

Case 1:07-cv-02867-NLH-AMD Document 289-3 Filed 01/22/2009 Page 1 of 1

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEYIN RE: PET FOOD PRODUCTS  
LIABILITY LITIGATION

MDL Docket No. 1850 (All Cases)

Civil Action No. 07-2867 (NLH)

~~REVISED~~ **ORDER APPROVING  
FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

UPON CONSIDERATION of this Court's Order Approving Class Action Settlement, Certifying Settlement Class, Directing Entry of Final Judgment and Awarding Attorneys' Fees and Reimbursement of Expenses [Dkt. No. 272] providing that this Court "retains exclusive and continuing jurisdiction over this action and the Parties ... for the purpose of supervising, administering, [and] implementing ... the Settlement and the claims process thereunder [and] all proceedings related to the Settlement Agreement; and

UPON CONSIDERATION of the First Amendment to the Settlement Agreement amending Sections IV.D.1, IV.D.3, IV.D.4 and IV.E.5 in accordance therewith;

This Court hereby orders that the First Amendment to the Settlement Agreement is APPROVED.

SO ORDERED.



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NOEL L. HILLMAN, U.S.D.J.

At Camden, New Jersey

Dated: January 27, 2009

**FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

WHEREAS, all defined terms used herein shall have the meaning set out in the Settlement Agreement;

WHEREAS, pursuant to Section IV.D.1 of the Settlement Agreement, an Escrow Account for the Settlement Fund has been established at Charter One Bank in Chicago, Illinois;

WHEREAS, portions of the Settlement Fund have been advanced to the Escrow Account at Charter One for class notice and related administrative expenses;

WHEREAS, Section IV.D.4 of the Settlement Agreement provides that monies held in the Escrow Account shall be invested in United States Treasuries;

WHEREAS, because of unanticipated economic conditions beyond the parties' control, Plaintiffs' Lead Counsel has requested that the Escrow Account be moved from Charter One to another institution;

WHEREAS, the parties agreed and the courts authorized and/or directed the transfer of the Escrow Account to JP Morgan Chase;

WHEREAS, Plaintiffs Lead Counsel could not reach a satisfactory escrow agreement with JP Morgan Chase and, thereafter, Plaintiffs' Lead Counsel requested that the Escrow Account be moved to Wells Fargo and Defendants did not object;

WHEREAS, on January 8, 2009, the MDL Court conducted a telephonic conference on Section IV of the Settlement Agreement, including the location of the Escrow Account and investment, if at all, of the Settlement Fund;

WHEREAS, the Federal Deposit Insurance Corporation ("FDIC") has issued Final Rules implementing the Transaction Account Guarantee Program of the Temporary Liquidity Guarantec Program effective as of December 19, 2008 providing a full guarantee by the FDIC for funds held in FDIC-insured depository institutions (which have not opted-out of the

program) in non-interest bearing transaction accounts above the existing deposit insurance limit through December 31, 2009, unless extended;

WHEREAS, it has been determined that Wells Fargo has not opted-out of the Transaction Account Guarantee Program;

WHEREAS, in the course of the January 8 hearing, the MDL Court directed, pending further order of Court, that the Settlement Fund be placed at this time in a non-interest bearing escrow account at Wells Fargo to achieve the full guarantee that is presently due to expire on December 31, 2009 unless further extended;

NOW THEREFORE, pursuant to and as a result of the Court's ruling, the following provisions of the Settlement Agreement are hereby amended as follows:

I. Section IV.D.1 of the Settlement Agreement is amended to provide that the Escrow Account for the Settlement Fund will be established at Wells Fargo bank.

II. Section IV.D.4 of the Settlement Agreement is amended to provide that monies held in the Escrow Account shall be held in a non-interest bearing trust account with the Escrow Agent so long as the non-interest bearing trust account is fully guaranteed by the FDIC.

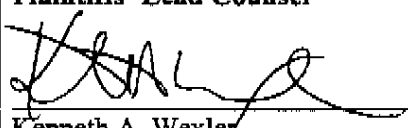
III. Section IV.D.3 of the Settlement Agreement is amended to provide that five (5) business days following entry of the last order by the MDL Court and the Canadian Courts approving this First Amendment to the Settlement Agreement, the Defendants shall pay into the Escrow Account the balance of the Settlement Fund not previously paid.

IV. Section IV.E.5 of the Settlement Agreement, is amended to provide: Maintenance, Investment and Distribution of Settlement Fund: The Parties, Defendants, Released Entities and their counsel shall not have any responsibility or liability whatsoever with respect to the maintenance, investment or distribution of the Settlement Fund. In addition, the Parties, Defendants, Released Entities and their counsel shall not have any responsibility for or

liability whatsoever with respect to the determination, administration, calculation or payment of Claim Forms from the Settlement Fund (except as specifically described in this Agreement) or any losses incurred in connection therewith.

Pursuant to Section VII.H.2 of the Settlement Agreement, the First Amendment to the Settlement Agreement is contingent on entry of approval orders by the MDL Court and by the applicable Canadian Courts. All other terms of the Settlement Agreement not specifically amended by this First Amendment shall remain in effect.

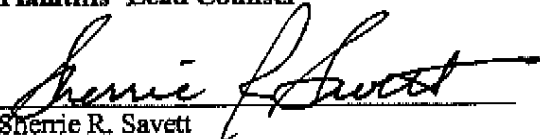
Dated January 22, 2009

<p><b>Plaintiffs' Lead Counsel</b></p>  <hr/> <p>Kenneth A. Wexley Mark J. Tamblyn WEXLER WALLACE LLP 55 West Monroe Street, Suite 3300 Chicago, Illinois 60603</p>	<p><b>Plaintiffs' Lead Counsel</b></p> <hr/> <p>Sherrie R. Savett Russell D. Paul BERGER &amp; MONTAGUE, P.C. 1622 Locust Street Philadelphia, Pennsylvania 19103</p>
<p><b>Plaintiffs' Lead Counsel</b></p> <hr/> <p>William M. Audet AUDET &amp; PARTNERS LLP 221 Main Street, Suite 1460 San Francisco, California</p>	<p><b>Plaintiffs' Lead Counsel</b></p> <hr/> <p>Scott A. Kamber Jay Edelson KAMBEREDELSON, LLC 11 Broadway, 22<sup>nd</sup> Floor New York, New York 10004</p>

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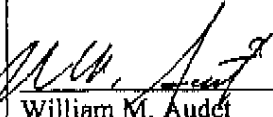
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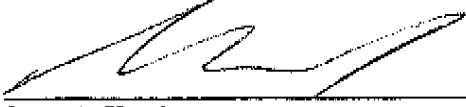
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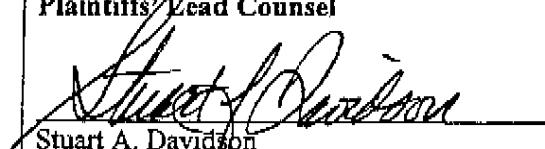
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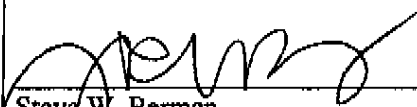
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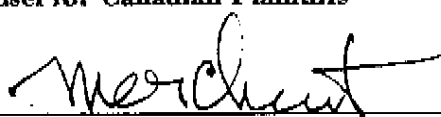
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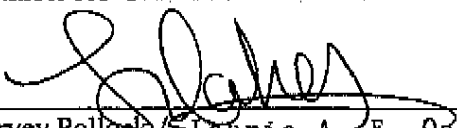
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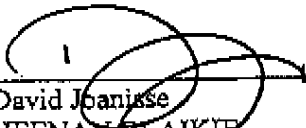
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<b>Defendants' Liaison Counsel</b> <hr/> <p>Mary E. Gately DLA PIPER US LLP 500 8th Street, NW Washington, DC 20004</p>	<b>Defendants' Liaison Counsel</b> <hr/> <p>Mark C. Goodman, Esq. SQUIRE, SANDERS &amp; DEMPSEY L.L.P. One Maritime Plaza, Suite 300 San Francisco, CA 94111-3492</p>

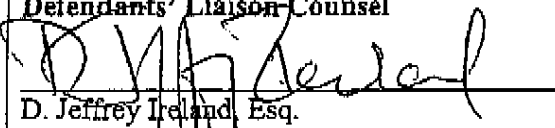
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