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13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 JACKLYN FEIST and ANGELICA  
16 ZIMMER, Individually and on Behalf  
17 of All Others Similarly Situated,

18 Plaintiffs,

19 v.

20 PETCO ANIMAL SUPPLIES, INC.,  
21 and DOES 1 through 10, inclusive,

22 Defendant.

Case No.: 3:16-cv-01369-H-RNB

**NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: June 11, 2018

Time: 10:30 a.m.

Judge: Hon. Marilyn L. Huff

Crtm: 15A

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on June 11, 2018 at 10:30 a.m. in Courtroom  
3  
4 15A of the United States District Court, Southern District of California located at 333  
5 West Broadway, San Diego, California 92101. Plaintiffs Jacklyn Feist and Angelica  
6 Zimmer will seek an order preliminarily approving the proposed class action settlement  
7  
8 with Defendant Petco Animal Supplies, Inc., pursuant to Federal Rule of Civil  
9 Procedure 23.

10 This motion will be based upon this Notice of Motion, the Memorandum of  
11  
12 Points and Authorities, the Declaration of Mark S. Greenstone filed concurrently  
13 herewith, all pleadings and other papers on file or deemed to be on file at the time of  
14 the hearing on this motion, and upon such other evidence and oral argument as may be  
15 received at the time of the hearing on this motion.  
16

17 Dated: April 20, 2018

GLANCY PRONGAY & MURRAY LLP

19 By: s/Mark S. Greenstone

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28 *Settlement Class*

**PROOF OF SERVICE BY ELECTRONIC POSTING**

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On April 20, 2018, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Southern District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2018, at Los Angeles, California.

s/ Mark S. Greenstone  
Mark S. Greenstone

## Mailing Information for a Case 3:16-cv-01369-H-RNB Feist et al v. Petco Animal Supplies, Inc. et al

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- (No manual recipients)

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12 *Proposed Settlement Class*

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

JACKLYN FEIST and ANGELICA  
ZIMMER, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiffs,

v.

PETCO ANIMAL SUPPLIES, INC,

Defendant.

Case No.: 3:16-cv-01369-H-DHB

**MEMORANDUM OF POINTS AND  
AUTHORITIES SUPPORTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: June 11, 2018

Time: 10:30 a.m.

Judge: Hon. Marilyn L. Huff

Crtm: 15A

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1 **I. INTRODUCTION**

2 Plaintiffs Jacklyn Feist and Angelica Zimmer, individually and on behalf of  
3 the Class,<sup>1</sup> seek preliminary approval of the proposed Settlement with Defendant  
4 Petco Animal Supplies, Inc. for alleged violations of the Fair Credit Reporting Act.  
5 The Settlement establishes a \$1,200,000 non-reversionary Common Fund for the  
6 benefit of two Classes. Disclosure Class Members (estimated at approximately  
7 37,279 individuals) will receive a net settlement payment of about \$20 each. A  
8 small subset of Disclosure Class Members who are also Adverse Action Class  
9 Members (estimated at approximately 52 individuals) will receive an additional  
10 \$150 each. As discussed below, these amounts are well within the range of similar  
11 settlements that have been approved. Settlement payments will be made  
12 *automatically*—there is no need to submit a claim.

13 Class Counsel forged this favorable resolution amidst a rapidly shifting legal  
14 landscape for FCRA claims. As this Court is aware, Defendant moved to dismiss  
15 this case for lack of Article III standing based on *Spokeo v. Robins*, 136 S.Ct. 1540  
16 (2016). While this Court concluded that Plaintiffs had standing based on the  
17 allegations in the Complaint, it specifically noted that Defendant's standing  
18 challenge could be renewed on summary judgment. In addition, Defendant both  
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26 <sup>1</sup> Unless otherwise explicitly defined herein, all capitalized terms have the same  
27 meanings as those set forth in the Settlement Agreement, attached to the Declaration  
28 of Mark S. Greenstone ("Greenstone Decl.") as Ex. 1.

1 denied liability and asserted an advice of counsel defense based on advice received  
2 from one of the most experienced FCRA defense lawyers in the country, whom  
3 Defendant designated as a percipient expert witness. After taking into account these  
4 and other risks attendant to continued litigation and engaging in extensive arm's-  
5 length negotiations with an experienced mediator, the Parties agreed to the proposed  
6 Settlement. The proposed Settlement provides Class Members with excellent relief  
7 that is well within the range of reasonableness and should be preliminarily  
8 approved.  
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11

## 12 **II. STATUTORY BACKGROUND**

13 Congress enacted the Fair Credit Reporting Act ("FCRA") in 1970 to protect  
14 the "consumer's right to privacy" by ensuring "the confidentiality, accuracy,  
15 relevancy, and proper utilization" of consumer credit, personnel, insurance and other  
16 information. 15 U.S.C. § 1681.<sup>2</sup> Recognizing the "vital role" that consumer reports  
17 play in the modern economy, Congress sought to encourage those who handle the  
18 sensitive information in those reports to "exercise their grave responsibilities" in a  
19 way that "ensure[s] fair and accurate credit reporting." § 1681(a)(4); *Robinson v.*  
20 *Equifax Info. Servs., LLC*, 560 F.3d 235, 239 (4th Cir. 2009). The FCRA fosters  
21 these purposes through a set of interlocking requirements concerning the  
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27 <sup>2</sup> Unless otherwise indicated, all statutory references are to Title 15 of the United  
28 States Code.

1 procurement and use of consumer reports, and about how consumers must be  
2 informed of their rights. *See* § 1681b.

3  
4 This case arises under a provision of the FCRA that prohibits the procurement  
5 of an applicant's consumer report for employment purposes unless: (1) a clear and  
6 conspicuous disclosure is provided in a separate document that contains no  
7 extraneous information, and (2) the job applicant authorizes the procurement in  
8 writing. §1681b(b)(2). The statute provides:

9  
10 [A] person may not procure a consumer report, or cause a consumer  
11 report to be procured, for employment purposes with respect to any  
12 consumer, unless—

13 (i) a clear and conspicuous disclosure has been made in writing to the  
14 consumer . . . , in a document that consists solely of the disclosure, that  
15 a consumer report may be obtained for employment purposes; and  
16 (ii) the consumer has authorized in writing (which authorization may  
17 be made on the document referred to in clause (i)) the procurement of  
18 the report by that person.

19 *Id.* This is often referred to as the “stand-alone” disclosure requirement. Absent  
20 compliance with this requirement, it is illegal for a company to procure a job  
21 applicant's consumer report for employment purposes.

22 The FCRA also requires employers who use information in consumer reports  
23 to follow certain notice procedures, provide certain disclosures, and wait a  
24 reasonable period of time before taking an adverse action against a prospective,  
25 current or former employee. § 1681b(b)(3). Specifically, the FCRA requires “pre-  
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adverse” action notice procedures be followed – *i.e.*, consumers must be provided with a copy of their report and summary of rights before adverse action is taken. *Id.*

Any person who willfully violates the FCRA may be liable for actual damages or statutory damages of \$100 to \$1,000 per violation. § 1681n.

### III. FACTUAL BACKGROUND

Plaintiff Angelica Zimmer is a former employee on whom Defendant procured a consumer report during the application process. ¶¶ 34-35.<sup>3</sup> Plaintiff Jacklyn Feist applied for work with Defendant and attended two rounds of interviews, after which she was provided with a work schedule. ¶ 30. When Plaintiff Feist reported for her first day of work she was told that her background check had not come through and was not allowed to begin working. ¶ 32. Plaintiff Feist alleges that her background check had been received by Defendant, and that she was not hired because it came back with an adjudication result indicating “Does Not Meet Company Standards,” which was based on erroneous information. ¶¶ 31, 33. Plaintiff Feist further alleges that she was never provided with a pre or post-adverse action notice, a copy of her consumer report or an opportunity to cure any deficiencies therein in violation of § 1681b(b)(3). ¶ 33.

---

<sup>3</sup> ¶¶ or ¶ refers to the paragraphs contained in the proposed Second Amended Complaint (“SAC”) filed concurrently herewith to conform the Class definition to that contained in the Settlement Agreement.

Both Plaintiffs applied for work online via an application divided into a series of tabs presented as web pages ¶¶ 30, 34, 36-37. During this process, Plaintiffs were presented with a purported “Background Check Consent” which appears on a screen with small-font wording in the middle of the page that the applicant scrolls through by dragging a scrollbar on the right hand side. ¶ 37. The wording contained within the Background Check Consent scroll down is set forth in over thirty separate paragraphs. *Id.* In addition to an advisement that a background check may be conducted, Defendant’s Background Check Consent contains, *inter alia*, the following extraneous information in violation of §1681b(b)(2):

- A broad release authorizing *any* person or entity to provide *any* and all information regarding the applicant to Defendant’s consumer reporting agency (“CRA”) or its agents (“Privacy Waiver”).
- Seven paragraphs containing various information relating to the laws of seven different states (“State Specific Notices”).

Based on the foregoing Plaintiffs allege separate claims for violation of the FCRA’s disclosure and adverse action requirements. It is estimated that Petco used the form at issue to procure consumer reports on 37,279 individuals during the Class Period (the Disclosure Class Members). It is estimated that 52 of these individuals were also subject to an adverse action but did not receive a pre-adverse action notification (the Adverse Action Class Members). (Greenstone Decl. ¶9)

Defendant denies all of the material allegations of the SAC and asserts its compliance with the FCRA and numerous affirmative defenses. (Greenstone Decl.,

¶10; Answer to Plaintiffs’ First Amended Complaint [ECF No. 17].) Defendant contends, among other things, that its disclosure form satisfied the FCRA’s requirements and that it did not take adverse action against Plaintiff Feist. (*Id.*) Defendant also asserts that because it relied on legal advice from outside counsel in crafting the disclosure form that it is protected by the advice of counsel defense. (*Id.*) Defendant further contends that even if Plaintiffs were to prove the alleged FCRA violations, such violations were not willful and do not entitle Plaintiffs or Class Members to recover any statutory or punitive damages or attorneys’ fees and costs. (*Id.*) Finally, Defendant contends that Plaintiffs and Class Members have not suffered any legally cognizable injury. (*Id.*)

#### IV. PROCEDURAL HISTORY & SETTLEMENT NEGOTIATIONS

This case was commenced on May 5, 2016 in the California Superior Court for the County of San Diego. On June 7, 2016, Defendant removed the case to this Court on the basis of federal-question jurisdiction. Defendant moved to dismiss the case shortly thereafter, arguing *inter alia*, that the federal court lacked subject-matter jurisdiction over Plaintiffs’ claims under *Spokeo*. This Court concluded that “Plaintiffs have alleged sufficient injury to survive a motion to dismiss,” but further stated that “Defendant may challenge Plaintiffs’ claims in a motion for summary judgment if Plaintiffs cannot demonstrate a concrete injury in fact.” ECF No. 16.

Thereafter, the Parties began exchanging discovery. While meeting and conferring regarding discovery, the Parties began to discuss exploring settlement on



1 a class-wide basis. The Parties agreed to mediate and selected a highly experienced  
2 mediator, the Honorable Leo S. Papas (Ret.). Prior to mediation, the Parties  
3 exchanged additional information concerning class size as well as the basis of  
4 Plaintiffs' claims and Petco's defenses.

6 On December 22, 2017, the Parties engaged in an all-day mediation with  
7 Judge Papas. After extensive negotiations weighing the relative strengths and  
8 weaknesses of the case, the Parties agreed to accept the mediator's proposal to settle  
9 the action on a class-wide basis for \$1,200,000. The Parties executed a  
10 Memorandum of Understanding outlining the terms of settlement. The Parties did  
11 not discuss counsel's fees or the Class Representatives' Enhancement award until  
12 after agreeing upon Class Member's relief. (Greenstone Decl. ¶8)

16 During the first week of April 2018, the Parties executed a formal Settlement  
17 Agreement (Greenstone Decl., Ex. 1). Plaintiffs now file this unopposed motion  
18 requesting that the Court certify the proposed Classes for settlement purposes only  
19 and preliminarily approve the Parties' Settlement.

## 21 **V. THE SETTLEMENT AGREEMENT**

### 22 **A. Overview Of The Settlement Terms**

23 The Parties have agreed to a full and complete Settlement of this matter that  
24 provides relief for members of the proposed Class, which is defined as:  
25

26 All persons regarding whom Defendant procured or caused to be  
27 procured a consumer report for employment purposes during the period  
28 from May 1, 2014 through December 31, 2015 (also sometimes  
referred to as the "Disclosure Class" or "Disclosure Class Members").

1 Included in the Settlement Class is a subclass consisting of those  
2 against whom Petco took an adverse action subsequent to procuring a  
3 consumer report and did not receive a pre-adverse action notification  
4 letter (also sometimes referred to as the “Adverse Action Class” or  
“Adverse Action Class Members”).

5 (Agreement, I.C.) Based on data from Petco’s records, the Parties believe that the  
6 Disclosure Class contains approximately 37,279 members, 52 of which are also  
7 Adverse Action Class Members. (Greenstone Decl. ¶9) Class Members who do not  
8 opt out will release all claims that are or could have been brought by Plaintiffs based  
9 upon the facts alleged in the SAC. (Agreement, I.T.)

11 In consideration for the release of the Class Members’ claims, Petco will pay  
12 a total of \$1,200,000 into a common settlement fund for the benefit of the Class.  
13 (Agreement, II.A.) In no circumstance will any portion of this fund revert to Petco.  
14 (*Id.* II.B.) After any Court-approved deductions for attorneys’ fees, expenses, claims  
15 administration costs, and Class Representative enhancements, the remaining fund  
16 will be distributed *pro rata* to all Class Members who do not exclude themselves  
17 from the Class. (*Id.*) Should any funds remain after the close of the check  
18 negotiation period, then those residual funds shall be distributed to a mutually  
19 agreeable *cy pres* recipient. (*Id.* II.B.5.).

23 The Parties have selected KCC, a well-respected, independent third party, to  
24 serve as the Settlement Administrator. (Agreement, I.U.) The Settlement  
25 Administrator will handle the distribution of direct notice to members of the  
26 Settlement Class, mailing settlement payments, providing phone support for  
27  
28

1 questions from Class Members, and other responsibilities associated with  
2 administering the Settlement. (*Id.* III.C.) Administration costs are estimated to be  
3 approximately \$80,000 which will be deducted from the Common Fund. (*Id.* II.E.)  
4

#### 5 **B. Form of Notice**

6 All Class Members will be mailed a Notice of Class Action Settlement (the  
7 “Notice”), a copy of which is attached to the Settlement Agreement. (Agreement,  
8 Ex. A). Prior to mailing the Notice to all Class Members, the Settlement  
9 Administrator shall update all addresses using the National Change of Address  
10 System. (Agreement, III.C.1.) The Notice informs Class Members of information  
11 about the Settlement, including the monetary terms, the nature of the claims and the  
12 release, and Class Members’ right to object to or opt-out. (*Id.*, Ex. A) Further, the  
13 Notice will inform Class Members how to obtain additional information about the  
14 Settlement. (*Id.*) The Notice provides a toll-free telephone number to contact the  
15 Settlement Administrator. (*Id.*) In the event that a Notice is returned to the  
16 Settlement Administrator, the Settlement Administrator will attempt to locate  
17 another address for the Class Member. (*Id.*, III.C.3.) The content of the proposed  
18 Notice is reasonable and appropriate, and Plaintiffs request that the Court approve  
19 dissemination of the Notice.  
20  
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#### 25 **C. Opt-Outs And Objections**

26 The Notice will inform all Class Members of their right to opt-out of or object  
27 to the Settlement, as well as the associated procedures and deadlines. Class  
28

1 Members who opt-out must send the Settlement Administrator written notice  
2 indicating their desire to opt-out by the Request for Exclusion/Opt Out Deadline.  
3  
4 The opt-out request must contain the person's name, address, telephone number,  
5 social security number. (Agreement, III.E.) To object, a Class Member must timely  
6 file a written copy of the objection with the Court. Any Class Member who objects  
7  
8 must set forth in his or her objection the reason(s) for objecting to the Settlement,  
9 the objector's name, address, telephone number, and whether the objector intends to  
10 appear at the Final Approval Hearing (with or without counsel). The objection must  
11  
12 be signed and include the case name and number.

13 **D. Attorneys' Fees, Costs, And Class Representative Enhancements**

14 The Settlement Agreement contemplates Class Counsel petitioning the Court  
15  
16 for attorneys' fees in an amount not to exceed \$300,000 (representing 25% of the  
17 Common Fund), as well as documented, customary costs incurred by Class Counsel  
18 up to \$15,725.26. (*Id.* II.D.) Class Counsel will petition the Court for an  
19  
20 Enhancement award for the Class Representatives in the amount of \$5,000 each. (*Id.*  
21 II.C.1.) Any approved awards will be deducted from the Common Fund prior to  
22 distribution to Class Members. Class Counsel will formally petition the Court for  
23  
24 these amounts. Neither the attorneys' fees nor the proposed Enhancement awards  
25 were negotiated before the other settlement terms were agreed upon, and neither  
26 final approval, nor the size of the Common Fund, are contingent upon the full  
27  
28

1 amount of any requested fees or approval of the Enhancement awards. (Greenstone  
2 Decl. ¶8)

### 3 4 **E. Estimated Allocation Of The Common Fund**

5 The Parties estimate that the Common Fund will be allocated as follows:

6	Net Common Fund (Payments to the Class Members)	\$793,274.74
7	Class Representative Enhancement as Awarded by the Court	\$10,000.00
8	Attorneys' Fees as Awarded by the Court	\$300,000.00
9	Costs of Suit as Awarded by the Court	\$15,725.26
10	<u>Administrative Costs</u>	<u>\$81,000.00</u>
11	Common Fund	\$1,200,000.00

## 12 **VI. ARGUMENT**

13  
14 Under Rule 23(e), “[t]he claims . . . of a certified class may be settled . . . only  
15 with the court’s approval.” FED. R. CIV. P. 23(e). This process requires the within  
16 Court to balance the following:

17  
18 the strength of the plaintiffs’ case; the risk, expense, complexity, and  
19 likely duration of further litigation; the risk of maintaining class action  
20 status throughout the trial; the amount offered in settlement; the extent  
21 of discovery completed and the stage of the proceedings; the  
22 experience and views of counsel; the presence of a governmental  
participant; and the reaction of the class members to the proposed  
settlement.

23 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Before a court  
24 approves a settlement, it must conclude that the settlement is “fundamentally fair,  
25 adequate, and reasonable.” *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017  
26 WL 2806698, at \*4 (N.D. Cal. June 29, 2017) (citing cases).  
27  
28

**I. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE**

**A. The Proposed Settlement Was Reached After Arm's-Length Negotiations With An Experienced Mediator**

The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.” *Satchell v. Fed. Express Corp.*, No. C03–2659 SI, 2007 WL 1114010, at \*4 (N.D. Cal. April 13, 2007). A non-collusive settlement, negotiated with the involvement of a respected mediator, is entitled to “a presumption of fairness.” *In re Toys “R” Us-Del., Inc. FACTA Litig.*, 295 F.R.D. 438, 450 (C.D. Cal. 2014); *see also* NEWBERG ON CLASS ACTIONS § 11.41.

The proposed Settlement Agreement here is the product of arms'-length negotiations conducted with oversight and assistance of the Honorable Leo S. Papas, a retired Magistrate Judge for this District. (Greenstone Decl., ¶7) Judge Papas is widely respected by Courts throughout the Ninth Circuit and has negotiated numerous settlements that have been approved as fair, adequate and reasonable. *See, e.g., See Knutson v. Schwan's Home Serv., Inc.*, No. 3:12-cv-00964-GPC, 2014 WL 3519064, at \*3 (S.D. Cal. July 14, 2014) (preliminarily approving arm's-length settlement mediated in front of Judge Papas). Moreover, the parties negotiated class counsel's entitlement to attorneys' fees and Plaintiffs' service awards separately, *after* the material terms of the proposed Settlement Agreement. (Greenstone Decl., ¶8) Based on these factors, the Settlement is entitled to a presumption of fairness. *See In re Toys “R” Us FACTA Litig.*, 295 F.R.D. at 450 (finding a presumption of

1 fairness where the settlement was reached following a mediation and the fees and  
2 settlement relief were separately negotiated).

3  
4 **B. The Amount Offered In Settlement Is Consistent With Other  
5 Similar Settlements**

6 Although the FCRA allows between \$100 and \$1,000 for each willful  
7 violation (*see* § 1681n(a)(1)), the statute itself does not provide courts with any  
8 guidance in choosing the appropriate recovery for a statutory violation. *See id.*  
9 Moreover, the \$100-\$1,000 range covers all FCRA violations, including those that  
10 allege monetary harm or damage to reputation (*e.g.*, damage stemming from  
11 inaccurate reporting). Given the breadth of violations covered under the FCRA, and  
12 that Plaintiffs do not allege any monetary harm or damage to reputation, it is  
13 unlikely that Plaintiffs could achieve an award of statutory damages substantially  
14 exceeding \$100 per person even if successful at trial.  
15  
16

17 On a per-person basis, the Settlement will provide Disclosure Class Members  
18 with a gross recovery of about \$32, and a net recovery after deduction of fees and  
19 expenses, administration costs, *etc.* of about \$20. The small number of Adverse  
20 Action Class Members will each receive an additional \$150. These Class recoveries  
21 are in line with the majority of proposed settlements based upon the same FCRA  
22 provisions. As set forth below, courts have repeatedly approved these FCRA  
23 settlements. Thus, this Settlement is well within the range of reason.  
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1 Indeed, in a recent case seeking preliminary approval of an FCRA stand-alone  
2 disclosure settlement, the court collected cases and compared gross recoveries.  
3  
4 *Hillson v. Kelly Servs. Inc.*, No. 2:15-cv-10803, 2017 WL 3446596, at \*3 (E.D.  
5 Mich. Aug. 11, 2017). The court concluded that “[t]he gross recovery (*i.e.*, recovery  
6 before fees and other expenses are taken form the fund) is \$30 per class member (on  
7 average). This appears to be in line with the average per-class-member gross  
8 recovery in other settlements of stand-alone disclosure claims.” *Id.*

10 Courts around the country have approved FCRA class settlements with  
11 similar settlement values when measured on a per-class member basis. *See Nesbitt*  
12 *v. Postmates, Inc.*, No. CGC-15-547146 (Nov. 8, 2017) (disclosure class members  
13 received approximately \$21.80 and adverse action class members received  
14 approximately \$65.40); *Moore v. Aerotek, Inc.*, No. 2:15-cv-2701, 2017 WL  
15 2838148, at \*4 (S.D. Ohio June 30, 2017) (per-capita gross recovery of \$25 in case  
16 involving a stand-alone disclosure claim and a claim that employer did not provide a  
17 copy of consumer report); *Aceves v. Autozone Inc.*, No. 5:14-cv-2032, ECF No. 58  
18 (C.D. Cal. Nov. 18, 2016) (final approval of FCRA settlement with gross recovery  
19 of \$20 per disclosure class member); *Brown v. Lowe's*, 5:13-cv-00079, ECF No. 173  
20 (W.D.N.C. Nov. 1, 2016) (granting final approval of a pre-adverse action claim in  
21 which the gross recovery was \$60 per class member); *Patrick v. Interstate Mgmt.*  
22 *Co., LLC*, No. 8:15-cv-1252, ECF No. 42 (M.D. Fla. April 29, 2016) (final approval  
23 of FCRA disclosure claim where class members received \$9 each); *Landrum v.*



1 *Acadian Ambulance Serv., Inc.*, No. 14-cv-1467, ECF No. 37 (S.D. Tex. Nov. 5,  
2 2015) (final approval of FCRA disclosure settlement of \$10 per person); *Walker v.*  
3 *McClane/Midwest, Inc.*, No. 2:14-cv-04315, ECF No. 29 (W.D. Mo. Oct. 23, 2015)  
4 (final approval of FCRA settlement in which disclosure class members recovered  
5 \$24). The ratio between the amounts awarded to Class Members in the two Classes  
6 is also in line with other similar settlements. *See, e.g., Hunter v. First Transit, Inc.*,  
7 No. 09-cv-6178, ECF No. 79 (N.D. Ill. Sept. 9, 2011) (approving settlement which  
8 allocated higher payouts to individuals who were not hired based on their  
9 background reports).

10  
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12  
13 Thus, the Settlement is well within the range of reason and should be  
14 approved.

15  
16 **C. The Significant Risks Of Further Litigation Also Support**  
17 **Settlement**

18 The impressive nature of the proposed Settlement comes into even sharper  
19 focus when the risks of further litigation are considered.

20 Plaintiffs had yet to certify a class. Moreover, the Settlement was negotiated  
21 in the shadow of the Supreme Court's *Spokeo* decision, the impact of which has  
22 divided District Courts around the country. *See Demmings v. KKW Trucking, Inc.*,  
23 No. 3:14-cv-494-SI, 2017 WL 1170856, at \*10 (D. Or. Mar. 29, 2017) (discussing  
24 split in authority). Plaintiffs believe it is highly likely that, had this litigation  
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1 proceeded, Defendant would have moved for summary judgment based on *Spokeo*.  
2 (Greenstone Decl., ¶11)  
3

4 In addition, Petco would have likely have raised numerous other challenges.  
5 Petco would have likely asserted an advice of counsel defense to Plaintiffs'  
6 disclosure claims. (Greenstone Decl., ¶11) This potential defense posed a risk to  
7 Plaintiffs given that Petco was advised by one of the most experienced FCRA  
8 attorneys in the country, Rod Fliegel, whom Petco designated as a percipient expert  
9 witness. (*Id.*) Plaintiffs further believe that Petco would have argued that Plaintiff  
10 Feist has no adverse action claim because she was not hired due to an issue with her  
11 social security number verification, and that this is not actionable under the FCRA  
12 based on *Bickley v. Dish Network, LLC*, No. 3:10-cv-00678-H, 2012 WL 5397754,  
13 at \*4 (W.D. Ky. Nov. 2, 2012) (response from consumer reporting agency indicating  
14 lack of a confident match between name and social security number provided not a  
15 consumer report subject to FCRA).  
16  
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19

20 Plaintiffs would also have faced risk at trial (and potentially, on summary  
21 judgment) on the issue of willfulness. The FCRA is not a strict liability statute.  
22 *Dalton v. Capital Associated Indus.*, 257 F .3d 409, 417 (4th Cir. 2001). Plaintiffs in  
23 an FCRA action can recover statutory damages only when the defendant has acted  
24 willfully. 15 U.S.C. § 1681n(a). Because Plaintiffs did not allege any actual  
25 damages, in order to recover anything for these claims, Plaintiffs would have to  
26 prove not only that Defendant violated the FCRA, but that it did so willfully.  
27  
28

1 Plaintiffs expect that if the matter was litigated, Defendant would contest the  
 2 question of willfulness vigorously. At least one court has found that allegations  
 3 similar to Plaintiffs' allegations to be insufficient to state a claim for a willful  
 4 violation of the statute. *Schoebel v. Am. Integrity Ins. Co. of Fla.*, No. 8:15-cv-380-  
 5 T-24 AEP, 2015 WL 3407895, at \*9 (M.D. Fla. May 27, 2015) (dismissing FCRA  
 6 stand-alone disclosure claim for failing to adequately plead willfulness); *see also*  
 7 *Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 212 (E.D. Pa. 2011) (noting  
 8 that proving willfulness in FCRA case was "a high hurdle to clear," weighing in  
 9 favor of settlement approval); *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 253  
 10 (E.D. Pa. 2011) (that willfulness presented "considerable albeit not insurmountable  
 11 risks" weighs in favor of settlement approval).

12 While Plaintiffs believe that these obstacles could have been overcome, they  
 13 present serious risks that the Settlement allows Plaintiffs and Class Members to  
 14 avoid. The settlement amount appropriately accounts for all of these risks and the  
 15 delay associated with appealing any adverse decision.

#### 16 **D. The Discovery Obtained And Stage Of Proceedings Supports** 17 **Settlement**

18 Prior to commencing this action, Plaintiffs' counsel conducted months of  
 19 investigation. (Greenstone Decl., ¶6) This investigation included analysis of  
 20 Defendant's online application and disclosure form, in addition to obtaining the  
 21 Plaintiffs' personnel files. (*Id.*) During the litigation, Plaintiffs and Defendants

1 served and responded to comprehensive sets of interrogatories and document  
 2 requests, and produced documents in connection therewith. (*Id.*) In addition, the  
 3 Parties engaged in extensive discussions concerning the relative strength of  
 4 Plaintiffs' claims and Defendant's defenses leading up to mediation. (*Id.*, ¶7) In  
 5 connection with these discussions, Defendant provided Plaintiffs with additional  
 6 information concerning changes made to its FCRA disclosure form, which helped  
 7 define the class period; the Disclosure Class size; both Defendant's adverse action  
 8 procedures generally, and as applied to Ms. Feist; and Defendant's advice of counsel  
 9 defense. (*Id.*) As a result, the Parties possessed all of the information necessary to  
 10 craft a settlement that is fair and reasonable.

#### 14 **E. Counsel's Views And Experience Support Settlement**

15 The Parties are represented by attorneys who have significant experience in  
 16 class action litigation and settlements.<sup>4</sup> It is the view of Plaintiffs' counsel that the  
 17 Settlement is fair, adequate, and reasonable. (Greenstone Decl., ¶¶3-5;12-17) The  
 18 judgment of Class Counsel is entitled to deference and a presumption of  
 19 reasonableness. *Toys "R" Us FACTA Litig.*, 295 F.R.D. at 455 ("The  
 20 recommendations of plaintiffs' counsel should be given a presumption of  
 21 reasonableness."). "Parties represented by competent counsel are better positioned  
 22 than courts to produce a settlement that fairly reflects each party's expected outcome  
 23  
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28 <sup>4</sup> Class Counsel's experience is described in detail *infra* II.B.3.

1 in litigation.” *Id.* (quoting *In re Pacific Enterprises Securities Litigation*, 47 F.3d  
 2 373, 378 (9th Cir.1995)).

## 3 4 **II. CLASS CERTIFICATION IS APPROPRIATE FOR** 5 **SETTLEMENT PURPOSES**

6 Plaintiffs request that the Court certify the Class for settlement purposes. The  
 7 action meets the four prerequisites of rule 23(a)—numerosity, commonality,  
 8 typicality, and adequacy—as well as the predominance and superiority prongs of  
 9 Rule 23(b).  
 10

11 Moreover, even in contested certification motions, FCRA claims for  
 12 violations of the FCRA’s stand-alone disclosure requirement have been certified.  
 13 *See Milbourne v. JRK Residential Am., LLC*, No. 12-cv-861 (REP), 2014 WL  
 14 5529731 (E.D. Va. Oct. 31,2014) (certifying class in contested motion in case  
 15 alleging that defendant failed to provide a stand-alone disclosure and failed to  
 16 provide pre-adverse action notice); *Reardon v. Closetmaid Corp.*, No. 08-cv-1730  
 17 (GLL), 2011 WL 1628041 (W.D. Pa. Apr. 27, 2011) (same); *Manuel v. Wells Fargo*  
 18 *Bank, Nat. Ass’n*, No. 14-cv-238 (REP), 2015 WL 4994549 (E.D. Va. Aug.  
 19 19,2015) (same); *Thomas v. FTS USA, LLC*, 312 F.R.D. 407 (E.D. Va. 2016)  
 20 (same); *Magallon v. Robert Half Int’l, Inc.*, 311 F.R.D. 625, 631 (D. Or. 2015)  
 21 certifying class alleging that defendant failed to provide pre-adverse action notice).  
 22 As these courts have recognized, FCRA claims are an appropriate vehicle for class-  
 23 wide resolution.  
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1                   **A.     The Proposed Class Is Ascertainable And Numerous**

2           Numerosity is satisfied if the class is so large that joinder of all members  
3           would be impracticable. First, as stated above, there are 37,279 Class Members,  
4           which presumptively satisfies the numerosity requirement. *See, e.g., Collins v.*  
5           *Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 300 (E.D. Cal. 2011) (explaining that  
6           “[c]ourts have routinely found the numerosity requirement satisfied when the class  
7           “[c]ourts have routinely found the numerosity requirement satisfied when the class  
8           comprises 40 or more members”). Even the relatively small Adverse Action Class  
9           exceeds 40 members. Numerosity is therefore satisfied.  
10          

11          Beyond Rule 23's express demands, courts have implied an additional  
12          requirement under Rule 23(a): that the proposed class be ascertainable. *Patel v.*  
13          *Trans Union, LLC*, 308 F.R.D. 292, 301–02 (N.D. Cal. 2015) (citing cases); *see*  
14          FED. R. CIV. P. 23(c)(1)(B) (“[a]n order that certifies a class action must define the  
15          class and the class claims, issues, or defenses”). This preliminary requirement asks  
16          whether the class is so defined that its individual members can be readily identified.  
17          A class should be sufficiently definite and “clearly ascertainable” by reference to  
18          objective criteria “that it is administratively feasible to determine whether a  
19          particular person is a class member.” *Id.* (quotation omitted).  
20          

21          Here, Class Members are identifiable from Defendant's records. Thus, the  
22          Class is ascertainable.  
23

**B. The Community Of Interest Requirements Are Met**

**1. Common Questions Predominate**

Here, there are overriding common questions of law and fact that predominate over individual questions in this case that are capable of resolution for the Class as a whole “in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Plaintiffs contend there are at least four class-wide issues that predominate over any individual concerns. First is the question of whether Defendant’s disclosure form constituted an appropriate stand-alone disclosure pursuant to the FCRA. Second is the question of whether Defendant’s pre-adverse action notice procedures complied with the FCRA. These forms and procedures were the same for all Class Members and present common questions.

Third, the willfulness of Defendant’s conduct presents a critical common question. Because Defendant is a single entity, which Plaintiffs contend followed the same procedures with respect to every member of the Class, the answer to the question of whether Defendant’s alleged violations were willful can be determined on a class-wide basis. *See Chakejian v. Equifax Info. Servs. LLC*, 256 F.R.D. 492, 500 (E.D. Pa. 2009) (“Thus, the inquiry is to [defendant’s] state of mind in implementing its policies and procedures, not on the customer’s particular interaction with the CRA ... To prove willfulness here, a consumer-by-consumer inquiry is not necessary.”).

1 Fourth, if this case were litigated, Plaintiffs contend the amount of damages  
2 presents a common question that could also be determined on a class-wide basis.  
3 Because Plaintiffs sought statutory damages, no individual analysis of damages  
4 would be required. *Murray v. GMAC Mortg. Corp.*, 434 F.3d, 952-53 (7th Cir.  
5 2006). Consideration of this factor requires no individual analysis.  
6

7  
8 Common questions have been found to predominate in numerous other cases  
9 in which it was alleged that the defendant failed to comply with the FCRA. *See, e.g.*,  
10 *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 675 (D. Md. 2013) (finding  
11 common questions of “whether [defendant] violated the FCRA by using [a form] to  
12 obtain consent from prospective and/or current employees to procure consumer  
13 reports for employment purposes, which [ ... ] was allegedly not a ‘stand-alone  
14 document’ and included a liability release” and “whether Domino's violated the  
15 FCRA by failing to provide employees with copies of their consumer reports and  
16 pre-adverse action notice”); *Reardon*, 2011 WL 1628041, at \*6 (“Here, there are  
17 numerous questions of law or fact common to the class. These include, but are not  
18 limited to, whether the forms used by [defendant] to obtain consent to procure a  
19 consumer report from the class member violated the FCRA.”); *Magallon*, 311  
20 F.R.D. at 635 (finding commonality for pre-adverse action FCRA claims); *Thomas*,  
21 312 F.R.D. at 418 (same). Thus, there are predominant common questions of law  
22 and fact, and certification of the Class is warranted.  
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## 2. Plaintiffs' Claims Are Typical

Typicality requires that the named plaintiffs' interests in the action be significantly similar to those of other class members. The test for typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

In this case, Plaintiffs have the same claims as the members of the Class: violation of the stand-alone disclosure and adverse action notice requirements. Claims of this sort are routinely found to be typical. *See Singleton*, 976 F. Supp. 2d at 676; *Reardon*, 2011 WL 1628041, at \*6 ("[P]laintiff has satisfied her burden to show that her interests are in alignment with the absent class members. Simply put, Plaintiffs executed what she alleges were legally infirm disclosures, which [defendant] used to obtain a consumer report on her ... Plaintiffs seeks to represent a class of individuals who also executed allegedly legally infirm disclosures."); *Magallon*, 311 F.R.D. at 638 (finding typicality for pre-adverse action FCRA claims); *Thomas*, 312 F.R.D. at 418.

## 3. Plaintiffs And Plaintiffs' Counsel Class Adequately Represent The Class

As to adequacy, courts make two inquiries: "(a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the

1 named plaintiffs and their counsel prosecute the action vigorously on behalf of the  
2 class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000).

3  
4 Proposed Class Counsel are highly qualified. Glancy Prongay & Murray  
5 (GPM) is a national class action firm with over twenty five lawyers and offices in  
6 Los Angeles, New York and Berkeley. GPM has specialized in class actions for  
7 over 25 years representing consumers, investors and employees in a myriad of cases.  
8  
9 The three attorneys primarily responsible for litigating this matter on behalf of  
10 GPM, Mark L. Godino, Mark S. Greenstone and Jennifer M. Leinbach have  
11 extensive consumer class action experience. *See* Greenstone Decl., ¶¶12-17  
12 (detailing personal experience of Mr. Godino, Mr. Greenstone and Ms. Leinbach)  
13 and Ex. 2 (GPM firm resume).

14  
15  
16 Plaintiffs have been actively engaged in litigation. (Greenstone Decl. ¶18)  
17 Plaintiffs have provided counsel with relevant documents, stayed abreast of  
18 developments and settlement negotiations. (*Id.*) Plaintiffs both took time off work  
19 and traveled to San Diego to personally attend the Early Neutral Evaluation. (*Id.*)  
20 Plaintiffs understand what it means to be a class representative and have put the  
21 interests of the Class first in making all decisions related to litigation and settlement.  
22  
23 (*Id.*) Further, Plaintiffs do not have any conflicts of interest that would compromise  
24 their representation of the Class. (*Id.*)  
25  
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#### 4. Class Action Is The Superior Vehicle For Adjudication

Class-wide resolution “is superior to other available methods” for adjudicating the Action, since Class Members presumably have a relatively low interest “in individually controlling the prosecution” of their claims—*i.e.*, each Class Member has little incentive to pursue his or her own individual litigation in light of the small statutory-damage amounts at stake. FED. R. CIV. P. 23(b)(3).

In a matter such as this, where the claims of all Class Members are identical and are based on the same common core of facts, but involve a modest amount of damages, it is clear that adjudicating this matter as a class action will achieve economies of time, effort, and expense, and promote uniformity of results. *Singleton*, 976 F. Supp. 2d at 678 (finding class action superior and certification for settlement purposes justified “particularly in light of the relatively modest amount of statutory damages available under the FCRA”).

#### VII. CONCLUSION

Plaintiffs respectfully request that the Court: (1) preliminarily approve the proposed Settlement, (2) certify the Class for settlement purposes only, (3) appoint Plaintiffs as Class Representatives, (4) appoint Plaintiffs’ counsel as Class Counsel, (5) direct notice to be distributed to the Classes, and (6) schedule a final approval hearing.

1 Dated: April 20, 2018

Respectfully submitted,

2 GLANCY PRONGAY & MURRAY LLP

3  
4 By: s/ Mark S. Greenstone

5 Lionel Z. Glancy

6 Marc L. Godino

7 Mark S. Greenstone

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14  
15 *Counsel for Plaintiffs and the*  
16 *Proposed Settlement Class*  
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**PROOF OF SERVICE BY ELECTRONIC POSTING**

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On April 20, 2018, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Southern District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2018, at Los Angeles, California.

s/ Mark S. Greenstone

Mark S. Greenstone

## Mailing Information for a Case 3:16-cv-01369-H-RNB Feist et al v. Petco Animal Supplies, Inc. et al

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

1 GLANCY PRONGAY & MURRAY LLP  
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6

7 *Counsel for Plaintiffs and the*  
8 *Proposed Settlement Class*

9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**  
11

12 JACKLYN FEIST and ANGELICA  
13 ZIMMER, Individually and on Behalf  
of All Others Similarly Situated,

14 Plaintiffs,

15 v.

16 PETCO ANIMAL SUPPLIES, INC,

17 Defendant.  
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Case No.: 3:16-cv-01369-H-DHB

**DECLARATION OF MARK S.  
GREENSTONE IN SUPPORT OF  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: June 11, 2018

Time: 10:30 a.m.

Judge: Hon. Marilyn L. Huff

Crtm: 15A

1 I, Mark S. Greenstone, hereby declare as follows:

2 1. I am Of Counsel with the firm Glancy Prongay & Murray, LLP  
3 (“GPM”) and am one of the attorneys representing Plaintiffs Jacklyn Feist and  
4 Angelica Zimmer (“Plaintiffs”) and the proposed Settlement Class in the above-  
5 captioned action.  
6

7  
8 2. I submit this Declaration in support of Plaintiffs’ Motion for  
9 Preliminary Approval of Class Action Settlement and Provisional Certification of  
10 Settlement Class.  
11

12 **SETTLEMENT TERMS**

13 3. Attached hereto as **Exhibit 1** is a true and correct copy of the proposed  
14 Settlement Agreement (the “Settlement” or “Settlement Agreement”) between  
15 Plaintiffs and Defendant Petco Animal Supplies, Inc. (“Petco”). This Settlement  
16 resolves Plaintiffs’ putative class action brought pursuant to the Fair Credit  
17 Reporting Act (“FCRA”) concerning Defendant’s alleged failure to comply with  
18 statutory disclosure and authorization requirements prior to procuring consumer  
19 reports on for employment purposes, and alleged failure to comply with statutory  
20 disclosure requirements before taking adverse action on the basis of a consumer  
21 report. The Parties have agreed to amend the Complaint in this matter to conform  
22 the class period to that agreed to in the Settlement Agreement. This Settlement will  
23 provide nationwide relief to all individuals affected by the challenged practices, and  
24 will fully and finally resolve any potential liability on the part of Petco. For this  
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1 reason alone, after years of zealous litigation, this Settlement represents a fair and  
2 favorable outcome for all of the parties involved.

3  
4 4. In addition, based on my knowledge of the relevant facts and law, my  
5 involvement in prosecution of the case and the settlement negotiations, and my  
6 examination of the documents and information produced by Petco, I believe that the  
7 terms of the Settlement are fair, reasonable, and adequate, and should be approved  
8 by the Court.  
9

10 5. Given the substantial benefits provided by the Settlement, and the risks,  
11 costs, and delay associated with continuing the litigation, I believe that the  
12 Settlement that was negotiated is reasonable and appropriate.  
13

14 **INVESTIGATION, DISCOVERY AND SETTLEMENT NEGOTIATIONS**

15 6. Prior to commencing this action, Plaintiffs' counsel conducted months  
16 of investigation. This investigation included analysis of Defendant's online  
17 application and disclosure form, in addition to obtaining the Plaintiffs' personnel  
18 files. During the litigation, Plaintiffs and Defendants served and responded to  
19 comprehensive sets of interrogatories and document requests, and produced  
20 documents in connection therewith.  
21

22  
23 7. The proposed Settlement Agreement is the product of arms'-length  
24 negotiations conducted with oversight and assistance of the Honorable Leo S. Papas,  
25 a retired Magistrate Judge for this District. The Parties engaged in extensive  
26 discussions concerning the relative strength of Plaintiffs' claims and Defendant's  
27  
28

1 defenses leading up to mediation. In connection with these discussions, Defendant  
2 provided Plaintiffs with additional information concerning changes made to its  
3 FCRA disclosure form, which helped define the class period; the Disclosure Class  
4 size; both Defendant's adverse action procedures generally, and as applied to Ms.  
5 Feist; and Defendant's advice of counsel defense. As a result, the Parties possessed  
6 all of the information necessary to craft a settlement that is fair and reasonable.  
7  
8

9       8. On December 22, 2017, the Parties engaged in an all-day mediation  
10 with Judge Papas. After extensive negotiations weighing the relative strengths and  
11 weaknesses of the case, the Parties agreed to accept the mediator's proposal to settle  
12 the action on a class-wide basis for \$1,200,000. The Parties executed a  
13 Memorandum of Understanding outlining the terms of settlement. The Parties did  
14 not discuss counsel's fees or the Class Representatives' Enhancement awards until  
15 after agreeing upon Class Member's relief, and neither final approval, nor the size of  
16 the Common Fund, are contingent upon the full amount of any requested fees or  
17 approval of the Enhancement awards. During the first week of April 2018, the  
18 Parties executed a formal Settlement Agreement.  
19  
20  
21

22       9. Based on data from Defendant's records, Petco used the disclosure  
23 form at issue to procure consumer reports on 37,279 individuals during the Class  
24 Period. Approximately 52 of these individuals are also Adverse Action Class  
25 Members.  
26  
27  
28

**THE RISKS OF CONTINUING LITIGATION FACED BY  
PLAINTIFFS AND THE CLASS**

10. I believe that Plaintiffs and the Class would face substantial risk should this matter proceed. Defendant denies all of the material allegations of the SAC and asserts its compliance with the FCRA. Defendant contends, among other things, that its disclosure form satisfied the FCRA's requirements and that it did not take adverse action against Plaintiff Feist based upon the contents of a consumer report because it did not hire Plaintiff Feist due to an issue with her SSN trace.

11. Defendant also asserts that because it relied on legal advice from outside counsel in crafting the disclosure form at issue, that it is protected by the advice of counsel defense. This potential defense posed a risk to Plaintiffs Disclosure Class claim given that Petco was advised by one of the most experienced FCRA attorneys in the country, Rod Fliegel, whom Petco designated as a percipient expert witness. Defendant further contends that even if Plaintiffs were to prove the alleged FCRA violations, such violations were not willful and do not entitle Plaintiffs or Class Members to recover any statutory or punitive damages or attorneys' fees and costs. Defendant also contends that Plaintiffs and Class Members have not suffered any legally cognizable injury, and I believe it is highly likely that, had this litigation proceeded, Defendant would have moved for summary judgment based on *Spokeo*.

**CLASS COUNSEL’S EXPERIENCE AND QUALIFICATIONS**

12. At all relevant times, the Plaintiffs have been represented by GPM, a well-respected and highly skilled in complex class-action litigation, including litigating claims under the Fair Credit Reporting Act (“FCRA”).

13. Attached hereto as **Exhibit 2** is a true and correct copy of GPM’s firm resume.

14. The three principal attorneys at GPM who have been primarily responsible for this matter are Marc L. Godino, myself and Jennifer M. Leinbach.

15. Mr. Godino is a Partner at GPM and leads the firm’s Consumer Practice Group, focusing on companies that reap millions of dollars in profits by misrepresenting their products or services, where class actions provide the only viable avenue for an individual to vindicate his or her rights as a consumer. Mr. Godino has taken a lead role in many significant federal and state consumer fraud cases throughout the country, and has obtained outstanding results for consumers. *See, e.g., Shin et al., v. BMW of N. Am.*, Case No. 09-cv-00398, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (after defeating a motion to dismiss, the case settled on very favorable terms for class members including free replacement of cracked wheels); *Payday Advance Plus, Inc. v. MIVA, Inc.*, Case No. 06-1923 (S.D.N.Y.) (nearly \$4 million cash settlement for class members); *Villefranche v. HSBC Bank Nevada, N.A.*, Case No. 09-3693 (C.D. Cal.) (after defeating a motion to dismiss, the case resulted in 100% recovery to class members); *Esslinger, et al. v. HSBC Bank*

1 *Nevada, N.A.*, Case No. 10-03213 (E.D. Pa.) (\$23.5 million settlement); *In re*  
2 *Discover Payment Protection Plan Mktg. and Sales Practices Litig.*, Case No. 10-  
3 06994 (N.D. Ill) (\$10.5 million settlement).

4  
5 16. I specialize in consumer, financial fraud and employment-related class  
6 actions. Possessing significant law and motion and trial experience, I have  
7 represented clients in multi-million dollar disputes in California state and federal  
8 courts, as well as the Court of Federal Claims in Washington D.C. In 2017, I was  
9 named as lead Class Counsel in a nationwide automobile class action settlement  
10 involving approximately 77,000 vehicles, *Reniger, et al. v. Hyundai Motor America*,  
11 No. 4:14-cv-03612-CW (N.D. Cal.). I was also lead class counsel in *Story v.*  
12 *Mammoth Mountain Ski Area, LLC*, No. 2:14-cv-02422 (E.D. Cal.), a case brought  
13 under the Telephone Consumer Protection Act in which the court recently granted  
14 final approval of a settlement that established a \$3.75 million non-reversionary  
15 common fund on behalf of a class of approximately 35,000.  
16  
17  
18  
19

20 17. Ms. Leinbach is an associate at GPM. Ms. Leinbach who served for  
21 nearly five years as a judicial law clerk for a number of judges in the Central District  
22 of California. As a judicial law clerk, Ms. Leinbach was responsible for assisting  
23 these judges with case management, preparing for hearings and trial, and drafting  
24 rulings. Ms. Leinbach worked on a variety of different cases, including cases  
25 involving financial fraud, insolvency and complex civil litigation. Ms. Leinbach  
26 was also responsible for assisting those judges, sitting by designation, on appellate  
27  
28

1 cases. Ms. Leinbach graduated *magna cum laude* from Vermont Law School in  
2 2011, and was a member of Vermont Law Review, where she focused on  
3 environmental law issues. During law school, Ms. Leinbach served as a judicial  
4 extern in the District of Vermont. She obtained her undergraduate degree *cum laude*  
5 from Pepperdine University.  
6

7  
8 **PLAINTIFFS' INVOLVEMENT IN THIS LITIGATION**

9 18. Plaintiffs have been actively engaged in litigation. Plaintiffs have  
10 provided counsel with relevant documents, stayed abreast of developments and  
11 settlement negotiations. Plaintiffs both took time off work and traveled to San  
12 Diego to personally attend the Early Neutral Evaluation. Plaintiffs understand what  
13 it means to be a class representative and have put the interests of the Class first in  
14 making all decisions related to litigation and settlement. Further, Plaintiffs do not  
15 have any conflicts of interest that would compromise their representation of the  
16 Class.  
17

18  
19 I declare under penalty of perjury under the laws of the state of California that  
20 the foregoing is true and correct. Executed this 20 day of April, 2018, at Los  
21 Angeles, California.  
22

23  
24 s/ Mark S. Greenstone

25 Mark S. Greenstone  
26  
27  
28

**PROOF OF SERVICE BY ELECTRONIC POSTING**

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On April 20, 2018, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Southern District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2018, at Los Angeles, California.

s/ Mark S. Greenstone

Mark S. Greenstone

## Mailing Information for a Case 3:16-cv-01369-H-RNB Feist et al v. Petco Animal Supplies, Inc. et al

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Hali M. Anderson**  
handerson@wilsonturnerkosmo.com,pclark@wilsonturnerkosmo.com
- **Marc L. Godino**  
mgodino@glancylaw.com,info@glancylaw.com,marc-godino-1414@ecf.pacerpro.com
- **Mark S. Greenstone**  
mgreenstone@glancylaw.com,info@glancylaw.com
- **Frederick William Kosmo , Jr**  
fkosmo@wilsonturnerkosmo.com,iekis@wilsonturnerkosmo.com
- **Marissa L. Lyftogt**  
mlyftogt@wilsonturnerkosmo.com,knickerson@wilsonturnerkosmo.com
- **Loleena Ansari May**  
lmay@wilsonturnerkosmo.com,kcastro@wilsonturnerkosmo.com

### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)



# EXHIBIT 1

1 GLANCY PRONGAY & MURRAY LLP  
2 Lionel Z. Glancy (SBN 134180)  
3 Marc L. Godino (SBN 182689)  
4 Mark S. Greenstone (SBN 199606)  
5 1925 Century Park East, Suite 2100  
6 Los Angeles, CA 90067  
7 Telephone: (310) 201-9150  
8 Facsimile: (310) 201-9160  
9 Email: info@glancylaw.com  
10

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

JACKLYN FEIST and ANGELICA  
ZIMMER, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiffs,

v.

PETCO ANIMAL SUPPLIES, INC.,  
and DOES 1 through 10, inclusive,

Defendant.

Case No. 3:16-cv-01369-H-DHB

**STIPULATION FOR CLASS  
ACTION SETTLEMENT**

1 **RECITALS**

2 Plaintiffs Jacklyn Feist and Angelica Zimmer (collectively, "Plaintiffs"),  
3 individually and on behalf of the proposed Settlement Class, and Defendant Petco  
4 Animal Supplies, Inc. ("Petco" or "Defendant") (collectively, the "Parties"), hereby  
5 enter into this Stipulation for Class Action Settlement ("Settlement" or "Settlement  
6 Agreement" or "Agreement").  
7

8 **A. Procedural History.**

9  
10 On May 5, 2016, Plaintiffs filed this proposed class action against Petco in the  
11 Superior Court for the State of California, County of San Diego. Plaintiffs alleged  
12 that Defendant violated the Fair Credit Reporting Act ("FCRA") by: (1) procuring  
13 consumer reports respecting Plaintiffs and Class Members without providing them  
14 with a clear and conspicuous disclosure, in a document that consists solely of the  
15 disclosure, that a consumer report may be obtained for employment purposes as  
16 required under 15 U.S.C. §1681b(b)(2), and (2) by failing to comply with FCRA's  
17 pre-adverse action requirements set forth in 15 U.S.C. §1681b(b)(3). On June 7,  
18 2016, Defendant removed the case to the United States District Court for the  
19 Southern District of California on the basis of federal-question jurisdiction. On  
20 June 13, 2016 Defendant filed a motion to dismiss, in response to which Plaintiffs  
21 filed their First Amended Complaint ("FAC") on July 1, 2016. Defendant moved to  
22 dismiss the FAC, which the Court denied. In answering the FAC, Defendant denied  
23 its material allegations and asserted numerous affirmative defenses.  
24  
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28

1 On December 22, 2017, the Parties attended a full day mediation before the  
2 Honorable Leo S. Papas (Ret.). The Parties provided Judge Papas with confidential,  
3 detailed mediation statements setting forth their positions on the merits of Plaintiffs'  
4 claims, the prospects for class certification, and their views on an appropriate  
5 settlement. At the end of the mediation, the Parties signed a Memorandum of  
6 Understanding outlining the principal terms of a nationwide class settlement.  
7  
8

9 **B. Investigation And Negotiations.**

10 The Parties and their respective attorneys have conducted significant  
11 investigation of the facts and law relevant to the Action. Counsel also researched  
12 and analyzed the applicable law regarding the claims and defenses in the case, as  
13 well as calculated and evaluated potential liability and damages. As set forth below,  
14 counsel concluded, after taking into account the sharply disputed factual and legal  
15 issues involved in this Action, the risks attending further prosecution, the discovery  
16 to be completed, the experts to be retained, the costs of litigation to be incurred in  
17 the future, and the substantial benefits to be received pursuant to this Agreement,  
18 that settlement on the terms hereinafter set forth is in the best interest of the Class  
19 Members. Counsel have balanced their evaluation of the validity and strength of the  
20 asserted claims against the problem of proof and the legal standards governing class  
21 certification of the claims alleged. Based on the Parties' respective analyses of the  
22 above-described investigations and negotiations, the Parties reached a settlement  
23 after engaging in extensive arms-length negotiations at a private mediation and  
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1 before a private mediator whose fees were paid by both sides. Plaintiffs' counsel  
2 believes that the settlement reached is fair to the Class and confers substantial  
3 benefits to the Class, offering all Class Members the opportunity to receive  
4 recoveries in the near term. Based on this evaluation, Plaintiffs' counsel determined  
5 that the Settlement set forth in this Agreement is in the best interest of the Class.  
6

7  
8 **C. Non-Admission; Denial Of Wrongdoing.**

9 Defendant denies the Class Representatives' claims in their entirety as to  
10 liability and damages, as well as the class action allegations, and does not waive, but  
11 rather expressly reserves, all rights to challenge all such claims and allegations upon  
12 all legal, procedural and factual grounds. This Settlement reflects a compromise  
13 reached to end litigation. Defendant's execution of this Agreement will not be  
14 deemed an admission of any wrongdoing, liability or unlawful action by Defendant.  
15  
16

17 **D. Conditional Settlement.**

18 The Parties enter into this Settlement Agreement on a conditional basis. In  
19 the event the Court does not enter an Order of Final Approval, or in the event that  
20 such Order of Final Approval does not become final for any reason, or in the event  
21 that the Effective Date, as defined herein, does not occur, this Settlement Agreement  
22 will be deemed null and void *ab initio*, and will be of no force or effect whatsoever,  
23 and will not be referred to or utilized for any purpose whatsoever.  
24  
25  
26  
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28

1                   **E. Benefits Of Settlement.**

2           Class Representatives and their counsel recognize the uncertainty and risk of  
3 the outcome of further litigation, and the difficulties and delays inherent in such  
4 litigation. Class Representatives are also aware of the burdens of proof necessary to  
5 establish liability for the claims asserted in the Action, the defenses thereto, the  
6 uncertainty in the law relating to the claims, the uncertainty of class certification,  
7 and other difficulties inherent in the litigation. Based on the foregoing, Class  
8 Representatives have, with their counsel, determined that the Settlement set forth in  
9 this Agreement is fair, adequate and reasonable, and is in the best interest of the  
10 Class Members. Defendant has concluded that any further defense of this Action  
11 would be protracted and expensive, and the results uncertain. Substantial amounts  
12 of time and resources have been, and will continue to be, devoted to the defense of  
13 this case unless this Settlement is made. Therefore, the Parties have agreed to a  
14 settlement in the manner and upon the terms set forth in this Agreement to fully and  
15 finally resolve and dispose of the Action.  
16  
17  
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20

21                   **SUMMARY OF SETTLEMENT ALLOCATION**

22           The following summary is intended for the convenience of the Court and  
23 other interested parties reviewing this Agreement. The Settlement will be fully  
24 funded by Defendant through a Common Fund in the amount of \$1,200,000.00, and  
25 none of the Common Fund shall revert to Defendant. All Class Members who do  
26 not opt out of the Settlement will be sent settlement payments from the Net  
27  
28

Common Fund. Any uncashed settlement payments to Class Members will be sent to a mutually agreeable *cy pres* recipient.

The estimated allocation of the Common Fund is as follows:

Net Common Fund (Payments to Participating Class Members)	\$793,274.74
Class Representative Enhancements as Awarded by the Court	\$10,000.00
Attorneys' Fees as Awarded by the Court	\$300,000.00
Costs of Suit as Awarded by the Court	\$15,725.26
<u>Administrative Costs</u>	<u>\$81,000.00</u>
Common Fund (or Total Settlement Amount)	\$1,200,000

### **STIPULATION AND AGREEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Class Representatives, on their own behalf and on behalf of the Class Members, and Defendant, and subject to approval by the Court, that the Action is hereby being compromised and settled pursuant to the following terms and conditions:

#### **I. DEFINITIONS.**

(A) “**Action**” means this action entitled *Feist, et al. v. Petco Animal Supplies, Inc.*, Case No. 3:16-cv-01369 pending in the United States District Court for the Southern District of California.

(B) “**Agreement**” and “**Settlement Agreement**” and “**Settlement**” mean this Stipulation and Agreement for Class Action Settlement, which the Parties acknowledge sets forth all material terms and conditions of the Settlement between



1 them, and which is subject to Court approval.

2 (C) **“Class”** and **“Class Members”** mean all persons regarding whom  
3  
4 Defendant procured or caused to be procured a consumer report for employment  
5 purposes during the period from May 1, 2014 through December 31, 2015 (also  
6 sometimes referred to as the **“Disclosure Class”** or **“Disclosure Class Members”**).  
7  
8 Included in the Settlement Class is a subclass consisting of those against whom  
9 Petco took an adverse action subsequent to procuring a consumer report and did not  
10 receive a pre-adverse action notification letter (also sometimes referred to as the  
11 **“Adverse Action Class”** or **“Adverse Action Class Members”**). Petco estimates  
12 that, to the best of its knowledge, the Settlement Class comprises approximately  
13 37,279 individuals all of whom are Disclosure Class members and approximately 52  
14 of whom are also Adverse Action Class Members. Plaintiffs shall file a proposed  
15  
16 Second Amended Complaint (**“SAC”**) concurrently with their Motion for  
17 Preliminary Approval to conform the class definition therein to the class definition  
18 contained in this Agreement.  
19

20  
21 (D) **“Class Counsel”** means Lionel Z. Glancy, Marc L. Godino and Mark  
22 S. Greenstone of Glancy Prongay & Murray LLP. Defendant stipulates to the  
23 appointment of the aforementioned law firm as Class Counsel for settlement  
24 purposes only.  
25

26 (E) **“Class List”** means the list of names, last known residential addresses,  
27 last known telephone numbers, and social security numbers of Class Members for  
28



1 whom Defendant possesses such information at the time of entry of the Court's  
2 Order of Preliminary Approval.

3  
4 (F) "**Class Representatives**" and "**Named Plaintiffs**" means Plaintiffs  
5 Jacklyn Feist and Angelica Zimmer.

6 (G) "**Common Fund**" means \$1,200,000.00, which amount will be non-  
7  
8 reversionary and fully funded by Defendant and includes: (i) a Net Common Fund  
9 (or payments to the Participating Class Members); (ii) settlement administrative  
10 costs pursuant to the terms of this Agreement; (iii) payment of attorneys' fees and  
11 costs as approved by the Court; and (iv) an Enhancement to the Class  
12 Representatives as approved by the Court.

13  
14 (H) "**Court**" means the United States District Court for the Southern  
15 District of California.

16  
17 (I) "**Effective Date**" means the date by which this Settlement is finally  
18 approved as provided herein and the Court's Judgment becomes final. For purposes  
19 of the meaning of "Effective Date," the Court's Judgment becomes final upon the  
20 later of: (a) the date of final affirmance on appeal of the Judgment, the expiration of  
21 the time for a petition to review the Judgment, and, if review is granted, the date of  
22 final affirmance of the Judgment following review; (b) the date of final dismissal of  
23 any appeal from the Judgment or the final dismissal of any proceeding to review the  
24 Judgment; or (c) if no appeal is filed, the expiration date for filing any appeal from  
25 the Judgment. Notwithstanding the foregoing, if no objections to the Settlement are  
26  
27  
28

1 filed or submitted, the Effective Date shall be the date that the Court's Judgment is  
2 entered.

3  
4 (J) **"Enhancement"** means that portion of the Common Fund paid to the  
5 Named Plaintiffs for their service in connection with being a Class Representative.

6 (K) **"Escrow Account"** means the separate, interest-bearing escrow  
7 account to be established by the Settlement Administrator under terms agreed upon  
8 by Class Counsel and Defendant at a depository institution that is insured by the  
9 Federal Deposit Insurance Corporation. The costs of establishing and maintaining  
10 the Escrow Account shall be paid from the Settlement Fund.  
11

12  
13 (L) **"Final Approval Hearing"** means a hearing set by the Court for the  
14 purpose of determining the fairness, adequacy and reasonableness of this Settlement  
15 pursuant to class action procedures and requirements.  
16

17 (M) **"Individual Settlement Payment"** means the gross amount to be paid  
18 to a Participating Class Member as set forth herein.  
19

20 (N) **"Net Common Fund"** means that portion of the Common Fund  
21 allocated for payment of Individual Settlement Payments to Participating Class  
22 Members (as defined below), which shall be the Common Fund minus the agreed-  
23 upon amounts to be requested for attorneys' fees and costs, Enhancements, and  
24 settlement administrative costs, as specified in this Agreement. The Parties estimate  
25 that the Net Common Fund will be approximately \$793,274.74. In the event that the  
26 Court awards less than the Enhancements requested by the Class Representative  
27  
28

1 and/or less than the attorneys' fees requested by Class Counsel and/or less than the  
2 costs requested by Class Counsel and/or the administrative costs of settlement are  
3 less than estimated, any excess funds resulting will be added to the Net Common  
4 Fund and will be made available for distribution to Participating Class Members.  
5

6 (O) **"Notice of Class Action Settlement"** and **"Class Notice"** mean a  
7 notice entitled "Notice of Class Action Settlement" in the form substantially similar  
8 to that attached hereto as Exhibit "A."  
9

10 (P) **"Order of Final Approval"** and **"Judgment"** mean an order executed,  
11 filed and entered by the Court granting final approval to the Settlement. Said Order  
12 of Final Approval will be in the form substantially similar to that attached hereto as  
13 Exhibit "B."  
14

15 (Q) **"Order of Preliminary Approval"** means an order executed, filed and  
16 entered by the Court granting preliminary approval to the Settlement. Said Order of  
17 Preliminary Approval will be in the form substantially similar to that attached hereto  
18 as Exhibit "C."  
19

20 (R) **"Participating Class Member"** means any Class Member who does  
21 not timely opt out of this Settlement.  
22

23 (S) **"Preliminary Approval Date"** means the date on which the Court  
24 executes, files and enters the Order of Preliminary Approval.  
25

26 (T) **"Released Claims For Class Members"** means all claims, damages,  
27 losses, demands, penalties, liabilities, fees, interest, causes of action, complaints or  
28

1 suits that are or could have been brought by Plaintiffs in this Action based upon the  
2 facts alleged in the SAC. Released Claims for Class Members include, without  
3 limiting the foregoing, all claims based on the failure to provide a proper disclosure  
4 and/or obtain a proper authorization and/or provide a pre-adverse action notification  
5 letter, in connection with an employment-related background check under the FCRA  
6 and all related, analogous or corresponding federal or state laws, which any  
7 Participating Class Member has ever had, or hereafter may claim to have, against  
8 the Released Parties relating to consumer reports procured by Defendant during the  
9 period from May 1, 2014 through December 31, 2015. All Class Members, except  
10 for any Class Member who timely opted out of the settlement, shall be deemed to  
11 have released, waived and forever discharged the Released Parties from the  
12 Released Claims.  
13  
14  
15  
16

17 (U) **“Released Parties”** means Petco Animal Supplies, Inc., Petco Animal  
18 Supplies Stores, Inc., and their past and present parents, subsidiaries, affiliated  
19 and/or related corporations, third-party vendors, predecessors, successors, and  
20 assigns, including each of their employees, officers, directors, members,  
21 shareholders, agents, representatives, consultants, attorneys, insurers, underwriters,  
22 and divisions, whether previously or hereinafter affiliated in any manner.  
23  
24

25 (V) **“Settlement Administrator”** means KCC LLC.  
26  
27  
28

1 **II. SETTLEMENT AMOUNTS.**

2 Upon the occurrence of the Effective Date, and after all conditions precedent  
3 have occurred as set forth in this Agreement, Defendant will make or cause to be  
4 made all disbursements required by the Settlement in accordance with the schedules  
5 and terms set forth herein.  
6

7 **A. The Common Fund.**

8  
9 1. The "Common Fund" will be \$1,200,000.00 and will be fully  
10 funded and all-inclusive, including: (i) a Net Common Fund (for payments to the  
11 Participating Class Members), (ii) Enhancements to the Named Plaintiffs as  
12 awarded by the Court; (iii) costs of settlement administration; and (iv) the payment  
13 of attorneys' fees and costs to Class Counsel as awarded by the Court.  
14

15  
16 2. Within thirty (30) days after the Court's entry of final judgment,  
17 provided there are no objectors to the settlement, Defendant shall pay into the  
18 Escrow Account the entirety of the Common Fund.  
19

20 3. If a class member objects, Defendant shall pay into the Escrow  
21 Fund the entirety of the Common Fund thirty (30) days after the Court's entry  
22 of judgment becomes final and nonappealable by any party or class member.  
23

24 **B. The Net Amount Of The Common Fund (Amounts Paid To The**  
25 **Participating Class Members).**

26 1. Upon Final Approval by the Court, each Participating Class  
27 Member will receive a payment subject to and in accordance with the provisions set  
28

1 forth below (the "Individual Settlement Payment"). Individual Settlement Payments  
2 shall be sent automatically without any claims process.

3  
4 2. One hundred percent (100%) of the Net Common Fund will be  
5 distributed to Participating Class Members as follows: Each Adverse Action Class  
6 Member shall be entitled to a payment of \$150 plus any amount to which they are  
7 entitled as Disclosure Class Members, computed as described in this paragraph. The  
8 adverse action claim total (\$150 x the number of Adverse Action Class Members)  
9 shall be deducted from the Net Common Fund. The remaining amount shall be  
10 distributed *pro rata* to Disclosure Class Members.  
11  
12

13 3. Each Individual Settlement Payment from the Net Common  
14 Fund will be allocated 100% to alleged penalties under the FCRA.  
15

16 4. Individual Settlement Payments will not count as earnings or  
17 compensation for purposes of any benefit plan (*e.g.*, 401(k) plan; retirement plan;  
18 etc.), company bonus, contest, paid time off, or any other benefit or agreement  
19 sponsored by Defendant. Participating Class Members will receive a Form 1099  
20 relating to such payment and be solely liable for and pay any and all taxes thereon.  
21

22 5. Each Participating Class Member will be responsible for  
23 remitting to federal, state, and local taxing authorities any taxes that may be due and  
24 owing as a result of his or receipt of an Individual Settlement Payment. Defendant  
25 and the Released Parties are not, and will not in any way be, obligated to compute,  
26 estimate, or pay any taxes on behalf of any Participating Class Member relating to  
27  
28



1 an Individual Settlement payment.

2           6. In the event a Participating Class Member does not cash his/her  
3  
4 Individual Settlement Payment, following the void date for that check, the  
5 Settlement Administrator shall pay the sum of any uncashed settlement payments to  
6 Class Members to a mutually agreeable *cy pres* recipient.

7  
8           7. No person, including, without limitation, a Participating Class  
9 Member, will have any claim against Class Counsel, the Class Representatives, the  
10 Released Parties, and Defendant's Counsel, or the Settlement Administrator based  
11 on distributions and payments made in accordance with this Agreement.

12  
13           **C. Class Representative Enhancement.**

14           1. Class Counsel will submit an application to the Court for an  
15  
16 award of an Enhancement to each of the Class Representatives in the amount of Five  
17 Thousand Dollars and No Cents (\$5,000.00). Such application will be set for  
18 hearing concurrently with the Motion for Final Approval. The Enhancements are to  
19 compensate Class Representatives for their service, involvement, and risk in  
20 connection with being a Class Representative.

21  
22           2. Defendant will not object to a request for approval of such  
23  
24 Enhancements.

25           3. The Enhancements are in addition to the Individual Settlement  
26 Payment allocated to Class Representatives under this Settlement. Class  
27 Representatives agree that they will not opt out of or object to the Settlement, and  
28

1 further agree that they will not encourage any other Class Member to opt out of or  
2 object to the Settlement.

3  
4 4. Any Enhancement awarded by the Court will not be treated as  
5 wages and will not count as earnings or compensation for purposes of any benefit  
6 plans (e.g., 401(k) plan; retirement plan; etc.) sponsored by Defendant. Class  
7 Representatives will receive a Form 1099 relating to such payment and be solely  
8 liable for and pay any and all taxes thereon.

9  
10 5. The Class Representatives will be responsible for remitting to  
11 federal, state, and local taxing authorities any taxes that may be due and owing as a  
12 result of a receipt of an Enhancement. Defendant and the Released Parties are not,  
13 and will not in any way be, obligated to compute, estimate, or pay any taxes on  
14 behalf of any Class Representative relating to a Class Representative Enhancement.  
15

16  
17 6. Neither Class Representative will have any claim against Class  
18 Counsel, the Released Parties, and Defendant's Counsel, or the Settlement  
19 Administrator based on distributions and payments made in accordance with this  
20 Agreement.  
21

22 7. The Net Common Fund will increase by any amount of the  
23 allocated Enhancements not awarded by the Court.  
24

25 **D. Class Counsel's Attorneys' Fees And Costs.**

26 1. Class Counsel will file a motion with the Court for an award of  
27 attorneys' fees in an amount not to exceed 25% of the settlement fund (or \$300,000  
28



1 for fees), and up to \$15,725.26 for costs. Such motion will be set for hearing  
2 concurrently with the Motion for Final Approval.

3  
4 2. Defendant and its counsel will not object to Class Counsel's  
5 motion for an award of up to \$300,000 for fees and up to \$15,725.26 for costs.

6  
7 3. As a condition of this Settlement, Class Counsel agrees to pursue  
8 attorneys' fees and costs only in the amounts and manner reflected herein.

9  
10 4. The Net Common Fund will increase by any amount of the  
11 attorneys' fees and costs allocated hereunder which are not awarded by the Court.

12 **E. Costs Of Settlement Administration.**

13 The agreed-upon Settlement Administrator is KCC LLC. All fees of the  
14 Settlement Administrator will be paid out of the Common Fund. The total fees of  
15 the Settlement Administrator are estimated at \$81,000. The Net Common Fund will  
16 increase or decrease by any amounts less or more than \$81,000.

17  
18 **III. SETTLEMENT APPROVAL AND PAYMENT PROCEDURES.**

19  
20 **A. Request For Preliminary And Final Approval.**

21 The Parties will cooperate fully in requesting preliminary and final approval  
22 of this Settlement by the Court, including a determination by the Court that this  
23 Settlement is fair, reasonable, and adequate. The Parties will also cooperate fully in  
24 promptly requesting that, as provided for in this Agreement, the Court approve the  
25 proposed forms of notices, orders, and other documents necessary to implement this  
26 Settlement.  
27  
28

1           **B.    Class List To Be Provided By Defendant To The Settlement**  
2           **Administrator.**

3           Within fifteen (15) business days after entry and service of an Order of  
4 Preliminary Approval regarding this Settlement, Defendant will provide a Class List  
5 to the Settlement Administrator that will identify each Class Member, his or her  
6 social security number, last known residential address, and last known phone  
7 number.  
8

9           **C.    Distribution Of Notices To Class Members.**  
10

11           1.    No later than five (5) business days after the Settlement  
12 Administrator receives the Class List from Defendant, the Settlement Administrator  
13 will first update all addresses using the National Change of Address System  
14 (NCOA) and then mail to all Class Members, via first-class United States Mail, a  
15 Notice of Class Action Settlement ("Class Notice"), Exhibit "A."  
16

17           2.    At the same time that the Class Notice is sent, the Settlement  
18 Administrator shall establish a Settlement website which shall contain information  
19 relevant to Class Members, including, but not limited to, all applicable deadlines,  
20 the Settlement Agreement, the Class Notice, all papers filed by the Parties in support  
21 of the settlement, orders of the court pertaining to the settlement, and contact  
22 information for reaching the Settlement Administrator via toll-free number,  
23 facsimile, email and U.S. mail. The Parties shall use good faith, reasonable efforts to  
24 agree on all information and documents to be posted on the Settlement website, and  
25  
26  
27  
28

1 no information shall be posted or provided on the Settlement website without the  
2 Parties' express approval. The Settlement website shall be rendered inactive ninety  
3  
4 (90) calendar days after the Effective Date.

5           3. In the event that a Class Notice is returned to the Settlement  
6 Administrator with a forwarding address, the Settlement Administrator will re-send  
7 the Class Notice to the forwarding address affixed thereto. If no forwarding address  
8 is provided, then the Settlement Administrator will promptly conduct a "standard  
9 search," sometimes called, "Skip Traces" or "Credit Header" searches, to locate a  
10 better address. If a better address is found, the Settlement Administrator will  
11 promptly re-send the Class Notice. If the standard search does not provide a better  
12 address or the Class Notice is returned a second time without a forwarding address,  
13 the Settlement Administrator shall perform a manual "in-depth search" to locate a  
14 better address. If a better address is found, the Settlement Administrator will  
15 promptly re-send the Class Notice. If a Class Notice is re-mailed to a better address  
16 within thirty (30) days of the Request For Exclusion/Opt Out or Objection  
17 Deadlines, the Class Member will be provided a minimum of thirty (30) days after  
18 the re-mailing to postmark or deliver a request for exclusion, or an objection, to the  
19 Settlement Administrator subject to the time limits in Section III.E.4 below.  
20  
21  
22  
23  
24

25           4. If, at any time prior to the Request For Exclusion/Opt Out or  
26 Objection Deadlines, a Class Member contacts the Settlement Administrator, or if  
27 Class Counsel does so on his or her behalf, to advise of a change in address, the  
28

1 Class Notice will be re-mailed to the address the Class Member (or Class Counsel)  
2 provides, and the Class Member will have thirty (30) days after the subsequent  
3 mailing of the Class Notice to submit a request for exclusion or an objection, to the  
4 Settlement Administrator, subject to the time limits in Section III.E.4 below.  
5

6 5. In no event will any Class Member be allowed to postmark or  
7 deliver a request for exclusion, or an objection, to the Settlement Administrator  
8 more than ninety (90) days from the date the Class Notices are initially mailed.  
9

10 6. In the event the procedures set forth herein are followed and the  
11 intended recipient of a Class Notice still does not receive the Class Notice, the  
12 intended recipient will be a Participating Class Member and will be bound by all  
13 terms of the Settlement and the Order of Final Approval entered by the Court.  
14

15 7. Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after  
16 the Agreement is filed with the Court, the Settlement Administrator has agreed to  
17 serve upon the Attorneys General of each U.S. State in which Settlement Class  
18 Members reside, the Attorney General of the United States, and other required  
19 government officials, notice of the proposed settlement as required by the Class  
20 Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(d)(b).  
21  
22

23  
24 **D. Participating Class Members.**

25 1. Only Participating Class Members can receive a portion of the  
26 Net Common Fund.  
27

28 2. In order to be deemed a Participating Class Member, a Class

1 Member must not be deemed excluded from this Settlement through the Opt Out  
2 process in Section III.E below.

3  
4 3. In the event the Settlement does not receive final approval, the  
5 Parties agree that any joinders shall be void and nullified *ab initio*.

6 **E. Requests For Exclusion ("Opt Out").**

7  
8 The Notice of Class Action Settlement will notify all Class Members of their  
9 right to opt out of the Settlement.

10 1. Any Class Member who wishes to be excluded (opt out) from the  
11 Settlement, must: submit a written statement requesting exclusion from the Class  
12 ("Request for Exclusion") on or before the Request For Exclusion/Opt Out Deadline  
13 Date. Such written Request for Exclusion must contain the name, address,  
14 telephone number and social security number of the person requesting exclusion,  
15 and must be returned by mail to the Settlement Administrator at a specified address  
16 and must be postmarked on or before the Request for Exclusion/Opt Out Deadline  
17 Date. The date of the postmark on the return mailing envelope shall be the  
18 exclusive means used to determine whether a Request for Exclusion has been timely  
19 submitted.

20  
21 2. The foregoing requirements shall be strictly construed, and  
22 substantial compliance shall not be sufficient. Any Class Member who does not  
23 satisfy all of the foregoing requirements will be conclusively deemed a Participating  
24 Class Member fully bound by the terms of the Settlement to the extent permitted by

1 law.

2           3. Any Class Member who mails a valid and timely Request for  
3  
4 Exclusion will, upon receipt by the Settlement Administrator of the Request for  
5 Exclusion, no longer be a Class Member, and will receive no benefit or payment  
6 from this Settlement and none of his or her claims, causes of action or rights will be  
7 released by virtue of this Settlement.  
8

9           4. The Request for Exclusion/Opt Out Deadline Date shall be sixty  
10 (60) days after the date the Class Notice is first mailed by the Settlement  
11 Administrator.  
12

13           **F. Objections To This Settlement**

14           The Notice of Class Action Settlement will notify Class members of their  
15 right to object to the settlement.  
16

17           1. Any Class Member who intends to object to the fairness,  
18 reasonableness, or adequacy of the Settlement must file a copy of the objection in  
19 writing with the Court no later than the Objection Deadline. Any Class Members  
20 who objects must set forth in his or her written objection:  
21

22                   (a) his or her full name;

23                   (b) his or her current address;

24                   (c) his or her phone number;

25                   (d) a written statement of his or her objection, and the reasons for  
26 each objection;

27                   (e) a statement of whether he or she intends to appear at the Final  
28



1 Fairness Hearing (with or without counsel);

2 (f) his or her signature; and,

3 (g) the case name and number of the Action.

4 2. The Parties shall request that the Court allow any interested party  
5 to file a reply to any objection no later than seven (7) calendar days before the Final  
6 Fairness Hearing, or as the Court otherwise may direct.

7  
8 3. The Objection Deadline Date shall be sixty (60) days after the  
9 date the Class Notice is first mailed by the Settlement Administrator.

10  
11 **G. Verification Of Dissemination Of Notice Of Class Action**  
12 **Settlement.**

13 The Settlement Administrator will verify, in writing, that the Class Notices  
14 have been disseminated in accordance with the Court's Order of Preliminary  
15 Approval, and will provide such verification to Class Counsel to file with the Court  
16 on or before the date of the Final Fairness Hearing.

17  
18 **H. Reporting Schedule.**

19 Every seven (7) days during the administration of this Settlement, the  
20 Settlement Administrator will provide written notice to Class Counsel and  
21 Defendant's attorneys of all objections to the Settlement, the number of address  
22 searches conducted, and the number of Class Members who have submitted  
23 Requests for Exclusion.  
24  
25  
26  
27  
28

1           **I. No Encouraging Class Members Not To Participate.**

2           No Party will directly or indirectly, through any person or entity, encourage  
3  
4 any Class Member not to participate in this Settlement.

5           **J. Final Fairness Hearing.**

6           On the date set forth in the Notice of Class Action Settlement, which will be  
7  
8 approximately one hundred and twenty (120) days after the initial mailing of the  
9 Notice of Class Action Settlement, a Final Fairness Hearing will be held before the  
10 Court in order to: (1) review this Settlement Agreement and determine whether the  
11 Court should give it final approval; and (2) consider any timely objections to the  
12 Settlement and all responses by the Parties to such objections. At the Final Fairness  
13 Hearing, the Parties will ask the Court to approve the Settlement Agreement and to  
14 enter judgment. The Court shall retain jurisdiction over the parties to enforce the  
15 terms of the judgment.  
16  
17

18           **K. Dates And Methods Of Payment Of The Common Fund.**

19           1. Within thirty (30) days after the Court's entry of final judgment,  
20  
21 provided there are no objectors to the Settlement, Defendant shall pay into the  
22 Escrow Account the entirety of the Common Fund. If a Class Member objects,  
23 Defendant shall pay into the Escrow Account the entirety of the Common Fund  
24 thirty (30) days after the Court's entry of judgment becomes final and nonappealable  
25 by any party or Class Member. The tenth (10) calendar day after Defendant pays to  
26 the Settlement Administrator the Common Fund will be known as the "Payment  
27  
28



1 Date.”

2           2. On or before the Payment Date, the Settlement Administrator  
3  
4 will prepare and mail settlement checks for each Participating Class Member in the  
5 amount of his or her Individual Settlement Payment. The checks will indicate on  
6 their face that they are void if not negotiated within one hundred and eighty (180)  
7 days of their issuance. In the event a settlement check is returned to the Settlement  
8 Administrator with a forwarding address, the settlement check will be forwarded to  
9 the forwarding address. In the event a settlement check is returned to the Settlement  
10 Administrator without a forwarding address or is otherwise undeliverable, the  
11 Settlement Administrator will conduct an in-depth search and re-mail the returned  
12 check if possible. If within that one hundred and eighty (180)-day period a  
13 Participating Class Member contacts Defendant or the Settlement Administrator, or  
14 if Class Counsel does so on his or her behalf, the settlement check will be re-mailed  
15 to the address the Participating Class Member (or Class Counsel) provides. Any  
16 such re-mailed settlement checks will indicate on their face that they are void if not  
17 negotiated within one hundred and eighty (180) days of their issuance.  
18

19  
20  
21           3. One hundred percent (100%) of the Net Common Fund will be  
22 distributed to the Participating Class Members.  
23

24  
25           4. The sum of the Net Common Fund that is not distributed to  
26 Participating Class Members for any reason (*e.g.*, any uncashed checks or checks  
27 that are undeliverable), will be sent to a mutually agreeable *cy pres* recipient.  
28

1           **L.    Dates And Methods Of Payments of Enhancements, Attorneys'**  
 2           **Fees And Costs.**

3           1.    On or before the Payment Date, the Settlement Administrator  
 4 will pay the Class Representatives from the Common Fund the Enhancements  
 5 approved by the Court. The payments will be made by sending to Class Counsel a  
 6 check for each of the Court-approved Enhancements, payable to Named Plaintiffs.

8           2.    On or before the Payment Date, the Settlement Administrator  
 9 will pay from the Common Fund to Class Counsel, its Court-approved attorneys'  
 10 fees and costs.

12           3.    Any Class Representative Enhancement or Class Counsel  
 13 attorneys' fees or costs amount not approved by the Court will be included in the  
 14 Net Common Fund and distributed to the Class Members.

16           **M.    Deadlines.**

17           If any deadline specified in this Agreement falls on a Saturday, Sunday, or  
 18 court holiday, the deadline will be automatically extended to the next regular  
 19 business day. Unless specified otherwise, all references to "days" shall mean  
 20 calendar days.  
 21  
 22

23           **IV.   RELEASES BY CLASS MEMBERS.**

24           **A.    Terms Of Release.**

25           In exchange for the consideration recited in this Settlement Agreement, all  
 26 Participating Class Members, on behalf of themselves and on behalf of their current,  
 27  
 28

1 former, and future heirs, executors, administrators, attorneys, agents, and assigns, do  
2 hereby and forever release, waive, acquit and discharge the Released Parties from  
3 the Released Claims as set forth in this Agreement. This Release does not apply to  
4 any claims for workers' compensation, unemployment insurance, employment  
5 discrimination or to any other claims Class Members may have against the  
6 Defendant which are unrelated to the Action.  
7

8  
9 **B. California Civil Code Section 1542.**

10 Solely with respect to the claims released by this Settlement, and upon the  
11 Effective Date, all Participating Class Members will be deemed to have, and by  
12 operation of the Order of Final Approval will have, expressly waived and  
13 relinquished, to the fullest extent permitted by law, the provisions, rights, and  
14 benefits of section 1542 of the California Civil Code, pertaining to the Released  
15 Claims as set forth in this Agreement. Civil Code section 1542, provides as follows:  
16  
17

18 "A general release does not extend to claims which the  
19 creditor does not know or suspect to exist in his or her  
20 favor at the time of executing the release, which if known  
21 by him or her must have materially affected his or her  
22 settlement with the debtor."

23 The Participating Class Members are deemed by operation of the Order of Final  
24 Approval to have agreed not to sue or otherwise make a claim against any of the  
25 Released Parties for all claims released by this Settlement.  
26  
27  
28

1           **C.   Claims By Class Members Based On Stipulation And Agreement.**

2           In addition to the terms of the Releases outlined above, no Participating Class  
3  
4 Member will have any claim against any of the Released Parties, Defendant's  
5 attorneys of record, the Settlement Administrator, any Named Plaintiff, any other  
6 Class Member, or Class Counsel based on errors in administering claims or  
7 performing the mailing and skip-tracing requirements under this Agreement.  
8

9           **V.   CLASS CERTIFICATION.**

10           The Parties stipulate and agree to certification of the Action solely for  
11 purposes of this Settlement. Should, for whatever reason, the Settlement not  
12 become final, the fact that the Parties stipulate and agree to the above will have no  
13 bearing on, and will not be admissible in connection with, the issue of whether a  
14 class should be certified in a non-settlement context in this Action, and will have no  
15 bearing on, and will not be admissible in connection with, the issue of whether a  
16 class should be certified in any other lawsuit. Defendant expressly reserves its  
17 rights to oppose class certification should this Settlement not become final.  
18  
19  
20

21           **VI.   ENFORCEMENT AND CONTINUING JURISDICTION OF THE**  
22           **COURT.**

23           The Court shall retain jurisdiction with respect to implementation and  
24 enforcement of the terms of the Settlement, and all Parties hereto submit to the  
25 jurisdiction of the Court for purposes of implementing and enforcing the Settlement.  
26  
27 Even after the Order of Final Judgment and notwithstanding it, this Court will have  
28

1 and retain continuing jurisdiction over the Action and over all Parties and Class  
2 Members, to the fullest extent necessary or convenient to enforce and effectuate the  
3 terms and intent of this Settlement and all matters provided for in it, and to interpret  
4 it.  
5

## 6 **VII. MUTUAL FULL COOPERATION.**

7  
8 The Parties will fully cooperate with each other to accomplish the terms of  
9 this Settlement Agreement, including, but not limited to, execution of such  
10 documents and taking such other action as may be reasonably necessary or  
11 convenient to implement it. In the event the Parties or their counsel are unable to  
12 resolve any dispute regarding the form or content of any document needed to  
13 implement this Agreement, or regarding any other matter that may become  
14 necessary or convenient to implement it, the Parties agree to seek the assistance of  
15 the Court in resolving such dispute.  
16  
17

## 18 **VIII. NO ADMISSIONS.**

19  
20 Nothing in this Settlement Agreement will constitute or be considered an  
21 admission by or on behalf of Defendant, or any Released Party, of any wrongdoing  
22 or liability or of the accuracy of any allegation made in connection with this Action.  
23

## 24 **IX. WITHDRAWAL, NULLIFICATION, INVALIDATION.**

### 25 **A. Effective Date Of Defendant's Obligations Under This Agreement.**

26 Defendant's obligations under this Settlement Agreement will become final  
27 and effective only upon occurrence of all of the following events:  
28

- 1           1.     Execution and filing by the Court of an Order of Preliminary
- 2                     Approval;
- 3
- 4           2.     Certification of the Class for settlement purposes;
- 5           3.     Appointment of Lionel Z. Glancy, Marc L. Godino and Mark S.
- 6                     Greenstone of Glancy Prongay & Murray LLP as Class Counsel;
- 7
- 8           4.     The Court conducting a Final Fairness Hearing;
- 9           5.     Execution and filing by the Court of the Order of Final
- 10                    Approval;
- 11
- 12           6.     Entry of Final Judgment; and
- 13           7.     Occurrence of the Effective Date.

14           In the event that any of the conditions specified in this Settlement Agreement  
15           are not satisfied, or in the event that the Court does not approve this Settlement for  
16           any reason, all matters covered by this Agreement will be null and void. In such  
17           event, neither this Agreement nor any negotiations leading to this Settlement will be  
18           used or construed by or against either Party as a determination, admission, or  
19           concession of any issue of law or fact in the litigation; and the Parties hereto do not  
20           waive, and instead expressly reserve, their respective rights regarding the  
21           prosecution and defense of the litigation, including all available claims and  
22           affirmative defenses, and challenging any claim that the Action could be certified as  
23           a class action, as if this Settlement Agreement never existed.

1           **B.    Withdrawal.**

2           1.     If prior to the Final Fairness Hearing, persons who otherwise  
3  
4 would be members of the Class have filed timely requests to opt out as outlined  
5 herein, and if such persons in the aggregate amount to a number greater than five  
6 percent (5%) of the total number of Class Members, Defendant will have the sole  
7 and absolute discretion to withdraw from this Settlement without any liability or  
8 expense. Defendant will provide notice of any such withdrawal in writing to Class  
9 Counsel prior to the date set for the Final Approval Hearing. In the event Defendant  
10 elects to so withdraw, it will not be responsible for paying any settlement amounts,  
11 Enhancements, or attorneys' fees or costs. Defendant, however, will pay any  
12 Administration costs. In the event Defendant elects to withdraw pursuant to this  
13 Section, such withdrawal will have the same effect as would non-approval pursuant  
14 to Section IX.C.  
15  
16  
17

18           **C.    Nullification.**

19  
20           If (a) the Court should for any reason fail to approve any material term of this  
21 Settlement; or (b) the Court should for any reason fail to enter the Order of Final  
22 Judgment; or (c) the Court's Order of Final Judgment is reversed or modified as to  
23 any material term, or declared or rendered void as to any material term; then (1) this  
24 Settlement Agreement will be considered null and void; (2) neither this Settlement  
25 Agreement nor any of the related negotiations or proceedings will be of any force or  
26  
27  
28



1 effect; and (3) Class Counsel will make repayment of any attorneys' fees and costs,  
2 and the Named Plaintiffs will repay any Enhancement received from Defendant.

3  
4 **D. Invalidation.**

5 Invalidation of any material term of this Settlement Agreement will invalidate  
6 this Agreement in its entirety unless the Parties subsequently agree in writing that  
7 the remaining provisions will remain in full force and effect.

8  
9 **E. Appeal From Judgment.**

10 In the event of a timely appeal from the Order of Final Judgment, the Order of  
11 Final Judgment will be stayed, and the Individual Settlement Payments, any other  
12 payments required hereunder by Defendant, and the Effective Date, will not occur  
13 pending the completion and final resolution of the appeal, and any payment  
14 thereafter will (1) occur only if the Order of Final Judgment is upheld after all  
15 appeals; and (2) be in a manner that is provided for in this Settlement Agreement  
16 and in the Order of Final Judgment.

17  
18  
19 **X. GENERAL PROVISIONS.**

20  
21 **A. Confidentiality.**

22 The Parties intend this Settlement Agreement to be and remain confidential  
23 until the Motion for Preliminary Approval is filed. Neither Party may disclose this  
24 Settlement Agreement or the Parties' settlement terms to any third party (except to  
25 the agreed-upon Claims Administrator) in any manner until the date of the filing of  
26 the Motion for Preliminary Approval. The Parties further agree that there will be no  
27  
28



1 press release or other communication to any media source about the settlement other  
2 than for purposes of effectuating the Settlement.

3  
4 **B. Entire Agreement.**

5 This Settlement Agreement constitutes the entire integrated agreement  
6 between the Parties relating to the settlement of the Action, and no oral  
7 representations, warranties or inducements have been made to any Party concerning  
8 this Settlement Agreement other than the representations, warranties and covenants  
9 contained and memorialized in this Settlement Agreement.

10  
11 **C. Authorization To Act.**

12 Class Counsel warrant and represent that they are authorized by Class  
13 Representative, and counsel of record for Defendant warrant that they are authorized  
14 by Defendant, to take all appropriate action required or permitted to be taken by  
15 such Parties pursuant to this Settlement Agreement to effectuate its terms, and to  
16 execute any other documents required to effectuate the terms of this Settlement  
17 Agreement, except for any documents, including but not limited to this Settlement  
18 Agreement, that are required to be executed by the Parties.

19  
20 **D. Modification Only In Writing.**

21 This Settlement Agreement may be amended or modified only by a written  
22 instrument signed by all Parties or their successors in interest.  
23  
24  
25  
26  
27  
28

1           **E.    Binding On Successors.**

2           This Settlement Agreement is binding upon and will inure to the benefit of the  
3  
4 Parties to this Agreement, as well as their respective attorneys, past, present, and  
5 future predecessors, successors, shareholders, officers, directors, employees, agents,  
6 trustees, representative, administrators, fiduciaries, assigns, insurers, executors,  
7  
8 partners, parents, subsidiaries, and related or affiliated entities.

9           **F.    No Prior Assignments.**

10          The Participating Class Members are deemed by operation of the Order of  
11  
12 Final Approval to represent, covenant, and warrant that they have not directly or  
13 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
14 encumber to any person or entity any portion of any liability, claim, demand, cause  
15  
16 of action or rights herein released and discharged.

17          **G.    Governing Law.**

18          All terms of this Settlement Agreement will be governed by and interpreted  
19  
20 according to the laws of the State of California, without giving effect to conflicts of  
21 laws principles.

22          **H.    Counterparts.**

23  
24          This Settlement Agreement may be executed in one or more counterparts. All  
25 executed counterparts and each of them will be deemed to be one and the same  
26 instrument. Counsel for the Parties will exchange among themselves signed  
27  
28 counterparts.

1           **I. Headings For Convenience Only.**

2           The descriptive headings of any paragraphs or sections of this Settlement  
3  
4 Agreement are inserted for convenience of reference only and do not constitute a  
5 part of this Settlement Agreement.

6           **J. Construction Of This Agreement.**

7  
8           The Parties hereto agree that the terms and conditions of this Settlement  
9 Agreement are the result of arms-length negotiations between the Parties and that  
10 this Settlement Agreement will not be construed in favor of or against any Party by  
11 reason of the extent to which any Party, or his, her or its counsel participated in the  
12 drafting of this Agreement. Except as expressly provided herein, this Settlement  
13 Agreement has not been executed in reliance upon any other oral or written  
14 representations or terms and no such extrinsic oral or written representations or  
15 terms will modify, vary or contradict the terms of this Settlement Agreement. In  
16 entering this Settlement Agreement, the Parties hereto explicitly recognize  
17 California Civil Code section 1625 and California Code of Civil Procedure section  
18 1856(a), which provide that a written agreement is to be construed according to its  
19 terms and may not be varied or contradicted by extrinsic evidence. The Class  
20 Representatives and Defendant participated in the negotiation and drafting of this  
21 Settlement Agreement and had available to them the advice and assistance of  
22 independent counsel. As such, no Participating Class Member nor Defendant may  
23  
24  
25  
26  
27  
28

1 claim that any ambiguity in this Settlement Agreement should be construed against  
2 the other.

3  
4 **K. Corporate Signatories.**

5 Any person executing this Settlement Agreement or any related document on  
6 behalf of a corporate signatory hereby warrants and promises for the benefit of all  
7 Parties hereto that such person has been duly authorized to execute this Settlement  
8 Agreement or any related document.

9  
10 **L. Representation By Counsel.**

11 The Parties hereto acknowledge that they have been represented by counsel  
12 throughout all negotiations which preceded the execution of this Settlement  
13 Agreement and that this Agreement has been executed with the consent and advice  
14 of counsel.

15  
16  
17 **M. Attorneys' Fees And Costs.**

18 Except as otherwise provided herein, the Parties hereto will bear  
19 responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred  
20 by them or arising out of this Action and will not seek reimbursement thereof from  
21 any Party to this Settlement Agreement. In the event that legal action arises out of  
22 this Agreement or is necessary to enforce any of the terms or provisions of this  
23 Settlement, the prevailing party in the Action will recover its attorneys' fees and  
24 costs.  
25  
26  
27  
28

1 IT IS SO STIPULATED AND AGREED.

2  
3 Dated: 4, 6, 2018

  
Jacklyn Feist

4  
5  
6 Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Angelica Zimmer

7  
8  
9 Dated: \_\_\_\_\_, 2018

Petco Animal Supplies, Inc.

10 By: \_\_\_\_\_

11 Its: \_\_\_\_\_

12  
13  
14 APPROVED AS TO FORM

15  
16 Dated: \_\_\_\_\_, 2018

GLANCY PRONGAY & MURRAY LLP

17 By: \_\_\_\_\_

Lionel Z. Glancy

Marc L. Godino

18 Mark S. Greenstone

19 1925 Century Park East, Suite 2100

20 Los Angeles, CA 90067

21 Telephone: (310) 201-9150

22 Facsimile: (310) 201-9160

23 lglancy@glancylaw.com

24 mgodinno@glancylaw.com

25 mgreenstone@glancylaw.com

26  
27 *Counsel for Plaintiffs*

1 IT IS SO STIPULATED AND AGREED.  
2

3 Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Jacklyn Feist

4  
5  
6 Dated: 4.5, 2018

\_\_\_\_\_  
Angelica Zimmer  
Angelica Zimmer

7  
8  
9  
10 Dated: \_\_\_\_\_, 2018

Petco Animal Supplies, Inc.

11 By: \_\_\_\_\_

12 Its: \_\_\_\_\_  
13

14 APPROVED AS TO FORM

15  
16 Dated: \_\_\_\_\_, 2018

GLANCY PRONGAY & MURRAY LLP

17 By: \_\_\_\_\_

18 Lionel Z. Glancy

Marc L. Godino

19 Mark S. Greenstone

20 1925 Century Park East, Suite 2100

Los Angeles, CA 90067

21 Telephone: (310) 201-9150

22 Facsimile: (310) 201-9160

23 lglancy@glancylaw.com

mgodinno@glancylaw.com

24 ingreenstone@glancylaw.com

25 *Counsel for Plaintiffs*  
26  
27  
28



1 **IT IS SO STIPULATED AND AGREED.**

2  
3 Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Jacklyn Feist

4  
5  
6 Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Angelica Zimmer

7  
8  
9 Dated: April 5, 2018

Petco Animal Supplies, Inc.

10  
11 By: 

12 Its: Associate General Counsel, Employment

13  
14 **APPROVED AS TO FORM**

15  
16 Dated: \_\_\_\_\_, 2018

GLANCY PRONGAY & MURRAY LLP

17 By: \_\_\_\_\_

18 Lionel Z. Glancy

19 Marc L. Godino

20 Mark S. Greenstone

21 1925 Century Park East, Suite 2100

22 Los Angeles, CA 90067

23 Telephone: (310) 201-9150

24 Facsimile: (310) 201-9160

25 lglancy@glancylaw.com

26 mgodinno@glancylaw.com

27 mgreenstone@glancylaw.com

28 *Counsel for Plaintiffs*

1 IT IS SO STIPULATED AND AGREED.

2  
3 Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Jacklyn Feist

4  
5  
6 Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Angelica Zimmer

7  
8  
9 Dated: \_\_\_\_\_, 2018

Petco Animal Supplies, Inc.

10  
11 By: \_\_\_\_\_

12 Its: \_\_\_\_\_  
13

14 APPROVED AS TO FORM

15  
16 Dated: 4-9, 2018

GLANCY PRONGAY & MURRAY LLP

17 By: 

Lionel Z. Glancy

Marc L. Godino

18 Mark S. Greenstone

19 1925 Century Park East, Suite 2100

20 Los Angeles, CA 90067

21 Telephone: (310) 201-9150

22 Facsimile: (310) 201-9160

23 lglancy@glancylaw.com

24 mgodinno@glancylaw.com

25 mgreenstone@glancylaw.com

26  
27  
28 *Counsel for Plaintiffs*



1  
2  
3 Dated: April 5, 2018

WILSON TURNER KOSMO LLP

4 By: 

5 Frederick W. Kosmo, Jr.

6 Marissa L. Lyftogt

7 Hali M. Anderson

8 550 West C Street, Suite 1050

9 San Diego, CA 92101

10 Telephone: (619) 236-9600

11 Facsimile: (619) 236-9669

12 fkosmo@wilsonturnerkosmo.com

13 mlyftogt@wilsonturnerkosmo.com

14 handerson@wilsonturnerkosmo.com

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*Counsel for Defendant*

## EXHIBIT A

## NOTICE OF CLASS ACTION SETTLEMENT

In The Matter of  
*Feist et al. v. Petco Animal Supplies, Inc.*

United States District Court for the Southern District of California, Case No.: 3:16-cv-01369-H-DHB

*A court authorized this notice. This is not a solicitation.  
This is not a lawsuit against you and you are not being sued.  
However, your legal rights are affected whether you act or don't act.*

**IMPORTANT: YOU MAY BE ENTITLED TO MONEY IF THE COURT APPROVES THE  
SETTLEMENT DESCRIBED HEREIN**

### NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT, YOUR RIGHTS AND OPTIONS FOR YOU TO CONSIDER

This Notice relates to a proposed Settlement in a class action lawsuit that alleges that Petco Animal Supplies, Inc. ("Petco" or "Defendant") violated the Fair Credit Reporting Act ("FCRA") by failing to provide required background check related disclosures and notices to people who applied for employment with Petco. Petco denies that it violated the law in any fashion whatsoever and has asserted numerous affirmative defenses.

There are two proposed Settlement Classes, which are defined in detail within this notice. The first Class is comprised of everyone with respect to whom Petco procured a consumer report for employment purposes during the period from May 1, 2014 through December 31, 2015. The parties estimate that this Class consists of approximately 37,279 individuals who will receive approximately \$21 each. The second Class is comprised of approximately 52 individuals in the first Class against whom an adverse action was taken based upon a consumer report but who were not provided with a pre-adverse action notification letter. This small number of individuals who are also members of the second Class will receive an additional \$150.

Your eligibility for a Settlement payment will be based upon Petco's records and any payment will be sent to you automatically provided you do not choose to opt out of the Settlement. There is no need to submit a claim.

**PLEASE READ THIS NOTICE CAREFULLY**

### WHAT THIS NOTICE CONTAINS

NOTICE OF CLASS ACTION SETTLEMENT .....	1
I. WHAT IS THE PURPOSE OF THIS NOTICE? .....	2
II. WHAT IS THE LAWSUIT ABOUT? .....	2
III. WHY DID I GET THIS NOTICE? .....	2
IV. WHO ARE THE PARTIES IN THIS CLASS ACTION? .....	2
V. WHO ARE THE ATTORNEYS FOR THE PARTIES? .....	3
VI. WHAT IS THE PROPOSED SETTLEMENT? .....	3

VII. RELEASE OF CLAIMS.....	4
VIII. WHEN IS THE FINAL FAIRNESS HEARING? .....	4
IX. WHAT ARE MY RIGHTS WITH REGARD TO THIS MATTER? .....	4
X. WHO CAN I CONTACT IF I HAVE FURTHER QUESTIONS? .....	5

#### I. WHAT IS THE PURPOSE OF THIS NOTICE?

This Notice is to let you know that there is a class action pending in the United States District Court for the Southern District of California, that you may be a member of the Settlement Class for this lawsuit, AND THAT YOU MAY BE ENTITLED TO A PAYMENT AS PART OF THE CLASS SETTLEMENT OF THIS LAWSUIT.

This Notice advises you of the benefits that may be available to you under the proposed Settlement and your rights and options as a potential Class Member, and notifies you that court hearings will be held to approve the Settlement.

#### II. WHAT IS THE LAWSUIT ABOUT?

On May 5, 2016, Plaintiffs Jacklyn Feist and Angelica Zimmer ("Plaintiffs"), as individuals and on behalf of all others similarly situated, filed a class action complaint entitled "*Feist, et al. v. Petco Animal Supplies, Inc.*," in San Diego Superior Court. On June 7, 2016, Petco removed the case to the United States District Court for the Southern District of California, No.: 3:16-cv-01369-H-DHB (the "Action").

The Action alleges that Petco violated the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, *et seq.* in two ways. First, Plaintiffs allege that Petco violated the FCRA by procuring consumer reports on Plaintiffs and class members for employment purposes without providing a proper stand-alone disclosure, and without obtaining a proper authorization, as required by the FCRA. These individuals are "Disclosure Class Members." It is estimated that there are approximately 37,279 Disclosure Class Members on whom Petco procured consumer reports during the Class Period, which is defined as the period from May 1, 2014 through December 31, 2015. Second, Plaintiffs allege that Petco failed to provide a required pre-adverse action notification letter to a small number of Disclosure Class Members against whom it took an adverse action on the basis of information contained within a consumer report. These individuals are "Adverse Action Class Members." It is estimated that approximately 52 of the Disclosure Class Members are also Adverse Action Class Members. You have received this Notice because Petco's records indicate that Petco procured your consumer report during the period from May 1, 2014 through December 31, 2015. You are therefore considered to be a Class Member.

Petco denies and continues to deny that it has done anything wrong, and denies that any Class Member has been injured or suffered damages. Considering the risks, uncertainties, inconvenience, and expense associated with the Action, the Parties and their counsel have concluded that it is in the best interests of the Parties and the Class Members to settle the Action on the terms summarized in this notice, and that the Settlement is fair, adequate and reasonable.

On \_\_\_\_\_, 2018, United States District Court Judge Marilyn Huff held a hearing and determined on a preliminary basis that the Settlement is fair, adequate and reasonable and in the best interests of the Class, subject to a final fairness hearing discussed below.

#### III. WHY DID I GET THIS NOTICE?

You received this Notice because Petco's records identify you as a member of the Settlement Class.

#### IV. WHO ARE THE PARTIES IN THIS CLASS ACTION?

The Plaintiffs are Jacklyn Feist and Angelica Zimmer ("Class Representatives"), who applied for employment with

Defendant during the period from May 1, 2014 through December 31, 2015 . The Class Representatives are pursuing the case on behalf of all other similarly situated individuals such as yourself.

Petco Animal Supplies, Inc. is the Defendant.

**V. WHO ARE THE ATTORNEYS FOR THE PARTIES?**

Counsel for Plaintiffs  
Mark S. Greenstone  
**GLANCY PRONGAY & MURRAY LLP**  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Phone: (888) 773-9224/Fax: (310) 201-9160

Counsel for Defendant  
Frederick W. Kosmo, Jr.  
**WILSON TURNER KOSMO LLP**  
550 West C St., Suite 1050  
San Diego, California 92101  
Phone: (619) 236-9600/Fax: (619) 236-9669

**VI. WHAT IS THE PROPOSED SETTLEMENT?**

The Parties have agreed to the Settlement generally described below:

Without admitting any wrongdoing, Defendant has agreed to pay \$1,200,000 (the "Common Fund") to resolve the Action. The Common Fund will be distributed as follows. First, court approved attorneys' fees and costs, settlement administration expenses and Class Representative Enhancements (if any) will be deducted. It is estimated that Class Counsel will seek approximately \$300,000 in attorneys' fees and \$15,725.26 in costs, that settlement administration expenses will be \$81,000 and that the Class Representative Enhancement will be \$10,000 (\$5,000 to each Plaintiff). The remaining Net Settlement Fund, estimated to be \$793,274.74, will be distributed to the Settlement Class. It is estimated that each Disclosure Class Member will receive approximately \$21 each. Each Disclosure Class Member who is also an Adverse Action Class Member will receive an additional \$150.

Please note that the above is a summary of the Settlement provisions. The specific and complete terms of the proposed Settlement are stated in the Stipulation of Settlement for Class Action Settlement, ("Settlement"), a copy of which is filed with the Clerk of the Court. You may obtain a copy of the Settlement as well as other documents relating to the Settlement that are filed with the Court (e.g., Plaintiffs' Motion for Preliminary approval, Plaintiffs' Motion for Final Approval, etc.) free of charge by contacting Plaintiffs' counsel listed in Section V above. You may also obtain copies of documents filed with the Court on pacer.gov for a fee.

**Individual Settlement Payments To All Participating Class Members.**

Each member of the Settlement Class who does not opt out of the settlement as described in Section IX, below, will receive an Individual Settlement Payment. **The estimated amount of your Individual Settlement Payment is indicated on the first page of this Notice and immediately above in Section VI. This is just an estimate of the minimum payment you could be eligible to receive under the Settlement.** Your payment could vary depending on the amounts that the Court ultimately approves for attorneys' fees and costs, settlement administration expenses, Class Representative Enhancements and the number of opt-outs.

Settlement payments will be distributed **automatically** approximately \_\_\_\_\_ ( ) days after the Effective Date of the Settlement. **There is no need to submit a claim.**

**No Effect On Employee Benefit Plans.** Neither the Class Settlement nor any amounts paid under the Class Settlement will form the basis of additional contributions to, benefits under, or any other monetary entitlement under, any employer-sponsored benefit plans, policies or bonus programs.

**VII. RELEASE OF CLAIMS.**

Effective upon entry of a Court order granting Final Approval of the proposed Class Settlement and Judgment, **Class Members** who have not validly exercised their right to opt out will be deemed to have waived and released all claims,



damages, losses, demands, penalties, liabilities, fees, interest, causes of action, complaints or suits that are or could have been brought by Plaintiffs in this Action based upon the facts alleged in Plaintiffs' Second Amended Complaint. Released Claims for Class Members include, without limiting the foregoing, all claims based on the failure to provide a proper disclosure and/or obtain a proper authorization and/or provide a pre-adverse action notification letter, in connection with an employment-related background check under the FCRA and all related, analogous or corresponding federal or state laws, which any Participating Class Member has ever had, or hereafter may claim to have, against the Released Parties relating to consumer reports procured by Defendant during the period from May 1, 2014 through December 31, 2015. All Class Members, except for any Class Member who timely opted out of the settlement, shall be deemed to have released, waived and forever discharged the Released Parties from the Released Claims.

This Release does not apply to any claims for workers' compensation, unemployment insurance, employment discrimination or to any other claims Class Members may have against the Defendant which are unrelated to the Action.

### **VIII. WHEN IS THE FINAL FAIRNESS HEARING?**

A final hearing will be held before the Honorable Marilyn Huff on \_\_\_\_\_, 2018 to determine whether the proposed Settlement is fair, reasonable and adequate and should be finally approved by the Court. The hearing will take place in Courtroom 15A of the United States District Court for the Southern District of California located at 333 West Broadway, San Diego, California 92101. **You are not required to attend the hearing in order to participate in the Settlement.**

### **IX. WHAT ARE MY RIGHTS WITH REGARD TO THIS MATTER?**

If you fit the description of a Disclosure Class Member and/or an Adverse Action Class Member as set forth in this notice, you have three options. Each option has its own consequences, which you should understand before making your decision. Your rights regarding each option, and the procedure you must follow to select each option, are set forth below.

A. Option One. You Can Do Nothing, Participate in the Settlement, Release Your Claims As Stated Above And Receive A Settlement Payment.

If you do nothing, you will automatically choose this option. Class Counsel, appointed and approved by the Court for Settlement purposes only, will represent your interests. You will receive a settlement payment after the Settlement has been finally approved by the Court. The judgment will bind all Class Members who do not request exclusion (Option Two below).

B. Option Two. You Can Exclude Yourself ("Opt Out") From The Settlement.

If you do not wish to participate in or be bound by the Settlement, you must submit a written statement by mail to the Settlement Administrator (address in Section X below) requesting to be excluded from the Class ("Request For Exclusion") on or before [DATE] ("Request For Exclusion/Opt Out Deadline"). Such a written Request for Exclusion must contain your name, address, telephone number and Social Security number and the location and date of when you sought employment by Petco Animal Supplies, Inc., and must be sent by mail to the Settlement Administrator, XXXXXXXX, at the address listed at the bottom of this Notice. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted.

If you request exclusion, you will not receive any money from the Settlement, nor will you be considered to have released your claims alleged in the Action. If you request exclusion from the Settlement, you may not pursue any recovery under the Settlement. You may, however, pursue other remedies separate and apart from the Settlement that may be available to you.

C. Option Three. You May Object to the Settlement.

If you are a Class Member, and you do not exclude yourself from the Settlement (opt out), you may object to the Settlement before final approval of the Settlement by the Court. If you choose to object to the Settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself), or through an attorney that you hire and pay for yourself.

In order to object to the Settlement, or any portion of it, you must file a copy of the objection in writing with the United States District Court, Southern District of California, 221 West Broadway, San Diego, CA 92101 on or before [DATE]. Your objection must set forth the following information: full name; current address; current phone number; a written statement of the reason(s) for the objection; a statement of whether the you intend to appear at the Final Fairness hearing (with or without counsel); a signature; and, the case name and number of the action.

No Class Member will be entitled to object to the Settlement if they do not object by the method specified above on or before the Objection Deadline. If the Court approves the Settlement despite any objections, you still will receive your share of the Settlement proceeds unless you exclude yourself in a timely manner according to Option Two above.

X. WHO CAN I CONTACT IF I HAVE FURTHER QUESTIONS?

The court-appointed Administrator for this Settlement is as follows:

*Feist et al v. Petco Animal Supplies Class Action Settlement*

[ADDRESS]  
[TELEPHONE NUMBER]

If you have questions, you may call the Settlement Administrator, toll free at [TELEPHONE NUMBER]. Ask about the *Feist et al v. Petco Animal Supplies Class Settlement*. You may also call or e-mail any of the attorneys for Plaintiffs listed in Section V above. **PLEASE DO NOT CALL THE COURT.**

## **EXHIBIT B**



1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA  
3

4 JACKLYN FEIST and ANGELICA  
5 ZIMMER, Individually and on Behalf of  
6 All Others Similarly Situated,

7 Plaintiffs,

8 v.

9 PETCO ANIMAL SUPPLIES, INC.,  
10 and DOES 1 through 10, inclusive,

11 Defendants.

Case No.: 3:16-cv-01369-H-DHB

**ORDER OF FINAL APPROVAL  
and  
JUDGMENT**

12 Based on the Plaintiffs' Motion for Final Approval of the Proposed  
13 Settlement and supporting papers, the arguments presented at Final Fairness  
14 Hearing, and for good cause shown, IT IS HEREBY ORDERED:

15 1. The Stipulation for Class Action Settlement, including its exhibits (the  
16 "Agreement" or "Settlement Agreement"), and the definition of words and terms  
17 contained therein are incorporated by reference in this Order. The terms of this  
18 Court's Preliminary Approval Order are also incorporated by reference in this  
19 Order.  
20

21 2. The Court reaffirms its certification of the following Settlement Classes  
22 for settlement purposes, which was provisionally certified for settlement purposes in  
23 this Court's Preliminary Approval Order:  
24

25 All persons regarding whom Defendant procured or caused to be  
26 procured a consumer report for employment purposes during the  
27 period from May 1, 2014 through December 31, 2015 ("Disclosure  
28 Class"). Included in that settlement class is a subclass consisting of

1 those against whom Petco took an adverse action subsequent to  
2 procuring a consumer report and did not receive a pre-adverse action  
3 notification letter ("Adverse Action Class").

4 The Court incorporates by reference its findings and conclusions regarding class  
5 certification contained in the Preliminary Approval Order, and reaffirms those  
6 findings and conclusions for purposes of final approval of the Settlement.

7 3. The Court hereby finds that the Settlement Agreement is the product of  
8 arm's length settlement negotiations among Plaintiffs, Class Counsel, and  
9 Defendant.  
10

11 4. The Court hereby finds and concludes that Class Notice was  
12 disseminated to members of the Settlement Classes in accordance with the terms set  
13 forth in Section III.C of the Settlement Agreement in compliance with this Court's  
14 Preliminary Approval Order.  
15

16 5. The Court further finds and concludes that the Class Notice and  
17 Settlement Award distribution procedures set forth in Sections III.C & K of the  
18 Settlement Agreement fully satisfy the requirements of due process, were the best  
19 notice practicable under the circumstances, and provided individual notice to all  
20 members of the Settlement Classes who could be identified through reasonable  
21 effort.  
22

23 6. The Court hereby finally approves the Settlement Agreement and the  
24 Settlement contemplated thereby, and finds that the terms and conditions constitute,  
25  
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1 in all respects, a fair, adequate, and reasonable settlement as to all Settlement Class  
2 Members, and directs its consummation pursuant to its terms and conditions.

3  
4 7. The Court reserves jurisdiction over all matters arising out of the  
5 Settlement Agreement, including for purposes of enforcing the terms of the  
6 Settlement Agreement, which are hereby incorporated into the Court's Judgment.

7  
8 8. The Court approves Class Counsel's application for \$ \_\_\_\_\_  
9 in attorneys' fees, \$ \_\_\_\_\_ in litigation costs and settlement administration  
10 expenses, and for a service award to the Named Plaintiffs in the amount of  
11 \$ \_\_\_\_\_ each.

12  
13 9. This Order of Final Approval and Judgment shall constitute a final  
14 judgment that is binding on the parties and the Settlement Classes. The Clerk of the  
15 Court is directed to enter this Order and Judgment on the docket forthwith.

16  
17  
18 Dated:

\_\_\_\_\_  
Hon. Marilyn L. Huff

## EXHIBIT C

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA  
3

4 JACKLYN FEIST and ANGELICA  
5 ZIMMER, Individually and on Behalf of  
6 All Others Similarly Situated,

7 Plaintiffs,

8 v.

9 PETCO ANIMAL SUPPLIES, INC.,  
10 and DOES 1 through 10, inclusive,

11 Defendants.

Case No.: 3:16-cv-01369-H-DHB

**ORDER PRELIMINARILY  
APPROVING SETTLEMENT**

12 Based on the Plaintiffs' unopposed Motion for Preliminary Approval of the  
13 Proposed Settlement and good cause shown therein, IT IS HEREBY ORDERED  
14 THAT:

15 1. Preliminary Approval of Proposed Settlement. The Stipulation for  
16 Class Action Settlement, including its exhibits (the "Agreement" or "Settlement  
17 Agreement"), and the definitions of words and terms contained therein are  
18 incorporated by reference in this Order. The Settlement Agreement, including all  
19 exhibits thereto, is preliminarily approved as fair, reasonable, and adequate and  
20 within the range of reasonableness for preliminary settlement approval. The Court  
21 finds that: (a) the Agreement resulted from extensive arm's length negotiations; and  
22 (b) the Agreement is sufficient to warrant notice of the Settlement to those persons  
23 in the Settlement Class and a full hearing on the approval of the Settlement.  
24  
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28

1           2.    Class Certification For Settlement Purposes Only. The Court  
2 provisionally certifies, for settlement purposes only, the following Settlement  
3 Classes:  
4

5           All persons regarding whom Defendant procured or caused to be  
6 procured a consumer report for employment purposes during the  
7 period from May 1, 2014 through December 31, 2015 ("Disclosure  
8 Class"). Included in that Settlement Class is a subclass consisting of  
9 those against whom Petco took an adverse action subsequent to  
procuring a consumer report and did not receive a pre-adverse action  
notification letter ("Adverse Action Class").

10 The parties stipulate that there are approximately 37,279 Disclosure Class Members,  
11 approximately 52 of whom are also Adverse Action Class Members. In connection  
12 with this provisional certification, the Court makes the following preliminary  
13 findings for settlement purposes only:  
14

- 15           a.    There are ascertainable classes composed of the members of the  
16 Settlement Classes defined above.  
17  
18           b.    It is not practicable to bring all members of those ascertainable  
19 classes before the Court.  
20  
21           c.    The questions of law or fact common to the claims of the  
22 ascertainable classes are substantially similar, and predominate  
23 over questions that affect each individual member of the classes.  
24  
25           d.    The claims of the Plaintiffs named above are typical of the  
26 claims of the ascertainable classes.  
27  
28

1 e. The Plaintiffs named above will fairly and adequately protect the  
2 interests of the classes.

3  
4 3. Class Counsel. The Court conditionally appoints Glancy Prongay &  
5 Murray LLP as Class Counsel.

6 4. Class Representatives. The Court conditionally appoints Jacklyn Feist  
7 and Angelica Zimmer as Class Representatives.

8  
9 5. Settlement Administrator. The Court conditionally appoints KCC LLC  
10 as the Settlement Administrator.

11  
12 6. Class Notice. The Parties' Notice of Class Action Settlement is  
13 approved for distribution in accordance with the schedule set forth in the Settlement  
14 Agreement.

15  
16 7. Requests For Exclusion/Opt-Outs. Any Class Member who wishes to  
17 be excluded (opt out) from the Settlement, must:

18 a. Submit a written statement requesting exclusion from the Class  
19 on or before the Exclusion Deadline, which shall be sixty (60)  
20 days after the date the Class Notice is first mailed by the  
21 Settlement Administrator. Such written Request for Exclusion  
22 must contain the name, address, telephone number and social  
23 security number of the person requesting exclusion and must be  
24 returned by mail to the Settlement Administrator at the address  
25 specified in the Class Notice and must be postmarked on or  
26  
27  
28

1 before the Request For Exclusion/Opt Out Deadline Date. The  
2 date of the postmark on the return mailing envelope shall be the  
3 exclusive means used to determine whether a Request for  
4 Exclusion has been timely submitted.  
5

6 b. The foregoing requirements shall be strictly construed, and  
7 substantial compliance shall not be sufficient. Any Class  
8 Member who does not satisfy all of the foregoing requirements  
9 will be conclusively deemed a Participating Class Member fully  
10 bound by the terms of the Settlement to the extent permitted by  
11 law.  
12

13 c. Any Class Member who mails a valid and timely Request for  
14 Exclusion will, upon receipt by the Settlement Administrator of  
15 the Request for Exclusion, no longer be a Class Member, and  
16 will receive no benefit or payment from this Settlement and none  
17 of his or her claims, causes of action or rights will be released by  
18 virtue of this Settlement.  
19

20  
21  
22 8. Objections. Any Class Member who wishes to object to the Settlement  
23 must file a copy of the objection in writing with the Court no later than the  
24 Objection Deadline, which shall be sixty (60) days after the date the Class Notice is  
25 first mailed by the Settlement Administrator. Any Class Member who objects must  
26 set forth in his or her written objection:  
27  
28



1 (a) his or her full name;

2 (b) his or her current address;

3 (c) his or her phone number;

4  
5 (d) a written statement of his or her objection, and the reasons for  
6 each objection;

7 (e) a statement of whether he or she intends to appear at the Final  
8 Fairness Hearing (with or without counsel);

9 (f) his or her signature; and,

10 (g) the case name and number of the Action.

11  
12  
13 9. Final Approval Hearing. A Final Approval Hearing is set for  
14 \_\_\_\_\_, 2018 in Courtroom 15A at the United States District Court for the  
15 Southern District of California, 333 West Broadway, San Diego, California 92101.  
16

17  
18 Dated:

19 Hon. Marilyn L. Huff  
20  
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22  
23  
24  
25  
26  
27  
28

## EXHIBIT 2



1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
T: 310.201.9150

## FIRM RESUME

**Glancy Prongay & Murray LLP** (the “Firm”) has represented investors, consumers and employees for over 25 years. Based in Los Angeles, with offices in New York City and Berkeley, the Firm has successfully prosecuted class action cases and complex litigation in federal and state courts throughout the country. As Lead Counsel or as a member of Plaintiffs’ Counsel Executive Committees, the Firm has recovered billions of dollars for parties wronged by corporate fraud and malfeasance. Indeed, the Institutional Shareholder Services unit of RiskMetrics Group has recognized the Firm as one of the top plaintiffs’ law firms in the United States in its Securities Class Action Services report for every year since the inception of the report in 2003. The Firm’s efforts have been publicized in major newspapers such as the *Wall Street Journal*, the *New York Times*, and the *Los Angeles Times*.

Glancy Prongay & Murray’s commitment to high quality and excellent personalized services has boosted its national reputation, and we are now recognized as one of the premier plaintiffs’ firms in the country. The Firm works tenaciously on behalf of clients to produce significant results and generate lasting corporate reform.

The Firm’s integrity and success originate from our attorneys, who are among the brightest and most experienced in the field. Our distinguished litigators have an unparalleled track record of investigating and prosecuting corporate wrongdoing. The Firm is respected for both the zealous advocacy with which we represent our clients’ interests as well as the highly-professional and ethical manner by which we achieve results. We are ideally positioned to interpret securities litigation, consumer litigation, antitrust litigation, and derivative and corporate takeover litigation. The Firm’s outstanding accomplishments are the direct result of the exceptional talents of our attorneys and employees.

Appointed as Lead or Co-Lead Counsel by judges throughout the United States, Glancy Prongay & Murray has achieved significant recoveries for class members, including:

*In re Mercury Interactive Corporation Securities Litigation*, USDC Northern District of California, Case No. 05-3395-JF, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$117 million.

*In re Real Estate Associates Limited Partnership Litigation*, USDC Central District of California, Case No. 98-7035-DDP, in which the Firm served as local counsel and plaintiffs achieved a \$184 million jury verdict after a complex six week trial in Los Angeles, California and later settled the case for \$83 million.

*The City of Farmington Hills Employees Retirement System v. Wells Fargo Bank, N.A.*, USDC District of Minnesota, Case No. 10-cv-04372-DWF/JJG, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at \$62.5 million.

*In re Lumenis, Ltd. Securities Litigation*, USDC Southern District of New York, Case No.02-CV-1989-DAB, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$20 million.

*In re Heritage Bond Litigation*, USDC Central District of California, Case No. 02-ML-1475-DT, where as Co-Lead Counsel, the Firm recovered in excess of \$28 million for defrauded investors and continues to pursue additional defendants.

*In re ECI Telecom Ltd. Securities Litigation*, USDC Eastern District of Virginia, Case No. 01-913-A, in which the Firm served as sole Lead Counsel and recovered almost \$22 million for defrauded ECI investors.

*Jenson v. First Trust Corporation*, USDC Central District of California, Case No. 05-cv-3124-ABC, in which the Firm was appointed sole lead counsel and achieved an \$8.5 million settlement in a very difficult case involving a trustee's potential liability for losses incurred by investors in a Ponzi scheme. Kevin Ruf of the Firm also successfully defended in the 9th Circuit Court of Appeals the trial court's granting of class certification in this case.

*Yaldo v. Airtouch Communications*, State of Michigan, Wayne County, Case No. 99-909694-CP, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$32 million for defrauded consumers.

*In re Infonet Services Corporation Securities Litigation*, USDC Central District of California, Case No. CV 01-10456-NM, in which as Co-Lead Counsel, the Firm achieved a settlement of \$18 million.

*In re Musicmaker.com Securities Litigation*, USDC Central District of California, Case No. 00-02018-CAS, a securities fraud class action in which the Firm was sole Lead Counsel for the Class and recovered in excess of \$13 million.

*In re ESC Medical Systems, Ltd. Securities Litigation*, USDC Southern District of New York, Case No. 98 Civ. 7530-NRB, a securities fraud class action in which the Firm served as sole Lead Counsel for the Class and achieved a settlement valued in excess of \$17 million.

*In re Lason, Inc. Securities Litigation*, USDC Eastern District of Michigan, Case No. 99 76079-AJT, in which the Firm was Co-Lead Counsel and recovered almost \$13 million for defrauded Lason stockholders.

*In re Inso Corp. Securities Litigation*, USDC District of Massachusetts, Case No. 99 10193-WGY, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$12 million.

*In re National TechTeam Securities Litigation*, USDC Eastern District of Michigan, Case No. 97-74587-AC, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$11 million.

*In re Ramp Networks, Inc. Securities Litigation*, USDC Northern District of California, Case No. C-00-3645-JCS, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of nearly \$7 million.

*In re Gilat Satellite Networks, Ltd. Securities Litigation*, USDC Eastern District of New York, Case No. 02-1510-CPS, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$20 million.

*Taft v. Ackermans (KPNQwest Securities Litigation)*, USDC Southern District of New York, Case No. 02-CV-07951-PKL, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement worth \$11 million.

*Ree v. Procom Technologies, Inc.*, USDC Southern District of New York, Case No. 02-CV-7613-JGK, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$2.7 million.

*Capri v. Comerica, Inc.*, USDC Eastern District of Michigan, Case No. 02-CV-60211-MOB, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$6.0 million.

*Tatz v. Nanophase Technologies Corp.*, USDC Northern District of Illinois, Case No. 01-C-8440-MCA, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$2.5 million.

*In re Livent, Inc. Noteholders Litigation*, USDC Southern District of New York, Case No. 99 Civ 9425-VM, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of over \$27 million.

*Plumbing Solutions Inc. v. Plug Power, Inc.*, USDC Eastern District of New York, Case No. CV 00 5553-ERK, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of over \$5 million.

*Schleicher v. Wendt*, (Conseco Securities Litigation), USDC Southern District of Indiana, Case No. 02-1332-SEB, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of over \$41 million.

*Lapin v. Goldman Sachs*, USDC Southern District of New York, Case No. 03-0850-KJD, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$29 million.

*Senn v. Sealed Air Corporation*, USDC New Jersey, Case No. 03-cv-4372-DMC, a securities fraud class action, in which the Firm acted as co-lead counsel for the Class and achieved a settlement of \$20 million.

The Firm filed the initial landmark antitrust lawsuit against all of the major NASDAQ market makers and served on Plaintiffs' Counsel's Executive Committee in *In re Nasdaq Market-Makers Antitrust Litigation*, USDC Southern District of New York, Case No. 94 C 3996-RWS, MDL Docket No. 1023, which recovered \$900 million for investors in numerous heavily traded Nasdaq issues.

Glancy Prongay & Murray has also previously acted as Class Counsel in obtaining substantial benefits for shareholders in a number of actions, including:

*In re F & M Distributors Securities Litigation*,  
Eastern District of Michigan, Case No. 95 CV 71778-DT (Executive Committee Member) (\$20.25 million settlement)

*James F. Schofield v. McNeil Partners, L.P. Securities Litigation*,  
California Superior Court, County of Los Angeles, Case No. BC 133799

*Resources High Equity Securities Litigation*,  
California Superior Court, County of Los Angeles, Case No. BC 080254

The Firm has served and currently serves as Class Counsel in a number of antitrust class actions, including:

*In re Nasdaq Market-Makers Antitrust Litigation*,  
USDC Southern District of New York, Case No. 94 C 3996-RWS, MDL Docket No. 1023

*In re Brand Name Prescription Drug Antitrust Litigation*,  
USDC Northern District of Illinois, Eastern Division, Case No. 94 C 897-CPK

Glancy Prongay & Murray has been responsible for obtaining favorable appellate opinions which have broken new ground in the class action or securities fields, or which have promoted shareholder rights in prosecuting these actions. The Firm successfully argued the appeals in a number of cases:

In *Smith v. L'Oreal*, 39 Cal.4th 77 (2006), Firm partner Kevin Ruf established ground-breaking law when the California Supreme Court agreed with the Firm's position that waiting penalties under the California Labor Code are available to *any* employee after termination of employment, regardless of the reason for that termination.

Other notable Firm cases are: *Silber v. Mabon I*, 957 F.2d 697 (9th Cir. 1992) and *Silber v. Mabon II*, 18 F.3d 1449 (9th Cir. 1994), which are the leading decisions in the Ninth Circuit regarding the rights of opt-outs in class action settlements. In *Rothman v. Gregor*, 220 F.3d 81 (2d Cir. 2000), the Firm won a seminal victory for investors before the Second Circuit Court of Appeals, which adopted a more favorable pleading standard

for investors in reversing the District Court's dismissal of the investors' complaint. After this successful appeal, the Firm then recovered millions of dollars for defrauded investors of the GT Interactive Corporation. The Firm also argued *Falkowski v. Imation Corp.*, 309 F.3d 1123 (9th Cir. 2002), *as amended*, 320 F.3d 905 (9th Cir. 2003) and favorably obtained the substantial reversal of a lower court's dismissal of a cutting edge, complex class action initiated to seek redress for a group of employees whose stock options were improperly forfeited by a giant corporation in the course of its sale of the subsidiary at which they worked. The revived action is currently proceeding in the California state court system.

The Firm is also involved in the representation of individual investors in court proceedings throughout the United States and in arbitrations before the American Arbitration Association, National Association of Securities Dealers, New York Stock Exchange, and Pacific Stock Exchange. Mr. Glancy has successfully represented litigants in proceedings against such major securities firms and insurance companies as A.G. Edwards & Sons, Bear Stearns, Merrill Lynch & Co., Morgan Stanley, PaineWebber, Prudential, and Shearson Lehman Brothers.

One of the Firm's unique skills is the use of "group litigation" - the representation of groups of individuals who have been collectively victimized or defrauded by large institutions. This type of litigation brought on behalf of individuals who have been similarly damaged often provides an efficient and effective economic remedy that frequently has advantages over the class action or individual action devices. The Firm has successfully achieved results for groups of individuals in cases against major corporations such as Metropolitan Life Insurance Company, and Occidental Petroleum Corporation.

Glancy Prongay & Murray LLP currently consists of the following attorneys:

## PARTNERS

**LEE ALBERT**, a partner, was admitted to the bars of the Commonwealth of Pennsylvania, the State of New Jersey, and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey in 1986. He received his B.S. and M.S. degrees from Temple University and Arcadia University in 1975 and 1980, respectively, and received his J.D. degree from Widener University School of Law in 1986. Upon graduation from law school, Mr. Albert spent several years working as a civil litigator in Philadelphia, PA. Mr. Albert has extensive litigation and appellate practice experience having argued before the Supreme and Superior Courts of Pennsylvania and has over fifteen years of trial experience in both jury and non-jury cases and arbitrations. Mr. Albert has represented a national health care provider at trial obtaining injunctive relief in federal court to enforce a five-year contract not to compete on behalf of a national health care provider and injunctive relief on behalf of an undergraduate university.



Currently, Mr. Albert represents clients in all types of complex litigation including matters concerning violations of federal and state antitrust and securities laws, mass tort/product liability and unfair and deceptive trade practices. Some of Mr. Albert's current major cases include *In Re Automotive Wire Harness Systems Antitrust Litigation* (E.D. Mich.); *In Re Heater Control Panels Antitrust Litigation* (E.D. Mich.); *Kleen Products, et al. v. Packaging Corp. of America* (N.D. Ill.); and *In re Class 8 Transmission Indirect Purchaser Antitrust Litigation* (D. Del.). Previously, Mr. Albert had a significant role in *Marine Products Antitrust Litigation* (C.D. Cal.); *Baby Products Antitrust Litigation* (E.D. Pa.); *In re ATM Fee Litigation* (N.D. Cal.); *In re Canadian Car Antitrust Litigation* (D. Me.); *In re Broadcom Securities Litigation* (C.D. Cal.); and has worked on *In re Avandia Marketing, Sales Practices and Products Liability Litigation* (E.D. Pa.); *In re Ortho Evra Birth Control Patch Litigation* (N.J. Super. Ct., Middlesex County); *In re AOL Time Warner, Inc. Securities Litigation* (S.D.N.Y.); *In re WorldCom, Inc. Securities Litigation* (S.D.N.Y.); and *In re Microsoft Corporation Massachusetts Consumer Protection Litigation* (Mass. Super. Ct.).

**JOSEPH D. COHEN** has extensive complex civil litigation experience, and currently oversees the firm's settlement department, negotiating, documenting and obtaining court approval of the firm's securities, merger and derivative settlements.

Prior to joining the firm, Mr. Cohen successfully prosecuted numerous securities fraud, consumer fraud, antitrust and constitutional law cases in federal and state courts throughout the country. Cases in which Mr. Cohen took a lead role include: *Jordan v. California Dep't of Motor Vehicles*, 100 Cal. App. 4th 431 (2002) (complex action in which the California Court of Appeal held that California's Non-Resident Vehicle \$300 Smog Impact Fee violated the Commerce Clause of the United States Constitution, paving the way for the creation of a \$665 million fund and full refunds, with interest, to 1.7 million motorists); *In re Geodyne Res., Inc. Sec. Litig.* (Harris Cty. Tex.) (settlement of securities fraud class action, including related litigation, totaling over \$200 million); *In re Cmty. Psychiatric Centers Sec. Litig.* (C.D. Cal.) (settlement of \$55.5 million was obtained from the company and its auditors, Ernst & Young, LLP); *In re McLeodUSA Inc., Sec. Litig.* (N.D. Iowa) (\$30 million settlement); *In re Arakis Energy Corp. Sec. Litig.* (E.D.N.Y.) (\$24 million settlement); *In re Metris Cos., Inc., Sec. Litig.* (D. Minn.) (\$7.5 million settlement); *In re Landry's Seafood Rest., Inc. Sec. Litig.* (S.D. Tex.) (\$6 million settlement); and *Freedman v. Maspeth Fed. Loan and Savings Ass'n*, (E.D.N.Y.) (favorable resolution of issue of first impression under RESPA resulting in full recovery of improperly assessed late fees).

Mr. Cohen was also a member of the teams that obtained substantial recoveries in the following cases: *In re: Foreign Exchange Benchmark Rates Antitrust Litig.* (S.D.N.Y.) (partial settlements of approximately \$2 billion); *In re Washington Mutual Mortgage-Backed Sec. Litig.* (W.D. Wash.) (settlement of \$26 million); *Mylan Pharm., Inc. v. Warner Chilcott Public Ltd. Co.* (E.D. Pa.) (\$8 million recovery in antitrust action on behalf of class of indirect purchasers of the prescription drug Doryx); *City of Omaha Police and Fire Ret. Sys. v. LHC Group, Inc.* (W.D. La.) (securities class action settlement of \$7.85 million); and *In re Pacific Biosciences of Cal., Inc. Sec. Litig.* (Cal. Super. Ct.) (\$7.6 million recovery).



In addition, Mr. Cohen was previously the head of the settlement department at Bernstein Litowitz Berger & Grossmann LLP. While at BLB&G, Mr. Cohen had primary responsibility for overseeing the team working on the following settlements, among others: *In Re Merck & Co., Inc. Sec., Deriv. & "ERISA" Litig.* (D.N.J.) (\$1.062 billion securities class action settlement); *New York State Teachers' Ret. Sys. v. General Motors Co.* (E.D. Mich.) (\$300 million securities class action settlement); *In re JPMorgan Chase & Co. Sec. Litig.* (S.D.N.Y.) (\$150 million settlement); *Dep't of the Treasury of the State of New Jersey and its Division of Inv. v. Cliffs Natural Res. Inc., et al.* (N.D. Ohio) (\$84 million securities class action settlement); *In re Penn West Petroleum Ltd. Sec. Litig.* (S.D.N.Y.) (\$19.76 million settlement); and *In re BioScrip, Inc. Sec. Litig.* (\$10.9 million settlement).

**JOSHUA L. CROWELL**, a partner in the firm's Los Angeles office, concentrates his practice on prosecuting complex securities cases on behalf of investors.

Recently he helped lead the successful resolution of *In re Penn West Petroleum Ltd. Securities Litigation*, No. 1:14-cv-06046-JGK (S.D.N.Y.), resulting in a \$19 million settlement for the U.S. shareholder class as part of a \$39 million global settlement. He also helped lead the prosecution of *In re Puda Coal Inc. Securities Litigation*, No. 1:11-cv-2598 (DLC) (S.D.N.Y.), resulting in a rare settlement against underwriter defendants for securities fraud of \$8.6 million.

Prior to joining Glancy Prongay & Murray LLP, Joshua was an Associate at Labaton Sucharow LLP in New York, where he substantially contributed to some of the firm's biggest successes. There he helped secure several large federal securities class settlements, including: *In re Countrywide Financial Corp. Securities Litigation*, No. CV 07-05295 MRP (MANx) (C.D. Cal.) – \$624 million; *In re Schering-Plough Corp. / ENHANCE Securities Litigation*, No. 08-397 (DMC) (JAD) (D.N.J.) – \$473 million; *In re Broadcom Corp. Class Action Litigation*, No. CV-06-5036-R (CWx) (C.D. Cal.) – \$173.5 million; *In re Fannie Mae 2008 Securities Litigation*, No. 08-civ-7831-PAC (S.D.N.Y.) – \$170 million; and the *Oppenheimer Champion Fund* and *Core Bond Fund* actions, Nos. 09-cv-525-JLK-KMT and 09-cv-1186-JLK-KMT (D. Colo.) – \$100 million combined. He began his legal career as an Associate at Paul, Hastings, Janofsky & Walker LLP in New York, primarily representing financial services clients in commercial litigation.

Super Lawyers has selected Joshua as a Rising Star in the area of Securities Litigation from 2015 through 2017.

Prior to attending law school, Joshua was a Senior Economics Consultant at Ernst & Young LLP, where he priced intercompany transactions and calculated the value of intellectual property. Joshua received a J.D., cum laude, from The George Washington University Law School. During law school, he was an Associate of The George Washington Law Review and a member of the Mock Trial Board. He was also a law intern for Chief Judge Edward J. Damich of the United States Court of Federal Claims. Joshua earned a B.A. in International Relations from Carleton College.

**LIONEL Z. GLANCY**, a graduate of University of Michigan Law School, is the founding partner of the Firm. After serving as a law clerk for United States District Judge Howard McKibben, he began his career as an associate at a New York law firm concentrating in securities litigation. Thereafter, he started a boutique law firm specializing in securities litigation, and other complex litigation, from the Plaintiff's perspective. Mr. Glancy has established a distinguished career in the field of securities litigation over the last fifteen years, having appeared and been appointed lead counsel on behalf of aggrieved investors in securities class action cases throughout the country. He has appeared and argued before dozen of district courts and a number of appellate courts. His efforts have resulted in the recovery of hundreds of millions of dollars in settlement proceeds for huge classes of shareholders. Well known in securities law, he has lectured on its developments and practice, including having lectured before Continuing Legal Education seminars and law schools.

Mr. Glancy was born in Windsor, Canada, on April 4, 1962. Mr. Glancy earned his undergraduate degree in political science in 1984 and his Juris Doctor degree in 1986, both from the University of Michigan. He was admitted to practice in California in 1988, and in Nevada and before the U.S. Court of Appeals, Ninth Circuit, in 1989.

**MARC L. GODINO** has extensive experience successfully litigating complex, class action lawsuits as a plaintiffs' lawyer. Since joining the firm in 2005, Mr. Godino has played a primary role in cases resulting in settlements of more than \$100 million. He has prosecuted securities, derivative, merger & acquisition, and consumer cases throughout the country in both state and federal court, as well as represented defrauded investors at FINRA arbitrations. Mr. Godino manages the Firm's consumer class action department.

While a senior associate with Stull Stull & Brody, Mr. Godino was one of the two primary attorneys involved in *Small v. Fritz Co.*, 30 Cal. 4th 167 (April 7, 2003), in which the California Supreme Court created new law in the State of California for shareholders that held shares in detrimental reliance on false statements made by corporate officers. The decision was widely covered by national media including The National Law Journal, the Los Angeles Times, the New York Times, and the New York Law Journal, among others, and was heralded as a significant victory for shareholders.

Mr. Godino's successes with Glancy Prongay & Murray LLP include: *Good Morning To You Productions Corp., et al., v. Warner/Chappell Music, Inc., et al.*, Case No. 13-04460 (C.D. Cal.) (In this highly publicized case that attracted world-wide attention, Plaintiffs prevailed on their claim that the song "Happy Birthday" should be in the public domain and achieved a \$14,000,000 settlement to class members who paid a licensing fee for the song); *Ord v. First National Bank of Pennsylvania*, Case No. 12-766 (W. D. Pa.) (\$3,000,000 settlement plus injunctive relief); *Pappas v. Naked Juice Co. of Glendora, Inc.*, Case No. 11-08276 (C.D. Cal.) (\$9,000,000 settlement plus injunctive relief); *Astiana v. Kashi Company*, Case No. 11-1967 (S.D. Cal.) (\$5,000,000 settlement); *In re Magma Design Automation, Inc. Securities Litigation*, Case No. 05-2394 (N.D. Cal.) (\$13,500,000 settlement); *In re Hovnanian Enterprises, Inc. Securities Litigation*, Case No. 08-cv-0099 (D.N.J.) (\$4,000,000 settlement); *In re Skilled Healthcare Group, Inc.*

*Securities Litigation*, Case No. 09-5416 (C.D. Cal.) (\$3,000,000 settlement); *Kelly v. Phiten USA, Inc.*, Case No. 11-67 (S.D. Iowa) (\$3,200,000 settlement plus injunctive relief); (*Shin et al. v. BMW of North America*, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (after defeating a motion to dismiss, the case settled on very favorable terms for class members including free replacement of cracked wheels); *Payday Advance Plus, Inc. v. MIVA, Inc.*, Case No. 06-1923 (S.D.N.Y.) (\$3,936,812 settlement); *Esslinger, et al. v. HSBC Bank Nevada, N.A.*, Case No. 10-03213 (E.D. Pa.) (\$23,500,000 settlement); *In re Discover Payment Protection Plan Marketing and Sales Practices Litigation*, Case No. 10-06994 (\$10,500,000 settlement ); *Sciortino v. Pepsico, Inc.*, Case No. 14-478 (N.D. CA) (obtained nationwide injunctive relief requiring certain Pepsico products to comply with California's Proposition 65); *In Re: Bank of America Credit Protection Marketing and Sales Practices Litigation*, Case No. 11-md-02269 (N.D. Cal.) (\$20,000,000 settlement).

Mr. Godino was also the principal attorney in the following published decisions: *Kramer v. Toyota Motor Corp.*, 705 F. 3d 1122 (9th Cir. 2013) (affirming denial of Defendant's motion to compel arbitration); *In re Zappos.com, Inc., Customer Data Sec. Breach Litigation*, 893 F. Supp. 2d 1058 (D. Nev. Sep 27, 2012) (motion to compel arbitration denied); *Sateriale, et al. v. R.J. Reynolds Tobacco Co.*, 697 F. 3d 777 (9th Cir. 2012) (reversing order dismissing class action complaint); *Lilly v. Jamba Juice Company*, 2014 WL 4652283 (N.D. Cal. Sep 18, 2014) (class certification granted in part); *Small v. University Medical Center of Southern Nevada*, 2013 WL 3043454 (D. Nev. June 14, 2013) (order granting conditional certification to FLSA class); *Peterson v. ConAgra Foods, Inc.*, 2014 WL 3741853 (S. D. Cal. July 29, 2014) (motion to dismiss denied); *In re 2TheMart.com Securities Litigation*, 114 F. Supp. 2d 955 (C.D. Cal. 2002) (motion to dismiss denied); *In re Irvine Sensors Securities Litigation*, 2003 U.S. Dist. LEXIS 18397 (C.D. Cal. 2003) (motion to dismiss denied); *Shin v. BMW of North America*, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (motion to dismiss denied).

The following represent just a few of the cases Mr. Godino is currently litigating in a leadership position: *Griffith v. Government Employees Insurance Company, et al.*, Case No. 16-00112 (N.D. Cal.); *Cortina, et al., v. Goya Foods, Inc.*, Case No. 14-169 (S.D. Cal.) (after defeating a motion to dismiss and motion for judgment on the pleadings, summary judgment and class certification motions are pending); *Peterson v. CJ America, Inc.*, Case No. 14-2570 (S.D. Cal.) (\$1,500,000 settlement pending final approval); *Castillo, et al., v. Seagate Technology LLC*, Case No. 16-01958 (N.D. Cal.) (motion to dismiss pending); *Small v. University Medical Center of Southern Nevada*, Case No. 13-00298 (D. Nev.); *Reniger, et al., v. Hyundai Motor America, et al.*, Case No. 14-03612 (N.D. Cal.); *Smith, et al., v. The Ohio State University*, Case No. 20015-00919 (Court of Claims of Ohio) (motion to dismiss pending); *Courtright, et al., v. O'Reilly Automotive Stores, Inc., et al.*, Case No. 14-334 (W.D. Mo); *In re: Michaels Stores, Inc. Fair Credit Reporting Act Litigation*, Case no. 15-05504 (D. N.J.).

**SUSAN G. KUPFER** is the founding partner of the Firm's Berkeley office and head of the Firm's Antitrust Practice Group. Ms Kupfer joined the Firm in 2003. She is a native of New York City, and received her A.B. degree from Mount Holyoke College in 1969 and her Juris Doctor degree from Boston University School of Law in 1973. She did

graduate work at Harvard Law School and, in 1977, was named Assistant Dean and Director of Clinical Programs at Harvard, supervising and teaching in that program of legal practice and related academic components.

For much of her legal career, Ms. Kupfer has been a professor of law. Her areas of academic expertise are Civil Procedure, Federal Courts, Conflict of Laws, Constitutional Law, Legal Ethics, and Jurisprudence. She has taught at Harvard Law School, Hastings College of the Law, Boston University School of Law, Golden Gate University School of Law, and Northeastern University School of Law. From 1991 through 2002, she was a lecturer on law at the University of California, Berkeley, Boalt Hall, teaching Civil Procedure and Conflict of Laws. Her publications include articles on federal civil rights litigation, legal ethics, and jurisprudence. She has also taught various aspects of practical legal and ethical training, including trial advocacy, negotiation and legal ethics, to both law students and practicing attorneys.

Ms. Kupfer previously served as corporate counsel to The Architects Collaborative in Cambridge and San Francisco, and was the Executive Director of the Massachusetts Commission on Judicial Conduct. She returned to the practice of law in San Francisco with Morgenstein & Jubelirer and Berman DeValerio LLP before joining the Firm.

Ms. Kupfer's practice is concentrated in complex antitrust litigation. She currently serves, or has served, as Co-Lead Counsel in several multidistrict antitrust cases: *In re Photochromic Lens Antitrust Litig.* (MDL 2173, M.D. Fla. 2010); *In re Fresh and Process Potatoes Antitrust Litig.* (D. ID. 2011); *In re Korean Air Lines Antitrust Litig.* (MDL No. 1891, C.D. Cal. 2007); *In re Urethane Antitrust Litigation* (MDL 1616, D. Kan. 2004); *In re Western States Wholesale Natural Gas Litigation* (MDL 1566, D. Nev. 2005); and *Sullivan et al v. DB Investments et al* (D. N.J. 2004). She has been a member of the lead counsel teams that achieved significant settlements in: *In re Sorbates Antitrust Litigation* (\$96.5 million settlement); *In re Pillar Point Partners Antitrust Litigation* (\$50 million settlement); and *In re Critical Path Securities Litigation* (\$17.5 million settlement).

Ms. Kupfer is a member of the bar of Massachusetts and California, and is admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California, the District of Massachusetts, the Courts of Appeals for the First and Ninth Circuits, and the U.S. Supreme Court.

**GREGORY B. LINKH** works out of the New York office, where he specializes in securities, shareholder derivative, antitrust, and consumer litigation. Greg graduated from the State University of New York at Binghamton in 1996 and from the University of Michigan Law School in 1999. While in law school, Greg externed with United States District Judge Gerald E. Rosen of the Eastern District of Michigan. Greg was previously associated with the law firms Dewey Ballantine LLP, Pomerantz Haudek Block Grossman & Gross LLP, and Murray Frank LLP.

Greg is the co-author of *Inherent Risk In Securities Cases In The Second Circuit*, NEW YORK LAW JOURNAL (Aug. 26, 2004); *Staying Derivative Action Pursuant to PSLRA*



and *SLUSA*, NEW YORK LAW JOURNAL, P. 4, COL. 4 (Oct. 21, 2005) and the SECURITIES REFORM ACT LITIGATION REPORTER, Vol. 20, No. 3 (Dec. 2005).

**BRIAN MURRAY** is the managing partner of the Firm's New York office. He received Bachelor of Arts and Master of Arts degrees from the University of Notre Dame in 1983 and 1986, respectively. He received a Juris Doctor degree, *cum laude*, from St. John's University School of Law in 1990. At St. John's, he was the Articles Editor of the ST. JOHN'S LAW REVIEW. Mr. Murray co-wrote: *Jurisdição Estrangeira Tem Papel Relevante Na De Fiesa De Investidores Brasileiros*, ESPAÇA JURÍDICO BOVESPA (August 2008); *The Proportionate Trading Model: Real Science or Junk Science?*, 52 CLEVELAND ST. L. REV. 391 (2004-05); *The Accident of Efficiency: Foreign Exchanges, American Depository Receipts, and Space Arbitrage*, 51 BUFFALO L. REV. 383 (2003); *You Shouldn't Be Required To Plead More Than You Have To Prove*, 53 BAYLOR L. REV. 783 (2001); *He Lies, You Die: Criminal Trials, Truth, Perjury, and Fairness*, 27 NEW ENGLAND J. ON CIVIL AND CRIMINAL CONFINEMENT 1 (2001); *Subject Matter Jurisdiction Under the Federal Securities Laws: The State of Affairs After Itoba*, 20 MARYLAND J. OF INT'L L. AND TRADE 235 (1996); *Determining Excessive Trading in Option Accounts: A Synthetic Valuation Approach*, 23 U. DAYTON L. REV. 316 (1997); *Loss Causation Pleading Standard*, NEW YORK LAW JOURNAL (Feb. 25, 2005); *The PSLRA 'Automatic Stay' of Discovery*, NEW YORK LAW JOURNAL (March 3, 2003); and *Inherent Risk In Securities Cases In The Second Circuit*, NEW YORK LAW JOURNAL (Aug. 26, 2004). He also authored *Protecting The Rights of International Clients in U.S. Securities Class Action Litigation*, INTERNATIONAL LITIGATION NEWS (Sept. 2007); *Lifting the PSLRA "Automatic Stay" of Discovery*, 80 N. DAK. L. REV. 405 (2004); *Aftermarket Purchaser Standing Under § 11 of the Securities Act of 1933*, 73 ST. JOHN'S L. REV. 633 (1999); *Recent Rulings Allow Section 11 Suits By Aftermarket Securities Purchasers*, NEW YORK LAW JOURNAL (Sept. 24, 1998); and *Comment, Weissmann v. Freeman: The Second Circuit Errs in its Analysis of Derivative Copy-rights by Joint Authors*, 63 ST. JOHN'S L. REV. 771 (1989).

Mr. Murray was on the trial team that prosecuted a securities fraud case under Section 10(b) of the Securities Exchange Act of 1934 against Microdyne Corporation in the Eastern District of Virginia and he was also on the trial team that presented a claim under Section 14 of the Securities Exchange Act of 1934 against Artek Systems Corporation and Dynatach Group which settled midway through the trial.

Mr. Murray's major cases include *In re Eagle Bldg. Tech. Sec. Litig.*, 221 F.R.D. 582 (S.D. Fla. 2004), 319 F. Supp. 2d 1318 (S.D. Fla. 2004) (complaint against auditor sustained due to magnitude and nature of fraud; no allegations of a "tip-off" were necessary); *In re Turkcell Iletisim A.S. Sec. Litig.*, 209 F.R.D. 353 (S.D.N.Y. 2002) (defining standards by which investment advisors have standing to sue); *In re Turkcell Iletisim A.S. Sec. Litig.*, 202 F. Supp. 2d 8 (S.D.N.Y. 2001) (liability found for false statements in prospectus concerning churn rates); *Feiner v. SS&C Tech., Inc.*, 11 F. Supp. 2d 204 (D. Conn. 1998) (qualified independent underwriters held liable for pricing of offering); *Malone v. Microdyne Corp.*, 26 F.3d 471 (4th Cir. 1994) (reversal of directed verdict for defendants); and *Adair v. Bristol Tech. Systems, Inc.*, 179 F.R.D. 126 (S.D.N.Y. 1998) (aftermarket purchasers have standing under section 11 of the

Securities Act of 1933). Mr. Murray also prevailed on an issue of first impression in the Superior Court of Massachusetts, in *Cambridge Biotech Corp. v. Deloitte and Touche LLP*, in which the court applied the doctrine of continuous representation for statute of limitations purposes to accountants for the first time in Massachusetts. 6 Mass. L. Rptr. 367 (Mass. Super. Jan. 28, 1997). In addition, in *Adair v. Microfield Graphics, Inc.* (D. Or.), Mr. Murray settled the case for 47% of estimated damages. In the *Qiao Xing Universal Telephone* case, claimants received 120% of their recognized losses.

Among his current cases, Mr. Murray represents a class of investors in a securities litigation involving preferred shares of Deutsche Bank and is co-lead counsel in a securities litigation on behalf of investors in FitBit, Inc. Mr. Murray is also currently co-lead counsel in *Avenarius, et al., v. Eaton Corp., et al.* (D. Del.), an antitrust class action against the world's largest commercial truck and transmission manufactures.

Mr. Murray served as a Trustee of the Incorporated Village of Garden City (2000-2002); Commissioner of Police for Garden City (2000-2001); Co-Chairman, Derivative Suits Subcommittee, American Bar Association Class Action and Derivative Suits Committee, (2007-Present); Member, Sports Law Committee, Association of the Bar for the City of New York, 1994-1997; Member, Litigation Committee, Association of the Bar for the City of New York, 2003-2007; Member, New York State Bar Association Committee on Federal Constitution and Legislation, 2005-2008; Member, Federal Bar Council, Second Circuit Committee, 2007-present.

Mr. Murray has been a panelist at CLEs sponsored by the Federal Bar Council and the Institute for Law and Economic Policy, at the German-American Lawyers Association Annual Meeting in Frankfurt, Germany, and is a frequent lecturer before institutional investors in Europe and South America on the topic of class actions.

**LESLEY F. PORTNOY** represents domestic and international clients in securities litigation and class actions. Mr. Portnoy focuses his practice on recovering losses suffered by investors resulting corporate fraud and other wrongdoing.

Mr. Portnoy has extensive experience litigating complex cases in state and federal courts nationwide, and previously served as counsel to investors in the Bernard L. Madoff securities, assisting the SIPC trustee Irving Picard in recovering assets on behalf of defrauded investors. During law school, he worked in the New York Supreme Court Commercial Division, the Second Circuit Court of Appeals, and the New York City Law Department. Mr. Portnoy has represented pro bono clients in New York and California.

**ROBERT V. PRONGAY** is a partner in the Firm's Los Angeles office where he focuses on the investigation, initiation, and prosecution of complex securities cases on behalf of institutional and individual investors. Mr. Prongay's practice concentrates on actions to recover investment losses resulting from violations of the federal securities laws and various actions to vindicate shareholder rights in response to corporate and fiduciary misconduct.

Mr. Prongay has extensive experience litigating complex cases in state and federal courts nationwide. Since joining the Firm, Mr. Prongay has successfully recovered millions of dollars for investors victimized by securities fraud and has negotiated the implementation of significant corporate governance reforms aimed at preventing the recurrence of corporate wrongdoing.

Mr. Prongay was recently recognized as one of thirty lawyers included in the Daily Journal's list of Top Plaintiffs Lawyers in California for 2017. Several of Mr. Prongay's cases have received national and regional press coverage. Mr. Prongay has been interviewed by journalists and writers for national and industry publications, ranging from *The Wall Street Journal* to the *Los Angeles Daily Journal*. Mr. Prongay has appeared as a guest on Bloomberg Television where he was interviewed about the securities litigation stemming from the high-profile initial public offering of Facebook, Inc.

Mr. Prongay received his Bachelor of Arts degree in Economics from the University of Southern California and his Juris Doctor degree from Seton Hall University School of Law. Mr. Prongay is also an alumnus of the Lawrenceville School.

**JONATHAN M. ROTTER** leads the Firm's intellectual property litigation practice. He recently served for three years as the first Patent Pilot Program Law Clerk at the United States District Court for the Central District of California, both in Los Angeles and Orange County. There, he assisted the Honorable S. James Otero, Andrew J. Guilford, George H. Wu, John A. Kronstadt, and Beverly Reid O'Connell with hundreds of patent cases in every major field of technology, from complaint to post-trial motions. Mr. Rotter also served as a law clerk for the Honorable Milan D. Smith, Jr. on the United States Court of Appeals for the Ninth Circuit.

Before his service to the court, Mr. Rotter practiced at an international law firm, where he argued appeals at the Federal Circuit, Ninth Circuit, and California Court of Appeal, tried cases, argued motions, and managed all aspects of complex litigation. He also served as a volunteer criminal prosecutor for the Los Angeles City Attorney's Office. His cases have involved diverse technologies in both "wet" and "dry" disciplines, and he excels at the critical skill of translating complex subject matter into a coherent story that can be digested by judges and juries.

In addition to intellectual property matters, Mr. Rotter litigates consumer protection, antitrust, and securities class actions. Mr. Rotter handles cases on contingency, partial contingency, and hourly bases. He works collaboratively with other lawyers and law firms across the country.

Mr. Rotter graduated with honors from Harvard Law School in 2004. He served as an editor of the Harvard Journal of Law & Technology, and was a Fellow in Law and Economics at the John M. Olin Center for Law, Economics, and Business, and a Fellow in Justice, Welfare, and Economics at the Weatherhead Center For International Affairs. He graduated with honors from the University of California, San Diego in 2000 with a B.S. in molecular biology and a B.A. in music.



Mr. Rotter serves on the Merit Selection Panel for Magistrate Judges in the Central District of California, and the Model Patent Jury Instructions and Model Patent Local Rules subcommittees of the American Intellectual Property Law Association. He has written extensively on intellectual property issues, and has been honored for his work with legal service organizations. He is admitted to practice before the United States Patent & Trademark Office, the United States Courts of Appeals for the Ninth and Federal Circuits, and the United States District Courts for the Northern, Central, and Southern Districts of California.

**KEVIN F. RUF** graduated from the University of California at Berkeley in 1984 with a Bachelor of Arts in Economics and earned his Juris Doctor degree from the University of Michigan in 1987. Mr. Ruf was admitted to the State Bar of California in 1988. Mr. Ruf was an associate at the Los Angeles firm Manatt Phelps and Phillips from 1988 until 1992, where he specialized in commercial litigation and was a leading trial lawyer among the associates there. In 1993, he joined the firm Corbin & Fitzgerald in order to gain experience in criminal law. There, he specialized in white collar criminal defense work, including matters related to National Medical Enterprises, Cynergy Film Productions and the Estate of Doris Duke. Mr. Ruf joined the Firm in 2001 and has taken a lead trial lawyer role in many of the Firm's cases. In 2006, Mr. Ruf argued before the California Supreme Court in the case *Smith v. L'Oreal* and achieved a unanimous reversal of the lower court rulings; the case established a fundamental right of all California workers to immediate payment of all earnings at the conclusion of employment. In 2007, Mr. Ruf took an important case before the Ninth Circuit Court of Appeals, convincing the Court to affirm the lower court's certification of a class action in a fraud case (fraud cases have traditionally faced difficulty as class actions because of the requirement of individual reliance). Mr. Ruf has extensive trial experience, including jury trials, and considers his courtroom and oral advocacy skills to be his strongest asset as a litigator. Mr. Ruf currently acts as the Head of the Firm's Labor and Consumer Practice, and has extensive experience in securities cases as well. Mr. Ruf also has experience in real estate law and has been a Licensed California Real Estate Broker since 1999.

**CASEY E. SADLER** is a native of New York, New York. After graduating from the University of Southern California, Gould School of Law, Mr. Sadler joined the Firm in 2010. While attending law school, Mr. Sadler externed for the Enforcement Division of the Securities and Exchange Commission, spent a summer working for P.H. Parekh & Co. – one of the leading appellate law firms in New Delhi, India – and was a member of USC's Hale Moot Court Honors Program.

Mr. Sadler's practice focuses on securities and consumer litigation. A partner in the Firm's Los Angeles office, Mr. Sadler is admitted to the State Bar of California and the United States District Courts for the Northern, Southern, and Central Districts of California.

**EX KANO S. SAMS II** earned his Bachelor of Arts degree in Political Science from the University of California Los Angeles. Mr. Sams earned his Juris Doctor degree from the University of California Los Angeles School of Law, where he served as a member of

the *UCLA Law Review*. After law school, Mr. Sams practiced class action civil rights litigation on behalf of plaintiffs. Subsequently, Mr. Sams was a partner at Coughlin Stoia Geller Rudman & Robbins LLP (currently Robbins Geller Rudman & Dowd LLP), where his practice focused on securities and consumer class actions on behalf of investors and consumers.

During his career, Mr. Sams has served as lead counsel in dozens of securities class actions and complex-litigation cases throughout the United States. Mr. Sams was one of the counsel for respondents in *Cyan, Inc. v. Beaver Cty. Employees Ret. Fund*, No. 15-1439, 2018 WL 1384564 (U.S. Mar. 20, 2018), 583 U.S. \_\_\_\_ (2018), in which the United States Supreme Court ruled unanimously in favor of respondents, holding that: (1) the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”) does not strip state courts of jurisdiction over class actions alleging violations of only the Securities Act of 1933; and (2) SLUSA does not empower defendants to remove such actions from state to federal court. Mr. Sams also participated in a successful appeal before a Fifth Circuit panel that included former United States Supreme Court Justice Sandra Day O’Connor sitting by designation, in which the court unanimously vacated the lower court’s denial of class certification, reversed the lower court’s grant of summary judgment, and issued an important decision on the issue of loss causation in securities litigation: *Alaska Electrical Pension Fund v. Flowserve Corp.*, 572 F.3d 221 (5th Cir. 2009). The case settled for \$55 million.

Mr. Sams has also obtained other significant results. Notable examples include: *In re King Digital Entm’t plc S’holder Litig.*, No. CGC-15-544770 (San Francisco Superior Court) (case settled for \$18.5 million); *In re Castlight Health, Inc. S’holder Litig.*, Lead Case No. CIV533203 (California Superior Court, County of San Mateo) (case settled for \$9.5 million); *Wiley v. Envivio, Inc.*, Master File No. CIV517185 (California Superior Court, County of San Mateo) (case settled for \$8.5 million); *In re CafePress Inc. S’holder Litig.*, Master File No. CIV522744 (California Superior Court, County of San Mateo) (case settled for \$8 million); *Robinson v. Audience, Inc.*, Case No. 1:12-cv-232227 (California Superior Court, County of Santa Clara) (case settled for \$6,050,000); *Estate of Gardner v. Continental Casualty Co.*, No. 3:13-cv-1918 (JBA), 2016 WL 806823 (D. Conn. Mar. 1, 2016) (granting class certification); *Forbush v. Goodale*, No. 33538/2011, 2013 WL 582255 (N.Y. Sup. Feb. 4, 2013) (denying motions to dismiss in a shareholder derivative action); *Curry v. Hansen Med., Inc.*, No. C 09-5094 CW, 2012 WL 3242447 (N.D. Cal. Aug. 10, 2012) (upholding securities fraud complaint; case settled for \$8.5 million); *Wilkof v. Caraco Pharm. Labs., Ltd.*, 280 F.R.D. 332 (E.D. Mich. 2012) (granting class certification); *Puskala v. Koss Corp.*, 799 F. Supp. 2d 941 (E.D. Wis. 2011) (upholding securities fraud complaint); *Mishkin v. Zynex Inc.*, Civil Action No. 09-cv-00780-REB-KLM, 2011 WL 1158715 (D. Colo. Mar. 30, 2011) (denying defendants’ motion to dismiss securities fraud complaint); and *Tsirekidze v. Syntax-Brilliant Corp.*, No. CV-07-02204-PHX-FJM, 2009 WL 2151838 (D. Ariz. July 17, 2009) (granting class certification; case settled for \$10 million).

Additionally, Mr. Sams has successfully represented consumers in class action litigation. Mr. Sams worked on nationwide litigation and a trial against major tobacco companies, and in statewide tobacco litigation that resulted in a \$12.5 billion recovery

for California cities and counties in a landmark settlement. He also was a principal attorney in a consumer class action against one of the largest banks in the country that resulted in a substantial recovery and a change in the company's business practices. Mr. Sams also participated in settlement negotiations on behalf of environmental organizations along with the United States Department of Justice and the Ohio Attorney General's Office that resulted in a consent decree requiring a company to perform remediation measures to address the effects of air and water pollution. Additionally, Mr. Sams has been an author or co-author of several articles in major legal publications, including "9th Circuit Decision Clarifies Securities Fraud Loss Causation Rule" published in the February 8, 2018 issue of the *Daily Journal*, and "Market Efficiency in the World of High-Frequency Trading" published in the December 26, 2017 issue of the *Daily Journal*.

**KARA M. WOLKE** is a partner in the firm's Los Angeles office. Ms. Wolke specializes in complex litigation, including the prosecution of securities fraud, derivative, consumer, and wage and hour class actions. She has extensive experience in written appellate advocacy in both State and Federal Circuit Courts of Appeals, and has successfully argued before the Court of Appeals for the State of California.

With over a decade of experience in financial class action litigation, Ms. Wolke has helped to recover hundreds of millions of dollars for injured investors, consumers, and employees. Notable cases include: *Farmington Hills Employees' Retirement System v. Wells Fargo Bank*, Case No. 10-4372 (D. Minn.) (\$62.5 million settlement on behalf of participants in Wells Fargo's securities lending program. The settlement was reached on the eve of trial and ranked among the largest recoveries achieved in a securities lending class action stemming from the 2008 financial crisis.); *Schleicher, et al. v. Wendt, et al.* (Conseco), Case No. 02-cv-1332 (S.D. Ind.) (\$41.5 million securities class action settlement); *Lapin v. Goldman Sachs*, Case No. 03-850 (S.D.N.Y.) (\$29 million securities class action settlement); *In Re: Mannkind Corporation Securities Litigation*, Case No. 11-929 (C.D. Cal) (approximately \$22 million settlement - \$16 million in cash plus stock); *Jenson v. First Trust Corp.*, Case No. 05-3124 (C.D. Cal.) (\$8.5 million settlement of action alleging breach of fiduciary duty and breach of contract against trust company on behalf of a class of elderly investors); and *Pappas v. Naked Juice Co.*, Case No. 11-08276 (C.D. Cal.) (\$9 million settlement in consumer class action alleging misleading labeling of juice products as "All Natural").

With a background in intellectual property, Ms. Wolke was a part of the team of lawyers who successfully challenged the claim of copyright ownership to the song "Happy Birthday to You" on behalf of artists and filmmakers who had been forced to pay hefty licensing fees to publicly sing the world's most famous song. In the resolution of that action, the defendant music publishing company funded a settlement of \$14 million and, significantly, agreed to relinquish the song to the public domain. Previously, Ms. Wolke penned an article regarding the failure of U.S. Copyright Law to provide an important public performance right in sound recordings, 7 Vand. J. Ent. L. & Prac. 411, which was nationally recognized and received an award by the American Bar Association and the Grammy® Foundation.

Committed to the provision of legal services to the poor, disadvantaged, and other vulnerable or disenfranchised individuals and groups, Ms. Wolke also oversees the Firm's pro bono practice. Ms. Wolke currently serves as a volunteer attorney for KIND (Kids In Need of Defense), representing unaccompanied immigrant and refugee children in custody and deportation proceedings, and helping them to secure legal permanent residency status in the U.S.

Ms. Wolke graduated summa cum laude with a Bachelor of Science in Economics from The Ohio State University in 2001. She subsequently earned her J.D. (with honors) from Ohio State, where she was active in Moot Court and received the Dean's Award for Excellence during each of her three years.

Ms. Wolke is admitted to the State Bar of California, the Ninth Circuit Court of Appeals, as well as the United States District Courts for the Northern, Southern, and Central Districts of California. She lives with her husband and two sons in Los Angeles.

## SENIOR COUNSEL

**JASON L. KRAJECER** is senior counsel in the firm's Los Angeles office. He specializes in complex securities cases and has extensive experience in all phases of litigation (fact investigation, pre-trial motion practice, discovery, trial, appeal).

Prior to joining Glancy Prongay & Murray LLP, Mr. Krajcer was an Associate at Goodwin Procter LLP where he represented issuers, officers and directors in multi-hundred million and billion dollar securities cases. He began his legal career at Orrick, Herrington & Sutcliffe LLP, where he represented issuers, officers and directors in securities class actions, shareholder derivative actions, and matters before the U.S. Securities & Exchange Commission.

Mr. Krajcer is admitted to the State Bar of California, the Bar of the District of Columbia, the United States Supreme Court, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central and Southern Districts of California.

## OF COUNSEL

**PETER A. BINKOW** has prosecuted lawsuits on behalf of consumers and investors in state and federal courts throughout the United States. He served as Lead or Co-Lead Counsel in many class action cases, including: *In re Mercury Interactive Securities Litigation* (\$117.5 million recovery); *Schleicher v Wendt* (Conseco Securities litigation - \$41.5 million recovery); *Lapin v Goldman Sachs* (\$29 million recovery); *In re Heritage Bond Litigation* (\$28 million recovery); *In re National Techteam Securities Litigation* (\$11 million recovery for investors); *In re Lason Inc. Securities Litigation* (\$12.68 million recovery); *In re ESC Medical Systems, Ltd. Securities Litigation* (\$17 million recovery); and many others. In *Schleicher v Wendt*, Mr. Binkow successfully argued the seminal Seventh Circuit case on class certification, in an opinion authored by Chief Judge Frank



Easterbrook. He has argued and/or prepared appeals before the Ninth Circuit, Seventh Circuit, Sixth Circuit and Second Circuit Courts of Appeals.

Mr. Binkow joined the Firm in 1994. He was born on August 16, 1965 in Detroit, Michigan. Mr. Binkow obtained a Bachelor of Arts degree from the University of Michigan in 1988 and a Juris Doctor degree from the University of Southern California in 1994.

**MARK S. GREENSTONE** specializes in consumer, financial fraud and employment-related class actions. Possessing significant law and motion and trial experience, Mr. Greenstone has represented clients in multi-million dollar disputes in California state and federal courts, as well as the Court of Federal Claims in Washington, D.C.

Mr. Greenstone received his training as an associate at Sheppard, Mullin, Richter & Hampton LLP where he specialized in complex business litigation relating to investment management, government contracts and real estate. Upon leaving Sheppard Mullin, Mr. Greenstone founded an internet-based company offering retail items on multiple platforms nationwide. He thereafter returned to law bringing a combination of business and legal skills to his practice.

Mr. Greenstone graduated Order of the Coif from the UCLA School of Law. He also received his undergraduate degree in Political Science from UCLA, where he graduated Magna Cum Laude and was inducted into the Phi Beta Kappa honor society.

Mr. Greenstone is a member of the Consumer Attorneys Association of Los Angeles, the Santa Monica Bar Association and the Beverly Hills Bar Association. He is admitted to practice in state and federal courts throughout California.

## ASSOCIATES

**GRAHAM CLEGG** received his LLB in 1988 from the Manchester University School of Law in England, with Honors. He was admitted to the New York State Bar in 2002. Mr. Clegg has significant experience in the prosecution of class claims, including *In re Bristol-Myers Squibb Securities Litigation*, which settled for \$185 million.

**CHRISTOPHER FALLON** focuses on securities, consumer, and anti-trust litigation. Prior to joining the firm, Mr. Fallon was a contract attorney with O'Melveny & Myers LLP working on anti-trust and business litigation disputes. He is a Certified E-Discovery Specialist through the Association of Certified E-Discovery Specialists (ACEDS).

Mr. Fallon earned his J.D. and a Certificate in Dispute Resolution from Pepperdine Law School in 2004. While attending law school, Christopher worked at the Pepperdine Special Education Advocacy Clinic and interned with the Rhode Island Office of the Attorney General. Prior to attending law school, he graduated from Boston College with a Bachelor of Arts in Economics and a minor in Irish Studies, then served as Deputy Campaign Finance Director on a U.S. Senate campaign.

**BRYAN FAUBUS** is based in the New York office. His work includes securities, antitrust, and consumer litigation.

Mr. Faubus received his B.A. in Urban Studies, with Honors, from the University of Texas at Austin in 2005. He received his J.D., cum laude, from Duke University School of Law, where he was the Online Editor of the Duke Law Journal. Mr. Faubus authored *Narrowing the Bankruptcy Safe Harbor for Derivatives to Combat Systemic Risk*, 59 DUKE L.J. 801 (2010). Prior to joining Glancy Prongay & Murray he practiced commercial litigation and real estate law at two large, international law firms.

**MEHRDAUD JAFARNIA** received his J.D. in 2001 from Southwestern University School of Law, having earlier earned a B.A. in Political Science/International Relations from the University of California at Los Angeles (UC Regents Merit Scholarship Award and the Vance Burch Scholarship). Mr. Jafarnia served as a Staff Attorney for the 9th Circuit Court of Appeals and has represented financial institutions in adversary and evidentiary proceedings in the Bankruptcy Courts.

**THOMAS J. KENNEDY** works out of the New York office, where he focuses on securities, antitrust, and consumer litigation. He received a Juris Doctor degree from St. John's University School of Law in 1995. At St. John's, he was a member of the ST. JOHN'S JOURNAL OF LEGAL COMMENTARY. Mr. Kennedy graduated from Miami University in 1992 with a Bachelor of Science degree in Accounting and has passed the CPA exam. Mr. Kennedy was previously associated with the law firm Murray Frank LLP.

**JENNIFER M. LEINBACH** served for nearly five years as a judicial law clerk for a number of judges in the Central District of California. As a judicial law clerk, Ms. Leinbach was responsible for assisting these judges with case management, preparing for hearings and trial, and drafting rulings. Ms. Leinbach worked on a variety of different cases, including cases involving financial fraud, insolvency and complex civil litigation. Ms. Leinbach was also responsible for assisting those judges, sitting by designation, on appellate cases.

Ms. Leinbach graduated magna cum laude from Vermont Law School and was a member of Vermont Law Review, where she focused on environmental law issues. During law school, Ms. Leinbach served as a judicial extern in the District of Vermont. She obtained her undergraduate degree cum laude from Pepperdine University.

**CHARLES H. LINEHAN** graduated summa cum laude from the University of California, Los Angeles with a Bachelor of Arts degree in Philosophy and a minor in Mathematics. Mr. Linehan received his Juris Doctor degree from the UCLA School of Law, where he was a member of the UCLA Moot Court Honors Board. While attending law school, Mr. Linehan participated in the school's First Amendment Amicus Brief Clinic (now the Scott & Cyan Banister First Amendment Clinic) where he worked with nationally recognized scholars and civil rights organizations to draft amicus briefs on various Free Speech issues.

**DANIELLE L. MANNING** received her Bachelor of Arts degree with honors in Environmental Analysis from Claremont McKenna College. Ms. Manning received her Juris Doctor degree from the University of California Los Angeles School of Law, where she served as Chief Managing Editor of the Journal of Environmental Law and Policy. While attending law school, Ms. Manning externed for the Honorable Laurie D. Zelon in the California Court of Appeal and interned for the California Department of Justice, Office of the Attorney General. Prior to law school, Ms. Manning worked as a paralegal in a large law firm.

**VAHE MESROPYAN** joined the firm in 2018 and focuses his practice on litigating securities fraud class actions. Immediately prior to joining the firm, Mr. Mesropyan served as a judicial law clerk for multiple judges in the U.S. District Court for the Central District of California. Prior to his clerkship, Mr. Mesropyan was an associate at Crowell & Moring LLP, where he represented Fortune 500 companies in complex antitrust matters.

Mr. Mesropyan received his J.D. from the University of California, Irvine School of Law as a Dean's Merit Scholarship recipient. While in law school, he clerked for the Federal Trade Commission, Consumer Protection Unit and served as an extern for the Internal Revenue Service, Office of Chief Counsel.

**ALEXA MULLARKY** joined the Firm in 2015. Ms. Mullarky's practice focuses on class action securities litigation. As an associate, Ms. Mullarky provides all necessary aspects of litigation support, including researching and drafting memoranda on specific legal issues, researching and drafting briefs in the context of law and motion practice, working with experts in preparation of class certification filings and damages calculations, and all aspects of discovery from document review to deposition preparation. Since joining the Firm, Ms. Mullarky has helped secure several large class action settlements for injured investors, including: *In re Akorn, Inc. Securities Litigation*, No. 15 C 01944 (N.D. Ill.) (\$24 million settlement, pending final approval, in securities class action alleging material inaccuracies in the company's financial statements); *Zacharia v. Straight Path Communications, Inc., et al.*, No. 2:15-cv-08051-JMV-MF (D.N.J.) (\$9.45 million settlement, pending final approval, in securities class action alleging misrepresentation of the company's compliance with applicable FCC regulations); and *Lewis v. Aimco Properties, L.P. et al.*, No. CIV 529683 (Cal. Super. Ct. San Mateo) together with *Lewis v. Aimco Properties, L.P. et al.*, C.A. No. 9934-VCMR (Del. Ch.) (combined settlement of \$3.5 million in class action alleging breach of fiduciary duties related to the valuation and sale of real property). Ms. Mullarky is admitted to the State Bar of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central and Northern Districts of California.

Ms. Mullarky received her Juris Doctor degree from the University of Southern California Gould School of Law, where she was a member of the Hale Moot Court Honors Program Executive Board. While attending law school, Ms. Mullarky interned in the legal department of Southern California Edison, a Fortune 500 company, where she worked in energy regulations. She graduated *cum laude* from the University of Washington with a Bachelor of Arts degree in Law, Societies, and Justice.



**JARED F. PITT** focuses on securities, consumer, and anti-trust litigation. Prior to joining the firm, Mr. Pitt was an associate at Willoughby Doyle LLP and was a senior financial statement auditor for KMPG LLP where he earned his CPA license.

Mr. Pitt earned his J.D. from Loyola Law School in 2010. Prior to attending law school he graduated with honors from both the University of Michigan's Ross School of Business and USC's Marshall School of Business where he received a Masters of Accounting.

**NOREEN R. SCOTT** received her J.D. in 2002 from Tulane Law School and earned a B.A. in Economics from Emory University in 1999. She served as a law clerk to the Hon. Charles R. Jones on the Louisiana State Court of Appeal, and has extensive experience prosecuting complex class action cases.

**LEANNE HEINE SOLISH** graduated *summa cum laude* from Tulane University with a B.S.M. in Accounting and Finance in 2007, and she received her J.D. from the University of Texas School of Law in 2011. While attending law school, Leanne was an editor for the Texas International Law Journal, a student attorney for the Immigration and Worker Rights Clinics, and she externed with MALDEF and the Texas Civil Rights Project. Leanne is a member of the Beta Gamma Sigma Business Honors Society. She is a registered CPA in Illinois, and was admitted to the California State Bar in 2011.

**GARTH A. SPENCER** is based in the New York office. His work includes securities, antitrust, and consumer litigation. Mr. Spencer also works on whistleblower matters.

Mr. Spencer received his B.A. in Mathematics from Grinnell College in 2006. He received his J.D. in 2011 from Duke University School of Law, where he was a staff editor on the Duke Law Journal. From 2011 until 2014 he worked in the tax group of a large, international law firm. Since 2014 he has worked on tax whistleblower matters. Mr. Spencer received his LL.M. in Taxation from New York University in 2016 immediately prior to joining the firm.

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