

1 GUSTAFSON GLUEK PLLC
2 DENNIS STEWART, SBN: 99152
3 600 W. Broadway, Suite 3300
4 San Diego, CA 92101
5 Telephone: (619) 595-3299
6 Facsimile: (612) 339-6622

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Superior Court of California
County of Fresno
By: Alexandria Payne, Deputy

7 COLEMAN & HOROWITT, LLP
8 DARRYL J. HOROWITT, SBN: 100898
9 SHERRIE M. FLYNN, SBN: 240215
10 499 West Shaw, Suite 116
11 Fresno, CA 93704
12 Telephone: (559) 248-4820
13 Facsimile: (559) 248-4830

14 Attorneys for Plaintiffs
15 [Additional Counsel on Signature Page]

16 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
17 **IN AND FOR THE COUNTY OF FRESNO**

18 MANMOHAN DHILLON, dba RANCHOS
19 VALERO, SATNAM PABLA, dba GMG
20 FOOD STORE 101 and MADERA AVE.
21 MARKET, SERGE HAITAYAN, dba 7-11
22 NUMBER 17906b, DALJIT SINGH, dba
23 LIQUOR MAX, and PAR VENTURES, LLC,
24 dba, QUICK PICK, on Their Own Behalves
25 and on Behalf of All Others Similarly Situated
26 and on Behalf of the General Public,

27 Plaintiffs,

28 v.

ANHEUSER-BUSCH, LLC, DONAGHY
SALES, LLC, a California Corporation;
ANHEUSER-BUSCH DOES 1-5 and DOES
6 through 50, inclusive,

Defendants.

CASE NO. 14CECG03039 JMS

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

JUDGE: Honorable Jon M. Skiles

DATE: May 21, 2024

TIME: 3:30PM

DEPT: 403

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1 **I. INTRODUCTION**

2 Plaintiffs Manmohan Dhillon, dba Ranchos Valero, Satnam Pabla, dba GMG Food Store
3 101 and Madera Market, Serge Haitayan, dba 7-11 Number 17906b, Daljit Singh, dba Liquor Max
4 and Par Ventures, LLC, dba Quick Pick (“Plaintiffs”), filed their Unopposed Motion for
5 Preliminary Approval of Class Action Settlement and supporting papers on November 14, 2023.¹
6 The Court issued its Tentative Ruling on that motion on March 24, 2024, denying the motion
7 without prejudice for the reasons stated in the Ruling (“March 24, 2024 Ruling”). At the March
8 28, 2024, hearing on the motion and Status Conference, the Court set a continued hearing on the
9 Preliminary Approval motion and set April 18 as the date by which the matters raised in its March
10 24, 2024 Ruling could be addressed in a supplemental filing.

11 Plaintiffs submit this Supplemental Memorandum of Points and Authorities addressed to
12 the issues raised in the Court’s March 24, 2024 Ruling. Some of the issues raised in the Court’s
13 March 24, 2024 Ruling are addressed to the as yet unfiled Plaintiffs’ Motion for Attorneys’ Fees,
14 Expenses, and Application for Service Awards to the Representative Plaintiffs, which, if the
15 Settlement is preliminarily approved, would be filed on a schedule set by the Court in its
16 Preliminary Approval Order. *See* Proposed Order Granting Preliminary Approval of Class Action
17 Settlement filed 11/14/2023. However, so the Court may be fully informed on the matters
18 addressed in its March 24, 2024 Ruling, Plaintiffs have included the facts relevant to that
19 application in the supporting Plaintiffs and Plaintiffs’ Counsels’ Declarations filed herewith.
20 Plaintiffs have also provided the brief it would tender in support of their application for fees,
21 expenses, and service awards. *See* Ex. “F” to the Supplemental Declaration of Dennis Stewart in
22 Further Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and for
23

24 ¹ Those papers consisted of a Notice of Motion, a Memorandum of Points and Authorities in
25 support of the Motion, the Declaration of Dennis Stewart In Support of Plaintiffs’ Motion For
26 Preliminary Approval of Class Action Settlement dated November 14, 2023, (“Stewart Decl.
27 11/14/23”), the Declaration of Peter Crudo In Support of Plaintiffs’ Motion For Preliminary
28 Approval of Class Action Settlement dated November 14, 2023, (Crudo Decl. 11/14/2023”), a
Proposed Order Granting Preliminary Approval of Class Action Settlement and a form of
“Proposed Judgment and Order Granting Final Approval of Class Action Settlement (collectively
“Plaintiffs’ 11/14/23 Submissions”)

1 Award of Attorneys' Fees, Expenses, and Service Awards for the Representative Plaintiffs
2 ("Stewart Suppl. Decl.")²

3 **II. PLAINTIFFS HAVE DEMONSTRATED ADEQUACY OF REPRESENTATION**

4 As noted in the Court's March 24, 2024 Ruling, certification of a settlement class requires
5 proof and a finding that the proposed settlement class is adequately represented by proposed class
6 counsel and by the proposed class representatives. See March 24, 2024 Ruling at 8. The Ruling
7 indicated that adequacy of representation should be addressed with a more specific showing.
8

9 **A. Class Counsel is Adequate.**

10 The adequacy of class counsel is addressed to their experience and demonstrated ability
11 and commitment to representation of the class. *Richmond v. Dart Industries, Inc.* 29 Cal. 3d 462,
12 478-79 (1981) "[A]n essential concomitant of adequate representation is that the party's attorney
13 be qualified, experienced and generally able to conduct the litigation" (quoting from *Eisen v.*
14 *Carlisle & Jacquelin Systems*, 391 F. 2d 555 (2d Cir. 1968)).³ Plaintiffs propose the appointment
15 of Dennis Stewart and Gustafson Gluek PLLC, Joseph Goldberg and Freedman Boyd Hollander
16

17 ² Proposed Notice procedures include the establishment of a website dedicated to matters
18 pertinent to consideration of approval of the proposed Settlement. If the Court grants
19 Preliminary Approval of the Proposed Settlement the current filings and Plaintiffs' application
20 for attorneys' fees, expenses, and service awards to the representative Plaintiffs and supporting
21 papers will be posted on the Settlement website so that class members will have access to those
22 documents well in advance of the objection and opt out deadlines.

23 ³ See also, *Fendler v. Westgate-California Corp.*, 527 F. 2d 1168, 1170 (9th Cir. 1975) (One of
24 the criteria for adequacy of representation would appear to be the zeal and the competence of
25 counsel); *Nunez v. BAE Systems San Diego Ship Repair, Inc.*, 292 F. Supp. 3d 1018, 1035 (S.D.,
26 Cal. 2017) ("Class counsel have significant class action litigation experience, are knowledgeable
27 about the applicable law, and will continue to commit their resources to further the interests of
28 the Class"); *Barbosa v. Cargill Meat Solutions, Corp.*, 297 F.R.D. 431, 442-43 (E.D. Cal. 2013)
citing to *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1021 (9th Cir. 1998))("Plaintiffs are
represented by experienced and competent counsel who have litigated numerous class actions");
In re Anthem, Inc. Data Breach Litigation, 327 F.R.D. 299, 311 (N.D. Cal. 2018)(finding class
counsel adequate based on counsel's class action experience and vigorous prosecution of the
matter); *In re LinkedIn User Privacy Litigation*, 309 F.R.D. 573, 584-85 (N.D. Cal. 2015)
(finding counsel adequate based on regular engagement in complex class action litigation);
Monterrubio v. Best Buy Stores, L.P., 291 F.R.D 443, 450 (E.D. Cal. 2013) (counsel adequate
based on experience in litigating and prior appointment as class counsel in other cases).

1 & Goldberg P.A., and Darryl Horowitz and Coleman and Horowitz, LLP as settlement class
2 counsel. As set forth in the Stewart Suppl. Decl., Messrs. Stewart, Goldberg, and Horowitz, have
3 been the attorneys responsible for the litigation of this case throughout its history. Stewart Suppl.
4 Decl. ¶ 2. The firms' and counsels' extensive litigation experience playing central roles in large
5 and complex class actions in state and federal courts are related in detail in the firms' respective
6 resumes and descriptions attached to the Stewart Declaration, filed on November 24, 2023,
7 ("Stewart Decl. 11/24/2023") as Exhibits B-D. As those resumes show, each of the firms and the
8 proposed counsel are highly experienced and qualified in class action and complex litigation.

9 Plaintiffs' Counsels' commitment to the case and the representation of the proposed class
10 is demonstrated by their zealous prosecution of this case for nearly 10 years. The extent to which
11 they have doggedly litigated the case on behalf of the proposed class in the face of substantial
12 challenges, setbacks, and appeals and the determined opposition is described in the Stewart Decl.
13 11/24/2023 at ¶¶ 10 – 25. Collectively, the firms have expended over 10,900 hours at a collective
14 lodestar of \$3,978,878.35 in their prosecution of the case.⁴ Their commitment to the case is also
15 evidenced by the fact that counsel advanced nearly \$550,000 dollars of their own funds in costs to
16 the prosecution of the case with no guarantee that any of those funds would be recouped.⁵ All of
17 the foregoing amply demonstrates the adequacy of counsel.

18 **B. The Class Representatives Are Adequate.**

19 The Court notes that the adequacy of the named Plaintiffs, while addressed by counsel in
20 summary form (Stewart Decl. 11/24/23 at ¶ 26), was not supported by Declarations of the proposed
21 class representatives demonstrating their adequacy and the absence of conflict with the proposed
22 class. March 24, 2024 Ruling at 8. Plaintiffs thus submit Declarations on behalf of each of the
23

24 ⁴ See, Stewart Suppl. Decl. ¶¶ 8-11 and Exhibits B and D; Declaration of Joseph Goldberg in
25 Support of Motion for Award of Attorneys' Fees, Expenses, and Service Awards to
26 Representative Plaintiffs ("Goldberg Decl.") at ¶ 3; Declaration of Darryl J. Horowitz in Support
27 of Motion for Award of Attorneys' Fees, Expenses, and Service Awards to Representative
28 Plaintiffs ("Horowitz Decl.") at ¶ 6.

⁵ Total advanced costs in the case were \$748,147.66; \$200,901.68 of those costs were advanced
by various potential class members and the remainder were advanced by counsel. Stewart Suppl.
Decl. at ¶¶ 4,8,11; Goldberg Decl. at ¶ 5; Horowitz Decl. at ¶ 7.

1 proposed class representatives summarizing their involvement throughout the case and their nearly
2 ten (10) year commitment to, and involvement in it. It began for some with attempting to bring
3 about a non-litigated resolution of the issues raised in the case and when that was not successful,
4 searching for and hiring counsel. It continued with their assistance in the pre-filing investigation
5 through their satisfaction of extensive discovery burdens and culminating in their involvement in
6 consulting with counsel with respect to the mediation which brought about the current proposed
7 settlement.⁶ Their nearly 10-year involvement in the case combined with their willingness to single
8 themselves out as taking up the cause of the class against a key ongoing supplier to their businesses
9 is powerful evidence of their adequacy.⁷ Of significance, and as set out in the various declarations
10 of the proposed class representatives, this case is one originated by the proposed class
11 representatives (and other convenience store operators in the area), who felt wronged by the
12 conduct of Defendants, sought non-litigation resolution and when that failed, sought out attorneys
13 to represent them, ultimately interviewing and selecting proposed class counsel. The active
14 participation of these small businesspeople in this lawsuit reflects their persistence to the cause of
15 the proposed class.

16 Nor is there any indication of conflict between the proposed class representatives and the
17 class. An adequacy of representation issue arises only where there is a showing of an irreconcilable
18 and crucial conflict between the class representative and the members of the class. “[O]nly a
19 conflict that goes to the very subject matter of the litigation will defeat a party’s claim of
20 representative status”. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 238 (2001) (citation
21 and internal quotations omitted). There is no such conflict here. As noted by this Court in its March
22 24, 2024 Ruling, the class representatives share a community of interest with the class as
23

24 ⁶ These Class Representative Declarations also fully support the award of service (or incentive)
25 awards to those Representative Plaintiffs. *See* Declarations of Manmohan Dhillon, Satnam Pabla,
26 Serge Haitayan, Daljit Singh and Parminder Singh in Support of Plaintiffs’ Motions for
27 Preliminary Approval of Class Action Settlement and For Award of Attorneys’ Fees, Expenses,
28 and for Service Awards for the Representative Plaintiffs submitted herewith; respectively:
“Dhillon Decl.,” “Pabla Decl.,” “Haitayan Decl.,” “D. Singh Decl.” and “P. Singh Decl.”.

⁷ *See, generally*, Dhillon Decl. at ¶¶ 2-10; Pabla Decl. ¶¶ 2-11; Haitayan Decl. at ¶¶ 2-10; D.
Singh Decl. at ¶¶ 2-9; and P. Singh Decl. at ¶¶ 2-9.

1 demonstrated by the fact they have claims typical of those they assert on behalf of the class; that
2 they and the class were overcharged for beer because of the alleged pricing preference afforded
3 through the alleged unequal distribution of discounts on the wholesale price of beer. *See*, March
4 24, 2024 Ruling at 7. As evidenced by their Declarations, each of the representative Plaintiffs
5 operated convenience stores in Fresno or Madera counties and purchased Anheuser Busch beer
6 from Defendant Donaghy during the class period. Each, in common with the class, claimed to have
7 been overcharged for beer based on the disparate pricing allegations of the case. They propose this
8 settlement be allocated on behalf of all members of the class (including themselves) to the extent
9 of each class member’s estimated respective injury as reflected by their purchases of the relevant
10 product. They seek modest discretionary service awards based upon their now 10-year service and
11 commitment to the case without which no recovery would have been possible on behalf of any
12 members of the class. There is no basis to suggest that any conflict with the class exists.

13 **III. THE PROPOSED SETTLEMENT AMOUNT REFLECTS A REASONABLE**
14 **COMPROMISE UNDER ALL THE CIRCUMSTANCES WHICH IS WITHIN**
15 **THE RANGE OF WHAT THE COURT COULD FINALLY APPROVE.**

16 At issue on this Preliminary Approval Motion is whether the proposed settlement is within
17 a range of resolutions which the Court might approve at the Final Approval hearing after soliciting
18 and hearing the views of any interested class members. *See*, Cal. Rules of Court Rule 3.769 (c)
19 (setting forth procedures for approval of proposed class action settlements). As the Court notes,
20 many of the factors which inform the ultimate “fairness” of the proposed settlement were addressed
21 in the Plaintiffs’ moving papers. *See* March 24, 2024 Ruling at pp. 9-10. However, the moving
22 papers did not address ‘the potential value of [the proposed Plaintiff class’s claims] if they had
23 prevailed at trial or why the decision to settle was reasonable in light of the potential recovery’.
24 *Id.* We turn to that.

25 Plaintiffs’ damages theory centered on a claim for restitution of alleged overcharges
26 incurred by class members in their purchases of Anheuser Busch Beer from distributor Donaghy
27 Sales. Plaintiffs’ damages expert, Marianne L. DeMario, calculated two alternative estimates of
28

1 those overcharges to the proposed class; \$12.4 million under one calculation and \$5.8 million
2 under the other. *See* September 25, 2020, Supplemental Expert Report of Marianne L. DeMario at
3 P. 4, ¶ 6 attached as Exhibit “A” to Stewart Suppl. Decl. The two damages figures differed because
4 each was based on different data sets. The \$2.5 million dollar settlement represents, respectively,
5 approximately 20% of her higher damages figure and 43% of her lower figure. Stewart Suppl.
6 Decl. at ¶ 5 and Exh. “A”. The legal and factual bases for these damages calculations were
7 contested by the Defendants, supported by their own experts, challenging the theoretical,
8 methodological and/or legal bases underlying these damages calculations. Stewart Suppl. Decl. at
9 ¶ 6. Considering the issues and uncertainties in the case laid out in detail in the Stewart Decl.
10 11/24/23 among other factors,⁸ the amount achieved in settlement after mediation with the
11 assistance of an experienced jurist is clearly within the range of recoveries which this Court could
12 approve on Final Approval. Each case is individual, but a point of reference may be found in
13 studies of the range of recoveries in other class action settlements.⁹ Considering all of the other
14 relevant factors cited in the moving papers, the amount of the mediated settlement here is fair,
15 adequate, and reasonable. It satisfies both the Preliminary Approval standard (within the range of
16 potential settlements which could be approved after notice to the class and a hearing) and the Final
17 Approval standard of fair, reasonable, and adequate.

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21 ⁸ *See* Stewart Decl. 11/24/23 at ¶¶ 27-29; Plaintiffs’ Memorandum of Points and Authorities in
22 Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement
23 filed 11/14/2023 at pp. 13-17.

24 ⁹ Studies of class action settlements over time relative to claimed damages provide some insight.
25 A study of class action securities settlements in state and federal courts over the years 2014 –
26 2023 showed approved settlements ranging between 4.5% and 23.2% of damages. “Securities
27 Class Action Settlements 2023 Review and Analysis” at pp. 8-9. Available at
28 “[Cornestone.com/wp-content/uploads/2024/03/Securities-Class-Action-Settlements-2023-
Review-and-Analysis.pdf](https://www.cornestone.com/wp-content/uploads/2024/03/Securities-Class-Action-Settlements-2023-Review-and-Analysis.pdf).” A study of 71 antitrust class action settlements over the period 1990-
2014 yielded a median average settlement value of 37% of single damages (antitrust damages are
trebled by statute) and a weighted mean of 19% of single damages. Conner and Lande, “Not
Treble Damages Cartel Recoveries are Mostly Less Than Single Damages” 100 Iowa L. Rev.
1997 (2015) available at “scholarworks.law.ubalt.edu/all_fac/364/”. At between 20% and 43%
of the claimed restitution amount, the current settlement is well within those ranges.

1 **IV. THE ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS ARE**
2 **PRELIMINARILY REASONABLE AND ARE APPROPRIATELY ADDRESSED**
3 **AT FINAL APPROVAL SHOULD THE COURT GRANT PRELIMINARY**
4 **APPROVAL TO THE PROPOSED SETTLEMENT**

5 The Court's March 24, 2024 Ruling notes various deficiencies in support of the
6 applications for attorneys' fees and costs sought by counsel and of the service awards requested
7 on behalf of the class representatives. March 24, 2024 Ruling at 10-11.

8 Procedures vary, but in Plaintiffs' Counsels' experience (as noted in the opening papers)
9 the application for attorneys' fees and reimbursement of litigation costs and service awards are
10 customarily issues briefed and addressed by the Court in connection with the motion for final
11 approval of settlement.

12 In light of the Court's March 24, 2024 Ruling, Plaintiffs have filed concurrently herewith,
13 the evidence and authorities which would support the Motion for Attorneys' Fees, Expenses, and
14 Service Awards to the Representative Plaintiffs if the proposed Settlement is preliminarily
15 approved.

16 **A. Fees and Litigation Expenses**

17 As noted, the four law firms who worked on this case from the outset collectively devoted
18 over 10,900 hours on a strictly contingent basis throughout the nearly 10 years this litigation has
19 been pending at a collective lodestar (hours times usual hourly billing rates) of roughly \$3.98
20 million dollars. Stewart Suppl. Decl. ¶¶ 3, 6-7, 9-10; Goldberg Decl. ¶ 3; Horowitz Decl. ¶ 6. The
21 requested 25% fee of \$625,000 represents about 16% of that lodestar. In other words, if the
22 proposed fee is granted, it would represent an 84% discount from counsel's usual hourly rates after
23 10 years of work on the case with no payment. In addition, Plaintiffs' Counsel expended
24 \$748,147.66 in litigation expenses on behalf of the class, approximately \$546,000 of which were
25 advanced by counsel themselves. These were all reasonable expenditures necessary to the
26 prosecution of Plaintiffs' claims. Stewart Suppl. Decl. ¶ 8, 11; Goldberg Decl. ¶ 5; Horowitz Decl.
27 ¶ 7. The nature and identify of those expenses as well as their reasonableness are also detailed in
28 the Proposed Memorandum of Points and Authorities for Award of Attorneys' Fees, Expenses,

1 and Service Awards to the Representative Plaintiffs attached as Exhibit “F” to the Stewart Suppl.
2 Decl. and supporting Declarations of counsel. For the reasons more fully stated therein, the
3 application for attorneys’ fees and expenses rests on a sound and reasonable basis and the Court
4 should give notice of the application to the Class in connection with its Preliminary Approval of
5 the proposed Settlement. The question of final approval of those applications is, of course, for
6 another day.

7 **B. Service or Incentive Awards**

8 The accompanying motion also seeks the award of \$5,000 to each of the five (5) named
9 Plaintiffs who have represented the Class throughout this litigation. In support of that motion and
10 in connection with the question raised in the Court’s March 24, 2024 Ruling, Plaintiffs have
11 provided substantial factual detail concerning their involvement in the case.¹⁰ See also, Stewart
12 Decl. 11/14/23 at ¶ 26.¹¹ The request for service awards also rests on a sound and reasonable basis
13 and should the Court grant Preliminary and ultimately Final Approval to the Proposed Settlement,
14 the requested service awards should ultimately be awarded.

15 **V. ESTIMATED CLASS ADMINISTRATOR FEES AND COSTS**

16 The Court’s March 24, 2024, Ruling directed the Plaintiffs to detail the fees and costs
17 proposed to be paid to the class administrator. March 24, 2024 Ruling at 10. Notice and
18 Administration costs will consist of fees paid to the Administrator and expenses incurred in the
19 Notice and Claims process. That information is provided in the Supplemental Declaration of Peter
20 Crudo in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement
21 (“Crudo Suppl. Decl.”), filed herewith. Gilardi’s costs and charges for administering the notice
22 and claims program, and all that entails are between \$40,000 and \$42,000 depending on whether
23 the initial mail notice is by postcard or of the long form notice. *Id.* ¶ 2. The Administrator’s’ fees
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26
27 ¹⁰ Dhillon Decl. ¶¶ 2-10; Pabla Decl. ¶¶ 2-11; Haitayan Decl. ¶¶ ; 2-10; D. Singh Decl. ¶¶ 2-9; P.
28 Singh Decl. ¶¶ 2-9.

¹¹ We correct one inadvertent misstatement in that Declaration. Two of the five representative
plaintiffs’ depositions were taken over two days; not all of them.

1 and costs will be reflected in periodic billings which will be monitored and reviewed for
2 reasonableness and conformity with the billing agreement by counsel.

3
4 **VI. CLAIM OPT OUT AND OBJECTION PROCEDURES**

5 **A. Claims Procedures**

6 As proposed, class members can claim either online or by mail. The Court has questioned
7 why any claim procedure should be required and whether class members who do not opt out prior
8 to the deadline could not just be mailed their recovery amount.

9 One issue is the age of the class. The class consists of convenience store purchasers of
10 Anheuser Busch Beer from Donaghy during a class period that ended nearly 10 years ago. The
11 stability of the business base even under ordinary economic conditions would be subject to
12 question.¹² Given the intervening pandemic and the well-publicized effect on business failures it
13 caused, there is reason to believe that the population of class period businesses and the ownership
14 of those businesses and the location of the eligible claimants may be even more unstable. For this
15 reason, counsel, in consultation with Gilardi, deemed it prudent to require some minimal form of
16 affirmation of the identity and location of the claimant as well as a sworn affirmation of the validity
17 of the claim. There simply is no guarantee that the business which operated between 2010 and
18 2014 as shown in Donaghy' contemporaneous business records is still in business under the same
19 ownership.

20 In addition, because this is a non-reversionary pro rata settlement, the individual recovery
21 of any one allowed claimant depends on a determination of its share of the net settlement proceeds
22 relative to the shares of all the remaining class members. This is not a fixed recovery settlement
23 where a pre-determined amount can be directed to the class member. The claims of all allowed
24 claimants must be determined before the pro rata shares of any individual allowed claimant can be
25 determined. Attempted fraudulent claims are a fact of life in class action settlements and the
26

27
28 ¹² Donaghy has provided Plaintiffs its current customer database which can be compared to the
class period list so that some number of class members existence and location can be confirmed.

1 provision of some measures to assure to the maximum extent possible that recoveries are delivered
2 to the rightful owners of claims is prudent. *See*, Crudo Suppl. Decl. ¶¶ 11-15.

3 Thus, Plaintiffs' Counsel is proposing completion of a minimal claim form which, where
4 possible, will inform the class member of the level of its record purchases in a pre-populated online
5 claim form and require nothing more than an affirmation of the claimant's current address if there
6 is no disagreement with the provided purchase amounts which will determine the value of that
7 claimant's claim. Plaintiffs' Counsel and the claims administrator believe that this proposed
8 system will protect the integrity of the claims determinations (to the benefit of legitimate class
9 claimants) with minimal burden on those class member claimants.

10 **B. Opt Out Procedure**

11 As noted in the Supplemental Crudo Declaration, while not common, an opt out form could
12 be provided with a long form notice in which the class member could indicate a desire to opt out
13 of the class and return it by mail. It would not be possible to fit such an option on the postcard
14 notice. Crudo Suppl. Decl. ¶¶ 16-18. Thus, should the Court determine to include such a form in
15 the initial mailing, a long form notice (and the attendant additional \$2,000 expense) will be
16 required. Whether on a form or through the website, significant care would have to be taken to
17 impress upon the class member that should the opt out box be checked, the claimant will not
18 receive any benefit from the settlement. Experience has shown that no matter how explicit the
19 instructions are, it is frequently the case that where such forms have been used some number of
20 claimants inevitably fill out everything on the form; both the claim and the opt out, necessitating
21 further inquiry (and additional expense) by the administrator into the class member's true
22 intentions as they cannot both claim and opt out. For that reason, it is customary, though not
23 necessary, to require a separate opt out signed communication from the class member to the
24 address provided.

25 **C. Objection Procedure**

26 As further noted in the Crudo Suppl. Declaration, objection forms are not generally
27 provided with notices. Crudo Suppl. Decl. ¶ 19. An objection is the equivalent of a pleading which
28

1 must be filed either by the class member, counsel for the class member, or class counsel and
2 considered by the Court.¹³ As only class members are affected by the terms of the proposed
3 settlement including the release, only class members have standing to object to it. Thus, as a
4 threshold requirement for consideration of the objection, the objector must provide sufficient
5 evidence of its identity and membership in the settlement class. Further, the objector must state
6 all of the grounds for the objection with reference to the specific matters to which the objection is
7 made and any evidence which the class member wishes to cite relevant to the objection. An
8 objector also needs to identify its name and address and that of any counsel representing the
9 objector so that notices of continued hearings (if any) and pleadings responding to the objection
10 may be served. The nature of these requirements (all clearly stated in the Notice) do not lend
11 themselves to a form provided with the Notice and there is no increased benefit to offset the
12 additional cost of what would be essentially a blank form with minimal common information.
13 Finally, it has not been our experience that persons who wish to object to either the settlement or
14 the applications for fees, costs or incentive awards are deterred from making those objections and
15 filing them with the Court in the manner required in the absence of a form being provided to them
16 to do so.

17 **VII. CONCLUSION**

18 Responding to the questions and issues raised in the Court's March 24, 2024 Ruling:

19 1) Class counsel has demonstrated their adequacy and can be appointed to represent
20 the proposed Settlement Class;

21 2) The named class representatives have demonstrated their adequacy and lack of any
22 disabling conflict with the proposed Settlement Class and can be appointed to represent the
23 proposed Settlement Class in these proceedings;
24

25
26 _____
27 ¹³ Court rules and practice vary. For example, in the Northern District of California an objector
28 must file their objections directly with the Court. "Procedural Guidance for Class Action
Settlements for the Northern District of California" available at
"cand.uscourts.gov/forms/procedural-guidance-for-class-actions-settlements/".

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FREEDMAN BOYD HOLLANDER &
GOLDBERG PA
JOSEPH GOLDBERG (admitted *pro hac*)
20 First Plaza, Suite 700
Albuquerque, NM 87102
Telephone: (505) 842-9960
Facsimile: (505) 842-0761

GUSTAFSON GLUEK PLLC
DANIEL C. HEDLUND (admitted *pro hac*)
MICHELLE J. LOOBY
JOSHUA J. RISSMAN
Canadian Pacific Plaza
120 South 6th Street, Suite 2600
Minneapolis, MN 55402
Telephone:(612) 333-8844
Facsimile:(612) 339-6622

Attorneys for Plaintiffs