

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE, KNOXVILLE DIVISION**

NICHOLE D. BASS, Individually, and)	
On behalf of similarly situated persons,)	
Plaintiff,)	
)	
v.)	No. 3:05-CV-586
)	JUDGE VARLAN
SCHELL & KAMPETER, INC.,)	MAGISTRATE JUDGE GUYTON
d/b/a DIAMOND PET FOODS, INC.,)	CLASS ACTION
and DIAMOND PET FOODS,)	
)	JURY DEMAND
Defendant.)	

**ORDER CERTIFYING A PLAINTIFF CLASS AND PRELIMINARILY
APPROVING CLASS ACTION SETTLEMENT**

Upon the Parties' Joint Motion for Preliminary Approval of the Class Action Settlement, arguments of counsel, exhibits, and the record as a whole, the Court hereby makes the following findings:

The parties are Plaintiff, Nicole D. Bass, the representative Plaintiff, and Defendant, Schell & Kampeter, Inc. d/b/a Diamond Pet Foods.

Both parties are represented by competent and well-qualified counsel.

The parties applied to the Court for entry of an order preliminarily approving a class action settlement in this consumer class action brought on behalf of people who purchased, received, and or used certain specific dog food products manufactured and supplied by Defendant Schell & Kampeter, Inc., Diamond Pet Foods, Inc., ("Diamond"), and intend that this proposed settlement will resolve all claims before this Court in this matter and in related actions nationwide as they regard or pertain to Diamond.

The proposed settlement agreement is in the form and substance that has been agreed upon by plaintiff, plaintiff's counsel, defendant, and defendant's counsel, and is

made a part of and incorporated into this Order, attached as Exhibit A.

In accordance with the provisions of the proposed settlement agreement, and consistent with and pursuant Federal Rules of Civil Procedure Rule 23, this Court, having reviewed and examined this matter, finds, orders, and acts as follows:

The requirements of Rule 23 of the Federal Rules of Civil Procedure have been met in that:

- (a) Neither Plaintiff nor Defendant know the exact size of the Proposed Subclasses. Based on the nature of the commerce involved, however, the Proposed Class members may number in the thousands. Proposed Classes are geographically dispersed throughout at least a twenty three state area so that joinder of all members would be impracticable;
- (b) Plaintiff's claims are typical of Proposed Class members' claims because each consumer has suffered financial losses due to purchase of the contaminated product, travel costs, veterinary bills, and/or loss or damage to personal property, *i.e.* disposal of contaminated or potentially contaminated pet food; and
- (c) Plaintiff has and will fairly and adequately represent and protect the interest of the Proposed Classes and has no interest that conflicts with or is antagonistic to the interests of the Proposed Classes. Plaintiff has retained attorneys who are experienced and competent in the United States in class action and consumer litigation and law. No conflict exists between the Plaintiff and Proposed Class members because:
 - (i) the claims of the named Plaintiff are typical of the absent Class members' claims;
 - (ii) all questions of law and fact regarding the liability of the Defendant are common to the Proposed Class and overwhelmingly predominate over any individual issues that may exist;
 - (iii) Due to the relatively small amount of money

involved in each individual claim, without the representation provided by the Plaintiff, many of the Proposed Class members would receive no adequate legal redress or representation for their injuries;

- (iv) Plaintiff and her counsel have the necessary financial resources to adequately and vigorously litigate this class action and the Plaintiff and counsel are aware of their fiduciary responsibilities to the Proposed Class members and have discharged those duties by vigorously seeking the maximum possible recovery for the Proposed Classes.
- (v) Virtually all of the issues of law and fact in this class action are common to each Proposed Class member.

2. Class certification is appropriate under Rule 23 of the Federal Rules of Civil Procedure because a class action is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted herein given that:

- (a) Common questions of law and fact predominate over any individual questions that may arise and consequently, there would be enormous economies to the courts and to the parties in litigating the common issues on a class-wide basis instead of on a repetitive individual basis;
- (b) The size of most Proposed Class members' individual damage claims is too small to make individual litigation an economically viable alternative, such that few Proposed Class members have any interest in individually controlling the prosecution of separate actions;
- (c) Class treatment is required for optimal deterrence, compensation, and for limiting the court-awarded reasonable legal expenses incurred by Proposed Class members;
- (d) Despite the relatively small size of most individual Proposed Class members' claim(s), the aggregate volume of said claims, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost effective basis,

especially when compared with repetitive individual litigation; and

- (e) No unusual difficulties are likely to be encountered in the management of this class action in that all questions of law or fact to be litigated at the liability phase are common to the class.

Class certification is also appropriate pursuant to Rule 23 (b)(1) (A) or (B) of the Federal Rules of Civil Procedure because prosecution of separate actions would create a risk of adjudication with respect to individual members of the Proposed Class which may, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or which may substantially impair or impede their ability to protect their interests.

The Court finds that the requirements of Rule 23 have been met for purposes of the proposed settlement. The Court hereby

ORDERS:

- (1) that the proposed plaintiff subclasses be certified,
- 2) that the class and class members be given notice of the pendency of this action and the proposed settlement in the form and manner proposed by the parties,
- 3) that a hearing be scheduled for the Court to consider the parties' motion for final approval of the proposed settlement, including the entry of a final judgment and to consider objections to the settlement. Said hearing is set for March 26, 2008, at 1:30 p.m. At that time, the Court will also rule on Plaintiff's counsel requested fee amount and cost and expense reimbursement.

The Court further directs that the following actions occur on or before certain specified dates, so as to advance this matter expeditiously:

- 1) That notice be provided to the settlement class members by the means and methods as prescribed in the proposed

settlement agreement (Exhibit A) and the proposed notice, attached as Exhibit B;

- 2) That requests for exclusion from this settlement be post marked on or before a specific date as ordered by the Court, that date being March 16, 2008;
- 3) That objections to the settlement or objections to the award of attorneys' fees or reimbursement of expenses in favor of plaintiffs' counsel be served on counsel as specified by the Court, that date being February 26, 2008;
- 4) That a Fairness Hearing be held on March 26, 2008, at 1:30 p.m.;
- 5) That executed proofs of claim be submitted by class members to the claims administrator consistent with and through the processes set forth in the settlement agreement (Exhibit A) and the notice documents (Exhibit B) by the methods prescribed therein, and that the said proofs of claim be postmarked on or before April 15, 2008, as specified by the Court.

Accordingly it is hereby ordered that the proposed Settlement Agreement attached to this Order is approved by the court and that the parties shall comply with the terms and conditions of the agreement in all respects, absent further order of the court.

Entered into this 6th day of November, 2007.

s/ H. Bruce Guyton
United States Magistrate Judge