

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

<b>MICHAEL TAYLOR, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 1616-CV11531</b>
	)	
<b>DYNAMIC PET PRODUCTS, LLC, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER GRANTING PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter comes before the Court on Plaintiffs Michael Taylor, Dawn Fortner and Catherine Gemkow's ("Plaintiffs") Motion for Preliminary Approval of Class Action Settlement. Having reviewed and considered Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, the Suggestions in Support filed contemporaneously with the Motion, and having also reviewed the parties' Settlement Agreement and the proposed class settlement notices and proposed notice plan, the Court finds that the Motion for Preliminary Approval of Class Action Settlement should be **GRANTED**.

**IT IS THEREFORE ORDERED** that Plaintiffs' Motion for Preliminary Approval of Class Action Settlement is hereby **GRANTED**.

**IT IS FURTHER ORDERED** that:

1. Preliminary Approval of the Settlement and Certification of the Settlement Class.
  - a. This Order incorporates herein, and makes a part hereof, the Settlement Agreement, its definitions, and its Exhibits thereto. Unless otherwise provided herein, the terms defined in the Settlement Agreement shall have the same meanings herein.

b. Based on the Court's examination of the record, the Court has made a preliminary determination that there is probable cause to find that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class under Missouri Rule of Civil Procedure 52.08 and applicable case law. In evaluating the fairness of the Settlement, the Court has considered: (1) the absence of fraud or collusion behind the Settlement; (2) the complexity, expense, and likely duration of the action; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of Plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of Plaintiffs' Counsel and Plaintiffs. *See State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 378 n.6 (Mo. Ct. App. 1997).

In particular, the Court preliminarily finds that: (a) the Settlement is not the product of any fraud or collusion, but rather resulted from arm's-length negotiations between adverse parties represented by experienced counsel (including interested third parties and their separate counsel, who were allowed full involvement in the mediations and settlement negotiations) and supervised by an experienced mediator; (b) the action is sufficiently complex, would be expensive to litigate, and would take sufficiently long to reach a judgment on the merits that the Settlement should be approved; (c) the Settlement was agreed to only after Plaintiffs' counsel conducted sufficient research and discovery to effectively evaluate the strengths and weaknesses of Plaintiffs' claims; (d) Plaintiffs' probability of success on the merits is uncertain; (e) the Settlement benefits are within the range of possible recovery, given the facts of the case, the inherent factual and legal difficulties in trying a nationwide class action, and the potential obstacles to recovery on any judgment; (f) Plaintiffs' counsel and Plaintiffs have concluded that the Settlement is fair, reasonable, and adequate; and (g) the Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.

Having considered the essential terms of the Settlement under the standards for preliminary approval of settlements recommended in the relevant jurisprudence, the Court preliminarily approves the Settlement and finds that those Settlement Class Members whose claims would be settled, compromised, dismissed, and/or released pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other related matters.

c. The Court preliminarily finds that the proposed Settlement Class meets all of the applicable requirements under Missouri Rule of Civil Procedure 52.08(a) and (b)(3). The Court makes the following preliminary findings for purposes of certifying the Settlement Class only: (1) Pursuant to Rule 52.08(a)(1), the Court finds that the members of the Settlement Class are so numerous that joinder of all members is impracticable. (2) Pursuant to Rule 52.08(a)(2), the Court determines that there are common issues of law and fact for the Settlement Class. (3) Pursuant to Rule 52.08(a)(3), the Court finds that the claims of the Class Representatives are typical of the claims of the Settlement Class that they represent. (4) Pursuant to Rule 52.08(a)(4), the Court finds that Plaintiffs and Plaintiffs' counsel will fairly and adequately protect and represent the interests of all members of the Settlement Class. (5) Pursuant to Rule 52.08(b)(3), the Court finds that questions of law and fact common to the members of the Settlement Class predominate over questions that may affect only individual members and that a class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Accordingly, the Court hereby certifies the following Class for settlement purposes only:

All persons who have purchased a Real Ham Bone For Dogs product in the United States other than for purposes of resale from January 1, 2011 to the first date notice is sent to the class or who suffered pet injury/property damage from use of the Real Ham Bone For Dogs from January 1, 2011 to the first date notice

is sent to the class. Excluded from the Class are (1) Defendants, subsidiaries and affiliates of Defendants, members, directors or officers of Defendants, and members of their immediate families; (2) federal, state, and local governmental entities; and (3) any judicial officers presiding over this action, their judicial staff, and members of their immediate families.

For purposes of this Order, the “Class Period” is the period from January 1, 2011 to the first date notice is sent to the Settlement Class.

d. The proposed Class Representatives, Plaintiffs Michael Taylor, Dawn Fortner and Catherine Gemkow, are conditionally appointed as representatives of the Settlement Class, and Plaintiffs’ counsel, Shank & Moore, LLC, is conditionally appointed as Class Counsel.

e. The Court has personal jurisdiction over the Class Representatives, the Settlement Class Members, and Defendants.

f. Plaintiffs and Class Counsel are authorized to enter into the Settlement Agreement on behalf of the Settlement Class, subject to final approval by this Court of the Settlement. Plaintiff and Class Counsel are authorized to act on behalf of the Settlement Class with respect to all acts required by the Settlement Agreement or such other acts which are reasonably necessary to consummate the proposed Settlement set forth in the Settlement Agreement.

g. Entry of this Order is without prejudice to the rights of: (a) Defendants Dynamic Pet Products, LLC and Frick’s Meat Products, Inc. (“Defendants”) to oppose class certification in the Action, and seek decertification or modification of the Settlement Class as certified, should the settlement not be approved or implemented for any reason; or (b) the Parties to terminate the Agreement as provided in the Agreement.

2. Approval of Class Notice and Method of Dissemination and Appointment of Settlement Administrator. Plaintiffs have presented to the Court proposed forms of class settlement notices, including long form notice and short form notice, which are attached as

Exhibits B and C respectively to the Settlement Agreement. The Court finds that these class settlement notices are reasonably calculated under the circumstances to apprise interested individuals of the Settlement and afford them the opportunity to exercise all options available to them with respect to it. The Court finds that the content and form of the notices satisfy the requirements of Missouri Rule of Civil Procedure 52.08 and due process. The class settlement notices fairly and adequately: (a) describe the terms and effect of the Settlement; (b) notify the Settlement Class that Plaintiffs' counsel will seek reimbursement of litigation expenses, an award of attorneys' fees, and incentive awards for the Plaintiffs; (c) notify the Settlement Class of the time and place of the final approval hearing; (d) advise the Settlement Class that the Court will exclude all members who so request by a specified date and describe the process for requesting exclusion; (e) advise the Settlement Class that a judgment in the case, whether favorable or not, will bind all class members who do not properly request exclusion; and (f) advise the Settlement Class that members who do not request exclusion may, if so desired, file objections to the Settlement by a specified date through a specified process for objecting to the Settlement, and enter an appearance in the case through counsel. For these reasons, the Court approves the proposed class settlement notices in form and content.

Plaintiffs have proposed a plan, as described in Exhibit D to the Settlement Agreement, to disseminate the settlement notices to the Settlement Class through a direct email and mail campaign and to publish notice online through means of internet banner notices targeted to Settlement Class Members, targeted social media banner notices, and web-based notice using keyword searches displaying banner notices. Each notice advises the Settlement Class Members that they may contact the Settlement Administrator to obtain more information concerning the class action and the Settlement. The notice plan also incorporates the reasonable use of a

settlement website on which members of the Settlement Class may obtain or request additional information or copies of settlement documents, including Claim Forms and the Settlement Agreement. The Court finds that this method of dissemination provides the best notice practicable under the circumstances to the Settlement Class and will fully comply with Missouri Rule of Civil Procedure 52.08 and satisfy due process, and therefore approves the proposed notice plan.

The Court hereby appoints Dahl Administration (“Dahl”) as the settlement and claims administrator (“Settlement Administrator”) in the case for purposes of disseminating the settlement notices and managing the claims process to follow. Fourteen (14) days after the date of this Order (the “Notice Date”), Dahl shall cause the direct email and mail notices to be mailed to the last known email or postal address of each Settlement Class member who can be identified in Defendants’ records by reasonable effort. Within fourteen (14) days after the date of this Order, Dahl shall cause the internet advertisements and notices to be placed, and make available the settlement website. The long form Notice substantially in the Form of Exhibit B to the Settlement Agreement shall be available on the settlement website and shall be provided to any Settlement Class Member who requests a copy.

3. Exclusion from the Settlement. Any member of the Settlement Class who wishes to be excluded (“Opt-Out”) from the Settlement must submit a written Opt-Out request to Dahl as directed in the detailed settlement notice, postmarked on or before **July 3, 2017**, which is sixty (60) days after the Notice Date. In order to be valid, each Opt-Out request must include the legal name, address, telephone number and personal signature of the individual requesting exclusion, and a clear and plain statement that the individual wishes to be excluded from the lawsuit, *Michael Taylor, et al. v. Dynamic Pet Products, LLC, et al.*, Case No. 1616-CV11531. Opt-Out

requests must be mailed to the Settlement Administrator, Dahl, as directed in the long form Notice. Members of the Settlement Class who request exclusion (a) will not participate in any distribution of the Settlement Fund and will not receive a settlement payment; (b) will not be bound by the terms of the Settlement Agreement or any judgment entered in this matter, including the releases provided therein, and will retain any right to file their own lawsuit(s) concerning the claims in this matter; and (c) will not be able to object to the Settlement. Each member of the Settlement Class who does not properly request to Opt-Out from the Settlement Class by mailing an Opt-Out request postmarked by **July 3, 2017** (sixty (60) days after the Notice Date) will remain a member of the Settlement Class and will bound by the terms of the Settlement Agreement and any judgment entered in this matter, including the releases provided therein.

4. Claim Forms. In order to be eligible to share in the distribution of the Settlement Fund, class members must complete and timely submit a Claim Form, which shall be published on the class settlement website, included with the full notice upon request, and available from the Settlement Administrator. All Claim Forms must be submitted to the Settlement Administrator as directed in the Claim Form, postmarked no later than **August 31, 2017**, one hundred twenty (120) days after the Notice Date. Any claims submitted to the Settlement Administrator thereafter shall be forever barred. However, the Settlement Administrator may, in its discretion, permit a Settlement Class Member who makes a timely Claim to remedy deficiencies in such Settlement Class Member's Claim Form or related documentation. Any class member who fails to submit a valid, timely Claim Form shall be forever barred from receiving any distribution from the Settlement Fund or payment pursuant to the Settlement Agreement, but shall in all other respects be bound by all of the terms of the Settlement Agreement and any judgment entered in

this matter, including the releases provided therein. Dahl shall cause the Claim Form (with such non-substantive modifications thereto as may be agreed upon by the parties) to be available to the Settlement Class via the settlement website or by email or mail upon request. Any Claim Form submitted by a class member will not bar that class member's ability to object to the Settlement or any aspect thereof.

5. Objections to the Settlement. Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement, or to the proposed requests for litigation expenses, attorneys' fees, and/or case contribution award, may file an objection to that effect. A valid and proper objection must include: (a) the legal name, address, telephone number and personal signature of the objector; (b) a clear reference that the objection is made with respect to the Settlement in the case of *Michael Taylor, et al. v. Dynamic Pet Products, LLC, et al.*, Case No. 1616-CV11531; (c) information sufficient to demonstrate membership in the Class (including information verifying the approximate date the objector purchased The Real Ham Bone For Dogs and the location (store, city and state) where the objector purchased The Real Ham Bone For Dogs and/or information and documents verifying that the objector suffered pet injury/property damage from use of The Real Ham Bone For Dogs during the Class Period); (d) a statement of the specific grounds for objection asserted, along with any legal support, papers, briefs or evidence that such objector wishes to bring the Court's attention; and (e) whether the objector intends to appear at the Fairness Hearing, either in person or through counsel. Objections must be mailed to all of the following:



**To the Court:**

Clerk of the Court  
Circuit Court of Jackson County  
Independence Courthouse  
308 West Kansas Street, 2nd Floor  
Independence, Missouri 64050

**To Plaintiffs' Counsel:**

Christopher S. Shank  
David L. Heinemann  
SHANK & MOORE, LLC  
1968 Shawnee Mission Parkway, Suite 100  
Mission Woods, Kansas 66205

**To Counsel for Defendant:**

Daniel E. Tranen  
Wilson Elser Moskowitz Edelman & Dicker LLP  
101 West Vandalia Street, Suite 220  
Edwardsville, Illinois 62025

All objections must be filed with the Court and received by parties' counsel on or before **July 3, 2017**, which is sixty (60) days after the Notice Date. If the objector retains an attorney to represent him or her for the purposes of making an objection, the attorney must formally enter his or her appearance in the case on or before **July 10, 2017**, which is sixty-seven (67) days after the Notice Date.

Any member of the Settlement Class who does not timely file and serve a valid written objection complying with the terms of this Order shall be deemed to have waived all objections to the Settlement and shall be foreclosed from raising any objection at the Final Approval Hearing. The Parties may file any desired response to any objection that is made, up and until seven (7) days before the Final Approval Hearing.

6. Final Approval of the Settlement. A hearing is scheduled for August 3, 2017 at 1:30 PM which is at least 75 days after the Notice Date. The hearing shall be held in Division 16 of the Circuit Court of Jackson County, Missouri, in the courtroom of the Honorable Marco A. Roldan, Jackson County Courthouse, 308 W. Kansas, Independence, Missouri, 64050. At the hearing the Court will determine, among other things: (a) whether the Settlement merits final approval as fair, reasonable, and adequate; (b) whether this action should be dismissed with prejudice and whether judgment should be entered pursuant to the terms of the Settlement Agreement; (c) whether the settlement notice to the Settlement Class was sufficient under the circumstances; (d) whether Plaintiffs' counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement; (e) whether the applications for an award of litigation expenses and attorneys' fees to Plaintiffs' counsel and for incentive awards to the Class Representatives are fair and reasonable and should be approved; and (f) whether the Court shall enter a Final Approval Order (i) providing that the Court retains jurisdiction for enforcement of the Released Claims, (ii) directing distribution of the Settlement funds in accordance with the Settlement Agreement, and (iii) entering the Release and Injunction.

On or before July 27, 2017, which is seven (7) days prior to the Final Approval hearing, Plaintiffs' counsel shall file all motions associated with the final approval hearing, including a motion for final approval of the Settlement and applications for awards of litigation expenses and attorneys' fees and an incentive award for the Class Representative. The Settlement Administrator also shall post a copy of these motions on the class settlement website and shall provide copies to any class member who requests them.

Any objector who files and serves a timely, valid objection may also appear at the final approval hearing, either in person or through qualified counsel retained at the objector's expense.

Objectors and their attorneys intending to appear at the final approval hearing must effect filing and service of a notice of intention to appear setting forth the name, address, and telephone number of the objector and the objector's attorney, if applicable. The notice of intention to appear must be filed with the Court and served on counsel for the parties at the respective addresses listed in Section 5, above, and must be accomplished on or before **July 3, 2017**, which is sixty (60) days after the Notice Date. Any objector or attorney who does not timely file and serve a notice of intention to appear shall not be permitted to appear at the final approval hearing.

The Court reserves the right to approve the Settlement at or after the Final Approval Hearing with such modification(s) as may be consented to by the Parties to the Agreement and without further notice to the Settlement Class.

7. Termination of the Settlement. This Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions as of April 3, 2017, if the Settlement is terminated in accordance with the terms of the Settlement Agreement.

8. Use of Order. This Order is not admissible as evidence for any purpose against Defendants in any pending or future litigation involving any of the parties. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability, and Defendants specifically deny any such fault, wrongdoing, breach, and liability. This Order shall not be construed or used as an admission, concession, or declaration by or against Plaintiffs or the Settlement Class that their claims lack merit or that the relief requested in this action is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any party of any arguments, defenses, or claims that may exist in the event that the Settlement is

terminated. Moreover, the Settlement and any proceedings conducted pursuant to the Settlement are for settlement purposes only. Neither the fact of, nor any provision contained in, the Settlement or the documents submitted in conjunction with the Settlement, nor any actions taken thereunder shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any legal argument that has been, could have been, or might in the future be asserted.

9. Stay. Because the Settlement entered into by the parties has been preliminarily approved by this Court, all proceedings in this action, other than those necessary to administer and evaluate the Settlement pursuant to Rule 52.08, are stayed.

10. Other Provisions.

a. No discovery with regard to the Settlement or Agreement shall be permitted as to any of the Parties to the Agreement other than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with the applicable rules of this Court.

b. Any information received by the Settlement Administrator in connection with this Settlement that pertains to a particular Member of the Settlement Class shall be confidential and shall not be disclosed by the Settlement Administrator to any other Settlement Class Member or their counsel.

c. Defendants may communicate with Settlement Class Members regarding the provisions of this Agreement, so long as such communications are not inconsistent with Class Notice or other agreed upon communications concerning the Agreement. Defendants may refer Settlement Class Members to the Settlement Administrator and the settlement website. Defendants

will not discourage the filing of any claims allowed under Section II of the Settlement Agreement. In addition, Defendants may continue to communicate with their customers, business contacts, and members of the public in the ordinary course of business without need to submit the communication to the Court for approval.

d. The Court may alter the time or the date of the Final Approval Hearing without further notice to the Members of the Settlement Class, provided that the time or the date of the Final Approval Hearing shall not be set at a time or date earlier than the time and date set forth in Paragraph 6 above, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

**IT IS SO ORDERED.**

Date: April 19, 2017

  
The Honorable Marco A. Roldan, Circuit Judge