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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.

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

CLASS ACTION

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT and ENTRY OF FINAL
JUDGMENT

Date: June 28, 2019

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Ctrl: C-73

TABLE OF CONTENTS

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

I.	INTRODUCTION	1
II.	SETTLEMENT BACKGROUND.....	2
	A. The Litigation History.....	2
	B. Settlement Negotiation History.....	3
	C. Key Terms of the Settlement Agreement.....	5
	D. Class Settlement Notice	7
III.	INDIVIDUAL CLASS NOTICE SATISFIED DUE PROCESS	8
IV.	THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, SATISFYING THE CRITERIA FOR FINAL APPROVAL	9
	A. The Settlement Was Well Received By Class Members	10
	B. The Settlement was Reached After Contentious and Informed Arms’ Length Negotiations	10
	C. The Proposed Settlement is Fair and Reasonable	11
V.	APPROVAL OF THE SETTLEMENT SATISFIES THE RULES OF COURT	13
VI.	CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

Andrews v. Sallie Mae, Inc.,
 (2014) U.S. Dist. LEXIS 163499 at 8-9 (S.D. Cal. Nov. 20, 2014)8

Asghari v. Volkswagen Grp. of Am., Inc.,
 (2015) U.S. Dist. LEXIS 188824 at 68.....10

Belaire-West Landscape, Inc. v. Sup. Ct.,
 (2007) 149 Cal.App.4th 554.....2

Cartt v. Superior Court,
 (1975) 50 Cal. App. 3d 960.....8

Cooper v. American Sav. & Loan Assn.,
 (1976) 55 Cal. App. 3d 274.....8

Cotter v. Lyft, Inc.,
 No. 13-cv-04065-VC, (2017) U.S. Dist. LEXIS 38256 at 17 (N.D. Cal. Mar. 16, 2017).....9

Dunk v. Ford Motor Co.,
 (1996) 48 Cal.App.4th 1794.....9, 10, 11

Eisen v. Carlisle & Jacquelin,
 (1974) 417 U.S. 156.....8

Ellison v. Madden, Ltd.,
 (2013) U.S. Dist. LEXIS 202269 at 7 (C.D. Cal. May 7, 2013)9

Hernandez v. Restoration Hardware, Inc.,
 (2018) 4 Cal.5th 260... ..8, 13

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 Microsoft I-V Cases
 (2006) 135 Cal.App.4th 706.....8

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

Kullar v. Foot Locker Retail, Inc.
 (2008) 168 Cal.App.4th 116.....9, 10

Luckey v. Superior Court,
 (2014) 228 Cal.App.4th 81.....13

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

1	<i>Nat'l Rural Telecomms. Coop v. DirecTV</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	13
2	<i>Officers for Justice v. Civil Serv. Comm'n</i> , (9th Cir. 1982) 688 F.2d 615.....	9
3		
4	<i>Pallas v. Pacific Bell</i> , 1999 WL 1209495 (N.D. Cal. July 13, 1999).....	10
5	<i>Rebney v. Wells Fargo Bank</i> , (1990) 220 Cal.App.3d 1117	13
6		
7	<i>Silber v. Mabon</i> , 18 F.3d 1449 (9th Cir. 1994)	8
8	<i>Vasquez v. Superior Court</i> , (1971) 4 Cal.3d 800....	10
9		
10	<i>Wershba v. Apple Computer, Inc.</i> , (2001) 91 Cal.App.4th 224....	8, 11
11	<u>Statutes</u>	
12	CAL RULES OF COURT § 3.769	1, 13, 14, 15
13	<u>Statutes</u>	
14	CAL. CORP. CODE § 12201.5	5, 12
15	CAL. CORP. CODE §12243	5
16	<u>Statutes</u>	
17	CAL. CODE. CIV. PROC. § 382	1, 15
18	<u>Statutes</u>	
19	FED. R. CIV. P. § 23.....	9
20	<u>Other Authorities</u>	
21	NEWBERG ON CLASS ACTIONS.....	9
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 On March 15, 2019, this Honorable Court preliminarily approved the class action settlement
3 between Plaintiff Karl Beck (the “Class Representative” or “Beck”) and defendants Point Loma
4 Patients Consumer Cooperative Corporation (the “PLPCC”), 419 Consulting Inc., Golden State
5 Greens LLC, Far West Management, LLC, Far West Operating, LLC, and Far West Staffing, LLC
6 (collectively “Defendants”). RoA # 221.

7 Direct, individual notice approved by this Court was issued to 37,530 Class Members.¹
8 Declaration of Joe Fisher filed 6/07/2019, at ¶¶ 8, 9. **Zero objections were made to the Settlement,**
9 **and only six (6) Class Members excluded themselves from the Settlement Class.** *Id.*, Ex. D.²

10 Because Class Members have confirmed the Settlement Agreement is “fair, reasonable, and
11 adequate,” the Court should finally approve it. Accordingly, the Class Representative respectfully
12 requests this Court:

- 13 (1) Grant Final Approval to the Agreement as “fair, adequate and reasonable” and in
14 compliance with California Rule of Court 3.769;
- 15 (2) Certify the Class Members, and Settlement Class, which excludes those persons who
16 excluded themselves from the Settlement, for settlement purposes pursuant to California
17 Code of Civil Procedure § 382 and California Rule of Court 3.769;
- 18 (3) Find that Class Notice complied fully with Due Process, and California Rule of Court
19 3.769; and
- 20 (4) Order the Parties and the Administrator to carry out and discharge their obligations under
21 the Agreement.

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23
24
25 ¹ Defined terms used in this Memorandum are the same as used in the Amended Stipulation and
26 Agreement of Settlement (the “Settlement Agreement”), filed as Exhibit A to the Declaration of
William R. Restis ISO Amended Motion for Preliminary Approval. RoA # 214.

27 ² “Class Members” refers generally to all persons to whom Notice was sent, and the “Settlement
28 Class” refers to all persons who received Notice and who did *not* exclude themselves from the
Settlement. RoA # 214, Ex. A.

1 **II. SETTLEMENT BACKGROUND**

2 **A. The Litigation History**

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

10 By that time, the Class Representative had served class certification discovery, and discovery
11 necessary to conduct an audit of Defendants' finances to determine whether there were any
12 cooperative profits that should have been distributed to PLPCC member patrons. On February 15,
13 2018, the Class Representative filed a motion to compel production of the names and addresses of
14 PLPCC patrons to Plaintiff's counsel after a notice and opt-out opportunity known as a "Belaire-
15 West notice." See RoA # 15; *Belaire-West Landscape, Inc. v. Sup. Ct.*, (2007) 149 Cal.App.4th 554.
16 Defendant opposed, and the Court granted Plaintiff's motion on March 23, 2018. RoA # 78 and 81.
17 Defendant requested a stay of the Court's order (RoA # 105), which was denied by the Court on
18 April 17, 2018. RoA # 110. Defendants then filed an emergency writ with the Fourth District Court
19 of Appeal, which the Class Representative opposed. The writ was summarily denied on April 23,
20 2018. RoA # 123. After it appeared that Defendant PLPCC did not comply with the Court's *Belaire-
21 West* Order, the Class Representative filed a motion requesting the PLPCC be found in contempt.
22 RoA # 135. Defendant opposed (RoA # 133), and on May 1, 2018, the Court found that the PLPCC's
23 conduct did not rise to the level of contempt.

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

28 On April 4, 2018, Defendants filed a motion for protective order to the Class Representative's

1 second set of class certification discovery. On April 18, 2018, the Class Representative filed a motion
2 to compel special interrogatories identifying sources of Electronically Stored Information. RoA #
3 112. That same day, the Class Representative filed a motion to compel responses to Plaintiff's first
4 set of document demands. RoA # 118. After extensive motion practice, the Court ordered Defendants
5 to identify sources of ESI (RoA # 151, 156, and 158), but denied the Class Representative's motion
6 to compel production of documents without prejudice. *Id.* Based on this ruling, the Class
7 Representative withdrew without prejudice his Request for Production (Set Two) which was the
8 subject of Defendants' motion for protective order. RoA # 154. The Court issued its order May 24,
9 2018. RoA # 163.

10 On April 23, 2018, Defendants filed their amended answer. RoA # 165. In the meantime, the
11 Class Representative subpoenaed the PLPCC's point of sale software vendor 420Soft, seeking
12 transaction print-outs of PLPCC's sales receipts. Defendant PLPCC filed a motion to quash the
13 subpoena on July 19, 2018. RoA # 169. On July 27, 2018, Defendants filed a motion for judgment
14 on the pleadings to the Class Representative's theory of liability. RoA # 177.

15 On August 7, 2018, the parties appeared *ex parte* to inform the Court that they had reached
16 a settlement in principle, and requested the Court vacate the hearings on pending motions. RoA #
17 183 and 184. In response, the Court vacated all pending motion hearing dates. RoA # 181-182.

18 **B. Settlement Negotiation History**

19 While the case was actively proceeding, the parties engaged in multiple rounds of settlement
20 negotiations. On May 17, 2018, the parties engaged in mediation before Judge Pressman, formerly
21 of the San Diego Superior Court. Restis Decl. ISO Amended Motion for Preliminary Approval, RoA
22 # 214, ¶¶ 3-5. During the May 17th mediation, the parties discussed and agreed on a general structure
23 for a proposed class settlement that formed the basis for the Settlement now before the Court. *Id.*, ¶
24 3. After the parties generally agreed on the structure of a class settlement, they began to discuss the
25 value of a common fund. *Id.*, ¶ 3.

26 Defendants provided financial statements to Judge Pressman, which the Judge represented
27 he reviewed. *Id.*, ¶ 4. Defendants communicated (through Judge Pressman) aggregated numbers
28

1 from their financial statements for the Class Representative’s consideration. *Id.*, ¶ 4. Judge Pressman
2 represented to Class Counsel that based on the documentation he had seen, and based on his
3 understanding of *alter ego* principles, he believed proving unlawful profits would be extremely
4 difficult. *Id.*, ¶ 5. Based on Judge Pressman’s review of Defendants’ financial statements, he
5 recommended that the Class Representative accept a class settlement that was approximately 38%
6 less than the current proposed Settlement. Despite these efforts, the parties were unable to resolve
7 the litigation. *Id.*, ¶ 5.

8 On July 30, 2018, the parties conducted a second mediation with Judge Pressman. *Id.*, ¶ 6.
9 During that mediation, based on the recommendation of Judge Pressman, the parties executed a
10 settlement term sheet containing the major elements of the proposed Settlement. *Id.* Although the
11 Class Representative had not yet viewed Defendants’ financial statements, they had been disclosed
12 to, and reviewed by Judge Pressman who recommended the Settlement (and communicated in part
13 to the Class Representative). *Id.*

14 Accordingly, the Settlement terms were expressly conditioned on the Class Representative’s
15 and Class Counsel’s ability to conduct confirmatory discovery to ensure that the Settlement terms
16 are “fair, reasonable and adequate” as claimed by Defendants and Judge Pressman. *Id.*, ¶ 7. The term
17 sheet included a list of materials recommended and approved by Judge Pressman, that Class Counsel
18 could promptly review to either substantiate the claims made by Defendants during mediation, or
19 withdraw from the Settlement. *Id.*, ¶ 7.

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

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

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

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

9 As detailed in the Notices sent to all Class Members, the Settlement Class will be entitled to
10 the following relief:

11 Defendants will create a Settlement Fund of \$630,000, for the payment of: Patronage
12 Distribution Credits to Settlement Class Members (\$600,480 estimate); Administration Costs
13 (\$25,000 estimate); and an Incentive Award for Beck as Class Representative (\$5,000 estimate).
14 Settlement Agreement, RoA # 214, Ex. A, at § 3-1. Defendants shall pay Administration Costs, and
15 any Incentive Award from the Settlement Fund. Amounts remaining in the Settlement Fund after
16 payment of Administration Costs, and any Incentive Award shall be credited as Patronage
17 Distribution Credits to Settlement Class Members *pro rata* based on their patronage in accordance
18 with California Corporations Code Sections 12201.5(b) and 12243(a)(2).³ *Id.* “Patronage
19 Distribution Credits” means the United States dollar value of credits for free or discounted product
20 from the PLPCC. *Id.* § 2-22. “PLPCC” means defendant Point Loma Patients Consumer Cooperative
21 Corporation, and any successor or related entities thereto operating a marijuana dispensary at 3452
22 Hancock Street, San Diego, CA 92110. *Id.* § 2-24.

23
24 ³ 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 Patronage Distribution Credits shall be available for Settlement Class Members to redeem
2 for free or discounted products (if a Settlement Class Member's Patronage Distribution Credits are
3 insufficient to fully purchase a product) from the PLPCC for 12 months from the Patronage
4 Distribution Date. *Id.*, § 3-1(c). "Patronage Distribution Date" means the ten (10) days after the
5 Effective Date, which will be disclosed on the Settlement Website and on the PLPCC's website
6 www.goldenstategreens.com. *Id.*, § 2-23. Patronage Distribution Credits not redeemed by
7 Settlement Class Members within 12 months from the Patronage Distribution Date ("Remainder
8 Credits") shall be redistributed to future PLPCC patrons as \$5.00 credited toward each purchase
9 from the PLPCC until the Settlement Fund is exhausted. *Id.*, § 3-1(c). The PLPCC may in its
10 discretion limit the amount of Remainder Credits paid in a single month. However, all Remainder
11 Credits must be paid out in within 24 months from the Patronage Distribution Date. RoA # 214, Ex.
12 A, § 3-1(d). Patronage Distribution Credits to Settlement Class Members and Remainder Credits
13 shall be non-transferrable and not 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
26 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
failure to act concerning the facts alleged in the Action. Notwithstanding the above,
"Class Released Claims" shall exclude any claims for personal injury on behalf of
the Settlement Class.

27 "Released Parties" means Defendants to this Action and each of their respective
28 current and former officers, directors, employees, stockholders, investors, owners,

1 agents, representatives, attorneys, accountants, lenders, underwriters, insurers,
2 administrators, successors, subsidiaries, assigns, affiliates, joint-ventures, partners,
members (but not “associate members”), divisions, predecessors.

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

5 **D. Class Settlement Notice**

6 On April 26, 2018, the PLPCC provided the notice administrator with name, physical
7 address, and e-mail address for 37,530 Class Members, that included address information that was
8 substantially complete for approximately 95% of the persons listed. Declaration of Joseph M. Fisher
9 Regarding Compliance With Class Notice (“Fisher Decl.”), filed 6/07/2019, ¶ 3. On March 28, 2019,
10 the Administrator updated the Class List with address updates from the National Change of Address
11 (the “NCOA”) list from the United States Postal Service. *Id.*, ¶ 4. The NCOA provided updated
12 mailing addresses for 8,559 persons on the Class List, and identified 125 invalid or undeliverable
13 addresses. *Id.* The Administrator then performed a “skip trace” for each person with an undeliverable
14 address and obtained better addresses for 68 persons. The resulting mailing list consisted of 37,410
15 entries for Class Members. *Id.*

16 On April 2, 2019, counsel for the PLPCC supplemented the Class List with email addresses
17 for 2,544 persons. *Id.*, at ¶ 5.

18 Commencing on April 3, 2019, the Administrator published the Settlement Website at
19 www.PLPCCsettlement.com, which provides information regarding the Settlement, including (a)
20 how to file Exclusion Requests or objections to the Settlement, (b) relevant dates and deadline,
21 including the Notice Response Deadline, Final Approval Hearing Date, and the date that Patronage
22 Distribution Credits will be available for redemption at the PLPCC if the Settlement becomes final;
23 and (c) copies of the following documents: Plaintiff’s Complaint, Defendants’ Answer, the
24 Settlement Agreement, Plaintiff’s Preliminary Approval Motion and supporting documentation, the
25 Preliminary Approval Order, Plaintiff’s Fee and Cost Application and supporting documents,
26 Motion for Final Approval (when filed), and Final Order and Judgment (when filed). *Id.*, ¶ 6 and Ex.

27 C.

1 As of June 7, 2019, there were 6,166 visits to the Settlement Website by 3,552 unique
2 visitors, who viewed or downloaded a total of 15,284 pages from the Settlement Website. *Id.*

3 On April 5, 2019, the Short-Form Notice was mailed, postage prepaid, to the 37,410
4 addresses on the Class Member Mailing List. *Id.*, ¶ 8. The USPS returned 1,861 mailings as
5 undeliverable. *Id.* Through additional information obtained through the USPS and skip traces, the
6 Administrator re-mailed 526 additional notices. *Id.*

7 Also on April 5, 2019, the Short-Form Notice was sent via email to persons with emails,
8 including 131 persons on the Class List who did not have deliverable postal addresses. *Id.*, ¶ 9.

9 **III. INDIVIDUAL CLASS NOTICE SATISFIED DUE PROCESS**

10 Due process “requires that individual notice be sent to all class members who can be
11 identified with reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Under
12 California law, “[t]he standard is whether the notice has ‘a reasonable chance of reaching a
13 substantial percentage of the class members.’” *Wershba v. Apple Comput., Inc.* (2001) 91 Cal. App.
14 4th 224, 251-52 citing *Cartt v. Superior Court* (1975) 50 Cal. App. 3d 960, 974 overruled in part on
15 other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260, 270.

16 Due Process “does not require that a class member receive actual notice of
17 the class settlement before being bound by it.” *Andrews v. Sallie Mae, Inc.*, 2014 U.S. Dist. LEXIS
18 163499, at *8-9 (S.D. Cal. Nov. 20, 2014) citing *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir.
19 1994). Instead, class notice satisfies Due Process when it is the “best notice practicable.” *Id.*; *also*
20 *Wershba*, at 252 citing *Cooper v. American Sav. & Loan Assn.* (1976) 55 Cal. App. 3d 274, at 284
21 (It “is not necessary to show that each member of a nationwide class has received notice.”)

22 In this case, the Court approved Notice was *successfully* mailed and emailed to 36,206 Class
23 Members, representing approximately 96.5% of all Class Members. *See* Fisher Decl., filed
24 6/07/2019, at ¶¶ 8-9. Approximately 10% of all Class Members came forward to seek additional
25 information about the Settlement from the Settlement Website. *Id.*, ¶ 6. These numbers confirm that
26 the Court approved Notice was effective and satisfied Due Process. *See In re Microsoft I-V Cases*
27 (2006) 135 Cal. App. 4th 706, 727 (affirming settlement on “evidence that the notice of settlement
28

1 had reached at least 80 percent of the estimated 14.7 million class members”); *Ellison v. Madden,*
2 *Ltd.*, 2013 U.S. Dist. LEXIS 202269, at *7 (C.D. Cal. May 7, 2013) (approving class settlement
3 where “the Claims Administrator estimates that the Notice Plan reached approximately 77.5 percent
4 of Class Members.”); *Cotter v. Lyft, Inc.*, No. 13-cv-04065-VC, 2017 U.S. Dist. LEXIS 38256, at
5 *17 (N.D. Cal. Mar. 16, 2017) (finding that the “notice program fully complied with Fed. R. Civ. P.
6 23 and the requirements of due process” because the “reach rate” “was nearly 100 percent.”)

7 **IV. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE,**
8 **SATISFYING THE CRITERIA FOR FINAL APPROVAL**⁴

9 Pre-trial settlement of complex class actions is a judicially favored remedy. *Officers for*
10 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982) (“Voluntary conciliation and
11 settlement are the preferred means of dispute resolution.”). The well-recognized factors that the trial
12 court should consider in evaluating the reasonableness of a class action settlement agreement
13 include

14 the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
15 further litigation, the risk of maintaining class action status through trial, the amount
16 offered in settlement, the extent of discovery completed and the stage of the
17 proceedings, the experience and views of counsel, the presence of a governmental
18 participant, and the reaction of the class members to the proposed settlement.

19 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128 citing *Dunk v. Ford Motor Co.*
20 (1996) 48 Cal.App.4th 1794, 1801 and NEWBERG ON CLASS ACTIONS (4th ed. 2002) §§ 11:41, 11:43,
21 13:68.

22 “[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length
23 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
24 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
25 small.” *Kullar*, at *128, citing *Dunk*, at p. 1802; *see also Vasquez v. Superior Court* (1971) 4 Cal.3d

26 ⁴ **Aside from the “reaction of the class members,” these factors were all presented to the**
27 **Court in near identical fashion in the Class Representative’s Amended Motion for Preliminary**
28 **Approval. Cf. RoA # 213, Preliminary Approval Motion at §§ III with Order Granting Preliminary**
Approval, RoA # 221, at ¶ 1.

1 800, 821 (California courts examine the Federal Rules of Civil Procedure for guidance in interpreting
2 state class action procedure in absence of controlling state jurisprudence).

3 **A. The Settlement Was Well Received By Class Members**

4 To gauge the reaction of other class members, “it is appropriate to evaluate the number of
5 requests for exclusion, as well as the objections submitted.” *Asghari v. Volkswagen Grp. of Am.,*
6 *Inc.*, 2015 U.S. Dist. LEXIS 188824, at *68-69 (C.D. Cal. May 29, 2015) citing *In re General Motors*
7 *Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 812 (3d Cir. 1995) (“In an effort
8 to measure the class's own reaction to the settlement's terms directly, courts look to the number and
9 vociferousness of the objectors) and *Pallas v. Pacific Bell*, 1999 WL 1209495, *6 (N.D. Cal. July
10 13, 1999) (“The greater the number of objectors, the heavier the burden on the proponents
11 of settlement to prove fairness”).

12 **In this case, 0.0% of Class Members objected and 0.0159% excluded themselves.** *See*
13 *Fisher Decl.*, filed 6/07/2019, at ¶¶ 10, 11. This extremely low number of objections and exclusions
14 weighs heavily in favor of final approval. *Asghari*, 2015 U.S. Dist. LEXIS 188824, at *70 (citing
15 cases and finding that 0.0017% opt-outs and 0.000065% objectors “indicates that generally, class
16 members favor the proposed settlement and find it fair.”)

17 **B. The Settlement was Reached After Contentious and Informed Arms’ Length**
18 **Negotiations**

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

24 In the instant case, the Settlement was negotiated while the parties were simultaneously
25 engaged in aggressive litigation. Indeed, the parties’ settlement discussions were conducted amidst
26 several discovery motions, and a motion for judgment on the pleadings by Defendants. *See RoA ##*
27 *112, 118, 151, 156, 158, 160, 169, 177.* The Class Representative and Class Counsel were granted
28 unrestricted access to the books and records of the Defendants to confirm that the Settlement is fair,

1 reasonable, and adequate to absent Class Members. Thus, the parties neither rushed to settlement
2 nor suffered from any informational asymmetries that would render the Settlement inherently
3 suspect. *See Dunk*, 48 Cal.App.4th at 1802 (holding that the fact that the litigation was several years
4 old, and involved extensive discovery and pretrial litigation when it settled, supported a finding of
5 fairness).

6 The parties also engaged a respected former Judge experienced in class action litigation to
7 help broker a settlement. RoA # 214, Restis Decl. ISO Amended Motion for Preliminary Approval,
8 ¶¶ 3-7. The involvement of Judge Pressman, as well as the lengthy and adversarial nature of the
9 settlement negotiations, are all indicia of the “contentious” nature of the underlying negotiations.
10 *See Wershba* 91 Cal.App.4th at 245 (approving of a settlement that was product of extensive
11 adversarial negotiations, with retired judges serving as neutral mediators, and followed by months
12 of discovery).

13 **C. The Proposed Settlement is Fair and Reasonable**

14 *1. The Value of the Settlement*

15 Pursuant to the proposed Settlement Agreement, Defendants will pay up to \$830,000 to settle
16 class claims. As confirmed by Class Counsel in confirmatory discovery, the gross settlement benefit
17 is approximately 57% of the total amount Class Members might recover if the class were certified,
18 and the Class Representative’s theories of liability were to prevail at trial. Restis Decl. ISO
19 Preliminary Approval, RoA # 214, at ¶ 11. Therefore, this compromise is well within the boundaries
20 of reasonableness. *See In re Newbridge Networks Sec. Litig.*, 1998 WL 765724, at *2 (D.D.C. Oct.
21 23, 1998) (“Courts have not identified a precise numerical range within which a settlement must fall
22 in order to be deemed reasonable; but an agreement that secures roughly six to twelve percent of a
23 potential trial recovery, while preventing further expenditures and delays and eliminating the risk
24 that no recovery at all will be won, seems to be within the targeted range of reasonableness.”)

25 *2. The Settlement is Fair for All Claimants*

26 The Settlement Agreement provides the same relief to all members of the Settlement Class,
27 including the Class Representative. RoA # 214, Ex. A, Amended Settlement Agreement § 3. To
28

1 ensure that all Settlement Class members receive equal treatment, Patronage Distribution Credits
2 will be credited to Settlement Class members *pro rata* based on their patronage. *Id.*, § 3-1-b; *cf.* CAL.
3 CORP. CODE § 12201.5 (“patronage distributions ... shall be apportioned among the members in
4 accordance with the ratio that each member's patronage during the period bears to total patronage
5 by all members during the period.”) Accordingly, the Amended Settlement Agreement does not give
6 preferential treatment to a subset of the class.

7 The Amended Settlement Agreement, however, does grant the Class Representative the
8 ability to apply to the Court for an incentive award. *Id.*, § 3-1-a. The Class Representative’s motion
9 for attorneys’ fees and costs, and petition for incentive award, was posted on the Settlement Website
10 for Class Member review prior to final approval. Fisher Decl., filed 6/07/2019, ¶ 6, and Ex. C.
11 Accordingly, Class Members had the opportunity to review and object to any incentive award sought
12 by Beck.

13 3. *Extent of Discovery Completed*

14 During the September 24, 2018 meeting, Class Counsel reviewed both consolidated and
15 deconstructed financial statements covering the entire Class Period. Restis Decl. ISO Preliminary
16 Approval, RoA # 214, ¶ 10. The information Class Counsel reviewed included the PLPCC’s income
17 statements, balance sheets, and cash flow statements. *Id.*, ¶ 10. Class Counsel also reviewed the sales
18 reports generated from the PLPCC’s 420soft point-of-sale software that was the subject of Plaintiff’s
19 June 28, 2018 subpoena. *Id.*, ¶ 10. Class Counsel compared the expenses from the PLPCC’s profit
20 and loss statements to the income of the other Defendants, as well as expenses incurred by the other
21 Defendants. During this review, Class Counsel learned that the Settlement’s consideration represents
22 approximately **57%** the total potentially recoverable funds if the Class Representative were to
23 successfully certify a class and prevail at trial. *Id.*, ¶ 11. As a result, the Class Representative and
24 Class Counsel were well informed, and discharged their fiduciary duty to ensure the proposed
25 Settlement is “fair, reasonable, and adequate.”

26 4. *The risk, expense, complexity, and likely duration of further litigation favors* 27 *settlement*

28 “It can be difficult to ascertain with precision the likelihood of success at trial. The Court

1 cannot and need not determine the merits of the contested facts and legal issues at this stage, and to
2 the extent courts assess this factor, it is to determine whether the decision to settle is a good value
3 for a relatively weak case or a sell-out of an extraordinary strong case.” *Misra v. Decision One*
4 *Mortg., Co.*, 2009 WL 4581276, at * 7 (C.D. Cal. Apr. 13, 2009).

5 The Class Representative is confident about the strength of his claims. Nonetheless, Beck
6 recognizes that Defendants had factual and legal defenses that, if successful, would potentially defeat
7 or substantially impair the value of the lawsuit. *See* RoA # 193, Motion Preliminary Approval, at §
8 III.B.2.iv (discussing potential defenses). Indeed, potential appeals aside, litigating a complex case
9 through trial is inherently perilous regardless of the strengths of merits of the claims:

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

13 *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *rev'd on other grounds by Hernandez*,
14 4 Cal.5th 260.

15 5. *Complexity, Expense, and Likely Duration of Litigation*

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

23 Because the Settlement satisfies all criteria of fairness, reasonableness, and adequacy, it
24 should be finally approved.

25 **V. APPROVAL OF THE SETTLEMENT SATISFIES THE RULES OF COURT**

26 The Settlement should be finally approved because all requirements of California Rule of
27 Court (“Rule”) 3.769 have been satisfied. *Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81, 93
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1 (class action settlement must comply with Rule 3.769).

2 As required by the Rules of Court, Plaintiff filed two motions to preliminarily approve the
3 Settlement, which included the Settlement Agreement, and proposed Short-Form and Long-Form
4 Notices. *Cf.* RoA ## 213-214 with Rule 3.769(c). The Notices approved by the Court “contain[ed]
5 an explanation of the proposed settlement and procedures for class members to follow in filing
6 written objections to it and in arranging to appear at the settlement hearing and state any objections
7 to the proposed settlement.” *Cf.* Rule 3.769(f) with Preliminary Approval Order, RoA # 221, at ¶ 8;
8 Fisher Decl., filed 6/07/2019, at Exs. A and B.

9 The Court’s Order Granting Preliminary Approval (RoA # 221), “include[d] the time, date,
10 and place of the final approval hearing; the notice to be given to the class; and any other matters
11 deemed necessary for the proper conduct of a settlement hearing.” Rule 3.769(e). Notice of the final
12 approval hearing was prominently displayed in the Short-Form and Long-Form Notices, as well as
13 the Settlement Website. *Cf.* Rule 3.769(f) with Fisher Decl., Exs. A-C.

14 In addition, the Class Representative’s Motion for Attorneys Fees, Expenses and Incentive
15 Award (RoA # 225) was made available on the day Notice was issued, and provided to Class
16 Members on the Settlement Website and the Court. *Cf.* Rule 3.769(b) with Fisher Decl., ¶ 7 and Ex.
17 C.

18 And this Motion, as well as the Class Representatives’ Amended Motion for Preliminary
19 Approval (RoA # 213) has allowed this Court to “conduct an inquiry into the fairness of the proposed
20 settlement.” Rule 3.769(g). Finally, the proposed Final Approval Order and Judgement “include[] a
21 provision for the retention of the [C]ourt’s jurisdiction over the parties to enforce the terms of the
22 judgment.” *Cf.* Rule 3.769(h) with Proposed Final Approval Order and Judgment.

23 Because the Settlement complies with the Rules of Court in every respect, the Settlement
24 should be finally approved.

25 **VI. CONCLUSION**

26 For the foregoing reasons, Plaintiff respectfully requests this Court:
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- (1) Grant Final Approval to the Agreement as “fair, adequate and reasonable” and in compliance with California Rule of Court 3.769;
- (2) Certify the Class Members, and Settlement Class, which excludes those persons who excluded themselves from the Settlement, for settlement purposes pursuant to California Code of Civil Procedure § 382 and California Rule of Court 3.769;
- (3) Find that Class Notice complied fully with Due Process, and California Rule of Court 3.769; and
- (4) Order the Parties and the Administrator to carry out and discharge their obligations under the Agreement.

DATED: June 14, 2019

Respectfully submitted,

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