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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

02/19/2019 at 12:00:00 AM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

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

CLASS ACTION

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

Date: March 15, 2019

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Ctrl: C-73

TABLE OF CONTENTS

I. INTRODUCTION 1

II. INFORMATION BACKGROUND 2

 A. The Litigation History..... 2

 B. Settlement Negotiation History..... 4

 C. Key Terms of the Settlement Agreement..... 6

 D. Proposed Class Settlement Notice 7

III. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE,
SATISFYING THE CRITERIA FOR PRELIMINARY APPROVAL..... 9

 A. Applicable Legal Standard..... 9

 B. The Proposed Settlement is Superior to Other Available Methods for Fairly and
Efficiently Adjudicating the Controversy..... 10

 1. The Settlement was Reached After Contentious and Informed Arms’ Length
Negotiations 10

 2. The Proposed Settlement is Fair and Reasonable 11

 C. The Proposed Class Members Satisfy The Requirement for Provisional
Certification 15

 D. The Proposed Form of Class Notice and Notice Plan Will Apprise the Class
Members of the Terms of the Proposed Settlement and Class Members Rights..... 17

 E. Proposed Timeline for Events Should be Adopted..... 17

IV. CONCLUSION..... 18

TABLE OF AUTHORITIES

Cases

Amchem Products, Inc. v. Windsor,
(1997) 521 U.S. 591.....15

Belaire-West Landscape, Inc. v. Sup. Ct.,
(2007) 149 Cal.App.4th 554.....3

Cho v. Seagate Tech. Holdings, Inc.,
(2009) 177 Cal.App.4th 734... ..11

Class of Plaintiffs v. City of Seattle,
(9th Cir. 1992) 955 F.2d 1268.....11

Dunk v. Ford Motor Co.,
(1996) 48 Cal.App.4th 1794... ..10, 11

Global Minerals & Metals Corp. v. Superior Court,
(2003) 113 Cal.App.4th 836.....15

Hernandez v. Restoration Hardware, Inc.,
(2018) 4 Cal.5th 260... ..11, 14

In re Cellphone Fee Termination Cases,
(2010) 186 Cal.App.4th 1380.....12

In re GM Pick-up Truck Fuel Tank Prods. Liab. Litig.,
55 F.3d 768 (3d Cir. 1995)10

In re Heritage Bond Litig.,
2005 WL 1594403 (C.D. Cal. June 10, 2005).....10

In re Newbridge Networks Sec. Litig., ,
1998 WL 765724 (D.D.C. Oct. 23, 1998)11

In re Tableware Antitrust Litig.,
484 F.Supp.2d 1078 (N.D. Cal. 2007)10

Johnson v. GlaxoSmithKline, Inc.,
(2008) 166 Cal.App.4th 1497.....16

Luckey v. Superior Court,
(2014) 228 Cal.App.4th 81.....9, 15

Merch. v. OfficeTeam,
(Cal. Ct. App. Mar. 21, 2013), 2013 WL 1153648.....9

Misra v. Decision One Mortg., Co.,
2009 WL 4581276 (C.D. Cal. Apr. 13, 2009).....13

Mullane v. Central Hanover Bank & Trust Co.,
(1950) 339 U.S. 306.....17

1	<i>Nat'l Rural Telecomms. Coop v. DirecTV,</i>	
	221 F.R.D. 523, 527 (C.D. Cal. 2004).....	14
2	<i>Officers for Justice v. Civil Serv. Comm'n,</i>	
3	(9th Cir. 1982) 688 F.2d 615.....	9
4	<i>Rebney v. Wells Fargo Bank,</i>	
	(1990) 220 Cal.App.3d 1117	14
5	<i>Roe v. Frito-Lay, Inc.,</i>	
6	2017 WL 1315626 (N.D. Cal. Apr. 7, 2017)....	12
7	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
	(2004) 34 Cal. 4th 319.....	16
8	<i>Simons v. Horowitz,</i>	
9	(1984) 151 Cal.App.3d 834.....	16
10	<i>Vasquez v. Superior Court,</i>	
	(1971) 4 Cal.3d 800.....	10
11	<i>Wershba v. Apple Computer, Inc.,</i>	
12	(2001) 91 Cal.App.4th 224.....	11
13	<u>Statutes</u>	
14	CAL RULES OF COURT § 3.769	9, 11, 15, 16
15	<u>Statutes</u>	
16	CAL. CORP. CODE § 12201.5	6, 12
17	CAL. CORP. CODE §12243	6
18	CAL. CORP. CODE §12420	14
19	CAL. CORP. CODE 12454	13
20	<u>Statutes</u>	
21	CAL. CODE CIV. PROC. § 382	15
22	<u>Other Authorities</u>	
23	Manual for Complex Litig.	9,16
24	Newburg on Class Actions.....	10
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 On December 5, 2018, Plaintiff Karl Beck (“Plaintiff” or “Beck”) and defendants Point Loma
3 Patients Consumer Cooperative Corporation (the “PLPCC”), 419 Consulting Inc., Golden State
4 Greens LLC, Far West Management, LLC, Far West Operating, LLC, and Far West Staffing, LLC
5 (collectively “Defendants”) moved for preliminary approval of a class action settlement. RoA ##
6 192-198. On January 4, 2019, the Court denied preliminary approval of that settlement without
7 prejudice because credits unclaimed by Settlement Class Members would “revert back to the
8 PLPCC’s general fund to be used ‘for the general welfare’ of PLPCC members consistent with the
9 Corporations Code.” Minute Order, RoA # 208, at p. 2. As such, “[t]he reversionary nature
10 render[ed] the proposed settlement illusory and, as a result [was] not fair, adequate, and reasonable
11 to the Class Members.” *Id.*

12 When asked by proposed Class Counsel at the January 4, 2019 hearing **whether the Court**
13 **“had any other concerns with the settlement”** the Court informed the parties that “[it] didn’t.”
14 *See* Declaration of William R. Restis ISO Plaintiff’s Amended Motion for Preliminary Approval
15 (“Restis Decl.”), Ex. C, at 8:25-27. As such, the parties represented to the Court that they believed
16 the reversionary portion of the settlement could be corrected, and intended to shortly thereafter
17 present an amended settlement for the Court’s approval. *Id.*, at p. 9:13-16.

18 Relying on the Court’s guidance, the parties have since renegotiated the reversionary portion
19 of the Settlement to ensure that every penny of the \$830,000 settlement consideration is paid out by
20 the PLPCC. The Amended Settlement Agreement is attached to the Restis Declaration as Exhibit A,
21 and B (redline), and incorporates the following changes:

22 (1) Any portion of the \$200,000 designated for payment of Class Counsel’s attorneys’
23 fees and costs not awarded by the Court will be added to the \$630,000 Settlement Fund to be
24 distributed to Settlement Class Members as Patronage Distribution Credits for free or discounted
25 purchase of any product from the PLPCC; Amended Settlement Agreement, at § 6.3.

26 (2) Patronage Distribution Credits not redeemed by Settlement Class Members within 12
27 months will be redistributed to *future* PLPCC patrons as \$5.00 credited toward each purchase from
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1 the PLPCC until the Settlement Fund is exhausted (“Remainder Credits”). The PLPCC may in its
2 discretion limit the amount of Remainder Credits paid in a single month, provided that the entire
3 Settlement Fund is paid out within 24 months. Amended Settlement Agreement, at §§ 3-1(c) and
4 (d).

5 (3) The PLPCC will provide the Court with four quarterly reports beginning 13 months
6 after Patronage Distribution Credits become available that state: (1) the total amount of Patronage
7 Distribution Credits distributed during the first 12 months, and (2) the total number of Remainder
8 Credits distributed in each quarter. Amended Settlement Agreement, at §§ 3-1(f).

9 (4) Within 30 days after the Settlement Fund is exhausted, a representative of the PLPCC
10 will file with the Court a declaration under penalty of perjury confirming that the entire Settlement
11 Fund was paid out. Amended Settlement Agreement, at §§ 3-1(c) and (d).

12 Amended versions of the Long-Form Notice and Short-Form Notice reflecting these changes
13 can be found as Exhibits A and B to the Amended Settlement Agreement, respectively. Redlined
14 versions of the Notices are attached as Exhibit D (Long-Form) and Exhibit E (Short-Form) to the
15 Restis Declaration.

16 Because the Amended Settlement Agreement is now “fair, reasonable, and adequate,” the
17 Court should preliminarily approve it. Accordingly, Plaintiff respectfully requests this Court grant
18 preliminary approval of the Amended Settlement Agreement, conditionally certify the Class
19 Members, appoint Plaintiff Beck as Class Representative and William R. Restis of THE RESTIS LAW
20 FIRM, P.C. as Class Counsel, approve the parties’ Notice plan, appoint the Notice Administrator, and
21 the date and time of final approval by the Court.

22 **II. INFORMATION BACKGROUND**

23 **A. The Litigation History**

24 Plaintiff Beck filed this class action complaint on October 6, 2017. RoA # 1. On November
25 16, 2017, Plaintiff filed a motion for appointment of an independent auditor, and for enforcement of
26 his pre-litigation demand to inspect the PLPCC’s corporate records. RoA # 14. On December 8,
27 2017, Defendants demurred to Plaintiff’s class action complaint. RoA # 20. After extensive briefing,
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1 on January 19, 2018, the Court issued an order denying both motions, and allowing the case to
2 proceed. RoA # 45-46. Defendants' answered on February 8, 2018. RoA # 47.

3 By that time, Plaintiff had served class certification discovery, and discovery necessary to
4 conduct an audit of Defendants' finances to determine whether there were any cooperative profits
5 that should have been distributed to PLPCC member patrons. On February 15, 2018, Plaintiff filed
6 a motion to compel production of the names and addresses of PLPCC patrons to Plaintiff's counsel
7 after a notice and opt-out opportunity known as a "Belaire-West notice." See RoA # 15; *Belaire-*
8 *West Landscape, Inc. v. Sup. Ct.*, (2007) 149 Cal.App.4th 554. Defendant opposed, and the Court
9 granted Plaintiff's motion on March 23, 2018. RoA # 78 and 81. Defendant requested a stay of the
10 Court's order (RoA # 105), which was denied by the Court on April 17, 2018. RoA # 110.
11 Defendants' then filed an emergency writ with the Fourth District Court of Appeal, which Plaintiff
12 opposed. The writ was summarily denied on April 23, 2018. RoA # 123. After it appeared that
13 Defendant PLPCC did not comply with the Court's *Belaire-West* Order, Plaintiff filed a motion
14 requesting the PLPCC be found in contempt. RoA # 135. Defendant opposed (RoA # 133), and on
15 May 1, 2018, the Court found that the PLPCC's conduct did not rise to the level of contempt.

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

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

2 On April 23, 2018, Defendants filed their amended answer. RoA # 165. In the meantime,
3 Plaintiff subpoenaed the PLPCC's point of sale software vendor 420Soft, seeking transaction print-
4 outs of PLPCC's sales receipts. Defendant PLPCC filed a motion to quash the subpoena on July 19,
5 2018. RoA # 169. On July 27, 2018, Defendants filed a motion for judgment on the pleadings to
6 Plaintiff's theory of liability. RoA # 177. On August 7, 2018, the parties appeared *ex parte* to inform
7 the Court that they had reached a settlement in principle, and requested to vacate the hearings on
8 pending motions. RoA # 183 and 184. In response, the Court vacated all pending motion hearing
9 dates. RoA # 181-182.

10 **B. Settlement Negotiation History**

11 While the case was actively proceeding, the parties engaged in multiple rounds of settlement
12 negotiations. On May 17, 2018, the parties engaged in mediation before Judge Pressman, formerly
13 of the San Diego Superior Court. Restis Decl., ¶¶ 3-5. During the May 17th mediation, the parties
14 discussed and agreed on a general structure for a proposed class settlement that formed the basis for
15 the Settlement now proposed to the Court. *Id.*, ¶ 3. After the parties generally agreed on the structure
16 of a class settlement, they began to discuss the value of a common fund. *Id.*, ¶ 3.

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

26 On July 30, 2018, the parties conducted a second mediation with Judge Pressman. *Id.*, ¶ 6.
27 During that mediation, based on the recommendation of Judge Pressman, the parties executed a
28

1 settlement term sheet containing the major elements of the proposed Settlement. *Id.* Although
2 Plaintiff had not yet viewed Defendants' financial statements, they had been disclosed to, and
3 reviewed by Judge Pressman who recommended the Settlement (and communicated in part to
4 Plaintiff). *Id.*

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

11 Prior to signing Settlement Agreement, on September 24, 2018 proposed Class Counsel met
12 with counsel for defendants Matthew Dart and Tamara Leetham, as well as defendant Henkes
13 (telephonically) at the offices of Austin Legal Group. During this meeting, which lasted
14 approximately four hours, proposed Class Counsel was provided unrestricted access to financial
15 statements and information related to all Defendants. Mr. Henkes (the accountant for Defendants)
16 answered every inquiry of proposed Class Counsel concerning the income, expenses, and balance
17 sheet of the Defendants. Mr. Henkes' candid disclosure went far beyond what the parties agreed to
18 (at the recommendation of Judge Pressman) at the July 30, 2018 mediation. *Id.*, ¶ 9.

19 During the months of August and September 2018, the parties negotiated the finer points of
20 the Settlement, as well as issues relating to Notice, and settlement administration. The parties
21 executed the initial Settlement Agreement on November 21, 2018. *Id.*, at ¶ 13.

22 After the Court denied preliminary approval without prejudice, the parties spent a month
23 negotiating how to distribute the reverter. *Id.*, ¶ 14. Plaintiff insisted that every single penny be paid
24 out, including any attorney fees that were not awarded by the Court. *Id.* The parties signed the
25 Amended Settlement Agreement on or about January 6, 2019. *Id.*

1 **C. Key Terms of the Settlement Agreement**

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

4 Defendants will create a Settlement Fund of \$630,000, for the payment of: Patronage
5 Distribution Credits to Settlement Class Members (\$600,480 estimate); Administration Costs
6 (\$25,000 estimate); and an Incentive Award for Plaintiff Beck as Class Representative (\$5,000
7 estimate). Settlement Agreement, § 3-1. Defendants shall pay Administration Costs, and any
8 Incentive Award from the Settlement Fund. Amounts remaining in the Settlement Fund after
9 payment of Administration Costs, and any Incentive Award shall be credited as Patronage
10 Distribution Credits to Settlement Class Members *pro rata* based on their patronage in accordance
11 with California Corporations Code Sections 12201.5(b) and 12243(a)(2).¹ *Id.* “Patronage
12 Distribution Credits” means the United States dollar value of credits for free or discounted product
13 from the PLPCC. *Id.* § 2-22. “PLPCC” means defendant Point Loma Patients Consumer Cooperative
14 Corporation, and any successor or related entities thereto operating a marijuana dispensary at 3452
15 Hancock Street, San Diego, CA 92110. *Id.* § 2-24.

16 Patronage Distribution Credits shall be available for Settlement Class Members to redeem
17 for free or discounted products (if a Settlement Class Member’s Patronage Distribution Credits are
18 insufficient to fully purchase a product) from the PLPCC for 12 months from the Patronage
19 Distribution Date. *Id.*, § 3-1(c). “Patronage Distribution Date” means the ten (10) days after the
20 Effective Date, which will be disclosed on the Settlement Website and on the PLPCC’s website
21 www.goldenstategreens.com. *Id.*, § 2-23. Patronage Distribution Credits not redeemed by
22 Settlement Class Members within 12 months from the Patronage Distribution Date (“Remainder
23

24 ¹ 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 Credits”) shall be redistributed to future PLPCC patrons as \$5.00 credited toward each purchase
2 from the PLPCC until the Settlement Fund is exhausted. *Id.*, § 3-1(c). The PLPCC may in its
3 discretion limit the amount of Remainder Credits paid in a single month. However, all Remainder
4 Credits must be paid out in accordance with this section within 24 months from the Patronage
5 Distribution Date. *Id.*, § 3-1(d). Patronage Distribution Credits to Settlement Class Members and
6 Remainder Credits shall be non-transferrable and not redeemable for cash. *Id.*, §§ 3-1(a)-(e).

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

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

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

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

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

D. Proposed Class Settlement Notice

Within seven (7) days following preliminary approval, the PLPCC will provide the notice

1 administrator with contact information for the Class Members. Within twenty-one (21) days, Class
2 Members will be individually sent Short-Form Notice to their physical or electronic mail address on
3 file with the PLPCC. Amended Settlement Agreement, § 4-1-a.; Ex. B. The Short-Form Notice will
4 clearly reference the settlement website www.PLPCCsettlement.com, where Class Members can
5 view the Long-Form Notice, Amended Settlement Agreement, pleadings, and the Court’s
6 preliminary approval order. Declaration of Joe Fisher ISO Motion for Preliminary Approval of Class
7 action Settlement, RoA # 197 (“Fisher Decl.”) at ¶ 4.

8 The Administrator will provide Short-Form notice *via email* to Class Members whose email
9 address is available. Fisher Decl., ¶ 6. The emailed Short-Form Notice will contain a software
10 identifier that will allow the Administrator to determine if the email is opened by the recipient. *Id.*,
11 ¶ 7. For Class Members who do not open their emailed Short-Form Notice within 5 days, the
12 Administrator will mail the Short-Form Notice to such Class Members’ physical address. *Id.*, ¶ 7.
13 The Administrator shall utilize the national change of address database to update the mailing list of
14 Class Members prior to sending Short-Form Notice to any Class Members that will be contacted by
15 mail, and shall perform a single Skip Trace to conduct an address update for any Short-Form Notice
16 returned to the Administrator using an industry accepted source such as Accurint. Amended
17 Settlement Agreement, § 4-1-a. In the event that a mailed Short-Form Notice is returned as
18 undeliverable with a forwarding address, the Administrator shall re-mail the Short-Form Notice to
19 the indicated forwarding address within 5 business days from the date of the receipt of the forwarding
20 address. The Administrator shall have no obligation to re-mail any Class Notice returned as
21 undeliverable after 30 days from the date on which it was originally mailed. *Id.*

22 The parties’ proposed Short-Form and Long-Form Notice are modeled after and consistent
23 with “The Federal Judicial Center’s ‘Illustrative’ Forms of Class Action Notices.” See
24 <http://www.fjc.gov/public/home.nsf>.

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

3 **A. Applicable Legal Standard**

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

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

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

24 While the Rules of Court are silent on a precise legal standard that should be adopted at
25 preliminary approval, the Court should generally examine the fairness of the settlement terms and
26 the adequacy of class notice. *Merch. v. OfficeTeam* (Cal. Ct. App. Mar. 21, 2013), No. B241888,
27 2013 WL 1153648, at *7 (unpublished) (citing the Los Angeles Superior Guidelines for Motions for
28 Preliminary and Final Approval of Class Settlement). In this manner, the Court’s process for
preliminary approval mirrors the standards imposed by federal counterparts:

“[The] preliminary determination establishes an initial presumption of fairness
[Citation]. As noted in the *Manual for Complex Litigation*, Second, “[i]f the proposed
settlement appears to be the product of serious, informed, non-collusive negotiations,
has no obvious deficiencies, does not improperly grant preferential treatment to class
representatives or segments of the class, and falls within the range of possible approval,
then the court should direct that the notice be given to the class members of a formal

1 fairness hearing” *Manual for Complex Litigation*, Second § 30.44 (1985). In
2 addition, “[t]he court may find that the settlement proposal contains some merit, is
3 within the range of reasonableness required for a settlement offer, or is presumptively
4 valid.” *Newberg on Class Actions* § 11.25 (1992).

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

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

14 **1. The Settlement was Reached After Contentious and Informed Arms’**
15 **Length Negotiations**

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

21 In the instant case, the Settlement was negotiated while the parties were simultaneously
22 engaged in aggressive litigation. Indeed, the parties’ settlement discussions were conducted amidst
23 several discovery motions, and a motion for judgment on the pleadings by Defendants. *See RoA ##*
24 *113, 119, 151, 156, 158, 160, 169, 177.* Plaintiff and proposed Class Counsel were granted
25 unrestricted access to the books and records of the Defendants to confirm that the Settlement is fair,
26 reasonable, and adequate to absent Class Members. Thus, the parties neither rushed to settlement
27 nor suffered from any informational asymmetries that would render the Settlement inherently
28 suspect. *See Dunk*, 48 Cal.App.4th at 1802 (holding that the fact that the litigation was several years
old, and involved extensive discovery and pretrial litigation when it settled, supported a finding of
fairness).

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

8 **2. The Proposed Settlement is Fair and Reasonable**

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

15 In granting final approval, California courts consider a number of factors including *inter alia*:
16 (1) the value of the settlement; (2) the inherent risk of continued litigation; (3) the extent of discovery
17 completed and the status of the proceedings when settlement is reached; and (4) the complexity,
18 expense, and likely duration of the litigation in the absence of a settlement. See *Wershba*, 91
19 Cal.App.4th at 244-45; *Dunk*, 48 Cal.App.4th at 1801. “Ultimately, the court's determination is
20 simply an amalgam of delicate balancing, gross approximations and rough justice.” *Cho v. Seagate*
21 *Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 743.

22 *i. The Value of the Settlement*

23 Pursuant to the proposed Settlement Agreement, Defendants will pay up to \$830,000 to settle
24 class claims. As confirmed by proposed Class Counsel in confirmatory discovery, the gross
25 settlement benefit is approximately 57% of the total amount Class Members might recover if the
26 class were certified, and Plaintiff's theories of liability were to prevail at trial. Restis Decl., ¶ 11.
27 Therefore, this compromise is well within the boundaries of reasonableness. See *In re Newbridge*
28

1 *Networks Sec. Litig.*, 1998 WL 765724, at *2 (D.D.C. Oct. 23, 1998) (“Courts have not identified a
2 precise numerical range within which a settlement must fall in order to be deemed reasonable; but
3 an agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing
4 further expenditures and delays and eliminating the risk that no recovery at all will be won, seems
5 to be within the targeted range of reasonableness.”)

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

7 The Settlement Agreement provides the same relief to all members of the Settlement Class,
8 including the Class Representative. Amended Settlement Agreement § 3. To ensure that all
9 Settlement Class members receive equal treatment, Patronage Distribution Credits will be credited
10 to Settlement Class members *pro rata* based on their patronage. *Id.*, § 3-1-b; *cf.* CAL. CORP. CODE §
11 12201.5 (“patronage distributions ... shall be apportioned among the members in accordance with
12 the ratio that each member's patronage during the period bears to total patronage by all members
13 during the period.”) Accordingly, the Amended Settlement Agreement does not give preferential
14 treatment to a subset of the class.

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

17 In this instance, the Amended Settlement Agreement allows Plaintiff Beck to petition the
18 Court for an incentive award of up to \$5,000. Given the sensitive and legally questionable subject
19 matter of the litigation (medical marijuana), this is a sensible amount for Plaintiff Beck to put his
20 name on this litigation for the benefit of absent Class members. *Roe v. Frito-Lay, Inc.*, 2017 WL
21 1315626, at *8 (N.D. Cal. Apr. 7, 2017) (“[A] \$5,000 incentive award is “presumptively reasonable”
22 in the Ninth Circuit.”); *see also In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th
23 1380, 1394, *as modified* (July 27, 2010) (approving a \$10,000 incentive award).

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

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iii. Extent of Discovery Completed

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

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

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

Plaintiff is confident about the strength of his claims. Nonetheless, Plaintiff recognizes that Defendants had factual and legal defenses that, if successful, would potentially defeat or substantially impair the value of the lawsuit. For example, Plaintiff could potentially be unable to establish that he and other PLPCC patrons are cooperative “members” entitled to patronage distributions at all. *See* RoA # 20, at p. 8 (arguing that Plaintiff is a mere “associate member” under the PLPCC bylaws and is explicitly not entitled to patronage distributions) citing CAL. CORP. CODE § 12454 (“Nothing in this chapter prohibits additional restrictions ... patronage distributions, by provision in a corporation's articles or bylaws or agreement entered into by the corporation.”) and

1 CAL. CORP. CODE § 12420(a) (“...a corporation may issue memberships having different rights,
2 privileges, preferences, restrictions, or conditions, as provided in its articles or bylaws.”)

3 In addition, Plaintiff may not be able to “pierce the corporate veil” between the PLPCC and
4 the other corporate defendants with which Plaintiff and other PLPCC patrons lack privity. *Id.*, at p
5 6 (arguing that Plaintiff cannot establish alter ego liability against defendants other than the PLPCC).
6 And at the time of settlement, the Court had denied Plaintiff the detailed discovery necessary to
7 conduct an independent audit of Defendants’ finances, and prove Plaintiff’s case. *See* RoA ## 158,
8 163 (denying Plaintiff’s motions to compel inspection requests intended to reconstruct Defendants’
9 financial statements). Finally, although Plaintiff is confident that this case is readily amenable to
10 certification, class certification is always a major risk.

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

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

16 *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *rev'd on other grounds by Hernandez*,
17 4 Cal.5th 260.

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

19 Continuing to litigate this action would require continued and extensive resources coupled
20 with significant Court time to proceed through trial, post-trial motions and likely appeal. “Avoiding
21 such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement
22 rather than further protracted and uncertain litigation.” *Nat’l Rural Telecomms. Coop v. DirecTV*,
23 221 F.R.D. 523, 527 (C.D. Cal. 2004). Thus, “unless the settlement is clearly inadequate, its
24 acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.”
25 *Id.* at 526.

1 **C. The Proposed Class Members Satisfy The Requirement for Provisional**
2 **Certification**

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

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

21 Here, the requirements for provisional certification pursuant to California Code of Civil
22 Procedure § 382 and California Rule of Court 3.769(d) are easily met. First, the 37,530 class
23 members are so numerous that joinder of all members is impracticable. *See* Declaration of Adam
24 Knopf, RoA # 195 (“Knopf Decl.”), at ¶ 5.

25 There are questions of law and fact common to the Class Members, such as: (a) whether
26 PLPCC patrons are “members” entitled to patronage distributions, or mere “associate members”
27 under the bylaws with no right to patronage distributions; (b) whether Plaintiff and Class Members
28 are entitled to “pierce the corporate veil” under an alter ego theory, (c) whether Defendants

1 collectively generated any profit that should have been distributed as patronage distributions; (c) the
2 proper calculation of patronage distributions under the Corporations Code. *See Sav-On Drug Stores,*
3 *Inc. v. Superior Court*, 34 Cal. 4th 319, 341 (2004) (“common issues may predominate even if each
4 member of the class must prove his separate claim to a portion of any recovery by the class”)

5 In addition, the proposed Class Representative’s claims are typical of those of Class
6 Members because he is a member of the Class. Mr. Beck is an “associate member” patron of the
7 PLPCC, who purchased product there during the Class Period. *See* Complaint, RoA # 1, at ¶¶ 13-
8 18; *Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal. App. 4th 1497, 1509 (“The test of typicality is
9 whether other members have the same or similar injury, whether the action is based on conduct
10 which is not unique to the named plaintiffs, and whether other class members have been injured by
11 the same course of conduct.”)

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

19 As shown in Section II-A above describing the litigation history herein, the proposed Class
20 Representative and Class Counsel have vigorously represented the interests of Class Members at
21 every turn. Class Counsel is an experienced class action litigator (Restis Decl., Ex. F), who has
22 negotiated an excellent Settlement that satisfies the primary objectives of the litigation. For this
23 reason, the Class Members should be provisionally certified.

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

26 Assuming the Court’s *prima facie* review determines the Settlement is fair and adequate, it
27 should order that notice be sent to the class. MANUAL FOR COMPLEX LITIGATION (FOURTH), Federal
28 Judicial Center (2004), § 21.632 at 321. Pursuant to California Rules of Court, rule 3.769(f) “[t]he

1 notice must contain an explanation of the proposed settlement and procedures for class members to
2 follow in filing written objections to it and in arranging to appear at the settlement hearing and state
3 any objections to the proposed settlement.”

4 Here, Class Members are *required* to provide their contact information to the PLPCC upon
5 their initial visit. Knopf Decl., at ¶¶ 3-4. This contact information will be updating using change-of
6 address databases, and re-mailed if returned undelivered. Amended Settlement Agreement § 4-1-a.
7 The Short-Form Notice will direct Class Members to the Settlement Website, which contains a more
8 detailed Long-Form Notice in plain English, the Amended Settlement Agreement, court pleadings,
9 settlement documentation, the Preliminary Approval Order, proposed Class Counsel’s Fee and Cost
10 Application, and important dates and deadlines. Amended Settlement Agreement, § 4-1-b. The
11 Notices were drafted using exemplar notices provided by the Federal Judicial Center, Judges’ Class
12 Action Notice and Claims Process Checklist.²

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

20 **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	Day 78

28 ² See <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction>

Compliance and Exclusion Requests	
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 Amended 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.

DATED: February 19, 2019

Respectfully submitted,

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