant's Counsel, the Court, or the Clerk of the Court.

EXHIBIT C
PROPOSED FINAL APPROVAL ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**JAMES FILARDI, COURTNEY ANDERSEN,
LISA BURMEISTER, KENNETH LEONARD,
DOROTHY PETERSEN, STEPHANIE RANEY,
IRENE NUNEZ, CONRADO MOREIRA, KIARA
REED, NACOLE HOUSTON, MONIKA
BENNETT, JASON JARRELL, ALISON
BARNHILL, KIMBERLEE FERRIS, JEFFREY
GOULD, MELISSA SWARINGEN-ORTON,
MICHELLE RUBIANO, and COLEMAN
STEPHENSONS on behalf of themselves and all others
similarly situated,**

Case No. 7:23-cv-11170-NSR

Plaintiffs,

v.

MID-AMERICA PET FOOD, L.L.C.

Defendant.

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Before the Court is Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement ("Motion"). *See* ECF No. ____ (Final Approval Motion). This consolidated Action arises from three voluntary recalls of Salmonella-contaminated pet foods manufactured, marketed, sold, and distributed by Defendant Mid America Pet Food, LLC ("Defendant"). In the operative consolidated complaint [ECF No. __], Plaintiffs alleged various tort and consumer fraud claims on behalf of a nationwide class (and state-specific subclasses) of pet food purchasers.

In November 2024, Plaintiffs and Defendant (together, the "Parties") executed a Class Action Settlement Agreement ("Settlement Agreement") on behalf of themselves and the Settlement Class that Plaintiffs seek to certify. *See* ECF No. ____ (Settlement Agreement).

Plaintiffs moved for Preliminary Approval of Class Action Settlement on _____, 2024 [ECF No. ___], and the Court granted the motion on _____, finding the Settlement would likely be approved and directing that Notice be provided to the Settlement Class as set forth in the Settlement Agreement [ECF No. ___]. Notice was disseminated by the Court-appointed claim administrator _____ (“____”), and Class Members had until _____, to submit claims, object, or request exclusion from the Settlement. According to the Settlement Administrator’s declaration [ECF No. ___], ___ Settlement Class Members opted out of the Settlement and ___ objections to the Settlement were filed.

Following the implementation of the Notice Plan and pursuant to the terms of the Settlement Agreement, Class Plaintiffs filed their Final Approval Motion and supporting papers on _____, 2025 [ECF No. ___], and on _____, 2025, the Court held a hearing on Plaintiffs’ Motion. Plaintiffs also timely filed their Motion for Award of: (1) Attorney Fees, (2) Reimbursement of Expenses, and (3) Service Awards (“Attorney Fee Motion”) [ECF No. ___].

Having thoroughly reviewed the Final Approval Motion; the Settlement Agreement [ECF No. ___]; the Declaration of _____ On Implementation and Adequacy of Notice Plan and Notices (“_____ Decl.”) attached as Exhibit ___ to the _____; the Attorney Fee Motion [ECF No. ___]; exhibits, records, pleadings, and other papers filed in this Action; and the arguments presented to the Court at the hearing of this Motion, the Court hereby finds that the Final Approval Motion is **GRANTED**.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this litigation and over the Parties to the Settlement Agreement, including Plaintiffs and all members of the Settlement Class (also referred to herein as the “Class”), and Defendant.

2. For purposes of this Order, except as otherwise set forth herein, the Court adopts and incorporates the definitions contained in the Settlement Agreement.

3. Pursuant to Fed. R. Civ. P. 23(g), Jeffrey Goldenberg, Goldenberg Schneider, LPA; Charles Schaffer, Levin Sedran Berman, LLP; Jason Sultzzer, Sultzzer & Lipari, PLLC; and Carlos F. Ramirez, Reese LLP are appointed Co-Lead Counsel, having previously been appointed by the Court during the preliminary approval process as they have, and will, fairly and competently represent the interests of the Class.

4. Pursuant to Federal Rule of Civil Procedure 23, the Court determines that the following Settlement Class be certified: "All persons and entities residing in the United States who purchased one or more of the Mid America Pet Food Products." Specifically excluded from the Settlement Class are the following:

- (a) persons or entities whose claims are solely based upon the purchase of Mid America Pet Food Products for resale;
- (b) corporate officers, members of the board of directors, and senior management of Defendant;
- (c) persons or entities who otherwise meet the definition of Settlement Class Members, but who previously contacted Defendant prior to and during the pendency of this litigation, signed a release and in exchange received financial compensation from Defendant;
- (d) any and all judges and justices assigned to hear or adjudicate any aspect of this Action;
- (e) any members of the Settlement Class that opted out prior to the opt out deadline;
- (f) any entity in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns and successors; and
- (g) Class Counsel.

5. The Court further finds that the prerequisites to a class action under Rule 23 are satisfied for settlement purposes in that: (a) there are hundreds of thousands of geographically dispersed class members, making joinder of all members impracticable; (b) there are questions of law and fact common to the class that predominate over individual issues; (c) the claims or defenses of the named plaintiffs are typical of the claims or defenses of the class members; (d) the named plaintiffs will fairly and adequately protect the interests of the class, and have retained counsel experienced in class action litigation who have, and will continue to, adequately represent the class; and (e) a class action is superior to individual actions.

6. The Court hereby finally approves and confirms the Settlement set forth in the Settlement Agreement and finds that said Settlement is, in all respects, fair, reasonable, and adequate to the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7. There is no question that the Parties are at arm's length. The Settlement Agreement is the result of extensive, non-collusive, arm's-length negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the case through mediation-related discovery and whose negotiations were supervised by respected class-action mediator, the Honorable Diane M. Welsh (Ret.) of JAMS.

8. The Settlement creates a \$5,500,000 Settlement Fund from which Settlement Class Members may submit Pet Injury Claims and/or Consumer Food Purchase Claims. Settlement Class Members who file valid Pet Injury Claims and/or valid Consumer Food Purchase Claims shall have those claims adjudicated and paid according to the Plan of Allocation as described in the Settlement Agreement, which the Court has reviewed and has already preliminarily approved. *See* ECF No. ____ (Preliminary Approval Order).

9. The Settlement Agreement, including the Plan of Allocation, provides adequate relief to the proposed Settlement Class. If the Settlement Agreement had not been reached, the Parties planned to vigorously contest, among other things, class certification and anticipated motions for summary judgment from Defendant, and Plaintiffs' chances at trial also would have been uncertain. In light of the costs, risks and delay of trial and appeal, including taking into consideration the current financials and operational challenges faced by Defendant, the compensation offered by this Settlement is at least adequate for purposes of Rule 23(e)(1).

10. No agreements required to be disclosed pursuant to Rule 23(e)(3) exist between the Parties aside from those referred to in the Settlement Agreement and/or submitted to the Court.

11. The Settlement Agreement and the Plan of Allocation treat members of the proposed Settlement Class equitably relative to each other because all members of the proposed Settlement Class were eligible to submit Pet Injury Claims and/or Consumer Food Purchase Claims. The Settlement is specifically designed to apportion relief among class members in proportion to the harms they allegedly have suffered and the relative strengths of their claims. For instance, Settlement Class Members with documentation supporting their claims are entitled to payment from a designated amount of the Settlement Fund, which shall be used to pay approved documented claims. If these designated funds are not depleted following the full payment of approved documented claims, the remaining designated funds, as well as the remainder of the Net Settlement Fund, will then be used to fund the payment of approved undocumented claims. These are equitable and fair terms.

12. The Court approves the payments provided for in the Settlement Agreement to the Settlement Class Members consistent with the Plan of Allocation.

13. The notice given to the Class was the best notice practicable under the circumstances. Said notice provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. Civ. R. 23 and due process.

14. ____ objections to the Settlement were filed, and this is a strong indication that the Settlement was well received by the Class and is fair, adequate and reasonable.

15. This Court hereby dismisses with prejudice the action against the Defendant, with each party to bear their own costs and fees, including attorneys' fees, except as provided in the Settlement Agreement.

16. The Court incorporates the releases defined in the Settlement Agreement, and Plaintiffs and all other Settlement Class Members are hereby and forever barred from commencing or continuing against the Defendant and the Mid America Released Parties any of the Released Claims as defined in the Settlement Agreement.

17. Any member of the Class who failed to timely and validly request to be excluded from the Class shall be subject to and bound by the provisions of the Settlement Agreement, the Released Claims contained therein, and this Order (and the related Final Judgment) with respect to all Released Claims, regardless of whether such members of the Class seek or obtain any payment from the Settlement Fund. This Release includes equitable, injunctive, and monetary claims within the scope of the definition of Released Claims.

18. The ____ persons who validly requested to be excluded from the Class are listed in Exhibit ____ to the _____ Declaration and shall be excluded from the Class.

Continuing Jurisdiction and Final Judgment

19. Without affecting the finality of this Final Judgment in any way, this Court hereby retains continuing exclusive jurisdiction over: (a) consummation, administration, interpretation, and implementation of the Settlement Agreement and distribution to Settlement Class members pursuant to further orders of this Court; (b) disposition of the Settlement Fund; (c) the actions in this litigation until the Final Judgment has become effective and each and every act agreed to be performed by the Parties all have been performed pursuant to the Settlement Agreement; (d) hearing and ruling on any matters relating to any Plan of Allocation or distribution of proceeds from the Settlement; (e) the Parties to the Settlement Agreement for the purpose of enforcing and administering the Settlement Agreement and the releases contemplated by, or executed in connection with the Settlement Agreement; (f) the enforcement of this Final Judgment; and (g) over any suit, action, proceeding, or dispute arising out of or relating to the Settlement Agreement or the applicability of the Settlement Agreement, that cannot be resolved by negotiation and agreement.

20. In the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement, then the Final Judgment shall be rendered null and void and shall be vacated, and in such event, all orders entered, and releases delivered in connection herewith shall be null and void and the Parties shall be returned to their respective positions *ex ante*.

21. The Court finds, pursuant to Rules 54(a) and (b) of the Federal Rules of Civil Procedure, that judgment should be entered and further finds that there is no just reason for delay in the entry of final judgment as to the Parties to the Settlement Agreement. Accordingly, the Clerk is hereby directed to enter this Final Judgment forthwith.

**Plaintiffs' Motion for Award of Attorneys' Fees,
Reimbursement of Expenses, and Class Representative Service Awards**

22. This Court has also fully assessed and grants Plaintiffs' Motion for Award of (1) Attorneys' Fees, (2) Reimbursement of Expenses, and (3) Class Representative Service Awards. Class Counsel's requested attorneys' fee award of \$ _____ represents _____ percent of the total Settlement Fund, the percentage commonly awarded by courts in the Second Circuit and other federal courts in similar cases, including this Court, and is therefore reasonable. *See e.g., Patora v. Tarte, Inc.*, Case No. 18-cv-11760-KMK (S.D.N.Y.) (awarding 33% of settlement fund for attorneys' fees and costs in a consumer fraud case); *Swetz v. GSK Consumer Health, Inc.*, 7:20-cv-04731-NSR (S.D.N.Y.) (same); *Bangoura v. Beiersdorf, Inc. and Bayer Healthcare, Inc.*, 1:22-cv-00291-BMC (E.D.N.Y.) (approving 32% fee award from common fund); *In Re: Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation*, No. 2:19-md-02887-JAR-TJJ (D. Kan.) (approving 32% fee award from common fund); *In Re: Midwestern Pet Foods Marketing, Sales Practices and Product Liability Litigation*, 3:21-cv-00007-MPB-MJD (approving fee 33.33% fee award from common fund).

23. Additional factors set forth in Plaintiffs' motion papers support the fee request, including: the substantial risk of non-payment; Class Counsel's performance; the complexity, length, and expense of the litigation; and the stakes of the litigation. *See Mills v. Capital One, N.A.*, 2015 WL 5730008, at *14 (S.D.N.Y. Sept. 30, 2015) ("[V]ictory in a contested suit would have been far from clear as there was case law contrary to plaintiffs' position."). [The Court also notes that no objections to Class Counsel's request were filed.]

24. Co-Lead Counsel, Jeffrey Goldenberg, Goldenberg Schneider, LPA; Charles Schaffer, Levin Sedran Berman, LLP; Jason Sultzer, Sultzer & Lipari, PLLC; and Carlos F. Ramirez, Reese LLP are authorized to, and shall, allocate the attorneys' fees and expense

reimbursement funds to those attorneys for the Plaintiffs and the Class based upon Co-Lead Counsel's determination of each such attorney' contributions and efforts to this litigation.

25. The Court also grants Class Counsel's request for reimbursement of litigation expenses totaling \$____, finding the expenses to have been reasonably incurred to litigate the Action in the best interests of the Class and to achieve the favorable Settlement. *See Mills v. Elec. Auto-Lite Co.*, 396 U.S. 275, 392 (1970) (recognizing counsel's right to reimbursement of expenses where a common fund has been established for the benefit of a class); *see also Jermyn v. Best Buy Stores, L.P.*, No. 08-CV-214 (CM), 2012 WL 2505644, at *9 (S.D.N.Y. June 27, 2012)(noting that “[a]ttorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were incidental and necessary to the representation of those clients.”).

26. The Court approves the requested service award to each named Class Representative as follows: (insert appropriate service award amount for each Class Representative). These service awards are to compensate and recognize the considerable time and effort expended by the Class Representatives in initiating, prosecuting, and supporting the case. *Id.* at *17-18. The Court has reviewed declarations from each of the Class Representatives [ECF No. ____] reflecting the time and effort each Class Representative contributed to protect the interests of the Class in pursuing the litigation as well as any individual settlement offer from Defendant that was rejected during the pendency of the litigation in order to proceed with the case to pursue class-wide benefits and finds that the Class has benefitted from those actions as manifested in the favorable Settlement that has been achieved.

IT IS SO ORDERED

Date: _____

Honorable Nelson S. Román
United States District Court
Southern District of New York

EXHIBIT D
PET FOODS LIST

Product Description - Dog Food	UPC	Bag Size	Best By Date
Victor Super Premium Dog Food, Select Beef Meal & Brown Rice Formula	894308002343	40 pound bag	Before 10/31/2024
	854524005092	15 pound bag	Before 10/31/2024
	894308002336	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Select Chicken Meal & Brown Rice Formula	894308002428	40 pound bag	Before 10/31/2024
	854524005108	15 pound bag	Before 10/31/2024
	894308002152	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Select Lamb Meal & Brown Rice Formula	894308002411	40 pound bag	Before 10/31/2024
	854524005115	15 pound bag	Before 10/31/2024
	894308002053	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Select Ocean Fish Formula	894308002497	40 pound bag	Before 10/31/2024
	854524005122	15 pound bag	Before 10/31/2024
	894308002077	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Select Grain Free Chicken Meal & Sweet Potato Recipe	854524005016	30 pound bag	Before 10/31/2024
	854524005245	15 pound bag	Before 10/31/2024
	854524005047	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Select Grain Free Lamb Meal & Sweet Potato Recipe	854524005177	30 pound bag	Before 10/31/2024
	854524005160	15 pound bag	Before 10/31/2024
	854524005184	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Select Grain Free Yukon River Canine	894308002510	30 pound bag	Before 10/31/2024
	894308002527	15 pound bag	Before 10/31/2024
	894308002176	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Purpose Grain Free Active Dog & Puppy	894308002473	30 pound bag	Before 10/31/2024
	894308002534	15 pound bag	Before 10/31/2024
	894308002169	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Purpose Grain Free Hero Canine	894308002763	50 pound bag	Before 10/31/2024
	894308002381	30 pound bag	Before 10/31/2024
	854524005290	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Purpose Grain Free Ultra Pro	894308002480	30 pound bag	Before 10/31/2024
	854524005306	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Purpose Performance	894308002404	40 pound bag	Before 10/31/2024
	854524005337	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Purpose Nutra Pro	854524005085	40 pound bag	Before 10/31/2024
	854524005146	15 pound bag	Before 10/31/2024
	854524005078	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Purpose Senior Healthy Weight	894308002572	40 pound bag	Before 10/31/2024
	854524005153	15 pound bag	Before 10/31/2024
	894308002596	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Classic Elite Canine	894308002824	50 pound bag	Before 10/31/2024
	894308002831	40 pound bag	Before 10/31/2024
	894308002848	15 pound bag	Before 10/31/2024

Victor Super Premium Dog Food, Classic High Energy	854524005252	50 pound bag	Before 10/31/2024
	894308002367	40 pound bag	Before 10/31/2024
	854524005313	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Classic Hi-Pro Plus	854524005276	50 pound bag	Before 10/31/2024
	894308002374	40 pound bag	Before 10/31/2024
	854524005139	15 pound bag	Before 10/31/2024
	894308002145	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Classic Multi-Pro	894308002718	50 pound bag	Before 10/31/2024
	854524005214	30 pound bag	Before 10/31/2024
	854524005344	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Classic Professional	854524005269	50 pound bag	Before 10/31/2024
	894308002350	40 pound bag	Before 10/31/2024
	854524005320	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Realtree Edge Energy	899944446056	40 pound bag	Before 10/31/2024
	899944446063	15 pound bag	Before 10/31/2024
	899944446070	5 pound bag	Before 10/31/2024
Victor Super Premium Dog Food, Realtree Max-5 Pro	899944446025	40 pound bag	Before 10/31/2024
	899944446032	15 pound bag	Before 10/31/2024
	899944446049	5 pound bag	Before 10/31/2024
Wayne Feeds Dog Food, High Energy	899944446094	40 pound bag	Before 10/31/2024
Wayne Feeds Dog Food, Original	899944446087	40 pound bag	Before 10/31/2024
Wayne Feeds Dog Food, Protein Plus	899944446100	40 pound bag	Before 10/31/2024
Wayne Feeds Gold Dog Food, Sport Protein	899944446148	40 pound bag	Before 10/31/2024
Wayne Feeds Gold Dog Food, Joint Support	899944446131	40 pound bag	Before 10/31/2024
Wayne Feeds Gold Dog Food, Puppy Plus	899944446155	40 pound bag	Before 10/31/2024
Eagle Mountain Pet Food Pro Balance, Dog Food	899944446001	40 pound bag	Before 10/31/2024
Member's Mark, Beef & Brown Rice Recipe, Dog Food	193968343347	30 pound bag	Before 10/31/2024
Member's Mark, Salmon & Sweet Potato Recipe, Dog Food	193968343354	30 pound bag	Before 10/31/2024

Product Description - Cat Food	UPC	Bag Size	Best By Date
Victor Super Premium Cat Food, Hi-Pro Plus Active Cat & Kitten	854524005825	15 pound bag	Before 10/31/2024
	854524005832	5 pound bag	Before 10/31/2024
Victor Super Premium Cat Food, Grain Free Fit Feline Indoor Cat	854524005870	15 pound bag	Before 10/31/2024
	854524005887	5 pound bag	Before 10/31/2024
Victor Super Premium Cat Food, Grain Free Healthy Skin & Coat Indoor Cat	854524005900	15 pound bag	Before 10/31/2024
	854524005917	5 pound bag	Before 10/31/2024
Victor Super Premium Cat Food, Mers Feline	854524005283	15 pound bag	Before 10/31/2024
	854524005221	5 pound bag	Before 10/31/2024
Wayne Feeds Gold Cat Food, Ranch & Sea Recipe	899944446162	16 pound bag	Before 10/31/2024
Wayne Feeds Cat Food, Barn Cat Plus	899944446179	40 pound bag	Before 10/31/2024

EXHIBIT E
PROPOSED PRELIMINARY APPROVAL ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES FILARDI, COURTNEY ANDERSEN, LISA BURMEISTER, KENNETH LEONARD, DOROTHY PETERSEN, STEPHANIE RANEY, IRENE NUNEZ, CONRADO MOREIRA, KIARA REED, NACOLE HOUSTON, MONIKA BENNETT, JASON JARRELL, ALISON BARNHILL, KIMBERLEE FERRIS, JEFFREY GOULD, MELISSA SWARINGEN-ORTON, MICHELLE RUBIANO, and COLEMAN STEPHENS on behalf of themselves and all others similarly situated,

Case No. 7:23-cv-11170-NSR

Plaintiffs,

v.

MID-AMERICA PET FOOD, L.L.C.

Defendant.

[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Before the Court is the Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion”)¹ of Plaintiffs James Filardi, Courtney Andersen, Lisa Burmeister, Kenneth Leonard, Dorothy Petersen, Stephanie Raney, Irene Nunez, Conrado Moreira, Kiara Reed, Nacole Houston, Monika Bennett, Jason Jarrell, Alison Barnhill, Kimberlee Ferris, Jeffrey Gould, Melissa Swaringen-Orton, Michelle Rubiano, and Coleman Stephens (“Plaintiffs”).

Plaintiffs in this lawsuit (the “Litigation”) assert claims on behalf of themselves and the proposed Settlement Class arising out of the sale of pet foods allegedly contaminated with

¹ Dkt. No. ____.

Salmonella manufactured and distributed by Defendant Mid America Pet Food, LLC (“Defendant”).²

In November 2024, Plaintiffs and Defendant (together, the “Parties”) executed a Class Action Settlement Agreement (“Settlement Agreement”) on behalf of themselves and the nationwide Settlement Class that Plaintiffs seek to certify. Having thoroughly reviewed the Settlement Agreement and exhibits thereto and having considered the Motion and all related supporting documents submitted therewith, THE COURT HEREBY FINDS, CONCLUDES AND ORDERS THE FOLLOWING:

1. The Parties have agreed to a class action settlement of all Released Claims, including Unknown Claims. Plaintiffs seek, and for purposes of settlement only Defendant does not object to, certification of a Settlement Class with the following definition:

All persons and entities residing in the United States who purchased one or more of the Mid America Pet Food Products.

Specifically excluded are the following:

- (i) persons or entities whose claims are solely based upon the purchase of Mid America Pet Food Products for resale;
- (ii) corporate officers, members of the board of directors, and senior management of Defendant;
- (iii) persons or entities who otherwise meet the definition of Settlement Class Members, but who previously contacted Defendant prior to and during the pendency of this litigation, signed a release and in exchange received financial compensation from Defendant;
- (iv) any and all judges and justices assigned to hear or adjudicate any aspect of this litigation;
- (v) any members of the Settlement Class that opt out prior to the opt out deadline;

² Capitalized terms not defined herein shall have the meaning as defined in the Settlement Agreement. Dkt. ____.

- (vi) any entity in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns and successors; and
- (vii) Class Counsel.

2. For purposes of preliminary approval, this Court assesses the Settlement Agreement under Fed. R. Civ. P. 23(e). Rule 23(e)(1)(B) provides that the Court “must direct notice in a reasonable manner” to proposed Settlement Class Members “if giving notice is justified by the parties’ showing that the court will likely be able to (i) approve the proposal [as fair, reasonable, and adequate] under Rule 23(e)(2) and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

Likely Approval as Fair, Reasonable and Adequate

3. To determine whether the Settlement Agreement is fair, reasonable and adequate, Rule 23(e)(2) directs the Court to consider whether:

- (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

4. The proposed Class Representatives are adequately representing the proposed Settlement Class: they share the same alleged injury (injury from the purchase of contaminated pet food) and the same interest (maximizing recovery related to the pet food contamination). Jeffrey Goldenberg, Goldenberg Schneider, LPA; Charles Schaffer, Levin Sedran Berman, LLP; Jason Sultzer, Sultzer & Lipari, PLLC; and Carlos F. Ramirez, Reese LLP are also adequately representing the proposed Settlement Class as Lead Class Counsel.

5. There is no question that the Parties are at arm's length. The Settlement Agreement appears to be the result of extensive, non-collusive, arm's-length negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the case through mediation-related discovery and whose negotiations were supervised by a respected class-action mediator, the Honorable Diane M. Welsh (Ret.) of JAMS.

6. The proposed Settlement creates a \$5,500,000 Settlement Fund from which Settlement Class Members may submit Pet Injury Claims and/or Food Purchase Claims. Settlement Class Members who file valid Pet Injury Claims and/or valid Consumer Food Purchase Claims shall have those claims adjudicated and paid according to the Plan of Allocation as described in the Settlement Agreement, which the Court has reviewed and preliminarily approves.

7. The Settlement Agreement, including the Plan of Allocation, provides adequate relief to the proposed Settlement Class. If the Settlement Agreement had not been reached, it is apparent that the Parties planned to vigorously contest this case through a motion to dismiss, motion for class certification, as well as a summary judgment motion, and Plaintiffs' chances at trial also would have been uncertain. In light of the costs, risks and delay of trial and appeal, including taking into consideration the current financial and operational challenges faced by Defendant, the compensation available through the Settlement Agreement is at least adequate for purposes of Rule 23(e)(1).

8. There is no reason to doubt the effectiveness of distributing relief under the Settlement Agreement. As further addressed below, the Parties propose a Notice Program reasonably calculated to reach as many members as practicable of the proposed Settlement Class, satisfying Civ. R. 23 and due process requirements.

9. This Court will fully assess the request of Settlement Class Counsel for the attorneys' fees, expenses, and service awards to Plaintiffs after receiving their motion supporting such request. At this stage, the Court finds that the plan to request fees to be paid from the Settlement Fund, which is a true common fund with no reversion, creates no reason not to direct notice to the proposed Settlement Class. In particular, should the Court find any aspect of the requested attorneys' fees, expenses, or service awards unsupported or unwarranted, such funds would not be returned to Defendant, and therefore the Settlement Class would not be prejudiced by directing notice at this time.

10. No agreements required to be disclosed pursuant to Rule 23(e)(3) exist between the Parties aside from those referred to in the Settlement Agreement and/or submitted to the Court.

11. The Settlement Agreement and the Plan of Allocation treat members of the proposed Settlement Class equitably relative to each other because all members of the proposed Settlement Class are eligible to submit Pet Injury Claims and/or Food Purchase Claims. The Settlement is specifically designed to apportion relief among Settlement Class Members based upon the harms they allegedly have suffered and the relative strengths of their claims. For instance, Settlement Class Members with documentation supporting their claims are entitled to payment from a designated amount of the Settlement Fund which shall be used to pay approved documented claims. If these designated funds are not depleted following the full payment of approved documented claims, the remaining designated funds, as well as the remainder of the Net Settlement Fund, will then be used to fund the payment of approved undocumented claims. These are equitable and fair terms.

Likely Certification of Settlement Class

12. The Court assesses the likelihood that it will be able to certify the proposed Settlement Class under Rules 23(a) and 23(b)(3) (because this Settlement Class seeks damages). *See Fed. R. Civ. P. 23(a)-(b).* The Court makes this assessment for the purposes of settlement only at this time.

13. The proposed Settlement Class is sufficiently numerous under Rule 23(a)(1) because it is estimated to contain hundreds of thousands of members.

14. Resolution of the Litigation would depend on the common answers to common questions, such as whether Defendant maintained adequate quality control over its pet food manufacturing processes and whether it is liable to consumers allegedly injured as a result of purchasing Mid America Pet Food Products covered by this settlement.

15. Plaintiffs' claims are typical of the claims of the members of the proposed Settlement Class because they challenge the same conduct—the sale of contaminated pet food products—and make the same legal arguments. Typicality under Rule 23(a)(3) is satisfied.

16. The proposed Class Representatives, Lead Counsel and Class Counsel will fairly and adequately protect the interests of the proposed Settlement Class. There is no evidence to suggest a conflict of interest, and Lead Class Counsel and Class Counsel are experienced litigators in consumer class actions, including prior experience with pet food contamination litigation.

17. At least for purposes of settlement, the common issues in the Litigation predominate over individual issues under Rule 23(b)(3). Key elements of Plaintiffs' claims are Defendant's allegedly inadequate sourcing, manufacturing, quality control, and testing procedures and sale of Mid America Pet Food Products. These issues predominate over individualized issues.

18. The settlement would be superior under Rule 23(b)(3) to many individual actions. Many members of the proposed Settlement Class may not have suffered sufficient alleged damages

to justify the costs of expensive litigation. The Settlement Agreement ensures that all Settlement Class Members will have the opportunity to be compensated through cash payments consistent with the Plan of Allocation.

19. For these reasons, pursuant to Rule 23, and for settlement purposes only, the Court finds it will likely certify the Settlement Class defined above in paragraph 1 of this Order. This finding is subject to further consideration at the Final Approval Hearing to be conducted as described below.

20. The Court hereby preliminarily appoints the Plaintiffs as representatives of the Settlement Class. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby preliminarily appoints Jeffrey Goldenberg, Goldenberg Schneider, LPA; Charles Schaffer, Levin Sedran Berman, LLP; Jason Sultzzer, Sultzzer & Lipari, PLLC; and Carlos F. Ramirez, Reese LLP, as Lead Class Counsel for the Settlement Class.

21. In any final approval order issued after the Final Approval Hearing, Plaintiffs and all other Settlement Class Members that have not been properly excluded from the Settlement Class will release all known and Unknown Claims to the fullest extent permitted by law against Defendant and the Mid America Released Parties relating to any alleged claims related to the Defendant's recalls of Mid America Pet Food Products due to levels of Salmonella exceeding acceptable limits pronounced by the U.S. Food and Drug Administration, as alleged in the Action. This Release includes equitable, injunctive, and monetary claims.

Approval of the Manner and Form of Notice

22. Having preliminarily approved the Settlement Agreement, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). The Parties have submitted to the Court the proposed Notices, Claim Forms,

and a detailed Notice Plan as explained in the Declaration of Jeffrey S. Goldenberg on Notice Plan and Notices attached as exhibits to the Settlement Agreement.

23. Having reviewed these exhibits and the Settlement Agreement, the Court finds that the Parties' proposed Notice Plan for providing notice to Settlement Class Members (a) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, (b) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Litigation and of their right to object to or to exclude themselves from the settlement and (c) meets all applicable requirements of applicable law. Accordingly, the Notice Plan satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. The Court therefore approves the Notice Plan, the Claim Form, the notice documents substantially in the form attached as the exhibits to the Settlement Agreement, and the creation of a Settlement Website consistent with these documents.

24. Angeion Group ("Angeion") has been selected to serve as the Settlement Administrator under the terms of the Settlement Agreement. The Court hereby appoints Angeion to serve as the Settlement Administrator to be supervised jointly by Settlement Class Counsel and Defendant's Counsel in taking the actions ordered below and performing any other duties of the Settlement Administrator provided for in the Settlement Agreement.

25. The Escrow Account shall be created and administered by Huntington National Bank and shall be funded pursuant to Section IV.1 of the Settlement Agreement.

26. Accordingly, the Court hereby ORDERS as follows and adopts the Proposed Schedule below to implement the Settlement:

Event	Date
-------	------

CAFA Notice Deadline	Motion for Preliminary Approval Filing Date plus no more than 10 days
Preliminary Approval Order	[Date]
Defendant to provide initial funding amount to Settlement Administrator	Preliminary Approval Order Date + 20 days
Plaintiffs and Defendant to provide Settlement Administrator with names and contact information of known class members	Preliminary Approval Order Date + 30 days
Notice Date (issuance of notices substantially similar to those provided to the Court)	Preliminary Approval Order Date + 45 days
Class Counsel's Fee and Expense Application and request for service awards for the Plaintiffs-Settlement Class Representatives	Notice Date + 39 days (21 days prior to Objection deadline)
Completion of Notice Plan	Notice Date +45 days
Claim Deadline	Notice Date +90 days
Opt-Out Deadline	Notice Date +60 days
Objection Deadline	Notice Date +60 days
Plaintiffs to file Motion for Final Approval of the Settlement	No less than 10 days prior to Final Approval Hearing Date
Final Approval Hearing	[Preliminary Approval Order Date] + at least 130 days (no earlier than April 8, 2025)
Date of Finality	First date after the Court enters a Final Approval Order and all appellate rights with respect to that order have expired or been exhausted in such a manner as to affirm the order
Defendant pays the remaining amount of the Settlement Fund	Date of Finality + 10 days

Participation in, Exclusion from or Objection to the Settlement Agreement

27. Each form described in this section shall be deemed to be submitted when postmarked or when electronically received by the Settlement Administrator if submitted electronically.

28. Settlement Class Members who wish to receive compensation for a Pet Injury Claim and/or Consumer Food Purchase Claim under the Settlement Agreement must properly and timely complete, sign and submit a Valid Claim Form in accordance with the instructions contained therein.

29. Settlement Class Members that wish to exclude themselves from (i.e., opt out of) the settlement must send a request for exclusion to the Settlement Administrator that: (i) states the person or entity's full name and current address, (ii) specifically and clearly states his/her/its desire to be excluded from the Settlement and from the Settlement Class; and (iii) provides sufficient proof that they are a Settlement Class Member.

30. All requests for exclusion must be submitted individually in connection with a Settlement Class Member, i.e., one request is required for every Settlement Class Member seeking exclusion; so-called "mass" or "class" opt outs shall not be allowed.

31. All requests for exclusion must be submitted no later than the Exclusion Deadline as contained in the Schedule. Any member of the Settlement Class that submits a timely request for exclusion may not file an objection to the Settlement Agreement and shall be deemed to have waived any rights or benefits under the Settlement Agreement.

32. Any Settlement Class Member that does not submit a timely and complete request for exclusion sent to the proper address shall be subject to and bound by the Settlement Agreement and every order or judgment entered pursuant to the Settlement Agreement. Any purported request for exclusion or other communication sent to such address that is unclear or internally inconsistent with respect to the Settlement Class Member's desire to be excluded from the Settlement Class will be deemed invalid unless determined otherwise by the Court. Requests for exclusion signed only by counsel or another representative shall not be permitted.

33. Any Settlement Class Member who does not exclude themselves and wishes to be heard at the Final Approval Hearing, or wishes for any objection to be considered, must file with the Clerk of the Court a written notice of objection, including any request to be heard, no later than sixty (60) days after the Notice Date. Such objection must provide:

- a. The name and case number of this lawsuit, *Filardi v. Mid America Pet Food, L.L.C.*, Case No. 7:23-cv-11170;
- b. The Settlement Class Member's full name, mailing address, and email address or telephone number;
- c. If objecting, the Settlement Class Member must state whether the objection applies only to the objector, or to a specific subset of the Settlement Class, or to the entire Settlement Class;
- d. All reasons for the objection or comment and sufficient proof establishing that they are a Settlement Class Member;
- e. A statement identifying the number of class action settlements the Settlement Class Member or their attorney has objected to or commented on in the last five years;
- f. Whether the Settlement Class Member intends to personally appear at the Final Approval Hearing;
- g. The name and contact information of any and all attorneys representing, advising, or assisting the Settlement Class Member, including any counsel who may be entitled to compensation for any reason related to the objection or comment;
- h. Whether any attorney will appear on the Settlement Class Member's behalf at the Final Approval Hearing, and if so the identity of that attorney and
- i. The Settlement Class Member's signature.

34. Any lawyer representing or assisting an objecting Settlement Class Member must:

(a) file a notice of appearance with the Court by the date set forth in the Preliminary Approval Order; (b) file a sworn declaration attesting to representation of each Settlement Class Member on whose behalf the lawyer has acted or will be acting and (c) comply (and ensure their client's compliance) with each of the above requirements.

35. Any Settlement Class Member who fails submit written objections that are both timely and in full compliance with the requirements of this Section will be deemed to have waived their objections to the Settlement and will be foreclosed and barred forever from making any objection (whether by appeal or otherwise) to the Settlement.

Final Approval Hearing and Related Deadlines

36. This Court will hold a Final Approval Hearing on _____ at ___ am/pm in the Daniel Patrick Moynihan United States Court House, Courtroom 218, 500 Pearl Street, New York, New York 10007.

37. The purposes of the Final Approval Hearing will be to consider the fairness, reasonableness and adequacy of the proposed settlement and the application for an award of attorneys' fees and expenses and service awards, and to consider whether the Court should issue a Final Approval Order approving the Settlement Agreement, granting Settlement Class Counsel's application for fees and expenses, granting the service awards application of Plaintiffs, and dismissing the claims against Defendant and the Mid America Released Parties with prejudice.

38. The Court reserves the right to adjourn the Final Approval Hearing without further notice to Settlement Class Members, change the Final Approval Hearing date and/or time, or to approve the Settlement Agreement with modification without further notice to Settlement Class Members.

39. Any Settlement Class Member may appear at the Final Approval Hearing by filing with the Clerk of the Court a written notice of objection in accordance with the requirements outlined above and including a statement that he or she intends to appear at the Final Approval Hearing, either with or without counsel, along with a list of all persons, if any, that will be called to testify in support of the objection.

40. If any Settlement Class Member hires an attorney to represent the Settlement Class Member at the Final Approval Hearing, that attorney will be at the Settlement Class Member's expense.

41. Any attorney hired by a Settlement Class Member for the purpose of objecting to the Settlement and who intends to make an appearance at the Final Approval Hearing must provide

to Lead Class Counsel and Defendant's Counsel and file with the Clerk of the Court a notice of intention to appear no later than sixty (60) days after the Notice Date.

42. Class Counsel's papers in support of any application for Attorneys' Fees and Expenses and/or Service Awards shall be filed no later than twenty-one days prior to the opt-out and objection deadline. Class Counsel shall also post their application for Attorneys' Fees and Expenses and/or Service Awards on the settlement website within two business days of filing the application with the Court.

43. Class Counsel's papers in support of final approval of the Settlement Agreement shall be filed no later than ten (10) days before the Final Fairness Hearing.

Effects of this Preliminary Approval Order

44. All proceedings in the Litigation other than those related to approval of the Settlement Agreement are hereby stayed.

45. If for any reason the Settlement Agreement fails to become effective in accordance with its terms, or if the judgment is not entered or is reversed, vacated or materially modified on appeal (and, in the event of material modification—which shall not include any modification to an award of attorneys' fees and expenses or to the service awards—if either party elects to terminate the Settlement Agreement), this Order shall be null and void, the Settlement Agreement shall be deemed terminated (except for any paragraphs that, pursuant to the terms of the Settlement Agreement, survive termination of the Settlement Agreement), and the Parties shall return to their positions without prejudice in any way, as provided for in the Settlement Agreement.

46. As set forth in the Settlement Agreement, the fact and terms of this Order and the Settlement Agreement, all negotiations, discussions, drafts, and proceedings in connection with this Order and the Settlement Agreement, and any act performed or document signed in connection

with this Order and the Settlement Agreement, shall not, in this or any other court, administrative agency, arbitration forum or other tribunal, constitute an admission or evidence or be deemed to create any inference against any party, including, but not limited to: (i) of any acts of wrongdoing or lack of wrongdoing; (ii) of any liability on the part of Defendant to the Plaintiffs, the Settlement Class or anyone else; (iii) of any deficiency of any claim or defense that has been or could have been asserted in this case; (iv) that Defendant agrees that a litigation class may be properly certified in this case; (v) of any damages or lack of damages suffered by the Plaintiffs, the Settlement Class or anyone else or (vi) that any benefits obtained by the Settlement Class pursuant to the Settlement Agreement or any other amount represents the amount that could or would have been recovered in the actions in this case if they were not settled at this point in time. The fact and terms of this Order and the Settlement Agreement, all negotiations, discussions, drafts and proceedings in connection with this Order and the Settlement Agreement, including but not limited to the judgment and the release of the Released Claims provided for in the Settlement Agreement and any judgment, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum or other tribunal, except as necessary to enforce the terms of this Order and/or the Settlement Agreement.

47. All members of the Settlement Class (unless and until they have timely and properly excluded themselves from the Settlement Class) are preliminarily enjoined from (a) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant, participant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action or the Released Claims; (b) filing, commencing, participating in or prosecuting a lawsuit or administrative, regulatory, arbitration or other

proceeding as a class action on behalf of any member of the Settlement Class that has not timely excluded himself or herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action or the Released Claims, including the Unknown Claims and (c) attempting to effect opt outs of a class of individuals in this lawsuit or any other lawsuit or administrative, regulatory, arbitration or other proceeding based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action or the Released Claims.

48. Any member of the Settlement Class who does not submit a timely and valid written request for exclusion from the Settlement Class (i.e., become an Opt-Out) will be bound by the terms of the Settlement Agreement and all proceedings, orders and judgments in the Action, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Released Claims. Any purported request for exclusion or other communication sent to such address that is unclear or internally inconsistent with respect to the Settlement Class Member's desire to be excluded from the Settlement Class will be deemed invalid unless determined otherwise by the Court. Requests for exclusion signed only by counsel or another representative shall not be permitted.

IT IS SO ORDERED

Date: _____

Honorable Nelson S. Román
United States District Court
Southern District of New York