

## **APPENDIX II**

### Pre-Approval Notice

# **DIAMOND PET FOODS CLASS ACTION NOTICE OF SETTLEMENT AND APPROVAL HEARING**

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS**

### **WHO IS INCLUDED?**

This notice applies to all residents in Canada who purchased and/or whose pets consumed Pet Food Products ("**the Products**") that were placed by Diamond Pet Foods and Costco Wholesale into the stream of commerce in 2011 and 2012 and were subsequently recalled on April 6, April 26, April 30, and May 4/5 of 2012. You can see a complete list of the Products at [www.petfoodclaim.ca](http://www.petfoodclaim.ca), or if you have questions you can call Class Counsel at the number given below.

### **WHAT IS THIS CASE ABOUT?**

Class proceeding lawsuits were initiated in Quebec and Ontario in relation to the above Products. These lawsuits alleged that the Products were contaminated with Salmonella, which if ingested by an animal can cause serious illness or even death in the most severe cases. The Defendants admit that they carried out a Voluntary Recall, but deny that the Products in fact caused the illness or death of any animal in Canada. The Court did not decide which side was right. Instead, the parties have decided to settle.

### **WHAT DOES THIS SETTLEMENT PROVIDE?**

If you purchased one or more of the Products and did not: i) return the Product(s) to the dealer or otherwise exchange the Products and/or ii) sign a release in favour of the Defendants, you may be entitled to benefits under the Settlement Agreement.

A total settlement fund limited to a maximum of CDN \$460,000 is intended to pay claims to eligible Class Members, the costs of the settlement notice, attorneys' fees in the amount of \$150,000 plus applicable taxes, an award to the representative Plaintiffs of \$1,500 each, and the costs of settlement administration. Full details about the Settlement are on the website [www.petfoodclaim.ca](http://www.petfoodclaim.ca).

### **WHAT TYPE OF COMPENSATION CAN YOU RECEIVE?**

Qualifying Class Members are divided into 2 groups, depending on whether or not their pet(s) got sick or died as a result of consuming the Product(s).

*SUB-CLASS I*

- Defendants will create a settlement fund limited to a total maximum of 35% of the net balance of the total settlement fund to pay claims from Sub-Class I. The Class Member, on submitting an eligible claim, shall receive one of the following:
  1. reimbursement for bags of Product actually purchased, up to a maximum equal to the retail value of 2 bags of Product per pet; OR, if the Sub-Class II Fund is insufficient to pay all eligible claims,
  2. a pro rata share of the Sub-Class II Fund.

### *SUB-CLASS II*

- Defendants will create a settlement fund limited to a total maximum of 65% of the net balance of the total settlement fund to pay claims from Sub-Class II. The Class Member, on submitting an eligible claim, shall receive one of the following:
  1. reimbursement for bags of Product actually purchased, up to a maximum equal to the retail value of 2 bags of Product per pet, plus full reimbursement of the actual cost of veterinarian testing, care, and/or treatment of the pets in question, including the cost of medication, plus (but only where the pet died as a result of ingesting the Product) the fair market value of the pet; OR, if the Sub-Class II Fund is insufficient to pay all eligible claims
  2. a pro rata share of the Sub-Class II Fund.

Payments of benefits to Class members resident in Quebec are subject by law to a deduction to be paid to the *Fonds d'aide aux recours collectifs*.

### **HOW DO YOU ASK FOR A PAYMENT?**

To receive money, eligible Class Members must submit a claim form and supporting documentation/information (if applicable) through the Settlement Website, by email, or by mail sent no later than **120 days** after the Court has approved the Settlement Agreement. The Claim Form is available on the Settlement Website at [www.petfoodclaim.ca](http://www.petfoodclaim.ca)

There will be no further notice in the newspapers of this Settlement Agreement. Should the Settlement Agreement receive final approval, further notice will be mailed or e-mailed to known Class Members and published on the Settlement Website (in English and French).

### **WHAT ARE YOUR OPTIONS?**

If you are a Class Member, you may (1) do nothing; (2) exclude yourself; (3) send in a Claim Form; and/or (4) object to the settlement. If you don't want to be bound by the settlement, you must exclude yourself. However, if you exclude yourself, you can't get a payment, but you can sue the Defendants for these claims. If you stay in the Class, you may submit a Claim Form and/or object to the settlement.

### **WHAT ARE THE IMPORTANT DATES AND DEADLINES?**

A motion to approve the Settlement will be heard by the Superior Court of Quebec, 1 Notre Dame Street East, Montréal, Quebec on **January 28, 2016 at 9:15 A.M. in room 2.08**.

If the proposed Settlement is approved, it will be binding on all Class Members except those who opt out before the deadline.

If you wish to opt out, you must no later than **60 days** from the date the Court has approved the Settlement Agreement: i) complete and submit by mail the Opt Out Form; ii) the Opt Out Form is available on the Settlement Website at [www.petfoodclaim.ca](http://www.petfoodclaim.ca). Class Members who want to opt out and who are residents of Quebec must IN ADDITION give written notice to the Clerk of the Superior Court of Quebec.

If you wish to object to the proposed settlement, you must send a written notice of objection to Class Counsel by no later than **January 13, 2016**. Your written objection should include: (a) your name, address, e-mail address and telephone number; (b) a brief statement of the reasons for your objection; and (c) whether you plan to attend at the hearing in person or through a lawyer, and if by lawyer, the name, address, e-mail address and telephone number of the lawyer. **Class Members who do not oppose the proposed settlement need not appear at the settlement approval hearing or take any other action at this time.**

### **WHEN SHOULD I MAKE A CLAIM?**

You may begin making a claim right away. However, no payments will be made until the Court has approved the Settlement Agreement.

### **WHEN DO I GET PAID?**

Cheques will only begin to be mailed to Class Members eligible for compensation at the **earliest** starting on **May 30, 2016**, assuming that the Settlement is approved and that such judgment has become final.

### **HOW CAN YOU GET MORE INFORMATION?**

A complete copy of the Settlement Agreement and detailed information on how to obtain or file a Claim are available on the Settlement Website at [www.petfoodclaim.ca](http://www.petfoodclaim.ca). To obtain a paper copy or for any other information, please communicate with Class Counsel at the phone numbers below.

### **WHO REPRESENTS ME?**

The Class Counsel, or law firm representing the petitioner, is the following:

Jeff Orenstein  
**Consumer Law Group Inc.**  
1030 Berri St., Suite 102  
Montreal, Quebec, H2L 4C3  
Telephone: 1-888-909-7863  
514-266-7863 | 416-479-4493 | 613- 627-4894  
Email: [jorenstein@clg.org](mailto:jorenstein@clg.org)  
Website: [www.clg.org](http://www.clg.org)

If there is a conflict between the provisions of this Notice and the Settlement Agreement and any of its Schedules, the terms of the Settlement Agreement shall prevail.

This notice has been approved by the Superior Court of Quebec.