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

JUDGE: Honorable Jon M. Skiles

DATE: January 17, 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”), submit this Memorandum of Points and
5 Authorities in Support of their Motion for Preliminary Approval of Settlement.

6 After years of hard-fought litigation, the parties have reached a proposed settlement (the
7 “Settlement”) that provides proposed Settlement Class Members pro-rata payments from a Two
8 Million Five Hundred Thousand Dollar (\$2,500,000.00) fund after deduction for notice and
9 administration costs and any award of litigation costs and attorneys’ fees and service awards the
10 Court may approve (the “Net Settlement Fund”). As detailed herein, and in the accompanying
11 Declaration of Dennis Stewart In support of Plaintiffs’ Motion for Preliminary Approval of Class
12 Action Settlement (“Stewart Declaration” or “Stewart Decl.”) the Settlement satisfies the
13 preliminary approval standard and is well within the range of a fair, reasonable, and adequate
14 resolution of the case.

15 As described herein, approval of a class action settlement is a two-step process. First, the
16 court considers whether the proposed settlement is within the range of reasonableness and fairness
17 as might justify an Order finally approving it after notice to the Class. At preliminary approval,
18 the Court also considers related applications such as certification of the proposed settlement class,
19 the appointment of counsel and representatives for the settlement class, the manner and content of
20 the Notice to the class and the setting of schedules, and procedures in connection with the
21 application for final approval. Second, after Court approved Notice of the proposed settlement has
22 been provided to the members of the settlement class, the Court considers whether to grant Final
23 Approval of the Settlement and enter Judgment thereon at a Final Approval hearing (also known
24 as a “Fairness Hearing”). Thus, by this motion Plaintiffs are moving the Court for orders:

- 25 1. Preliminarily approving the proposed Class Action Settlement;
- 26 2. Certifying the proposed Settlement Class and appointing representatives and
27 counsel for the proposed Settlement Class;
- 28 3. Setting the procedures and a schedule for Class Members to request exclusion (“opt

1 out”) of the Settlement Class or to object to the proposed Class Action Settlement
2 and/or the applications for attorneys’ fees and expenses and service awards to the
3 Representative Plaintiffs, and the plan for the allocation of net settlement proceeds
4 among the class members who do not opt out of the Settlement Class (the “related
5 applications”)

6 4. Setting a briefing schedule for a Plaintiffs’ Motion for Final Approval of the
7 proposed Class Action Settlement and related applications;

8 5. Setting a hearing date at which final approval of the proposed Class Action
9 Settlement and related applications will be considered by the Court;

10 6. Approving the form of notice and manner of dissemination of notice to the
11 Settlement Class of the proposed Settlement and the related applications, the
12 manner and schedule for requesting exclusion from the class or objecting to the
13 proposed Settlement and/or related applications, and the Final Approval hearing;
14 and

15 7. Appointing Gilardi & Co. as administrator of the Notice Plan, settlement website,
16 and, if the Settlement is approved, administration of the claims procedures and
17 distribution of net settlement proceeds to Class Members according to the plan of
18 allocation.

19 **II. SUMMARY OF LITIGATION**

20 **A. Plaintiffs’ Allegations and Procedural History**

21 The nature of the case and its procedural history are set out in detail in the supporting
22 Stewart Declaration. In sum, Plaintiffs alleged that defendant Anheuser Busch, LLC (“A-B”) a
23 manufacturer of beer, and Donaghy Sales, LLC (“Donaghy”),¹ A-B's distributor in Fresno and
24 Madera counties, discriminated in the wholesale prices Donaghy charged plaintiffs and a proposed
25 class of Fresno and Madera county retailers in violation of California beer pricing laws. Plaintiffs
26 alleged that the discrimination was accomplished through the Defendants’ alleged selective
27

28 ¹ A-B and Donaghy are collectively referred to as “Defendants”.

1 distribution of consumer coupons to some but not all retailers which those retailers redeemed
2 themselves for what Plaintiffs alleged was an effective discount from the wholesale price. Relying
3 primarily on certain California beer pricing statutes which require equal wholesale pricing of beer
4 to retailers, Plaintiffs sought restitution of claimed overcharges on the wholesale prices they paid
5 to Donaghy. Plaintiffs alleged that this conduct constituted: (i) an unlawful business practice and
6 (ii) unfair competition, in violation of Section 17200 of the California Business and Professions
7 Code; (iii) secret rebates in violation of Section 17045 of the California Business and Professions
8 Code; and (iv) a civil conspiracy and aiding and abetting in violation of Sections 17047 and 17048
9 of the California Business and Professions Code. Second Amended Class Action Complaint
10 (hereinafter “SAC”) at ¶¶ 44-71. Defendants denied liability for the alleged violations, that this is
11 a proper class action, and that Plaintiffs and the class were injured as a result of the alleged
12 violations.

13 The case was originally filed on October 10, 2014, and was litigated over nearly ten (10)
14 years, including extensive appellate litigation. This included: 1) motions directed to the adequacy
15 of the Complaint; 2) extensive party and third-party fact and expert formal discovery (both written
16 and deposition) and extensive meet and confers on discovery disputes, 3) discovery motion
17 practice; 4) substantial informal discovery; and 5) the litigation of two motions for class
18 certification in the Superior Court, both of which were then litigated in the Fifth District Court of
19 Appeal (one of them twice) and one in the California Supreme Court. See generally Stewart Decl.
20 ¶¶ 10-25.

21 **B. Settlement Negotiations**

22 The parties mediated the case twice. The first mediation took place on December 1, 2016,
23 and failed to result in an agreement. The second mediation took place on May 24, 2023, before the
24 Honorable Stephen J. Kane (Ret.) and resulted in an agreement in principle. Subsequently, the
25 parties negotiated the full terms of the definitive Settlement Agreement which is now before the
26 Court.

27 **III. The Proposed Settlement**

28 **A. The Settlement Class**

1 The proposed settlement is between Defendants and Plaintiffs as proposed representatives
2 of an agreed Settlement Class defined as follows:

3 All persons who owned retail business establishments in Fresno and
4 Madera Counties classified in the Donaghy sales database within
5 one of the following channel descriptions and channel id numbers
6 (“Cid#”): a) Convenience/Cid# 190; b) Oil and Service/Cid# 195; c)
7 Grocery/Cid# 265; d) Gas and Convenience/Cid# 294; e) Package
8 Liquor/Cid# 200; f) Mom and Pop/Cid# 175; g) Deli/Cid# 180; h)
9 Bodega/Cid# 185; and i) Package Liquor/Cid# 290, and which
10 purchased from Donaghy beer manufactured and/or sold by
11 Anheuser-Busch during the period from October 10, 2010 through
12 December 31, 2014 excluding Vikram and Vinay Vohra and
13 Hardeep Singh and all entities owned, controlled by or affiliated
14 with any of them.²

11 **B. The Non-Reversionary Settlement Fund**

12 The proposed settlement obtains for the benefit of the proposed settlement class a non-
13 reversionary Settlement Fund of \$2.5 Million dollars; “non-reversionary” meaning that without
14 regard to the level of claims on the fund, no portion of the Settlement Fund is eligible to be returned
15 to the Defendants.³ The \$2.5-Million-dollar settlement payment represents the entire obligation of
16 the Defendants. Any awarded attorneys’ fees, expenses, costs of administration and service awards
17 will be taken from that fund. The remainder of the \$2.5 million dollar fund after payment of costs
18 of administration, any allowed attorneys’ fees and costs and service awards constitutes the “Net
19 Settlement Fund” which will be distributed pro rata to the claiming settlement class members who
20 do not opt out based upon each class member’s purchases of A-B beer from Donaghy.

21 **C. Release and Waiver**

22 The Settlement includes a mutual release and waiver of claims which is set out in the
23 Settlement Agreement (Exhibit A to the Stewart Decl.) at ¶¶ 13 and 14 and is in the form, and to

24 _____
25 ² This is the class definition which Plaintiffs sought to be certified in all prior motions for class
26 certification.

27 ³ Defendants have the sole discretion, but not the obligation, to rescind the Settlement Agreement
28 in the event that at least 30 potential members of the Settlement Class opt out of the Settlement
Class. In the event the Settlement Agreement is rescinded, cancelled or terminated, or the
Settlement Agreement is not finally approved by the Court, then the Settlement Fund (minus half
of all funds spent on notice) shall be returned to Defendants. Settlement Agreement ¶¶ 20, 21.

1 the effect of, releases and waivers customarily provided in class action settlements in California.
2 The Releases will be effective only upon entry of the Final Approval Order.

3 **D. Attorneys’ Fees, Costs, and Expenses and Incentive Awards**

4 In connection with Final approval, proposed Class Counsel will apply for an award of
5 attorneys’ fees of \$625,000.00, which amounts to 25% of the Settlement Fund, litigation costs and
6 expenses in the amount of approximately \$750,000.00, and a service award for each of the
7 Representative Plaintiffs of \$5,000 for a total of \$25,000. The attorneys’ fees, costs, and service
8 awards, if approved, will be paid from the Settlement Fund. Class members will be noticed of the
9 proposed settlement and related applications for fees, expenses, and service awards, and will have
10 an opportunity to comment on or object to those applications consistent with California authority.
11 *See, Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 267 (2018) (Confirming that any
12 class member – including non-intervening members – in a California state-court class action may
13 object to a proposed class action settlement, consistent with Cal. Rules of Court, rule 3.769(f)).
14 Approval of those applications will be considered as part of the Final Approval process.

15
16 **IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED, THE SETTLEMENT**
17 **SHOULD BE PRELIMINARILY APPROVED AND NOTICED TO THE**
18 **PROPOSED SETTLEMENT CLASS**

19 **A. The Court Should Certify the Settlement Class**

20 Plaintiffs propose certification of the proposed Settlement Class and submit that
21 certification of the Settlement Class is appropriate. In California, there are two certification
22 prerequisites: (1) the existence of an “ascertainable class,” and (2) “a well-defined community of
23 interest in the questions of law and fact involved affecting the parties to be represented.” *Daar v.*
24 *Yellow Cab Co.*, 67 Cal. 2d 695, 704 (1967); *Gutierrez v. Cal. Commerce Club, Inc.*, 187 Cal.
25 App. 4th 969, 976 (2010); *Hernandez v. Vitamin Shoppe Indus. Inc.*, 174 Cal. App. 4th 1441, 1456-
26 57 (2009). Section 1781(b) of the California Civil Code provides that class certification is
appropriate when:

- 27 (1) It is impracticable to bring all members of the class before the court.
28

- 1 (2) The questions of law or fact common to the class are substantially similar and
2 predominate over the questions affecting the individual members.
- 3 (3) The claims or defenses of the representative plaintiffs are typical of the claims or
4 defenses of the class.
- 5 (4) The representative plaintiffs will fairly and adequately protect the interests of the
6 class.

7 Cal. Civ. Code §1781(b). A lesser standard of scrutiny applies where, as here, these criteria are
8 evaluated solely for purposes of settlement. *Global Minerals & Metals Corp. v. Superior Court*,
9 113 Cal. App. 4th 836, 859 (2003) (citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1807
10 n.19 (1996)) (courts should take settlement into account in evaluating class certification).
11 California has a public policy which encourages the use of the class action device.”” *Sav-On Drug*
12 *Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 335 (2004) (quoting *Richmond v. Dart Industries,*
13 *Inc.*, (1981) 29 Cal.3d 462, 470). ““By establishing a technique whereby the claims of many
14 individuals can be resolved at the same time, the class suit both eliminates the possibility of
15 repetitious litigation and provides small claimants with a method of obtaining redress for claims
16 which would otherwise be too small to warrant individual litigation.”” *Id.*

17 **1. An Ascertainable and Numerous Settlement Class Exists**

18 Cal. Civ. Code §1781(b)(1) requires that the class be sufficiently numerous and
19 ascertainable. *See Fireside Bank v. Superior Court*, 40 Cal. 4th 1069, 1089 (2007); *Brinker*
20 *Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012). The class here is comprised
21 of approximately 800 retail sellers of A-B beer in Fresno and Madera counties. The numerosity
22 requirement is met. The class, defined in terms of class period purchasers of A-B Beer from
23 Donaghy who were classified in certain Donaghy sales categories as reflected in its records, is also
24 ascertainable, as determined by the Court of Appeal. *See, Dhillon v. Anheuser Busch, LLC*, Cal.
25 Ct. App., Fifth App. Dist. No. F074952, Order Filed May 29, 2020.

26 **2. Common Questions of Law and Fact Exist and Predominate**

27 Section 1781(b)(2) requires that “questions of law or fact common to the class [be]
28 substantially similar and predominate over the questions affecting the individual members.” Cal.

1 Civ. Code §1781(b)(2). “[I]t has never been the law in California that the class representative must
2 have *identical* interests with the class members. The only requirements are that common questions
3 of law and fact *predominate* and that the class representative be *similarly* situated.” *B.W.I. Custom*
4 *Kitchen v. Owens-Illinois, Inc.*, 191 Cal. App. 3d 1341, 1347 (1987) (emphasis in original).
5 Common issues predominate when they are “the principal issues in any individual action, both in
6 terms of time to be expended in their proof and of their importance[,]” *Vasquez v. Superior Court*,
7 4 Cal. 3d 800, 810 (1971), and need only be “sufficiently pervasive to permit adjudication in a
8 class action rather than in a multiplicity of suits.” *Vasquez*, 4 Cal. 3d at 810. “As a general rule if
9 the defendant's liability can be determined by facts common to all members of the class, a class
10 will be certified[.]” *Ali v. U.S.A. Cab Ltd.*, 176 Cal. App. 4th 1333, 1347 (2009).

11 Here, Plaintiffs allege that Defendants violated certain California statutes by discriminating
12 in wholesale beer prices charged to Fresno and Madera County retailers. These facts and legal
13 claims raise liability issues common to all Class Members that sufficiently predominate over any
14 questions affecting individual Class Members for the purposes of settlement.

15 16 **3. Named Plaintiffs’ Claims Are Typical of the Proposed Class’ Claims and Will Fairly and Adequately Represent the Class**

17 Typicality requires only that the named plaintiff’s interests in the action be significantly
18 similar to those of other class members. Cal. Civ. Code §1781(b)(3); *see Fireside Bank*, 40 Cal.
19 4th at 1090; *see also Richmond*, 29 Cal. 3d at 470-75. When the same underlying conduct affects
20 the named plaintiff and the class sought to be represented, the typicality requirement is met. *See*
21 *Daniels v. Centennial Grp., Inc.*, 16 Cal. App. 4th 467, 473 (1993). Here, Plaintiffs’ claims are the
22 same as those of the Class they seek to represent; they like the class they propose to represent
23 claim to have been overcharged for beer by the conduct alleged in the Complaint.

24 To maintain a class action, the representative plaintiff must adequately protect the interests
25 of the class. Cal. Civ. Code §1781(b)(4). “This prerequisite requires the court to determine that
26 there are no conflicts of interest between the representative parties and the class they seek to
27 represent, and that the representatives' attorneys are qualified and willing to prosecute the case
28 competently and vigorously.” *Janik v. Rudy*, 199 Cal. App. 4th 930, 944 (2004) (citing to *Amchem*

1 *Products, Inc. v. Windsor*, 521 U.S. 591, 626 n. 20 (1997)). No conflicts, disabling or otherwise,
2 exist between Plaintiffs and other Class Members. Class Counsel are very experienced class action
3 attorneys. See Stewart Decl. ¶ 27 and Exs. B-D.

4 **4. Class Resolution of this Case is Superior**

5 Also relevant to class certification is whether a class action is the superior method of
6 adjudication of this dispute. See *Schneider v. Vennard*, 183 Cal. App. 3d 1340, 1347 (1986). Here
7 the value of each individual class member’s claim is relatively small compared to the costs of
8 litigating that claim. See *Lazar v. Hertz Corp.*, 143 Cal. App. 3d 128, 143 (1983) (“The class action
9 has been held appropriate when numerous parties suffer injury of insufficient size to warrant
10 individual action and when denial of class relief would result in unjust advantage to the
11 wrongdoer.”) (quoting *Blue Chip Stamps v. Superior Court*, 18 Cal. 3d 381, 385-86 (1976)).
12 Because the \$2,500,000.00 proposed Settlement will confer a “substantial benefit” to the Class,
13 the superiority of class treatment is virtually evident. See *Dean Witter Reynolds, Inc. v. Superior*
14 *Court*, 211 Cal. App. 3d 758, 798 (1989) (superiority is “manifest” when class mechanism confers
15 “substantial benefit”). In sum, all prerequisites for class certification are sufficiently met for the
16 purposes of Settlement, and the Class should be certified for purposes of implementing the
17 Settlement and resolving the Litigation.

18 **B. The Settlement Should be Preliminarily Approved As Fair, Reasonable, and** 19 **Adequate**

20 The Court has “broad discretion” in approving a class settlement. *Moniz v. Adecco USA,*
21 *Inc.*, 72 Cal. App. 5th 56, 76 (2021); *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380,
22 1389 (2010). The required procedures are: (1) preliminary approval of the settlement; (2) notice to
23 class members; and (3) final approval of the settlement after hearing. Cal. Rules of Ct. 3.769.

24 As noted, class action settlement approval proceeds in two stages. At the preliminary
25 approval stage, the Court need only “make a preliminary determination on the fairness,
26 reasonableness and adequacy of the settlement terms and must direct the preparation of notice of
27 the certification, proposed settlement and date of the final fairness hearing.” Manual For Complex
28 Litigation (Fourth), § 21.633 at 321 (2004); see also *Cellphone Termination*, 186 Cal. App. 4th at

1 1389 (2010); *In re Vitamin Cases*, 107 Cal. App. 4th 820, 824-25 (2003). In considering the
2 proposed settlement, the Court need not reach any ultimate conclusions on the issues of fact and
3 law which underlie the merits of the dispute and need not engage in a trial on the merits. *7-Eleven*
4 *Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1145 (2000).

5 The Court's ultimate duty at Final Approval is to finally determine whether the settlement
6 is fair, adequate and reasonable. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996);
7 *Cho v. Seagate Tech Holdings, Inc.*, 177 Cal. App. 4th 734, 742-43 (2009). "In reviewing the
8 fairness of a class action settlement, 'due regard should be given to what is otherwise a private
9 consensual agreement between the parties.'" *Cellphone Termination*, 186 Cal. App. 4th at 1389
10 (quoting *7-Eleven Owners*, 85 Cal. App. 4th at 1145).

11 In evaluating the reasonableness of a class action settlement, the Court should consider
12 factors including "the strength of the plaintiffs' case, the risk, expense, complexity and likely
13 duration of further litigation, the risk of maintaining class action status through trial, the amount
14 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the reaction of
16 the class members to the proposed settlement." *Cellphone Termination*, 186 Cal. App. 4th at 1389
17 (citing to *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk*, 48
18 Cal. App. 4th at 1801)). However, fairness is presumed "where: (1) the settlement is reached
19 through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel
20 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
21 percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802; *Cellphone Termination*, 186
22 Cal. App. 4th at 1389. All of these factors are addressed in detail in the Stewart Declaration.

23 **1. The Settlement was Reached Through Arm's-Length Negotiations**

24 The settlement was reached following arm's-length negotiations with the assistance of an
25 experienced mediator. An initial mediation, which took place in December 2016, failed to result
26 in an agreement and the parties continued the litigation. After securing the second reversal of
27 Orders denying the Plaintiffs' motions for class certification, the parties agreed to once again
28 explore settlement with the assistance of a skilled and experienced mediator. Following some

1 preliminary negotiations directly between the parties, they participated in a full day of mediation
2 with the Hon. Stephen J. Kane (Ret.). After considerable guided discussion on aspects of the case,
3 numerous offers and counteroffers were exchanged which culminated in a mediator’s proposal of
4 a settlement in principle which both parties accepted. Numerous communications among counsel
5 followed regarding the terms of the Settlement Agreement which is the subject of this motion.
6 Stewart Decl. ¶ 7.

7 **2. Investigation and Discovery were Conducted to Support the Settlement**

8 The Court also must be satisfied that “investigation and discovery are sufficient to allow
9 counsel and the [C]ourt to act intelligently” in deciding whether to approve a settlement. *Dunk*,
10 Cal. App. 4th at 1802; *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 53 (2008). The proposed
11 settlement was reached after extensive discovery and litigation over many years. Plaintiffs’ counsel
12 diligently developed the facts and legal claims in this case. Counsel conducted significant party,
13 third party, and expert formal and informal discovery into every aspect of the case, from liability
14 to damages. This included: interviews of industry participants, review of documents produced by
15 Plaintiffs, Defendants, and third parties obtained both in formal and informal discovery, numerous
16 interrogatories and requests for admission, and multiple depositions of the representative plaintiffs,
17 defendants, relevant third parties and expert witnesses. All aspects of the merits of the case and
18 the parties’ competing legal and factual contentions were thoroughly explored in demurrers, a
19 motion for summary judgement filed by the defendants, depositions and written discovery and
20 extensive litigation of all issues related to class certification, at the trial court level and in the course
21 of multiple appeals. Stewart Decl. ¶¶ 5-7.

22 In sum, Plaintiffs’ counsel and defense counsel were fully informed of the factual and legal
23 issues and the parties’ mutual contentions and of the evidence supporting those contentions and
24 were in an ideal position to judge the risks of further litigation and the merits of the proposed
25 settlement.

26 **3. The Risk, Expense, Complexity, and Duration of the Case Support**
27 **Preliminary Approval**

1 The risk, expense, complexity and duration of the case if further litigated rather than settled
2 weigh in favor of preliminary (and ultimately, final) approval of the settlement. While Plaintiffs
3 are confident of the underlying merit of their claims, they understand the numerous challenges
4 they need to overcome to prevail in the case.

5 First is class certification. Class certification has twice been denied in the Superior Court.
6 And while both of those denials were ultimately reversed, it is likely that a renewal of the motion
7 will be opposed, and the outcome cannot be guaranteed. Even if the renewed motion were granted,
8 as Plaintiffs believe it should be, Plaintiffs must anticipate an eventual motion to decertify the class
9 and/or an appeal of the grant of certification after trial.

10 Second, while the Plaintiffs have confidence in their claims, both legally and factually,
11 counsel recognize that there is always the risk of an adverse outcome and take that into
12 consideration. The defense raises defenses on the applicability and validity of Plaintiffs' legal
13 theories and claims as well as the manner in which Plaintiffs' experts have calculated the proposed
14 remedy.

15 Third, Plaintiffs' counsel must consider the range of potential recoveries if tried to a
16 successful conclusion. Again, Plaintiffs have confidence in the damages amounts estimated by
17 their expert, Ms. DeMario, but counsel also recognizes the risk that the court or jury may award a
18 lesser sum.

19 Finally, there is the significant element of further delay. This case has been bogged down
20 for so many years already litigating class certification. If Plaintiffs' counsel litigated these claims
21 against Defendants to conclusion, it is reasonable to expect that the litigation and inevitable appeals
22 will consume many more years. This factor weighed greatly on Class counsel in seeking and
23 reaching a settlement. With this Settlement, Class Members receive significant payments and
24 Defendants, and class members, can put this dispute behind them.

25 **4. The Experience and Views of Counsel**

26 As set forth in the firm resumes of Plaintiffs' counsel, all counsel involved in this case and
27 who are proposing this settlement, are highly experienced in trade practice class actions and trial
28 and are thus well situated to evaluate the merits of the proposed settlement. Stewart Decl. Exs. B-

1 D. It is the unanimous view of Plaintiffs’ counsel that the settlement is in the best interests of the
2 Class. Stewart Decl. ¶ 29.

3 **C. The Proposed Notice Program Should be Approved**

4 “When the court approves the settlement or compromise of a class action, it must give
5 notice to the class of its preliminary approval and the opportunity for class members to object and,
6 in appropriate cases, opt out of the class.” *Cho v. Seagate Tech Holdings, Inc.*, 177 Cal. App. 4th
7 734, 746 (2009) (citing Cal. Rules of Ct. 3.769). A settlement notice “must contain an explanation
8 of the proposed settlement and procedures for class members to follow in filing written objections
9 to it and in arranging to appear at the settlement hearing and state any objections to the proposed
10 settlement.” *Cellphone Termination*, 186 Cal. App. 4th at 1390.

11 The rules also specify the required content of the notice to class members. Cal. Rules of
12 Court 3.766. The “notice ... must fairly apprise the class members of the terms of the proposed
13 compromise and of the options open to dissenting class members.” *Wershba v. Apple Computer,*
14 *Inc.*, 91 Cal. App. 4th 224, 251 (2001); *see Cellphone Termination*, 186 Cal. App. 4th at 1393
15 (notice must “fairly apprise the prospective members of the class of the terms of the proposed
16 settlement and of the options that are open to them in connection with [the] proceedings.”). The
17 proposed notice, in both its mailed short form and long form, settlement website and publication
18 notice, readily meets these requirements.

19 The proposed Notice Program will be administered by Gilardi & Co., (“Gilardi”) a
20 company that specializes in class action notice and administration of class action settlements. A
21 description of Gilardi’s qualifications and experience is described in the Declaration of Peter
22 Crudo In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement
23 (“Crudo Decl.”). Subject to Court approval, Gilardi will begin dissemination of Court approved
24 notice to the Class in a manner consistent with the Notice Plan approved by the Court.⁴ At or prior
25 to the Final Approval Hearing, Gilardi will provide the Court with a declaration attesting that
26 notice was provided in accordance with the terms of the Notice Plan and the Court’s Preliminary
27 Approval order.

28 ⁴ The Plan for dissemination of Notice is described in the Crudo Declaration at ¶¶ 5-9.

1 The Notice Plan consists of three major components: 1) Direct mail notice of a “short form”
2 postcard notice to class members identified from the Donaghy sales records previously produced
3 during this litigation; 2) Publication Notice; and 3) The establishment of a Notice and Claims
4 website specific to this case which will be identified in the postcard notice and the Publication
5 Notice, on which class members can, among other things, access a more extensive “Long Form
6 Notice”. The Long Form Notice will also be made available upon request to Gilardi or Plaintiffs’
7 counsel.

8 Identified Class Members from Donaghy’s customer database previously produced in this
9 litigation will receive the “short-form Notice via U.S. mail.”⁵ For any Direct Mail Notices returned
10 as undeliverable, Gilardi will: (a) re-mail any notices returned by the United States Postal Service
11 with a forwarding address no later than the deadline set in the Preliminary Approval Order; (b)
12 research, by itself or using an address research firm, as soon as practicable following receipt of
13 any returned notices that do not include a forwarding address, such returned mail for a better
14 address, and promptly mail copies of the applicable notice to any better address so found. As noted,
15 the Direct Mail Notice will direct class members to a website set up and maintained by Gilardi for
16 Notice and claims administration. On this website, class members will be able to access, in addition
17 the Long Form Notice⁶ as well as the Settlement Agreement, the claim form, the SAC, and all
18 pleadings and Orders in connection with the Motions for Preliminary and Final Approval. The
19 website will also provide instructions for how to electronically file the claim form. Summary
20 Notice will also be published in the Fresno Bee.⁷

21 This Notice Plan and the form of Notice comply with California Rule of Court (“CRC”),
22 rule 3.766(d). The Notice is written in plain language and satisfies due process. It includes: (1)
23 basic information about the litigation; (2) a description of the benefits provided by the Settlement;
24 (3) an explanation of how Settlement Class Members can obtain settlement benefits; (4) an
25 explanation of how Settlement Class Members can exercise their right to opt-out or object to the

26 _____
27 ⁵ The proposed short form mailed notice is attached to the Crudo Declaration as Exhibit 2.

28 ⁶ A copy of the Proposed Long Form Notice is attached to the Crudo Declaration as Exhibit 3.

⁷ A copy of the proposed Summary Notice for publication is attached to the Crudo Declaration as Exhibit 4.

1 Settlement; (5) an explanation that any claims against A-B and Donaghy related to the Action will
2 be released if the Settlement Class Member does not opt-out; (6) the names of Class Counsel and
3 information regarding attorneys' fees, expenses, and the service awards requested; (7) the Final
4 Approval Hearing date; (8) an explanation that each Settlement Class Member has the right to
5 appear at the Final Approval Hearing; and (9) the Settlement Website address and a toll-free
6 number where additional information can be obtained.

7 The website will also be utilized to support claims administration. Class members will be
8 able to conveniently access information relevant to their claim and electronically submit their
9 claim or, if they prefer, download a mailable claim form.

10 Settlement Class Members will be notified of their option to exclude themselves from the
11 Settlement or object to the proposed Settlement via letter and how to do so. As is fully described
12 in the Long Form Notice (Crudo Decl. Ex. 3) and referenced in the Short Form Notice (Crudo
13 Decl. 2), exclusion requests must be mailed to the Settlement Administrator and postmarked no
14 later than the Opt-Out Deadline. To object, Settlement Class Members must send written notice of
15 their objection to the Clerk of the Court and counsel for both Parties at the stated addresses. The
16 objection must be personally signed and include the information identified in the Long Form
17 Notice.

18 **V. THE PROPOSED SCHEDULE OF EVENTS**

19 The last step in the settlement approval process is to hold a Final Approval Hearing at
20 which the Court will hear argument and make a final decision about whether to approve the
21 Settlement and the applications for attorneys' fees, costs, and service awards. Specifically,
22 Plaintiffs propose the following schedule:
23
24
25
26
27
28

EVENT	DATE/DEADLINE
Class Notice Date Mailing and Publication	30 days after Preliminary Approval
Claims Deadline	90 days after the last day Direct Mail Notice is mailed to Class Members
Deadline for Filing of Motion in Support of Application for Attorneys' Fees, Reimbursement of Expenses, and Service Awards for Class Representatives	60 days before Final Approval Hearing
Deadline for Filing of Objections to Settlement and to Opt-Out of Settlement	45 days before Final Approval Hearing
Deadline for Filing of Motion for Final Approval of Settlement and Response to Any Objections	30 days before Final Approval Hearing
Final Approval Hearing	150 days after Preliminary Approval

Plaintiffs respectfully submit that this proposed schedule is similar to those used in numerous class action settlements and provides due process to Settlement Class Members.

VI. CONCLUSION

Plaintiffs respectfully request that the Court grant their motion and enter an Order preliminarily approving the proposed Settlement and:

1. Certifying the proposed Settlement Class and appointing representatives and counsel for the proposed Settlement Class;
2. Setting the procedures and a schedule for Class Members to request exclusion (“opt out”) of the Settlement Class or to object to the proposed Class Action Settlement and/or the applications for attorneys’ fees and expenses and service awards to the

1 Representative Plaintiffs, and the plan for the allocation of net settlement proceeds
2 among the class members who do not opt out of the Settlement Class (the “related
3 applications”)

- 4 3. Setting a briefing schedule for a Plaintiffs’ Motion for Final Approval of the
5 proposed Class Action Settlement and related applications;
- 6 4. Setting a hearing date at which approval of the proposed Class Action Settlement
7 and related applications will be considered by the Court;
- 8 5. Approving the form of notice and manner of dissemination of notice to the
9 Settlement Class of the proposed Settlement and the related applications, the
10 manner and schedule for requesting exclusion from the class or objecting to the
11 proposed Settlement and/or related applications, and the Final Approval hearing;
12 and
- 13 6. Appointing Gilardi & Co. as administrator of the Notice Plan, settlement website,
14 and, if the Settlement is approved, administration of the claims procedures and
15 distribution of net settlement proceeds to Class Members according to the plan of
16 allocation.

17 Respectfully submitted,

18
19 DATED: November 14, 2023

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