

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

DAMIAN MONTELEONE, an individual and  
on behalf of all others similarly situated,

Plaintiff,

v.

THE NUTRO COMPANY, a Delaware  
corporation; MARS, INCORPORATED, a  
Delaware corporation; and DOES 1 through  
100, inclusive,

Defendants.

**Case No.: 2:14-cv-00801-ES-JAD**

**NOTICE OF CLASS ACTION  
SETTLEMENT**

**IF YOU PURCHASED THE NUTRO COMPANY'S ULTRA™ BRAND DOG FOOD OR  
BISCUITS IN THE UNITED STATES, YOU MAY BE ENTITLED TO RECOVERY IN A  
CLASS ACTION SETTLEMENT.**

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON'T ACT.  
PLEASE READ THIS NOTICE CAREFULLY.**

**A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION.**

**1. Introduction** – This notice advises you of a proposed settlement (the “Settlement”) of a lawsuit (the “Action”) against THE NUTRO COMPANY and MARS, INCORPORATED (collectively “Defendants”) on behalf of all persons who purchased Ultra™ brand dry dog kibble between April 1, 2007 and June 30, 2009 and/or Ultra™ brand dog biscuits between April 1, 2007 and April 30, 2011 that contained a “Guaranteed Analysis” regarding the amount of *Bacillus* Species contained therein. The Action is currently pending in the United States District Court for the District of New Jersey (the “Court”). The Court has certified the Action to proceed as a class action, for purposes of settlement only, on behalf of the class described below. The details of the proposed settlement are set forth below in the Proposed Settlement paragraph. This notice explains your legal rights, what benefits are available in the settlement, who can claim them, and how to get them. You should read this notice carefully because your legal rights may be affected whether you act or not.

**2. Court Approval** – This Notice of Settlement and the Settlement Agreement have been approved by the Court. This is not a solicitation from a lawyer.

**3. Purpose of This Notice** – This notice is intended (1) to inform you of the Settlement of the Action, (2) to describe the Settlement, and (3) to advise you of your rights and your options with respect to the Settlement, including how to make a claim in the Settlement, how to exclude yourself from the Settlement, and how to object to the Settlement.

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**4. Description of the Action** – The Action alleges that Defendants violated New Jersey law by improperly labeling and selling certain dog food products with a “Guaranteed Analysis” regarding the amount of *Bacillus* Species contained therein. Notwithstanding the accuracy of the aforementioned *Bacillus* labeling, **AT NO TIME WERE ANIMALS EVER HARMED OR AT RISK DUE TO THE PRESENCE OR LACK THEREOF OF *BACILLUS* IN THE DOG FOOD PRODUCTS AT ISSUE IN THIS LITIGATION.** Rather, the allegation (if proven true) would establish that an additive (a probiotic) was substantially missing from the dog food products. The Action seeks, among other things, an award of civil penalties against Defendants as a result of this alleged conduct.

**5. Defendants’ Denial** – There has been no determination as to who is right in this Action. Defendants deny each and every one of the allegations of the Complaint and have asserted a number of defenses to the claims. Both sides have agreed to this settlement to avoid the costs and risk of a trial.

**6. Definition of the Class** – You should read the following carefully to determine whether you are a member of the Settlement Class. The Settlement Class is defined as all persons in the United States (excluding residents of California) who purchased the following Ultra™ brand dry dog kibble between April 1, 2007 and June 30, 2009, or Ultra™ brand dog biscuits between April 1, 2007 and April 30, 2011 that contained a “Guaranteed Analysis” regarding the amount of *Bacillus* Species contained therein:

- a. Ultra™ Adult Dry
- b. Ultra™ Large Breed Adult Dry
- c. Ultra™ Large Breed Puppy Dry
- d. Ultra™ Puppy Dry
- e. Ultra™ Senior Dry
- f. Ultra™ Small Breed Adult Dry
- g. Ultra™ Weight Management Dry
- h. Ultra™ Adult Biscuits
- i. Ultra™ Puppy Biscuits
- j. Ultra™ Senior Biscuits
- k. Ultra™ Weight Management Biscuits

**7. The Proposed Settlement** – The following describes the compensation you may receive if you are a Settlement Class member and if you submit a proper claim. The parties have reached a proposed settlement of this action, which the attorneys for the Settlement Class believe is fair, reasonable, adequate and in the best interest of class members. Defendants have agreed to the settlement, without admitting liability, to avoid the costs and other burdens of continued litigation. The parties acknowledge that Defendants removed the *Bacillus* guarantee from the Ultra™ brand dry dog kibble in June of 2009 and from the Ultra™ brand dog biscuits in April of 2011. The proposed settlement provides payment to every Class Member who does not opt out of the settlement and returns a valid Claim Form of either:

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- (i) **Cash:** a \$2.00 check, subject to the terms and limitations described in paragraph 8 below;
- (ii) **Gift Certificate:** a \$5.00 Gift Certificate good towards the purchase of any Nutro product; or
- (iii) **Donation:** a donation of Defendants' dry kibble product worth \$5.00 at retail price to animal shelters and/or animal charities of the Defendants' choice after consultation with Class Counsel.

Subject to the total amount of the Settlement Administrator's reasonable costs, fees, and expenses, Defendants agreed to establish up to a **\$500,000.00 settlement fund** for Class Members. This fund will be used to pay claims by Class Members.

All claims made will be reduced from the fund and the unclaimed remainder, if any, will be donated in the form of Defendants' kibble products to animal shelters and/or animal charities of Defendants' choice. Defendants will meet and confer with Class Counsel concerning the animal shelters and charities that Defendants choose prior to making this donation. Defendants shall be required to submit a signed declaration under penalty of perjury establishing the value of the common fund at \$500,000.00. Defendants are required to submit a signed declaration, if necessary, confirming the transfer of Defendants' kibble products to the yet to be determined animal shelters and/or animal charities.

Pending Court approval, the parties also agreed to an incentive award to the class representative Damian Monteleone and payment by Defendants of Class Counsel's attorneys' fees (such payments will **not** diminish the settlement fund). As such, Plaintiff shall file a motion in the Court wherein Plaintiff will petition the Court for an award of:

- (i) a class representative incentive award to Damian Monteleone in the amount of **\$5,000.00**; and
- (ii) payment by Defendants of Class Counsel's attorneys' fees in the amount of **\$375,000.00**.

The incentive award will be paid out of Class Counsel's attorneys' fee award. Defendants have agreed not to oppose such request so long as it is within the stated limits.

**8. Terms of Payment to Class Members** – Class Members submitting a Claim Form must represent that they saw and relied upon a “Guaranteed Analysis” that included a reference to *Bacillus* in purchasing the product. Class Members who do not opt out and who return a valid Claim Form establishing their class membership will receive either (i) a \$2.00 check, (ii) a \$5.00 Gift Certificate towards the purchase of any Nutro product, or may elect (iii) a donation of Defendants' dry kibble product worth \$5.00 at retail price to animal shelters and/or animal charities of the Defendants' choice after consultation with Class Counsel.

The Gift Certificates shall have the following characteristics:

- a) They will be fully transferable;
- b) They cannot be used in combination with other rebates or coupons for Nutro's products;
- c) Only one Gift Certificate may be used per purchase order;
- d) A Gift Certificate may be used only once;
- e) Each Gift Certificate will be valid for six (6) months from the date of issuance;
- f) Gift Certificates will have no cash value; and
- g) Gift Certificates will be redeemable for any Nutro product at participating pet specialty stores, including but not limited to, Petco and PetSmart.

Subject to the total amount of the Settlement Administrator's reasonable costs, fees, and expenses, if the aggregate value of the Gift Certificates, Checks and Donations to be awarded to Settlement Class Members pursuant to valid Claim Forms exceeds Five Hundred Thousand Dollars (\$500,000.00), then the value of the individual Gift Certificate, Check and Donation to be provided shall be reduced on a *pro rata* basis, such that the aggregate value of the award does not exceed \$500,000.00. For example and by way of illustration only, if the aggregate value of the total number of Gift Certificates, Checks and Donations redeemed by Settlement Class Members is \$1,000,000.00, then the value of each Gift Certificate, Check and Donation shall be reduced by fifty per cent (50%) to ensure that the aggregate value of the total number of Gift Certificates, Checks and Donations does not exceed \$500,000.00.

The Settlement Administrator will determine each authorized Settlement Class Member's *pro rata* share based upon each Settlement Class Member's Claim Form, the total number of valid Claim Forms received and the total amount of the Settlement Administrator's reasonable costs, fees and expenses. Accordingly, the actual amount recoverable by each Settlement Class Member will not be determined until after the Claims Period has ended and all Claim Forms have been received. In no event shall an individual Settlement Class Member's award exceed the individual recovery cap described above.

Defendants have agreed to pay the Settlement Administrator up to Forty-Five Thousand Dollars (\$45,000.00) toward reasonable costs, fees, and expenses of providing notice to the Settlement Class and administering the Settlement in accordance with this Agreement. To the extent, if any, that the Settlement Administrator's reasonable costs, fees, and expenses exceed \$45,000.00, Class Counsel may pay up to Five-Thousand Dollars (\$5,000) of such excess.

Subject to the total amount of the Settlement Administrator's reasonable costs, fees, and expenses, Defendants are not obligated to provide the full amount of \$500,000.00 in Gift Certificates, Checks and Donations unless there are sufficient Claim Forms submitted and approved to reach the \$500,000.00 limit.

**9. Releases** – In return for the settlement award described above, members of the Settlement Class who do not request exclusion from the class agree to fully, finally and forever release, relinquish, and discharge any current or future claims you might have against Defendants that relate to the claims in this lawsuit. The release provisions contained in the Settlement Agreement are set forth below:

“Released Parties” means (a) Defendants and each of their employees, assigns, attorneys, agents, and all of their past, present, and future officers and directors; (b) All of Defendants' parents, subsidiaries, divisions, affiliates, predecessors, and successors, and each of their respective employees, assigns, attorneys, agents, resellers and past, present and future officers and directors; and (c) Any and all persons, entities, or corporations involved in any way in the manufacture and sale of *Bacillus* to the Defendants.

“Released Claims” means and includes any and all claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims (as described in Paragraph b) below) as of the Effective Date by Plaintiff and all Settlement Class Members (and Plaintiff's and Settlement Class Members' respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns) that:

- a) were brought or that could have been brought against the Released Parties (as hereinafter defined), or any of them, and that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged or referred to in the Action (including, but not limited to alleged violations of state consumer protection and unfair competition laws (including, but not limited to, N.J. Stat. 56:8-1 *et seq.*); fraud; negligent misrepresentation; breach of contract; breach of express or implied warranty; unjust enrichment, restitution, trespass, conversion, declaratory or injunctive relief, and other equitable claims or claims sounding in contract and tort); and

- b) relate in any way to the *Bacillus* Guarantee, including but not limited to all claims that relate in any way to (i) Nutro’s representation that its Ultra™ kibble and biscuits contained a specified amount of “Total *Bacillus* Species” (listed as CFUs per pound) in its “Guaranteed Analysis” or (ii) Nutro’s representation that its Ultra™ kibble and biscuits were a source of live microbials.

The Released Claims include known and unknown claims relating to the Action, and this Agreement is expressly intended to cover and include all such injuries or damages, including all rights of action thereunder. To the fullest extent possible, Settlement Class Members hereby expressly, knowingly, intelligently, and voluntarily waive any and all rights they may have under applicable state or federal laws restricting or limiting the scope and effect of the general release given herein to claims known or suspected by Settlement Class Members at the time this Agreement is executed. In connection with such waiver and relinquishment, the Settlement Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Settlement Class Members to the Released Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Parties expressly acknowledges that it has been advised by its attorney of the contents and effect of any state and federal law restricting or limiting the scope and effect of the general release given herein to claims known or suspected at the time this Agreement is executed, and with knowledge, each of the Parties hereby expressly waives whatever benefits it may have had pursuant to such laws. Plaintiff acknowledges, and the Settlement Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

**10. How to Make a Claim** – Only Class Members who submit a valid Claim Form postmarked no later than October 18, 2015 will be eligible to participate in the settlement. Claim Forms postmarked after October 18, 2015 will not be considered. To obtain a Claim Form, you may go to [www.ultradogfoodsettlement.com](http://www.ultradogfoodsettlement.com). Once completed, electronically submit the claim form at [www.ultradogfoodsettlement.com](http://www.ultradogfoodsettlement.com), or mail the Claim Form to:

Ultra Dog Food Class Action  
c/o GCG  
P.O. Box 35100  
Seattle, WA 98124-1100

Approved claims will be paid after the Settlement Effective Date and processing of all Claim Forms.

**11. How To Request for Exclusion from the Class** – If you are a member of the Settlement Class, you have the right to be excluded from the class. If you wish to be excluded from the class, you must send to the Settlement Administrator by fax, U.S. Mail, or email a letter so that it is postmarked no later than October 18, 2015 at the address listed in paragraph 10 above. The Settlement Administrator’s Fax number is (206) 876-5201 and email address is [info@ultradogfoodsettlement.com](mailto:info@ultradogfoodsettlement.com). The letter must clearly state your full name, current mailing address, phone number, and signature and include the following statement: “I want to be excluded from the plaintiff class in *Monteleone v. The Nutro Company, et al.*, United States District Court for the District of New Jersey, Case No. 2:14-cv-00801-ES-JAD.”

The request for exclusion must be submitted in your own name and signed by you personally; no individual may request that other persons be excluded from the class. Do not send a letter requesting exclusion if you wish to remain a class member or file a claim for an award under the settlement. **If you exclude yourself from the class, you will not be entitled to share in any benefits that the class may obtain.** If you do not exclude yourself, you will not be able to file a separate claim against Defendants based on the events, circumstances and/or practices alleged in the Action.

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**12. How To Object To This Settlement** – If you do not request exclusion, you may still object to the proposed settlement. You may also move to appear in the action.

If you wish to object, you must send a written objection by fax, U.S. mail, or email to the Settlement Administrator at the contact information in paragraphs 10 and 11, and send by U.S. mail or e-mail a copy to Class Counsel and Defense Counsel at the address set forth below postmarked no later than October 18, 2015.

If you wish to object, you must also file a written objection with the Court. The objection must include: (1) your complete name and current residence and business address (giving the address of any lawyer who represents you is not sufficient); (2) a statement that you fall within the definition of the class; (3) each ground for comment or objection and any supporting papers you wish the Court to consider (*i.e.*, a mere statement that “I object” will not be deemed sufficient); and (4) whether you intend to appear at the Fairness Hearing either with or without separate counsel.

You or your personal attorney may attend the settlement hearing and state your support or objection to this settlement orally, but you are not required to do so. If you intend to attend the hearing and orally state your opinion, your written objection must also state “**I intend to appear at the hearing.**” Only class members, or their attorneys, who have submitted a timely written objection, will have their objections considered by the Court, or be heard at the final hearing on approval of the settlement. To be considered, a written objection must be filed with the Court and mailed to the Settlement Administrator and both Class and Defense Counsel no later than October 18, 2015 at the following addresses:

<u>Court</u>	<u>Class Counsel</u>	<u>Defense Counsel</u>
United States District Court for the District of New Jersey Newark Division Martin Luther King Building & U.S. Courthouse 50 Walnut Street Newark, NJ 07101	John H. Donboli DEL MAR LAW GROUP, LLP 12250 El Camino Real San Diego, CA 92130 Tel: (858) 793-6244 <a href="mailto:JDonboli@delmarlawgroup.com">JDonboli@delmarlawgroup.com</a>	David F. Forkner WILLIAMS & CONNOLLY LLP 725 Twelfth Street NW Washington, DC 20005 Tel: (202) 434-5000 <a href="mailto:DForkner@wc.com">DForkner@wc.com</a>

If you wish to submit a brief to the Court in support of any objection, such brief must be filed with the Court, and served by mail on both Class and Defense Counsel, at the addresses listed above no later than October 18, 2015.

**13. Court Hearing On Settlement** - The Court will hold a Final Approval Hearing to consider: (a) whether the tentative settlement summarized above is fair, reasonable, adequate, and in the best interests of the plaintiff class, and (b) whether Plaintiff and his attorneys have fully, fairly and adequately represented the plaintiff class in the action and in negotiating the settlement. The Final Approval Hearing is scheduled for **December 7, 2015 at 10:30 a.m.** before Judge Esther Salas in the United States District Court for the District of New Jersey, Newark Division, 50 Walnut Street, Newark, NJ 07101. The time and date of the approval may be changed by the Court without further notice to the class.

**14. Court Hearing On Class Counsel Fees and Class Representative Incentive Award** – The Court will also hold a hearing on **December 7, 2015 at 10:30 a.m.** in the United States District Court for the District of New Jersey, Newark Division, 50 Walnut Street, Newark, NJ 07101, to consider whether to award attorneys’ fees and costs to Class Counsel and whether to award a class representative fee to Damian Monteleone. The time and date of the hearing may be changed by the Court without further notice to the class. At this Court hearing, Plaintiff shall request that the Court grant: (i) a class representative incentive award to Damian Monteleone in the amount of \$5,000.00; and (ii) payment by Defendants of Class Counsel’s attorneys’ fees in the amount of \$375,000.00. Defendants have agreed not to oppose the above-stated request.

**15. More Information** – If you wish to receive additional information about this notice or the settlement, you may:

- (i) Examine the Court’s file on the case at the address shown above;
- (ii) Contact Class Counsel in writing at the address in paragraph 12 above; or
- (iii) Visit [www.ultradogfoodsettlement.com](http://www.ultradogfoodsettlement.com)

**Do not contact Defendants or the Court regarding this Notice or the lawsuit.**

**THE COURT HAS NOT RULED IN FAVOR OF OR AGAINST THE PLAINTIFF OR DEFENDANTS ON THE MERITS OF ANY OF THEIR CLAIMS, DENIALS, OR DEFENSES IN THIS CASE.**

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