No. 14-

IN THE
Supreme Court of the United States

NESTLE PURINA PETCARE COMPANY
and WAGGIN' TRAIN, LLC,
Petitioners,
v.

CONNIE CURTS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under the All Writs Act and the Anti-Injunction Act, a district court's injunction to enjoin parallel state litigation pending final approval of a comprehensive settlement of a complex case can ever be "necessary in aid of its jurisdiction."

PARTIES TO THE PROCEEDING

1. Nestle Purina PetCare Company and Waggin' Train, LLC, petitioners on review, were defendants-appellees below.

2. Connie Curts, respondent on review, was an intervenor-plaintiff-appellant below.

3. Dennis Adkins, Maria Higginbotham, Kaiya Holley, Deborah Cowan, Mary Ellis, Cindi Farkas, Dwayne Holley, Barbara Pierpont, Terry Safranek, Elizabeth Mawaka, Robin Pierre, Jill Holbrook, Mary Ellen Deschamps, Tracy Bagatta, Hal Scheer, S. Raymond Parker, Kristina Irving, Kathleen Malone, Jeannie Johnson, Rebel Ely, Rita Desollar, Faris Matin, and Rosalinda M. Gandara, respondents on review, were plaintiffs-appellees below.

RULE 29.6 DISCLOSURE STATEMENT

Nestle Purina PetCare Company is a wholly owned subsidiary of Nestle Holdings, Inc. Nestle Holdings, Inc., is a wholly owned subsidiary of NIMCO US, Inc., which is a wholly owned subsidiary of NESCO II, LLC, which is a wholly owned subsidiary of NESCO I, LLC, which is a wholly owned subsidiary of Nestle S.A., a publicly traded Swiss company, the shares of which are traded in the United States in the form of American Depositary Receipts.

Waggin' Train, LLC, is a wholly owned subsidiary of Nestle Purina PetCare Company. Nestle Purina PetCare Company is a wholly owned subsidiary of Nestle Holdings, Inc., which is a wholly owned subsidiary of NIMCO US, Inc., which is a wholly owned subsidiary of NESCO II, LLC, which is a wholly owned subsidiary of NESCO I, LLC, which is a wholly owned subsidiary of Nestle S.A., a publicly traded Swiss company, the shares of which are traded in the United States in the form of American Depositary Receipts.

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PETITION FOR A WRIT OF CERTIORARI

Nestle Purina PetCare Company and Waggin' Train, LLC, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The Seventh Circuit's opinion is not yet published in the *Federal Reporter*, but is available at 2015 WL 864931. Pet. App. 1a-10a. The District Court's order is unreported. *Id.* at 11a-28a.

JURISDICTION

The Seventh Circuit entered judgment on March 2, 2015. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The All Writs Act, 28 U.S.C. § 1651(a), provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

The Anti-Injunction Act, 28 U.S.C. § 2283, provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

INTRODUCTION

When complex cases are litigated in federal court, the parties often seek a comprehensive settlement, resolving all claims on behalf of a broad class. And when the parties reach a settlement, they often seek a stay of any parallel litigation in state court until their settlement is finally approved. The question presented in this case is whether, under the All Writs Act and the Anti-Injunction Act, a federal district court's injunction to enjoin parallel state litigation pending final approval of a comprehensive settlement can ever be "necessary in aid of its jurisdiction." 28 U.S.C. § 2283; *see also id.* § 1651(a).

This Court should grant certiorari to review this question for three reasons. *First*, the courts of appeals are squarely divided over the question. In the decision below, the Seventh Circuit flatly held that such injunctions are never "necessary in aid of" the district court's "jurisdiction." Six other courts of

appeals disagree. The First, Second, Third, Fifth, Eighth, and Ninth Circuits have all concluded that such injunctions may be issued under the All Writs Act and the Anti-Injunction Act. This Court should intervene to resolve this circuit split.

Second, the question presented raises a frequently recurring issue of national importance. More than ever, complex class actions are being litigated in federal court. And when they reach settlement, the question often arises: Should parallel state-court proceedings be temporarily enjoined in the period between preliminary and final approval? Parties and judges alike have a stake in the answer; after all, further proceedings in state court could threaten to unwind all the efforts that brought the case to its final stages. This Court should grant review to decide this consequential issue, which profoundly affects the conduct of complex class-action litigation in federal courts.

Third and finally, the Seventh Circuit's decision in this case is incorrect. When, as here, a district court preliminarily approves a settlement that resolves all claims on behalf of a nationwide class, a temporary stay of parallel state litigation—lasting only until the district court renders a decision on final approval—is "necessary in aid of" the district court's "jurisdiction." That is because the settlement represents a careful balancing of the parties' priorities at the time it was entered, and any further progress in state court could disrupt that balance. Moreover, the time between preliminary and final approval is critical for class members, who must decide whether to object to the settlement or opt out of the class. A temporary stay ensures that class members will not be confused about their status in parallel lawsuits as they con-

front that important decision. Accordingly, the Seventh Circuit erred in reversing the District Court's injunction.

For these reasons, certiorari should be granted.

STATEMENT

Petitioners Nestle Purina PetCare Company and Waggin' Train, LLC (together, Waggin' Train) are distributors of various dog treat products sold in retail stores across the United States. In April 2012, Dennis Adkins brought a putative class action in the federal District Court for the Northern District of Illinois, alleging that some of those products were unsafe. Compl. ¶ 1, No. 1:12-cv-2871 (N.D. Ill. Apr. 18, 2012), ECF No. 1. Adkins's suit was the first such action filed against Waggin' Train, and similar suits were eventually transferred to the Northern District of Illinois and consolidated with his. C.A. Appellant's App. 91. The plaintiffs in the consolidated actions sought certification of a nationwide class of persons who had purchased the allegedly unsafe dog treats. *Id.* at 36. They also sought damages for alleged violations of the federal Racketeer Influenced and Corrupt Organizations Act, various state consumer protection statutes, and other laws. *Id.* at 3, 79.

In May 2014, after nine months of negotiations facilitated by a retired federal judge, the parties in the consolidated actions agreed to a settlement. Under the terms of the settlement, class members would release all claims against Waggin' Train relating to the dog treats. *Id.* at 98. In exchange, Waggin' Train would, among other things, establish a $6.5-million settlement fund to pay class members for damages and commit to certain requirements in

its business practices. *Id.* at 89-90. The parties moved the District Court to conditionally certify a nationwide class, approve a method for notifying class members, and preliminarily approve the terms of the settlement. *Id.* at 90-91.

Only one person objected to preliminary approval of the settlement: Connie Curts. In February 2013—after each of the consolidated actions had already been filed—Curts brought her own suit against Waggin' Train in Missouri state court. *Id.* at 225. Curts's suit sought damages under Missouri law on behalf of a statewide class of Missouri citizens who had purchased the dog treats. *Id.* at 117. In her objections to the proposed settlement in the District Court, Curts argued that the amount of the settlement fund was insufficient, and that the named plaintiffs in the nationwide class would not adequately represent the interests of Missouri citizens. *Id.* at 219, 228.

In October 2014, after several hearings, the District Court preliminarily approved the settlement and preliminarily certified the nationwide class. Pet. App. 13a-14a. It also scheduled a hearing to consider final approval of the settlement and class certification. *Id.* at 14a. The court explained that it would give further consideration to any objections at that hearing. *Id.* at 14a-15a. To preserve the status quo in the meantime, the court entered an order enjoining all class members, including Curts, from prosecuting any other related suits pending a decision regarding final approval. *Id.* at 23a-24a. The court's order also gave all class members the rights to object to the settlement, and to opt out of the class and pursue any claims on their own. *Id.* at 14a-16a, 21a.

Curts appealed the District Court's injunction temporarily staying her Missouri action. In an opinion by Judge Easterbrook, the Seventh Circuit reversed, allowing that Missouri suit to proceed. *Id.* at 10a. According to the Seventh Circuit, the injunction was barred by the Anti-Injunction Act. *Id.* at 4a-10a. That Act generally prohibits a federal court from staying proceedings in state court, but provides for an exception to that bar where the federal injunction is "necessary in aid of [the federal court's] jurisdiction." 28 U.S.C. § 2283. The Seventh Circuit held that the injunction in this case did not fall within that exception. In its view, "'jurisdiction' means adjudicatory competence," and the Missouri suit "could [not] imperil the district court's ability and authority adjudicate the federal suit." Pet. App. 5a. The Seventh Circuit also held that even if the injunction was "prudent, beneficial, helpful," or in the interest of "good litigation management," it was not "necessary" within the meaning of the Act. *Id.* at 8a.

REASONS FOR GRANTING THE PETITION

I. THE COURTS OF APPEALS ARE SHARPLY DIVIDED OVER THE QUESTION PRESENTED

The Seventh Circuit held that a district court's injunction enjoining parallel state litigation pending final approval of a comprehensive settlement can never be "necessary in aid of its jurisdiction." Pet. App. 4a-10a. That holding directly conflicts with decisions of the First, Third, Fifth, and Ninth Circuits, which have approved such injunctions under the Anti-Injunction Act. It is also contrary to decisions of the Second and Eighth Circuits, which have upheld similar injunctions under the All Writs Act.

1. Unlike the Seventh Circuit, four courts of appeals—the First, Third, Fifth, and Ninth—have approved injunctions like the one at issue here under the Anti-Injunction Act.

In *In re Diet Drugs Litigation*, 282 F.3d 220 (3d Cir. 2002), for example, a district court overseeing consolidated class actions in federal court preliminarily approved a settlement. *Id.* at 226. It then issued an injunction enjoining parallel proceedings in state court. *Id.* at 233. In an opinion by Judge Scirica, the Third Circuit affirmed the injunction. It held that under the "in aid of jurisdiction" exception of the Anti-Injunction Act, "[a]n injunction may issue * * * where the state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation." *Id.* at 234 (internal quotation marks omitted). The court then explained that "[i]n complex cases where certification or settlement has received conditional approval, * * * the challenges facing the overseeing court are such that it is likely that *almost any* parallel litigation in other fora presents a genuine threat to the jurisdiction of the federal court." *Id.* at 236 (emphasis added). Parallel state litigation presented such a threat in *Diet Drugs*, and so the Third Circuit held that the injunction was not barred by the Anti-Injunction Act. *Id.* at 239. The Third Circuit upheld a similar injunction in *Carlough* v. *Amchem Products, Inc.*, 10 F.3d 189, 201-204 (3d Cir. 1993).

The Fifth Circuit has adopted the very same interpretation of the Anti-Injunction Act. In *In re Corrugated Container Antitrust Litigation*, 659 F.2d 1332 (5th Cir. Unit A 1981), the district court approved settlements in an "enormous class action." *Id.* at 1333; *see also id.* at 1335. Then, before entering final

judgment, *see id.* at 1335, the district court enjoined parallel proceedings in state court. *Id.* at 1333. On appeal, the Fifth Circuit agreed that the parallel state litigation posed "a challenge" to the district court's jurisdiction. *Id.* at 1334. The Fifth Circuit emphasized that "[t]his complicated * * * action has required a great deal of the district court's time and has necessitated that it maintain a flexible approach in resolving the various claims of the many parties." *Id.* at 1334-1335. Accordingly, the Fifth Circuit held that the injunction fell within the "in aid of jurisdiction" exception of the Anti-Injunction Act. *Id.* at 1334.

The Ninth Circuit reached the same holding in *Hanlon* v. *Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998). That case was a nationwide class action. *Id.* at 1017. After granting preliminary approval of a settlement, the district court entered an injunction enjoining parallel state litigation. *Id.* at 1018. The Ninth Circuit affirmed. Because federal courts may interfere with state litigation "when their jurisdiction is threatened," the district court's injunction was permissible under Anti-Injunction Act. *Id.* at 1025.

The First Circuit's decision in *James* v. *Bellotti*, 733 F.2d 989 (1st Cir. 1984), is to the same effect. That case involved a complex dispute over tribal lands. *Id.* at 991. After the parties reached a proposed settlement in federal district court, certain plaintiffs filed a related action in state court. *Id.* at 991-992. The First Circuit admonished that the state-court plaintiffs could not "pursue further litigation without heed to the effects on the district court's jurisdiction." *Id.* at 993. Indeed, the First Circuit explained, although the proposed settlement had not been finalized, the district court could "issu[e] an order

provisionally approving the settlement, which would support a subsequent protective injunction" against parallel state litigation. *Id.* at 994. Such an injunction, the First Circuit concluded, would be permissible under the Anti-Injunction Act. *Id.* at 993-994.

2. Two other courts of appeals—the Second and Eighth Circuits—have also rendered opinions contrary to the Seventh Circuit's decision. Although their opinions rest on the All Writs Act, not the Anti-Injunction Act, the conflict with the Seventh Circuit is still square. That is because both statutes permit injunctions where "necessary" "in aid of" the federal court's "jurisdiction," and so are construed similarly. *See In re Baldwin-United Corp.*, 770 F.2d 328, 335 (2d Cir. 1985); *Carlough*, 10 F.3d at 201 n.9.

In *Baldwin-United*, for instance, the district court preliminarily approved the settlement of a consolidated, multidistrict class action. 770 F.2d at 331-332. After doing so—but before entering final judgment—the district court granted an injunction enjoining "impending suits in state court" by state attorneys general. *Id.* at 333. The Second Circuit affirmed. It explained that "[t]he existence of multiple and harassing actions by the states could only serve to frustrate the district court's efforts to craft a settlement in the multidistrict litigation before it." *Id.* at 337. After all, the Second Circuit emphasized, the federal action "had already consumed vast amounts of judicial time and was nearing completion"; moreover, parallel state litigation would eliminate any "certainty about the finality of any federal settlement." *Id.* Thus, the Second Circuit held that the injunction was "unquestionably 'necessary or appropriate in aid of' the federal court's jurisdiction." *Id.* at 338.

The Eighth Circuit reached a similar conclusion in *Liles* v. *Del Campo*, 350 F.3d 742 (8th Cir. 2003). There, the district court preliminarily approved the settlement of a nationwide class. *Id.* at 745. The court then enjoined "all related litigation." *Id.* The Eighth Circuit upheld the injunction. As a general matter, the Eighth Circuit held, "[i]njunctions of related proceedings are appropriate when necessary for adjudication or settlement of a case." *Id.* at 746. And in the case before it, "enjoining related litigation was necessary to ensure the enforceability of the order approving the preliminary settlement and to and to prevent further draining of the limited settlement fund." *Id.* at 746-747.

3. These decisions of the First, Second, Third, Fifth, Eighth, and Ninth Circuits stand in stark contrast to the decision below. And this Court's intervention is particularly warranted because this split is unlikely to resolve itself through further percolation. The Seventh Circuit stated a square legal rule: that a district court can never enjoin parallel state litigation pending final approval of a settlement under the Anti-Injunction Act's "in aid of jurisdiction" exception. Pet. App. 4a-10a. In the wake of that holding, class-action litigants in the Seventh Circuit are unlikely to seek such injunctions to facilitate provisionally approved settlements. And district courts are even less likely to enter such an injunction. Because "no responsible attorney [is] likely to renew the fray," "[t]he likelihood is slim that a later case will arise in which [the Seventh Circuit] will face a plea to retract the rule" the panel below announced. *Dart Cherokee Basin Operating Co.* v. *Owens*, 135 S. Ct. 547, 556 (2014). This Court should act now and resolve this circuit split.

II. THE QUESTION PRESENTED RAISES A FREQUENTLY RECURRING ISSUE OF NATIONAL IMPORTANCE

Even leaving aside the fact that the courts of appeals are sharply divided, certiorari should be granted because the petition raises a frequently recurring issue of national importance. Indeed, federal district courts across the country are routinely asked to enjoin parallel state-court proceedings pending final approval of a class-action settlement. *See, e.g.*, *In re NFL Players' Concussion Injury Litig.*, 301 F.R.D. 191, 203-204 (E.D. Pa. 2014) (enjoining class members from litigating state actions "unless and until they have opted out of the" federal class); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig.*, No. 8:10ML2151, 2012 WL 6733023, at *6 (C.D. Cal. Dec. 28, 2012); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958, 2012 WL 5055810, at *11-14 (D. Minn. Oct. 18, 2012); *In re Skechers Toning Shoe Prods. Liab. Litig.*, MDL No. 2308, 2012 WL 3312668, at *12-13 (W.D. Ky. Aug. 13, 2012); *Hershey* v. *ExxonMobil Oil Corp.*, No. 07-1300-JTM, 2012 WL 3644895, at *1-2 (D. Kan. Aug. 24, 2012); *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, No. 09-6690, 2011 WL 2313866, at *6-7 (E.D. La. June 9, 2011); *Midland Funding, LLC* v. *Brent*, No. 3:08 CV 1434, 2011 WL 1882507, at *2-3 (N.D. Ohio May 17, 2011); *Faught* v. *Am. Home Shield Corp.*, No. 2:07-CV-1928, 2009 WL 10263452, at *1-2 (N.D. Ala. Oct. 30, 2009); *Wright* v. *Linkus Enters., Inc.*, 259 F.R.D. 468, 477 (E.D. Cal. 2009) (noting that the "existence of other actions by class members for the same or similar claims could jeopardize the ability to proceed with final approval of the settlement");

Kaufman v. *Am. Exp. Travel Related Servs. Co.*, 264 F.R.D. 438, 450 (N.D. Ill. 2009) (noting the need to "assur[e] the integrity of the class"); *DeHoyos* v. *Allstate Corp.*, 240 F.R.D. 269, 310-311 (W.D. Tex. 2007) (finding an injunction "necessary and appropriate * * * to protect and effectuate the Court's review of the settlement"); *Lucas* v. *Kmart Corp.*, 234 F.R.D. 688, 698 (D. Colo. 2006) (enjoining state actions in service of "the management of the settlement approval process"); *In re Inter Op Hip Prosthesis Liab. Litig.*, 174 F. Supp. 2d 648, 654 (N.D. Ohio 2001) (finding an injunction necessary to "make the fairness hearing scheduled by this Court a meaningful one").

The question presented thus bears on a significant number of major federal class actions every year. It is easy to understand why. After all, Congress has specifically encouraged the adjudication of complex litigation in federal court. In 2005, for instance, Congress passed the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d)—which formed part of the basis for the District Court's jurisdiction in this case. Congress's purpose in passing CAFA was to "restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance." Pub. L. No. 109-2, § 2(b)(2), 119 Stat. 4, 5 (2005); *Standard Fire Ins. Co.* v. *Knowles*, 133 S. Ct. 1345, 1350 (2013). To that end, CAFA "expand[s] substantially federal court jurisdiction over class actions." S. Rep. No. 109-14, at 43 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 41. It also "allow[s] overlapping and 'copycat' cases to be consolidated in a single federal court." *Id.* at 5, *reprinted in* 2005 U.S.C.C.A.N. at 6. As a consequence, more and more

putative class actions are ending up in federal court and being consolidated before a single district judge. *See* Fed. Judicial Ctr., *Impact of the Class Action Fairness Act of 2005 on the Federal Courts: Fourth Interim Report* 1-2 (2008) (noting a 72 percent increase in class-action filings following CAFA's enactment); Robert J. Herrington, *Numbers Game Update: Are Class Actions on the Decline?*, ABA News & Developments, May 16, 2014 (reporting 6,700 class actions filed on average each year between 2010 and 2014);[1] *The 2014 Carlton Fields Jorden Burt Class Action Survey* 5, 7 (2014) (reporting that more than half of major American corporations faced an average of four class actions per year from 2011 to 2013).[2]

And when the parties in those class actions reach a settlement, they frequently request (and courts often grant) injunctions enjoining parallel state-court proceedings while the settlement proceeds toward final approval. From the parties' perspective, the rationale behind an injunction is straightforward: Class actions are expensive, as is the process leading up to their settlement. Settled class actions last on average more than twice as long as the median civil case. *See* Emery G. Lee III & Thomas E. Willging, *Class Certification and Class Settlement: Findings from Federal Question Cases, 2003-2007*, 80 U. Cin. L. Rev. 315, 344 tbl. 1 (2012); U.S. Courts, *Federal Judicial Caseload Statistics 2014*, tbl. C-5.[3] And the parties will typically have briefed more than three

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[1] *Available at* http://goo.gl/jq07zW.

[2] *Available at* http://goo.gl/9Kts1y.

[3] *Available at* http://goo.gl/jMzVFM.

substantive motions—including motions for class certification, remand, dismissal, or summary judgment. Fed. Judicial Ctr., *Impact of the Class Action Fairness Act on the Federal Courts: Preliminary Findings from Phase Two's Pre-CAFA Sample of Diversity Class Actions* 8 tbl. 8 (2008). Accordingly, the parties have every incentive to ensure that their hard-earned settlement is not jeopardized by parallel state-court proceedings—which, if allowed to continue, could reach trial or judgment and radically alter the settlement calculus.

A temporary stay of state-court proceedings also makes sense from a district court's perspective. Just as settlements consume the resources of the parties, they also consume the resources of the court. And the court is no more interested in seeing its efforts go to waste because of further state-court proceedings that could disrupt the parties' compromise. Moreover, the court is charged with assessing whether the settlement is fair and the representation of the class is adequate. Fed. R. Civ. P. 23(a), (e). Those assessments depend, in part, on how many class members object or opt out of the class. *See, e.g.*, *Prof'l Firefighters Ass'n of Omaha, Local 385* v. *Zalewski*, 678 F.3d 640, 648 (8th Cir. 2012); *Lane* v. *Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). And so the court has an interest in ensuring that class members give serious consideration to exercising their rights to do so—an interest that is served by temporarily staying state-court actions and directing the attention of state-court plaintiffs to the pending settlement.

In short, the question in this case arises frequently in federal courts throughout the Nation. And when it does, the way in which it is answered has signifi-

cant consequences for litigants and courts alike. The petition thus presents an important federal question warranting this Court's review.

III. THE DECISION BELOW IS INCORRECT

Finally, certiorari should be granted because the Seventh Circuit's decision is wrong. It was well within the District Court's discretion to conclude that a stay of state-court proceedings pending final approval of the proposed settlement was necessary in aid of its jurisdiction. Accordingly, the temporary stay was not barred by the Anti-Injunction Act.

1. Under the All Writs Act, all federal courts—including this one—"may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Although the Anti-Injunction Act limits the power of federal courts to "grant an injunction to stay proceedings in a State court," it expressly preserves their power to do so "where necessary in aid of [their] jurisdiction." *Id.* § 2283. In *Atlantic Coast Line Railroad Co.* v. *Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970), this Court explained precisely what that proviso means: It allows a federal court to stay state-court proceedings where "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Id.* at 295.

The District Court did not abuse its discretion in determining that this standard was satisfied here. By the time the District Court issued the temporary stay, the consolidated actions in federal court had reached a critical stage. After months of negotia-

tions, the parties had agreed to a settlement of all claims relating to the dog treats on behalf of a nationwide class. Moreover, the District Court had preliminarily approved the settlement and conditionally certified the class, triggering notice to class members of their rights to object or opt out. The consolidated actions were thus "nearing completion," with a final approval hearing on the calendar. *Baldwin-United*, 770 F.2d at 337.

Given all this, the District Court reasonably concluded that a temporary stay of state-court proceedings—lasting only several months until it could render a decision regarding final approval—would be necessary in aid of its jurisdiction over the consolidated actions. For starters, the Missouri suit threatened to unravel the nationwide settlement that the District Court had already preliminarily approved. That settlement proposed to resolve *all* claims relating to the dog treats, including those asserted in the Missouri suit. And it reflected a careful balancing of the parties' competing priorities, taking into account the status of related lawsuits *at the time it was preliminarily approved*. Any further progress in the Missouri suit could therefore disrupt that balance, unravel the benefit of the settlement for the defendants, and force the parties back to the drawing board to renegotiate the terms of the settlement—wasting the enormous amount of time and resources that had gone into negotiating the settlement, obtaining the court's preliminary approval of it, and notifying members of the conditionally certified class. *See Diet Drugs*, 282 F.3d at 236-237.

The Missouri suit also threatened the District Court's authority over the consolidated actions in another way: by risking confusion among class

members over their status in the "dueling lawsuits." *Carlough*, 10 F.3d at 204; *see also Liles*, 350 F.3d at 746. Although the consolidated actions were approaching the finish line, the home stretch would be crucial. In the time between preliminary and final approval of the settlement, members of the nationwide class would face an important choice: They could (1) remain part of the settlement class, (2) object to the settlement and class certification, or (3) opt out of the settlement class altogether. And what choices they made would have significant consequences. How many class members ultimately opt out, for example, could affect the District Court's final assessment of the sufficiency of the settlement fund or the adequacy of class representation. The Missouri suit risked confusing class members about the nature of the choice before them; were proceedings in state court to continue, some Missouri citizens might wrongly believe, for instance, that simply by participating in the Missouri suit, they were opting out of the nationwide settlement class.

For these reasons, the District Court reasonably concluded that the Missouri suit threatened to "seriously impair" its "flexibility and authority" to resolve the consolidated actions. *Atl. Coast*, 398 U.S. at 295. And the injunction the court issued was no broader than "necessary to prevent" the Missouri suit from doing so. *Id.* Indeed, the court's order stayed state-court proceedings only pending final approval—just long enough for the court to give the settlement one more look, and for class members to seriously consider objecting or opting out. Should Curts decide to opt out, she may continue pursuing her individual claims in Missouri once the District Court renders a decision on final approval. Because

it was reasonable for the District Court to conclude that maintaining the status quo for a short period was "necessary in aid of its jurisdiction," the Anti-Injunction Act did not bar the temporary stay.

2. In reaching a contrary conclusion, the Seventh Circuit failed to apply this Court's interpretation of the "in aid of jurisdiction" exception in *Atlantic Coast*. Indeed, the Seventh Circuit did not cite that decision—not once. Instead, the Seventh Circuit crafted its own test for determining when the exception applies, based on a novel reading of the statute. That reading cannot be squared with the text of the statute, this Court's precedents, or settled federal practice.

a. Begin with the Seventh Circuit's interpretation of "jurisdiction." According to the decision below, "'jurisdiction' means adjudicatory competence," as distinguished from "the many procedural or substantive rules that determine how cases are resolved." Pet. App. 5a. Applying that definition, the Seventh Circuit concluded that even if the Missouri suit risked causing the settlement to collapse, there would be no justification for an injunction "in aid of" the District Court's "jurisdiction," because "adjudicatory competence" in the District Court would still exist. *Id.*

Even assuming that "jurisdiction" means "adjudicatory competence"—which is hardly a given, since this Court has admonished time and again that "jurisdiction" is a word with "many, too many, meanings"—the Seventh Circuit's conclusion does not follow. *Union Pac. R.R.* v. *Bhd. of Locomotive Eng'rs*, 558 U.S. 67, 81 (2009) (internal quotation marks omitted). That is because the word "jurisdiction" appears

not in isolation, but rather as part of a phrase: "*in aid of* * * * jurisdiction." 28 U.S.C. § 2283 (emphasis added). Thus, the relevant question under the Anti-Injunction Act is not the effect of a stay of state-court proceedings on the existence of federal jurisdiction itself. Rather, the relevant question is whether such a stay would "aid" the federal court in its exercise of "jurisdiction"—which is precisely what this Court said in *Atlantic Coast*, when it framed the inquiry in terms of whether state-court proceedings would "so interfer[e] with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." 398 U.S. at 295.

Moreover, if the Seventh Circuit's narrow interpretation of the statute were correct, it would call into question the authority of this Court and others to issue all sorts of writs under the All Writs Act. Recall that the All Writs Act authorizes federal courts to issue writs "in aid of their respective jurisdictions"—language that is materially the same as the Anti-Injunction Act. *See Carlough*, 10 F.3d at 201 n.9 (explaining that "[t]he parallel 'necessary in aid of jurisdiction' language is construed similarly" in both statutes). Pursuant to that authority, this Court and others issue stays of judgments pending judicial review. *See Nken* v. *Holder*, 556 U.S. 418, 426 (2009). They also issue writs of mandamus policing the discretion of lower courts. *See Cheney* v. *U.S. Dist. Ct. for the Dist. of Columbia*, 542 U.S. 367, 380 (2004). These and other writs certainly "aid" the federal courts in their exercise of "jurisdiction." But it is hard to see how they affect the existence of federal jurisdiction itself; the "adjudicatory competence" of the issuing court does not depend on them.

That the Seventh Circuit's interpretation cannot be reconciled with settled federal practice is reason enough to reject it.

b. Consider next the Seventh Circuit's interpretation of "necessary." According to the Seventh Circuit, the term excludes injunctions that are merely "prudent, beneficial, [or] helpful." Pet. App. 8a. But this Court has long rejected such a literal reading of the word "necessary." "To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable." *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 413-414 (1819); *see also id.* at 413 (observing that the word "necessary" "frequently imports no more than that one thing is convenient, or useful, or essential to another"). Accordingly, this Court has described the phrase "necessary in aid of" as "admittedly broad." *Atl. Coast*, 398 U.S. at 295.

This is not to say that just any injunction will qualify. It is true that typically, "*in personam* actions in federal and state court may proceed concurrently, without interference from either court." *Vendo Co.* v. *Lektro-Vend Corp.*, 433 U.S. 623, 642 (1977) (plurality opinion). But this case is not typical in at least two respects. First, the District Court has conditionally certified a nationwide class action, which would release the claims of all persons in the United States, including those litigating the Missouri suit. And second, the federal proceedings are in their final stages: The parties have reached a settlement, and the District Court has preliminarily approved it. Thus, when the District Court issued the temporary stay, the case before it was "a class action proceeding

so far advanced that it was the virtual equivalent of a res over which the district judge required full control." *Baldwin-United*, 770 F.2d at 337; *see also Diet Drugs*, 282 F.3d at 235 n.12. And no one doubts that when a federal court "obtain[s] jurisdiction over the *res*, prior to the state-court action," an injunction is "necessary in aid of" the federal court's "jurisdiction." *Vendo*, 433 U.S. at 641 (plurality opinion). In these circumstances, the District Court did not abuse its discretion in concluding that a temporary stay satisfied that same exception under the Anti-Injunction Act. This Court should grant certiorari to reverse the Seventh Circuit's contrary conclusion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 2015

APPENDIX

APPENDIX A

THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 14-3436

DENNIS ADKINS, *et al.*,
Plaintiffs-Appellees,
and

CONNIE CURTS,
Intervening Plaintiff-Appellant,

v.

NESTLÉ PURINA PETCARE COMPANY
and WAGGIN' TRAIN, LLC,
Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 12 C 2871 — Robert W. Gettleman, *Judge.*

Argued February 24, 2015
Decided March 2, 2015

Before EASTERBROOK, ROVNER, and SYKES, *Circuit Judges.*

EASTERBROOK, *Circuit Judge*. Plaintiffs contend in this suit, which the district court has certified as a nationwide class action, that Nestlé and Waggin' Train sold dog treats that injured the dogs. The

parties have reached a settlement, to which the district court has given tentative approval pending a fairness hearing under Fed. R. Civ. P. 23(e). That hearing has been scheduled for June 23, 2015. The order tentatively approving the settlement has one non-tentative provision: It enjoins all class members from prosecuting litigation about the dog treats in any other forum.

One case affected by this injunction has been pending for two years in Missouri, and it was certified as a statewide class action before the federal suit was certified as a national class action. It was on a schedule leading to a trial in May 2015 when the injunction stopped it cold. Connie Curts, the certified representative of the Missouri class, intervened to protest the federal injunction.[†] She contends in this appeal that the district court has violated 28 U.S.C. §2283, the Anti-Injunction Act, which provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

[†] At least she tried to intervene. The district judge denied the motion with a brief oral statement. We have directed district courts to allow intervention under circumstances such as these. See, e.g., *Crawford v. Equifax Payment Services, Inc.*, 201 F.3d 877, 881 (7th Cir. 2000); *Robert F. Booth Trust v. Crowley*, 687 F.3d 314 (7th Cir. 2012). The district court did not mention either of these decisions (or any other case, for that matter). Still, the error is not fatal, given *Devlin v. Scardelletti*, 536 U.S. 1 (2002), and *United States v. Kirschenbaum*, 156 F.3d 784, 794 (7th Cir. 1998) (a non-party bound by an injunction is entitled to appeal).

The parties (the representatives of the federal class plus Nestlé and Waggin' Train) contend that the injunction is "necessary in aid of [the district court's] jurisdiction". Curts maintains, to the contrary, that only federal actions *in rem*—that is, suits about the disposition of specific property—come within the scope of the "aid of jurisdiction" exception, because only then could a state court's action override the federal tribunal by moving or destroying the property on which federal authority depends.

But when we sought to learn the district court's view of this subject, we were stymied. The district judge has not explained why he entered the injunction. There are some hints, but nothing more. That won't do. Rule 65(d)(1)(A) of the Federal Rules of Civil Procedure provides that every order issuing an injunction must "state the reasons why it issued".

At oral argument, counsel for Nestlé insisted that the judge had provided reasons and referred us to six pages of the transcript of a hearing at which the settlement was discussed. According to counsel, the district judge found that continuation of the Missouri action "has a great potential of tanking the entire settlement". We'll return to the question whether this has anything to do with "jurisdiction." For the moment, it is enough to observe that Nestlé's lawyer was quoting a statement by Morton Denlow, a retired magistrate judge who in a private capacity had mediated the negotiations, not a statement by the district judge.

And if we understand the judge as sharing Mr. Denlow's view, that would not satisfy Rule 65(d)(1)(A). Before issuing an injunction, a judge must identify the appropriate legal standard

and make the findings of law and fact required by that standard. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

The district judge did not discuss these subjects, and although Mr. Denlow's statement may be relevant it is not conclusive on any of them. Take irreparable injury: It is established that the costs of ongoing litigation (the result if the settlement collapses) are not irreparable injury. See, e.g., *Petroleum Exploration, Inc. v. Public Service Commission*, 304 U.S. 209, 222 (1938); *Renegotiation Board v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974); *FTC v. Standard Oil Co.*, 449 U.S. 232, 244 (1980). More: an injunction that halts state litigation is permissible only if it satisfies §2283 in addition to the traditional factors that *Winter* catalogs. The district judge was silent about everything that matters.

The immediate question we must resolve, therefore, is whether to vacate the injunction and remand for further proceedings, or to reverse outright. We think the latter step appropriate, for two reasons: first, the final hearing is scheduled for June, and further proceedings in the district court (potentially followed by another appeal) could leave the state litigation in limbo until then, disrupting the state case almost as effectively as an injunction; second, in supporting this injunction the parties do not even *contend* that it is "necessary" in aid of the

district court's "jurisdiction." Instead the parties contend that, if the Missouri case proceeds to final decision before June 23, then their settlement must be renegotiated and may well collapse. We take that as a given. Still, what has that to do with the federal court's "jurisdiction"? And why is preserving a particular settlement "necessary" to federal jurisdiction?

Many decisions by the Supreme Court over the last 30 years tell us that "jurisdiction" means adjudicatory competence. See, e.g., *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010); *Union Pacific R.R. v. Brotherhood of Locomotive Engineers,* 558 U.S. 67 (2009); *Zipes v. Trans World Airlines, Inc.,* 455 U.S. 385 (1982). See also *Minn-Chem, Inc. v. Agrium Inc.*, 683 F.3d 845 (7th Cir. 2012) (en banc). These opinions show that there is a fundamental difference between "jurisdiction" and the many procedural or substantive rules that determine how cases are resolved. A court has "jurisdiction" when it has been designated by statute as an appropriate forum for a dispute of a given sort; other rules are non-jurisdictional.

No one doubts that the district court has subject-matter jurisdiction over this litigation, and no one contends that trial or judgment in the Missouri litigation could imperil the district court's ability and authority to adjudicate the federal suit. If the settlement collapses, the court's adjudicatory competence remains. A need to adjudicate a suit on the merits after settlement negotiations fail does not undermine the nature or extent of a court's jurisdiction. Yet if the Missouri case cannot diminish federal jurisdiction, §2283 precludes an injunction until the federal case reaches a final

decision. (After a final decision, an injunction could be appropriate to protect the federal judgment, although class members who opt out would remain entitled to pursue their own suits.)

Parallel state and federal litigation is common. The first to reach final decision can affect the other, either through rules of claim and issue preclusion (res judicata and collateral estoppel) or through effects such as reducing the scope of a class from 50 to 49 states. Yet the potential effect of one suit on the other does not justify an injunction.

> We have never viewed parallel *in personam* actions as interfering with the jurisdiction of either court; as we stated in *Kline v. Burke Construction Co.*, 260 U.S. 226 (1922):
>
> > [A]n action brought to enforce [a personal liability] *does not tend to impair or defeat the jurisdiction* of the court in which a prior action for the same cause is pending. Each court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court. Whenever a judgment is rendered in one of the courts and pleaded in the other, the effect of that judgment is to be determined by the application of the principles of *res adjudicate* . . . ." *Id.*, at 230 (emphasis added).
>
> No case of this Court has ever held that an injunction to "preserve" a case or controversy fits within the "necessary in aid of its jurisdiction" exception [to §2283]; neither have

> the parties directed us to any other federal-court decisions so holding.

Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 642 (1977) (plurality opinion). More recently, *Sprint Communications, Inc. v. Jacobs*, 134 S. Ct. 584 (2013), held that parallel state and federal proceedings do not justify abstention by a federal court. The Court thought that both should be allowed to proceed, subject only to the equitable power of each tribunal to defer its own proceedings in deference to a case that is farther along. Nothing in *Sprint* or any other decision of the Supreme Court suggests that the court presiding over the case likely to reach judgment second can jump the queue by enjoining the suit that is likely to reach decision first. Our opinion in *Zurich American Insurance Co. v. Superior Court of California*, 326 F.3d 816, 825-27 (7th Cir. 2002), dealt with just such a situation and held that the prospect of a state court reaching decision first, making federal decision unnecessary (or the federal case harder to adjudicate), does not justify a federal injunction against the state litigation.

We therefore need not address Curts's argument that only *in rem* proceedings can satisfy the "aid of jurisdiction" clause in §2283. We can imagine extreme situations in which a state could imperil a federal court's adjudicatory power over *in personam* actions. For example, suppose a state court were to bar a necessary witness from attending a federal trial or deposition; a federal injunction (or a writ of habeas corpus) might be an authorized response. *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996), concludes that the "aid of jurisdiction" clause may be invoked when an inconsistent decision

by a state court would "render the exercise of the federal court's jurisdiction nugatory."

The panel in *Winkler* thought that this might occur when the federal litigation sought an injunction (as in school desegregation litigation); an order by the state court to do something different from what the federal litigation sought could undermine federal authority as a practical matter. (*Winkler* itself entailed incompatible state and federal orders about discovery management.) But nothing of the sort has occurred here. Curts wants to litigate her own suit in Missouri, not to stop the federal court from adjudicating the suit pending before it, and the parties do not contend that there is a significant prospect of inconsistent injunctions affecting defendants' future conduct. (Should that possibility be realized, it can be dealt with.)

No matter what one makes of the word "jurisdiction" in §2283, an injunction is proper only when "necessary" to protect federal jurisdiction. The parties argue that closing down the Missouri case would be prudent, beneficial, helpful, and so on; the unstated premise is that §2283 allows whatever a federal court thinks is good litigation management. But that's not what "necessary" means. The Supreme Court told us recently:

> The statute . . . "is a necessary concomitant of the Framers' decision to authorize, and Congress' decision to implement, a dual system of federal and state courts." And the Act's core message is one of respect for state courts. The Act broadly commands that those tribunals "shall remain free from interference by federal courts." That edict is subject to only

> "three specifically defined exceptions." And those exceptions, though designed for important purposes, "are narrow and are 'not [to] be enlarged by loose statutory construction." Indeed, "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed."

Smith v. Bayer Corp., 131 S. Ct. 2368, 2375 (2011) (internal citations omitted). One reason why doubts must be resolved against a federal injunction is the word "necessary". Section 2283 leaves only limited opportunities for federal intervention. In the main §2283 commits to the *state* court the question whether it would be prudent, beneficial, or helpful to let the federal case go first.

According to the parties, *In re VMS Securities Litigation*, 103 F.3d 1317 (7th Cir. 1996), shows that the district court's injunction is proper. Not at all. In *VMS Securities* the district court issued an injunction to protect the final decision in a class suit. That step was authorized by the relitigation exception to §2283. What is more, the parties had failed to raise §2283 in the district court, and we held that this forfeited any entitlement to rely on it in the court of appeals. 103 F.3d at 1326. Nothing in *VMS Securities* supports the propriety of an injunction while the federal case remains in process.

Although the parties and Curts debate the significance of many decisions outside the Seventh Circuit, those opinions are so various that it would not be helpful to catalog them. It is enough to say that, to the extent any of them supports injunctive relief before the settlement of a federal class action

has become final, it fails to discuss the Supreme Court's understanding of "jurisdiction" and predates its reminder in *Bayer* that doubts must be resolved in favor of allowing state courts to proceed with litigation pending there.

Curts and the parties have locked horns on a number of additional questions, such as whether it is appropriate to certify a national class (as opposed to a number of state-specific classes), whether the plaintiffs are adequate representatives of a national class, and whether the settlement ought to be approved. Our jurisdiction under 28 U.S.C. §1292(a) is limited to the injunction, however. Whatever scope remains for pendent appellate jurisdiction after *Swint v. Chambers County Comm'n*, 514 U.S. 35, 43-51 (1995), and *Clinton v. Jones*, 520 U.S. 681, 707 n.41 (1997), this is not an appropriate occasion for its exercise. Disputes about class certification and the terms of the settlement are independent of the injunction against state litigation. Anyone dissatisfied with the district court's final disposition is free to seek appellate review; we will not try to resolve issues still under consideration in the district court.

Effective immediately, the district court's injunction is stayed. Curts and the Missouri court are free to proceed. But our mandate will issue in the ordinary course, to preserve the parties' entitlement to seek rehearing.

REVERSED

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Judge Robert W. Gettleman

Case Nos. 12-cv-2871, 13-cv-1512, 13-cv-4159

CONSOLIDATED WITH:
Case No. 12-cv-880 (D. Conn)
Case No. 12-cv-4785 (N.D. Cal.)
Case No. 12-cv-4774 (N.D. Cal.)

DENNIS ADKINS, *et al.*,

Plaintiffs,

v.

NESTLÉ PURINA PETCARE COMPANY, *et al.*,

Defendants.

FARIS MATIN, *et al.*,

Plaintiffs,

v.

NESTLÉ PURINA PETCARE COMPANY, *et al.*,

Defendants.

ROSALINDA GANDARA, *et al.*,

Plaintiffs,

v.

NESTLÉ PURINA PETCARE COMPANY, *et al.*,

Defendants.

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF PROPOSED FORM OF NOTICE, AND PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

WHEREAS, Plaintiffs Dennis Adkins, Maria Higginbotham, Mary Ellis, Dwayne Holley, Kaiya Holley, Deborah Cowan, Barbara Pierpont, Cindi Farkas, Terry Safranek, Elizabeth Mawaka, Robin Pierre, Jill Holbrook, Mary Ellen Deschamps, Tracy Bagatta, Hal Scheer, S. Raymond Parker, Kristina Irving, Kathleen Malone, Jeannie Johnson, Rebel Ely, Rita DeSollar, Faris Matin, Rosalinda Gandara, and Felicita Morales (collectively, "Plaintiffs"), and Defendants Nestle Purina PetCare Company ("Nestle Purina") and Waggin' Train, LLC ("Waggin' Train") (collectively, "Defendants," and with Plaintiffs, the "Parties") in the above-captioned litigation (the "Actions"), having applied pursuant to Federal Rule of Civil Procedure 23(e) for an Order preliminarily approving the proposed settlement of the Actions in accordance with the Amended Stipulation of Class Action Settlement entered into on May 28, 2014, and amended on October 28, 2014 ("the Agreement"), which, together with the Exhibits annexed thereto, set forth the terms and conditions

for a proposed settlement of the Actions between the Parties and for dismissal of the Actions upon the terms and conditions provided in the Agreement;

WHEREAS, the Agreement contemplates certification by this Court of a Class solely for settlement purposes; and

WHERAS, the Court having considered the Agreement and all Exhibits thereto.

NOW, THEREFORE, this 28th day of October 2014, upon application of the parties, **IT IS HEREBY ORDERED** that:

Preliminary Approval and Certification of the Settlement Class

1. This Order incorporates herein, and makes a part hereof, the Agreement, its definitions, and its Exhibits thereto. Unless otherwise provided herein, the terms defined in the Agreement shall have the same meanings herein.

2. The Court does hereby preliminarily approve the Agreement and the Settlement set forth therein, subject to further consideration at the Final Approval Hearing described below.

3. The Court preliminarily finds that the proposed Settlement Class meets all of the applicable requirements under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. This Court hereby certifies the following Class for settlement purposes only:

> All persons and entities who purchased, used or obtained, or whose pets used or consumed a Dog Treat Product. The Settlement Class does not include Released Entities, as well as any judicial officer presiding over the Actions, or

their immediate families. The Settlement Class also will exclude those Settlement Class Members who have properly opted out of the Settlement Class.

4. The Class Representatives, as set forth in Agreement, Section I.K, are conditionally appointed as representatives of the Settlement Class, and Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and Edelman Combs Latturner & Goodwin LLC ("Edelman Combs") are conditionally appointed as Co-Lead Class Counsel.

5. Entry of this Order is without prejudice to the rights of: (a) Defendants to oppose certification in the Actions, and seek decertification or modification of the Settlement Class as certified, should the settlement not be approved or implemented for any reason; or (b) the Parties to terminate the Agreement as provided in the Agreement.

Final Approval Hearing; Right to Appear and Object

6. A hearing on final settlement approval (the "Final Approval Hearing") will be held on June 23, 2015 at 10 a.m. before the Honorable Robert W. Gettleman or other judge sitting in his stead, United States District Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Courtroom 1703, Chicago, IL 60604, to consider, *inter alia*, the following:

(a) whether the preliminary certification of the Settlement Class defined herein should be made final;

(b) whether the Agreement and the terms and conditions of settlement are fair, reasonable,

adequate, and in the best interests of the Settlement Class;

(c) whether the proposed Notice Plan, as approved herein below, constitutes reasonable and the best practicable notice reasonably under the circumstances;

(d) whether this Court should enter an Order and Final Judgment dismissing with prejudice the Actions, pursuant to the Agreement;

(e) whether the Court should permanently enjoin the assertion of any Released Claims against any of the Released Entities by Members of the Settlement Class or any other Releasing Parties;

(f) whether any application for attorneys' fees, expenses, costs, and Class Representative awards should be granted;

(g) any objections to the Agreement that may be submitted by Settlement Class Members; and

(h) any other matters as the Court may deem appropriate.

7. Plaintiffs' Counsel shall file with the Court: (i) any memoranda or other materials in support of final approval of the Settlement; and (ii) any application for an award of attorneys' fees and expenses on or before April 24, 2015, and any reply brief in support thereof, on or before June 9, 2015.

8. Any Member of the Settlement Class who or that has not properly filed a request to Opt Out in the manner set forth below may appear at the Final Approval Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlement, the

dismissal with prejudice of the Actions, the entry of final judgment, and/or an application for attorneys' fees or expenses; provided, however, that no person shall be heard in opposition to the Agreement, dismissal and/or entry of final judgment or an application for attorneys' fees or expenses, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless submitted to the Court and served upon Co-Lead Class Counsel and Defendants' Counsel in accordance with Section IV.G of the Agreement and as set forth in paragraph 9 below. Such person must (a) file with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition and any documentation in support of such opposition, and (b) serve copies of such notice, statement, and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon Co-Lead Class Counsel and Defendants' Counsel on or before May 25, 2015 (the "Objection Date"). Persons who fail to object in the manner and by the dates provided herein shall be deemed to have waived and shall forever be foreclosed from raising any such objections.

9. Pursuant to Section VII.M of the Agreement, counsel for the Parties entitled to service of documentation described above are as follows:

Co-Lead Class Counsel

Rachel L. Jensen
Stuart A. Davidson
Phong L. Tran

ROBBINS GELLER RUDMAN & DOWD LLP
655 West Broadway, Suite 1900
San Diego, California 92101

Defendants' Counsel

Craig A. Hoover
E. Desmond Hogan
Miranda L. Berge
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004

10. The date and time of the Final Approval Hearing shall be set forth in the Notice, but shall be subject to change by the Court without further notice to the Members of the Settlement Class other than that which may be docketed by the Court, on the Court's website, and/or the settlement website.

11. The Court may approve the Settlement at or after the Final Approval Hearing with such modification(s) as may be consented to by the Parties to the Agreement and without further notice to the Settlement Class and Defendants.

Form and Timing of Notice

12. On or before December 12, 2014 (the "Notice Date"), class notice as described in the proposed Notice Plan provided in Exhibit 3 to the Agreement and proposed Notices in Exhibits 4, 5, and 6, individual and published class shall commence and be as follows:

(a) Individual Notice

(i) Individual notice shall be made by the Claims Administrator of all putative Settlement Class Members that can be identified by reasonable

effort through review before Preliminary Approval of records of Defendants Nestle Purina and Waggin' Train and Class Counsel. Defendants and Class Counsel, shall within twenty (20) calendar days of entry of the Preliminary Approval Order, provide to the Claims Administrator lists in computer readable format, of the applicable names and mailing addresses, for individual putative Settlement Class Members within Defendants' and Class Counsel's possession. Such information shall be provided to and maintained by the Claims Administrator on a confidential basis and shall not be shared with any other Party.

(ii) Individual notice shall be by email where Defendants or Class Counsel actually possess the email address of a putative Settlement Class Member or his, her, or its counsel. The Claims Administrator shall provide notice by way of postcard substantially in the form of Exhibit 4 to any putative class member for whom Defendants or Class Counsel do not possess an email address or for any putative Settlement Class Member whose email notification is returned as undeliverable.

(iii) After the mailing has been completed, the Claims Administrator shall each certify to the Court the number of putative Settlement Class Members to whom individual notice was provided, the manner in which it was provided, and the pertinent information regarding changes of address and reissuance of notices. Such certification shall be submitted to the Court as part of Plaintiffs' motion for final approval on or before April 24, 2015.

(b) Published Notice

(i) The Claims Administrator shall cause the Short Form Notice substantially in the form of Exhibit 5 to be published in two consecutive editions of *People Magazine* and an edition of *Sports Illustrated.*

(ii) Prominent interne banner notices will be displayed on a variety of websites purchased on the *Conversant* ad network which represents over 9,600 digital properties across all major content categories. Banners will also be placed on websites such as *Facebook*, *MSN* and *Yahoo!* It is estimated that the banners ads will result in hundreds of millions of impressions (unique instances in which the banner ad is displayed for view).

(iii) Mobile banners will be purchased through *Greystripe*, a mobile network serving digital banners across over 9,500 properties within multiple categories including Auto, Lifestyle, Entertainment, Technology, Health, Finance and more. It is estimated that the mobile banners ads will result in over ten million impressions.

(iv) A link to the settlement website established by the Claims Administrator shall also appear on the websites of Class Counsel and of Defendant Waggin' Train and Nestle Purina PetCare Company no later than the Notice Date through the Effective Date of the Settlement, as defined in the Agreement. The Long Form Notice substantially in the Form of Exhibit 6 shall be available on the settlement website and provided to any Settlement Class Member who requests a copy. Sponsored search ads will be bought across the three most highly-visited Internet search engines in the United

States: Google, Yahoo!, and Bing, so that consumers searching for more information about the settlement are specifically directed to the link to the settlement website.

(v) The Publication Notice will also be provided to the American Veterinary Association, the American Board of Veterinary Practitioners, and the American College of Veterinary Internal Medicine, which shall have the option of distributing the Publication Notice to its veterinarian members.

(c) The costs of preparing, printing, publishing, mailing, and otherwise disseminating the notice shall be paid in accordance with the applicable provisions of the Agreement.

13. The Court finds that the forms and manner of notice as set forth in paragraph 12 and approved herein meet the requirements of due process under Fed. R. Civ. P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional due process requirements of notice. The Court approves the Notice Plan in all respects and Orders that notice be given in substantial conformity therewith.

14. The Court appoints Epiq Systems, Inc. ("Epiq"), as the Claims Administrator. Responsibilities of the Claims Administrator include the following: (a) disseminating notice to the Settlement Class; (b) certifying to the Court that notice was published; (c) certifying the dates that notices to the Settlement Class were actually published by each newspaper, periodical, or other sources, provide a true copy of each notice in each publication, and provide any other information

relevant to the publication and mailing of the notice; (d) establishing a website for purposes of posting the notice, Settlement Agreement, and related documents; (e) accepting and maintaining documents sent from Settlement Class Members, including claim forms, requests to Opt Out, and other documents relating to claims administration; (f) administering claims for the payments from the Settlement Fund to Settlement Class Members, in accordance with the terms of the Settlement Agreement; and (g) all other responsibilities designated to the Claims Administrator in the Agreement.

Ability of Settlement Class Members to Opt Out of Settlement Agreement

15. Any Member of the Settlement Class who wishes to be excluded from the Settlement Class shall mail or shall have his or her counsel mail a written request to Opt Out to the Claims Administrator, to be received on or before February 10, 2015 (the "Opt-Out Deadline"), and shall clearly state the following: the name, address, telephone number, and signature of the individual or entity that wishes to be excluded from the Settlement Class.

16. Settlement Class Members who submit valid, timely, and complete requests to Opt Out shall not be bound by the Settlement Agreement or the Final Order and Judgment.

17. The initial determination that each request to Opt Out by a Settlement Class Member complies with the Opt Out procedures in the Agreement will be made by the Claims Administrator and is subject to final approval by the Court, as part of the Final

Approval of the Agreement. The Court may disallow any request for exclusion that fails to comply with the provisions of this Preliminary Approval Order or the Opt Out procedures otherwise approved by the Court.

18. Any Member of the Settlement Class who does not timely mail a valid request to Opt Out as set forth in paragraph 15 above shall be automatically included in the Settlement Class, and if the Settlement is approved, shall be bound by all the terms and provisions of the Agreement, including but not limited to the releases, waivers, and covenants not to sue described therein, whether or not such Member of the Settlement Class shall have objected to the Settlement and whether or not such Member of the Settlement Class makes a claim upon or participates in the Settlement Fund.

Submission of Claims

19. Settlement Class Members who wish to receive reimbursement under the Agreement must accurately and timely submit a Claim Form to the Claims Administrator in accordance to the instructions set forth therein. All Claim Forms by Settlement Class Members must be initially submitted to the Claims Administrator on or before April 1, 2015 (within one-hundred ten (110) days after the Notice Date ("Claims Deadline")). Any claims submitted to the Claims Administrator thereafter shall be forever barred. However, the Claims Administrator may, in its discretion, permit a Settlement Class Member who makes a timely Claim to remedy deficiencies in such Settlement Class Member's Claim Form or related documentation. Any Settlement Class Member who does not submit

a Claim Form within the time provided shall be barred from sharing in the distribution of the proceeds of the Settlement Fund, but shall nevertheless be bound by any final judgment entered by the Court. On or before April 24, 2014, the Claims Administrator shall certify to the Court the total number of claims received and amounts claimed, and shall provide such other updates to the Court regarding claims submissions as the Court may request in connection with Final Approval.

Other Provisions

20. All proceedings in the Actions, except any matters necessary to implement, advance, or further the Agreement or settlement process, are hereby stayed and suspended until further order of this Court.

21. No discovery with regard to the Settlement or Agreement shall be permitted as to any of the Parties to the Agreement other than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with the applicable rules of this Court.

22. This Order bars and enjoins all Settlement Class Members from commencing or prosecuting any action asserting any Released Claims, and stays any actions or proceedings brought by any Member of the Settlement Class asserting any Released Claims as of three (3) days after the date of this Order.

23. Pending Final Approval, no Settlement Class Member, either directly, representatively, or in any other capacity, shall file or shall have his or her counsel file, commence, prosecute or continue against any or all of the Released Entities, any action or

proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released in the event of Final Approval pursuant to the Agreement, and are hereby enjoined from so proceeding. In the event of Final Approval, all Settlement Class Members except those persons found by this Court to have validly excluded themselves from the Settlement shall be forever enjoined and barred from:

(a) Filing, commencing, prosecuting, continuing, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding or order in any jurisdiction based on any or all Released Claims against one or more Released Entities or against any person or entity who may claim over against any Released Entity for contribution or indemnity;

(b) Instituting, continuing, maintaining, organizing class members in, or joining with class members in, intervening in, or receiving any benefits from any action or arbitration, including but not limited to a purported class action, in any jurisdiction, against one or more Released Entities, or against any person or entity who may claim over against any Released Entity for contribution or indemnity, based on, involving, or incorporating, directly or indirectly, any or all Released Claims;

(c) Filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding, or order in any jurisdiction based on an allegation that an action taken by the Released

Entities, which is in compliance with the provisions of the Settlement Agreement, violates any legal right of any Settlement Class Member; and

(d) Filing, commencing, prosecuting, continuing, maintaining, intervening in, participating in (as class representatives, members or otherwise), or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding or order in any jurisdiction based upon or related to any Released Claim against any person or entity who is, has been, could have been, or could be alleged to be a joint-tortfeasor, co-tortfeasor, co-conspirator, or co-obligor with any Released entity based upon or related to any Released Claim.

24. Any information received by the Claims Administrator in connection with this Settlement that pertains to a particular Member of the Settlement Class shall be confidential and shall not be disclosed by the Claims Administrator to any other Settlement Class Member or their counsel.

25. In the event of Final Approval, each and every term and provision of the Agreement (except as modified by the Final Approval Order) shall be deemed incorporated into the Final Order and Judgment as if expressly set forth and shall have the full force and effect of an Order of the Court.

26. In the event the Settlement is terminated in accordance with the provisions of the Agreement, the Settlement and all proceedings had in connection therewith, including the certification of the Settlement Class and appointment of class representatives for settlement purposes only, shall be null and void, except insofar as expressly provided in the Agreement, and without prejudice to the

status quo ante rights of Parties and Released Entities. Neither this Order nor the Agreement, nor any negotiations, statements, communications or proceedings in connection therewith, shall be offered or received as, construed as, or be deemed to constitute any evidence of, an admission or concession by any Released Entity of any liability or wrongdoing by them, or that the claims and defenses that have been asserted in the Actions. The certification of the Settlement Class shall not be treated as the adjudication of any fact or issue for any purpose other than this Agreement and shall not be considered as law of the case, *res judicata*, or collateral estoppel in any other proceeding. Until and unless the Agreement reaches the Effective Date, the certification of the Settlement Class shall not be treated as the adjudication of any fact or issue and shall not be considered as law of the case, *res judicata*, or collateral estoppel in this proceeding, the certification of the Settlement Class shall not be treated as the adjudication of any fact or issue and shall not be considered as law of the case, *res judicata*, or collateral estoppel in this proceeding.

27. Defendants may communicate with Settlement Class Members regarding the provisions of this Agreement, so long as such communications are not inconsistent with Class Notice or other agreed upon communications concerning the Agreement. The Released Entities may refer Settlement Class Members to the Claims Administrator, the toll free number, and the settlement website. Defendants will not discourage the filing of any claims allowed under Section II of the Settlement Agreement. Released Entities that have been reimbursing potential Class Members may

continue to do so if necessary to complete claims and Released Entities also may encourage those persons to participate in the Settlement that is the subject of the Agreement. In addition, Defendants may continue to communicate with their customers, business contacts, and members of the public in the ordinary course of business without need to submit the communication to the Court for approval.

28. The Court may enter its Order and Judgment approving the Settlement and dismissing the Actions on the merits and with prejudice regardless of whether it has approved the plan of distribution or awarded attorneys' fees and expenses.

29. In accordance with the Agreement, Defendants will transfer or cause to the transferred the Settlement Amount into the Escrow Account within ten (10) business days of the Court's entry of this Order.

30. All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis,* and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Agreement and/or further order(s) of the Court.

31. The Court may alter the time or the date of the Final Approval Hearing without further notice to the Members of the Settlement Class, provided that the time or the date of the Final Approval Hearing shall not be set at a time or date earlier than the time and date set forth in Paragraph 6 above, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be

agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

SO ORDERED this 28th day of October, 2014.

/s/

The Honorable Robert W. Gettleman
United States District Judge