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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 **KARL BECK**, individually and on behalf of all
13 other similarly situated California residents,

14 Plaintiff,

15 v.

16 **POINT LOMA PATIENTS CONSUMER**
17 **COOPERATIVE CORPORATION**, A
18 California Corporation, **ADAM KNOPF**, an
19 Individual, **JUSTUS H. HENKES IV**, an
20 Individual, **419 CONSULTING INC.**, a
21 California Corporation, **GOLDEN STATE**
22 **GREENS LLC**, a California LLC, **FAR WEST**
23 **MANAGEMENT, LLC**, a California LLC,
24 **FAR WEST OPERATING, LLC**, a California
25 LLC, **FAR WEST STAFFING, LLC**, a
26 California LLC, and **DOES 1-50**,

27 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Tamara Parra, Deputy Clerk

Case No: 37-2017-00037524-CU-BT-CTL

CLASS ACTION

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

Date: January 4, 2019

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Ctrm: C-73

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1 **I. INTRODUCTION**

2 Plaintiff Karl Beck (“Plaintiff” or “Beck”) seeks preliminary approval of a class action
3 settlement with defendants Point Loma Patients Consumer Cooperative Corporation (the “PLPCC”),
4 419 Consulting Inc., Golden State Greens LLC, Far West Management, LLC, Far West Operating,
5 LLC, and Far West Staffing, LLC (collectively “Defendants”) that will provide significant patronage
6 distribution credits to dispensary members consistent with the objectives of the litigation and the
7 California Cooperative Corporations Code.

8 If approved, the Settlement¹ will create a **common fund of \$630,000 that can be redeemed**
9 **for free or discounted products at the PLPCC**, as well as pay for notice costs and any incentive
10 fee (if awarded) to Plaintiff Beck as Class Representative. *See* Declaration of William R. Restis ISO
11 Motion for Preliminary Approval (“Restis Decl”), Ex. 1 (the “Settlement Agreement”) at § 3. Class
12 members are not required to fill out any claim form; their “Patronage Distribution Credits” will
13 become automatically available upon final approval. The credits will be redeemable by the
14 Settlement Class for 18 months following final approval, after which they revert back to the
15 PLPCC’s general fund to be used “for the general welfare” of PLPCC members consistent with the
16 Corporations Code. Settlement Agreement, § 3-1; CORP. CODE § 12201. The proposed Settlement
17 also provides for payment of attorneys fees and reimbursement of litigation expenses up to \$200,000
18 which will be paid separately from the common fund as awarded by the Court. *Id.*, § 6-3.

19 Upon preliminary approval, Class Members will be sent *individual, direct* Short-Form Notice
20 of the Settlement, updated to address change of address information, to the physical or electronic
21 mail address on file with the PLPCC. Settlement Agreement, Ex. B; (Short-Form Notice). A more
22 detailed Long-Form Notice, as well as relevant pleadings and settlement documentation will be
23 posted on the settlement website www.PLPCCsettlement.com. *Id.*, Ex. A (Long-Form Notice). After
24 notice is disseminated, Class members will have a comfortable forty-five (45) days to opt-out or
25 otherwise object to the Settlement. Settlement Agreement, § 5-2.

26 The proposed Settlement is the result of serious, informed, non-collusive negotiations
27

28 ¹ Defined terms used herein are consistent with defined terms in the Settlement Agreement.

1 conducted over five months and brokered by the Honorable Joel Pressman (Ret.). It provides the
2 exact relief consistently sought by Plaintiff Beck on behalf of the Settlement Class – distribution of
3 profits back to PLPCC members as patronage distributions. *See* RoA # 1, Complaint ¶ 9-10. The
4 Settlement represents approximately 57% of the total potential recovery if Plaintiff were to certify a
5 class and prevail at trial, which represents an excellent recovery for the Settlement Class.

6 Accordingly, Plaintiff respectfully requests this Court grant preliminary approval of the
7 Settlement Agreement, conditionally certify the Class Members, appoint Plaintiff Beck as Class
8 Representative and William R. Restis of THE RESTIS LAW FIRM, P.C. as Class Counsel, approve the
9 parties' Notice plan, appoint the Notice Administrator, and the date and time of final approval by
10 the Court.

11 **II. INFORMATION BACKGROUND**

12 **A. The Litigation History**

13 Plaintiff Beck filed this class action complaint on October 6, 2017. RoA # 1. On November
14 16, 2017, Plaintiff filed a motion for appointment of an independent auditor, and for enforcement of
15 his pre-litigation demand to inspect the PLPCC's corporate records. RoA # 14. On December 8,
16 2017, Defendants demurred to Plaintiff's class action complaint. RoA # 20. After extensive briefing,
17 on January 19, 2018, the Court issued an order denying both motions, and allowing the case to
18 proceed. RoA # 45-46. Defendants' answered on February 8, 2018. RoA # 47.

19 By that time, Plaintiff had served class certification discovery, and discovery necessary to
20 conduct an audit of Defendants' finances to determine whether there were any cooperative profits
21 that should have been distributed to PLPCC member patrons. On February 15, 2018, Plaintiff filed
22 a motion to compel production of the names and addresses of PLPCC patrons to Plaintiff's counsel
23 after a notice and opt-out opportunity known as a "Belaire-West notice." *See* RoA # 15; *Belaire-*
24 *West Landscape, Inc. v. Sup. Ct.*, (2007) 149 Cal.App.4th 554. Defendant opposed, and the Court
25 granted Plaintiff's motion on March 23, 2018. RoA # 78 and 81. Defendant requested a stay of the
26 Court's order (RoA # 105), which was denied by the Court on April 17, 2018. RoA # 110.
27 Defendants' then filed an emergency writ with the Fourth District Court of Appeal, which Plaintiff
28

1 opposed. The writ was summarily denied on April 23, 2018. RoA # 123. After it appeared that
2 Defendant PLPCC did not comply with the Court's *Belaire-West* Order, Plaintiff filed a motion
3 requesting the PLPCC be found in contempt. RoA # 135. Defendant opposed (RoA # 133), and on
4 May 1, 2018, the Court found that the PLPCC's conduct did not rise to the level of contempt.

5 On March 26, 2018, Plaintiff filed a motion for judgment on the pleadings to Defendants'
6 affirmative defenses. RoA # 85. Defendant opposed (RoA # 124), and on May 4, 2018, the Court
7 granted Plaintiff's motion in part, striking several of Defendants' affirmative defenses and narrowing
8 the case. RoA # 138.

9 On April 4, 2018, Defendants filed a motion for protective order to Plaintiff's second set of
10 class certification discovery. On April 18, 2018, Plaintiff filed a motion to compel special
11 interrogatories identifying sources of Electronically Stored Information. RoA # 113. That same day,
12 Plaintiff filed a motion to compel Plaintiff's first set of document demands. RoA # 119. After
13 extensive motion practice, the Court ordered Defendants to identify sources of ESI (RoA # 151, 156,
14 and 158), but denied Plaintiff's motion to compel production of documents without prejudice. *Id.*
15 Based on this ruling, Plaintiff withdrew without prejudice his Request for Production (Set Two)
16 which was the subject of Defendants' motion for protective order. RoA # 154. The Court issued its
17 order May 24, 2018. RoA # 163.

18 On April 23, 2018, Defendants filed their amended answer. RoA # 165. In the meantime,
19 Plaintiff subpoenaed the PLPCC's point of sale software vendor 420Soft, seeking transaction print-
20 outs of PLPCC's sales receipts. Defendant PLPCC filed a motion to quash the subpoena on July 19,
21 2018. RoA # 169. On July 27, 2018, Defendants filed a motion for judgment on the pleadings to
22 Plaintiff's theory of liability. RoA # 177. On August 7, 2018, the parties appeared *ex parte* to inform
23 the Court that they had reached a settlement in principle, and requested to vacate the hearings on
24 pending motions. RoA # 183 and 184. In response, the Court vacated all pending motion hearing
25 dates. RoA # 181-182.

26 **B. Settlement Negotiation History**

27 While the case was actively proceeding, the parties engaged in multiple rounds of settlement
28

1 negotiations. On May 17, 2018, the parties engaged in mediation before Judge Pressman, formerly
2 of the San Diego Superior Court. Restis Decl., ¶¶ 3-5. During the May 17th mediation, the parties
3 discussed and agreed on a general structure for a proposed class settlement that formed the basis for
4 the Settlement now proposed to the Court. *Id.*, ¶ 3. After the parties generally agreed on the structure
5 of a class settlement, they began to discuss the value of a common fund. *Id.*, ¶ 3.

6 Defendants provided financial statements to Judge Pressman, which the Judge represented
7 he reviewed. *Id.*, ¶ 4. Defendants communicated (through Judge Pressman) aggregated numbers
8 from their financial statements for Plaintiff's consideration. *Id.*, ¶ 4. Judge Pressman represented to
9 proposed Class Counsel that based on the documentation he had seen, and based on his
10 understanding of *alter ego* principles, he believed proving unlawful profits would be extremely
11 difficult. *Id.*, ¶ 5. Based on Judge Pressman's review of Defendants' financial statements, he
12 recommended that Plaintiff accept a class settlement that was approximately 38% less than the
13 current proposed Settlement. Despite these efforts, the parties were unable to resolve the litigation.
14 *Id.*, ¶ 5.

15 On July 30, 2018, the parties conducted a second mediation with Judge Pressman. *Id.*, ¶ 6.
16 During that mediation, based on the recommendation of Judge Pressman, the parties executed a
17 settlement term sheet containing the major elements of the proposed Settlement. *Id.*. Although
18 Plaintiff had not yet viewed Defendants' financial statements, they had been disclosed to, and
19 reviewed by Judge Pressman who recommended the Settlement (and communicated in part to
20 Plaintiff). *Id.*.

21 Accordingly, the Settlement terms were expressly conditioned on Plaintiff and proposed
22 Class Counsel's ability to conduct confirmatory discovery to ensure that the Settlement terms are
23 "fair, reasonable and adequate" as claimed by Defendants and Judge Pressman. *Id.*, ¶ 7. The term
24 sheet included a list of materials recommended and approved by Judge Pressman, that proposed
25 Class Counsel could promptly review to either substantiate the claims made by Defendants during
26 mediation, or withdraw from the Settlement. *Id.*, ¶ 7.

27 Prior to signing Settlement Agreement, on September 24, 2018 proposed Class Counsel met
28

1 with counsel for defendants Matthew Dart and Tamara Leetham, as well as defendant Henkes
2 (telephonically) at the offices of Austin Legal Group. During this meeting, which lasted
3 approximately four hours, proposed Class Counsel was provided unrestricted access to financial
4 statements and information related to all Defendants. Mr. Henkes (the accountant for Defendants)
5 answered every inquiry of proposed Class Counsel concerning the income, expenses, and balance
6 sheet of the Defendants. Mr. Henkes' candid disclosure went far beyond what the parties agreed to
7 (at the recommendation of Judge Pressman) at the July 30, 2018 mediation. *Id.*, ¶ 9.

8 During the months of August through November 2018, the parties negotiated the finer points
9 of the Settlement, as well as issues relating to Notice, and settlement administration. The parties
10 executed the final Settlement Agreement on November 26, 2018. *Id.*, at 13.

11 C. Key Terms of the Settlement Agreement

12 As detailed in the proposed Class Notices submitted as Exhibits A and B to the Settlement
13 Agreement, all the Settlement Class will be entitled to the following relief:

14 Defendants will create a Settlement Fund of \$630,000, for the payment of: Patronage
15 Distribution Credits to Settlement Class Members (\$600,480 estimate); Administration Costs
16 (\$25,000 estimate); and an Incentive Award for Plaintiff Beck as Class Representative (\$5,000
17 estimate). Settlement Agreement, § 3-1. Defendants shall pay Administration Costs, and any
18 Incentive Award from the Settlement Fund. Amounts remaining in the Settlement Fund after
19 payment of Administration Costs, and any Incentive Award shall be credited as Patronage
20 Distribution Credits to Settlement Class Members *pro rata* based on their patronage in accordance
21 with California Corporations Code Sections 12201.5(b) and 12243(a)(2).² *Id.* “Patronage
22 Distribution Credits” means the United States dollar value of credits for free or discounted product
23

24 ² CAL CORP. CODE § 12201.5(b) (“Net earnings declared as patronage distributions with respect to a
25 period of time, and paid to a creditor or member, shall be apportioned among the members in
26 accordance with the ratio that each member's patronage during the period bears to total patronage
27 by all members during the period.”); *also* CAL. CORP. CODE 12243(a)(2) (“‘Patronage’ of a patron
28 is measured by the volume or value, or both, of a patron's purchases of products from, and use
of services furnished by, the corporation, and by products and services provided by the patron to the
corporation for marketing.”)

1 from the PLPCC. *Id.* § 2-22. “PLPCC” means defendant Point Loma Patients Consumer Cooperative
2 Corporation, and any successor or related entities thereto operating a marijuana dispensary at 3452
3 Hancock Street, San Diego, CA 92110. *Id.* § 2-24.

4 Patronage Distribution Credits shall be available for Settlement Class Members to redeem
5 for free or discounted products (if a Settlement Class Member’s Patronage Distribution Credits are
6 insufficient to fully purchase a product) from the PLPCC for 18 months from the Patronage
7 Distribution Date. “Patronage Distribution Date” means the ten (10) days after the Effective Date,
8 which will be disclosed on the Settlement Website and on the PLPCC’s website
9 www.goldenstategreens.com. Patronage Distribution Credits not redeemed by Settlement Class
10 Members within 18 months shall revert back to the general fund of the PLPCC to be used for the
11 “general welfare” of PLPCC patrons pursuant to California Corporations Code Section 12201.³
12 Patronage Distribution Credits to Settlement Class Members shall be non-transferrable and not
13 redeemable for cash. *Id.*, §§ 3-1(a)-(e).

14 In exchange for these benefits, the Settlement Class will release Defendants, and its related
15 entities, from the following claims:

16 On the Effective Date, if it occurs, the Settlement Class Members shall be deemed
17 to have, and by operation of this Settlement Agreement shall have fully, finally and
18 forever released, relinquished and discharged the Released Parties from any and all
of the Class Released Claims.

19 “Class Released Claims” means any and all actions, causes of action, claims,
20 demands, liabilities, obligations, fees, costs, sanctions, proceedings, and/or rights
21 of any nature and description whatsoever, including, without limitation, violations
22 of any state or federal statutes, or rules or regulations, or principles of common law,
23 whether liquidated or unliquidated, known or unknown, in law or in equity, whether
24 or not concealed or hidden, by Plaintiff, members of the Settlement Class, or any
25 of them (on their own behalf and/or on behalf of the proposed class or the general
public) against Defendants, or any other Released Parties, through the date the Final
Approval Order is entered, and that are based on, or arise out of, the facts,
transactions, events, occurrences, acts, disclosures, advertisements, omissions, or

26 ³ See CORP. CODE § 12201 (a cooperative corporation “shall conduct its business primarily for the
27 mutual benefit of its members as patrons of the corporation. The earnings, savings, or benefits of the
28 corporation shall be used for the general welfare of the members or shall be proportionately and
equitably distributed to some or all of its members or its patrons, based upon their patronage ... in
the form of cash, property, ... capital credits, ... or services.”) (emphasis added)

1 failure to act concerning the facts alleged in the Action. Notwithstanding the above,
2 “Class Released Claims” shall exclude any claims for personal injury on behalf of
the Settlement Class.

3 “Released Parties” means Defendants to this Action and each of their respective
4 current and former officers, directors, employees, stockholders, investors, owners,
5 agents, representatives, attorneys, accountants, lenders, underwriters, insurers,
administrators, successors, subsidiaries, assigns, affiliates, joint-ventures, partners,
6 members (but not “associate members”), divisions, predecessors.

7 *Id.*, at §§ 7-2, 2-7, and 2-26. Plaintiff Beck will provide a broader general release to Defendants and
8 related entities. *Id.*, at § 7-3.

9 **D. Proposed Class Settlement Notice**

10 Within seven (7) days following preliminary approval, the PLPCC will provide the notice
11 administrator with contact information for the Class Members. Within twenty-one (21) days, Class
12 Members will be individually sent Short-Form Notice to their physical or electronic mail address on
13 file with the PLPCC. Settlement Agreement, § 4-1-a.; Ex. B. The short form notice will clearly
14 reference the settlement website www.PLPCCsettlement.com, where Class Members can view the
15 long-form notice, Settlement Agreement, pleadings, and the Court’s preliminary approval order.
16 Declaration of Joseph M. Fisher in Support of Plaintiff’s Motion for Preliminary Approval of Class
17 Action Settlement (“Fisher Decl.”), ¶ 4.

18 The Administrator will provide Short-Form notice *via email* to Class Members whose email
19 address is available. Fisher Decl., ¶ 6. The emailed Short-Form Notice will contain a software
20 identifier that will allow the Administrator to determine if the email is opened by the recipient. *Id.*,
21 ¶ 7. For Class Members who do not open their emailed Short-Form Notice within 5 days, the
22 Administrator will mail the Short-Form Notice to such Class Members’ physical address. *Id.*, ¶ 7.
23 The Administrator shall utilize the national change of address database to update the mailing list of
24 Class Members prior to sending Short-Form Notice to any Class Members that will be contacted by
25 mail, and shall perform a single Skip Trace to conduct an address update for any Short-Form Notice
26 returned to the Administrator using an industry accepted source such as Accurint. Settlement
27 Agreement, § 4-1-a. In the event that a mailed Short-Form Notice is returned as undeliverable with
28 a forwarding address, the Administrator shall re-mail the Short-Form Notice to the indicated

1 forwarding address within 5 business days from the date of the receipt of the forwarding address.
2 The Administrator shall have no obligation to re-mail any Class Notice returned as undeliverable
3 after 30 days from the date on which it was originally mailed. *Id.*

4 The parties' proposed Short-Form and Long-Form Notice are modeled after and consistent
5 with "The Federal Judicial Center's 'Illustrative' Forms of Class Action Notices." See
6 <http://www.fjc.gov/public/home.nsf>.

7 **III. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE,**
8 **SATISFYING THE CRITERIA FOR PRELIMINARY APPROVAL**

9 **A. Applicable Legal Standard**

10 Pre-trial settlement of complex class actions is a judicially favored remedy. *Officers for*
11 *Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and
12 settlement are the preferred means of dispute resolution."). California Rules of Court, rule 3.769 sets
13 forth the procedure to be followed when a class action is provisionally
14 settled *prior* to class certification. In that case, certification and settlement approval occur
15 simultaneously.

16 First, a party to the settlement moves for "preliminary approval of the settlement."
17 (Cal. Rules of Court, rule 3.769(c).) After the hearing, the court makes an order
18 approving or denying "certification of a provisional settlement class." (Cal. Rules of
19 Court, rule 3.769(d).) If the court grants preliminary approval, it must set a final
20 approval hearing and provide for notice to be given to the class. (Cal. Rules of Court,
21 rule 3.769(e).) "The notice must contain an explanation of the proposed settlement and
22 procedures for class members to follow in filing written objections to it and in
23 arranging to appear at the settlement hearing and state any objections to the
24 proposed settlement." (Cal. Rules of Court, rule 3.769(f).) At the final approval
25 hearing, "the court must conduct an inquiry into the fairness of the
26 proposed settlement." (Cal. Rules of Court, rule 3.769(g).) If the court approves
27 the settlement agreement, it enters judgment accordingly. (Cal. Rules of Court, rule
28 3.769(h).)

Luckey v. Superior Court (2014) 228 Cal.App.4th 81, 93.

While the Rules of Court are silent on a precise legal standard that should be adopted at
preliminary approval, the Court should generally examine the fairness of the settlement terms and
the adequacy of class notice. *Merch. v. OfficeTeam* (Cal. Ct. App. Mar. 21, 2013, No. B241888),

1 2013 WL 1153648, at *7 (unpublished) (citing the Los Angeles Superior Guidelines for Motions for
2 Preliminary and Final Approval of Class Settlement). In this manner, the Court’s process for
3 preliminary approval mirrors the standards imposed by federal counterparts:

4 “[The] preliminary determination establishes an initial presumption of fairness
5 [Citation]. As noted in the *Manual for Complex Litigation*, Second, “[i]f the proposed
6 settlement appears to be the product of serious, informed, non-collusive negotiations,
7 has no obvious deficiencies, does not improperly grant preferential treatment to class
8 representatives or segments of the class, and falls within the range of possible
9 approval, then the court should direct that the notice be given to the class members of
a formal fairness hearing” *Manual for Complex Litigation*, Second § 30.44
(1985). In addition, “[t]he court may find that the settlement proposal contains some
merit, is within the range of reasonableness required for a settlement offer, or is
presumptively valid.” *Newberg on Class Actions* § 11.25 (1992).

10 *In re Tableware Antitrust Litig.* 484 F.Supp.2d 1078, 1079–80 (N.D. Cal. 2007); *Dunk v. Ford Motor*
11 *Co.* (1996) 48 Cal.App.4th 1794, 1802 as modified (Sept. 30, 1996) (noting that “a presumption of
12 fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation
13 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
14 experienced in similar litigation... .”); *see also Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821
15 (California courts examine the Federal Rules of Civil Procedure for guidance in interpreting state
16 class action procedure in absence of controlling state jurisprudence).

17 **B. The Proposed Settlement is Superior to Other Available Methods for Fairly and**
18 **Efficiently Adjudicating the Controversy**

19 1. The Settlement was Reached After Contentious and Informed Arms’ Length
20 Negotiations

21 “A presumption of correctness is said to attach to a class settlement reached in arm’s-length
22 negotiations between experienced capable counsel after meaningful discovery.” *In re Heritage Bond*
23 *Litig.*, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005); *Dunk*, 48 Cal.App.4th at 1802. Moreover,
24 if the terms of the settlement are fair, courts generally assume the negotiations were proper. *See In*
re GM Pick-up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 785-86 (3d Cir. 1995).

25 In the instant case, the Settlement was negotiated while the parties were simultaneously
26 engaged in aggressive litigation. Indeed, the parties’ settlement discussions were conducted amidst
27 several discovery motions, and a motion for judgment on the pleadings by Defendants. *See RoA ##*
28

1 113, 119, 151, 156, 158, 160, 169, 177. Plaintiff and proposed Class Counsel were granted
2 unrestricted access to the books and records of the Defendants to confirm that the Settlement is fair,
3 reasonable, and adequate to absent Class Members. Thus, the parties neither rushed to settlement
4 nor suffered from any informational asymmetries that would render the Settlement inherently
5 suspect. *See Dunk*, 48 Cal.App.4th at 1802 (holding that the fact that the litigation was several years
6 old, and involved extensive discovery and pretrial litigation when it settled, supported a finding of
7 fairness).

8 The parties also engaged a respected former Judge experienced in class action litigation to
9 help broker a settlement. Restis Decl., ¶¶ 3-7. The involvement of Judge Pressman, as well as the
10 lengthy and adversarial nature of the settlement negotiations, are all indicia of the “contentious”
11 nature of the underlying negotiations. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
12 224, 245, *rev'd on other grounds by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260
13 (approving of a settlement that was product of extensive adversarial negotiations, with retired judges
14 serving as neutral mediators, and followed by months of discovery).

15 2. The Proposed Settlement is Fair and Reasonable

16 Courts strongly favor and encourage settlements, particularly in class actions and other
17 complex matters where the inherent costs, delays, and risk of continued litigation might otherwise
18 overwhelm the potential benefit a class hopes to obtain. *See Class of Plaintiffs v. City of Seattle* (9th
19 Cir. 1992) 955 F.2d 1268, 1276 (noting that “strong judicial policy...favors settlements, particularly
20 where complex class action is concerned.”). Each class settlement must be reviewed and approved
21 by the trial court. *See Cal. R. Ct. 3.769(a)*; *see also Dunk*, 48 Cal.App.4th at 1800-01.

22 In granting final approval, California courts consider a number of factors including *inter alia*:
23 (1) the value of the settlement; (2) the inherent risk of continued litigation; (3) the extent of discovery
24 completed and the status of the proceedings when settlement is reached; and (4) the complexity,
25 expense, and likely duration of the litigation in the absence of a settlement. *See Wershba*, 91
26 Cal.App.4th at 244-45; *Dunk*, 48 Cal.App.4th at 1801. “Ultimately, the court's determination is
27 simply an amalgam of delicate balancing, gross approximations and rough justice.” *Cho v. Seagate*
28

1 *Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 743.

2 *i. The Value of the Settlement*

3 Pursuant to the proposed Settlement Agreement, Defendants will pay up to \$830,000 to settle
4 class claims. As confirmed by proposed Class Counsel in confirmatory discovery, the gross
5 settlement benefit is approximately 57% of the total amount Class Members might recover if the
6 class were certified, and Plaintiff's theories of liability were to prevail at trial. Restis Decl., ¶ 11.
7 Therefore, this compromise is well within the boundaries of reasonableness. *See In re Newbridge*
8 *Networks Sec. Litig.*, 1998 WL 765724, at *2 (D.D.C. Oct. 23, 1998) ("Courts have not identified a
9 precise numerical range within which a settlement must fall in order to be deemed reasonable; but
10 an agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing
11 further expenditures and delays and eliminating the risk that no recovery at all will be won, seems
12 to be within the targeted range of reasonableness.")

13 *ii. The Settlement is Fair for All Claimants*

14 The Settlement Agreement provides the same relief to all members of the Settlement Class,
15 including the Class Representative. Settlement Agreement § 3. To ensure that all Settlement Class
16 members receive equal treatment, Patronage Distribution Credits will be credited to Settlement Class
17 members *pro rata* based on their patronage. *Id.*, § 3-1-b; *cf.* CAL. CORP. CODE § 12201.5 ("patronage
18 distributions ... shall be apportioned among the members in accordance with the ratio that each
19 member's patronage during the period bears to total patronage by all members during the period.")
20 Accordingly, the Settlement Agreement does not give preferential treatment to a subset of the class.

21 The Settlement Agreement, however, does grant Karl Beck as Class Representative the
22 ability to apply to the Court for an incentive award. *Id.*, § 3-1-a

23 In this instance, the Settlement Agreement allows Plaintiff Beck to petition the Court for an
24 incentive award of up to \$5,000. Given the sensitive and legally questionable subject matter of the
25 litigation (medical marijuana), this is a sensible amount for Plaintiff Beck to put his name on this
26 litigation for the benefit of absent Class members. *Roe v. Frito-Lay, Inc.*, 2017 WL 1315626, at *8
27 (N.D. Cal. Apr. 7, 2017) ("[A] \$5,000 incentive award is "presumptively reasonable" in the Ninth
28

1 Circuit.”); *see also In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394, *as*
2 *modified* (July 27, 2010) (approving a \$10,000 incentive award).

3 The proposed Class Representative’s motion for attorneys’ fees and costs, and petition for
4 incentive award, will be posted on the settlement website for class member review prior to final
5 approval. Settlement Agreement, § 4-1-b. Accordingly, Class Members will have an opportunity
6 to review and object to any incentive award sought by Plaintiff Beck.

7 *iii. Extent of Discovery Completed*

8 During the September 24, 2018 meeting, proposed Class Counsel reviewed both consolidated
9 and deconstructed financial statements covering the entire Class Period. Restis Decl. ¶ 10. The
10 information Proposed Class Counsel reviewed included the PLPCC’s income statements, balance
11 sheets, and cash flow statements. *Id.*, ¶ 10. Proposed Class Counsel also reviewed the sales reports
12 generated from the PLPCC’s 420soft point-of-sale software that was the subject of Plaintiff’s June
13 28, 2018 subpoena. *Id.*, ¶ 10. Proposed Class Counsel compared the expenses from the PLPCC’s
14 profit and loss statements to the income of the other defendants, as well as expenses incurred by the
15 other Defendants. During this review, proposed Class Counsel learned that the Settlement’s
16 consideration represents approximately **57%** the total potentially recoverable funds if Plaintiff were
17 to successfully certify a class and prevail at trial. *Id.*, ¶ 11. As a result, Plaintiff and proposed Class
18 Counsel were well informed, and discharged their fiduciary duty to ensure the proposed Settlement
19 is “fair, reasonable, and adequate.”

20 *iv. The risk, expense, complexity, and likely duration of further litigation*
21 *favors settlement*

22 “It can be difficult to ascertain with precision the likelihood of success at trial. The Court
23 cannot and need not determine the merits of the contested facts and legal issues at this stage, and to
24 the extent courts assess this factor, it is to determine whether the decision to settle is a good value
25 for a relatively weak case or a sell-out of an extraordinary strong case.” *Misra v. Decision One*
26 *Mortg., Co.*, 2009 WL 4581276 (C.D. Cal. Apr. 13, 2009), at *7.

27 Plaintiff is confident about the strength of his claims. Nonetheless, Plaintiff recognizes that
28 Defendants had factual and legal defenses that, if successful, would potentially defeat or

1 substantially impair the value of the lawsuit. For example, Plaintiff could potentially be unable to
2 establish that he and other PLPCC patrons are cooperative “members” entitled to patronage
3 distributions at all. *See* RoA # 20, at p. 8 (arguing that Plaintiff is a mere “associate member” under
4 the PLPCC bylaws and is explicitly not entitled to patronage distributions) citing CAL. CORP. CODE
5 § 12454 (“Nothing in this chapter prohibits additional restrictions ... patronage distributions, by
6 provision in a corporation's articles or bylaws or agreement entered into by the corporation.”) and
7 CAL. CORP. CODE § 12420(a) (“...a corporation may issue memberships having different rights,
8 privileges, preferences, restrictions, or conditions, as provided in its articles or bylaws.”)

9 In addition, Plaintiff may not be able to “pierce the corporate veil” between the PLPCC and
10 the other corporate defendants with which Plaintiff and other PLPCC patrons lack privity. *Id.*, at p
11 6 (arguing that Plaintiff cannot establish alter ego liability against defendants other than the PLPCC).
12 And at the time of settlement, the Court had denied Plaintiff the detailed discovery necessary to
13 conduct an independent audit of Defendants’ finances, and prove Plaintiff’s case. *See* RoA ## 158,
14 163 (denying Plaintiff’s motions to compel inspection requests intended to reconstruct Defendants’
15 financial statements). Finally, although Plaintiff is confident that this case is readily amenable to
16 certification, class certification is always a major risk.

17 Indeed, potential appeals aside, litigating a complex case through trial is inherently perilous
18 regardless of the strengths of merits of the claims:

19 [N]othing is assured when litigating against [corporations] with vast litigative
20 resources, particular in such complex litigation as this, which would strain the
21 cognitive capacities of any jury. Defense judgments were hardly beyond the realm
of possibility. Accordingly, this factor weighs in favor of preliminary approval.

22 *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *rev'd on other grounds by*
Hernandez, 4 Cal.5th 260.

23 v. *Complexity, Expense, and Likely Duration of Litigation*

24 Continuing to litigate this action would require continued and extensive resources coupled
25 with significant Court time to proceed through trial, post-trial motions and likely appeal. “Avoiding
26 such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement
27 rather than further protracted and uncertain litigation.” *Nat’l Rural Telecomms. Coop v. DirecTV*,

1 221 F.R.D. 523, 527 (C.D. Cal. 2004). Thus, “unless the settlement is clearly inadequate, its
2 acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.”
3 *Id.* at 526.

4 **C. The Proposed Class Members Satisfy The Requirement for Provisional**
5 **Certification**

6 Section 382 of the Code of Civil Procedure authorizes class certification when ‘the question
7 is one of a common or general interest, of many persons, or when the parties are numerous, and it is
8 impracticable to bring them all before the court.’ The burden is on the party seeking certification to
9 establish the existence of both an ascertainable class and a well-defined community of interest
10 among the class members. *Global Minerals & Metals Corp. v. Superior Court* (2003) 113
11 Cal.App.4th 836, 848 “The community of interest requirement [for class certification] embodies
12 three factors: (1) predominant common questions of law or fact; (2) class representatives with claims
13 or defenses typical of the class; and (3) class representatives who can adequately represent
14 the class.” *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 92 (same).

15 Because the Court is evaluating certification only in the context of settlement, its evaluation
16 of the certification issues is somewhat different from its consideration of certification issues when
17 the class action has not yet settled. *Luckey*, 228 Cal. App. 4th at 93. In some ways, the court's review
18 of certification of a settlement-only class is lessened. as no trial is anticipated in a settlement-
19 only class case. *Id.* at 73-74. However, other certification issues, “those designed to protect
20 absentees by blocking unwarranted or overbroad class definitions” require heightened scrutiny in
21 the settlement-only class context “for a court asked to certify a settlement class will lack the
22 opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they
23 unfold.” *Id.* citing *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620.

24 Here, the requirements for provisional certification pursuant to California Code of Civil
25 Procedure § 382 and California Rule of Court 3.769(d) are easily met. First, the 37,530 class
26 members are so numerous that joinder of all members is impracticable. *See* Declaration of Adam
27 Knopf (“Knopf Decl.”), at ¶ 5.

1 There are questions of law and fact common to the Class Members, such as: (a) whether
2 PLPCC patrons are “members” entitled to patronage distributions, or mere “associate members”
3 under the bylaws with no right to patronage distributions; (b) whether Plaintiff and Class Members
4 are entitled to “pierce the corporate veil” under an alter ego theory, (c) whether Defendants
5 collectively generated any profit that should have been distributed as patronage distributions; (c) the
6 proper calculation of patronage distributions under the Corporations Code. *See Sav-On Drug Stores,*
7 *Inc. v. Superior Court*, (2004) 34 Cal.4th 319, 341, 17 Cal. Rptr. 3d 906, 924, 96 P.3d 194, 210
8 (“common issues may predominate even if each member of the class must prove his separate claim
9 to a portion of any recovery by the class”)

10 In addition, the proposed Class Representative’s claims are typical of those of Class
11 Members because he is a member of the Class. Mr. Beck is an “associate member” patron of the
12 PLPCC, who purchased product there during the Class Period. *See Complaint*, RoA # 1, at ¶¶ 13-
13 18; *Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1509 (“The test of typicality is
14 whether other members have the same or similar injury, whether the action is based on conduct
15 which is not unique to the named plaintiffs, and whether other class members have been injured by
16 the same course of conduct.”)

17 Finally, the Class Representative and Class Counsel have, and will continue to adequately
18 represent Class Members. “The adequacy inquiry serves to uncover conflicts of interest between
19 named parties and the class they seek to represent.” *Johnson v. GlaxoSmithKline, Inc.* (2008) 166
20 Cal.App.4th 1497, 1509. The “primary criterion for determining whether a class representative has
21 adequately represented a class is whether the representative, through qualified counsel, ‘vigorously
22 and tenaciously protected the interests of the class.’” *Simons v. Horowitz* (1984) 151 Cal.App.3d
23 834, 846.

24 As shown in Section II-A above describing the litigation history herein, the proposed Class
25 Representative and Class Counsel have vigorously represented the interests of Class Members at
26 every turn. Class Counsel is an experienced class action litigator (Restis Decl., Ex. 2), who has
27
28

1 negotiated an excellent Settlement that satisfies the primary objectives of the litigation. For this
2 reason, the Class Members should be provisionally certified.

3 **D. The Proposed Form of Class Notice and Notice Plan Will Apprise the Class**
4 **Members of the Terms of the Proposed Settlement and Class Members Rights**

5 Assuming the Court's *prima facie* review determines the Settlement is fair and adequate, it
6 should order that notice be sent to the class. MANUAL FOR COMPLEX LITIGATION (FOURTH), Federal
7 Judicial Center (2004), § 21.632 at 321. Pursuant to California Rules of Court, rule 3.769(f) "[t]he
8 notice must contain an explanation of the proposed settlement and procedures for class members to
9 follow in filing written objections to it and in arranging to appear at the settlement hearing and state
10 any objections to the proposed settlement."

11 Here, Class Members are *required* to provide their contact information to the PLPCC upon
12 their initial visit. Knopf Decl., at ¶¶ 3-4. This contact information will be updating using change-of
13 address databases, and re-mailed if returned undelivered. Settlement Agreement § 4-1-a. The Short-
14 Form Notice will direct Class Members to the Settlement Website, which contains a more detailed
15 Long-Form Notice in plain English, the Settlement Agreement, court pleadings, settlement
16 documentation, the Preliminary Approval Order, proposed Class Counsel's Fee and Cost
17 Application, and important dates and deadlines. Settlement Agreement, § 4-1-b. The Notices were
18 drafted using exemplar notices provided by the Federal Judicial Center, Judges' Class Action Notice
19 and Claims Process Checklist.⁴

20 In addition, the PLPCC's website www.goldenstategreens.com will contain a link to the
21 Settlement Website. After notice is circulated, Class members will have a comfortable forty-five
22 (45) days to opt-out or otherwise object to the Settlement. This proposed individual direct notice
23 plan is extremely robust, and constitutes the "best notice practicable under the circumstances."
24 *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 (best practicable notice is
25 that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the
26 pendency of the action and afford them an opportunity to present their objections.")

27
28 ⁴ See <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction>

E. Proposed Timeline for Events Should be Adopted

Event	Date
Preliminary Approval Granted	Day 1
Class Member Contact Information Provided to Settlement Administrator	On or before Day 7
Short-Form Notice Disseminated and Settlement Website Launched	On or before Day 21
Class Counsel to File Motion for Attorney's Fees and Costs and Incentive Award	Day 21
Objection and Exclusion Deadline	Day 66
Notice Administrator Files Declaration of Compliance and Exclusion Requests	Day 78
Plaintiffs to File Motion for Final Approval and Response to Objectors	Day 85
Final Approval Hearing	Day 99

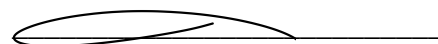
IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this Court grant preliminary approval of the Settlement Agreement, conditionally certify the Class Members, appoint Plaintiff Beck as Class Representative and William R. Restis of The Restis Law Firm, P.C. as Class Counsel, approve the parties' Notice plan, appoint the Notice Administrator, and the date and time of final approval by the Court.

Respectfully submitted,

DATED: December 5, 2018

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