

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FINAL SETTLEMENT APPROVAL HEARING

Marciano v. Schell & Kampeter, Inc., No. 12-cv-02708-SJF-AKT
 United States District Court, Eastern District of New York

THIS NOTICE MAY AFFECT YOUR RIGHTS -- PLEASE READ IT CAREFULLY.

If you purchased certain recalled pet food products, you may be eligible for a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been reached between Schell & Kampeter, Inc. d/b/a Diamond Pet Foods, Diamond Pet Food Processors of South Carolina LLC, Costco Wholesale Corporation and certain related entities ("Defendants") and Plaintiff Barbara Marciano ("Class Representative" or "Plaintiff"), individually and on behalf of the Settlement Class.
- The settlement will provide Two Million Dollars to reimburse/refund Class Members for the purchase price of certain recalled pet food products, and to pay claims for pet owners who, in addition to having purchased or used a recalled product, sustained economic damages as a result of injury or death to animals from their consumption of a recalled product. A complete list of eligible products is contained in this notice.
- Defendants will also provide relief in the form of coupons for class members who purchased pet food products subject to the recalls and fully utilized the products (i.e. fed the products to their pets or animals) with no resultant ill effects.
- In order to establish a claim, you must provide sufficient information about the purchase or use of the included products. If you have previously received relief from the defendants that falls under either Sub-Class I or II, you may be eligible to file a claim in another Sub-Class.
- Your legal rights are affected whether you act or don't act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM	The only way to get a benefit.
EXCLUDE YOURSELF	Get no benefit. This is the only option that allows you to ever be part of any other lawsuit against Diamond Pet Foods, Costco Wholesale Corporation, and all persons and entities that are alleged to have manufactured, tested, distributed, supplied, sold, offered or were otherwise involved in placing the Recalled Pet Food Products into the marketplace, about the legal claims in this case.
OBJECT	Write to the Court about why you don't like the settlement, but remain in the class.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no benefit. Give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.

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Basic Information

1. Why did I get this notice?

You or someone in your family may have purchased certain products placed by Diamond Pet Foods and Costco Wholesale into the stream of commerce in 2011 and 2012. Or you or a family member may have reported to the Defendants or your veterinarian that your pet became ill after consuming a Diamond Pet Foods product.

The Court sent you this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the settlement. If the Court approves it and after objections and appeals are resolved, an administrator appointed by the Court will make the payments that the settlement allows.

This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court of the Eastern District of New York, and the case is known as *Marciano v. Schell & Kampeter, Inc. d/b/a Diamond Pet Foods, et al.*, Civil No. 12-2708. The people who sued are called Plaintiffs, and the companies they sued, Diamond Pet Foods and Costco Wholesale, are called the Defendants.

2. What is this lawsuit about?

Plaintiffs allege that Defendants manufactured and distributed certain pet food products that led to illness and death of some animals that consumed them, and in doing so breached their warranties, were negligent, were strictly liable, violated state statutes prohibiting unfair or deceptive trade practices, and/or were liable under other theories. The Defendants deny that they did anything wrong.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case Barbara Marciano) sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. U.S. District Judge Sandra J. Feuerstein is in charge of this class action.

4. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representative and attorneys think the settlement is best for everyone who was injured.

Who is in the Settlement

5. How do I know if I am part of the settlement?

Judge Sandra J. Feuerstein has preliminarily certified and approved the Class as follows:

All persons and business entities who purchased “Recalled Pet Food Product(s)” as defined in Section 7 below.

6. If I purchased the product, but my pet did not become sick, am I included?

Yes. The parties have agreed to the following three (3) sub-classes:

Sub-Class I: Individuals who: (1) purchased but never used a recalled pet product, never fed his/her pet or animal the recalled product, and the class member discarded or retained the product, did not return the product to the dealer or otherwise exchanged the product; or (2) purchased and used a recalled pet product that caused economic damages detailed in Sub-Class II.

Sub-Class II: Individuals who, in addition to having purchased or used a recalled pet food product, sustained economic damages as a result of injury or death to animals from their consumption of a recalled product.

Sub-Class III: Individuals who purchased pet food products subject to the recalls and fully utilized the products with no resultant ill effects.

7. Which Diamond Pet Food Products are included?

Product Name	Sizes	Production Code	Dates
Apex Chicken and Rice Dog	20 lb, 40 lb bags	ACD0101B32	Best by 1/24/2013
Canidae Dog Dry Dog Food, All Life Stages	All Sizes	Number “3” in the 9th digit AND the letter “X” in the 10th or 11th digit	“Best Before” between 12/9/2012-1/31/2013
Canidae Dog Dry Dog Food, Chicken Meal & Rice	All Sizes	Number “3” in the 9th digit AND the letter “X” in the 10th or 11th digit	“Best Before” between 12/9/2012-1/31/2013
Canidae Dog Dry Dog Food, Lamb Meal & Rice	All Sizes	Number “3” in the 9th digit AND the letter “X” in the 10th or 11th digit	“Best Before” between 12/9/2012-1/31/2013
Canidae Dog Dry Dog Food, Canidae Platinum	All Sizes	Number “3” in the 9th digit AND the letter “X” in the 10th or 11th digit	“Best Before” between 12/9/2012-1/31/2013
Chicken Soup for the Pet Lover’s Soul	All Sizes & Formulas	Number “2” or “3” in the 9th digit and the letter “X” in the 10th or 11th digit	“Best Before” between 12/9/2012-4/7/2013
Country Value	All Sizes & Formulas	Number “2” or “3” in the 9th digit and the letter “X” in the 10th or 11th digit	“Best Before” between 12/9/2012-4/7/2013
Diamond	All Sizes & Formulas	Number “2” or “3” in the 9th digit and the letter “X” in the 10th or 11th digit	“Best Before” between 12/9/2012-4/7/2013
Diamond Naturals	All Sizes & Formulas	Number “2” or “3” in the 9th digit and the letter “X” in the 10th or 11th digit	“Best Before” between 12/9/2012-4/7/2013
Diamond Naturals Small Breed Adult Dog Lamb & Rice Formula	Samples, 6 lb and 18 lb bags	DSL0801	“Best Before” 10/20/2012; 8/26/2012; 9/27/2012; 10/18/2012
Kirkland Signature Super Premium Adult Dog Chicken, Rice & Vegetable Formula		Number “3” in the 10th digit and the letter “X” in the 11th digit	“Best Before” 12/9/2012 - 1/31/2013

Product Name	Sizes	Production Code	Dates
Kirkland Signature Super Premium Mature Dog Chicken, Rice & Egg Formulas		Number "3" in the 10th digit and the letter "X" in the 11th digit	"Best Before" 12/9/2012 - 1/31/2013
Kirkland Signature Super Premium Healthy Weight Dog Formulated with Chicken & Vegetables		Number "3" in the 10th digit and the letter "X" in the 11th digit	"Best Before" 12/9/2012 - 1/31/2013
Kirkland Signature Nature's Domain Salmon Meal & Sweet Potato Formula for Dogs		Number "3" in the 10th digit and the letter "X" in the 11th digit	"Best Before" 12/9/2012 - 1/31/2013
Natural Balance Sweet Potato & Venison Dog	5 lb bag		Best By 12/12/2012; 12/13/2013; 3/13/2013
Natural Balance Sweet Potato & Venison Dog	15 lb bag		Best by 12/12/2012; 12/13/2012; 12/14/2012; 3/5/2013; 3/6/2013
Natural Balance Sweet Potato & Venison Dog	28 lb bag		Best By 12/12/2012; 12/13/2012; 12/14/2012; 3/5/2013; 3/6/2013; 3/7/2013; 3/8/2013; 3/12/2013
Natural Balance Lamb Meal & Brown Rice Dog	5 lb, 15 lb, 28 lb bags		Best by 12/10/2012; 12/21/2013; 12/22/2012
Natural Balance Sweet Potato & Bison Dog	5 lb bag		Best by 12/17/2012, 12/18/2012; 12/28/2012; 12/29/2012
Natural Balance Sweet Potato & Bison Dog	15 lb, 28 lb bag		Best By 12/9/2012; 12/17/2012; 12/18/2012; 12/28/2012; 12/29/2012
Natural Balance Vegetarian Dog	5 lb bag		Best By 12/9/2012
Natural Balance Lamb Meal & Brown Rice Dog Large Breed Bites	28 lb bag		Best by 12/12/2012; 12/20/2012; 12/21/2012
Natural Balance Lamb Meal & Brown Rice Dog Small Breed Bites	5 lb and 12.5 lb bags		Best by 12/21/2012
Premium Edge	All Sizes & Formulas	Number "2" or "3" in the 9th digit and the letter "X" in the 10th or 11th digit	"Best Before" between 12/9/2012 and 4/7/2013
Professional	All Sizes & Formulas	Number "2" or "3" in the 9th digit and the letter "X" in the 10th or 11th digit	"Best Before" between 12/9/2012 and 4/7/2013
Solid Gold WolfKing Large Breed Adult Dog Food	All Sizes		"Best Before" 12/30/2012
Solid Gold WolfCub Large Breed Puppy Food	All Sizes		"Best Before" 12/30/2012
Taste of the Wild	All Sizes & Formulas	Number "2" or "3" in the 9th digit and the letter "X" in the 10th or 11th digit	"Best Before" between 12/9/2012 and 4/7/2013
Wellness Complete Health Super5Mix Large Breed Puppy	15 lb and 30 lb bags, 5 oz. sample bags		"Best Before" 1/9/2013 and 1/11/2013

The Settlement Benefits—What You Get

8. What does the settlement provide?

Sub-Class I

Defendants will create a settlement fund limited to a total maximum of \$750,000 to pay claims from Sub-Class I. The Class Member in submitting a valid claim shall receive one of the following:

1. Payment up to a maximum value of two (2) bags of pet food per pet; OR
2. A pro rata share of the net proceeds of the Settlement fund for this Sub-Class not to exceed the actual or estimated purchase price of up to two (2) bags of the pet food per pet if the Settlement fund is exhausted, if the total amount claimed by eligible Sub-Class I Members exceeds the funds available.
3. If applicable, Class Members in Sub-Class I can request reimbursement of the cost of veterinary care and/or the fair market value of the pet as set forth in Sub-Class II, subject to the submission of proof required for Sub-Class II.

Sub-Class II

Defendants will create a settlement fund limited to a total maximum of \$1,250,000 to pay claims from Sub-Class II. The Class Member in submitting a valid claim shall receive one of the following:

1. A full reimbursement of the actual cost of veterinarian testing, care, and/or treatment. However, Defendants shall not be required to reimburse for any other portion of the veterinary bill unrelated to suspected or actual salmonella illness. Furthermore, Defendants shall reimburse only for veterinary or related charges deemed reasonable, necessary, and typical within the Class Member's community; OR
2. A pro rata share of the net proceeds of the settlement fund for this Sub-Class if the settlement fund is exhausted.
3. If applicable, Class Members in Sub-Class II can request reimbursement of the purchase price of the product as set forth in Sub-Class I, subject to the submission of proof required for Sub-Class I.

If death of a pet or animal is claimed, a Class Member submitting a valid claim shall receive:

1. The fair market value of the pet OR, if the settlement fund is exhausted, a pro rata share of the market value of the pet; AND
2. If applicable, the relief for veterinary care set forth in this Section.
3. If applicable, Class Members in Sub-Class II can request reimbursement of the purchase price of the product as set forth in Sub-Class I, subject to the submission of proof required for Sub-Class I.

Sub-Class III

Defendants will provide relief in the form of coupons to pay claims for Sub-Class III. The Class Member in submitting a valid claim shall receive one or more coupons. The total maximum value of such coupons shall be \$100,000, each with a face value of Two Dollars (\$2) to a maximum of 50,000 coupons.

Injunctive Relief: Defendant will employ for three years from the date of the Approval of the settlement and Final Judgment new and improved quality control procedures and therapeutic reforms that had not been implemented prior to the placement of the Recalled Pet Food Products into the market place. Additionally, Plaintiff has a right to visually inspect defendants Schell & Kampeter, Inc.'s Gaston, South Carolina, manufacturing facility to ensure that the standards are being employed.

9. What if my pet becomes sick from ingesting Diamond Pet Foods products in the future?

If your pet has sustained any injury or death, or if you have experienced any economic loss due to the purchase of included Diamond Pet Foods products as described above, you must submit a claim now, or you will not be able to get a payment under this settlement.

If, in the future, your pet should become ill after consuming Diamond Pet Food products other than those listed on pages 3 and 4, Section 7, then you are not bound by this settlement for those claims.

How You Get a Payment—Submitting a Claim Form

10. How can I get a payment?

To qualify for payment, you must submit a claim. You can submit a claim online or download a claim form at www.DiamondPetFoodsSettlement.com, or you may request a claim form by contacting the Settlement Administrator at: 1-877-284-5091 or Diamond Pet Foods Settlement, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign, and mail the claim in its entirety postmarked no later than July 11, 2014.

11. When would I get my payment?

The Court will hold a hearing on September 15, 2014 to decide whether to approve the settlement. If Judge Feuerstein approves the settlement there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are remaining in the Class. This means that you can't sue, continue to sue, or be part of any other lawsuit against Diamond Pet Foods and Costco about the legal issues being resolved in *this* case. It also means that all of the Court's orders will apply to you and bind you to the Court's decision.

Excluding Yourself From the Settlement

13. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from *Marciano v. Schell & Kampeter, Inc. d/b/a Diamond Pet Foods*. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than April 24, 2014 to:

Diamond Pet Foods Exclusions
c/o Gilardi & Co. LLC
P.O. Box 6002
Larkspur, CA, 94977-6002

You can't exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not get any settlement benefit, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

14. If I don't exclude myself, can I sue Diamond Pet Foods and Costco for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Diamond Pet Foods and Costco for the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer immediately. You must exclude yourself from this Class to continue your own lawsuit.

15. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you are choosing to not be a part of this lawsuit and will not receive benefits from this settlement. However, you may sue, continue to sue, or be part of a different lawsuit against Diamond Pet Foods and Costco.

The Lawyers Representing You

16. Who are the lawyers in this case?

The Court has selected Mario Alba, Jr., Esq. from Robbins Geller Rudman & Dowd LLP to represent you and other Class Members. Mr. Alba may be contacted at the following address:

Class Counsel
Mario Alba, Jr., Esq.
Robbins Geller Rudman & Dowd LLP
58 South Service Road, Suite 200
Melville, NY 11747

You will not be charged for this lawyer. If you want to be represented by your own lawyer, you may hire one at your own expense. Addresses for Defendants' Counsel and the Court are as follows:

<i>Defendants' Counsel</i>	<i>Clerk of the Court</i>
Gerard Benvenuto, Esq. Traub Lieberman Straus & Shrewsbury LLP Mid-Westchester Executive Park Seven Skyline Drive Hawthorne, New York 10532	Clerk of the Court U.S. District Court for the Eastern District of New York Courtroom 1010 100 Federal Plaza Central Islip, NY 11722

17. How will the lawyers be paid?

Class Counsel will apply to the Court for reimbursement of attorneys' fees in a total amount not to exceed 20% of the Settlement Fund (maximum of \$400,000) and will be no less than \$150,000.

Objecting to the Settlement

18. How do I tell the Court that I don't like the settlement?

If you're a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Marciano v. Schell & Kampeter, Inc. d/b/a Diamond Pet Foods*. Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement. Mail the objection, postmarked no later than April 28, 2014, to Class Counsel, Defendants' Counsel, and the Clerk of the Court at the addresses listed in Section 16 and to the Claims Administrator at:

Diamond Pet Foods Objections
c/o Gilardi & Co. LLC
P.O. Box 6002
Larkspur, CA 94977-6002

19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. By excluding yourself, you are telling the Court that you don't want to be a part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

The Court's Fairness Hearing

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at 11:15 a.m., on Monday, September 15, 2014 at the United States District Court for the Eastern District of New York, Courtroom 1010, 100 Federal Plaza, Central Islip, NY 11722. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Feuerstein will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

21. Do I have to come to the hearing?

No. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Marciano v. Schell & Kampeter, Inc. d/b/a Diamond Pet Foods*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than April 28, 2014, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the three addresses on pages 6 and 7 in Question 16. You cannot speak at the hearing if you excluded yourself.

If You Do Nothing

23. What happens if I do nothing at all?

If you do nothing, you'll get no benefit from the settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Diamond Pet Foods or Costco about the legal issues in this case ever again.

Getting More Information

24. Are there more details about the settlement?

This notice summarizes the proposed settlement. The Settlement Agreement and all court documents related to this matter are available on the settlement website at www.DiamondPetFoodsSettlement.com. Please do not contact the Court with questions regarding this matter.

25. How do I get more information?

You can call 1-877-284-5091 toll free, write to Diamond Pet Foods Settlement c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA, 94912-8060, or visit the website at www.DiamondPetFoodsSettlement.com where you will find answers to common questions about the settlement, a claim form, plus other information to help you determine your eligibility and options.