

Court File No. CV-19-0062978600CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) Thursday , THE 21st DAY  
JUSTICE BENJAMIN T. GLUSTEIN ) OF Sept , 2023

BETWEEN:

CLAIRE LINDHOUT AND BETTY ANN MARTIN

Plaintiffs

- and -

HILL'S PET NUTRITION, INC.  
and HILL'S PET NUTRITION CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**CERTIFICATION AND SETTLEMENT APPROVAL ORDER**

**THIS MOTION** made by the Plaintiffs for an Order certifying the class action for settlement purposes and approving the settlement with Hill's Pet Nutrition, Inc. and Hill's Pet Nutrition Canada Inc., and dismissing this action, was heard this 21st day of September, 2023 at 130 Queen Street West, Toronto, Ontario.

**ON READING** the materials filed, including the Settlement Agreement dated June 2, 2023 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been 0 written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the Defendants consent to this Order;


1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the action is certified as a class proceeding as against the Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the “Settlement Class” is certified as follows:

all persons and entities that purchased Products in Canada from  
September 1, 2018 to May 31, 2019.
5. **THIS COURT ORDERS** that Claire Rennie and Betty Ann Martin be appointed as the representative plaintiff for the Settlement Class.
6. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Are the Defendants liable to the Class?
7. **THIS COURT ORDERS** that Koskie Minsky LLP and McKenzie Lake Lawyers LLP be appointed as Class Counsel.

8. **THIS COURT ORDERS THAT** any member of the class who wishes to opt out of the class must do so by submitting the Opt Out Form attached as Schedule "E" to the Settlement Agreement, in accordance with the procedure set out in the Settlement Agreement.
9. **THIS COURT ORDERS THAT** the Opt-Out Period shall be sixty (60) days from the date of this Order. No further Opt-Outs shall be permitted after this date, except with leave of the Court.
10. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class Members.
11. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
12. **THIS COURT ORDERS** that Humane Canada is hereby approved as the Cy Pres Recipient for the purposes of the Settlement Agreement.
13. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.
14. **THIS COURT ORDERS** that, upon the Irrevocable Agreement Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

15. **THIS COURT ORDERS** that, upon the Irrevocable Agreement Date, the action be and is hereby dismissed against the defendants, without costs and with prejudice.
16. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
17. **THIS COURT ORDERS** that the Phase II Notice, substantially in the form set out in Schedule “D” to the Settlement Agreement is hereby approved.
18. **THIS COURT ORDERS** that within seven (7) days of this Order, notice of settlement approval shall be disseminated in accordance with the Notice Plan attached as Schedule “A” to the Settlement Agreement and approved by this Court.
19. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

  
The Honourable Justice Benjamin T. Glustein

SCHEDULE "A"

Court File No. CV-19-0062978600CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CLAIRE LINDHOUT AND BETTY ANN MARTIN

Plaintiffs

and

HILL'S PET NUTRITION, INC.  
and HILL'S PET NUTRITION CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**SETTLEMENT AGREEMENT**

This Settlement Agreement and Release, including its recitals and attached Schedules (“**Settlement Agreement**” or “**Agreement**”), is entered into by and between the Plaintiffs (as defined herein), as of the 2nd day of June, 2023, individually and on behalf of the Settlement Class Members (as defined herein), and Hill’s Pet Nutrition, Inc. and Hill’s Pet Nutrition Canada Inc. (collectively, “**Hill’s**” or the “**Defendants**”, and together with the Plaintiffs, the “**Parties**”). This Settlement Agreement is intended by the Parties to resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Settlement Agreement, and upon approval by the Court.

**RECITALS**

**WHEREAS:**

- (a) In August 2018, DSM Nutritional Products LLC, one of Hill’s long-time suppliers, delivered to Hill’s vitamin premix that included too much vitamin D;
- (b) On January 31, 2019, in coordination with the United States Food and Drug Administration, Hill’s announced its first voluntary recall in the United States and

in Canada of certain batches of Hill's Prescription Diet and Science Diet canned dog food products due to potential excessive levels of vitamin D;

- (c) On March 20, 2019, Hill's expanded the recall to include additional lots of the products recalled in January, as well as eight additional products, and on May 15, 2019, Hill's identified a single, additional lot that had been inadvertently omitted from the recall, recalling that lot as well;
- (d) Following the recall, on September 12, 2019, a proposed class proceeding was commenced by Betty Ann Martin against the Defendants bearing Ontario Superior Court of Justice Court File No. CV-19-1778-CP (the "**Martin Action**"), in which Ms. Martin alleged that she was harmed by purchasing pet food manufactured by the Defendants;
- (e) Following the recall, on October 24, 2019, this class proceeding was commenced by the Plaintiffs alleging that they were harmed by purchasing pet food manufactured by Defendants;
- (f) On November 15, 2019, this class proceeding was assigned to Justice Glustein of the Superior Court of Justice for case management;
- (g) On or about February 10, 2020, the Defendants served their Notice of Intent to Defend this class proceeding;
- (h) On March 3, 2020, the Martin Action was dismissed on the consent of Ms. Martin and the Defendants pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "**Class Proceedings Act**");
- (i) On or about November 30, 2020, the Plaintiffs in this proceeding served their Motion Record for, *inter alia*, an order certifying this proceeding as a class proceeding pursuant to the *Class Proceedings Act*;
- (j) Thereafter the Parties have engaged in extensive arms-length settlement negotiations and have now reached an agreement providing for a national class-

wide settlement of this Action and a release of the Released Claims by the Settlement Class;

- (k) The Plaintiffs and Class Counsel have examined and considered the benefits to be provided to the Settlement Class under this Settlement and the claims and defences that could be asserted regarding the Products (as defined herein), and have concluded that this Settlement Agreement is fair, reasonable, adequate, and in the best interest of the Class, taking into account the risks of litigation, and the length of time required to complete the litigation and any appeals;
- (l) The Defendants deny any and all claims and theories of the case asserted by or on behalf of Plaintiffs; and
- (m) The Parties believe that the interests of all concerned are best served by compromise, settlement, and dismissal of the claims;

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

#### **PART I - INTERPRETATION**

1. In this Settlement Agreement, the following terms have the following meanings:
  - (a) **“Action”** means the above action, Court File No. CV-19-0062978600CP;
  - (b) **“Approval Date”** means the date the Court issues its Approval Order;
  - (c) **“Approval Hearing”** means the hearing by the Court to determine whether this Settlement is fair and reasonable in accordance with the *Class Proceedings Act* and to approve the Fee and Disbursements Award;
  - (d) **“Approval Order”** means the order of the Ontario Superior Court of Justice, a draft of which is attached as **Schedule “F”**, certifying this Action as a class proceeding for settlement purposes and approving this Settlement Agreement as fair, reasonable, and in the best interests of the Settlement Class Members;

- (e) **“Class Counsel”** means Koskie Minsky LLP and McKenzie Lake Lawyers LLP;
- (f) **“Claims Period”** means the 180-day period commencing on the Notice Date;
- (g) **“Common Issue”** means “Are the Defendants liable to the Class?”;
- (h) **“Consumer Food Purchase Claims”** means claims solely for reimbursement of the costs associated with the purchase of the Products by Settlement Class Members who have not been reimbursed for such costs to date, including through the return or exchange of the Products. Any Consumer Food Purchase Claim will specifically exclude any amounts that Hill’s has already paid to the Settlement Class Members or on their behalf as part of a Hill’s Claims Process or amounts paid to Settlement Class members by retailers following the recall.
- (i) **“Court”** means the Ontario Superior Court of Justice;
- (j) **“Cy Pres Recipient”** means Humane Canada, or an otherwise mutually agreed upon organization, subject to Court approval;
- (k) **“Defendants’ Counsel”** means Fasken Martineau DuMoulin LLP;
- (l) **“Dog Injury Claims”** means claims seeking damages allegedly incurred by Settlement Class Members whose dogs consumed any of the Products and where the Settlement Class Member incurred any economic loss related to their dog’s ingestion of excess levels of vitamin D through the consumption of the Products or where the Settlement Class Member’s dog died allegedly as a result of the dog’s ingestion of excess levels of vitamin D through the consumption of the Products, specifically excluding any amounts Hill’s has already paid to the Settlement Class Member or on his or her behalf as part of a Hill’s Claims Process.
- (m) **“Fee and Disbursements Award”** means all Class Counsel fees, disbursements, and related taxes approved by the Court in this Action;



- (n) **“Final Order”** means an Approval Order in respect of which the time to appeal has expired without any appeal being taken, or in respect of which there has been a final disposition of all appeals without any reversal or amendment of the Approval Order;
- (o) **“Hill’s Claims Process”** means (i) the veterinarian claims process in which Hill’s reimbursed veterinarians directly on a consumer’s behalf for allegations related to the Products and/or (ii) the consumer claims process in which Hill’s reimbursed consumers for Dog Injury Claims upon an individual evaluation of each alleged claimant, or issued refunds for the purchase of the Products;
- (p) **“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;
- (q) **“Irrevocable Agreement Date”** means the 17<sup>th</sup> Day after delivery of the Threshold Notification to the Defendants;
- (r) **“Notice Approval Order”** means an order approving the Notice Plan, in the form attached hereto as **Schedule “G”**;
- (s) **“Notice Date”** means the day on which Phase II Notice is first disseminated to Settlement Class Members;
- (t) **“Objection”** means the delivery of a valid Participation Form describing an objection to Class Counsel prior to the Objection Deadline;
- (u) **“Objection Deadline”** means the final date by which a Settlement Class Member’s Participation Form must be received in order for the Settlement Class Member to object to the Settlement;
- (v) **“Opt-Out”** means the delivery of a valid Opt-Out Form to Class Counsel prior to expiry of the Opt-Out Period;

- (w) **"Opt-Out Deadline"** means the final date by which a Settlement Class Member's Opt-Out Form must be received in order for the Settlement Class Member to opt out of the Settlement;
- (x) **"Opt-Out List"** means the complete and accurate list compiled by the Settlement Administrator of all Settlement Class Members who have timely and validly opted out of the Settlement in accordance with the terms of this Settlement Agreement;
- (y) **"Opt-Out Period"** means the 60-day period commencing on the Approval Date;
- (z) **"Opt-Out Request"** means a document that complies with Section 11 of this Settlement Agreement in the form attached hereto as **Schedule "E"**;
- (aa) **"Opt-Out Threshold"** means the specific number of opt-outs agreed upon pursuant to Section 9 that will trigger the Defendants' option to terminate this Agreement pursuant to Section 37;
- (bb) **"Plaintiffs"** means Betty Ann Martin and Claire Lindhout, as identified in the Amended Statement of Claim;
- (cc) **"Products"** means the Hill's Prescription Diet and Science Diet canned dog foods listed in **Schedule "H"** and sold to consumers in Canada from September 1, 2018 to May 31, 2019, and any pet food product sold in Canada by the Defendants, regardless of brand name, to which the allegations made in the Statement of Claim in this action could pertain. The definition of the Products specifically excludes any cat foods, dry dog food products, treats, Ideal Balance products or Healthy Advantage products, or other products produced by Hill's that are not specifically listed in **Schedule "H"**;
- (dd) **"Released Claims"** means any claim by any Releasor related in any way to the production, packaging, labelling, marketing or sale of Products prior to May 31, 2019, regardless of cause of action, type of loss or damage, or relief sought, and including, without limitation, any and all past, present, future or potential claims, demands, suits, proceedings, payment of obligations, adjustments, executions, offsets, actions, causes of action, costs, defences, debts, sums of money, assertions of rights, accounts, reckoning,

bills, bonds, covenants, contracts, controversies, agreements, promises, expenses (including without limitation court costs, legal fees and disbursements), requests for relief of any kind, statutory or regulatory obligations, judgments or any liabilities of any nature whatsoever, known or unknown, anticipated or unanticipated, fixed or contingent, matured or unmatured, accrued or unaccrued, personal or representative, derivative or subrogated, direct or indirect, whether statutory, in law, equity, civil or criminal, whether sounding in tort, contract, equity, nuisance, trespass, negligence or strict liability, which have been asserted in this Action, could have been asserted, or may be asserted by or on behalf of any Releasor;

(ee) **“Releasee(s)”** means individually and collectively, the Defendants and all of respective present and former parents, subsidiaries, divisions, affiliates, partners, directors, officers, employees, servants, agents, representatives, shareholders, suppliers, distributors, dealers and sales branches, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of all of the foregoing, together with the underwriters and insurers of any Releasee;

(ff) **“Releasor(s)”** means the Plaintiffs, each Settlement Class Member and deceased Settlement Class Member, any person who may be entitled to make any subrogated, derivative or other claim pursuant to any contract, law or statute based upon any relationship with the Plaintiffs or Settlement Class Members, any person or organization deemed to be a Releasor by operation of this Agreement, and the respective successors, heirs, beneficiaries, transferees, grantees, next of kin, executors, administrators and assigns of any of the foregoing;

(gg) **“Settlement”** means the Settlement provided for in this Settlement Agreement;

(hh) **“Settlement Administrator”** means Kroll LLC or an otherwise mutually agreed upon Administrator with responsibilities outlined in this Settlement Agreement, subject to Court approval;

(ii) **“Settlement Cheque”** means any cheque issued by the Settlement Administrator payable from the Settlement Fund to a Settlement Class Member for payment of a valid Claim or Claims.

(jj) **“Settlement Class”** and **“Settlement Class Members”** means all persons and entities that purchased Products in Canada from September 1, 2018 to May 31, 2019. Excluded from this Settlement Class are: all persons and entities that have been provided compensation from any Defendant and have executed a release for the claims described herein; Defendants, any entity in which Defendants have a controlling interest, and their legal representatives, officers, directors, employees, assigns and successors; persons and entities that purchased Products for resale or resold the Products, but persons or entities that purchased the Products for direct use are not excluded; Settlement Class Counsel; and putative Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

(kk) **“Settlement Class Period”** means September 1, 2018 to May 31, 2019.

(ll) **“Settlement Fund”** means an amount equal to, and in no circumstances greater than, five hundred and seventy-five thousand U.S. Dollars (\$575,000 USD), to be paid by the Defendants to the Settlement Administrator in trust for the Settlement Class Members after the Irrevocable Agreement date in accordance with Section 38 of this Settlement Agreement, which amount includes any interest accrued thereon after payment, after the deduction of any and all Taxes and Tax-Related Expenses;

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

(nn) **“Threshold Notification”** means a notice from Class Counsel to the Defendants that includes the Opt-Out List;

(oo) **“Threshold Notification Date”** means the 7<sup>th</sup> day after the Opt-Out Deadline;

(pp) **“Unpaid Funds”** means any and all funds remaining in the Settlement Fund after the issuance of all payments to Settlement Class Members’ by the Settlement Administrator.

## **PART II - APPROVAL AND IMPLEMENTATION**

2. The following Schedules to this Settlement Agreement are incorporated into and form part of it by this reference as fully as if contained in the body of this Settlement Agreement:

**Schedule “A”: Notice Plan**

**Schedule “B”: Phase I Form of Notice**

**Schedule “C”: Participation Form**

**Schedule “D”: Phase II Form of Notice**

**Schedule “E”: Opt-Out Form**

**Schedule “F”: Draft Settlement Approval Order**

**Schedule “G”: Notice Approval Order**

**Schedule “H”: Products**

**Schedule “I”: Press Release**

**Schedule “J”: Claim Form**

3. However, in the event of a contradiction between the content of the body of this Settlement Agreement and the content of the body of one of the above Schedules, the language of the body of the Settlement Agreement will govern.

## **PART III - CERTIFICATION FOR SETTLEMENT PURPOSES**

4. For the purposes of implementing this Settlement Agreement, and for no other purpose, the Defendants consent to the conditional certification of the Class, as set forth in the Notice Approval Order, on the terms and conditions of this Settlement Agreement. The Parties agree that the Defendants’ consent to the certification of the Proposed Class Action is

conditional upon the Court approving the settlement, including the plan of allocation, in accordance with the terms of this Settlement Agreement.

5. Neither the certification of a Class pursuant to the terms of this Settlement Agreement nor the statement of the Common Issue shall constitute, or be construed as, an admission on the part of the Defendants that this Action, or any other proposed class action, is appropriate for certification as a litigation class under any applicable law, or that the Common Issue or any other common issue is appropriate for certification on a contested basis in this Action or on any basis in any other proceeding.

#### **PART IV - NOTICE PROGRAM AND OPT OUT RIGHT**

6. The Plaintiffs and Defendants have agreed to work collaboratively to facilitate the provision of notice of the hearing for consent certification and approval of this Settlement Agreement, and notice of the process to Opt-Out of the settlement.
7. **Phase I Notice:** Upon execution of this Settlement Agreement, Class Counsel shall seek Court approval of the Phase I Notice attached hereto as **Schedule “B”**, in the manner provided in the Notice Plan at **Schedule “A”**, and shall implement the Phase I Notice using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of this Settlement; a date by which Settlement Class Members may object to this Settlement; the date upon which the Approval Hearing shall occur; and the address of the website at which Settlement Class Members may access this Settlement and other related documents and information.
8. **Objections:** The Phase I Notice shall explain the procedure for Settlement Class Members who wish to object to the Settlement by submitting written objections to the Settlement Administrator, Class Counsel, and Defendants’ Counsel prior to the Objection Deadline set by the Court for such action and as described in the Notice Plan. The Phase I Notice must set forth the time and place of the Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this section waives the right to object or to be heard at the Approval Hearing and shall be forever barred from making any objection to the Settlement. Class Counsel shall deliver Objections to the Defendants once every two weeks.

9. **Opt-Out Threshold:** If the total number of Settlement Class Members who have delivered a valid Opt-Out Form exceeds the agreed opt-out number (as recorded in a separate confidential agreement executed by Class Counsel and Defence Counsel and delivered to the Court under seal), the Defendants may, in their discretion, within 14 days after receipt of the Threshold Notification, exercise the option to void this Settlement Agreement, in which case the Approval Order will be set aside in its entirety.
10. **Phase II Notice:** Upon the Approval Date, Class Counsel shall implement the Phase II Notice attached hereto as **Schedule “D”**, in the manner provided in the Notice Plan at **Schedule “A”**, using the forms of Notice approved by the Court.
11. **Opt-Out Period:** The Phase II Notice shall explain the procedure for Settlement Class Members to exclude themselves or “Opt-Out” of the Settlement by submitting an Opt-Out Form to the Settlement Administrator prior to the Opt-Out Deadline). Settlement Class Members who wish to Opt-Out of the proceeding must do so by submitting an Opt-Out Request to the Settlement Administrator before the Opt-Out Deadline. An Opt-Out Request shall be in the form attached as **Schedule “E”**, or if in another form, shall clearly identify: the Settlement Class Member’s intention to opt-out, the Settlement Class Member’s type of claim (i.e. whether it is a Dog Injury Claim or Consumer Food Purchase Claim) and, the name of the Settlement Class Member’s lawyer (if applicable). If a Settlement Class Member submits both a Claim and an Opt-Out Request, the Settlement Administrator will disregard the Opt-Out Request. Any Settlement Class Member who does not submit a properly completed Opt-Out Request before the Opt-Out Deadline shall be deemed to be a member of the Settlement Class upon the expiry of the Opt-Out Deadline.
12. **Jurisdiction:** The Court shall retain jurisdiction over the implementation, enforcement and performance of this Agreement, and shall have exclusive jurisdiction of any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by Counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of this Agreement and shall retain jurisdiction for the purpose of enforcing all terms of this Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Phase I Notice

and Phase II Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement Agreement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

#### **PART V - SETTLEMENT CONSIDERATION**

13. **Establishment of Settlement Fund:** Within thirty (30) calendar days after the Court enters the Approval Order, the Defendants shall pay the Settlement Fund to the Settlement Administrator in trust for the Settlement Class Members.
14. **Non-Reversionary:** The Settlement Fund is non-reversionary. As of the Approval Date, all rights of the Defendants in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated pursuant to the terms of this Agreement.
15. **Custody of Settlement Fund:** Funds shall be held by the Settlement Administrator in an interest-bearing account. The Settlement Administrator shall provide a detailed accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties. The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with this Agreement.
16. **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 costs and administrative expenses; (ii) fee awards, honoraria and costs; (iii) settlement payments to Settlement Class Members, and (iv) any distribution of Unpaid Funds. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.
17. **Taxes and Representations:** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold



harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by either Plaintiff 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 Plaintiff and each Settlement Class Member shall be solely responsible for the federal, provincial, local, and other tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

#### **PART VI - CLAIMS PROCESS**

18. To be eligible for monetary relief from the Settlement Fund, Settlement Class Members must submit a valid Claim Form and meet one of the definitions of Settlement Class Members outlined in section 21 below.
19. **Claims Process:** Each Claim Form shall provide the opportunity for a Settlement Class Member to demonstrate eligibility. Each Settlement Class Member shall be entitled to submit a Claim Form that will, if valid, entitle the Settlement Class Member to a payment as set forth below. The period for submitting such Claim Forms shall commence upon the Notice Date and continue for no less than one hundred and eighty (180) days (the “**Claims Period**”). The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by this Settlement by processing Claim Forms in a rational, responsive, cost effective and timely manner. All available monies in the Settlement Fund will be paid out to Settlement Class Members or, to the extent there are any residual Unpaid Funds after any additional distribution, paid on the Settlement Class’s behalf to the *Cy Pres* Recipient with no possibility of reversion to Defendants.
20. Settlement Class Members who have already received reimbursement for their otherwise eligible claims or whose veterinarians already received reimbursement for their otherwise eligible claims on the Settlement Class Members’ behalf are not eligible to receive duplicative payments and their claims under this Settlement Agreement shall accordingly be denied.

21. Monies will be distributed to Settlement Class Members *pro rata* based on the amounts apportioned to each Settlement Class Member by the following criteria:

(a) **Settlement Class Members Who Have Dog Injury Claims:** Settlement Class Members will have a Dog Injury Claim for either or both of:

(i) any amounts incurred in screening, diagnosing, and treating the dog, if they provide: documentation showing screening or treatment of the dog for symptoms consistent with consumption of excess vitamin D as a result of the use or consumption of the Products, up to a maximum of \$500 Canadian dollars. The Settlement Administrator is authorized (in conjunction with a veterinarian or other expert, if necessary, selected by Class Counsel) to review this documentation, investigate, evaluate, and make a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant. Acceptable forms of documentation of the veterinary treatment incurred include, but are not limited to: veterinary notes, veterinary records, test or laboratory reports, or statements and/or letters from the veterinarian, hospital or clinic. By submitting a Dog Injury Claim, the Settlement Class Member is authorizing the Settlement Administrator, in its discretion, to contact the treating veterinarian of the Settlement Class Member's allegedly injured dog, to seek the input of Class Counsel and Hill's, and to fully investigate and make a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant. The Settlement Administrator is under no obligation to rely solely on information provided by the Settlement Class Member in making its determination of payment for a Dog Injury Claim.

(A) For clarity, Dog Injury Claims may also include claims for screening and testing costs that were reasonably necessary based on concern for having a dog that consumed the Products. Such screening/testing shall have been performed by or upon the recommendation or

referral of the veterinarian to screen for illness from the consumption of the Products, provided that reimbursement will only be granted for the share of the veterinary bill, costs, tests, or examination that relate to the determination of whether the dog suffered injury from the use or consumption of the Products, and not for any other or unrelated portion of the veterinary bill.

- (ii) an amount of \$5,000 Canadian dollars per Settlement Class Member for damages alleged to relate to the death of their dog if they provide: (i) documentation showing screening or treatment of the dog for symptoms consistent with consumption of excess vitamin D following the use or consumption of the Products, (ii) documentation showing that the dog died after the date of these documented symptoms, and (iii) documentation showing that the dog died or was euthanized as a result of these symptoms. The Settlement Administrator is authorized (in conjunction with a veterinarian or other expert, if necessary, selected by Class Counsel) to review this documentation, investigate, evaluate, and make a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant. Acceptable forms of documentation of the veterinary treatment incurred include, but are not limited to: veterinary notes, veterinary records, test or laboratory reports, or statements and/or letters from the veterinarian, hospital or clinic. By submitting a Dog Death 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 deceased dog, to seek the input of Class Counsel and Hill's, and to fully investigate and make a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant. The Settlement Administrator is under no obligation to rely solely on information provided by the Settlement Class Member in making its determination of payment for a Dog Death Claim.

(b) **Settlement Class Members Who Have Consumer Food Purchase Claims:** Settlement Class Members will have a Consumer Food Purchase Claim for up to the full purchase price of the Products if they can provide: an attestation under penalty of perjury confirming that they purchased one of the Products, and they have not already received a payment or a refund for the products. Each Settlement Class Member with a Consumer Food Purchase Claim may elect to submit either: (i) a Consumer Food Purchase Claim with Proof of Purchase; or (ii) a Consumer Food Purchase Claim without Proof of Purchase; but they may not submit both.

(i) **Consumer Food Purchase Claims With Proof of Purchase:** Settlement Class Members who complete the Claim Form and provide valid Proof of Purchase showing their actual purchase(s) of Products during the Settlement Class Period and the purchase price of the Products purchased shall receive the full price of the Products as set forth on their Proof of Purchase. The Settlement Administrator shall have the right to determine the validity of such claims and may investigate and request reasonable additional information in order to avoid fraud.

(ii) **Consumer Food Purchase Claims Without Proof of Purchase:** Settlement Class Members who complete the Claim Form and do not provide valid Proof of Purchase showing their actual purchase(s) of Products during the Settlement Class Period shall receive the manufacturer's suggested retail purchase price for the Products claimed to have been purchased for up to a total value of twenty Canadian dollars (\$20 CAD). 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.

22. **Decisions:** The Settlement Administrator will make best efforts to deliver decisions to all Settlement Class Members who have filed a Claim Form within one hundred and twenty days (120) days of the expiry of the Claims Period. The decision of the Settlement

Administrator will be final and not subject to dispute or appeal. While the Settlement Administrator may, in its discretion, seek input from Class Counsel and Defendants' Counsel about a claim, neither Defendants' Counsel nor Class Counsel is obligated to review all claims.

23. **Plan of Allocation:** All payments of Settlement compensation to Settlement Class Members shall be made from the Settlement Fund after all costs of Settlement administration (including, but not limited to, costs related to the Phase I Notice and Phase II Notice, the fees and expenses of the Settlement Administrator as approved by the Court, and the Fee and Disbursements Award as approved by the Court), are deducted from the Settlement Fund. If the total of the timely, valid and approved Claims submitted exceeds the available relief, minus any covered costs and expenses, each Settlement Class Member's award shall be reduced on a *pro rata* basis. If the total of the timely, valid and approved Claims is less than the available relief, minus any covered costs and expenses, each Settlement Class Member's award shall be *pro rata* increased to no more than two-times the value of the timely, valid and approved Claim absent any further written agreement by the Parties. After such distribution(s), the Settlement Administrator shall pay the Unpaid Funds, if any, to the *Cy Pres* Recipient.
24. **Returned Cheques:** For any Settlement Cheque 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 Settlement Cheque is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send by mail and if available an e-mail and/or place a telephone call to that Settlement Class Member to obtain updated address information. Any replacement Settlement Cheques issued to Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Settlement Class Members within that time.

25. **Claims per Household:** Settlement Class Members can make claims under both categories of claim and be compensated for any or all of those Claims. However, only one of each Claim Form per Household will be eligible for compensation.
26. **Residue of Settlement Fund:** No portion of the Settlement Fund shall revert or be repaid to Defendants after the Approval Date. All funds shall be distributed pursuant to the Plan of Allocation in section 23.
27. **Honouraria:** Within 30 days of the Approval Date, and subject to Court approval, each Plaintiff shall receive an honourarium of \$10,000 from the Settlement Fund, in addition to any monetary compensation for those claims they may make under this Settlement Agreement.
28. If the quantum of the honouraria set out in Section 27 is not approved by the Court or confirmed on appeal (if any), Section 27 shall be regarded as severed while the rest of this Settlement Agreement shall remain in full force and effect.
29. **Administrator Functions:** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following functions:
  - (a) maintain reasonably detailed records of its activities under this Settlement; and,
  - (b) maintain all such records as are required by applicable law in accordance with its normal business practices, and such records will be made available to either Plaintiff, either Defendant, Class Counsel, or Defendants' Counsel promptly upon request.
  - (c) provide reports and other information to the Court as the Court may require. Should the Court request or should it be reasonably advisable to do so, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator;
  - (d) create, administer, and oversee the Settlement Fund;

- (e) establish and maintain the Settlement Website;
- (f) establish and maintain a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- (g) respond to any mailed or emailed Settlement Class Member inquiries within one (1) business day;
- (h) provide Class Counsel and the Defendants' Counsel with the Opt-Out List
- (i) upon request by Defendants' Counsel or Class Counsel, promptly forward to Defendants' Counsel and Class Counsel, copies of all documents and other materials relating to the administration of the Settlement;
- (j) receive requests from Settlement Class Members to exclude themselves from the Settlement Class and promptly provide to Class Counsel and Defendants' Counsel a copy thereof upon receipt. If the Settlement Administrator receives any requests for exclusion from Settlement Class Members after the Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel;
- (k) provide reports and summaries, as requested, to Class Counsel and Defendants' Counsel, including without limitation, reports regarding the number of Claim Forms received and the identity of the Settlement Class Members;
- (l) employ reasonable procedures to screen Claim Forms for waste, fraud, and abuse and reject a Claim Form, or any part of a claim for a payment reflected therein, where the Settlement Administrator determines that there is evidence of fraud. The Settlement Administrator will review each Claim Form based upon the initial submission by a Settlement Class Member and ensure that each is complete, properly substantiated and, based on the substantiation, determine the appropriate

benefit to be paid, if any, in accordance with the terms of this Agreement. The Settlement Administrator is empowered to pay legitimate and valid claims only;

- (m) Issue Settlement Cheques: All Settlement Cheques issued pursuant to this Settlement shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a Settlement Cheque 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 cheque. To the extent that a Settlement Cheque is not cashed within ninety (90) days after the date of issue, the cheque will be void;
- (n) make the Claim Form available on the Settlement Website. The Claim Form will be mailed to Settlement Class Members upon request by calling or writing to the Settlement Administrator. Settlement Class Members may submit their completed and signed Claim Forms to the Settlement Administrator by such means as proscribed by the Notice on or before the Claims Deadline. Such Claim Form shall be submitted to the Court for approval substantially in the form as that attached hereto and made a part hereof as **Schedule “J”**;
- (o) after the Effective Date, process and transmit Settlement Payments to Settlement Class Members and, if necessary, process and transmit any residual Unpaid Funds to the *Cy Pres* Recipient;
- (p) in advance of the Approval Hearing, prepare an affidavit to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) identifies all Opt-Out Requests and/or objectors. Such declaration shall be provided to Defendants’ Counsel and Class Counsel for filing with the Court no later than fourteen (14) days prior to the Approval Hearing; and



- (q) perform any function related to Settlement administration at the agreed-upon instruction of Class Counsel or Defendants' Counsel, including, but not limited to, verifying that Settlement payments have been distributed.
30. The Settlement Administrator shall only consider Claims submitted with a Claim Form and received by the Settlement Administrator or postmarked by the Claims Deadline. The Claims Deadline shall be clearly set forth in the Phase II Notice, the Settlement Website, and on the Claim Form. Settlement Class Members who fail to submit a Claim Form by the Claims Deadline shall not be eligible for a payment;
31. The Parties, Class Counsel, and Defendants' Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.
32. The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Defendants' Counsel for: (i) any act or omission or determination of the Settlement Administrator, or any of the Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

#### **PART VII - CONDITIONS AND TERMINATION**

33. With exception to the Phase I notice as provided in section 7, and notice costs and administrative expenses related to Phase I notice as provided at section 16, and subject to

Sections 39 and 41, unless the Plaintiffs and the Defendants agree otherwise in writing, this Settlement Agreement shall be automatically terminated and shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court declines to issue the Notice Approval Order without amendment, if the Court declines to issue the Approval Order without amendment, or if the Approval Order does not become a Final Order.

34. The Defendants may also terminate this Settlement Agreement, in accordance with Sections 9 and 37, if the Opt-Out Threshold is exceeded.
35. The Parties hereby confirm that they have agreed upon an Opt-Out Threshold and that the Opt-Out Threshold is confirmed in a separate document executed by Class Counsel and Defence Counsel. That document shall be delivered to the Court under seal, and shall be treated by the Parties and the Court as strictly confidential and shall not be disclosed to any person other than the Parties and their respective Counsel.
36. Promptly after the Opt-Out Deadline, and in any event no later than the Threshold Notification Date, the Settlement Administrator shall deliver the Threshold Notification to Defendants' Counsel and Class Counsel.
37. The Defendants may elect to terminate the Settlement Agreement, in their sole and absolute discretion, if the Opt-Out Threshold is exceeded.
38. If the Defendants elect to exercise their right to terminate this Settlement Agreement, then the Defendants shall deliver written notice of termination to Class Counsel no later than 14 days after delivery of the Threshold Notification. If the Defendants do not deliver a notice of termination within 14 days after receiving the Threshold Notification, this Settlement Agreement shall become fully effective and irrevocable on the Irrevocable Agreement Date.
39. If the Settlement Agreement is terminated automatically under Section 33 or by the Defendants pursuant to Section 37, the Defendants shall bring a motion before the Court for an order:

- (a) Declaring the Settlement Agreement to be null and void and of no force or effect; and,
  - (b) Setting aside the Notice Approval Order and/or the Approval Order on the basis of the termination of the Agreement.
40. In the event that this Settlement Agreement is automatically terminated pursuant to Section 33 or in the event that this Settlement Agreement is terminated by the Defendants pursuant to Section 37, this Settlement Agreement shall have no further force and effect, shall not be binding on any person or Party and shall not be used as evidence or otherwise in any litigation or other proceeding, and the legal position of each Party shall be the same as it was immediately prior to the execution of this Settlement Agreement, including the return of the Settlement Fund (plus interest) to the Defendants within thirty (30) days of termination, minus any funds the Parties jointly have authorized to be paid out of the Settlement Fund. In addition, in the event of such a termination, each party may exercise its legal rights to the same extent as if this Agreement had never been executed and all of the Parties' respective pre-Settlement claims and defenses will be preserved.
41. If the quantum of the legal fees and disbursements sought is not approved by the Court or confirmed on appeal (if any), the rest of this Settlement Agreement shall remain in full force and effect.
42. Except as expressly provided in this Settlement Agreement, no amendment or supplement may be made to the provisions of this Settlement Agreement and no restatement of this Settlement Agreement may be made unless agreed to by the Parties in writing and any such amendment, supplement or restatement is approved by the Court without any material difference.

### **PART VIII - PRIVACY AND CONFIDENTIALITY**

43. Any information provided, created or obtained in the course of this settlement, whether written or oral, will be kept confidential by the Parties and the Parties' counsel, and will not be shared or used for any purpose other than this settlement unless otherwise agreed by the Parties in writing or as otherwise provided for or required by law.

44. Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to this Settlement Agreement continues in force and in perpetuity, notwithstanding the termination or voiding of this Settlement Agreement.
45. **Non-Disparagement:** Each Plaintiff agrees that he or she will not directly or indirectly through a third party issue or publish any statement to or in the media (or to any media representative), including but not limited to print, television, radio and the internet, commenting on this Action or Settlement Agreement and/or disparaging the name, reputation, practices or operations of Hill's or any other Released Party. Class Counsel shall instruct each Plaintiff that any violation of this section could entitle Hill's or the Released Party, as the case may be, to pursue legal action against the Plaintiff and seek, among other remedies, a refund of any honourarium in an amount that shall not exceed the value of the honourarium. Class Counsel will not be required to monitor the Plaintiffs to ensure compliance with this section or to monitor any of the Plaintiffs' social media accounts or other communications on an ongoing basis. If Defendants' Counsel provides written notice to Class Counsel of a Plaintiff's potential breach of this section, Class Counsel has agreed to forward the written notice on to the Plaintiff. The Parties agree that Class Counsel have no other responsibilities or potential liability for the breach of this section by a Plaintiff.
46. 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 local, provincial or federal law, and will be solely responsible for directly providing notice to local, provincial, or federal agencies, affected Settlement Class Members, and/or other persons or entities.

### **PART IX - RELEASES**

47. The Releasors fully and forever release, remise, acquit and discharge the Releasees from the Released Claims, regardless of whether any Releasor executes and delivers a written release. By executing this Settlement Agreement, the Parties acknowledge that the Action shall be discontinued pursuant to the terms of the Approval Order, and all Released Claims shall thereby be conclusively settled, compromised, satisfied and released as to the Releasees. The Approval Order shall provide for and effect the full and final release by the Releasors of all Released Claims.
48. The Settlement Class Members hereby acknowledge that they are aware that they or their legal counsel may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is still their intention to hereby fully, finally, and forever settle, release, extinguish and waive all of the Released Claims, known or unknown, suspected or unsuspected, that they had, now have or, absent this Settlement Agreement, may in the future have had against Releasees. In furtherance of such intention, the release herein given by the Releasors to the Releasees shall be and remain in effect as a full and complete general release of the Released Claims notwithstanding any discovery of the existence of any such additional or different claims or facts.
49. If any Releasor brings an action or asserts a claim against any Releasee contrary to the terms of this Settlement Agreement, the counsel of record for such Releasor shall be provided with a copy of this Settlement Agreement. If the Releasor does not within 20 days thereafter dismiss his or her action and the action or claim is subsequently dismissed or decided in favour of the Releasees, the Releasor who brought such action or claim shall pay Releasees' reasonable counsel fees and disbursements incurred by Releasees in the defense of such action or claim.
50. Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Settlement Agreement and with respect to the future performance of the terms of the Settlement Agreement, and to ensure that all payments and other actions required of any of the Parties by the Settlement and this Settlement Agreement are properly made or taken.

**PART X - GENERAL**

51. This Settlement Agreement will be governed and construed in accordance with the laws of the province of Ontario.
52. This Settlement Agreement is not to be construed as an admission of liability or wrongdoing by the Defendants.
53. Any notice, instruction, application for Court approval or application for Court order sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or by electronic mail to the following representatives for the Parties:

**FOR DEFENDANTS:**

Paul J. Martin and Sarah J. Armstrong, Fasken Martineau DuMoulin LLP  
Bay Adelaide Centre, 333 Bay Street, Suite 2400, P.O. Box 20, Toronto, Ontario M5H 2T6  
Email: pmartin@fasken.com and sarmstrong@fasken.com

**FOR CLASS COUNSEL AND PLAINTIFFS:**

Adam Tanel, Koskie Minsky LLP  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3  
atanel@kmlaw.ca

Matthew D. Baer and Emily Assini McKenzie Lake LLP  
140 Fullarton Street, Suite 1800  
London, ON N6A 5P2  
Email: matt.baer@mckenzielake.com and emily.assini@mckenzielake.com

54. In the event that any date or deadline set forth in this Agreement falls on a weekend or holiday, such a date or deadline shall be on the first business day thereafter.
55. In no event shall the Defendants, Defendants' Counsel, the Plaintiffs, any Settlement Class Member, or Class Counsel have any liability for claims or wrongful or negligent conduct by any third party with respect to the implementation of any term of this Agreement.
56. The Parties and their respective counsel agree to prepare and execute any additional documents that maybe reasonably necessary to effectuate the terms of this Agreement.

57. For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.
58. Subject to Section 42 regarding amendments, this Settlement Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Settlement Agreement and cancels and supersedes any prior or other understandings or agreements between or among the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between or among the Parties with respect to the subject matter of this Settlement Agreement other than as expressly set forth or referred to in this Settlement Agreement.
59. Any payments owing under this Settlement Agreement to a deceased Settlement Class Member will be paid to the deceased Settlement Class Member's estate. In the event that payments cannot be accepted by a deceased Settlement Class Member's estate because the estate is closed, and the Unpaid Funds have not been distributed at the time the Administrator is notified of same, the payment owing to that deceased Settlement Class Member shall revert to the Unpaid Funds. In the event that payments cannot be accepted by a deceased Settlement Class Member's estate because the estate is closed, and the Unpaid Funds have already been distributed at the time the Settlement Administrator is notified of same, the payment owing to that deceased Settlement Class Member shall revert to the *Cy Pres* Recipient. Any costs associated with reopening the estate shall be borne by the estate, not by the Parties.
60. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and which, taken together, will be deemed to constitute one and the same Settlement Agreement.
61. This Agreement may be executed manually or using commonly accepted electronic signature software.
62. The Counsel who have executed this Agreement hereby represent and warrant that they have authority to bind their respective clients to this Agreement.

63. IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of June 2nd, 2023.

**KOSKIE MINSKY LLP**

June 2, 2023  
Date



Adam Tanel Koskie Minsky LLP  
Matthew D. Baer / Emily Assini, McKenzie  
Lake LLP

Counsel for the Plaintiffs and the Settlement  
Class

**FASKEN MARTINEAU DUMOULIN LLP**

June 2, 2023  
Date



Paul J. Martin / Sarah J. Armstrong, Fasken  
Martineau DuMoulin LLP

Counsel for the Defendants



## SCHEDULE “A”

### NOTICE PLAN

#### IN THIS SCHEDULE, THE FOLLOWING DEFINITIONS APPLY:

“**Phase I Notice**” means notice to Settlement Class Members of the hearing to certify the class and approve the Settlement Agreement

“**Phase II Notice**” means notice to Settlement Class Members of the Certification and Court approval of the Settlement Agreement, and the process for opting out.

#### **Purpose**

1. The Purpose of this Notice Plan is to:
  - (a) Set out the process by which the Plaintiffs and Defendants will inform Settlement Class Members of the hearing to approve the Settlement Agreement and certify the class, as well as the process for opting out; and
  - (b) If the Settlement Agreement is approved, set out the process for the Phase II Notice.

#### **Method of Notice**

##### Phase I Notice

2. On or before the date set by the Court (but by no later than 30 days before the Approval Hearing), Class Counsel will distribute the Phase I Notice approved by the Court in substantially the form set out in **Schedule “B”**, as follows:
  - (a) post the Notice on Class Counsel’s websites dedicated to this class action;
  - (b) send the Notice directly to all individuals who have contacted Class Counsel regarding this Action;
  - (c) advertise the Notice in publications including the following, as possible during the Phase I notice period:
    - (i) Canadian Veterinary Medical Association journal;and,
    - (iv) Google and Facebook ads directed towards dog owners for a period of 90 days.

## Phase II Notice

3. On or before the date set by the Court (but by no later than 60 days before the close of the Claims Period), Class Counsel will distribute the Phase II Notice approved by the Court in substantially the form set out in **Schedule “D”**, as follows:
  - (a) post the Notice on Class Counsel’s websites dedicated to this class action;
  - (b) send the Notice directly to all individuals who have contacted Class Counsel regarding this Action;
  - (c) advertise the Notice in publications including the following, as possible during the Phase II notice period:
    - (i) Canadian Veterinary Medical Association journal;and,
    - (iv) Google and Facebook ads directed towards dog owners for a period of 90 days.

**SCHEDULE “B”**  
**NOTICE OF PROPOSED SETTLEMENT IN**  
**HILL'S DOG FOOD CLASS ACTION**

*Lindhout et al. v. Hill's Pet Nutrition Inc. et al.*  
(Court File No. CV-19-00629786-00CP)

**Did you buy Hill's Prescription Diet or Hill's Science Diet canned dog foods  
between September 1, 2018 to May 31, 2019?**

**If so, this lawsuit may affect you. Please read this notice carefully.**

**The Court authorized this notice to all Class Members.**  
**This is not a solicitation from a lawyer. You are not being sued.**

This proposed class action concerns a list of recalled Hill's products that allegedly contained excessively high levels of vitamin D. The Defendants, Hill's Pet Nutrition, Inc. and Hill's Pet Nutrition Canada Inc. (together “**Hill's**”), have agreed to a settlement of this class action and deny the Plaintiffs' allegations.

A hearing to determine whether to certify this class action for settlement purposes, approve the proposed settlement, and approve proposed legal fees, is scheduled to take place in Toronto on **[DATE]**.

If approved by the Court, the proposed settlement will provide a fund of **\$575,000 USD** for:

1. financial compensation for claims relating to the injury of a dog;
2. financial compensation for claims relating to the death of a dog; and
3. financial compensation for the purchase price of the products specified below.

If the Court approves the proposed settlement, and you are included in the Settlement Class defined below, you will be able to make a claim for financial compensation as described below. To do so, you will have to complete a **Claim Form** and send it to the claims Administrator during the claims period. More information on how to make a claim will be available at a later date, if the proposed settlement is approved.

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: **1 855 595 2628**.

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

If the proposed settlement is approved by the Court, Class Members can also “**Opt Out**” if they do not want to be legally bound by the terms of the settlement. More information about opting out is set out below, and further information about opting out will be provided if the proposed settlement is approved.

You may object to or support the proposed settlement and may do so by setting out your objections or support in writing in a Participation Form and emailing the Participation Form to [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca), or mailing it to Koskie Minsky LLP, 20 Queen Street West, Suite 900, Box 52 Toronto, ON M5H 3R3. by **[date]**.

Your options are explained in this notice.

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### YOUR LEGAL RIGHTS & OPTIONS

<p><b>1. Do nothing</b></p>	<p>If you do not object to the proposed settlement, you do not have to do anything right now. There will be another notice explaining how to make a claim in the settlement.</p>
<p><b>2. Object to the proposed settlement</b></p>	<p>If you would like to explain why you object to the settlement, you must submit a <b>Participation Form by [DATE]</b>. This form will include your name, address, and the reasons why you do not support the settlement. The Participation Form can be found at <a href="https://kmlaw.ca/cases/hills-toxic-dog-food/">https://kmlaw.ca/cases/hills-toxic-dog-food/</a>. You must email this Form to <a href="mailto:dogfoodclassaction@kmlaw.ca">dogfoodclassaction@kmlaw.ca</a>, or mail it to Koskie Minsky LLP 20 Queen Street West, Suite 900, Box 52 Toronto, ON M5H 3R3. All Participation Forms must be received or postmarked no later than [DATE].</p> <p>If you also wish to voice your objection at the Settlement Approval hearing, you must indicate your intention to appear on your Participation Form.</p>
<p><b>3. Submit a statement of support</b></p>	<p>If you do not wish to attend the hearing, but you would like to explain why you support the settlement, you may complete a <b>Participation Form</b>. This form will include your name, address, and the reasons why you support the settlement. The Participation Form can be found at <a href="https://kmlaw.ca/cases/hills-toxic-dog-food/">https://kmlaw.ca/cases/hills-toxic-dog-food/</a>. You must email this Form to <a href="mailto:dogfoodclassaction@kmlaw.ca">dogfoodclassaction@kmlaw.ca</a>, or mail it to Koskie Minsky LLP 20 Queen Street West, Suite 900, Box 52 Toronto, ON M5H 3R3. All Participation Forms must be received or postmarked no later than [DATE].</p>
<p><b>4. Opt Out</b></p>	<p>If the settlement is approved, there will be a period immediately after the court's approval, when you can "Opt Out". If you do not want to be bound by the settlement if it is approved by the Court, you can Opt Out of the class action, at that time. More information about how and when to Opt Out will be provided when and if the settlement is approved. You will have <b>60 days from the date the Court approves the settlement</b> to make your decision. If you Opt Out, you will not be entitled to any financial compensation from the settlement, but you will keep your right to sue Hill's in relation to the dog food Products described here, subject to any time or other legal limitations applying to your claim.</p>

**NOTICE OF PROPOSED SETTLEMENT IN  
HILL'S DOG FOOD CLASS ACTION**

**WHAT THIS NOTICE CONTAINS**

**YOUR LEGAL RIGHTS & OPTIONS** ..... 3

**WHAT THIS NOTICE CONTAINS** ..... 4

**Basic information** ..... 5

1. Why did I get this notice? ..... 5

2. What is a class action?..... 5

3. What is this class action about? ..... 5

4. Why is there a settlement? ..... 6

5. Who are the proposed Representative Plaintiffs in this class action? ..... 6

6. Who is included in the proposed settlement? ..... 6

7. What if I do not want to be included in the lawsuit or settlement? ..... 9

**Proposed settlement benefits**..... 10

8. What does the proposed settlement provide?..... 10

9. What kind of compensation am I eligible for? ..... 12

10. Who are the lawyers for the Plaintiffs?..... 13

11. How will the lawyers be paid? ..... 13

**Your Legal Options Now** ..... 14

12. What if I do nothing? ..... 14

13. How do I tell the Court if I support the proposed settlement? ..... 14

14. How do I tell the Court if I object to the proposed settlement? ..... 14

15. What are the details of the Court hearing? ..... 15

16. Do I have to attend the Court hearing? ..... 15

**Getting More Information**..... 16

17. How do I get more information or ask questions?..... 16

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### Basic information

#### 1. Why did I get this notice?

The Defendants, Hill's Pet Nutrition, Inc. and Hill's Pet Nutrition Canada Inc. (together "**Hill's**"), and the proposed Representative Plaintiffs, have agreed to settle this class action. The Ontario Superior Court of Justice authorized this notice to let you know that there is a Court hearing scheduled to approve this settlement. If you have received this notice, you may have legal rights and interests that are affected by the proposed settlement. This notice explains what is happening, and what actions you can take.

#### 2. What is a class action?

In a class action, one or more people called "Representative Plaintiffs" sue on behalf of people who have similar claims. All of the people who have similar claims are called a "Class" or "Class Members." The court resolves the issues for everyone affected, except for those who exclude themselves from the lawsuits by "Opting Out".

#### 3. What is this class action about?

The proposed class action concerns a list of 33 Hill's Prescription Diet or Hill's Science Diet canned dog food products that allegedly contained excessively high levels of vitamin D, which may be dangerous for dogs to consume. Vitamin D toxicity can result in dog illness, hospitalization, and death. Hill's recalled products which may have contained excessive vitamin D from January to May 2019.

Hill's denies the Plaintiffs' allegations.

The proposed class includes all persons who purchased certain Hill's products in Canada. **The specific products are listed under question #6 below.**

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: **1 855 595 2628**.

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### 4. Why is there a settlement?

The Representative Plaintiffs and Hill's have agreed to a proposed settlement. By agreeing to the proposed settlement, the parties avoid the costs and uncertainty of a trial and delays in obtaining a judgment, and Settlement Class Members receive financial compensation, which is described in this notice and the settlement agreement. It also means that the Class Members will not need to testify in court. The Representative Plaintiffs and their lawyers believe that the proposed settlement is in the best interests of all Class Members. The settlement is not an agreement that the theories alleged in the lawsuit are correct.

### 5. Who are the proposed Representative Plaintiffs in this class action?

The two dog owners who commenced this lawsuit are the Plaintiffs Betty Ann Martin and Claire Lindhout. If this lawsuit is certified to proceed as a class action, they may be appointed Representative Plaintiffs by the Court.

### 6. Who is included in the proposed settlement?

The proposed settlement includes everyone who meets the following Settlement Class definition:

**All persons and entities that purchased "Products" in Canada from September 1, 2018 to May 31, 2019.**

*Excluded from this Settlement Class are those who have been provided other compensation by a Defendant and have executed a release, have purchased Products for resale or resold the Products, are an entity in which the Defendants have a controlling interest, or Opt-Out before the Opt-Out deadline.*

The "Products" are all Hill's Prescription Diet and Science Diet canned dog foods listed below and sold to consumers in Canada from September 1, 2018 to May 31, 2019, and any other pet food product sold in Canada by Hill's, regardless of brand name, to which the allegations in this action could pertain.

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.



## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### The specific "Products" are:

- i. Hill's Prescription Diet k/d with Lamb Canine 13oz (SKU number 2697, Date/Lot Code 102020T25);
- ii. Hill's Prescription Diet c/d Multicare Canine Chicken & Vegetable Stew 12.5oz (SKU number 3384, Date/Lot Codes 092020T29, 102020T10, 102020T25);
- iii. Hill's Prescription Diet c/d Multicare Canine Chicken & Vegetable Stew 5.5oz (SKU number 3388, Date/Lot Code 102020T18);
- iv. Hill's Prescription Diet i/d Canine Chicken & Vegetable Stew 12.5oz (SKU number 3389, Date/Lot Codes 092020T28, 102020T24, 102020T25, 102020T04, 102020T10, 102020T19, 102020T20, 102020T21);
- v. Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 5.5oz (SKU number 3391, Date/Lot Code 092020T27);
- vi. Hill's Prescription Diet r/d Canine 12.3oz (SKU number 7014, Date/Lot Codes 092020T28, 102020T27, 102020T28);
- vii. Hill's Science Diet Adult Perfect Weight Chicken & Vegetable Entrée Dog Food 13oz (SKU number 2975, Date/Lot Code 092020T28);
- viii. Hill's Science Diet Adult Beef & Barley Entrée Dog Food 13oz (SKU number 7039, Date/Lot Codes 092020T31, 102020T21);
- ix. Hill's Science Diet Mature Adult Healthy Cuisine Chicken & Carrots Stew Dog Food 12.5oz (SKU number 10449, Date/Lot Codes 092020T28);
- x. Hill's Science Diet Adult Healthy Cuisine Braised Beef, Carrots & Peas Stew Dog Food 12.5oz (SKU number 10451, Date/Lot Codes 102020T28);
- xi. Hill's Prescription Diet i/d Canine Chicken & Vegetable Stew 5.5oz (SKU number 3390, Date/Lot Codes 102020T11, 112020T23, 122020T07);
- xii. Hill's Prescription Diet g/d Canine 13oz (SKU number 7006, Date/Lot Codes 112020T19, 092020T22, 112020T20);
- xiii. Hill's Prescription Diet i/d Canine 13oz (SKU number 7008, Date/Lot Codes 092020T21, 092020T30, 102020T07, 102020T11, 112020T22, 112020T23);
- xiv. Hill's Prescription Diet j/d Canine 13oz (SKU number 7009, Date/Lot Codes 112020T20);
- xv. Hill's Prescription Diet k/d Canine 13oz (SKU number 7010, Date/Lot Codes 102020T10, 102020T11);
- xvi. Hill's Prescription Diet w/d Canine 13oz (SKU number 7017, Date/Lot Codes 102020T24, 102020T25, 112020T09, 112020T10, 092020T30, 102020T11, 102020T12);
- xvii. Hill's Prescription Diet z/d Canine 13oz (SKU number 7018, Date/Lot Codes 102020T04, 112020T22);

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: **1 855 595 2628**.

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

- xviii. Hill's Prescription Diet Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz (SKU number 10086, Date/Lot Codes 102020T05, 102020T26);
- xix. Hill's Prescription Diet w/d Canine Vegetable & Chicken Stew 12.5oz (SKU number 10129, Date/Lot Codes 112020T05, 112020T11, 102020T04, 102020T21);
- xx. Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz (SKU number 10423, Date/Lot Codes 092020T27, 092020T28, 102020T17, 102020T19, 112020T04);
- xxi. Hill's Prescription Diet Derm Defense Canine Chicken & Vegetable Stew 12.5oz (SKU number 10509, Date/Lot Codes 102020T05);
- xxii. Hill's Science Diet Puppy Chicken & Barley Entrée 13oz (SKU number 7036, Date/Lot Codes 102020T12);
- xxiii. Hill's Science Diet Adult Chicken & Barley Entrée Dog Food 13oz (SKU number 7037, Date/Lot Codes 092020T22, 102020T13, 102020T14, 112020T23, 112020T24);
- xxiv. Hill's Science Diet Adult Turkey & Barley Dog Food 13oz (SKU number 7038, Date/Lot Codes 102020T06);
- xxv. Hill's Science Diet Adult Chicken & Beef Entrée Dog Food 13oz (SKU number 7040, Date/Lot Codes 112020T10, 112020T11, 102020T13);
- xxvi. Hill's Science Diet Adult Light with Liver Dog Food 13oz (SKU number 7048, Date/Lot Codes 112020T19);
- xxvii. Hill's Science Diet Adult 7+ Chicken & Barley Entrée Dog Food 13oz (SKU number 7055, Date/Lot Codes 092020T31, 102020T13);
- xxviii. Hill's Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13oz (SKU number 7056, Date/Lot Codes 102020T28, 092020T31, 112020T20, 112020T24);
- xxix. Hill's Science Diet Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz (SKU number 10452, Date/Lot Codes 102020T28, 102020T14, 102020T21);
- xxx. Hill's Science Diet Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz (SKU number 10763, Date/Lot Codes 102020T04, 102020T05, 112020T11);
- xxxi. Hill's Prescription Diet z/d Canine 5.5oz (SKU 5403, Date/Lot Code 102020T17, 112020T22);
- xxxii. Hill's Science Diet Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz (SKU 4969, Date/Lot Code 102020T18); and
- xxxiii. Hill's Science Diet Adult 7+ Turkey & Barley Entrée 13oz (SKU 7057, Date/Lot Code 112020T19).

The definition of the Products specifically *excludes* any cat foods, dry dog food products, treats, Ideal Balance products or Healthy Advantage products, or other products produced by Hill's that are not specifically described.

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: **1 855 595 2628**.

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### 7. What if I do not want to be included in the lawsuit or settlement?

If you do not want to be bound by the settlement if it is approved, you will have an opportunity to “**Opt Out**” after the Court has decided whether to approve the Settlement. The Parties have agreed that the Opt-Out Period will be **60 days from the Approval Date** (the date the court issues an order approving the settlement).

If you Opt Out, you will *not* be entitled to *any* financial compensation from the settlement, but you will keep your right to sue Hill’s in relation to the dog food Products described above, subject to any time or other legal limitations applying to your claim.

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### Proposed settlement benefits

#### 8. What does the proposed settlement provide?

The settlement provides a global Settlement Fund of \$575,000 USD. If approved, the following benefits will be available to Settlement Class Members from the Settlement Fund:

1. financial compensation for claims relating to the injury of a dog,
2. financial compensation for claims relating to the death of a dog; and
3. financial compensation for the purchase price of the recalled products.

To make a claim, the settlement requires Class Members to complete a paper Claim Form and provide relevant documentation within a 180-day claims period.

The settlement also provides a process through which all claims will be assessed, by a Court-appointed Settlement Administrator. To prove a claim under the settlement, class members will *not* need to testify in Court or be cross-examined. The Settlement Administrator may, if necessary, contact the treating veterinarian of the Class Member's dog.

All payments of settlement compensation to Settlement Class Members shall be made from the Settlement Fund after costs of Settlement administration are deducted from the Settlement Fund. If the total of the timely, valid and approved Claims is less than the available relief, minus any covered costs and expenses, each Settlement Class Member's award shall be *pro rata* increased to no more than two-times the value of the timely, valid and approved Claim absent any further written agreement by the Parties. If the total of the timely, valid and approved Claims submitted exceeds the available relief, each Settlement Class Member's award shall be reduced on a *pro rata* basis.

If any unpaid funds remain after the distribution, they will be paid to Humane Canada, or an otherwise mutually agreed upon organization, subject to Court approval.

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

**NOTICE OF PROPOSED SETTLEMENT IN  
HILL'S DOG FOOD CLASS ACTION**

The settlement also allows individuals to "opt-out" after the settlement is approved. If the number of Class Members who opt-out is higher than the opt-out threshold number agreed to by the parties, the settlement will be automatically terminated and ineffective.

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### 9. What kind of compensation am I eligible for?

If approved, Settlement Class Members can claim for the following types of compensation:

<b>Claim</b>	<b>Amount</b>	<b>Type</b>	<b>Documentation Required</b>
<b>Dog Injury Claims</b>	<b>up to \$500</b>	any amounts incurred in screening, diagnosing, and treating the dog*	documentation showing screening or treatment of the dog for symptoms consistent with consumption of excess vitamin D as a result of the use or consumption of the Products
	<b>\$5,000</b>	damages relating to the death of the dog	(i) documentation showing screening or treatment of the dog for symptoms consistent with consumption of excess vitamin D following the use or consumption of the Products, (ii) documentation showing that the dog died after the date of these documented symptoms, and (iii) documentation showing that the dog died or was euthanized as a result of these symptoms.
<b>Consumer Food Purchase Claims</b>	<b>full purchase price</b>	purchase of the Products	attestation with valid proof of purchase
	<b>suggested retail purchase price up to \$20</b>	purchase of the Products	attestation without valid proof of purchase

Acceptable forms of documentation include: veterinary notes, veterinary records, test or laboratory reports, or statements and/or letters from the veterinarian, hospital or clinic.

Dog Injury Claims may also include claims for screening and testing costs that were reasonably necessary based on concern for having a dog that consumed the Products. Such screening/testing shall have been performed by or upon the recommendation or referral of the veterinarian to screen for illness from the consumption of the Products.

Class members can make both types of Dog Injury Claims, but only one type of Consumer Food Purchase Claim.

Only one claimant per household will be eligible.

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: **1 855 595 2628**.

**NOTICE OF PROPOSED SETTLEMENT IN  
HILL'S DOG FOOD CLASS ACTION**

**10. Who are the lawyers for the Plaintiffs?**

The lawyers for the Plaintiffs are Koskie Minsky LLP of Toronto, Ontario, and McKenzie Lake LLP of London, Ontario. If the class action is certified, the Court may appoint these lawyers as “**Class Counsel**”. Class Counsel represent the Class in a class proceeding.

**11. How will the lawyers be paid?**

Before the commencement of this action in October 2019, the lawyers for the Plaintiffs entered into a contingency fee agreement with the Plaintiffs in this action, meaning they are not paid unless and until there is recovery in this action. The Court must determine that the proposed legal fees are fair and reasonable before they are paid.

If appointed, Class Counsel will seek Court approval of their legal fee up to 30% of recovery, plus applicable taxes and expenses that Class Counsel has incurred.

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### Your Legal Options Now

The Court will hold a hearing to decide whether to approve the proposed settlement, and the request for Plaintiffs' counsel's legal fees, disbursements and taxes (the "**Approval Hearing**").

### 12. What if I do nothing?

If you do nothing, the Approval Hearing will proceed, and the Court will consider whether the proposed settlement is fair, reasonable, and in the best interests of the Class.

If the settlement is approved, you will afterwards have an opportunity to Opt-Out, or to submit a Claim Form.

### 13. How do I tell the Court if I support the proposed settlement?

If you support the proposed settlement, you do not need to do anything right now. However, you may submit a Participation Form outlining why you support the settlement.

The Participation Form can be found at <https://kmlaw.ca/cases/hills-toxic-dog-food/>. You must email this Form to [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca), or mail it to Koskie Minsky LLP 20 Queen Street West, Suite 900, Box 52 Toronto, ON M5H 3R3. All Participation Forms must be received or postmarked no later than [DATE].

### 14. How do I tell the Court if I object to the proposed settlement?

If you would like to explain why you object to the settlement, you must submit a Participation Form by [DATE]. This form will include your name, address, and the reasons why you do not support the settlement.

The Participation Form can be found at <https://kmlaw.ca/cases/hills-toxic-dog-food/>. You must email this Form to [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca), or mail it to Koskie Minsky LLP 20 Queen Street West, Suite 900, Box 52 Toronto, ON M5H 3R3. All Participation Forms must be received or postmarked no later than [DATE].

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.



## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### **15. What are the details of the Court hearing?**

The Approval Hearing will take place in Toronto, Ontario on [DATE] at 10:00 a.m.

At the hearing, the Ontario Superior Court of Justice will consider whether to certify this lawsuit as a class action for the purposes of settlement, appoint the representative plaintiffs, and appoint class counsel.

At the hearing, the Ontario Superior Court of Justice will also consider whether the proposed settlement is fair, reasonable, and in the best interests of the Class. If there are objections, the Court will consider them and will listen to people who have filed a Participation Form and asked to speak at the hearing. The Court will then decide whether to approve the proposed settlement and Class Counsel's legal fees. We do not know how long these decisions will take.

The Court will make its final decisions at some point after the hearing.

### **16. Do I have to attend the Court hearing?**

No. Class Counsel will answer questions from the Court. If you send a participation form, you do not have to come to the Court to talk about it. If you mailed or emailed your written participation form on time, the Court will consider it. You or your own lawyer may also attend the hearing at your own expense, but it is not necessary.

## NOTICE OF PROPOSED SETTLEMENT IN HILL'S DOG FOOD CLASS ACTION

### Getting More Information

#### 17. How do I get more information or ask questions?

This notice summarizes the current status of this lawsuit and the proposed settlement. Updates on this lawsuit and a full copy of the settlement agreement are available at <https://kmlaw.ca/cases/hills-toxic-dog-food/>.

You are welcome to seek legal advice about this class action and settlement from the lawyers representing the plaintiffs, at no cost to you:

Email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca)

Toll-free: **1 855 595 2628**

If you want to be represented by or receive advice from another lawyer, you may hire one at your own expense to appear in court for you.

**SCHEDULE “C”**

**PARTICIPATION FORM**

**HILL’S DOG FOOD CLASS ACTION**

**ONLY USE THIS FORM IF YOU WANT TO REGISTER YOUR SUPPORT OR OBJECTION TO THE PROPOSED SETTLEMENT**

TO: Hill’s Dog Food Class Action c/o Koskie Minsky LLP  
[dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca)

20 Queen Street West  
Suite 900, Box 52  
Toronto, Ontario M5H 3R3

My name is

---

I bought the following Products described in the Notice (list full product names):

---

---

For the reasons stated below, I:

*(Please check relevant boxes)*

- |   |   |
|---|---|
| <input type="checkbox"/> <b>SUPPORT</b> the terms of settlement | <input type="checkbox"/> <b>OBJECT TO</b> the terms of settlement |
| <input type="checkbox"/> <b>SUPPORT</b> the legal fees          | <input type="checkbox"/> <b>OBJECT TO</b> the legal fees          |

I am supporting or objecting to the Proposed Settlement or legal fees for the following reasons (please attach extra pages if you require more space):


**SCHEDULE “C”**

<input type="checkbox"/>	I have enclosed copies of documentation supporting my support or objection. (You do not have to attach any documents).
<input type="checkbox"/>	I have <b>NOT</b> enclosed documentation supporting my objections and I do not intend to provide any.
<input type="checkbox"/>	I do <b>NOT</b> intend to appear at the hearing of the motion to approve the proposed settlement, and I understand that my support or objection will be filed with the court prior to the hearing of the motion on <b>XXXXXXXXXXXXXXXXXXXXXX</b> .
<input type="checkbox"/>	I intend to appear, in person or by counsel, and to make submissions at the hearing on <b>XXXXXXXXXXXXXXXXXX</b> .

**MY ADDRESS FOR SERVICE IS:**

**MY LAWYER’S ADDRESS FOR SERVICE IS (if applicable, but you do not need a lawyer to object):**

Name:

Name:

Address:

Address:

Tel.:

Tel.:

Fax:

Fax:

Email:

Email:

Date:

Signature:

\_\_\_\_\_

\_\_\_\_\_

## SCHEDULE “D”

### NOTICE OF SETTLEMENT IN HILL’S DOG FOOD CLASS ACTION

**This Notice is for all persons who purchased Hill’s Prescription Diet or Hill’s Science Diet canned dog foods between September 1, 2018 to May 31, 2019.**

*Lindhout et al. v. Hill’s Pet Nutrition Inc. et al.  
(Court File No. CV-19-00629786-00CP)*

**You may be eligible for compensation.**

*A court authorized this notice. You are not being sued.*

- You are receiving this Notice because a settlement has been approved by the Ontario Superior Court of Justice in a certified class action lawsuit on behalf of individuals who purchased certain Hill’s products that allegedly contained excessively high levels of vitamin D.
- If you purchased one of the Products listed in this Notice in Canada between September 1, 2018 to May 31, 2019, you could be eligible to make a claim for compensation.
- All claims must be submitted before **[DATE]**. If you do not make a claim by **[DATE]**, you will not be eligible for any compensation as part of this lawsuit.
- **The online Claim Form is available here: [link]. You can also request for a copy of the Claim Form to be mailed to you by contacting [ADMIN CONTACT INFO]**
- If you do not wish to participate in the class action and settlement, you must remove yourself by completing an Opt Out Form (available here: [link]) and send it to the Settlement Administrator, no later than \*\*\*.

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

## WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....	3
1. Why is there a notice?.....	3
2. What is this lawsuit about?.....	3
3. Am I a member of the Class? .....	3
4. What is the status of this lawsuit? .....	5
THE SETTLEMENT .....	6
5. What does the Settlement offer?.....	6
6. How much money can I get?.....	6
7. Where can I get a Claim Form?.....	7
8. My dog was injured after consuming the Products. How do I make a claim a Dog Injury Claim? .....	8
9. My dog did not suffer any injury. Can I still make a claim?.....	8
10. I do not wish to be a part of the settlement.....	9
THE LAWYERS REPRESENTING YOU .....	9
11. Do I have a lawyer in the case? .....	9

## BASIC INFORMATION

### 1. Why is there a notice?

The Ontario Superior Court of Justice has approved this notice to let you know that the settlement of this class action lawsuit has been approved and that a claims process is available for compensation.

### 2. What is this lawsuit about?

This class action lawsuit concerns a list of 33 Hill's Prescription Diet or Hill's Science Diet canned dog food products that allegedly contained excessively high levels of vitamin D, which may be dangerous for dogs to consume. Vitamin D toxicity can result in dog illness, hospitalization, and death. Hill's recalled products which may have contained excessive vitamin D from January to May 2019. Hill's denies the allegations made in the claim.

### 3. Am I a member of the Class?

The class action includes everyone who meets the following Settlement Class definition:

All persons and entities that purchased "Products" in Canada from September 1, 2018 to May 31, 2019.

Excluded from this Settlement Class are those who have been provided other compensation by a Defendant and have executed a release, have purchased Products for resale or resold the Products, are an entity in which the Defendants have a controlling interest, or Opt-Out before the Opt-Out deadline.

The "Products" are all Hill's Prescription Diet and Science Diet canned dog foods listed below and sold to consumers in Canada from September 1, 2018 to May 31, 2019, and any other pet food product sold in Canada by Hill's, regardless of brand name, to which the allegations in this action could pertain.

#### **The specific "Products" are:**

- i. Hill's Prescription Diet k/d with Lamb Canine 13oz (SKU number 2697, Date/Lot Code 102020T25);
- ii. Hill's Prescription Diet c/d Multicare Canine Chicken & Vegetable Stew 12.5oz (SKU number 3384, Date/Lot Codes 092020T29, 102020T10, 102020T25);
- iii. Hill's Prescription Diet c/d Multicare Canine Chicken & Vegetable Stew 5.5oz (SKU number 3388, Date/Lot Code 102020T18);
- iv. Hill's Prescription Diet i/d Canine Chicken & Vegetable Stew 12.5oz (SKU number 3389, Date/Lot Codes 092020T28, 102020T24, 102020T25, 102020T04, 102020T10, 102020T19, 102020T20, 102020T21);

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

- v. Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 5.5oz (SKU number 3391, Date/Lot Code 092020T27);
- vi. Hill's Prescription Diet r/d Canine 12.3oz (SKU number 7014, Date/Lot Codes 092020T28, 102020T27, 102020T28);
- vii. Hill's Science Diet Adult Perfect Weight Chicken & Vegetable Entrée Dog Food 13oz (SKU number 2975, Date/Lot Code 092020T28);
- viii. Hill's Science Diet Adult Beef & Barley Entrée Dog Food 13oz (SKU number 7039, Date/Lot Codes 092020T31, 102020T21);
- ix. Hill's Science Diet Mature Adult Healthy Cuisine Chicken & Carrots Stew Dog Food 12.5oz (SKU number 10449, Date/Lot Codes 092020T28);
- x. Hill's Science Diet Adult Healthy Cuisine Braised Beef, Carrots & Peas Stew Dog Food 12.5oz (SKU number 10451, Date/Lot Codes 102020T28);
- xi. Hill's Prescription Diet i/d Canine Chicken & Vegetable Stew 5.5oz (SKU number 3390, Date/Lot Codes 102020T11, 112020T23, 122020T07);
- xii. Hill's Prescription Diet g/d Canine 13oz (SKU number 7006, Date/Lot Codes 112020T19, 092020T22, 112020T20);
- xiii. Hill's Prescription Diet i/d Canine 13oz (SKU number 7008, Date/Lot Codes 092020T21, 092020T30, 102020T07, 102020T11, 112020T22, 112020T23);
- xiv. Hill's Prescription Diet j/d Canine 13oz (SKU number 7009, Date/Lot Codes 112020T20);
- xv. Hill's Prescription Diet k/d Canine 13oz (SKU number 7010, Date/Lot Codes 102020T10, 102020T11);
- xvi. Hill's Prescription Diet w/d Canine 13oz (SKU number 7017, Date/Lot Codes 102020T24, 102020T25, 112020T09, 112020T10, 092020T30, 102020T11, 102020T12);
- xvii. Hill's Prescription Diet z/d Canine 13oz (SKU number 7018, Date/Lot Codes 102020T04, 112020T22);
- xviii. Hill's Prescription Diet Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz (SKU number 10086, Date/Lot Codes 102020T05, 102020T26);
- xix. Hill's Prescription Diet w/d Canine Vegetable & Chicken Stew 12.5oz (SKU number 10129, Date/Lot Codes 112020T05, 112020T11, 102020T04, 102020T21);
- xx. Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz (SKU number 10423, Date/Lot Codes 092020T27, 092020T28, 102020T17, 102020T19, 112020T04);
- xxi. Hill's Prescription Diet Derm Defense Canine Chicken & Vegetable Stew 12.5oz (SKU number 10509, Date/Lot Codes 102020T05);

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.



- xxii. Hill's Science Diet Puppy Chicken & Barley Entrée 13oz (SKU number 7036, Date/Lot Codes 102020T12);
- xxiii. Hill's Science Diet Adult Chicken & Barley Entrée Dog Food 13oz (SKU number 7037, Date/Lot Codes 092020T22, 102020T13, 102020T14, 112020T23, 112020T24);
- xxiv. Hill's Science Diet Adult Turkey & Barley Dog Food 13oz (SKU number 7038, Date/Lot Codes 102020T06);
- xxv. Hill's Science Diet Adult Chicken & Beef Entrée Dog Food 13oz (SKU number 7040, Date/Lot Codes 112020T10, 112020T11, 102020T13);
- xxvi. Hill's Science Diet Adult Light with Liver Dog Food 13oz (SKU number 7048, Date/Lot Codes 112020T19);
- xxvii. Hill's Science Diet Adult 7+ Chicken & Barley Entrée Dog Food 13oz (SKU number 7055, Date/Lot Codes 092020T31, 102020T13);
- xxviii. Hill's Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13oz (SKU number 7056, Date/Lot Codes 102020T28, 092020T31, 112020T20, 112020T24);
- xxix. Hill's Science Diet Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz (SKU number 10452, Date/Lot Codes 102020T28, 102020T14, 102020T21);
- xxx. Hill's Science Diet Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz (SKU number 10763, Date/Lot Codes 102020T04, 102020T05, 112020T11);
- xxxi. Hill's Prescription Diet z/d Canine 5.5oz (SKU 5403, Date/Lot Code 102020T17, 112020T22);
- xxxii. Hill's Science Diet Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz (SKU 4969, Date/Lot Code 102020T18); and
- xxxiii. Hill's Science Diet Adult 7+ Turkey & Barley Entrée 13oz (SKU 7057, Date/Lot Code 112020T19).

The definition of the Products specifically excludes any cat foods, dry dog food products, treats, Ideal Balance products or Healthy Advantage products, or other products produced by Hill's that are not specifically described.

#### **4. What is the status of this lawsuit?**

The lawsuit was certified to proceed as a class action for settlement purposes on \*\*, 2023. Notice of the motion for certification and approval of the settlement approval hearing, which described the settlement agreement was previously distributed. The Court approved the settlement and claims process described below, on \*\*, 2023.

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

## THE SETTLEMENT

### 5. What does the Settlement offer?

The settlement provides for a Settlement Fund of \$575,000 USD. The following benefits are available to Settlement Class Members from the Settlement Fund:

1. financial compensation for claims relating to the injury of a dog,
2. financial compensation for claims relating to the death of a dog; and
3. financial compensation for the purchase price of the recalled products.

To make a claim, the settlement requires Class Members to complete an online or paper Claim Form and provide relevant documentation within a 180-day claims period.

The settlement also provides a process through which all claims will be assessed, by a Court-appointed Settlement Administrator. To prove a claim under the settlement, class members will not need to testify in Court or be cross-examined. The Settlement Administrator may, if necessary, contact the treating veterinarian of the Class Member's dog.

All payments of settlement compensation to Settlement Class Members shall be made from the Settlement Fund after costs of Settlement administration are deducted from the Settlement Fund. If the total of the timely, valid and approved Claims is less than the available relief, minus any covered costs and expenses, each Settlement Class Member's award shall be pro rata increased to no more than two-times the value of the timely, valid and approved Claim absent any further written agreement by the Parties. If the total of the timely, valid and approved Claims submitted exceeds the available relief, each Settlement Class Member's award shall be reduced on a pro rata basis.

If any unpaid funds remain after the distribution, they will be paid to Humane Canada, or an otherwise mutually agreed upon organization.

The settlement also allows individuals to "opt-out" after the settlement is approved. If the number of Class Members who opt-out is higher than the opt-out threshold number agreed to by the parties, the settlement will be automatically terminated and ineffective.

### 6. How much money can I get?

Settlement Class Members can claim for the following types of compensation:

Claim	Amount	Type	Documentation Required
Dog Injury Claims	up to \$500	any amounts incurred in screening, diagnosing, and treating the dog*	documentation showing screening or treatment of the dog for symptoms consistent with consumption of excess vitamin D as a result of the use or consumption of the Products
	\$5,000	damages relating to the death of the dog	(i) documentation showing screening or treatment of the dog for symptoms consistent with consumption of excess vitamin D following the use or consumption of the Products,

For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

			(ii) documentation showing that the dog died after the date of these documented symptoms, and (iii) documentation showing that the dog died or was euthanized as a result of these symptoms.
<b>Consumer Food Purchase Claims</b>	<b>full purchase price</b>	purchase of the Products	attestation with valid proof of purchase
	<b>suggested retail purchase price up to \$20</b>	purchase of the Products	attestation without valid proof of purchase

Acceptable forms of documentation include: veterinary notes, veterinary records, test or laboratory reports, or statements and/or letters from the veterinarian, hospital or clinic.

Dog Injury Claims may also include claims for screening and testing costs that were reasonably necessary based on concern for having a dog that consumed the Products. Such screening/testing shall have been performed by or upon the recommendation or referral of the veterinarian to screen for illness from the consumption of the Products.

Class members can make both types of Dog Injury Claims, but only one type of Consumer Food Purchase Claim.

Only one claimant per household will be eligible.

**To receive any compensation, you must submit a Claim Form by \*\*, 2023.**

**You must submit your Claim Form directly to the claims office known as the [SETTLEMENT ADMINISTRATOR]. You can do so by completing the online and secure Claim Form available here: [insert website]**

If you wish to complete a paper Claim Form, you must submit your Claim Form to:

**Email:** [insert [email](#)]

OR

**Mailing Address:** Claims Administrator Address

The Administrator shall decide whether each Claimant is eligible to receive compensation.

A full copy of the Settlement Agreement is available for download at: <https://kmlaw.ca/cases/hills-toxic-dog-food/> You can also request a copy by calling 1-855-595-2628, or emailing: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca).

## HOW TO CLAIM

### 7. Where can I get a Claim Form?

The Claim Form can be submitted online at: [\[insert link\]](#).

**For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.**

You can also request a copy by calling **1-855-595-2628**, or emailing:  
[dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca).

**8. My dog was injured after consuming the Products. How do I make a claim a Dog Injury Claim?**

To make a claim for the veterinary expenses you paid related to your dog's injury (or concern for injury) from the consumption of the Hill's Products, you must complete Section B of the Claim Form, check all relevant boxes and provide the required documentation.

Your Claim Form must be submitted by **[DATE]**.

To make a claim for amounts incurred in screening, diagnosing and treating your dog, you must provide documentation that shows screening or treatment of your dog for symptoms consistent with the consumption of excess vitamin D as a result of the use or consumption of the relevant Products.

To make a claim for compensation relating to the death of your dog, you must provide:

- (i) documentation showing screening or treatment of the dog for symptoms consistent with consumption of excess vitamin D following the use or consumption of the Products,
- (ii) documentation showing that the dog died after the date of these documented symptoms, and
- (iii) documentation showing that the dog died or was euthanized as a result of these symptoms.

You will be required to provide your permission to allow the Settlement Administrator to contact your dog's treating veterinarian to make a determination as to the validity of the claim you submitted based on the documentation submitted and any other materials determined to be relevant.

**9. My dog did not suffer any injury. Can I still make a claim?**

Yes. The Settlement also allows for Consumer Food Purchase Claims. You can seek reimbursement of the costs associated with the purchase of the Products if you have not been reimbursed for such costs to date, including through the return or exchange of the Products. If you have proof of purchase, you should include it with your Claims Form.

To make a claim, you do not need to provide documentation but you will not be eligible for the full purchase price paid without documentation. You will also need to provide confirmation, under penalty of perjury, that you purchased the Products and have not already received payment or a refund for the Products, if you do not have proof of purchase.

**For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.**

Your Claim Form must be submitted by [DATE].

#### **10. I do not wish to be a part of the settlement**

If you do not want to be bound by the settlement, you must remove yourself from the class action i.e., “**Opt Out**”. The Parties have agreed that the Opt-Out Period will be **60 days from the Approval Date** (the date the court issues an order approving the settlement). The Opt Out deadline is \*\*\*.

If you Opt Out, you will *not* be entitled to *any* financial compensation from the settlement, but you will keep your right to sue Hill’s in relation to the dog food Products described above, subject to any time or other legal limitations applying to your claim.

To Opt Out, you must complete an Opt Out Form, which can be obtained here: [insert link] and send it to the Settlement Administrator, no later than \*\*\*. The Opt Out Form may be sent to the following addresses:

By email: [EMAIL ADDRESS]

By mail: [MAILING ADDRESS]

### **THE LAWYERS REPRESENTING YOU**

#### **11. Do I have a lawyer in the case?**

Yes. The Court has appointed Koskie Minsky LLP from Toronto and McKenzie Lake Lawyers LLP from London to represent you and all other Class Members as “Class Counsel.” You may contact these lawyers with any questions about the claims process. The contact information of the law firm is:

Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, Ontario  
M5H 3R3  
Email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca)  
Phone: 1-855-595-2628

McKenzie Lake Lawyers LLP  
Suite 1800, 140 Fullarton Street  
London, ON N6A 5P2  
Email: [danielle.sparks@mckenzielake.com](mailto:danielle.sparks@mckenzielake.com)  
Phone: 1-844-672-5666

You will not be charged for contacting these lawyers with questions.

**For more information, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.**



**SCHEDULE “F”**

1

Court File No. CV-19-0062978600CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE BENJAMIN T. GLUSTEIN ) OF , 2023

BETWEEN:

CLAIRE LINDHOUT AND BETTY ANN MARTIN

Plaintiffs

- and -

HILL’S PET NUTRITION, INC.  
and HILL’S PET NUTRITION CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**CERTIFICATION AND SETTLEMENT APPROVAL ORDER**

**THIS MOTION** made by the Plaintiffs for an Order certifying the class action for settlement purposes and approving the settlement with Hill’s Pet Nutrition, Inc. and Hill’s Pet Nutrition Canada Inc., and dismissing this action, was heard this \*\* day of \*\*, 2023 at 330 University Avenue, Toronto, Ontario.

**ON READING** the materials filed, including the Settlement Agreement dated \*\*\*, 2023 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been \*\* written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the parties consent to this Order;

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the action is certified as a class proceeding as against the Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the “Settlement Class” is certified as follows:

all persons and entities that purchased Products in Canada from  
September 1, 2018 to May 31, 2019.
5. **THIS COURT ORDERS** that Claire Lindhout and Betty Ann Martin be appointed as the representative plaintiffs for the Settlement Class.
6. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Are the Defendants liable to the Class?
7. **THIS COURT ORDERS** that Koskie Minsky LLP and McKenzie Lake Lawyers LLP be appointed as Class Counsel.



8. **THIS COURT ORDERS THAT** any member of the class who wishes to opt out of the class must do so by submitting the Opt Out Form attached as Schedule "E" to the Settlement Agreement, in accordance with the procedure set out in the Settlement Agreement.
9. **THIS COURT ORDERS THAT** the Opt-Out Period shall be sixty (60) days from the date of this Order. No further Opt-Outs shall be permitted after this date, except with leave of the Court.
10. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class Members.
11. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
12. **THIS COURT ORDERS** that Humane Canada is hereby approved as the *Cy Pres* Recipient for the purposes of the Settlement Agreement.
13. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.
14. **THIS COURT ORDERS** that, upon the Irrevocable Agreement Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

15. **THIS COURT ORDERS** that, upon the Irrevocable Agreement Date, the action be and is hereby dismissed against the defendants, without costs and with prejudice.
16. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
17. **THIS COURT ORDERS** that the Phase II Notice, substantially in the form set out in Schedule “D” to the Settlement Agreement is hereby approved.
18. **THIS COURT ORDERS** that within seven (7) days of this Order, notice of settlement approval shall be disseminated in accordance with the Notice Plan attached as Schedule “A” to the Settlement Agreement and approved by this Court.
19. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

---

The Honourable Justice Benjamin T. Glustein

**SCHEDULE “G”**

1

Court File No. CV-19-0062978600CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE BENJAMIN T. GLUSTEIN ) OF , 2023

BETWEEN:

CLAIRE LINDHOUT AND BETTY ANN MARTIN

Plaintiffs

- and -

HILL’S PET NUTRITION, INC.  
and HILL’S PET NUTRITION CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER APPROVING NOTICE OF SETTLEMENT APPROVAL HEARING**

**THIS MOTION** made by the Plaintiffs for an Order approving the notice of settlement approval hearing and the method of dissemination of said notice, was heard this day by teleconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the materials filed, including the settlement agreement dated as of **\*\*\***, 2023 attached to this Order as **Schedule “A”** (the “Settlement Agreement”), and on hearing the submissions of counsel;

**AND ON BEING ADVISED** that the parties consent to this Order;

1. **THIS COURT ORDERS** that the motion for settlement approval shall be set on \*\*, 2023, and shall be heard in person at the Ontario Superior Court of Justice, 330 University Avenue, Toronto, Ontario.
2. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
3. **THIS COURT ORDERS** that the notice of settlement approval hearing, substantially in the form attached hereto as **Schedule “B”**, is hereby approved.
4. **THIS COURT ORDERS** that Kroll LLC is appointed to provide notice of approval of the Settlement Agreement and as Settlement Administrator.
5. **THIS COURT ORDERS** that the plan to disseminate the notice of settlement approval hearing and settlement approval, as contemplated in the Notice Plan attached as Schedule “A” to the Settlement Agreement, is hereby approved.
6. **THIS COURT ORDERS** that the Objection Deadline is thirty (30) days from the date of this Order.

---

The Honourable Justice Benjamin T.  
Glustein

## **SCHEDULE “H”**

### **PRODUCTS**

The following products are included in the definition of Products (as defined in Section 1(bb) of this Settlement Agreement):

- i. Hill’s Prescription Diet k/d with Lamb Canine 13oz (SKU number 2697, Date/Lot Code 102020T25);
- ii. Hill’s Prescription Diet c/d Multicare Canine Chicken & Vegetable Stew 12.5oz (SKU number 3384, Date/Lot Codes 092020T29, 102020T10, 102020T25);
- iii. Hill’s Prescription Diet c/d Multicare Canine Chicken & Vegetable Stew 5.5oz (SKU number 3388, Date/Lot Code 102020T18);
- iv. Hill’s Prescription Diet i/d Canine Chicken & Vegetable Stew 12.5oz (SKU number 3389, Date/Lot Codes 092020T28, 102020T24, 102020T25, 102020T04, 102020T10, 102020T19, 102020T20, 102020T21);
- v. Hill’s Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 5.5oz (SKU number 3391, Date/Lot Code 092020T27);
- vi. Hill’s Prescription Diet r/d Canine 12.3oz (SKU number 7014, Date/Lot Codes 092020T28, 102020T27, 102020T28);
- vii. Hill’s Science Diet Adult Perfect Weight Chicken & Vegetable Entrée Dog Food 13oz (SKU number 2975, Date/Lot Code 092020T28);
- viii. Hill’s Science Diet Adult Beef & Barley Entrée Dog Food 13oz (SKU number 7039, Date/Lot Codes 092020T31, 102020T21);
- ix. Hill’s Science Diet Mature Adult Healthy Cuisine Chicken & Carrots Stew Dog Food 12.5oz (SKU number 10449, Date/Lot Codes 092020T28);
- x. Hill’s Science Diet Adult Healthy Cuisine Braised Beef, Carrots & Peas Stew Dog Food 12.5oz (SKU number 10451, Date/Lot Codes 102020T28);
- xi. Hill’s Prescription Diet i/d Canine Chicken & Vegetable Stew 5.5oz (SKU number 3390, Date/Lot Codes 102020T11, 112020T23, 122020T07);
- xii. Hill’s Prescription Diet g/d Canine 13oz (SKU number 7006, Date/Lot Codes 112020T19, 092020T22, 112020T20);
- xiii. Hill’s Prescription Diet i/d Canine 13oz (SKU number 7008, Date/Lot Codes 092020T21, 092020T30, 102020T07, 102020T11, 112020T22, 112020T23);
- xiv. Hill’s Prescription Diet j/d Canine 13oz (SKU number 7009, Date/Lot Codes 112020T20);
- xv. Hill’s Prescription Diet k/d Canine 13oz (SKU number 7010, Date/Lot Codes 102020T10, 102020T11);

- xvi. Hill's Prescription Diet w/d Canine 13oz (SKU number 7017, Date/Lot Codes 102020T24, 102020T25, 112020T09, 112020T10, 092020T30, 102020T11, 102020T12);
- xvii. Hill's Prescription Diet z/d Canine 13oz (SKU number 7018, Date/Lot Codes 102020T04, 112020T22);
- xviii. Hill's Prescription Diet Metabolic + Mobility Canine Vegetable & Tuna Stew 12.5oz (SKU number 10086, Date/Lot Codes 102020T05, 102020T26);
- xix. Hill's Prescription Diet w/d Canine Vegetable & Chicken Stew 12.5oz (SKU number 10129, Date/Lot Codes 112020T05, 112020T11, 102020T04, 102020T21);
- xx. Hill's Prescription Diet i/d Low Fat Canine Rice, Vegetable & Chicken Stew 12.5oz (SKU number 10423, Date/Lot Codes 092020T27, 092020T28, 102020T17, 102020T19, 112020T04);
- xxi. Hill's Prescription Diet Derm Defense Canine Chicken & Vegetable Stew 12.5oz (SKU number 10509, Date/Lot Codes 102020T05);
- xxii. Hill's Science Diet Puppy Chicken & Barley Entrée 13oz (SKU number 7036, Date/Lot Codes 102020T12);
- xxiii. Hill's Science Diet Adult Chicken & Barley Entrée Dog Food 13oz (SKU number 7037, Date/Lot Codes 092020T22, 102020T13, 102020T14, 112020T23, 112020T24);
- xxiv. Hill's Science Diet Adult Turkey & Barley Dog Food 13oz (SKU number 7038, Date/Lot Codes 102020T06);
- xxv. Hill's Science Diet Adult Chicken & Beef Entrée Dog Food 13oz (SKU number 7040, Date/Lot Codes 112020T10, 112020T11, 102020T13);
- xxvi. Hill's Science Diet Adult Light with Liver Dog Food 13oz (SKU number 7048, Date/Lot Codes 112020T19);
- xxvii. Hill's Science Diet Adult 7+ Chicken & Barley Entrée Dog Food 13oz (SKU number 7055, Date/Lot Codes 092020T31, 102020T13);
- xxviii. Hill's Science Diet Adult 7+ Beef & Barley Entrée Dog Food 13oz (SKU number 7056, Date/Lot Codes 102020T28, 092020T31, 112020T20, 112020T24);
- xxix. Hill's Science Diet Adult 7+ Healthy Cuisine Braised Beef, Carrots & Peas Stew dog food 12.5oz (SKU number 10452, Date/Lot Codes 102020T28, 102020T14, 102020T21);
- xxx. Hill's Science Diet Adult 7+ Youthful Vitality Chicken & Vegetable Stew dog food 12.5oz (SKU number 10763, Date/Lot Codes 102020T04, 102020T05, 112020T11);
- xxxi. Hill's Prescription Diet z/d Canine 5.5oz (SKU 5403, Date/Lot Code 102020T17, 112020T22);
- xxxii. Hill's Science Diet Adult 7+ Small & Toy Breed Chicken & Barley Entrée Dog Food 5.8oz (SKU 4969, Date/Lot Code 102020T18); and

xxxiii. Hill's Science Diet Adult 7+ Turkey & Barley Entrée 13oz (SKU 7057, Date/Lot Code 112020T19).

## SCHEDULE “T”

### FOR IMMEDIATE RELEASE

### PROPOSED SETTLEMENT AGREEMENT IN HILL’S DOG FOOD CLASS ACTION

[Toronto, Ontario] - [Date] – A proposed settlement agreement has been reached between the parties in a proposed class action against Hill’s Pet Nutrition, Inc. and Hill’s Pet Nutrition Canada Inc. (collectively “Hill’s”). The proposed class action was commenced in October 2019 by Claire Lindhout and Betty Ann Martin in relation to allegations that Hill’s products contained excessively high levels of vitamin D, which may be dangerous for dogs to consume. Hill’s denies these allegations.

The Ontario Superior Court of Justice will determine whether the settlement is fair, reasonable and in the best interests of the class, and whether to approve the settlement agreement on at a hearing to be held on [date] at [place].

The proposed settlement agreement will provide a fund of \$575,000 USD for financial compensation for claims relating to injury or death of a dog as well as financial compensation for the purchase price of the affected products. The affected products consist of Hill’s Prescription Diet and Science Diet canned dog foods. A full list of the affected products are set out in the Notice of Settlement Approval, which is available on Class Counsels’ websites. The proposed class action settlement includes all persons and entities who purchased the affected products in Canada between September 1, 2018 and May 31, 2019.

The settlement agreement will provide for a streamlined, online and paper-based claims assessment process, which will allow class members to seek compensation without having to go to court.

A copy of the settlement agreement along with a copy of the Notice of Settlement Approval Hearing, can be found on Class Counsels’ websites at <https://kmlaw.ca/cases/hills-toxic-dog-food/> and <https://www.mckenzielake.com/hills-canned-dog-foods/>. The Notice of Settlement Approval Hearing contains details of the proposed settlement, and information about potential class members' rights.



**Schedule "J"**  
**CLAIM FORM**  
**HILL'S DOG FOOD CLASS ACTION**

You must fill in and submit this Claim Form by [DATE] to ask for money from the Hill's Dog Food Class Action Settlement. This Settlement generally includes those who purchased certain Hill's Prescription Diet and Science Diet canned dog foods ("**Products**") in Canada between September 1, 2018 and May 31, 2019.

**The specific Products are listed in the Notice of Proposed Settlement in the Hill's Dog Food Class Action.** Before you fill in this Form, you should read that Notice document. That Notice document also tells you about the settlement, and where to get free legal help with this claim form.

There is an office that will review your claim and decide if you get money. The name of that office is Kroll. You must send this Form to that office by [DATE]. Please note that submitting this form does not guarantee reimbursement.

You must attach to this Form, all of the **Documentation Required** for your claim, as listed in the grid below. Acceptable forms of documentation include: veterinary notes, veterinary records, test or laboratory reports, or statements and/or letters from the veterinarian, hospital or clinic. If you do *not* submit the Documentation Required for the claim you are making, you will *not* receive compensation.

<b>Claim</b>	<b>Amount</b>	<b>Type</b>	<b>Documentation Required</b>
<b>Dog Injury Claims</b>	<b>up to \$500</b>	any amounts incurred in screening, diagnosing, and treating the dog	documentation showing screening or treatment of the dog for symptoms consistent with consumption of excess vitamin D as a result of the use or consumption of the Products
	<b>\$5,000</b>	damages relating to the death of the dog	(i) documentation showing screening or treatment of the dog for symptoms consistent with consumption of excess vitamin D following the use or consumption of the Products, (ii) documentation showing that the dog died after the date of these documented symptoms, and (iii) documentation showing that the dog died or was euthanized as a result of these symptoms.
<b>Consumer Food Purchase Claims</b>	<b>full purchase price</b>	purchase of the Products	attestation with valid proof of purchase
	<b>suggested retail purchase price up to \$20</b>	purchase of the Products	attestation without valid proof of purchase

Send this Form to: [\[ADMIN EMAIL\]](#) OR [\[ADMIN ADDRESS\]](#)

For questions, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

**CLAIM FORM  
HILL'S DOG FOOD CLASS ACTION**

<b>SECTION A: CLAIMANT INFORMATION*</b>			
Claimant Name:			
Claimant Address:			
Claimant Email:			
Claimant Telephone:			
Dog Name(s) as appearing on any veterinary records:			
If you are making a claim on behalf of someone else, please provide your name, contact information, and basis for representation:			

**To make a claim, you must complete one or more of the Sections below.**

Class members can make both a Dog Injury claim for amounts paid, and a Dog Injury (Death) claim for the passing of their dog, if applicable.

Class members may only make one type of Consumer Food Purchase Claim (either with proof of payment, or without proof of payment).

Only one claimant per household will be eligible.

Send this Form to: [\[ADMIN EMAIL\]](#) OR [\[ADMIN ADDRESS\]](#)

For questions, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

## CLAIM FORM HILL'S DOG FOOD CLASS ACTION

To make a claim for the veterinary expenses you paid related to your dog's injury (or concern for injury) from the consumption of the Hill's Products, you must complete Section B below, and provide documentation. Please check all boxes that apply.

SECTION B: DOG INJURY CLAIM	
<input type="checkbox"/>	<p>I bought the following Products described in the Notice (full product names):</p> <p>_____</p> <p>_____</p> <p>between September 1, 2018 and May 31, 2019.</p>
<input type="checkbox"/>	<p>I paid a total of \$ _____</p> <p>for the screening, diagnosing, or treatment of my dog for symptoms consistent with consumption of excess vitamin D as a result of my dog having consumed these Products.</p>
<input type="checkbox"/>	<p>I paid a total of \$ _____</p> <p>for the screening, diagnosing, or treating my dog, which was reasonably necessary based on a concern for my dog that had consumed these Products, and was done on a veterinarian's referral or recommendation.</p>
<input type="checkbox"/>	<p>I am attaching the following documents showing screening or treatment of my dog for symptoms consistent with consumption of excess vitamin D as a result of my dog's consumption of these Products, and/or a referral or recommendation of a veterinarian to screen for illness from the consumption of these Products:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<input type="checkbox"/>	<p>I authorize the Settlement Administrator, in its own discretion, to contact my dog's treating veterinarian, to make a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant.</p> <p>Veterinarian Name and Office Name: _____</p> <p>Veterinarian Address: _____</p> <p>Veterinarian Email: _____</p> <p>Veterinarian Telephone: _____</p>

Send this Form to: [\[ADMIN EMAIL\]](#) OR [\[ADMIN ADDRESS\]](#)

For questions, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

## CLAIM FORM HILL'S DOG FOOD CLASS ACTION

To make a claim related to your dog's passing from the consumption of the Hill's Products, you must complete Section C below, and provide documentation. Please check all boxes that apply.

SECTION C: DOG INJURY CLAIM (DEATH)	
<input type="checkbox"/>	<p>I bought the following Products described in the Notice (full product names):</p> <p>_____</p> <p>_____</p> <p>between September 1, 2018 and May 31, 2019.</p>
<input type="checkbox"/>	<p>I am attaching these documents showing <i>all</i> of the following:</p> <p style="padding-left: 20px;">(i) screening or treatment of my dog for symptoms consistent with consumption of excess vitamin D following the use or consumption of the Products; <u>and</u></p> <p style="padding-left: 20px;">(ii) that my dog passed away or was euthanized <i>after the date</i> of these symptoms; <u>and</u></p> <p style="padding-left: 20px;">(iii) that my dog passed away or was euthanized <i>as a result</i> of these symptoms:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<input type="checkbox"/>	<p>I authorize the Settlement Administrator, in its own discretion, to contact my dog's treating veterinarian, to make a determination as to the validity of the claim based on the documentation submitted and any other materials determined to be relevant.</p> <p>Veterinarian Name and Office Name: _____</p> <p>Veterinarian Address: _____</p> <p>Veterinarian Email: _____</p> <p>Veterinarian Telephone: _____</p>

Send this Form to: [\[ADMIN EMAIL\]](#) OR [\[ADMIN ADDRESS\]](#)

For questions, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

**CLAIM FORM  
HILL'S DOG FOOD CLASS ACTION**

To make a claim for what you paid for the Hill's Products, you must complete Section D below. You do not need to provide documentation, but will not be eligible for the full purchase price paid without documentation. Please check all boxes that apply.

<b>SECTION D: CONSUMER FOOD PURCHASE</b>	
<input type="checkbox"/>	I bought the following Products described in the Notice (full product names): _____ _____ between September 1, 2018 and May 31, 2019.
<input type="checkbox"/>	I am attaching a proof of purchase of these Products, which shows the full price I paid for them of \$_____.
<input type="checkbox"/>	I am not attaching a proof of purchase, but I confirm under penalty of perjury that I purchased these Products, and that I have not already received payment or a refund for these products.

I confirm that all the information provided in this Form is true.

\_\_\_\_\_  
**Claimant Signature**

\_\_\_\_\_  
**Date**

Send this Form to: [\[ADMIN EMAIL\]](#) OR [\[ADMIN ADDRESS\]](#)

For questions, email: [dogfoodclassaction@kmlaw.ca](mailto:dogfoodclassaction@kmlaw.ca); or call toll-free: 1 855 595 2628.

**Claire Lindhout and  
Betty Ann Martin**  
Plaintiffs

And

**Hill's Pet Nutrition Canada Inc. et al.**  
Defendants

Court File No.: CV-19-0062978600CP

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding under the *Class Proceedings Act, 1992*

---

**CERTIFICATION AND  
SETTLEMENT APPROVAL ORDER**

---

**KOSKIE MINSKY LLP**

20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**Adam Tanel** LS#: 61715D

[atanel@kmlaw.ca](mailto:atanel@kmlaw.ca)

Tel: 416-595-2072 Fax: 416-204-492

**Sue Tan** LS#: 74826A

[stan@kmlaw.ca](mailto:stan@kmlaw.ca)

Tel: 416-595-2117 Fax: 416-706-5633

**MCKENZIE LAKE LLP**

140 Fullarton Street, Suite 1800  
London, ON N6A 5P2

**Michael J. Peerless** LS# 34127P

**Matthew D. Baer** LS# 48227K

**Emily Assini** LS# 59137J

Tel: 519-672-5666 Fax: 519-672-2674

Lawyers for the Plaintiffs