

CLASS ACTION SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE (“*Settlement Agreement*”) is entered as of October 18, 2019, between Nicole and Guy Mael, Nadine Vigliano, Britney Morea, Angela Bertucci, and Tina Wiepert (“Plaintiffs”), individually, and on behalf of the Settlement Class defined below, and Evanger’s Dog and Cat Food Co., Inc., Nutripack, LLC, and Against the Grain Pet Foods, and Sher Services Co. (“Evanger’s”). Plaintiffs and Evanger’s are collectively referred to as the “Parties.”

RECITALS

A. On June 16, 2017, Nicole and Guy Mael filed the initial complaint in this proposed class action lawsuit. On October 4, 2017, Plaintiffs filed an amended class action complaint. On April 3, 2018, Plaintiffs filed the operative second amended class action complaint (the “Second Amended Complaint”) alleging, *inter alia*, that Evanger’s charged a premium price for their meat-based pet foods that were misrepresented to be, among other things, “human-grade,” produced in USDA-inspected facilities or containing USDA-inspected meats, and “people food for pets.” Plaintiffs further alleged that three of Evanger’s products that ultimately were recalled contained pentobarbital that injured their dogs. The Second Amended Complaint sought both monetary and injunctive relief, including changes to Evanger’s marketing and advertising practices.

B. Evanger’s deny all material allegations in the Second Amended Complaint, deny that the exceptional quality of its products was in any way misrepresented, deny that Plaintiffs or the proposed classes have been damaged in any amount whatsoever, and deny that Plaintiffs or the proposed classes are entitled to the relief requested in the Second Amended Complaint.

C. The Parties have conducted discovery and analyzed the relevant legal issues arising from the claims and defenses asserted in the Second Amended Complaint. Among other things, the Parties engaged in extensive written discovery and exchanged approximately 40,000 pages of documents subject to a Court-approved confidentiality order. The Parties also conducted extensive non-party discovery, sending subpoenas to suppliers, retailers, and regulators and receiving thousands of pages of documents in response. Plaintiffs have also retained two experts, one in the field of veterinary medicine, and another in the field of marketing and consumer behavior, and have provided preliminary expert reports from each to Evanger's Counsel.

D. On March 5 and 13, 2019, the Parties participated in two half-day mediation sessions in Tacoma, Washington before the Hon. J. Richard Creatura, Magistrate Judge for the Western District of Washington. The Parties participated in a third mediation session on April 11, 2019. After these formal sessions, Judge Creatura continued to provide guidance to the Parties by telephone.

E. As a result of the progress made during formal mediation and in subsequent negotiations, the Parties have reached a settlement, the terms of which are set forth in this Settlement Agreement.

F. Plaintiffs and their Counsel believe the claims asserted in the Second Amended Complaint have merit. Evanger's deny all allegations of wrongdoing and believe the claims asserted by Plaintiffs lack merit. The Parties have concluded that litigation could be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement in order to limit further expense, inconvenience, and uncertainty. The Parties also have considered the uncertainties of

trial and the benefits to be obtained under the proposed Settlement Agreement and have considered the costs, risks, and delays associated with the prosecution of this complex and time-consuming litigation and the likely appeals of any rulings in favor of either Plaintiffs or Evanger's.

AGREEMENT

1. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

1.1 “**Action**” means the lawsuit entitled *Mael et al. v. Evanger's Dog and Cat Food Co., et al.*, No. 3:17-cv-05469-RBL (W.D. Wash.).

1.2 “**Authorized Claimant**” means any Settlement Class Member who timely submits a complete and sufficient Claim Form according to the terms of this Settlement Agreement and does not validly request exclusion from the Settlement Class.

1.3 “**Claim**” means a request made by a Settlement Class Member to receive a payment pursuant to the procedures stated in paragraph 6.

1.4 “**Claim Form**” means the form a Class Member must complete and submit to receive a payment under this Agreement. The Claim Form mailed to Settlement Class members is attached to the notice mailed to Settlement Class members and must be substantially similar to the form attached as **Exhibit A** and satisfy the requirements set forth in paragraph 6.1. Settlement Class Members also will be able to submit a claim on the Settlement Website.

1.5 “**Claimant**” means any Settlement Class Member who submits a Claim under this Agreement.

1.6 **“Settlement Administrator”** means CPT Group, Inc. and any successors to that entity, that Plaintiffs designate (with approval from Evanger’s, whose approval shall not be unreasonably withheld), to administer the notice, Claims, and Settlement relief distribution process provided for in the Settlement Agreement.

1.7 **“Settlement Administrator Costs”** means any and all costs incurred by the Settlement Administrator, including the cost of providing notice to the Settlement Class; the cost of providing notice to relevant governmental officials pursuant to the Class Action Fairness Act; the cost of claims administration, including the cost of retaining a neutral third-party veterinarian to review claims for veterinary expenses; and costs of otherwise administering the Settlement. It is a material term of the Settlement Agreement that administration costs not exceed \$150,000. Any remaining amount of the \$150,000 budget after settlement administration will be applied to Evanger’s costs, if any, of obtaining customer data for direct notice through third parties.

1.8 **“Court”** means the United States District Court for the Western District of Washington.

1.9 **“Defendants”** means Evanger’s Dog and Cat Food Co., Inc., Nutripack, LLC, Against the Grain Pet Foods, and Sher Services Co. Inc.

1.10 **“Evanger’s Counsel”** means the law firms of Johnson, Graffe, Keay, Moniz & Wick, LLP, Brown Wegner LLP, and Knabe, Kroning & Bedell.

1.11 **“Email Notice”** means the legal notice summarizing the proposed Settlement Agreement terms and containing a hyperlink to the Claim Form as approved by Plaintiffs’ Counsel, Evanger’s Counsel, and the Court, to be provided to Settlement Class Members under

paragraph 5.2 of this Settlement Agreement via electronic mail. The Email Notice must be substantially similar to the form attached **Exhibit B**.

1.12 “***Fairness Hearing***” means the hearing(s) to be held by the Court to consider and determine whether the proposed Settlement Agreement should be approved as fair, reasonable, and adequate, and whether the Final Order and Judgment should be entered.

1.13 “***Final Approval Order***” means the Court order granting final approval of the Settlement Agreement following the Fairness Hearing. The Final Approval Order must be substantially similar to the form attached as **Exhibit C**.

1.14 “***Final Settlement Date***” means two Court days after the Final Approval Order becomes “final.” For the purposes of this paragraph, “final” means after (a) thirty-one (31) calendar days after the entry of the Final Approval Order, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other effort to obtain review has been initiated, the date after any and all such appeals or other review(s) have been finally concluded in favor of the Final Approval Order, any mandates have been returned to the Court, and the Final Approval Order is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise.

1.15 “***Long-Form Notice***” means the full legal notice of the proposed Settlement Agreement terms, as approved by the Court, to be provided to Settlement Class Members under paragraph 5.2 of this Settlement Agreement. The Long-Form Notice must be substantially similar to the form attached as **Exhibit D**.

1.16 “***Hand Packed Products***” means (i) Evanger’s Hunk of Beef, (ii) Evanger’s Braised Beef, and (iii) Against the Grain Pulled Beef with Gravy.

1.17 ***“Initial Payments”*** means (1) any and all costs of the Settlement Administrator incurred pursuant to this Agreement, (2) any attorneys’ fees and costs awarded by the Court, and (3) any payment to Plaintiffs awarded by the Court.

1.18 ***“Final Judgment”*** means a document labeled by the Court as such and that has the effect of a judgment under Fed. R. Civ. P. 54. The Final Judgment must be substantially similar to the form attached as **Exhibit C**.

1.19 ***“Marketing Materials”*** means all labels, boxes, flyers, placards, slip sheets, in store displays or demonstrations, videos, social media (including but not limited to Twitter, Facebook, Instagram, and YouTube), websites including Evanger’s own and others that are used to sell Evanger’s Pet Food, promotions, coupons, calendars, blogs, press releases, or any other publication statements.

1.20 ***“Plaintiffs”*** means Nicole and Guy Mael, Nadine Vigliano, Britney Morea, Angela Bertucci, and Tina Wiepert.

1.21 ***“Net Payment Fund”*** means the Net Settlement Fund after the aggregate amount of veterinary expenses paid to members of the Settlement Class have been subtracted.

1.22 ***“Net Settlement Fund”*** means the Settlement Fund after the Initial Payments have been subtracted.

1.23 ***“Notice Plan”*** means the plan for providing notice of the Settlement Agreement to members of the Settlement Class.

1.24 ***“Online Notice”*** means a legal notice directing Settlement Class Members to the Settlement Website, as approved by Plaintiffs’ Counsel, Evanger’s Counsel, and the Court, to be provided to Settlement Class Members under paragraph 5.2 of this Settlement Agreement in substantially the form attached as **Exhibit E**.

1.25 ***“Plaintiffs’ Counsel”*** means the law firms of Terrell Marshall Law Group and Andersen Sleater Sianni LLC.

1.26 ***“Preliminary Approval Order”*** means the order certifying the Settlement Class for settlement purposes only, approving and directing notice, and setting the Fairness Hearing. This order must be substantially similar to the form attached as **Exhibit F**.

1.27 ***“Proof of Purchase”*** means a receipt or other documentation reasonably establishing the fact, date of purchase, and the price paid for a Recalled Product. Proof of Purchase includes information obtained from Evanger’s or receipts obtained or retained from retailers, including online retailers.

1.28 ***“Recalled Products”*** means the approximately 106,712 cases of (i) Evanger’s Hunk of Beef, (ii) Evanger’s Braised Beef, and (iii) Against the Grain Pulled Beef with Gravy that were recalled in February and March 2017 and not returned to Evanger’s.

1.29 ***“Released Claims”*** means all manner of action, causes of action, claims, counterclaims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys’ fees, of any nature, in law or equity, fixed or contingent, which the Parties have or may have arising out of or relating to any of the acts, omissions or other conduct that has or could have been alleged or otherwise referred to in the Action relating to the Recalled Products, including but not limited to, any and all acts, omissions, or other conduct asserting claims regarding the advertising, marketing, promotion, sale, redemption, or use of the Recalled Products. The Released Claims do not include any claims for money damages by consumers, including but not limited to Settlement Class Members, who purchased any product other than the Recalled Products.

1.30 “**Released Parties**” means Plaintiffs, Defendants, Settlement Class Members, and each of their respective successors, assigns, legatees, heirs, personal representatives, attorneys, and immediate family members. Released Parties do not include any Settlement Class members who timely and sufficiently request to be excluded from the Settlement Agreement.

1.31 “**Response Deadline**” means the deadline by which Settlement Class Members must postmark Claim Forms or submit Claim Forms online, serve requests for exclusion, or serve and file objections. The Response Deadline shall be sixty (60) calendar days after the Settlement Administrator commences the Notice Plan.

1.32 “**Settlement**” means the Settlement effectuated by this Settlement Agreement.

1.33 “**Settlement Class**” means: All persons in the United States who purchased (i) Evanger’s Hunk of Beef, (ii) Evanger’s Braised Beef, or (iii) Against the Grain Pulled Beef with Gravy between the dates of December 1, 2015 and June 30, 2017.

1.34 “**Settlement Class Member**” means: Any person who is included within the definition of the Settlement Class and who has not submitted a timely and valid request for exclusion.

1.35 “**Settlement Class Period**” means the period from December 1, 2015 through June 30, 2017, inclusive of those dates.

1.36 “**Settlement Fund**” means the sum of \$545,500 that is intended to cover any and all monetary relief offered to Settlement Class Members, any and all costs of the Settlement Administrator incurred pursuant to this Settlement Agreement, any attorneys’ fees and costs awarded by the Court, and any payment to Plaintiffs awarded by the Court.

1.37 “***Settlement Website***” means the website that shall be created for settlement administration purposes and administered by the Settlement Administrator. The Settlement Administrator shall propose a URL to the parties for their approval.

2. **SETTLEMENT CONSIDERATION AND BENEFITS.**

2.1 **Changes in Business Practices.**

a. **Changes in Advertising:** In Evanger’s Marketing Materials, Evanger’s agrees to not use the term “human grade” unless they comply with the voluntary criteria established by the Association of American Feed Control Officials (“AAFCO”) as set forth in their guidance titled “AAFCO Human Grade Standards for Pet Products,” dated August 1, 2017, including any amendments, clarifications or updates thereto, which provides standards and guidelines for the use of the term “human grade” in the labeling of pet foods and specialty pet foods. A complete copy of the August 1, 2017 AAFCO Guidelines is attached hereto as **Exhibit G** and incorporated herein by reference. Evanger’s further agrees that (i) Evanger’s will not use the phrase “People Food for Pets” in any of its Marketing Materials, including but not limited to “Organic People Food for Pets”; (ii) Evanger’s will not circulate videos or other demonstrations showing people eating their Pet Food; and (iii) Evanger’s will not describe their manufacturing facilities as “USDA inspected” in any of its Marketing Materials, and will not describe their products as using “USDA-inspected meats” or “USDA-inspected ingredients,” except as set forth below. Evanger’s may specify in its Marketing Materials that particular ingredients were sourced from “human grade facilities” under the following conditions: (1) Each ingredient subject to such a claim is specifically identified; (2) for each ingredient represented as sourced from a human grade facility, Evanger’s maintains in its records invoices showing the identity of the facility from which the ingredient was sourced; and (3) Evanger’s maintain in its records proof that each

ingredient identified as sourced from a “human grade facility” was purchased from a human grade facility or a retailer of food products sold to the public for human consumption.

Evanger’s may, when appropriate, state that a product qualifies as “Certified Organic” under the USDA National Organic Program. Evanger’s may, when appropriate, state that their facility is USDA-APHIS inspected and that it is inspected under the USDA National Organic Program. Evanger’s may make the unqualified characterization that their manufacturing facility is “USDA inspected” in its Marketing Materials only if its facility becomes USDA-FSIS certified. If the facility becomes USDA-FSIS certified within five (5) years after final settlement approval, Evanger’s will provide proof of such certification to Plaintiffs before using this phrase in connection with their manufacturing facility. Evanger’s agrees to implement the terms of this subparagraph on or before one (1) month after the Final Settlement Date.

b. **Notice to Distributors and Retailers:** Evanger’s will send a letter to all distributors, online retailers, and brick and mortar retailers listed on Evanger’s website, explaining that Evanger’s have settled this class action suit. They will also explain that they will no longer be using the terms in section 3(a) including “human grade,” or “people food for pets” or “USDA inspected” in connection with any of Evanger’s products unless permitted to do so under applicable AAFCO rules or guidance, or in accordance with paragraph 2.1.a above. This letter will also request that the distributors and retailers not use these terms in any of their Marketing Materials unless permitted to do so under applicable AAFCO rules or guidance. Evanger’s will provide Plaintiffs’ Counsel with a copy of the draft letter for their review and approval. Evanger’s agree to implement the terms of this subparagraph on or before one (1) month after the Final Settlement Date.

c. **FDA Regulations:** The FDA issued a Warning Letter to Evanger's in June 2017 in response to which Evanger's have taken certain corrective actions to address issues that the FDA identified in Evanger's manufacturing of Pet Foods. These actions include: The defendants in the Action that engage in manufacturing have improved their current good manufacturing practices for pet food ("CGMP"), improved their employee training, and have enhanced their supplier verification and tracing of ingredients. These defendants have also created a HACCP plan and worked to ensure compliance with it through operation protocols, separation protocols (to prevent contamination and commingling), clean out protocols, and testing protocols. In addition, Evanger's staff have: received certified training through the Food Safety Preventive Controls Alliance in food safety preventive controls; participated in training from the International Food Protection Training Institute, which is recognized by AAFCO. Evanger's staff also completed an FDA food safety awareness module for sanitary transportation of human and animal food. In addition, Evanger's forgoing actions also served to comply with the sections, rules, and regulations of the Food Safety Modernization Act ("FSMA") applicable to a "Small Entity" that produces "low-acid canned food." <https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm366510.htm>. Any of the defendants in the Action that engage in pet food manufacturing will continue to operate in compliance with applicable laws, rules, and regulations, including the FSMA.

d. **Supplier and Ingredient Safety:** Evanger's will provide a letter confirming that they are in compliance with all FDA requirements regarding supplier and ingredient safety for the Hand Packed Products. The letter will list the steps Evanger's have taken to ensure compliance with FDA requirements. The letter will be provided to Plaintiffs' Counsel on or before one (1) month after the Final Settlement Date.

e. **Testing:** Evanger's agree to submit to random testing of their finished Hand Packed Products, or to the extent any of the Hand Packed Products are renamed, the renamed products. Evanger's agree the testing will be conducted at Evanger's expense by an independent, third party every quarter for two (2) years commencing on the Final Settlement Date with results to be published on their websites. The independent third party will test cans of Hand Packed Product that the independent third party has randomly selected from the stream of commerce at a cost not to exceed \$5,000 per year.

f. **Verification:** One month after the Final Settlement Date, Evanger's will file a verification with the Court affirming their compliance with the terms of this paragraph

2.2 Settlement Fund. The Settlement Fund shall be \$545,500.00.

a. The Settlement Fund shall be used to pay (a) cash awards to Settlement Class Members who submit timely and valid claim forms choosing a cash payment option (described below) rather than a product certificate; (b) settlement administration costs, including notice and claims administration costs; (c) any attorneys' fees and costs awarded by the Court; and (d) any payments to Plaintiffs awarded by the Court. No portion of the Settlement Fund will revert to Evanger's. The funds will be distributed as set forth in paragraph 2.4 below.

b. Within ten (10) calendar days of entry of the Preliminary Approval Order, Evanger's shall transmit to the Settlement Administrator the estimated Settlement Administrator Costs sufficient to cover the cost of providing notice pursuant to paragraph 5. To the extent that any portion of the estimated Settlement Administrator Costs to cover the cost of providing notice pursuant to paragraph 5 is not actually incurred by the Settlement Administrator or not approved by the Court, that portion shall become part of the Net Settlement Fund, and distributed pursuant to the procedures set forth below.

c. Within ten (10) calendar days of the Final Settlement Date, Evanger's shall transmit to the Settlement Administrator the remainder of the Settlement Fund that was not transmitted pursuant to paragraph 2.2(b).

d. Only Settlement Class Members with proof of purchase are eligible to choose between a monetary payment and a product certificate. To exercise the option, Settlement Class Members must accurately complete and submit a Claim Form and deliver that Claim Form to the Settlement Administrator no later than the Response Deadline. Only one Claim Form may be submitted per household.

e. Cash Payments: Settlement Class Members who purchased Recalled Products and who choose the option to receive a one-time cash payment are eligible to receive a share of the Settlement Fund after any court-awarded attorneys' fees and costs, court-awarded individual payments to named Plaintiffs, settlement administration costs, and approved veterinary expense are subtracted. A Settlement Class Member's distribution will take into consideration the number of cases or cans that the Settlement Class Member purchased.

f. Veterinary Expenses: A Settlement Class Member is eligible to receive payment for out-of-pocket veterinary expenses incurred as a result of the Settlement Class Member's pet becoming ill due to eating a Recalled Product. The Settlement Class Member can receive reimbursement for veterinary expenses by submitting to the Settlement Administrator veterinary records that indicate the pet's illness was caused by pentobarbital exposure from ingestion of a Recalled Product.

2.3 Product Certificates. Evanger's also agrees to provide Settlement Class Members who purchased any Recalled Products with the option of redeeming certificates valued at 50% of the verified amount of Recalled Products purchased in lieu of cash payment.

a. Verified purchasers. A Settlement Class Member with Proof of Purchase must choose either to claim a cash payment or redeem the certificate. The Settlement Class Member cannot both make a claim for a cash payment and redeem the certificate.

b. Unverified Purchasers. Settlement Class Members who submit a valid claim but have no Proof of Purchase will receive a certificate that allows the claimant to obtain at no cost three (3) cans of Evanger's or Against the Grain products from a retailer that currently sells these products. A list of such retailers is available on the Evanger's and Against the Grain websites. If there is no retailer located near a particular Settlement Class member, the person will be able to contact Evanger's to redeem his or her certificate directly.

2.4 Distribution of the Cash Payment. Settlement administration expenses, any court-awarded attorneys' fees and costs, and any court-awarded service awards to the named Plaintiffs will be deducted from the \$545,500 cash payment. The remaining funds ("Net Settlement Fund") will be distributed to each Settlement Class Member who submits a timely, valid claim form ("Authorized Claimant") as follows:

a. *Veterinary expenses.* The cash payment will be used to reimburse Settlement Class Members who submit timely, valid claims for reimbursement of veterinary expenses incurred due to their pets eating a Recalled Product. To receive reimbursement for veterinary expenses, the Settlement Class Member must submit to the Settlement Administrator veterinary records that indicate the pet's illness was caused by pentobarbital exposure from ingestion of a Recalled Product. The parties agree that each claim for reimbursement will be approved or disapproved by a veterinarian to be agreed upon by the parties and based upon criteria to be agreed upon by counsel for the parties. The time for the veterinarian's review of the

claims will be paid from the Settlement Fund and will be considered part of the Settlement Administration Costs.

b. *Individual cash awards to eligible Settlement Class members who purchased the Recalled Products.* The Net Payment Fund will be used to make cash payments to Settlement Class Members who opt to receive a cash award in lieu of a product certificate. Evanger's agree to use their best efforts to identify all known Settlement Class Members and their purchases, including via their own business records and any records they are able to obtain from any online distributors such as Chewy.com. The cash awards will be calculated as follows:

i. Each Settlement Class Member who purchased Recalled Products will be eligible to receive 25% of the total verified value of those products. For example, if a Settlement Class Member paid \$100 for Recalled Product, the Settlement Class Member would be eligible to receive a cash payment of \$25. Purchases may be verified either by reference to purchase records maintained by Evanger's or online vendors, or by Proof of Purchase records that the Settlement Class Member has maintained.

ii. In addition, if funds remain after paying eligible claimants 25% of their total verified purchases, remaining amounts will be distributed to Settlement Class Members proportionally based on the total amount of their verified purchases up to 100% of their verified purchases. For example, if Settlement Class Member Mary purchased \$100 of Recalled Products and Settlement Class Member Joe purchased \$200, Settlement Class Member Joe would receive a pro rata share of remaining funds that is equal to twice that of Settlement Class Member Mary. Conversely, if insufficient funds exist to pay Settlement Class Members their full 25%, their cash awards will be reduced proportionally.

iii. Evanger's will supply the Settlement Administrator with a list of individuals who have already received reimbursement for veterinarian costs and/or a refund for Recalled Products. The Settlement Administrator will compare submitted claim forms with this list to ensure claimants do not receive double payments.

iv. *Cy pres*. If funds remain after the payments are made as described herein, remaining amounts will be donated to North Shore Animal League America.

2.5 Individual Service Awards to Plaintiffs. Plaintiffs must petition the Court for approval of any individual service award to any of the Plaintiffs. If the Court approves the Settlement and individual service awards to Plaintiffs, the Settlement Administrator shall pay the awards approved by the Court out of the Settlement Fund to Plaintiffs within ten (10) calendar days following the occurrence of both of the following events (a) the Final Settlement Date, and (b) Plaintiffs providing the Settlement Administrator with their Form W-9s.

2.6 Attorneys' Fees and Costs. Plaintiffs must petition the Court for approval of any award to Plaintiffs' Counsel for attorneys' fees and costs. Plaintiffs' Counsel will file any papers supporting their request for attorneys' fees and costs with the Court thirty (30) calendar days before the deadline for Settlement Class Members to object to the Settlement, as such deadline is defined in paragraph 1.31 of this Settlement Agreement. Evanger's may, in their discretion, choose to oppose the request for attorneys' fees and costs in whole or in part. If the Court approves the Settlement and an award of attorneys' fees and costs to Plaintiffs' Counsel, the Settlement Administrator shall pay the award approved by the Court to Plaintiffs' Counsel within ten (10) calendar days following the occurrence of both of the following events (a) the Final Settlement Date, and (b) Plaintiffs' Counsel delivery to the Settlement Administrator the relevant Forms W-9.

2.7 Reduction in Plaintiffs' Individual Service Awards or Plaintiffs' Counsel's Attorneys' Fees. In the event that the Court (or any appellate court) awards less than the amount requested for Plaintiffs' Counsel's fee and cost award or Plaintiffs' service awards, any remaining or un-awarded portion of the requested award shall be allocated to the Authorized Claimants pursuant to the terms of this paragraph 2. To the extent the Court does not approve any or all of the amount of Plaintiffs' Counsel's requested fee and cost award and/or Plaintiffs' service award, the Settlement shall remain binding, and this will not be a justification for Plaintiffs to withdraw from the Settlement.

2.8 Settlement Administration Costs. All costs of providing notice to the Settlement Class in the manner prescribed in paragraph 5 of this Settlement Agreement and the costs associated with independent administration of benefits by the Settlement Administrator shall be paid from the Settlement Fund.

3. RELEASE OF CLAIMS

3.1 Mutual Release. Unless specifically excepted herein, Plaintiffs, Evanger's, Settlement Class Members, and each of their respective successors, assigns, legatees, heirs, personal representatives, and attorneys, mutually release all manner of action, causes of action, claims, counterclaims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature, in law or equity, fixed or contingent, which they have or may have arising out of or relating to any of the acts, omissions or other conduct that have or could have been alleged or otherwise referred to in the Action relating to the Recalled Products, but not limited to, any and all acts, omissions, or other conduct asserting claims regarding the advertising, marketing, promotion, sale, redemption, or use of the Recalled Products. Specifically excluded from this

Mutual Release are (1) any Settlement Class Members who timely and sufficiently request to be excluded from the Settlement; and (2) any claims of Settlement Class Members regarding non-Recalled Products.

4. **CLASS SETTLEMENT PROCEDURES**

4.1 **Preliminary Approval and Provisional Class Certification.** Plaintiffs shall file their motion for preliminary approval of the Settlement Agreement as soon as feasibly possible after execution of the Settlement Agreement. The motion for preliminary approval of the class action settlement and settlement class certification must request the Court to:

- a. preliminarily approve this Settlement Agreement.
 - b. preliminarily approve the form, manner, and content of the Long-Form Notice, Email Notice, Online Notice, and Claim Form described in paragraph 5 of this Settlement Agreement, and attached as **Exhibits A, B, D, and E**;
 - c. set the date and time of the Fairness Hearing;
 - d. certify the Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure, for settlement purposes only;
 - e. find that Evanger's have complied with 28 U.S.C. § 1715(b);
 - f. stay all proceedings in the Action until the Court renders a final decision on approval of the Settlement and sets a briefing schedule for the papers in support of the Final Approval Order;
 - g. appoint Plaintiffs as the class representatives for settlement purposes only;
- and
- h. appoint the law firms of Terrell Marshall Law Group and Andersen Sleater Sianni LLC as class counsel for settlement purposes only.

4.2 **Preliminary Approval Order.** The proposed Preliminary Approval and Provisional Class Certification Order must be substantially similar to the form attached as **Exhibit F.**

5. **CLASS NOTICE**

5.1 **Class List for Direct Notice.** Evanger's will cooperate to assemble a list of Settlement Class Members who will receive direct notice by either email or U.S. Mail. This list will include information on known purchasers from their records and retailers. The parties will work cooperatively to assemble this list and provide the list to the Settlement Administrator within thirty (30) calendar days after entry of the Preliminary Approval Order.

5.2 **Class Notice.** Subject to the Court entering the Preliminary Approval Order, the Settlement Administrator will provide the Class with notice of the proposed Settlement by the following methods, as approved by the Court.

a. **Settlement Website.** Unless otherwise ordered by the Court, within thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will set up the Settlement Website and post the Second Amended Complaint, Settlement Agreement, Preliminary Approval Order, Long-Form Notice, Claim Form, and within twenty-four (24) hours after it is filed, Plaintiffs' Counsel's fee application. The Settlement Website will be active until at least the Final Settlement Date. The Settlement Website shall be designed and constructed to accept electronic Claim Form submission.

b. **Email Notice.** Unless otherwise ordered by the Court, within sixty (60) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will send an Email Notice to Settlement Class Members on the list referenced in paragraph 5.1 except to those Settlement Class Members who purchased product from Amazon.com and Chewy.com.

The Email Notice will be substantially similar to the form attached as **Exhibit B** and will provide the web address of the Settlement Website and an email and mailing address to contact the Settlement Administrator. Amazon.com and Chewy.com will send separate emails at their own cost substantially in the forms attached as **Exhibits H and I** or as approved by the Court.

c. **U.S. Mail Notice.** Unless otherwise ordered by the Court, for those persons (a) to whom the Settlement Administrator, Amazon.com or Chewy.com sends an Email Notice as described above, but then receives notification that the email was not ultimately delivered (a “hard bounce”), and (b) for whom Evanger’s, Amazon.com or Chewy.com have a facially valid U.S. Postal mailing address, the Settlement Administrator, Amazon.com, and Chewy.com shall send U.S. Mail Notice. The U.S. Mail Notice that the Settlement Administrator will send will be substantially similar to **Exhibit A** and will provide the web address of the Settlement Website and an email and mailing address to contact the Settlement Administrator and Plaintiffs’ Counsel. Before sending the U.S. Mail Notice, the Settlement Administrator will check the addresses to be used against the National Change of Address Database. The U.S. Mail Notice that Amazon.com and Chewy.com will send will be substantially similar to the notices attached as Exhibits H and I.

d. **Online Notice Plan.** Unless otherwise ordered by the Court, within sixty (60) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will start implementing an online media notice effort. The Online Notice will substantially take the form as **Exhibit E**.

e. **Telephonic Notice.** Unless otherwise ordered by the Court, within thirty (30) calendar days after entry of the Preliminary Approval Order and continuing at least until the

Response Deadline, a recording of the Long-Form Notice will be available by calling a toll-free number established by the Settlement Administrator.

5.3 **CAFA Notice.** Within ten (10) calendar days after this Settlement Agreement is filed with the Court, Evanger's, through the Settlement Administrator, shall serve upon relevant government officials notice of the proposed settlement in accordance with 28 U.S.C. § 1715. The Settlement Administrator shall thereafter complete a declaration attesting to the completion of notice pursuant to the 28 U.S.C. § 1715 such that it can be filed with the Court in advance of the preliminary approval hearing. Before serving the relevant government officials with the CAFA Notice, the Settlement Administrator shall provide a copy of the CAFA Notice to Plaintiffs' Counsel and provide Plaintiffs' Counsel sufficient time to review and comment.

6. **CLAIMS PROCEDURE**

6.1 **Claim Form.** The Claim Form will contain spaces for Settlement Class Members to report the number of cases or cans of Recalled Products they purchased during the Settlement Class Period, as well as the approximate date, seller, and location of any purchase.

a. For retail purchases (*i.e.* purchases not made online) Claimants can verify the amount they spent on Recalled Products by providing Proof of Purchase with their Claim Forms. For online purchases of Recalled Products made by Settlement Class Members on the list assembled by the Parties, no verification by receipt is necessary for the purchases reflected on the list. For these Claimants, the total of their verified purchases will populate into their electronic Claim Form.

b. For claims without Proof of Purchase, the Claim Form shall provide a space for the Settlement Class Member to sign and submit an attestation that states to the best of his or her knowledge the total number and type of purchases and the approximate date of his or

her purchases. The Claim Form shall be signed under an affirmation stating, among other things, the following or substantially similar language: “I declare under the penalties of perjury that the information in this Claim Form is true and correct to the best of my knowledge, and that I purchased the products claimed above during the Class Period. I understand that my Claim Form may be subject to audit, verification, and Court review.”

c. The Claim Form shall also provide spaces for Settlement Class Members to identify dates, expenses and identification of veterinarians supported by reports from their veterinarians explaining illnesses that their pets experienced as a result of ingesting Recalled Products. A veterinarian will review the information provided by the Settlement Class Member to determine if a reimbursement for the costs is appropriate.

d. The Claim Form shall also contain spaces for Claimants to provide their contact information so that the Settlement Administrator may communicate with them regarding their Claim and, if the Claimant is an Authorized Claimant, transmit the appropriate Settlement Payment. Mandatory fields for contact information shall be name, address, and email address (online Claim Form submission only). Claimants may elect to provide their telephone numbers.

e. The Claim Form shall be submitted by postal mail or electronically through the Settlement Website. The delivery date is deemed to be the date (a) the Claim Form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. Mail, or (b) in the case of submission electronically through the Settlement Website, the date the Settlement Administrator receives the Claim Form as evidenced by the transmission receipt.

f. Any Class Member who fails to submit a valid and timely Claim Form will not be entitled to receive a payment under this Settlement Agreement.

6.2 Claims Review and Reporting Process. Starting two (2) weeks after the Settlement Administrator begins providing notice to the Settlement Class pursuant to paragraph 5, the Settlement Administrator shall provide weekly reports to Evanger's Counsel and Plaintiffs' Counsel concerning the Claim Forms received during the prior week including, but not limited to, number of timely and valid Claim Forms that were submitted and the amounts claimed on such forms. Claim Forms that do not meet the submission requirements shall be rejected. Prior to rejection of a Claim Form, the Settlement Administrator shall communicate with the Claimant in an effort to remedy curable deficiencies in the Claim Form submitted. Thereafter, the Settlement Administrator shall notify, in a timely fashion, all Claimants whose Claim Forms it proposes to reject in whole or in part, setting forth the reasons for rejection.

6.3 Disputed Claims. If a Claimant disputes the verified amount shown on his or her electronic Claim Form, he or she may submit receipts to the Settlement Administrator to support a higher verified amount. Additionally, if the Parties dispute a Claim Form's timeliness, validity or applicable Allocated Amount (defined in paragraph 9.2.f below), the Parties must meet and confer in good faith to resolve the dispute. Evanger's records will be entitled to a rebuttable presumption of accuracy. In the event that good faith negotiations fail to resolve the dispute, it shall be resolved by the Court, which shall retain jurisdiction over all matters related to the administration of the Settlement.

6.4 Deadline to Complete Claims Review. The Settlement Administrator shall finish verifying claims and handling any deficient claims at least ten business days before the filing date for Plaintiffs' motion in support of Final Approval Order and Judgment. Five business days before Plaintiffs' motion in support of Final Approval Order and Judgment, the Settlement Administrator will provide Plaintiffs' Counsel and Evanger's Counsel a declaration confirming

that notice to the Settlement Class was provided in accordance with paragraph 5 of this Settlement Agreement. The declaration shall include a report indicating (1) the number of timely and valid Claim Forms submitted; (2) the total amount claimed, (3) the total number of exclusion requests, (4) the total number of objections received, and (5) the total cost of notice and settlement administration occurred as of that date and an estimate of the total cost to complete settlement administration.

6.5 Inquiries from Settlement Class Members. The Settlement Administrator will establish an email account and P.O. Box to which Settlement Class Members may submit questions regarding the Settlement. The Settlement Administrator will monitor the email account and P.O. Box and respond promptly to inquiries received from Settlement Class Members.

6.6 Settlement Administrator Reports. Starting two weeks after the deadline to commence sending notice to the Settlement Class under paragraph 4, the Settlement Administrator shall provide weekly reports to Plaintiffs' Counsel and Evanger's Counsel concerning the Claim Forms received during the prior week and the amount claimed to date. The report shall also identify the number of valid requests for exclusions received and transmit any received objections to counsel.

7. OBJECTIONS AND EXCLUSION REQUESTS

7.1 Objections. Any Settlement Class Member who has not submitted a timely written exclusion request pursuant to paragraph 7.2 of this Settlement Agreement and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, must file an objection with the Court no later than the Response Deadline. It shall be the objector's responsibility to ensure receipt of any objection by the Court. As required by Federal Rule of Civil Procedure 23(e)(5)(A), the objection must state whether it

applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, and also state with specificity the grounds for the objection. Any Settlement Class Member who files and serves a written objection, as described in this paragraph, has the option to appear at the Fairness Hearing, either in person or through personal counsel hired at his or her own expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees. However, Settlement Class Members (with or without their attorneys) intending to make an appearance at the Fairness Hearing must include on a timely and valid objection a statement substantially similar to "Notice of Intention to Appear." If the objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. If the objecting Settlement Class Member intends to request the Court to allow him or her to call witnesses at the Fairness Hearing, such request must be made in the Settlement Class Member's written brief, which must also contain a list of any such witnesses and a summary of each witness's expected testimony. Only Settlement Class Members who file and serve timely objections including Notices of Intention to Appear may speak at the Fairness Hearing. If a Settlement Class Member makes an objection through an attorney, he or she will be responsible for his or her personal attorney's fees and costs.

7.2 Exclusion from the Settlement Class. Settlement Class Members may elect not to be part of the Settlement Class and not to be bound by this Settlement Agreement. To make this election, Settlement Class Members must send a letter to the Settlement Administrator stating: (a) the name and case number of the Action; (b) the full name, address, email address,

and telephone number (optional) of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Settlement, postmarked no later than the Response Deadline. The Settlement Administrator must serve on Plaintiffs' Counsel a list of those who have timely and validly excluded themselves from the Settlement Class no later than fourteen (14) calendar days before the filing date for Plaintiffs' motion in support of the Final Approval Order and Judgment.

8. FAIRNESS HEARING, DISMISSALS, AND JUDGMENT

8.1 Final Approval Order and Judgment. Before the Fairness Hearing, Plaintiffs must apply for Court approval of a proposed Final Approval Order and Judgment, substantially similar to the form attached as **Exhibit C**, respectively. Subject to the Court's approval, the Final Approval Order and Judgment shall, among other things:

- a. finally approve the Settlement Agreement as fair, reasonable and adequate;
- b. finally certify the Settlement Class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(b)(3);
- c. find that the notice and the notice dissemination methodology complied with the Settlement Agreement, Federal Rule of Civil Procedure 23, and the Due Process Clause of the United States Constitution;
- d. issue orders related to the relief provided for in the Settlement Agreement, including distribution of payments to Authorized Claimants, payment of Plaintiffs' individual service awards, and payment of Plaintiffs' Counsel's fees and costs;
- e. incorporate the Mutual Release;
- f. procedurally close the Action after entry of Judgment; and

g. retain jurisdiction over the Action and the Parties relating to the administration, consummation, and/or enforcement of the Settlement Agreement or the Final Approval Order and Judgment, and for any other necessary purpose.

9. DISTRIBUTION

9.1 **Initial Payments.** Except as otherwise provided, on or before thirty (30) calendar days after the Final Settlement Date, the Settlement Administrator shall deduct all Initial Payments from the Settlement Fund and deliver them to the appropriate individuals or entities entitled to them, in accordance with the terms of the Agreement and the Court's Final Approval Order and Judgment.

a. **Additional Instructions Regarding Plaintiffs' Individual Payments.**

Within five (5) calendar days after the Final Settlement Date, Plaintiffs shall provide the Settlement Administrator their relevant form W-9s. The Settlement Administrator shall have no obligation to forward to Plaintiffs the individual payments until it receives the Form W-9s.

b. **Additional Instructions Regarding Plaintiffs' Counsel's Award.**

Within five (5) calendar days after the Final Settlement Date, Plaintiffs' Counsel shall provide the Settlement Administrator their relevant form W-9s. The Settlement Administrator shall have no obligation to forward to Plaintiffs' Counsel their court-awarded attorneys' fees and costs until it receives the Form W-9s.

c. **Additional Instructions Regarding Settlement Administrator Costs.**

The Settlement Administrator shall be paid for any additional, necessary Settlement Administrator Costs reasonably incurred beyond the payment provided in paragraph 2.2 up to the \$150,000 cap. The payment(s) to the Settlement Administrator shall cover costs incurred and costs to be incurred, *i.e.*, there will be no supplemental payment to the Settlement Administrator

to cover its costs incurred after this payment. As such, when calculating the amount to be paid for administration costs, the Settlement Administrator must make a reasonable estimate of the cost of the services to be given in the future. The Settlement Administrator must include the cost of those future services in the declaration it submits to be filed with the Court before the Fairness Hearing.

9.2 Authorized Claimant Settlement Award Calculations. The awards to Authorized Claimants shall be calculated and apportioned as follows:

- a. The Net Settlement Fund shall be calculated by subtracting the Initial Payments from the Settlement Fund.
- b. The Settlement Administrator shall calculate the total amount of veterinary expenses timely and validly claimed by Authorized Claimants. These amounts shall then be paid from the Net Settlement Fund. The remaining amount shall be the Net Payment Fund.
- c. The Settlement Administrator shall identify those Authorized Claimants who have chosen to receive product certificates and calculate the total amount of product certificates to which each such Authorized Claimant is entitled.
- d. The Settlement Administrator shall identify those Authorized Claimants who have chosen to receive a one-time cash payment and calculate the total amount of these payments. The sum shall be the “Total Cash Payments Claimed.”
- e. If funds remain in the Net Payment Fund, remaining amounts will be distributed to Authorized Claimants proportionally based on the total amount of their verified purchases up to 100% of their verified purchases. For example, if Settlement Class member Mary purchased \$100 of Recalled Products and Settlement Class member Joe purchased \$200,

Settlement Class member Joe would receive a pro rata share of remaining funds that is equal to twice that of Settlement Class member Mary. Conversely, if insufficient funds exist to pay Settlement Class members their full 25%, their cash awards will be reduced proportionally. The amount allocated to each Authorized Claimant through this process is the Allocated Amount.

f. For each Authorized Claimant, the Settlement Administrator shall add the Allocated Amount to the amount of any veterinary expenses that the Authorized Claimant timely and validly claimed. The resulting figure shall be the Gross Allocated Amount for each such Authorized Claimant.

9.3 Distribution of Awards.

a. On or before fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide Plaintiffs' Counsel and Evanger's Counsel with information regarding the number of product certificates, Settlement payments and credits and amount claimed by each Authorized Claimant. To the extent any adjustment to these amounts are made after this deadline, the Settlement Administrator will timely provide the updated information to Evanger's Counsel and Plaintiffs' Counsel. All adjustments must be complete before the Fairness Hearing.

b. The Settlement Administrator shall mail a product certificate and/or a check as appropriate to each Authorized Claimant's election to each Authorized Claimant.

9.4 Uncashed Settlement Checks. Any checks issued under this Settlement shall be negotiable for 120 calendar days. Individual checks that have not been negotiated within 120 calendar days after issuance, if any, shall be void, and the underlying funds shall returned to the Net Payment Fund.

10. EFFECT OF AGREEMENT IF SETTLEMENT IS NOT APPROVED

This Settlement Agreement was entered into only for the purpose of Settlement. In the event that the Court conditions its approval of either the Preliminary Approval Order or the Final Approval Order and Judgment on any modifications of this Settlement Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement or enter the Final Approval Order and Judgment, or if the Final Settlement Date does not occur for any reason, then this Settlement Agreement shall be deemed null and void *ab initio* and the Parties shall be deemed restored to their respective positions *status quo ante*, and as if this Settlement Agreement was never executed. In that event (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, including, but not limited to, vacating certification of the Settlement Class, appointment of Plaintiffs as class representatives, and appointment of Plaintiffs' counsel as class counsel; (b) the Action will revert to the status that existed before Plaintiffs filed their motion for approval of the Preliminary Approval Order; and (c) no term or draft of this Settlement Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement or enter the Final Approval Order and Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Evanger's shall retain all their rights to challenge any and all allegations in the Second Amended Complaint. Nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action.

11. ADDITIONAL PROVISIONS

11.1 Change of Time Periods. All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class.

11.2 Fair, Adequate, and Reasonable Settlement. The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached after extensive negotiations, including three mediations, conducted with the assistance of U.S. Magistrate Judge J. Richard Creatura.

11.3 Real Parties in Interest. In executing this Settlement Agreement, the Parties warrant and represent that except as provided herein, neither said claims nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.

11.4 Voluntary Agreement. This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

11.5 Binding on Successors. This Settlement Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties, except that two (2) years after the Final Settlement Date the terms relating to Advertising Changes set forth in Paragraph 2.1.a will bind only successors owned by (1) Evanger's owners at the time of execution of this agreement and final settlement approval, (2) Joel Sher, (3) Holly Sher, (4) Chelsea Sher, (5) Brett Sher, (6) Callie Sher or (7) any member of Joel, Holly, Chelsea, Brett, or Callie Sher's immediate families.

11.6 **Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Settlement Agreement by independent counsel of their own choosing, that they have read this Settlement Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and of its legal effect.

11.7 **Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

11.8 **Entire Agreement.** This Settlement Agreement and attached exhibits contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Settlement Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement Agreement.

11.9 **Construction and Interpretation.** Neither the Parties nor any of the Parties' respective attorneys shall be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

11.10 **Headings and Formatting of Definitions.** The various headings used in this Settlement Agreement are solely for the convenience of the Parties and shall not be used to interpret this Settlement Agreement. Similarly, bolding and italicizing of definitional words and

phrases is solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

11.11 **Exhibits.** The exhibits to this Settlement Agreement are integral parts of the Settlement Agreement and Settlement and are hereby incorporated and made a part of this Settlement Agreement as though fully set forth in the Settlement Agreement.

11.12 **Modifications and Amendments.** No amendment, change, or modification of this Settlement Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel.

11.13 **Governing Law.** This Agreement is entered into in accordance with the laws of the State of Washington and shall be governed by and interpreted in accordance with the laws of the State of Washington, without regard to its conflict of law principles.

11.14 **Further Assurances.** Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its obligations hereunder to carry out the express intent of the Parties hereto.

11.15 **Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement.

11.16 **Execution Date.** This Settlement Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

11.17 **Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Settlement Agreement.

11.18 **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

11.19 **Recitals.** The Recitals are incorporated by this reference and are part of the Settlement Agreement.



11.20 **Inadmissibility.** This Settlement Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Settlement Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Order and Judgment.

11.21 **No Conflict Intended.** Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

11.22 **Disposal of the Claimant Information.** Within three (3) years after the Final Settlement Date and completion of the administration, or in the event the Settlement is terminated, all originals, copies, documents, transcriptions, iterations, or drafts of information

from Settlement Class Members or any portion thereof shall be destroyed by the Settlement Administrator.

11.23 **Notices.** Any notice, instruction, application for Court approval or application for Court orders sought in connection with the Settlement Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Evanger's to the attention of Evanger's Counsel, and if to Settlement Class Members to the attention of Plaintiffs' Counsel on their behalf.

PLAINTIFFS' COUNSEL	EVANGER'S COUNSEL
<p>ANDERSEN SLEATER SIANNI LLC</p> <p>By:  _____ Jessica J. Sleater</p> <p>TERRELL MARSHALL LAW GROUP PLLC</p> <p>By:  _____ Jennifer Rust Murray</p>	<p>KNABE, KRONING & BEDELL</p> <p>By: _____ Gregory A. Bedell</p> <p>JOHNSON, GRAFFE, KEAY, MONIZ & WICK, LLP</p> <p>By: _____ Brennen J. Johnson</p>
PLAINTIFFS	DEFENDANTS
<p>By: _____ Nicole Mael</p> <p>By: _____ Guy Mael</p> <p>By: _____ Nadine Vigliano</p>	<p>EVANGER'S DOG AND CAT FOOD CO., INC.</p> <p>By: _____</p> <p>NUTRIPACK, LLC</p> <p>By: _____</p>


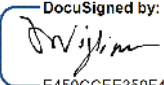
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TERRELL MARSHALL LAW GROUP PLLC	JOHNSON, GRAFFE, KEAY, MONIZ & WICK, LLP
By: _____ Jennifer Rust Murray	By: _____ Brennen J. Johnson
PLAINTIFFS	DEFENDANTS
By: <u>Nicole Mael</u> Nicole Mael	EVANGER'S DOG AND CAT FOOD CO., INC.
By: <u>Guy Mael</u> Guy Mael	By: _____
By: _____ Nadine Vigliano	NUTRIPACK, LLC
	By: _____

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By: _____ Jessica J. Sleater	By: _____ Gregory A. Bedell
TERRELL MARSHALL LAW GROUP PLLC	JOHNSON, GRAFFE, KEAY, MONIZ & WICK, LLP
By: _____ Jennifer Rust Murray	By: /s/ Brennen J. Johnson Brennen J. Johnson
PLAINTIFFS	DEFENDANTS
By: _____ Nicole Mael	EVANGER'S DOG AND CAT FOOD CO., INC.
By: _____ Guy Mael	By: _____ NUTRIPACK, LLC President
By: _____ Nadine Vigliano	By: _____ ITS MANAGER

<p>By: _____ Britney Morea</p> <p>By: _____ Angela Bertucci</p> <p>By: _____ Tina Wiepert</p>	<p>AGAINST THE GRAIN PET FOODS</p> <p>By: <u><i>Joel Sher</i></u> ITS PRINCIPAL SHER SERVICES COMPANY INCORPORATED</p> <p>By: <u><i>Joel Sher</i></u> ITS PRESIDENT</p>
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Court orders sought in connection with the Settlement Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Evanger's to the attention of Evanger's Counsel, and if to Settlement Class Members to the attention of Plaintiffs' Counsel on their behalf.

PLAINTIFFS' COUNSEL	EVANGER'S COUNSEL
<p>ANDERSEN SLEATER SIANNI LLC</p> <p>By: _____ Jessica J. Sleater</p>	<p>KNABE, KRONING & BEDELL</p> <p>By: _____ Gregory A. Bedell</p>
<p>TERRELL MARSHALL LAW GROUP PLLC</p> <p>By: _____ Jennifer Rust Murray</p>	<p>JOHNSON, GRAFFE, KEAY, MONIZ & WICK, LLP</p> <p>By: _____ Brennen J. Johnson</p>
PLAINTIFFS	DEFENDANTS
<p>By: <u>Nicole Mael</u> Nicole Mael</p> <p>By: _____ Guy Mael</p> <p>By: _____ Nadine Vigliano</p>	<p>EVANGER'S DOG AND CAT FOOD CO., INC.</p> <p>By: _____</p> <p>NUTRIPACK, LLC</p> <p>By: _____</p>

<p>By: <u>Britney Morea</u> Britney Morea</p> <p>By: _____ Angela Bertucci</p> <p>By: _____ Tina Wiepert</p>	<p>AGAINST THE GRAIN PET FOODS</p> <p>By: _____</p> <p>SHER SERVICES COMPANY INCORPORATED</p> <p>By: _____</p>
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By: _____

Britney Morea

By: Angela Bertucci

Angela Bertucci

By: _____


Tina Wiepert

AGAINST THE GRAIN PET FOODS

By: _____

SHER SERVICES COMPANY
INCORPORATED

By: _____

<p>By: _____ Britney Morea</p> <p>By: _____ Angela Bertucci</p> <p>By: <u></u> Tina Wiepert</p>	<p>AGAINST THE GRAIN PET FOODS</p> <p>By: _____</p> <p>SHER SERVICES COMPANY INCORPORATED</p> <p>By: _____</p>
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