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Attorneys for Plaintiffs, CANDIDA ARACELY TORRES
and JUAN A. VILLAREAL-ROMERO, on behalf of
themselves and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

CANDIDA ARACELY TORRES and JUAN
A. VILLAREAL-ROMERO, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

PRIMAL PET FOODS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: FCS054783

[Assigned for all purposes to the Hon. Wendy
G. Getty Dept. 8]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY;**

**[[Proposed] Order Concurrently Filed
Herewith]**

HEARING INFORMATION:

DATE: July 6, 2021 ✓

TIME: 9:00 a.m.

DEPT: 8 (Courtroom 1)

**[PROPOSED] ORDER FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

1 This Court, having considered the Motion of plaintiffs Candida Aracely Torres ("Plaintiff
2 Torres" or "Ms. Torres") and Juan A. Villareal-Romero ("Plaintiff Villareal-Romero" or "Mr.
3 Villareal-Romero") for Preliminary Approval of Class and Representative Action Settlement and
4 Provisional Class Certification for Settlement Purposes Only ("Motion for Preliminary Approval"),
5 the Declaration of David D. Bibiyan, the Joint Stipulation Re: Class Action and Representative
6 Action Settlement (the "Settlement Agreement"), the Notice of Proposed Class Action Settlement
7 ("Class Notice"), and other documents submitted in support of the Motion for Preliminary Approval,
8 hereby **ORDERS, ADJUDGES AND DECREES THAT:**

9 1. The definitions set out in the Settlement Agreement are incorporated by reference
10 into this Order; all terms defined therein shall have the same meaning in this Order.

11 2. The Court certifies the following settlement class for the purpose of settlement only:
12 all current and former non-exempt, hourly-paid employees who worked for defendant Primal Pet
13 Foods, Inc. ("Defendant") from May 18, 2016 through May 12, 2021 ("Class Period") in California
14 ("Class Members").

15 3. The Court preliminarily appoints named plaintiffs Ms. Torres and Mr. Villareal-
16 Romero as Class Representatives, and David D. Bibiyan, Diego Aviles and Sara Ehsani-Nia of
17 Bibiyan Law Group, P.C. as Class Counsel.

18 4. The Court preliminarily approves the proposed class settlement upon the terms and
19 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
20 settlement appears to be within the range of reasonableness of settlement that could ultimately be
21 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
22 amount is fair, adequate and reasonable as to all potential Class Members when balanced against
23 the probable outcome of further litigation relating to liability and damages issues. It further appears
24 that extensive and costly investigation and research has been conducted such that counsel for the
25 parties at this time are reasonably able to evaluate their respective positions. It further appears to
26 the Court that the settlement at this time will avoid substantial additional costs by all parties, as well
27 as the delay and risks that would be presented by the further prosecution of the Action. It further
28 appears that the settlement has been reached as the result of intensive, non-collusive, arms-length

1 negotiations utilizing an experienced neutral third party.

2 5. The Court approves, as to form and content, the Class Notice that has been submitted
3 herewith. *with modifications/clarifications discussed on record*
4 on 7/6/21.

5 6. The Court directs the mailing of the Class Notice by first-class mail to Class
6 Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds
7 that the dissemination of the Class Notice set forth in the Settlement Agreement complies with the
8 requirements of law, and appears to be the best notice practicable under the circumstances.

9 7. The Court hereby preliminarily approves the definition and disposition of the Gross
10 Settlement Amount of \$1,800,000, which is inclusive of attorneys' fees up to 35% the Gross
11 Settlement Amount (or \$630,000 based on the current Gross Settlement Amount), in addition to
12 actual costs; an enhancement award of \$7,500.00 for Ms. Torres and an enhancement of \$5,000 for
13 Mr. Villareal-Romero; costs of claims administration of approximately \$8,750; and PAGA penalties
14 in the amount of \$100,000.00, of which \$75,000 (75%) will be paid to the LWDA and \$25,000.00
15 (25%) will be paid to Participating Class Members (*i.e.*, Class Members who do not validly opt out).
16 The Gross Settlement Amount expressly excludes Employer Taxes, which will be paid separately
17 and apart by Defendant on the wages portion of the Settlement Amount.

18 8. Defendant represents that there are no more than 24,242 Workweeks worked by
19 Class Members between May 18, 2016 through December 20, 2020. In the event the number of
20 Workweeks in the Class Period exceeds 26,666 Workweeks, then the Gross Settlement Amount
21 shall be increased proportionally for every Workweek above and beyond 26,666 Workweeks by the
22 Workweek Value. The Workweek Value shall be calculated by dividing the current Gross
23 Settlement Amount (\$1,800,000.00) by 24,242, which amounts to a Workweek Value of \$74.25.
24 Thus, for example, should there be 27,000 Workweeks in the Class Period, then the Gross Settlement
25 Amount shall be increased by \$24,799.50. (27,000 Workweeks - 26,666 Workweeks x
\$74.25/Workweek.)

26 9. The Court deems Phoenix Settlement Administrators ("Phoenix") the Settlement
27 Administrator, and approves payment of administrative costs, not to exceed \$8,750.00, out of the
28 Gross Settlement Amount for services to be rendered by Phoenix on behalf of the class.

3 weeks (wg)

10. The Court directs Defendant to, within ~~ten (10) calendar days~~ of the date of this Order, provide the Settlement Administrator with the "Class List" for Settlement Class Members providing the following information for each Settlement Class Member: (1) name, last known address(es) and last known telephone number(s) currently in Defendants' possession, custody, or control; (2) Social Security Number in Defendants' possession, custody, or control; and (3) the hire dates and termination dates for each Class Member. The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly-found addresses, if any.

3 weeks (wg)

11. Within ~~seven (7) calendar days~~ of receiving the Class List from Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Class Members via first-class regular U.S. Mail using the most current mailing address information available. Prior to mailing the Notice to each Class Member, the Settlement Administrator shall undertake reasonable address verification measures so as to update the last known address for each Class Member. To the extent that this process yields an updated address, that updated address shall replace the last known address and be treated as the new last known address for purposes of this Settlement, and for subsequent mailings. The Settlement Administrator shall maintain a Class List with continuously updated contact information for the Class Members, and digital copies of all the Settlement Administrator's records evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from the Effective Final Settlement Date. Such information shall be available to Class Counsel and Defendants' Counsel upon request.

12. If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the Class Notice to the Settlement Class Member. Further, any Class Notices that are returned to the Settlement Administrator with a forwarding address before the

1 Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto. Class
2 Members who are re-mailed a Class Notice shall have an additional fifteen (15) calendar days to
3 submit a Request for Exclusion, objection or to dispute estimated payments.

4 13. The deadline for filing objections to any of the terms of the settlement shall be forty-
5 five (45) days from the date of mailing of the Class Notice (as the same may be extended in the
6 event of the remailing of a Class Notice). Any Class Member who wishes to object to the settlement
7 must mail a written objection to the Settlement Administrator, who will email a copy of the objection
8 to Class Counsel and counsel for Defendant. Defendant's Counsel will lodge a copy of the objection
9 with the Court. The objection should set forth in writing: (1) the objector's name and address, (2)
10 the reason(s) for the objection, along with whatever legal authority, if any, the objector asserts
11 supports the objection. Any Class Member who fails to make his or her objection in the manner
12 provided for in this Order may still be heard at the Final Approval Hearing.

13 14. Any Class Member may request exclusion from (i.e., "opts out" of) the Settlement
14 by mailing a written request to be excluded from the Settlement ("Request for Exclusion") to the
15 Settlement Administrator, postmarked within forty-five (45) days from the date of mailing of the
16 Class Notice (as the same may be extended in the event of the remailing of a Class Notice). To be
17 valid, a Request for Exclusion must include the Class Member's name, social security number and
18 signature and the following statement or something to its effect: "Please exclude me from the
19 Settlement Class in the *Torres v. Primal Pet Foods, Inc.* matter" or a statement of similar meaning.
20 The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to
21 Class Counsel and Defendant's Counsel and shall report the Requests for Exclusions that it receives,
22 to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any
23 Settlement Class Member who requests exclusion using this procedure will not be entitled to receive
24 any payment from the Settlement and will not be bound by the Settlement Agreement or have any
25 right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does
26 not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
27 by all terms of the Settlement, including those pertaining to the Released Claims, as well as any
28 Judgment that may be entered by the Court if Final Approval of the Settlement is granted.

1 15. Defendant has the right to withdraw from the settlement at any time prior to final
2 approval if more than 10% of Settlement Class Members affirmatively and validly opt out of the
3 Settlement.

4 16. If a Class Member objects to the Settlement, the Class Member will remain a
5 member of the Settlement Class and, if the Court approves the Settlement, the Class Member will
6 be bound by the terms of the Settlement in the same way and to the same extent as a Class member
7 who does not object. A Class Member cannot both object and opt out. If a Class Member both
8 objects and opts out of the Settlement, the objection will be overruled and the opt-out will control.

9 17. No later than ^{2 weeks} ~~seven (7) calendar days~~ from the Response Deadline, the Settlement
10 Administrator shall prepare and submit to Class Counsel and Defendant's Counsel a declaration
11 attesting to the completion of the notice process as set forth in the Settlement Agreement, including
12 an explanation of the number of attempts to obtain valid mailing addresses for, and re-sending of,
13 any Class Notice returned undeliverable and the identities, number of, and copies of all opt-outs and
14 objections received by the Settlement Administrator.

15 18. Any checks from this distribution that are not cashed by Participating Class Members
16 within one-hundred-eighty (180) calendar days from the date of the mailing of the checks shall be
17 cancelled within seven (days) after the expiration of the 180-day period. Checks for such payments
18 shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or
19 abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The
20 Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384,
21 shall be transmitted as follows: to Legal Aid at Work, 180 Montgomery St., Suite 600, San
22 Francisco, California 94104 for use in Solano County. The Settlement Administrator shall prepare
23 a report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the
24 report shall be presented to the Court by Class Counsel along with a proposed amended judgment
25 that is consistent with the provisions of Code of Civil Procedure section 384.

26 19. All papers filed in support of final approval, including supporting documents for
27 attorneys' fees and costs, shall be filed by October 8, 2021.

20. Class Counsel and counsel for Defendant shall file any responses to any written objections submitted to the Court by five (5) court days prior to the final approval hearing.

21. A final approval hearing shall be held with the Court on November 4, 2021 at 9³⁰ ~~a.m.~~ ~~p.m.~~ in Department 8, Courtroom 1, (Old Courthouse) of the above-entitled Court to determine: (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to award Class Counsel; (3) the amount of incentive award to the Class Representative; (4) the amount to be paid to the Settlement Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA. In the event the settlement does not become effective in accordance with the terms of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the parties shall revert to their respective positions as of the entry of the Settlement Agreement. The parties will be free to assert any claim or defense that could have been asserted at the time of entry of the Settlement Agreement.

IT IS SO ORDERED.

Dated: 7/6, 2021


Judge of the Superior Court

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd.,
Suite 500, Beverly Hills, California 91211.

5 On April 9, 2021, and pursuant to California Code of Civil Procedure section 1010.6, I
6 caused a true and correct copy of **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL**
7 **OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL**
8 **CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATION OF**
9 **DAVID D. BIBIYAN IN SUPPORT THEREOF; [PROPOSED] ORDER THEREON** to be
10 served by electronic transmission to the below referenced electronic e-mail addresses as follows:

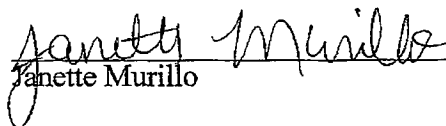
11 Christopher J. Banks
12 Morgan Lewis & Bockius LLP
13 1 Market, Spear Street Tower
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15 Marina C. Gruber
16 Morgan Lewis & Bockius LLP
17 1400 Page Mill Road
18 Palo Alto, California 94304
19 marina.gruber@morganlewis.com

20 **Counsel for Defendant Primal Pet Foods, Inc.**

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct.

23 Executed on April 9, 2021 at Beverly Hills, California.

24
25
26
27
28

Janette Murillo