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David W. Slayton,
Executive Officer/Clerk of Court,
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7 *Attorneys for Plaintiffs on behalf of themselves*
8 *and others similarly situated*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11
12 **TAMARA MARGOLIS**, an individual;
13 **AIMEE TULLY**, an individual; on behalf of
themselves and all others similarly situated,

14 Plaintiffs,

15 v.

16 **HEALTHY SPOT LLC**, a Limited Liability
17 Company; and **DOES 1-20**, inclusive,

18 Defendants.
19

Case No. 21STCV25347

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

*[Filed Concurrently with Declaration of Gary A.
Praglin, Declaration of Edward Zusman,
Declaration of Plaintiff Tamara Margolis,
Declaration of Plaintiff Aimee Tully, [Proposed]
Order]*

Date: April 10, 2024
Time: 9:00 a.m.
Judge: Hon. David S. Cunningham
Dept.: 11

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April
3 10, 2024 at 9:00 a.m. in Department 11 of the above-entitled Court, located at 312 North Spring Street,
4 Los Angeles, California 90012, Plaintiffs Tamara Margolis and Aimee Tully (collectively,
5 “Plaintiffs”), individually and on behalf of a class of similarly situated individuals, will and hereby do
6 move this Court for:

- 7 1. Preliminary approval of the proposed class settlement of this lawsuit;
- 8 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification
9 of the following Settlement Class defined as follows:

10 ALL HEALTHY SPOT CUSTOMERS WHOSE DOGS WERE PHYSICALLY
11 HARMED AND/OR KILLED AT ANY OF THE 20 HEALTHY SPOT
12 LOCATIONS IN CALIFORNIA BETWEEN JULY 2018 AND JULY 2021
13 AND ON MAY 6, 2022.

- 14 3. Preliminary appointment of Plaintiffs Tamara Margolis and Aimee Tully as the Class
15 Representatives;
- 16 4. Preliminary appointment of Gary A. Praglin and Theresa E. Vitale of Cotchett, Pitre &
17 McCarthy LLP as Class Counsel;
- 18 5. Preliminary approval of the settlement of additional unfiled claims by Healthy Spot
19 Customer, Kristian Capalik, whose dog was also killed at Healthy Spot on May 6, 2022
20 (otherwise a stand-alone claim but slightly outside the Class Period).
- 21 6. The scheduling of a hearing to consider whether the Settlement should be finally approved,
22 and to award Settlement Administration costs, and attorneys’ fees and costs to Class
23 Counsel;
- 24 7. Appointment of Postlethwaite & Netterville, AP AC, ("P&N") as the third-party Settlement
25 Administrator for providing class notices; and
- 26 8. Approval of the proposed Court Approved Notice of Class Action Settlement and Hearing
27 Date for Final Court Approval and an order that it be disseminated to the proposed
28 Settlement Class Members as provided in the Settlement Agreement.

1 This Motion is based on this notice of motion, the memorandum of points and authorities, the
2 declarations of Gary A. Praglin, Plaintiffs Tamara Margolis and Aimee Tully, and counsel for
3 Defendant, Edward Zusman, and the exhibits attached thereto, the pleadings and other papers filed in
4 this action, and on any further oral or documentary evidence or argument presented at the time of
5 hearing.

6

7

Dated: March 18, 2024

COTCHETT, PITRE & McCARTHY, LLP

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By: 
GARY A. PRAGLIN
THERESA E. VITALE
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Tamara Margolis and Aimee Tully (“Plaintiffs”) brought this class and representative
4 action against Defendant Healthy Spot LLC (hereinafter referred to as “Healthy Spot” or “Defendant”)
5 alleging violations of the Consumers Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*) (“CLRA”),
6 the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) (“UCL”), and the False
7 Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*) (“FAL”), due to false advertising and
8 unlawful business practices, including animal abuse during grooming. Plaintiffs’ primary allegations
9 are that all Healthy Spot grooming salons: (1) abused dogs, in violation of the California Penal Code,
10 during grooming by failing to adequately train staff or follow safe grooming techniques; and (2) falsely
11 advertised dangerous grooming services as safe, high-quality and performed by trained groomers.

12 Plaintiffs now respectfully request that this Court preliminarily approve this class action
13 settlement,¹ in which Healthy Spot has agreed to pay Seven Hundred Twenty-Five Thousand Dollars
14 and Zero Cents (\$725,000.00) to the following Settlement Class:

15 All Healthy Spot customers whose dogs were harmed and/or killed at any of the 20 Healthy
16 Spot locations in California between July 2018 and July 2021, and on May 6, 2022.²

17 The class includes the following subclasses:

- 18 (1) Deaths
- 19 (2) Severe Injuries
- 20 (3) Minor Injuries

21 Settlement Class members do not need to file a claim and will automatically receive a payment
22 unless they affirmatively opt-out. After deducting administration costs, the proposed Plaintiffs’ service
23 awards of \$5,000.00 each (\$10,000.00 total), and attorneys’ fees and costs, the remaining Net
24 Settlement Amount (“NSA”) of approximately \$418,750.00 will be distributed to all Settlement Class
25 members who do not opt-out. With approximately 750 Settlement Class members, payments to each

26 _____
27 ¹ The Settlement Agreement (“Settlement”) is attached to the Declaration of Gary A. Praglin as **Exhibit 1**. The proposed
28 Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval is attached to the
Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the Settlement

² The settlement also includes the additional unfiled claim by Healthy Spot Customer, Kristian Capalik, whose dog was
killed at Healthy Spot on May 6, 2022.

1 Settlement Subclass member are currently expected to be approximately: (1) Deaths: \$7,5000.00; (2)
2 Severe Injuries: \$2,375.00; and (3) Minor Injuries: \$100.00. Categories 2 and 3 are discussed further
3 below.

4 This proposed Settlement is well within the range of possible approval in light of the significant
5 legal and factual obstacles that Plaintiffs faced, the status of Healthy Spot and its ability to pay an
6 eventual judgment, the risks and costs of further litigation, and the tangible monetary benefits to be
7 received by the Settlement Class. For the reasons discussed herein, Plaintiffs respectfully request that
8 the Court grant preliminary approval of the Settlement.

9 **II. SUMMARY OF LITIGATION**

10 **A. The Parties**

11 Healthy Spot conducted business as a pet product, boarding and puppy training facility, and
12 grooming salon. (*See* Declaration of Gary A. Praglin (“Praglin Decl.”), ¶ 3.) Effective February 1,
13 2023, Healthy Spot was sold in a UCC Article 9 Public Auction and has not conducted any business
14 nor employed any employees since that date. (Praglin Decl. ¶ 4; Declaration of Edward S. Zusman
15 (“Zusman Decl.”), ¶ 3.) Plaintiff Aimee Tully’s dog, Noel, suffered a severe laceration, resulting in the
16 amputation of five inches of her tail, at Healthy Spot on January 23, 2021. (*See* Declaration of Aimee
17 Tully (“Tully Decl.”), ¶ 2.) Plaintiff Tamara Margolis’ dog, Charlie, was killed at Healthy Spot on
18 April 24, 2021. (*See* Declaration of Tamara Margolis (“Margolis Decl.”), ¶ 2.)

19 **B. Procedural History**

20 On July 12, 2021, Plaintiffs filed a class action Complaint against Defendant in Los Angeles
21 County Superior Court. (Praglin Decl., ¶ 5.) On January 18, 2022, Plaintiffs served Defendant with
22 their Demand for Action letter Pursuant to the requirements of California Civil Code § 1782. On March
23 25, 2022, pursuant to a March 23, 2022 Order from the Court, Plaintiffs filed a Third Amended
24 Complaint, the operative complaint in the action, alleging the following claims: (i) violation of the
25 CLRA for falsely advertising and misrepresenting the safety and quality of grooming services; (ii)
26 violation of the UCL for abusing dogs during grooming; (iii) false and misleading advertising in
27 violation of the California False Advertising Law (“FAL”); (iv) breach of express warranty; and (v)
28 negligent misrepresentation. (*Id.*)

1 **C. Discovery**

2 The discovery stay was partially lifted in June of 2022 for precertification discovery only.
3 (Praglin Decl. ¶ 6.) In response to Plaintiffs’ requests for production of documents, Defendant produced
4 an incident spreadsheet identifying 752 incidents involving injuries to customers’ dogs during
5 grooming at Healthy Spot between July 2018 and July 2021. (*Id.*) In addition to the detailed incident
6 spreadsheet, Defendant produced policies and procedures and advertisements from the relevant time
7 period. (*Id.*) Defendant subsequently served two sets of requests for production on each of the Plaintiffs,
8 which Plaintiffs responded to. (*Id.*) After meeting and conferring about additional documents in
9 Defendant’s possession over a period of months, in January of 2023, Plaintiffs noticed the deposition
10 of Healthy Spot’s Person Most Knowledgeable (“PMK”) for the following topics: (1) policies and
11 procedures regarding grooming at all Healthy Spot locations; (2) policies and procedures regarding
12 refunds to customers at all Healthy Spot locations; (3) policies and procedures regarding training of
13 grooming employees at all Healthy Spot locations; (4) policies and procedures regarding the
14 supervision and monitoring of grooming employees at all Healthy Spot locations; (5) policies and
15 procedures regarding pet safety and injury avoidance at all Healthy Spot locations; (6) the number of
16 dogs serviced per day at each Healthy Spot location; (7) policies and procedures regarding Healthy
17 Spot employee compensation for number of dogs serviced per day; and (8) policies and procedures
18 regarding customer complaints at all Healthy Spot locations. (Praglin Decl. ¶ 7.) When trying to find a
19 mutually agreeable date for the deposition, Plaintiffs learned that Healthy Spot would likely be sold at
20 a UCC Article 9 Auction. (Praglin Decl. ¶ 8.) Plaintiffs also learned that a notice substituting new
21 counsel would be filed. (*Id.*)

22 Indeed, on February 1, 2023, the assets of Defendant Healthy Spot were sold at a UCC Article
23 9 Public Auction. (Zusman Decl. ¶ 3.) Subsequently, on February 21, 2023, prior counsel for Healthy
24 Spot substituted out and new counsel, Edward Zusman and Kevin Eng of Markun Zusman & Compton
25 LLP, substituted in. (Zusman Decl. ¶ 2.) In order to allow Defendant’s new counsel time to get up to
26 speed, the Parties agreed to a mutual extension of all pending discovery and motions to compel
27 deadlines and to postpone the PMK deposition. (Zusman Decl. ¶ 4.) Additionally, the Parties scheduled
28 a formal mediation with Mediator Jeff Kichaven for May of 2023. (Zusman Decl. ¶ 5.)

1 **D. Arms-Length Negotiations**

2 On May 1, 2023, after extensive research and analysis, including a detailed analysis of
3 Defendant’s potential exposure by Plaintiff, a mediation was held with Jeff Kichaven, Esq. (Praglin
4 Decl., ¶ 9.) During mediation, the Parties vigorously debated their opposing legal positions, the
5 likelihood of certification of Plaintiffs’ claims, as well as the legal basis for the claims and defenses.
6 (*Id.*) The Parties also discussed Defendant’s financial condition considering it had not been in operation
7 (and had sold its assets) as of February 2023. Defendant revealed for the first time that the only
8 remaining asset, insurance coverage, would not cover various aspects of Plaintiffs’ damages, due to
9 explicit exclusions. (Praglin Decl., ¶ 9; Zusman Decl. ¶ 6.) Further, because Defendant is no longer in
10 business, one of Plaintiffs’ primary requested remedies, injunctive relief requiring Healthy Spot to
11 change its dangerous policies, would not be achievable. (Praglin Decl., ¶ 9.) The Parties were unable
12 to reach a settlement at mediation. (*Id.*)

13 After the Parties’ unsuccessful mediation, Plaintiffs moved forward with the deposition of the
14 Person Most Knowledgeable. (Praglin Decl., ¶ 10.) Due to the current status of Healthy Spot, the
15 Certified Public Accountant charged with winding up the company was produced for the deposition.
16 (*Id.*) As a result, Plaintiffs’ counsel confirmed Healthy Spot’s representations regarding the sale of its
17 assets. (*Id.*)

18 Ultimately, after months of further settlement negotiations, including supplemental briefing,
19 and with the continued assistance of Mediator Kichaven, the Parties agreed in principle on a class-wide
20 resolution. (Praglin Decl., ¶ 11.) Thereafter, in the months that followed, the Parties negotiated, drafted,
21 approved and signed a Settlement Agreement. (Praglin Decl., ¶ 12, **Exhibit 1.**)

22 **III. ARGUMENT**

23 **A. The Parties’ Settlement Satisfies the Criteria for Certification**

24 California Rule of Court 3.769 conditions settlement of a class action on court approval, which
25 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of
26 Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial
27 court to determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v.*
28

1 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine “whether a
2 proposed settlement is fundamentally fair, adequate, and reasonable”)

3 Further, class actions under the CLRA are governed by Cal. Civ. Code section 1781, which
4 specifies:

5 “(b) The court shall permit the suit to be maintained on behalf of all members of the represented
6 class if all of the following conditions exist:

7 (1) It is impracticable to bring all members of the class before the court.

8 (2) The questions of law or fact common to the class are substantially similar and predominate
9 over the questions affecting the individual members.

10 (3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses
11 of the class.

12 “(4) The representative plaintiffs will fairly and adequately protect the interests of the class.”
13 (§ 1781, subd. (b).)

14 As explained below, the Settlement Class satisfies the criteria for certification under California
15 law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common
16 questions of law and fact predominate over individual questions such that class certification is the most
17 efficient and desirable way to maintain this litigation; (3) Plaintiffs’ claims are typical of the claims of
18 the Settlement Class Members; and (4) Plaintiffs and their counsel will fairly and adequately represent
19 Settlement Class Members’ interests. *See* Cal. Civ. Proc. § 382; (Praglin Decl., ¶ 13.)

20 1. Numerosity is Satisfied

21 There are approximately 750 Settlement Class Members. Therefore, numerosity is satisfied.
22 (Praglin Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10
23 beneficiaries of a trust sufficiently numerous).)

24 Further, a class is “ascertainable” where the members “may be readily identified without
25 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
26 *Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class
27 is defined as “all Healthy Spot customers whose dogs were physically harmed and/or killed at any of
28 the 20 Healthy Spot locations in California between July 2018 and July 2021, and on May 6, 2022.”

1 (Praglin Decl., ¶ 14.) These class members are easily ascertained due to Healthy Spot’s practice of
2 maintaining a spreadsheet which includes the details of every injury during grooming that occurred
3 before its sale in February of 2023. (*Id.*)

4 **2. Commonality is Satisfied**

5 The focus in a certification dispute is not the merits, but rather on what types of questions,
6 “common or individual,” are likely to arise in the action. (*See Sav-On Drug Store, Inc. v. Superior*
7 *Court (Rocher)* (2004) 34 Cal.4th 319, 327.) Here, Settlement Class Members’ claims arise from
8 Healthy Spot’s common, uniform policies and practices that applied to Plaintiffs and Settlement Class
9 Members during the class period. (Praglin Decl., ¶ 15.) As a result of the common and uniform policies
10 and practices that applied to all Settlement Class Members, their claims involve common questions of
11 law and fact, including but not limited to:

- 12 1. Whether Healthy Spot had a policy and practice of abusing dogs during grooming;
- 13 2. Whether Healthy Spot falsely advertised the safety and quality of its grooming services;
- 14 3. Whether Healthy Spot failed to adequately train and/or supervise its grooming employees;
- 15 4. Whether Healthy Spot’s conduct constituted unlawful and/or unfair business practices; and
- 16 5. Whether injuries sustained by dogs during grooming at Healthy Spot were due to the above
17 policies, practices and/or unlawful and unfair business practices.

18 These alleged practices and the fact that each of the Settlement Class members’ dogs was
19 injured during grooming at Healthy Spot during the class period result in common questions as to the
20 affected Settlement Class Members. (Praglin Decl., ¶ 15; *See e.g., Benton v. Telecom Network*
21 *Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.)

22 **3. Typicality is Satisfied**

23 The typicality requirement is satisfied where class representatives have claims that are typical
24 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
25 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative
26 class in a consumer class action).

27 Here, Plaintiffs’ claims are typical of those held by the Settlement Class. First, both Plaintiffs
28 were Healthy Spot customers whose dogs were injured and or/killed during grooming at Healthy Spot.

1 (Praglin Decl. ¶ 16; Margolis Decl., ¶ 2, Tully Decl., ¶ 2.) All of the Settlement Class members' dogs
2 also suffered an injury during grooming at Healthy Spot that resulted in their inclusion on Healthy
3 Spot's incident spreadsheet. (Praglin Decl., ¶ 16.) Second, Plaintiffs contend their dogs were injured
4 by the same policies that injured the Settlement Class as a whole. (Margolis Decl., ¶ 3; Tully Decl., ¶¶
5 3-4.) Third, both Plaintiffs contend they relied on the advertising and representations at issue in
6 choosing to have their dogs groomed at Healthy Spot. (See Margolis Decl., ¶¶ 4-10, Tully Decl., ¶¶ 5-
7 7.) Most notably, surveillance video of both incidents involving Plaintiffs' dogs depict conditions and
8 circumstances that are consistent with videos of many of the Settlement Class Members' incidents.
9 (Praglin Decl., ¶ 16; Tully Decl., ¶ 4.) Given that Defendant's policies and practices applied to all
10 grooming services at Healthy Spot stores during the class period, Settlement Class Members possess a
11 similar interest and have suffered similar alleged injuries as Plaintiffs. (Praglin Decl., ¶ 17.)
12 Accordingly, because Plaintiffs' claims and those of the Settlement Class all arise from the same
13 conduct, typicality is satisfied.

14 **4. Adequacy is Satisfied.**

15 The adequacy requirement examines conflicts of interest between named parties and the
16 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
17 (2007) Cal.App.4th 676, 697.

18 Here, there are no apparent conflicts of interest between Plaintiffs and the Settlement Class they
19 seek to represent. (Praglin Decl., ¶ 18.) Indeed, Plaintiffs' interests are aligned with those of the
20 Settlement Class Members, as they all seek the same relief under the same facts and legal theories. (*Id.*)
21 Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. (*Id.*;
22 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was
23 no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic
24 to those of the proposed class).) Further, Class Counsel also have extensive experience in consumer
25 and class action litigation and have vigorously litigated this case. (Praglin Decl., ¶ 18.)

26 **B. The Proposed Class Action Settlement Is Fair, Adequate, And Reasonable**

27 Settlement is the preferred means of dispute resolution, particularly in complex class action
28 litigation. See *In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in

1 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
2 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
3 Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an
4 experienced mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

5 **1. The Preliminary Approval Standard is Met**

6 To make a fairness determination, the Court should consider several factors, including: “the
7 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the
8 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
9 discovery completed and the stage of the proceedings, [and] the experience and views of counsel.”
10 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and
11 the court is free to engage in a balancing and weighing of the factors depending on the circumstances
12 of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. The Settlement is
13 fair, adequate, and reasonable for the following reasons.

14 *i. The strength of Plaintiffs’ case*

15 Although Plaintiffs maintain that their claims are meritorious, they acknowledge there were
16 substantial risks and uncertainty in proceeding with litigation including, without limitation,
17 Defendant’s ability to pay an eventual potential judgment in light of the fact it was forced into a UCC
18 Article 9 sale by a creditor, leaving no assets other than limited insurance coverage (with notable
19 coverage exclusions). This fact also prevented Plaintiffs from continuing to pursue injunctive relief, as
20 Defendant is no longer in operation. Further, as described below, Healthy Spot presented multiple
21 defenses to Plaintiffs’ claims, both on the merits and class certification. Thus, while Plaintiffs were
22 prepared to litigate these claims through certification and trial, success and recoverability of a judgment
23 was far from certain.

24 *ii. Risk, expenses, complexity, and duration of further litigation*

25 Although the parties engaged in some certification-oriented discovery, the parties still had
26 significant discovery to complete in formal litigation had the matter not settled. (Praglin Decl. ¶ 19.)
27 Moreover, Plaintiffs still had to file for class certification, and faced the prospect of appeals in the wake
28 of a disputed class certification ruling and/or an adverse summary judgment ruling. (*Id.*) Even if the

1 classes sought to be certified by Plaintiffs were in fact certified, the parties would incur considerably
2 more attorneys' fees and costs through depositions, merits discovery, summary judgment motions, trial,
3 and possible appeals. (*Id.*) This Settlement avoids those risks and the accompanying expense. Further,
4 as stated above, Healthy Spot's sale and ability to pay an eventual judgment were large factors in the
5 settlement decision. Thus, this factor supports preliminary approval.

6 *iii. Risk of maintaining Class Action status*

7 Plaintiffs had not yet filed their motion for class certification and as such, the extent to which
8 Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement, there was a
9 risk that there would not be a certified class at the time of trial.

10 *iv. Overview of the Settlement Agreement*

11 If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA")
12 of \$725,000.00. (Praglin Decl., ¶ 20; **Exhibit 1**.) Each Settlement Class member will automatically
13 receive a Settlement Award unless he or she affirmatively opts out of the Settlement. (*Id.*) The monetary
14 terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$725,000.00
Minus Court-approved attorneys' fees (25% of GSA):	\$181,250.00
Minus Court-approved, verified costs (up to):	\$65,000.00
Minus Court-approved Class Representative Service Awards:	\$10,000.00
Minus Settlement Administration Costs (up to):	\$50,000.00
Net Settlement Amount ("NSA"):	\$418,750.00

21
22
23 As of the submission of this motion, the Settlement Administrator is in the process of
24 establishing an interest bearing qualified settlement account for the benefit of participating Settlement
25 Class members (the "Settlement Account"). Once the Settlement Account is open and able to be
26 funded, Healthy Spot will deposit the Gross Settlement Amount promptly. Healthy Spot anticipates
27 the Gross Settlement Amount will be deposited well before the preliminary approval hearing. (Zusman
28

1 Decl. ¶ 7.) If the Settlement is not finally approved by the Court, the Gross Settlement Amount, and
2 interest, will be returned to Defendant. (Praglin Decl., ¶ 21, Exhibit 1.)

3 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service
4 Awards to Plaintiffs, and Settlement Administrator costs, the Settlement requires Defendant to pay a
5 Net Settlement Amount ("NSA") of at least **\$418,750.00** to all Settlement Class Members who do not
6 timely opt out. (Praglin Decl., ¶ 22, Exhibit 1.)

7 According to Defendant, there are approximately 750 total Settlement Class Members. (Zusman
8 Decl., ¶ 8.) Thus, the Individual Settlement Awards (assuming there are no opt-outs) are projected to
9 be approximately: **(1) Deaths: \$7,5000.00; (2) Severe Injuries: \$2,375.00; and (3) Minor Injuries:**
10 **\$100.00.** (Praglin Decl., ¶ 23, Exhibit 1.) Severe injuries include grooming injuries requiring a
11 veterinarian visit, pneumonia, cage falls, grooming, and other conditions not qualifying as Minor
12 Injuries. Minor injuries are mostly reports of suspected but unconfirmed injuries or nicks or minor
13 abrasions from grooming, many of which were not followed up on by dog owners, but were
14 documented by Defendant. (*Id.*) The Individual Settlement Awards were determined based on the
15 category and description of injury as contemporaneously recorded by Defendant's employees and staff.
16 In addition, Defendant's policies and procedures called for recording of information that would identify
17 whether an incident involved a minor injury, severe injury, or death. Data recorded from all of
18 Defendant's locations was compiled on the incident spreadsheet created by Defendant and produced in
19 the course of discovery in this litigation. (*Id.*)

20 Settlement Class Members will have sixty (60) calendar days from service of the Class Notice
21 to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without
22 unduly delaying the Settlement. (Praglin Decl., ¶ 24, Exhibit 1.) Those Settlement Class Members who
23 do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant
24 included within the Settlement, for the period of July 2018 through July 2021, and May 6, 2022. (*Id.*)

25 v. *The Parties engaged in fair and honest negotiations*

26 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
27 of an impartial, experienced mediator. (Praglin Decl., ¶ 25.) In connection with mediation, Defendant
28 produced insurance policies, internal policies and procedures, and records related to the payment of

1 Decl., ¶¶ 2-11, Tully Decl., ¶¶ 2-14.) Finally, Plaintiffs allege that Healthy Spot’s false advertising and
2 representations were uniform across all stores in California and that other Healthy Spot customers
3 whose dogs were harmed at Healthy Spot also relied on the misrepresentations in making grooming
4 appointments. (Praglin Decl., ¶ 28.) Using the incident spreadsheet, Plaintiffs were able to categorize
5 the type of injuries sustained by dogs at Healthy Spot during grooming into three categories: (1) Death;
6 (2) Severe Injuries; and (3) Minor injuries. Defendant’s exposure for each of these injuries include the
7 veterinary bills incurred, as well as the loss of life and limb that the dogs sustained. (Praglin Decl., ¶
8 29.) Further, the CLRA entitles Plaintiffs to punitive damages and “any other relief that the court deems
9 proper.” Because of what Plaintiffs contended were egregious and ongoing conditions in which Healthy
10 Spot Customer’s dogs were injured, Plaintiffs would seek emotional distress and punitive damages.
11 Plaintiffs ultimately estimated that Defendant’s exposure (notwithstanding insurance
12 coverage/collectability issues) for the class CLRA claims would be between \$1,500,000.00 and
13 \$2,500,000.00, depending on the ultimate size of the class and unpaid veterinary bills. (Id.)

14 Healthy Spot contends that it adequately compensated Settlement Class members for all injuries
15 sustained at Healthy Spot by covering any veterinary bills presented by customers and by providing
16 refunds for grooming services that resulted in an incident. (Zusman Decl., ¶ 9.) Defendant’s
17 Spreadsheet of injuries confirms reimbursement of customer veterinary bills. (Id.) It also contends that
18 given the number of pets Healthy Spot groomed at its many locations the incidents of injury or death
19 were relatively small and typical of similar grooming businesses, and that its pet safety policies and
20 procedures were consistent with, or exceeded, industry norms. Healthy Spot contends that, as with any
21 business, there may be one-off situations in which workers do not follow their company’s procedures,
22 but that does not mean that a worker was not properly trained or that the procedures were flawed.
23 (Zusman Decl., ¶ 10.) Healthy Spot further asserts that Plaintiffs would be unable to certify a class in
24 this case given the individualized inquiries into the circumstances of each incident that would be
25 required and due to the fact that both Plaintiffs’ received grooming service refunds and had veterinary
26 bills paid in full. (Id.) Additionally, Healthy Spot contends that Plaintiffs’ assessment of the value of
27 Settlement Class Members’ dogs’ injuries is improperly based on theories that are contrary to the
28 prevailing law. For example, Plaintiffs seek emotional distress punitive damages, which Defendant

1 contends are unavailable under the circumstances of this case. (Zusman Decl., ¶ 18.) Finally, Healthy
2 Spot contends that most of its customers were not exposed to, and therefore could not have relied on,
3 the representations at issue. (Zusman Decl., ¶ 12.)

4 In light of these defenses, Plaintiffs discounted the probable maximum exposure by 15% for
5 the risk of non-certification, and an additional 15% to account for Defendant's defenses on the merits
6 to arrive at an estimated probable maximum exposure of approximately \$1,750,000.00. (Praglin Decl.,
7 ¶ 30.)

8 UCL Claims: Plaintiffs further allege that Defendant's uniform policies, practices and
9 procedures across all Healthy Spot stores resulted in the routine abuse, harm, and sometimes, death of
10 dogs during grooming, in violation of the California Penal Code and in turn, the UCL. (Praglin Decl.,
11 ¶ 31.) Due to Defendant's allegedly unsafe policies and procedures and alleged lack of adequate
12 supervision and training of grooming employees, Plaintiffs contend their dogs and Settlement Class
13 Members' dogs were injured or killed during grooming at Healthy Spot. (*Id.*)

14 However, UCL claims only entitle Plaintiffs to equitable relief, including injunctive relief and
15 restitution. Defendant contends that all Healthy Spot Customers whose dogs were injured during
16 grooming received both a refund for the grooming service and payment of any veterinary bills presented
17 to them. (Zusman Decl., ¶ 10.) Further, Healthy Spot was sold and is no longer in operation. (Zusman
18 Decl., ¶ 3.) Finally, any restitution that remains would be duplicative of amounts calculated to
19 determine Defendant's exposure for Plaintiffs' CLRA claims. (Zusman Decl., ¶ 13.)

20 FAL, Breach of Warranty and Negligent Misrepresentation claims: Plaintiffs' FAL, Breach of
21 Warranty and Negligent Misrepresentation claims involve the same allegations as Plaintiffs' CLRA
22 claims, and present the same challenges to monetary recovery as discussed above.

23 *vii. The Settlement is within the range of possible approval*

24 Using these estimated figures for each of the claims described above, Plaintiffs estimate the
25 realistic total damages for the Settlement Class would be approximately \$1,750,000.00
26 (notwithstanding coverage and collectability issues). (Praglin Decl., ¶¶ 30, 32.) The proposed
27 settlement of \$725,000.00 therefore represents approximately 41% of the reasonably forecasted
28 recovery for the Settlement Class. (*Id.*) Preliminary approval is appropriate as the settlement will

1 provide tangible monetary relief to Settlement Class Members, and will still provide an approximate
2 recovery to Settlement Class Members of \$7,500.00 for those whose dogs were killed, \$2,375.00 for
3 those whose dogs were severely injured and \$100.00 each for those whose dogs suffered only minor
4 injuries, which is a good result in light of the fact that Healthy Spot ceased operations in early 2023
5 and no longer has ongoing revenue. (Praglin Decl., ¶ 23; Zusman Decl. ¶ 3.) Thus, Healthy Spot’s
6 status and the inability to pay any final judgment if this case proceeded through trial was also a major
7 factor in the ultimate settlement amount agreed upon.

8 The proposed settlement reflects approximately 41% of the estimated recovery the Settlement
9 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
10 monetary compensation for hotly disputed claims, and eliminates the risk of uncollectability. Indeed,
11 the percentage of the liability exposure recovered in this case exceeds percentages routinely approved
12 by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL
13 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*
14 (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
15 recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is
16 well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction
17 of the potential recovery that might be available to the Settlement Class members at trial”). Thus,
18 Plaintiffs submit the settlement is within the range of reasonable approval, such that notice should be
19 provided to the Settlement Class so that they can consider the Settlement. The Court will have the
20 opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the
21 opportunity to opt-out or object.

22 *viii. The experience and views of counsel*

23 “Parties represented by competent counsel are better positioned than courts to produce a
24 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
25 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent,
26 experienced counsel who possess extensive experience prosecuting class actions, and who have been
27 appointed as class counsel in numerous cases alleging similar claims. (Praglin Decl., ¶ 33.) Class
28 Counsel conducted an in-depth review of Defendant’s policies, incident records and refund records,

1 and drew on their extensive experience to assess the strengths and weaknesses of Plaintiffs’ case.
2 (Praglin Decl., ¶ 34.) The Settlement was also reached with the assistance of an experienced and
3 respected mediator. (*Id.*) This factor strongly supports preliminary approval of the Settlement. *See*
4 *Kullar, supra*, 168 Cal.App.4th at 130.

5 *ix. Attorneys’ fees and costs*

6 California courts recognize an appropriate method for awarding attorneys’ fees in class actions
7 is to award a percentage of the “common fund” created as a result of a settlement. *See e.g., Laffitte v.*
8 *Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding “the percentage of fund method survives in
9 California class action cases”). Class Counsel’s request for fees of one-fourth of the GSA is well within
10 the range of reasonableness, and indeed is considered at the low end of the typical rate for common
11 fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%,
12 depending on the circumstances of the case. *See e.g. 4 Newberg on Class Actions* § 14.6 (4th Ed. 2013).

13 Here, Class Counsel will also apply for an attorneys’ fees award of one-fourth of the GSA,
14 which is currently estimated to be \$181,250.00, and up to \$65,000 in verified costs reimbursement.
15 (Praglin Decl., ¶ 35.) Plaintiffs submit the requested fee is fair compensation for undertaking complex,
16 risky, expensive, and time-consuming litigation on a purely contingent fee basis. (Praglin Decl., ¶ 36.)
17 Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing
18 Plaintiffs’ claims, conducting legal research, reviewing Defendant’s documents and policies,
19 reviewing surveillance videos of grooming at Healthy Spot, analyzing Settlement Class Members’
20 records, preparing for and attending mediation, engaging in months of direct negotiations, negotiating
21 and revising the long-form Settlement, preparing for and taking the deposition of Healthy Spot’s Person
22 Most Knowledgeable, preparing this Motion, and otherwise litigating the case. (Praglin Decl., ¶ 37.)

23 In fact, Class Counsel’s lodestar of the actual hours spent at their hourly rates dwarfs the amount
24 being requested here. (Praglin Decl., ¶ 38.) Class Counsel’s lodestar as of the time of filing this motion
25 has exceeded \$800,000.00. (*Id.*) Class Counsel expect to expend additional attorney time in attending
26 the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class
27 Members, preparing the final approval papers and attending the Final Approval hearing. (*Id.*)

28

1 Class Counsel submits that the request for attorneys’ fees is reasonable when viewed as an
2 overall percentage of the settlement in light of the substantial risks, significant work undertaken, the
3 extremely positive results obtained for the class, and the efficiency with which the Parties conducted
4 the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of
5 attorneys’ fees and verified litigation costs at the time of seeking final approval of the Settlement,
6 which will include a full lodestar analysis.

7 x. Administration costs

8 P&N’s fees and expenses are estimated not to exceed \$50,000.00. (Praglin Decl., ¶ 38, Exhibit
9 1.) This includes sending the Notice via both mail and e-mail, due to the nature of the contact
10 information available. This request is reasonable in light of the proposed class size of approximately
11 750 Settlement Class Members and the costs and expenses associated with administering the notices
12 and distributing the awards.

13 xi. Service awards

14 “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate
15 class representatives for work done on behalf of the class [and] to make up for financial or reputational
16 risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
17 1380, 1393-94. Here, as part of the Settlement, Plaintiffs will separately apply for service awards at the
18 time of seeking final approval of the proposed class action settlement in the amount of \$5,000.00 each
19 for their services to the Settlement Class. (Praglin Decl., ¶ 40.) As will be fully briefed at the time of
20 final approval, Plaintiffs’ requested service award are intended to recognize the time and effort
21 Plaintiffs expended on behalf of the Settlement Class, including providing substantial factual
22 information, documents, and video evidence to Class Counsel, attending many meetings with Class
23 Counsel to discuss the claims and theories at issue in the litigation, responding to discovery,
24 participating in the mediation, as well as the significant risks Plaintiffs undertook by agreeing to serve
25 as the named plaintiffs in this case and the fact that Plaintiffs have agreed to a general release of all
26 claims subject to a waiver of Civil Code § 1542. (*See* Praglin Decl., ¶ 41; Margolis Decl., ¶¶ 13-14;
27 Tully Decl., ¶¶ 3, 15-16.)

1 preliminary approval of the Settlement. (See Settlement ¶ 4.2.) Within 30 calendar days of receipt of
2 the Settlement Class Members' addresses, P&N will send to all Class Members identified in the Class
3 Data, via first-class USPS mail and/or email, the notices to Settlement Class Members. (See Settlement
4 ¶ 7.3.2.)

5 The content of the proposed Notice of Settlement satisfies California Rule of Court 3.766(d)
6 because it advises Settlement Class Members, who have already been notified of the nature of the
7 claims, of the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement
8 and the procedures by which to do so, explains the expected recovery amount for each Settlement Class
9 member, provides them the opportunity to object to the settlement, and advises them that they will be
10 bound by the terms of the Settlement if they do not opt-out. (See Praglin Decl., Exh. 1 (Settlement,
11 Exhibit A).) The proposed Notice of Settlement will also notify Settlement Class Members of the final
12 approval hearing date and provides Settlement Class Members the contact information for Class
13 Counsel. (Praglin Decl., ¶ 44.) This manner of giving notice satisfies California Rule of Court 3.766(e)
14 as the most reliable and cost-effective method of reaching Settlement Class Members.

15 **E. The Court Should Set a Final Approval Hearing**

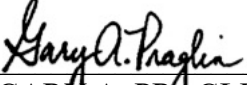
16 Finally, this Court should set a hearing for final approval of the Settlement on a date
17 appropriately scheduled to follow the deadline by which Settlement Class Members must file
18 objections to the Settlement or opt-out. See California Rule of Court 3.769.

19 **IV. CONCLUSION**

20 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve
21 the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order
22 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

23 Dated: March 18, 2024

COTCHETT, PITRE & McCARTHY, LLP

24
25
26 By: 
27 GARY A. PRAGLIN
28 THERESA E. VITALE
Attorneys for Plaintiffs

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PROOF OF SERVICE

I am employed in the County of Los Angeles. I am over the age of 18 years and not a party to this action. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP, 2716 Ocean Park Boulevard, Suite 3088, Santa Monica, CA 90405. On this day, I served the following document(s) in the manner described below:

PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

✓ **VIA ELECTRONIC TRANSMISSION:** I am readily familiar with this firm’s practice for causing documents to be served by electronic transmission. Following that practice, I caused the aforementioned document(s) to be electronically submitted to the e-mail addressee(s) specified below using the electronic service provider Case Anywhere.

Edward S. Zusman Kevin Eng Markun Zusman & Compton LLP 465 California St., Suite 401 San Francisco, CA 94104 ezusman@mzclaw.com keng@mzclaw.com	COUNSEL FOR DEFENDANT HEALTHY SPOT, LLC
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Santa Monica, California, March 18, 2024.



MELISSA BRESSICK