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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' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

JUDGE: Honorable Jonathan M. Skiles

DATE: November 5, 2024

TIME: 3:30PM

DEPT: 403

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Manual For Complex Litigation (Fourth), § 21.633 at 321 (2004) 9

1 Plaintiffs Manmohan Dhillon, Satnam Pabla, Serge Haitayan, Daljit Singh, and Par
2 Ventures, LLC (together, “Representative Plaintiffs”) respectfully submit this Memorandum in
3 Support of their Motion for Final Approval of Class Action Settlement.

4 **I. INTRODUCTION**

5 After nearly ten years of litigation, Plaintiffs secured a substantial settlement with Defendant.
6 This settlement results in a recovery of Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
7 and represents an excellent result for the class. Plaintiffs submitted extensive declarations, evidence,
8 and memoranda to the Court on November 14, 2023 and April 18, 2024.¹ In a thorough opinion,
9 which examined all of the factors relevant to consideration of the fairness of this proposed class action
10 settlement, the Court preliminarily approved the settlement on May 21, 2024.² The Court also
11 approved the form of Notice and plan for dissemination of notice to be provided to the Settlement
12 Class.³ As noted in the accompanying Declaration of Derek Smith⁴, the Court-approved Notice Plan
13 was carried out in accordance with the Court’s May 21, 2024 Preliminary Approval Order. Among
14 other things, the Notice communicated to the Class the deadline for any opt outs or objections to the
15 proposed settlement. The reaction of the class supports settlement approval: no class members have
16 objected, nor have any opted out of the settlement.⁵ Accordingly, and for all the reasons set forth in
17 Plaintiffs’ November 14, 2023 Motion for Preliminary Approval, Plaintiffs’ Counsel submit that all

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19 ¹ See Plaintiffs’ Notice of Motion and Unopposed Motion for Preliminary Approval of Class
20 Action Settlement, filed on November 14, 2023; Plaintiffs’ Memorandum of Points and
21 Authorities in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class
22 Action Settlement, filed on November 14, 2023; [Proposed] Order Granting Preliminary
23 Approval of Class Action Settlement, filed on November 14, 2023; Declaration of Dennis
24 Stewart in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement,
25 filed on November 14, 2023; Declaration of Peter Crudo in Support of Plaintiffs’ Motion for
26 Preliminary Approval of Class Action Settlement, filed on November 14, 2023; and [Proposed]
27 Judgement and Order Granting Final Approval of Class Action Settlement, filed on November
28 14, 2023.

² See Order Granting Preliminary Approval of Settlement (“PA Order”) issued by the Honorable
Jon M. Skiles on May 21, 2024.

³ *Id.* ¶ 13.

⁴ See Declaration of Derek Smith Regarding Notice Administration, dated September 23, 2024
 (“9/23/2024 Smith Decl.”).

⁵ 9/23/2024 Smith Decl. ¶¶ 6-7.

1 of the procedural requirements for the approval process have been met and the settlement is fair,
2 reasonable, and adequate, and merits the Court’s final approval. ⁶

3 **II. STATEMENT OF FACTS**

4 **A. Litigation Background**

5 The history of this litigation was set out in detail in the pleadings filed in support of the
6 Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, filed on
7 November 14, 2023.⁷ To summarize, this case was litigated for nearly ten (10) years, including
8 extensive appellate litigation. Plaintiffs filed an initial complaint on October 10, 2014 and the
9 operative Second Amended Complaint, (hereinafter “Complaint” or “Compl.”) after the denial of
10 the Defendants’ demurrers. Plaintiffs alleged that defendant Anheuser Busch, LLC (“A-B”) a
11 manufacturer of beer, and Donaghy Sales, LLC (“Donaghy”),⁸ A-B's distributor in Fresno and
12 Madera counties, discriminated in the wholesale prices Donaghy charged plaintiffs and a proposed
13 class of Fresno and Madera County retailers in violation of California beer pricing laws.

14 Plaintiffs alleged that the discrimination took the form of the selective distribution of
15 consumer coupons to some but not all retailers which those retailers redeemed themselves for what
16 Plaintiffs alleged was an effective and illegal discount from the wholesale price. Plaintiffs, who
17 did not receive coupons at all or in the quantity (and hence the total amount as other retailers),
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19 ⁶ In the Order Granting Preliminary Approval of Settlement, dated May 21, 2024, the Court
20 ordered Plaintiffs to file opening papers in support of the motion for an award of attorneys’ fees,
21 expenses, and service awards to class representative no later than August 23, 2024 at 5:00 p.m.
22 See PA Order ¶ 7. Pursuant to this order, Plaintiffs filed their Notice of Motion and Motion for
23 an Award of Attorneys’ Fees, Expenses, and Service Awards for Class Representatives on
24 August 20, 2024. The Court submitted a Further Order granting preliminary approval of
25 settlement on May 24, 2024, which, in paragraph 1, permits any Class Member to object to the
26 fairness, reasonableness, or adequacy of the Settlement Agreement by September 20, 2024.
27 Pursuant to the Further Order ¶ 1, Plaintiffs could address any objections by any Class Members
28 on or before that same day, September 20, 2024. As there are no objections to that motion to
address, Plaintiffs will not be filing any reply papers.

⁷ Plaintiffs respectfully refer the Court to the Declaration of Dennis Stewart in Support of
Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, dated
November 14, 2023 (“11/14/2023 Stewart Decl.”). This sets out in detail the history of the
litigation.

⁸ A-B and Donaghy are collectively referred to as “Defendants”.

1 sought restitution of claimed overcharges on the wholesale prices they paid to Donaghy, claiming
2 that the conduct violated Sections 17200, 17045, 17047 and 17048 of the California Business and
3 Professions Code. Compl. ¶¶ 44-71. Defendants vigorously defended the case at the trial court
4 level and through multiple appeals, maintaining that they were not liable under the legal theories
5 asserted by Plaintiffs, that this was not a proper class action, and that neither Plaintiffs nor members
6 of the proposed class had been damaged. The central premise of the case, that the distribution of
7 coupons to certain retailers amounted to illegal price discrimination under California law, was both
8 untested and hotly disputed by the Defendants

9 The parties engaged in extensive written, deposition and expert discovery.⁹ This included
10 numerous sets of interrogatories, extensive document requests, and requests for admission, and the
11 negotiation and objections to same.¹⁰ Defendants produced substantial numbers of documents and
12 data, which Plaintiffs reviewed, analyzed, organized, and put into a litigation database for use in
13 the litigation. There was a significant number of oral depositions in the case.¹¹ Each Plaintiff was
14 deposed multiple times by Defendants. Plaintiffs deposed representatives of Defendants and took
15 several third-party depositions of certain retailers and of a representative of another beer
16 distributor.¹²

17 This litigation involved extensive expert work. Plaintiffs engaged two experts who in total
18 prepared five reports.¹³ The experts were deposed several times and Defendants submitted reports
19 from experts of their own who were also deposed.¹⁴

20 As has been noted, this case involved substantial litigation surrounding class certification
21 before this Court, the Court of Appeal, and the California Supreme Court. Plaintiffs initially
22 moved for class certification on August 3, 2016, which motion was denied by the Superior Court
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25 ⁹ 11/14/2023 Stewart Decl. ¶ 5.

26 ¹⁰ *Id.*

27 ¹¹ *Id.* ¶ 5.

28 ¹² *Id.*

¹³ *Id.* ¶¶ 5, 18.

¹⁴ *Id.* ¶ 19.

1 on December 15, 2016.¹⁵ Plaintiffs appealed that denial to the Court of Appeals for the Fifth
2 District which both originally affirmed the Superior Court’s denial and denied Plaintiffs’ motion
3 for reconsideration.¹⁶ Plaintiffs then sought review from the California Supreme Court which
4 transferred the case back to the Court of Appeal with instructions to vacate its decision affirming
5 the trial court’s first denial of class certification and reconsider the cause in light of the Supreme
6 Court’s decision in an intervening Supreme Court class certification decision. On remand, and
7 after further briefing, the Fifth District reversed the denial and remanded it back to the Superior
8 Court for further proceedings.

9 Plaintiffs moved for class certification again on September 25, 2020, which the Superior
10 Court again denied and which Plaintiffs again appealed; this time successfully before the Fifth
11 District Court of Appeal which reversed the denial and remanded the case back to this court.¹⁷ At
12 the time of Plaintiffs’ initial motion for class certification, Defendants had also moved for
13 summary judgment.¹⁸ Plaintiffs began work on the opposition to the motion while at the same time
14 scheduling remaining depositions in the case. It was then that the parties stayed the case pending
15 appeal of the first (and subsequently) the second denial of the motion for class certification.

16 **B. Summary of Settlement Negotiations and Agreements**

17 The parties initially unsuccessfully mediated this case in December 2016. The parties
18 reconvened in December 2022, after the latest remand from the Fifth District, to mediate before
19 Judge Stephen J. Kane (Ret.).¹⁹ Judge Kane successfully brought the parties together to reach the
20 proposed settlement which is now before this court.²⁰ As previously detailed, the settlement obtains
21 for the benefit of the proposed settlement class a non-reversionary Settlement Fund of \$2.5 Million
22 dollars for the Class.

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25 ¹⁵ *Id.* ¶ 21.

26 ¹⁶ *Id.*

27 ¹⁷ *Id.* ¶ 22.

28 ¹⁸ *Id.* ¶ 23.

¹⁹ *Id.* ¶ 25.

²⁰ *Id.*

1 On August 20, 2024, Plaintiffs moved for an award of attorneys’ fees, reimbursement of
2 litigation expenses, and service awards for the representative Plaintiffs from the settlement fund.²¹
3 If awarded, the remainder of the \$2.5 million dollar fund after payment of costs of administration
4 will constitute the “Net Settlement Fund” which is to be distributed pro rata to the claiming
5 settlement class members. The Settlement Agreement also includes a mutual release and waiver
6 of claims, which is customarily provided in class action settlements in California. The Releases
7 will be effective only upon entry of the Final Approval Order.

8 **C. Class Notice Program**

9 The Notice Plan conducted by the parties provided individual, direct mailed notice to all
10 known Class Members and constitutes the best notice practicable under the circumstances of this
11 Action. The Claims Administrator mailed direct notice to all potential Class members on June
12 20, 2024.²² The notice mailed was the same as the version approved by the Court.²³ The last day
13 to opt out of the settlement class or object to the proposed settlement was September 20, 2024.²⁴
14 There were no opt outs or objections to the settlement.²⁵ The Notice program, as the Court
15 previously found,²⁶ meets the requirements of California Rules of Court 3.766, which calls for
16 “a means of notice reasonably calculated to apprise the class members of the pendency of the
17 action.”

18 **III. FINAL APPROVAL SHOULD BE GRANTED**

19 The issue of whether a proposed settlement should be approved is within the sound and
20 broad discretion of the court. *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76 (2021);
21 *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010). This discretion should
22 be exercised in the context of public policy strongly favoring settlement of controversies,

23 _____
24 ²¹ See Plaintiffs’ Motion for Award of Attorneys’ Fees, Expenses, and Service Awards for the
25 Representative Plaintiffs, filed on August 20, 2024.

26 ²² 9/23/2024 Smith Decl.¶ 3.

27 ²³ See PA Order, issued on May 21, 2024.

28 ²⁴ 9/23/2024 Smith Decl.6-7; see also Further Order Granting Preliminary Approval of Class
Action Settlement, issued by Judge Jonathan M. Skiles, dated May 24, 2024.

²⁵ *Id.*

²⁶ See PA Order, issued on May 21, 2024.

1 particularly in the context of class action lawsuits. *See Rheinhardt v. Nissan North America, Inc.*,
2 92 Cal. App. 5th 1016, 1027 (“California has a strong public policy favoring the voluntary
3 settlement of disputes.”); *Osumi v. Sutton* 151 Cal.App.4th 1355, 1359 (2007) (it is “the strong
4 public policy of this state to encourage the voluntary settlement of litigation.”)

5 Class action settlement approval proceeds in two stages. First, at the preliminary approval
6 stage, the Court need only “make a preliminary determination on the fairness, reasonableness and
7 adequacy of the settlement terms and must direct the preparation of notice of the certification,
8 proposed settlement and date of the final fairness hearing.” Manual For Complex Litigation
9 (Fourth), § 21.633 at 321 (2004); *see also Cellphone Termination*, 186 Cal. App. 4th at 1389
10 (2010); *In re Vitamin Cases*, 107 Cal. App. 4th 820, 824-25 (2003). Second, is the Final Approval
11 stage whereby the Court’s duty is to finally determine whether the settlement is fair, adequate and
12 reasonable. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Cho v. Seagate Tech*
13 *Holdings, Inc.*, 177 Cal. App. 4th 734, 742-43 (2009). This Court preliminarily approved the
14 Settlement in a thorough opinion and now should grant final approval.

15 **A. The Standard for Final Approval Has Been Satisfied.**

16 Before a class action may be settled, the court must determine whether the settlement is
17 fair, adequate and reasonable. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996);
18 *Cho v. Seagate Tech Holdings, Inc.*, 177 Cal. App. 4th 734, 742-43 (2009). “In reviewing the
19 fairness of a class action settlement, ‘due regard should be given to what is otherwise a private
20 consensual agreement between the parties.’” *Cellphone Termination*, 186 Cal. App. 4th at 1389
21 (quoting *7-Eleven Owners*, 85 Cal. App. 4th at 1145). Fairness is presumed “where: (1) the
22 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
23 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
24 litigation; and (4) the percentage of objectors is small.” *Dunk*, 48 Cal. App. 4th at 1802; *Cellphone*
25 *Termination*, 186 Cal. App. 4th at 1389. In evaluating the reasonableness of a class action
26 settlement, the Court should consider factors including, but not limited to:

1 the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration
2 of further litigation, the risk of maintaining class action status through trial, the
3 amount offered in settlement, the extent of discovery completed and the stage of
4 the proceedings, the experience and views of counsel, the presence of a
governmental participant, and the reaction of the class members to the proposed
settlement.”

5 *Cellphone Termination*, 186 Cal. App. 4th at 1389 (citing to *Kullar v. Foot Locker Retail, Inc.*,
6 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801)). All of the
7 aforementioned factors have been addressed in detail in previous filings.²⁷ The Court also
8 thoroughly examined these factors in connection with the prior motion for Preliminary Approval
9 of the Settlement.²⁸ Plaintiffs’ counsel recount those factors below, all of which demonstrate that
10 the proposed Settlement is fair, reasonable, and adequate and should be finally approved.

11 **B. The Settlement Was Negotiated at Arm’s Length and Satisfies the Procedural**
12 **Component for Final Approval.**

13 Courts attach a presumption of fairness, in part, where “the settlement is reached through
14 arm's-length bargaining[.]” *Cellphone Termination*, 186 Cal. App. 4th at 1389 (internal citation
15 omitted). In this case, the parties attended a mediation session in December 2016, which was
16 unsuccessful. Following the second reversal of the denial of class certification, the parties reopened
17 the conversation of settlement and agreed to mediate before Judge Stephen J. Kane (Ret.) on May
18 24, 2023. After considerable guided discussion on aspects of the case, numerous offers and
19 counteroffers were exchanged. These negotiations and this settlement, reached after a mediator’s
20 proposal by Judge Kane (Ret.), evidence that the Settlement was reached at arm’s length. *See*
21 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52-53 (2008) (finding that the agreement reached
22 was the result of arm's-length bargaining between the parties as the parties “participated in two
23 formal mediation sessions with a highly respected former federal magistrate judge.”).

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27 ²⁷ See 11/14/2023 Stewart Decl.

28 ²⁸ See PA Order, issued on May 21, 2024.

1 **C. Counsel Conducted Sufficient Investigation and Discovery to Support the**
2 **Settlement.**

3 The Court also must be satisfied that “investigation and discovery are sufficient to allow
4 counsel and the [C]ourt to act intelligently” in deciding whether to approve a settlement. *Dunk*,
5 Cal. App. 4th at 1802; *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 53 (2008). As detailed
6 previously,²⁹ Plaintiffs’ Counsel devoted substantial time and resources towards extensive formal
7 and informal party, third party and expert discovery. This included: interviews of industry
8 participants, review and analysis of documents, numerous interrogatories and requests for
9 admission, and multiple depositions of the representative plaintiffs, defendants, third parties and
10 expert witnesses.³⁰ All aspects of the merits of the case and the parties’ competing legal and factual
11 contentions were thoroughly explored in demurrers, a motion for summary judgement filed by the
12 defendants, depositions and written discovery and extensive litigation of all issues related to class
13 certification, at the trial court level and in the course of multiple appeals.³¹ In sum, the parties were
14 fully informed of the factual and legal issues and in an ideal position to judge the risks of further
15 litigation and the merits of the proposed settlement.

16 **D. The Risk, Expense, Complexity, and Duration of the Case Support Final**
17 **Approval.**

18 In determining whether a class settlement is fair and reasonable, “[t]he most important
19 factor is strength of the case for plaintiffs on the merits, balanced against the amount offered in
20 settlement.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 789 (2009)
21 (internal citation omitted). The risk, expense, complexity and duration of the case, if further
22 litigated rather than settled, weigh in favor of approval of the settlement. While Plaintiffs were
23 confident of the underlying merit of their claims, they understand the numerous challenges they
24 needed to overcome to prevail in the case.

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27 ²⁹ See 11/14/2023 Stewart Decl.

28 ³⁰ *Id.* ¶¶ 5, 12-14, 16-17, 19.

³¹ *Id.* ¶¶ 10, 20-23.

1 The first challenge is class certification. Class certification was twice denied in the Superior
2 Court, and it is likely that a renewal of the motion would be opposed.³² Even if the renewed motion
3 were granted, Plaintiffs needed to anticipate an eventual motion to decertify the class and/or an
4 appeal of the grant of certification after trial.

5 Second, counsel recognizes that there is always the risk of an adverse outcome on the merits
6 and take that into consideration.³³ The defense raises defenses on the applicability and validity of
7 Plaintiffs' legal theories and claims as well as the manner in which Plaintiffs' experts have
8 calculated the proposed remedy. The case advanced untested theories on the interpretation of the
9 beer pricing statutes in a novel factual context.

10 Third, Plaintiffs' counsel must consider the range of potential recoveries if tried to a
11 successful conclusion. Counsel recognizes the risk that the court or jury may award a lesser sum.
12 As detailed in the Plaintiffs' motion for preliminary approval the amount achieved in settlement
13 relative to the damages claimed in the case compares very favorably to settlements achieved in
14 other class action settlements. The \$2.5 million constitutes 20% of the claimed damages under
15 one damages theory and 43% of the other.³⁴

16 Finally, there is the significant element of further delay.³⁵ If Plaintiffs' counsel litigated
17 these claims against Defendants to conclusion, it is reasonable to expect that the litigation and
18 inevitable appeals would add many more years to the nearly ten years for which this case has been
19 pending. With this Settlement, Class Members receive significant payments and Defendants, and
20 class members, can put this dispute behind them.

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25 ³² *Id.* ¶ 28.

26 ³³ *Id.*

27 ³⁴ See Plaintiffs' Supplemental Memorandum of Points and Authorities in Support of Plaintiffs'
28 Unopposed Motion for Preliminary Approval of Class Action Settlement at 9, dated April 18,
2024.

³⁵ 11/14/2023 Stewart Decl. ¶ 28

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