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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

THEODORE BROOMFIELD, *et al.*,

Plaintiffs,

v.

CRAFT BREW ALLIANCE, INC., *et al.*,

Defendants.

CASE NO.: 5:17-cv-01027-BLF

**PLAINTIFFS' NOTICE OF MOTION
AND UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: June 13, 2019

Time: 1:30 p.m.

Courtroom: 3 – 5th Floor

Judge: Hon. Beth Labson Freeman

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 13, 2019, at 1:30 pm, in Courtroom 3 of the above-
3 captioned Court, Plaintiffs will and hereby do move this Court, pursuant to Fed. R. Civ. P. 23(e),
4 this District’s Civil Local Rules, this Court’s Standing Orders, and this District’s Procedural
5 Guidance For Class Action Settlements, for an entry of an Order: (1) preliminarily approving the
6 terms of the proposed Settlement Agreement; (2) provisionally certifying the Class for settlement
7 purposes only; (3) provisionally appointing Faruqi & Faruqi, LLP and the Wand Law Firm, P.C. as
8 Class Counsel, and Plaintiffs as Class Representatives, for settlement purposes only; (4) appointing
9 CPT Group, Inc. as the Settlement Administrator; (5) approving the proposed Notice Plan and
10 authorizing dissemination of notice to the Class; and (6) scheduling a Final Approval Hearing.

11 This Motion is unopposed and is based on this Notice of Motion, the below Memorandum
12 of Points and Authorities in support, the Declarations of Timothy J. Peter, Aubry Wand, Bruce A.
13 Edwards, and Julie N. Green, the Settlement Agreement and exhibits thereto, the complete files and
14 records in this action, on such further oral and documentary evidence that may be submitted, and
15 any further evidence as the Court may receive.

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DATED: May 23, 2019

FARUQI & FARUQI LLP

By: /s/ Timothy J. Peter
Timothy J. Peter
Benjamin Heikali

THE WAND LAW FIRM, P.C.
Aubry Wand

Attorneys for Plaintiffs and the Classes

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1 **ISSUE TO BE DECIDED**

2 Whether the Court should grant preliminary of the proposed Settlement.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 In this class action, Plaintiffs Theodore Broomfield and Simone Zimmer (“Plaintiffs”) allege
6 that Defendant Craft Brew Alliance, Inc. (“CBA”) violated California consumer protection laws and
7 common law by packaging and advertising Kona Brewing Company Beers (“Kona Beers”) as
8 brewed in Hawaii when they are actually brewed in the continental U.S.

9 After over two years of hard-fought litigation, Plaintiffs are pleased to present this
10 Settlement to the Court for preliminary approval. The Settlement represents an outstanding result
11 for the proposed nationwide Settlement Class in that it fully achieves the two central goals of this
12 litigation. First, the Settlement affords Class Members the opportunity to recover more than what
13 they would likely receive if this case proceeded to trial. Second, the Settlement provides for
14 meaningful changes to the packaging of Kona Beers that will mitigate the likelihood of consumer
15 confusion that they are exclusively brewed in Hawaii. As such, the proposed Settlement is fair,
16 adequate and reasonable, and should be preliminarily approved under Fed. R. Civ. P. 23(e), Ninth
17 Circuit case law, and this District’s Procedural Guidance for Class Action Settlements.

18 Further, the proposed robust Notice Plan is designed to reach over 90 percent of the Class
19 and it will adequately advise Class Members of the terms of this Settlement and their rights
20 thereunder, in compliance with due process and all other applicable laws and rules. In addition, the
21 proposed nationwide Settlement Class should be certified for settlement purposes because all of the
22 requirements of Fed. R. Civ. P. 23(a) and (b)(3) are satisfied.

23 Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval of the
24 Settlement, provisionally certify the Settlement Class, provisionally appoint Faruqi & Faruqi, LLP
25 and the Wand Law Firm, P.C. as Class Counsel and Plaintiffs as Class Representatives, appoint CPT
26 Group, Inc. as the administrator for the Settlement, approve the Notice Plan and authorize
27 dissemination of notice to the Class, and schedule a Final Approval Hearing.

28

1 **II. RELEVANT PROCEDURAL BACKGROUND**¹

2 Before commencing this action, Class Counsel conducted a thorough pre-suit investigation.
 3 Declaration of Timothy J. Peter (“Peter Decl.”) at ¶¶ 3-4; Declaration of Aubry Wand (“Wand
 4 Decl.”). at ¶ 6. On April 7, 2017, Plaintiffs filed a Consolidated Class Action Complaint against
 5 CBA, challenging CBA’s packaging and marketing of the Kona Beers as being brewed in Hawaii
 6 when they are brewed in the continental U.S. ECF No. 15. After the Court denied in part and
 7 granted in part CBA’s Motion to Dismiss (ECF No. 44), on December 15, 2017, Plaintiffs filed a
 8 First Amended Consolidated Class Action Complaint (“FAC”), which is the operative complaint in
 9 this action. ECF No. 65. The FAC asserts the following causes of action: (1) violation of California’s
 10 Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*, (2) violation of
 11 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, (3)
 12 violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*,
 13 (4) common law fraud, (5) intentional misrepresentation, (6) negligent misrepresentation, and (7)
 14 unjust enrichment. *Id.* On December 29, 2017, CBA filed an Answer to the FAC. ECF No. 66.

15 On September 25, 2018, the Court granted Plaintiffs’ Motion for Class Certification,
 16 certifying: (1) a damages Class of California purchasers of six- and twelve-packs of Kona Beers
 17 pursuant to Rule 23(b)(3), and (2) an injunctive relief Class of California purchasers of six- and
 18 twelve-packs of Kona Beers pursuant to Rule 23(b)(2). ECF No. 94 (“Class Certification Order”).
 19 The law firms of Faruqi & Faruqi, LLP and the Wand Law Firm, P.C. were appointed as Class
 20 Counsel, and Plaintiffs were appointed as Class Representatives. *Id.*

21 On October 22, 2018, CBA filed a Rule 23(f) petition for interlocutory appeal of the Court’s
 22 Class Certification Order, which Plaintiffs timely opposed. Peter Decl., ¶ 6. On February 1, 2019,
 23 the Ninth Circuit Court of Appeals denied CBA’s Rule 23(f) petition. ECF No. 104. *Id.* On
 24 February 15, 2019, CBA filed a Petition for Rehearing en banc of the Ninth Circuit’s denial of
 25 CBA’s Rule 23(f) petition. *Id.*

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 27
 28 ¹ This is a non-exhaustive summary of the litigation. Paragraphs 1-26 of the Settlement Agreement
 sets forth a more detailed record of the litigation.

1 On January 24, 2019, the Parties participated in a full day mediation session with Bruce A.
 2 Edwards, an experienced mediator at JAMS in San Francisco, California. *Id.* at ¶ 7. The Parties
 3 did not reach settlement during this mediation but continued to engage in settlement discussions.
 4 *Id.* On March 6, 2019, the Parties participated in a second mediation session with Mr. Edwards, at
 5 the conclusion of which the Parties were able to reach a settlement in principle. *Id.* at ¶ 8. Notably,
 6 the Parties negotiated Class Counsel’s attorneys’ fees and costs and the class representative service
 7 awards only after reaching agreement on the monetary and injunctive relief for the Class. *Id.*; *see*
 8 *also* Declaration of Bruce A. Edwards (“Edwards Decl.”), ¶ 5. In the subsequent weeks, the Parties
 9 continued to negotiate and finalize all terms of this Settlement Agreement, and executed the final
 10 form on May 23, 2019, attached to the Peter Decl. at ¶ 9 as **Ex. A** (“Settlement Agreement”).

11 In light of the proposed Settlement, the Parties have filed a request to stay all appellate
 12 proceedings, including CBA’s Petition for Rehearing *en banc*. Peter Decl. at ¶ 11. All proceedings
 13 before this Court, other than those relating to the settlement approval process, have been vacated.
 14 ECF No. 111.

15 **III. THE SETTLEMENT TERMS**

16 **A. The Settlement Class**

17 The Settlement Class is comprised of and Settlement Class Members are defined as:

18 All Persons who purchased any four-pack, six-pack, twelve-pack or twenty-four pack of
 19 Kona Beers in the United States, its territories, or at any United States military facility,
 20 during the Class Period.² For the purposes of this definition, individuals living in the same
 household shall be deemed to be a single Class Member.

21 Settlement Agreement, ¶ 74.

22 Excluded from the Settlement Class are: (a) CBA’s and any of its parents’, affiliates’, or
 23 subsidiaries’ employees, officers and directors, (b) distributors, retailers or re-sellers of Kona Beers,
 24 (c) governmental entities, (d) Persons who timely and properly exclude themselves from the
 25 Settlement Class as provided herein, (e) the Court, the Court’s immediate family, and Court staff,
 26 and (f) counsel of record for the Parties, and their respective law firms. *Id.*

27 _____
 28 ² The Class Period is from February 28, 2013 through the date of Preliminary Approval. Settlement
 Agreement, ¶ 40.

1 Kona Beers are defined as: all 4-pack, 6-pack, 12-pack, or 24-packs of Longboard Island
 2 Lager, Hanalei IPA, Castaway IPA, Big Wave Golden Ale, Lemongrass Luau, Wailua Wheat, Fire
 3 Rock Pale Ale, Pipeline Porter, Lavaman Red Ale, Koko Brown Ale, Kua Bay IPA, Gold Cliff IPA,
 4 Kanaha Blonde Ale, Liquid Aloha Variety Pack, Island Hopper Variety Pack, Happy Mahalo
 5 Variety Pack, Wave Rider Tandem Pack. Excluded from the definition is all Kona beer that is sold
 6 without packaging (i.e., loose bottles, loose cans, and draft beer). Settlement Agreement, ¶ 53.

7 **B. Monetary Benefit For The Settlement Class**

8 Each Settlement Class Member who submits a timely and valid Claim Form will receive a
 9 monetary payment, based on the number and type of eligible purchases made during the Class
 10 Period, as follows:

Type of Unit Purchased	Amount Per Unit
4-pack Kona Beers	\$1.25
6-pack Kona Beers	\$1.25
12-pack Kona Beers	\$2.00
24-pack Kona Beers	\$2.75

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17 *Id.* ¶ 77(a).

18 Based on the foregoing per unit values, Settlement Class Members will be eligible to recover
 19 up to a maximum of \$20 per household (i.e., the same mailing address) if they submit Proof of
 20 Purchase up to \$10 per household without submitting any Proof of Purchase, provided they were 21
 21 years or older at the time of the purchase. *Id.* ¶ 77(b), (c).

22 There is no cap on the number of claims CBA must pay out and no pro-rata reduction.
 23 However, given that claims may be submitted without Proof of Purchase, CBA has the option to
 24 terminate the Settlement if there are more than 1 million claims (regardless of the dollar amount of
 25 such claims). *Id.* ¶ 77(d). While the precise number of claims cannot be stated with certainty at this
 26 juncture, the proposed Settlement Administrator, CPT Group, Inc. (“CPT”), estimates that there are
 27 roughly 7,800,000 Class Members. Declaration of Julie N. Green on Behalf of CPT (“Green
 28 Decl.”), ¶ 11. Both the CPT and Class Counsel believe that it is highly unlikely that more than 1

1 million Claims will be submitted.³ *Id.* at ¶ 29; Peter Decl., 12; Wand Decl. ¶ 18. Therefore, the submission of more than 1 million claims – in conjunction with the fact that no proof of purchase is required – may suggest fraud. Peter Decl., ¶ 13. Preventing fraud is the principal purpose of affording CBA the *option* to terminate the Settlement if there more than 1 million Claims. *Id.*

5 **C. Injunctive Relief For The Settlement Class**

6 No later than March 2020 or thirty calendar days after the Effective Date, whichever is later,
7 CBA shall make the following changes to its business practices:

8 To the extent permitted by law and/or regulation, CBA shall include a conspicuous statement
9 on all consumer-facing Kona Beer packaging on a panel other than the bottom of the package that
10 lists each location where the Kona Beers are brewed or lists the location or locations at which a
11 particular Kona Beer is brewed, for a minimum of four years after the Effective Date. Settlement
12 Agreement, ¶ 78(a). An exemplar mock-up of the new packaging is attached Settlement Agreement
13 as Exhibit 7. *Id.* In addition, for a minimum of four years after the Effective Date, CBA’s General
14 Counsel or his or her designee shall conduct annual meetings with CBA’s marketing department to
15 review and comply with the injunctive terms of this Settlement. *Id.* ¶ 78(b).

16 **D. Release Of Settlement Class Members’ Claims**

17 The Parties have negotiated a class-wide release that is tailored to the allegations in this
18 Action. Upon the Effective Date of the Settlement, Plaintiffs, as well as any Settlement Class
19 Member who does not submit a valid and timely Request for Exclusion (i.e., opt-out of the
20 settlement) shall release the following claims against CBA and the other Released Parties:

21 Any claim, cross-claim, liability, right, demand, suit, matter, obligation, damage,
22 restitution, disgorgement, loss or cost, attorneys’ fee, cost or expense, action or
23 cause of action, of every kind and description that the Releasing Party had or has,
24 including assigned claims, whether in arbitration, administrative, or judicial
25 proceedings, whether as individual claims or as claims asserted on a class basis or
26 on behalf of the general public, whether known or unknown, asserted or unasserted,
27 suspected or unsuspected, latent or patent, that is, has been, could reasonably have
28 been or in the future might reasonably be asserted by the Releasing Party in the
Action against any of the Released Parties arising out of the allegations in the
complaints filed in the Action (“Released Claims”) Excluded from the Released

³ The estimated claims rate is described in more detail below at Section VI.D.2 below.

1 Claims is any claim for alleged bodily injuries arising after the Effective Date of
2 this Settlement Agreement.

3 Settlement Agreement, ¶ 66.

4 This release includes a waiver of Section 1542 of the California Civil Code and any law of
5 any state or territory of the United States, federal law or principle of common law, or of international
6 or foreign law, that is similar, comparable or equivalent to Section 1542 of the California Civil
7 Code. *Id.*, ¶¶ 124-26.

8 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**
9 **BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE**

10 As an initial matter, in the Ninth Circuit, there is a “strong judicial policy that favors
11 settlements, particularly where complex class action litigation is concerned.” *Class Plaintiffs v. City*
12 *of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

13 Approval of a class action settlement requires a two-step process – a preliminary approval
14 followed by a later final approval. *See Tijero v. Aaron Bros., Inc.*, No. C 10-01089, 2013 WL 60464,
15 at *6 (N.D. Cal. Jan.2, 2013). “Although the Ninth Circuit has not specified what standard should
16 apply at the preliminary approval stage, ‘district courts often state or imply that scrutiny should be
17 more lax.’” *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1122 (N.D. Cal. 2016). Under
18 this more lax standard, courts examine whether the settlement “‘falls within the range of possible
19 approval’ or ‘within the range of reasonableness,’ looking at factors such as whether the settlement
20 is the product of non-collusive negotiations, has no obvious deficiencies, does not improperly grant
21 preferential treatment to class representatives or segments of the class, and falls within the range of
22 possible approval.” *Id.* (internal quotation marks omitted). However, given practical
23 considerations, such as the cost of providing notice to the class, some courts apply a more exacting
24 standard at the preliminary approval stage. *See, e.g., Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037
25 (N.D. Cal. 2016).

26 Here, preliminary approval of the Settlement is appropriate under the more exacting final
27 approval standard because it is fair, reasonable, and adequate under the Federal Rule of Civil
28 Procedure 23(e), Ninth Circuit case law, and the applicable Northern District’s Procedural Guidance

1 for Class Action Settlements (“Settlement Guidelines”). Under Rule 23(e)(2), the Court may
 2 approve a proposed settlement only after finding that the settlement is “fair, reasonable, and
 3 adequate.” The recent amendments to Rule 23, effective December 1, 2018, require a court, in
 4 making a determination about the adequacy of a proposed settlement, to consider whether:

- 5 (A) the class representatives and class counsel have adequately represented the class;
 6 (B) the proposal was negotiated at arm’s length;
 7 (C) the relief provided for the class is adequate, taking into account:
 8 (i) the costs, risks, and delay of trial and appeal;
 9 (ii) the effectiveness of any proposed method of distributing relief to the class,
 10 including the method of processing class-member claims;
 11 (iii) the terms of any proposed award of attorney’s fees, including timing of
 12 payment; and
 13 (iv) any agreement required to be identified under Rule 23(e)(3); and
 14 (D) the proposal treats class members equitably relative to each other.

15 Fed. R. Civ. P. 23(e)(2).

16 The Advisory Committee recognizes that circuits have developed their own lists of factors
 17 for courts to consider when assessing the fairness of a proposed class action settlement. The 2018
 18 amendments were not intended to “displace any factor, but rather to focus the court and the lawyers
 19 on the core concerns of procedure and substance that should guide the decision whether to approve
 20 the proposal.” Fed. R. Civ. P. 23(e)(2) Advisory Comm. Note to 2018 Amendment. The Ninth
 21 Circuit has often used the “*Churchill* factors” when determining whether to approve a class action
 22 settlement:

- 23 (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration
 24 of further litigation; (3) the risk of maintaining class action status throughout the trial; (4)
 25 the amount offered in settlement; (5) the extent of discovery completed and the stage of the
 26 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
 27 participant; and (8) the reaction of the class members to the proposed settlement.

28 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).⁴ As detailed below, the
 Settlement passes both procedural and substantive muster under the Rule 23 and *Churchill* factors,
 and merits preliminary approval.

⁴ The “*Churchill* factors” are also known as the “*Hanlon* factors.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

1 **A. Plaintiffs And Class Counsel Have Adequately Represented The Settlement**
 2 **Class**

3 Under Rule 23(e)(2)(A), the Court should consider whether “the class representatives and
 4 class counsel have adequately represented the class.” In granting class certification, the Court
 5 concluded that Class Counsel are adequate. ECF No. 94 at 36 (“Plaintiffs have retained highly
 6 capable counsel with extensive experience in successfully prosecuting consumer class actions”.)
 7 Accordingly, and without any opposition, the Court finds that Faruqi & Faruqi, LLP and the Wand
 8 Law Firm, P.C. are adequate under Rule 23(g)(1) and (4).”). The Court also concluded that Plaintiffs
 9 are adequate and appointed them as representatives of the Class. *Id.* at 12-13, 37. This remains true
 10 for the purposes of seeking approval of this Settlement, as after obtaining class certification,
 11 Plaintiffs and Class Counsel have, and will continue to, zealously represent the Class.⁵ Peter Decl.
 12 ¶¶ 5-6; Wand Decl. ¶¶ 7-8.

13 **B. The Settlement Was Reached After Informed, Arm’s Length Bargaining**

14 Under Rule 23(e)(2)(B), the Court should consider whether “the [proposed settlement] was
 15 negotiated at arm’s length[.]” As discussed below, this “procedural” factor weighs in support of
 16 preliminary approval.

17 1. Class Counsel Negotiated This Settlement Based On Sufficient Information

18 Class Counsel conducted extensive investigative work prior to bringing a lawsuit. Peter
 19 Decl., ¶¶ 3-4; Wand Decl., ¶ 6. After commencing this action, the Parties engaged in extensive
 20 motion practice and discovery before participating in any settlement discussions. Plaintiffs’ counsel,
 21 among other things, took multiple Rule 30(b)(6) depositions relating to CBA’s advertising and sales
 22 practices, served and responded to several rounds of written discovery, reviewed tens of thousands
 23 of pages of documents, and retained well-qualified experts in the fields of consumer surveys and
 24 statistics and economics to proffer opinions on threshold issues of deception, materiality, and
 25 damages. Peter Decl., ¶ 5.

26
 27
 28 ⁵ Adequacy of Plaintiffs and Class Counsel is further discussed in Section V.C.4 below.

1 Moreover, while Plaintiffs ultimately obtained class certification, it was vigorously
2 contested by CBA, as evidenced by the three depositions taken of the parties' respective experts,
3 CBA's deposition of the two Plaintiffs, CBA's thorough opposition brief, and CBA's post-
4 certification motion for reconsideration and Rule 23(f) petition to appeal, all of which occurred
5 before the parties reached this Settlement. *Id.* ¶¶ 5-6. Even after the parties began settlement
6 negotiations, they continued to exchange documents and information regarding their respective
7 positions. *Id.* ¶ 7. Thus, Plaintiffs and Class Counsel were well-apprised of the salient legal and
8 factual issues before reaching the decision to settle this matter. *Id.* ¶ 10; *see also Louie v. Kaiser*
9 *Found. Health Plan, Inc.*, No. 08-cv-0795, 2008 WL 4473183, at *6 (S.D. Cal. Oct. 6, 2008) ("Class
10 counsels' extensive investigation, discovery, and research weighs in favor of preliminary settlement
11 approval."); *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004)
12 ("A court is more likely to approve a settlement if most of the discovery is completed because it
13 suggests that the parties arrived at a compromise based on a full understanding of the legal and
14 factual issues surrounding the case.") .

15 2. The Settlement Was Negotiated At Arm's Length With An Experienced
16 Neutral Mediator

17 The close involvement of Bruce A. Edwards, Esq. of JAMS, a highly experienced class
18 action mediator, throughout the settlement negotiation process underscores the procedural fairness
19 of the Settlement. *See Adams v. Inter-Con Sec. Sys., Inc.*, No. C-06-5428 MHP, 2007 WL 3225466,
20 at *3 (N.D. Cal. Oct. 30, 2007) ("The assistance of an experienced mediator in the settlement process
21 confirms that the settlement is non-collusive."). Here, the settlement negotiations were at arm's
22 length and, although conducted in a professional manner, were adversarial. Edwards Decl., ¶ 6.
23 The Parties first participated in a full-day mediation session with Mr. Edwards on January 24, 2019,
24 but were unable to reach a settlement. *Id.*, ¶ 4. After several rounds of conference calls with Mr.
25 Edwards, the Parties agreed to participate in a second mediation session on March 6, 2019. After
26 negotiating for approximately 12 hours at the second mediation session, the Parties were finally able
27 to reach agreement regarding the principle terms of this Settlement. *Id.*

1 3. Attorneys' Fees Were Negotiated After Relief to the Class Was Agreed Upon

2 The Parties negotiated Class Counsel's attorneys' fees and costs and the class representative
3 service awards only after reaching agreement on the monetary and injunctive relief for the Class.
4 Edwards Decl. ¶ 5. Moreover, this Settlement is not contingent on the award of attorneys' fees and
5 costs or the class representative service awards, Settlement Agreement, ¶¶ 109, 113, which is
6 indicative of a fair and arm's-length settlement process. *See* Fed. R. Civ. P. 23 Advisory Comm.
7 Note to 2018 Amendment (courts may look at "the treatment of any award of attorneys' fees, with
8 respect to both the manner of negotiating the fee award and its terms."); *Sadowska v. Volkswagen*
9 *Grp. of Am., Inc.*, No. CV 11-00665, 2013 WL 9600948, at *8 (C.D. Cal. Sept. 25, 2013) (approving
10 settlement and finding agreement on fees and expenses reasonable where "[o]nly after agreeing
11 upon proposed relief for the Class Members, did the parties discuss attorneys' fees, expenses, and
12 costs").⁶

13 **C. The Settlement Provides Substantial Benefit To The Settlement Class**

14 Rule 23(e)(2)(C) "focus[es] on what might be called a 'substantive' review of the terms of
15 the proposed settlement." Fed. R. Civ. P. 23 Advisory Comm. Note to 2018 Amendment. In
16 determining whether "the relief provided for the class is adequate," the Court should consider "(i)
17 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of
18 distributing relief to the class, including the method of processing class-member claims; (iii) the
19 terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement
20 required to be identified under Rule 23(e)(3)[.]" Fed. R. Civ. P. 23(e)(2)(C). As discussed below,
21 all of these substantive considerations are satisfied here.

22 1. The Benefit To The Settlement Class Is Substantial, Particularly When
23 Compared To What Class Members Could Have Recovered At Trial

24 Under the Settlement, Class Members who file timely and valid claims will receive
25 compensation ranging from \$1.25-\$2.75 per product, and up to a total maximum of \$10 or \$20 per
26 household, depending on whether the Settlement Class Member has Proof of Purchase. This relief

27 _____
28 ⁶ The substantive terms of the attorneys' fees and costs provisions are detailed below in Section IV.C.5.

1 is clearly reasonable when weighed against the damages recoverable if Plaintiffs were to prevail at
2 trial on their claims. Notably, the compensation per-product negotiated on behalf of the Settlement
3 Class (\$1.25-\$2.75) is *more than* the damages per-product that Class members likely could have
4 received at trial.⁷ Peter Decl., ¶ 14. In support of their Motion for Class Certification, Plaintiffs’
5 statistics and economics expert, Stefan Boedeker, conducted a conjoint analysis, and calculated a
6 12.7% nationwide price premium based on the mistaken belief that Kona Beers are brewed in
7 Hawaii. ECF No. 79-14, ¶ 144. Based on the sales and financial data produced in the litigation,
8 Class Counsel determined that the per-product recovery afforded to Class Members under this
9 Settlement represents more than the 12.7% price premium per-product that could be recovered if
10 Plaintiffs were to prevail at trial. Peter Decl., ¶ 14. This is an excellent result for the Class. *See In*
11 *Re Nucoa Real Margarine Litig.*, No. CV 10-00927 MMM (AJWx), 2012 WL 12854896, at *13
12 (C.D. Cal. June 12, 2012) (“Even though class members will receive slightly less than the full
13 purchase price, and recover for a limited number of purchases, therefore, their recovery from the
14 settlement might well be significantly more than they would receive if they prevailed at trial.”).⁸

15 The injunctive component of the Settlement also provides substantial benefit to the
16 Settlement Class. CBA has agreed to include a conspicuous statement on all consumer-facing Kona
17 Beer packaging that lists each location where the Kona Beers are brewed or lists the location or
18 locations at which a particular Kona Beer is brewed. Settlement Agreement, ¶ 78(a), Ex. 7. This
19 statement will mitigate any potential consumer confusion that the Kona Beers are brewed
20 exclusively in Hawaii – the issue at the very heart of this case. Peter Decl., ¶ 15. Indeed, courts in
21 other false advertising beer origin cases have recognized significant value derived from substantially

23 ⁷ Up to an aggregate amount of \$10 without proof of purchase and \$20 with proof of purchase.

24 ⁸ Moreover, “it is well-settled law that a proposed settlement may be acceptable even though it
25 amounts to only a fraction of the potential recovery that might be available to the class members at
26 trial.” *DIRECTV*, 221 F.R.D. at 527, citing *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242
27 (9th Cir. 1998). *See also In re Toys R Us–Del., Inc.– Fair & Accurate Credit Transactions Act*
28 *(FACTA) Litig.*, 295 F.R.D. 438, 453–54 (C.D. Cal.2014) (granting final approval of a settlement
providing for payment reflecting 3% of possible recovery); *Reed v. 1–800 Contacts, Inc.*, 2014 WL
29011, *6 (S.D. Cal. Jan. 2, 2014) (granting final approval where settlement represented 1.7% of
possible recovery).

1 similar injunctive relief. *See Marty v. Anheuser-Busch Cos., LLC*, No. 13-cv-23656, ECF No. 171
 2 – Order Overruling Objections at 7 (holding that “injunctive changes such as label modifications
 3 represent a benefit to the class and should be considered when approving a class settlement[,]” and
 4 collecting cases in accord) (decision attached as **Ex. D** to the Peter Decl. ¶ 20); *Suarez v. Anheuser-*
 5 *Busch Companies, LLC*, No. 13-033620-CA-01, (Final Order and Judgment) (approving settlement
 6 agreement in Japanese beer-mislabeling class action, requiring labeling changes clarifying that the
 7 beer was not brewed in Japan) (decision attached as **Ex. F** to the Peter Decl. ¶ 22); *Shalikar v. Asahi*
 8 *Beer, U.S.A., Inc.*, No. BC702360, Order Granting Preliminary Approval (same) (decision attached
 9 as **Ex. B** to the Peter Decl. ¶ 17).

10 2. The Recovery For The Settlement Class Is Reasonable In Comparison To
 11 Comparable Settlements

12 Settlements in similar false advertising beer cases also serve as a useful benchmark to assess
 13 the reasonableness of this Settlement. *See Fed. R. Civ. P. 23 Advisory Comm. Note to 2018*
 14 *Amendment* (“the nature and amount of discovery in this or other cases, or the actual outcomes of
 15 other cases . . . may indicate whether counsel negotiating on behalf of the class had an adequate
 16 information base.”). This Settlement is comparable to or exceeds the class-wide benefits in similar
 17 false geographic origin beer settlements. For example, in *Marty*, a class action challenging the origin
 18 of Beck’s beer, the court approved a class-wide settlement which included: (1) monetary benefits
 19 ranging from \$.10 to \$1.75 per unit depending on which beer size was purchased; and (2) injunctive
 20 relief in the form of label changes that inform consumers where Beck’s beer is brewed. Peter Decl.,
 21 ¶ 20. Notably, the plaintiffs’ expert in *Marty* had calculated that the monetary benefit was
 22 approximately 33% to 50% of the recovery plaintiffs could have achieved at trial. *Id.* at ¶ 21, **Ex.**
 23 **E**. Here, in addition to similar injunctive relief, the monetary relief, as discussed above, is greater
 24 than the amount Class Members could have recovered a trial on a per-product basis. Moreover, in
 25 accordance with the Settlement Guidelines, ¶ 11, this Settlement is also comparable to the settlement
 26 reached by Class Counsel in *Shalikar v. Asahi Beer USA, Inc.*, No. BC702360 and *In re Scotts EZ*
 27 *Seed Litigation*, No. 12-cv-4727, both consumer class actions settled on a claims-made basis. *See*
 28 Peter Decl., ¶ 17-19, **Ex. B** and **C** for further detail.

1 3. The Costs, Risks, And Delay Of Trial

2 Consistent with Fed. R. Civ. P. 23(e)(2)(C)(i), courts in this circuit evaluate “the strength of
3 the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; [and] the
4 risk of maintaining class action status throughout the trial[.]” *Hanlon v. Chrysler Corp.*, 150 F.3d
5 1011, 1026 (9th Cir. 1998). Thus, the recovery obtained for Settlement Class should also be
6 balanced against the time, expense, and risk associated with extensive litigation and trial. Generally,
7 the principal risks to be assessed are the difficulties and complexities of proving liability and
8 damages. *See Class Plaintiffs*, 955 F.2d at 1292 (approving settlement based on uncertainty of
9 claims and avoidance of summary judgment).

10 Here, in considering whether to enter into the Settlement, Plaintiffs and Class Counsel
11 considered the significant risks of proceeding with the litigation, including the risks of maintaining
12 class certification, establishing liability, proving damages at trial, and the likely duration of post-
13 trial motions and appeals. Peter Decl., ¶ 24; *see also Schaffer v. Litton Loan Servicing, LP*, No. CV
14 05–07673, 2012 WL10274679, at *11 (C.D. Cal. Nov. 13, 2012) (“Estimates of what constitutes a
15 fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of
16 litigating the case, and the expected delay in recovery (often measured in years.)”); *see also Vathana*
17 *v. Everbank*, No. 09-CV-02338-RS, 2016 WL 3951334, at *2 (N.D. Cal. July 20, 2016) (“All in all,
18 the risk at trial would have been great, and while the total recovery for some plaintiffs may seem
19 modest, it is far better than \$0 that might have resulted.”).

20 More specifically, CBA contests liability, as well as the propriety of certification, and is
21 prepared to vigorously defend against Plaintiffs’ claims if the action is not settled. This is evidenced
22 by the extensive record in this case, including an en banc petition on file (but stayed pending this
23 Settlement) in the Ninth Circuit filed by CBA. And even if the Ninth Circuit were to deny CBA’s
24 en banc petition, CBA would likely file a motion for summary judgment and *Daubert* motions as to
25 Plaintiffs’ experts, all before Plaintiffs could even present this case for trial. Finally, even if
26 Plaintiffs prevailed at trial, and any appeals were resolved in Plaintiffs’ favor, payment to Class
27 members would likely be delayed for several years. Peter Decl. ¶ 24; *see also Officers for Justice*
28 *v. Civil Serv. Comm’n of S.F.*, 688 F.2d 615, 629 (9th Cir. 1982), *cert denied*, 459 U.S. 1217 (1983)

1 (approving settlement based in part on the possibility that a judgment after a trial, when discounted,
2 might not reward class members for their patience and the likely delay reflected in the “track record”
3 for large class actions). In sum, when the risks of further litigation, the uncertainties involved in
4 maintaining class certification, the burdens of proof necessary to establish liability, the probability
5 of appeal of a favorable judgment, and the likely delay in any payments to the Class, are balanced
6 against the fact that Settlement Class Members will be receiving more monetary recovery on a per
7 unit basis than they could have received at trial, it is clear that the Settlement amount is fair,
8 adequate, and reasonable. Peter Decl., ¶ 25; Wand Decl., ¶ 3.

9 4. Effectiveness Of The Proposed Distribution Method

10 Under Rule 23(e)(2)(C)(ii), the Court should consider “the effectiveness of [the] proposed
11 method of distributing relief to the class.” Here, Settlement Class Members who seek benefits under
12 the Settlement must only submit a Claim Form with basic questions about class membership and
13 their purchases of Kona Beer.⁹ Settlement Agreement, ¶ 36, Ex. 1. All payments to Settlement
14 Class Members will be in the form of a check or via electronic payment, whichever option the
15 Settlement Class Member so chooses. Settlement Agreement, ¶ 91; *see also* Settlement Guidelines,
16 ¶ 3 (Class Counsel should consider “distributions to class members via direct deposit.”). This
17 procedure is claimant-friendly, efficient, cost-effective, proportional and reasonable.

18 5. Terms Of Attorneys’ Fees

19 Under Rule 23(e)(2)(C)(iii), the Court should consider “the terms of any proposed award of
20 attorney’s fees, including timing of payment.” Here, Plaintiffs will request the payment of attorneys’
21 fees and expenses in the amount of \$2,900,000, which is to be paid by CBA separate and apart from
22 the money made available to the Class for purposes of payments of Claims and notice and
23 administration expenses. Peter Decl. ¶ 26.

24 Under Ninth Circuit law, in cases such as this where monetary relief is made on a claims-
25 made basis (no common fund) and there is a fee-shifting statute (here, California Civil Code § 1750
26 and California Code of Civil Procedure § 1021.5), it is appropriate for a District Court to analyze
27

28 ⁹ Further detail about the Notice Plan is described in Section VI.B below.

1 an attorneys' fee request and issue an award based on the "lodestar" method. *Hanlon*, 150 F.3d at
2 1029 (affirming choice of lodestar method where calculation of value of common fund was
3 uncertain); *Grays Harbor Adventist Christian School v. Carrier Corp.*, 2008 WL 1901988 (W.D.
4 Wash. April 24, 2008) (holding that where "[s]ettlement relief will be paid on a claims-made basis
5 with no cap to the relief available, consideration of attorneys' fees lends itself more readily to the
6 lodestar method"). The \$2,900,000 in attorneys' fees and costs is fair and reasonable based on Class
7 Counsel's litigation costs and current lodestar, and any other method of review, which may be
8 discussed in a fee application should the Court grant this Motion.

9 Class Counsel estimates their current litigation costs are approximately \$324,593. Peter
10 Decl., ¶ 27; Wand Decl., ¶ 19. Thus, after subtracting these litigation costs (which will continue to
11 increase through the settlement approval process) from the \$2,900,000 figure, Class Counsel will
12 be seeking an award of attorneys' fees of approximately \$2,575,407. To date, Class Counsel's total
13 current lodestar is \$1,713,295 based on the hours expended at each attorney's customary hourly
14 rates for this District. Peter Decl., ¶ 27; Wand Decl., ¶ 20. Class Counsel's lodestar will continue
15 to increase based on the substantial time and effort they will need to expend through the settlement
16 administration and approval process. Peter Decl., ¶ 28. Thus, the \$2,575,407 in attorneys' fees that
17 Class Counsel intends to seek reflects a modest multiplier of 1.50 or less on their current lodestar.
18 The Ninth Circuit has approved multipliers in similar cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d
19 1043, 1051 n.6 (9th Cir. 2002) (affirming lode star cross-check that resulted in a multiplier of 3.65
20 and recognizing that multipliers of 1 to 4 are commonly found to be appropriate in common fund
21 cases). This Court has also approved similar multipliers. *See, e.g., Gergetz v. Telenav, Inc.*, No. 16-
22 CV-04261-BLF, 2018 WL 4691169, at *7 (N.D. Cal. Sept. 27, 2018) (Freeman, J.) (approving 2.625
23 multiplier in consumer class action settlement).

24 At least 35 days prior to the deadline by which Class members must submit claims, requests
25 for exclusions, or objections, Plaintiffs will file a fee application that will include detailed briefing
26 regarding the facts and law in support of the appropriateness of their request for attorneys' fees and
27 costs. Settlement Agreement, ¶¶ 35, 48, 60. This will afford Class Members a full opportunity to
28 consider this issue before deciding how to proceed under the Settlement. *See In re Mercury*

1 *Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993 (9th Cir. 2010); *see also* Settlement Guidelines, ¶ 9
 2 (advising that class members should have at least 35 days after fee application is filed to opt out or
 3 object).

4 6. There Are No Supplemental Agreements

5 Rule 23(e)(2)(C)(iv) and 23(e)(3) require identification of all agreements. There are no
 6 agreements between Plaintiffs and CBA other than this Settlement Agreement. Peter Decl., ¶ 30.

7 **D. Settlement Class Members Are Treated Equitably Under The Settlement**

8 The Court must also consider whether “the [settlement] proposal treats class members
 9 equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). This factor is intended to ensure that
 10 a proposed settlement does not include “inequitable treatment of some Class Members vis-a-vis
 11 others.” Fed. R. Civ. P. 23 Advisory Comm. Note to 2018 Amendment. Here, the Settlement
 12 Agreement provides equal relief to all Class Members, as each Class Member will be eligible to
 13 recover the same relief. The injunctive relief also equally benefits each member of the Settlement
 14 Class.

15 The Settlement does provide class representative service awards to Plaintiffs in an amount
 16 of up to \$5,000 each. Settlement Agreement, ¶ 112. But this modest payment is for the extensive
 17 risk and services undertaken by Plaintiffs, as well as the substantial benefit conferred on the Class
 18 as a result of Plaintiffs’ efforts. Peter Decl., ¶ 29. As will be detailed further in the forthcoming
 19 Fee Application, Plaintiffs have been actively involved in all material aspects of this case. *Id.* The
 20 Ninth Circuit has also recognized that service awards to named plaintiffs in a class action are
 21 permissible and do not render a settlement unfair or unreasonable. *See Rodriguez v. West Publ’g*
 22 *Corp.*, 563 F. 3d 948, 958-69 (9th Cir. 2009) (finding that the payment of a service award is “fairly
 23 typical in class action[s][.]”). “Many courts in this Circuit have held that a \$5,000 service award is
 24 ‘presumptively reasonable.’” *Terry v. Hoovestol, Inc.*, No. 16-CV-05183-JST, 2019 WL 2061105,
 25 at *7 (N.D. Cal. May 9, 2019) (citing cases).

26 //

27 //

28 //

1 **E. Additional Ninth Circuit Factors Favor Approval**

2 1. Class Counsels' Experience And Views¹⁰

3 Although not articulated as a separate factor in Rule 23(e), in deciding whether to approve a
4 proposed settlement of a class action, the Court should consider the experience and views of counsel.
5 *Churchill Vill.*, 361 F.3d at 575. Here, Class Counsel are experienced in litigating consumer class
6 actions, and have a nuanced understanding of the legal and factual issues involved in this case. Class
7 Counsel fully endorse the Settlement as fair, adequate, and reasonable. Peter Decl. ¶ 23; Wand
8 Decl., ¶ 3. The fact that qualified and well-informed counsel endorse the settlement as being fair,
9 reasonable, and adequate weighs in favor of preliminary approval. *See In re Omnivision Techs.,*
10 *Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (“The recommendations of plaintiffs’ counsel
11 should be given a presumption of reasonableness.”); *Moyle v. Liberty Mut. Ret. Benefit Plan*, No.
12 10CV2179-GPC (MDD), 2018 WL 1141499, at *6 (S.D. Cal. Mar. 2, 2018) (because voluntary
13 settlements are highly favored by the law, courts should be deferential to the good faith negotiations
14 of experienced counsel whenever possible).

15 **V. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES**

16 The proposed Settlement Class should be certified because the requirements of Rule 23(a)
17 and Rule 23(b)(3) are satisfied, as explained below. CBA does not oppose certification of the
18 Settlement Class for settlement purposes. Settlement Agreement, ¶¶ 118-19. CBA takes no position
19 on the availability or advisability of class certification outside the context of this settlement, and
20 does not concede that the requirements of Rule 23(a) and (b)(3) could be met in any other context.

21 **A. The Court Can Certify A Settlement Class That Is Broader Than The Certified**
22 **California Litigation Classes**

23 The Court can amend or alter the class definition at any time before a decision on the merits.
24 *See Fed. R. Civ. P. 23(c)(1)(C); see also Vizcaino v. United States Dist. Ct. for W. Dist. Wash.*, 173
25 F.3d 713, 721 (9th Cir. 1999).

26 _____
27 ¹⁰ The *Churchill* Factors also include the presence of a governmental participant and the reaction of
28 the class to the settlement. These factors are not applicable at this stage, but can and will be
addressed at final approval.

1 The Court has already certified two California classes:

2 Six-Pack Class

3 All persons who purchased any six-pack bottles of the Kona Beers in California at any
4 time beginning four (4) years prior to the filing of this action on February 28, 2017 until
5 the present (“Class Period”).

6 Twelve-Pack Class

7 All persons who purchased any twelve-pack bottles of the Kona Beers in California at any
8 time beginning four (4) years prior to the filing of this action on February 28, 2017 until
9 the present (“Class Period”).

10 ECF No. 94 at 5.

11 The “Kona Beers” included in the foregoing class definitions were the following eight
12 products: Longboard Island Lager, Hanalei IPA, Castaway IPA, Big Wave Golden Ale, Lemongrass
13 Luau, Wailua Wheat, Fire Rock Pale Ale, and Pipeline Porter. *Id.*

14 The proposed nationwide Settlement Class is broader than the certified California litigation
15 classes in the following three respects: (1) it includes a nationwide class of consumers (as opposed
16 to a California class of consumers); (2) it includes the following additional product varieties within
17 the definition of Kona Beers: Lavaman Red Ale, Koko Brown Ale, Kua Bay IPA, Gold Cliff IPA,
18 Kanaha Blonde Ale, Liquid Aloha Variety Pack, Island Hopper Variety Pack, Happy Mahalo
19 Variety Pack, Wave Rider Tandem Pack; and (3) it includes 4-packs and 24-packs of Kona Beers
20 (as opposed to just 6-packs and 12-packs).

21 Here, certifying a proposed Settlement Class including the additional Kona Beer varieties is
22 appropriate because the representations with a disclaimer challenged by Plaintiffs at class
23 certification are on the packaging of 4-packs, 6-packs, 12-packs, and 24-packs of all the Kona Beers,
24 including the additional Kona Beer varieties. Peter Decl. at ¶ 16; *see also* Settlement Guidelines, ¶
25 1(b). Furthermore, the Settlement provides substantial benefits to all Settlement Class Members
26 equally, as the monetary compensation afforded to California Class Members will be the same as
27 the monetary compensation afforded to Class Members in all other states. Similarly, the injunctive
28

1 relief will equally benefit all Class Members nationwide because the packaging for all Kona Beers
2 sold nationwide will be modified in the same manner under the Settlement.¹¹

3 Moreover, the Court can certify a settlement class that is broader than a previously certified
4 litigation class. Courts routinely alter or expand previously-certified classes for purposes of
5 certifying a settlement class. *See, e.g., Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 320 (C.D. Cal.
6 2016) (adding additional time period and removing exclusion for class members who used coupons
7 to previously certified class definition for purposes of settlement); *In re TRS Recovery Servs., Inc.*
8 *& Telecheck Servs., Inc., Fair Debt Collection Practices Act (FDCPA) Litig.*, Civ. No. 2:13-MD-
9 2426-DBH, 2016 WL 543137, at *2 (D. Me. Feb. 10, 2016) (certifying a settlement class that has
10 been “merged and expanded by agreement” to cover not only the previously certified class of Maine
11 residents, but also residents nationwide); *Hahn v. Massage Envy Franchising LLC*, No. 3:12-cv-
12 00153-DMS-BGS, 2015 WL 2164981, at *1 (S.D. Cal. Mar. 6, 2015) (granting preliminary approval
13 of class action settlement that expanded the certified class to encompass former and current
14 members of Defendant’s clinics or spas nationwide, rather than only former members in California).

15 Accordingly, Plaintiffs respectfully request that the Court modify its September 25, 2018
16 Class Certification Order and certify the proposed nationwide Settlement Class, defined in Section
17 III.A above.

18 **B. The Claims To Be Released Are Not Broader Than The Claims That Would Be**
19 **Released Under the Previously Certified California Litigation Classes**

20 The Court should also consider any differences between the claims to be released and the
21 claims certified for class treatment and an explanation as to why the differences are appropriate in
22 the instant case. Settlement Guidelines, ¶ 1(d). Here, other than the broader Settlement Class
23 definition described above, the legal claims being released are not broader than a res judicata release
24 that would be obtained after trial. It releases only claims that were or could have been asserted
25 regarding the advertising of the geographic origin of the Kona Beers – the very issue in suit. *See*
26

27 _____
28 ¹¹ The appropriateness of certifying the proposed nationwide Settlement Class is discussed in more
detail in Section V.D below in the context of the predominance requirement of Rule 23(b)(3).

1 *Allied Fire Prot. v. Diede Constr., Inc.*, 127 Cal. App. 4th 150, 155 (2005) (“Res judicata serves as
2 a bar to all causes of action that were litigated or that could have been litigated in the first action.”);
3 *see also In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 327 (N.D. Cal. 2018) *appeals*
4 *dismissed voluntarily*, 18-16826, 2018 WL 7858371, (9th Cir. Oct. 17, 2018) 18-16866, 2018 WL
5 7890391 (9th Cir. Oct. 15, 2018) (“the Ninth Circuit allows federal courts to release not only those
6 claims alleged in the complaint, but also claims ‘based on the identical factual predicate as that
7 underlying the claims in the settled class action.’”) (quoting *Hesse v. Sprint Corp.*, 598 F.3d 581,
8 590 (9th Cir. 2010)). Claims relating to “alleged bodily injuries” are specifically excluded from the
9 release. Settlement Agreement, ¶ 66. In short, the release is limited to the claims at issue in this
10 case and is appropriate.

11 C. The Requirements Of Rule 23(a) Are Satisfied

12 When presented with a proposed settlement, the Court must ascertain whether the proposed
13 settlement class satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. *See*
14 *Hanlon*, 150 F.3d at 1019-22. Rule 23(a) enumerates four prerequisites for class certification: (1)
15 numerosity; (2) commonality; (3) typicality; and (4) adequacy. Fed. R. Civ. P. 23(a).

16 While the propriety of certification of the nationwide Settlement Class should not be
17 presumed based on the Court’s earlier certification of the California classes, because CBA has
18 engaged in uniform challenged conduct in all states nationwide, the Court’s class certification order
19 should nevertheless guide the analysis of the Rule 23(a) and (b)(3) requirements here. As the Court
20 recognized in its Class Certification Order, the conduct challenged on the Kona Beer packaging is
21 “consistent on a state-by-state basis, including on the packages sold in California.” ECF No. 94 at
22 3 (citing deposition transcript of Nick Mallory at 129:20-23; 154:20-23); *see also Kumar v. Salov*
23 *N. Am. Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898, at *4 (N.D. Cal. July 7, 2017), *aff’d*, 737
24 F. App’x 341 (9th Cir. 2018), *and appeal dismissed*, No. 17-16621, 2017 WL 5502713 (9th Cir.
25 Sept. 21, 2017) (“Here, the settlement agreement was negotiated after the Court heard and decided
26 the class certification motion. The Court undertook a thorough analysis of the evidence and claims
27 in the context of the class certification motion. The nature of the claims and class certification factors
28

1 does not differ significantly as between the California Class certified and the Nationwide Class in
2 the settlement.”).

3 1. The Numerosity Requirement Is Satisfied

4 A class must be so numerous that joinder of all members individually is “impracticable.”
5 Fed. R. Civ. P. 23(a)(1). The Court has already found that the certified California classes satisfy the
6 numerosity requirement. ECF No. 94 at 8. The nationwide class consists of approximately
7 7,800,000 Class Members. Green Decl., ¶ 11. Thus, joinder impracticable, and numerosity is
8 satisfied for the nationwide Settlement Class. *See Jordan v. Cty. of L.A.*, 669 F.2d 1311, 1319-20
9 (9th Cir. 1982), *rev’d on other grounds*, 713 F.2d 503 (9th Cir. 1983).

10 2. The Commonality Requirement Is Satisfied

11 Rule 23(a)(2) only requires that there be at least one issue of law or fact common to the class.
12 “[C]ommonality only requires a single significant question of law or fact.” *Mazza v. Am. Honda*
13 *Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012) (citing *Wal-Mart Stores, Inc. v. Dukes, et al.*, 564 U.S.
14 338, 358 (2011)). As the Court previously found, the commonality requirement is satisfied because
15 all Class Members were exposed to the same challenged misrepresentations on the packaging of
16 Kona Beers, raising the common question of whether the packaging would mislead a reasonable
17 consumer. ECF No. 94 at 8-9. If this case was to proceed to trial, this same question of law and
18 fact can be resolved in one fell swoop. Thus, the commonality requirement is satisfied.

19 3. The Typicality Requirement Is Satisfied

20 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical
21 of the claims or defenses of the class[.]” Fed. R. Civ. P. 23(a)(3). “Typicality does not mean that
22 the claims of the class representative[s] must be identical or substantially identical to those of the
23 absent class members.” *Staton*, 327 F.3d at 957 (internal quotation mark omitted). Rather, they
24 only need to be “reasonably co-extensive with those of absent class members[.]” *Hanlon*, 150 F.3d
25 at 1020. Again, the Court has already determined that the typicality requirement is satisfied as to
26 the California litigation classes and the same holds true for the proposed Settlement Class. The
27 typicality requirement is satisfied here because “Plaintiffs’ claims and those of the proposed class
28 members arise out of CBA’s allegedly false representations on its packaging that Kona Beers are

1 brewed in Hawaii. Plaintiffs have demonstrated that their claims are representative of the claims of
2 the class.” ECF No. 94 at 10. Moreover, as class representatives, Plaintiffs are the only class
3 members that must prove actual reliance, and Plaintiffs have demonstrated that they relied on the
4 challenged representations on the packaging of the Kona Beers. *See id.* at 11. In short, Plaintiffs
5 share an injury with the Class that “is not unique to” them and which occurred out of the same
6 “course of [deceptive] conduct[.]” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir.
7 2011). Thus, the typicality requirement is met.

8 4. The Adequacy Requirement Is Satisfied

9 A class representative must be able to “fairly and adequately” protect the interests of all
10 members in the class. Fed. R. Civ. P. 23(a)(4). Adequacy involves analysis of two inquiries: (1)
11 whether the named plaintiff and his or her counsel have any conflicts of interest with other class
12 members and (2) whether the named plaintiff and his or her counsel will act vigorously on behalf of
13 the class. *Calvert v. Red Robin Int’l, Inc.*, No. C 11–03026, 2012 WL 1668980, at *2 (N.D. Cal.
14 May 11, 2012) (citing *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)).
15 Again, the Court has already determined that the adequacy requirement is satisfied as to the certified
16 California litigation classes. ECF No. 94 at 12-13. Here, Plaintiffs have the same types of interests
17 and have suffered the same types of injury as all other Class members. There is also no conflict
18 between Plaintiffs and the Class and Plaintiffs are prepared to represent the interests of the Class
19 throughout the litigation. Zimmer Declaration, ECF No. 79-18, ¶¶ 5-6, Broomfield Declaration,
20 ECF No. 79-19, ¶¶ 6-7. In addition, Plaintiffs have provided significant, valuable assistance in the
21 prosecution of this matter, and helped to bring about the Settlement now before this Court. Peter
22 Decl., ¶ 29. Class Counsel is also “adequate” because they have extensive experience in class action
23 litigation, have diligently litigated this case, and will continue to do so through the settlement
24 approval process. Peter Decl., ¶¶ 31-33, Ex. G; Wand Decl., ¶¶ 7-18. Accordingly, the adequacy
25 requirement is satisfied.

26 **D. The Requirements Of Rule 23(b)(3) Are Satisfied**

27 “To qualify for certification under [Rule 23(b)(3)], a class must satisfy two conditions in
28 addition to the Rule 23(a) prerequisites: common questions must ‘predominate over any questions

1 affecting only individual members,’ and class resolution must be ‘superior to other available
2 methods for the fair and efficient adjudication of the controversy.’” *Hanlon*, 150 F.3d at 1022
3 (quoting Fed. R. Civ. P. 23(b)(3)). Both conditions are met here.

4 1. Common Questions Predominate Over Individual Issues

5 Plaintiffs assert claims for violations of the FAL, CLRA, and UCL and common law claims
6 for fraud, intentional misrepresentation, negligent misrepresentation, and unjust enrichment. The
7 central and predominant question as to all of Plaintiffs’ claims is whether CBA’s packaging was
8 materially misleading and whether all consumers in the class were exposed to that packaging (thus
9 showing class-wide reliance). This determination is not made with regard to each class member, but
10 under a single, objective, reasonable consumer standard. *Williams v. Gerber Prods. Co.*, 552 F.3d
11 934, 938 (9th Cir. 2008). “This objective test renders claims under the UCL, FAL, and CLRA ideal
12 for class certification because they will not require the court to investigate class members’ individual
13 interaction with the product.” *Tait v. BSH Home Appliances Corp.*, 289 F.R.D 466, 480 (C.D. Cal.
14 2012). Moreover, as the Court has already found in certifying the California litigation classes,
15 reliance, materiality, and damages can be proven on a class-wide basis. ECF No. 94. More
16 specifically, the Court determined that, based on evidence submitted in connection with Plaintiffs’
17 motion for class certification, materiality and therefore reliance “created by uniform exposure to the
18 allegedly misleading statements” satisfies the predominance requirement as to Plaintiffs’ FAL,
19 CLRA, and UCL claims. *Id.* at 16-21. For largely the same reasons, the Court found that the
20 predominance requirement was satisfied as to Plaintiffs’ common law fraud, misrepresentation, and
21 unjust enrichment claims. *Id.* at 21-23. The Court also concluded that Plaintiffs’ damages model is
22 tethered to their theory of liability and could be used prove damages on a class-wide basis. These
23 analyses and conclusions remain true for the proposed nationwide class, as the same evidence in
24 support of certification of the California litigation classes could be used to prove materiality,
25 reliance, and damages for the nationwide Settlement Class. As discussed above, the same conduct
26 challenged on the Kona Beer packaging is consistent on a state-by-state basis, ECF No. 79-3 at
27 154:4-23, and Plaintiffs’ expert has already calculated a nationwide 12.7% price premium
28 attributable to the challenged conduct. ECF No. 79-14 ¶ 144.

1 **a. Any Minor Variation In State Laws Does Not Preclude**
 2 **Certification Of The Nationwide Settlement Class**

3 The predominance requirement is satisfied for the nationwide Settlement Class because,
 4 regardless of the state, Plaintiffs allege that the challenged representations on the packaging – to
 5 which all Settlement Class members have been exposed – are material and deceptive. Accordingly,
 6 Plaintiffs’ claims present uniform issues of material fact for Class Members nationwide.

7 This remains true despite *In re Hyundai & Kia Fuel Economy Litigation*, 881 F.3d 679, 702
 8 (9th Cir. 2018) (“*Hyundai*”), *reh’g en banc granted*, 897 F.3d 1003 (9th Cir. 2018), where a Ninth
 9 Circuit panel rejected a nationwide settlement.¹² As an initial matter, the panel’s decision in *Hyundai*
 10 has been vacated pending en banc review. 897 F.3d at 1007. As such, *Hyundai* may no longer be
 11 cited as precedent. *Id.* (“Upon the vote of a majority of nonrecused active judges, it is ordered that
 12 these cases be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit
 13 Rule 35-3. The three-judge panel disposition in these cases shall not be cited as precedent by or to
 14 any court of the Ninth Circuit.”). In any event, the panel’s decision in *Hyundai* casts no doubt on
 15 the viability of the proposed nationwide Settlement Class here. *Hyundai* does not stand for the
 16 proposition that a nationwide class can never be certified. Rather, as the panel explained in its now
 17 vacated decision, the district court must consider “whether the consumer-protection laws of the
 18 affected States vary in *material* ways[.]” *Id.* at 702 (internal quotation marks omitted) (emphasis
 19 added). This case presents none of the problems addressed in *Hyundai*.

20 First, unlike in *Hyundai*, where the court certified the nationwide settlement class based on
 21 application of California law to all states nationwide, despite previously concluding to the contrary,
 22 *Hyundai*, 881 F.3d at 700, this Court never issued any ruling indicating that a nationwide class was
 23 unlikely here. Rather, the Court certified California litigation classes, and as set forth above, the
 24 challenged conduct on the Kona Beer packaging is the same in every state. Moreover, Plaintiffs’
 25 expert has already calculated a nationwide 12.7% price premium attributable to the challenged
 26 conduct. Thus, issues of materiality, reliance, and damages can be proven regardless of the state.

27
 28

¹² The case was argued and submitted September 27, 2018 but no opinion has been issued yet.

1 Second, unlike in *Hyundai*, Plaintiffs are not seeking to apply California law to class
2 members in all states, but to apply the unjust enrichment laws of each state to the residents of that
3 state. This is possible because the unjust enrichment laws of each state are not materially different.
4 Indeed, several courts have recognized that the unjust enrichment laws across all 50 states are
5 materially similar for the purposes of Rule 23 predominance analysis. *See, e.g., In re Abbott Labs.*
6 *Norvir Anti-Trust Litig.*, No. C 04-1511 CW, 2007 WL 1689899, at *9 (N.D. Cal. June 11, 2007)
7 (certifying nationwide class and holding that the “variations among some States’ unjust enrichment
8 laws do not significantly alter the central issue or the manner of proof”); *In re Checking Account*
9 *Overdraft Litig.*, 307 F.R.D. 630, 647 (S.D. Fla. 2015) (“There is general agreement among courts
10 that the “minor variations in the elements of unjust enrichment under the laws of the various states
11 . . . are not material and do not create an actual conflict.”). To the extent there are any immaterial
12 differences in the unjust enrichment laws between the states, the Ninth Circuit has made clear that
13 “[v]ariations in state law do not necessarily preclude a [nationwide] 23(b)(3) action’ because
14 sometimes ‘the idiosyncratic differences between state consumer protection laws are not sufficiently
15 substantive to predominate over the shared claims.’” *Hanlon*, 150 F.3d at 1022-23. Similarly, in
16 *Koller v. Med Foods, Inc.*, Case No. 14-cv- 2400-RS (N.D. Cal.) (ECF No. 144) the parties sought
17 approval of a nationwide settlement after a California only class was certified. The plaintiffs asserted
18 that due to material similarity in the unjust enrichment laws of all 50 states, the predominance
19 requirement for class certification in the context of settlement approval was satisfied. *Id.* at 19-23.
20 The *Koller* court granted final approval, overruling an objection, in this regard. *Koller*, ECF No.
21 169 at 11.

22 In accord with this principle, in *In Re Anthem, Inc. Data Breach Litigation*, the court held
23 that predominance was satisfied with respect to a nationwide settlement class notwithstanding
24 *Hyundai*. There, the court approved nationwide settlement despite *Hyundai* because although “[i]t
25 is true that the state consumer protection statutes at issue here are not identical . . . the Court
26 concludes that this is a case in which ‘the idiosyncratic differences between state consumer
27 protection laws are not sufficiently substantive to predominate over the shared claims.’” *In re*
28 *Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 313 (N.D. Cal. 2018), *appeal dismissed sub nom.*

1 *In re Anthem, Inc., Customer Data Sec. Breach Litig.*, No. 18-16866, 2018 WL 7890391 (9th Cir.
 2 Oct. 15, 2018) (citation omitted). The *In Re Anthem* court further held that the case revolved around
 3 a common issue across the country – whether Anthem used unreasonable data security – which
 4 could be resolved using common evidence. *Id.*

5 Notably, this Court has also certified nationwide settlement classes post *Hyundai*. For
 6 example, in *Sheikh v. Tesla, Inc.*, No. 17-CV-02193-BLF, 2018 WL 5794532, at *4 (N.D. Cal. Nov.
 7 2, 2018), this Court certified a nationwide settlement class based on a “common question in this
 8 case—whether Tesla’s conduct with respect to its representations and delivery of the features
 9 violated consumer protection statutes, false advertising laws”¹³ The same is true here. This
 10 litigation involves one common issue: whether the packaging of Kona Beer employed uniformly by
 11 CBA nationwide would likely deceive a reasonable consumer. The Court can apply the unjust
 12 enrichment laws of all fifty states as they are materially similar. And any immaterial difference in
 13 the unjust enrichment laws of the states is dwarfed by common issue regarding consumer deception,
 14 materiality, and damages at the core of this litigation. Therefore, the predominance element is met
 15 for the nationwide settlement class.

16 2. A Class Is The Superior Method To Resolve This Controversy

17 A class action is superior to other methods of litigation where, as here, “classwide litigation
 18 of common issues will reduce litigation costs and promote greater efficiency” and “no realistic
 19 alternative [to classwide treatment] exists.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234-
 20 35 (9th Cir. 1996). In considering whether a class action is superior, the Court must focus on
 21 whether “efficiency and economy” would be advanced by class treatment. *See Zinser v. Accufix*
 22

23 ¹³ This Court also preliminarily approved a nationwide settlement class in *In Re Nexus 6P Products*
 24 *Liability Litigation*, No. 5:17-cv-02185-BLF (N.D. Cal. May 3, 2019) (ECF No. 204). Several other
 25 courts post *Hyundai* have upheld nationwide class settlements. *See, e.g., In re Volkswagen "Clean*
 26 *Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d 597, 609 n.17 (9th Cir. 2018), *petition*
 27 *for cert. docketed* (approving nationwide settlement where “predominance analysis under Rule
 28 23(b)(3), [was] sufficient under *In re Hyundai*”); *In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales*
Practices, & Prods. Liab. Litig., No. 17-md-02777, 2019 WL 536661 at *7 (N.D. Cal. Feb. 11,
 2019) (preliminarily approving nationwide class settlement despite *Hyundai*, because “while there
 are some variations in state law, Plaintiffs have made at least a fair argument . . . that such variations
 are not so extensive or complicated that they defeat predominance”).

1 *Research Inst., Inc.*, 253 F.3d. 1180, 1190 (9th Cir. 2001). Here, concentrating the adjudication of
2 claims into a single proceeding is highly desirable because individual claims could only be brought
3 by claimants unlikely to be able to afford to pursue them or who lack sufficient knowledge of their
4 rights. Even if those individuals could bring separate lawsuits, having nearly identical lawsuits filed
5 by hundreds if not thousands of individuals would be wasteful and inefficient. Indeed, the Court has
6 already made this finding. ECF No. 94 at 35 (“The Court finds a class action here would be the
7 superior method of adjudication. The alternative to class action would surely mean an abandonment
8 of claims by most class members since the amount of individual recovery is so small—just a few
9 dollars per pack purchased.”) (citation omitted). Accordingly, certification of the Settlement Class
10 is superior to any other method of resolution, as it will promote economy, expediency, and
11 efficiency.

12 **VI. THE PROPOSED CLASS NOTICE PLAN SHOULD BE APPROVED**

13 **A. The Settlement Administrator And Settlement Administration Costs**

14 Set forth below is the information describing the proposed settlement administrator as
15 required under the Settlement Guidelines, ¶ 2. The Parties have selected CPT to provide Class notice
16 and otherwise administer the Settlement. Before agreeing on CPT, the parties engaged in a months-
17 long process of considering bids from four reputable administrators. Peter Decl., ¶ 34. This was an
18 iterative process where counsel engaged in numerous back and forth discussions with these
19 administrators, which involved multiple revisions of bids based on factors such as pricing and scope
20 of notice and the administration plan. *Id.* Notably, each of these administrators provided similar
21 competing bids and their notice plans overlapped substantially. *Id.* Class Counsel ultimately
22 selected CPT because they are confident in CPT’s experience and expertise in administering class
23 action settlements. *Id.* Class Counsel is also confident that CPT’s proposed notice and
24 administration plan fully complies with due process, Rule 23(e), relevant case law, and the
25 Settlement Guidance. *Id.* Moreover, Class Counsel believed that CPT’s bid provided the most
26 effective notice for the lowest cost. *Id.*

27 Over the past two years, Class Counsel has used CPT to administer one class settlement.
28 Peter Decl. ¶ 35; Wand Decl., ¶ 4. Thus, while Class Counsel has sufficient information to be

1 confident in CPT's qualifications, there is no repeated or ongoing relationship between CPT and
2 Class Counsel. Wand Decl., ¶¶ 4-5. Moreover, none of the parties have a financial interest in CPT
3 or otherwise have a relationship with CPT that could create a conflict of interest. Settlement
4 Agreement, ¶ 71.

5 It is estimated that CPT's costs to provide notice to the Class and administer settlement
6 payments is approximately \$395,000. Green Decl., ¶ 32. Given the robust notice plan proposed by
7 CPT, explained in more detail below, these costs are relatively small in comparison to the value of
8 the Settlement and are well justified to ensure that adequate notice is given to the Class and that
9 payments are properly distributed. In any event, CBA is responsible for paying all Settlement
10 Administration costs separate and apart from any amounts paid to the Settlement Class. Settlement
11 Agreement, ¶ 72.

12 **B. The Method Of Providing Notice To The Class**

13 Adequate notice is critical to court approval of a class settlement under Rule 23(e). *Hanlon*,
14 150 F.3d at 1025; Settlement Guidelines, ¶ 3.

15 The proposed Notice Plan will consist of four components; (1) direct email notice, (2) print
16 publication notice, (3) internet and social media notice, and (4) notice via the settlement website.
17 Together, this Notice Plan is reasonably calculated to reach approximately 90 percent of the Class
18 and will thus adequately apprise the Settlement Class Members of this Settlement and their rights
19 under the Settlement. Green Decl. at ¶¶ 13-14. In short, the proposed Notice Plan is the best
20 practicable method of providing notice under the circumstances. *Phillips Petroleum Co. v. Shutts*,
21 472 U.S. 797, 811-12 (1985) ("The notice must be the best practicable, reasonably calculated, under
22 all the circumstances, to apprise interested parties of the pendency of the action and afford them an
23 opportunity to present their objections.") (internal quotation marks omitted).

24 1. Settlement Website Notice: No later than five calendar days before Internet
25 Publication Notice, CPT will create an interactive Settlement Website, which will include, *inter*
26 *alia*, links to the Long Form Notice, the Summary Notice, the Claim Form, the Settlement
27 Agreement and Exhibits, relevant filings and orders, and information relating to filing a claim,
28 objecting to the Settlement, opting out of the Settlement, other deadlines relating to the Settlement,

1 and instructions on how to access the case docket via PACER or in person at any of the Court's
2 locations. Settlement Agreement, ¶ 93(a).

3 2. Toll-Free Telephone Support: No later than five calendar days before Internet
4 Publication Notice, CPT will establish a toll-free telephone support system to provide Settlement
5 Class Members with (a) general information about the Action and Settlement; (b) frequently asked
6 questions and answers; and (c) information relating to filing a claim, objecting to the Settlement,
7 opting out of the Settlement, and other deadlines relating to the Settlement. *Id.*, ¶ 93(b).

8 3. Direct Notice: No later than twenty-five calendar days after Preliminary
9 Approval, CPT will cause the Summary Notice to be sent to all Class Members for whom addresses
10 have been provided. As CBA is a wholesaler and does not sell directly to consumers, it as a general
11 matter does have such information for Class members. However, CBA does have such information
12 for approximately 795 potential Class members, each of whom will receive direct notice via U.S.
13 mail. *Id.*, ¶ 93(c); Green Decl., ¶ 16.

14 4. Print Publication Notice: On the first available publication date after
15 Preliminary Approval, CPT will publish the Summary Notice in print in National Geographic
16 Magazine for a period of one month. *Id.*, ¶ 93(d). National Geographic Magazine is a national
17 magazine with an estimated circulation of 2,648,853 individuals. Green Decl., ¶ 19. Publication in
18 National Geographic Magazine is expected to reach 16.42% of the Target Audience, and based on
19 the market research and class definition, National Geographic had the highest circulation and best
20 reach for the target audience for the lowest cost. *Id.* Assuming the Court grants preliminary
21 approval by on June 13, 2019, the Summary Notice can be published in the September edition of
22 National Geographic. *Id.*, ¶ 23. Further, on the first available publication date after Preliminary
23 Approval, CPT will publish the Summary Notice in print in the San Jose Mercury News Newspaper
24 one day per week for a period of four consecutive weeks in compliance with the CLRA, Cal. Civ.
25 Code § 1781(d) and (e). Assuming the Court grants preliminary approval on June 13, 2019, the
26 Summary Notice can be published in the San Jose Mercury News beginning on July 7, 2019. *Id.*

27 5. Internet and Social Media Publication Notice: No later than twenty-five
28 calendar days of Preliminary Approval, CPT will issue an informational press release to PR

1 Newswire of the Settlement. The press release will include the Settlement Website address so that
2 Settlement Class Members can easily access information about the Action and Settlement. The
3 Settlement Administrator will also purchase internet and social media banner notice ads that will
4 allow access to the Settlement Website through an embedded hyperlink contained within the banner
5 notice ad. These banner ads will continue for a period of ten (10) weeks from the date of first
6 publication. Settlement Agreement, ¶ 93(e).

7 6. Total Reach: The Notice Plan is designed to create roughly 40,000,000
8 impressions nationwide through internet banner and social media advertisements for a reach of
9 approximately 75%. Green Decl., ¶¶ 13, 18. Print publication notice will reach approximately 16%
10 of the Class for a combined reach through print, internet and social media of approximately 90%.
11 Green Decl., ¶¶ 19, 33. The Federal Judicial Center notes that a notice plan is reasonable if it reaches
12 at least 70% of the class. *See* FED. JUDICIAL CTR., Judges’ Class Action Notice and Claims
13 Process Checklist and Plain Language Guide 3 (2010). Thus, a 90% reach is clearly sufficient.

14 C. **Class Notice Documents**

15 In the Ninth Circuit, notice is satisfactory if it “generally describes the terms of the settlement
16 in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be
17 heard.” *Churchill Vill.*, 361 F.3d at 575. The Class Notice documents consist of a Summary Notice
18 and a Long Form Notice. Settlement Agreement, Exs. 2-3, respectively. These Notice Documents
19 adequately apprise Class Members of the material terms of this Settlement and will enable them to
20 make an informed decision about how they wish to proceed under the Settlement. They are also
21 written in simple, straightforward language in full compliance with the Settlement Guidelines, ¶ 3.

22 The Summary Notice includes a basic description of the case and a summary of the process
23 and deadlines for submitting claims, requests for exclusion, and objections. *Id.*, ¶ 76, Ex. 2. It also
24 informs Class Members about how they can obtain additional information by providing them with
25 the URL address for the Settlement Website, a toll-free number they can call, and information
26 regarding how to access pertinent documents through PACER. *Id.*

27 The Long Form Notice provides more detailed information about the Settlement, including:
28 (1) basic background information about the lawsuit; (2) a description of the benefits provided by the

1 Settlement; (3) an explanation of how Class Members can obtain settlement benefits; (4) an
 2 explanation of how Class Members can exercise their right to request exclusion from or object to
 3 the settlement; (5) an explanation that any claims against CBA that could have been litigated in this
 4 action will be released if the Class Member does not request exclusion from the Settlement; (6)
 5 information regarding Class Counsel's forthcoming request for fees and expenses, Plaintiffs' service
 6 payments, and how Class Members may obtain a copy of the upcoming fee application (which, like
 7 all pertinent settlement documents, will be posted to a settlement website listed in the Notice); (7)
 8 instructions on how to access the case docket via PACER or in person at any of the court's locations;
 9 (8) the Final Approval hearing date (subject to change); (9) an explanation of eligibility for
 10 appearing at the Final Approval hearing; and (10) Class Counsel's contact information. *Id.* ¶ 54,
 11 Ex. 3.

12 **D. Submission Of Claim Forms And Estimated Claims Rate**

13 1. Submission of Claim Forms

14 Class members are required to submit a timely and valid Claim Form in order to receive
 15 payment under the Settlement. Settlement Agreement, ¶ 36, Ex. 1. The Claim Form is straight
 16 forward and concise. Aside from basic purchase information, the Claim Form must be signed in
 17 hard copy or electronically by the Settlement Class Member under penalty of perjury and bear an
 18 attestation by the Settlement Class Member that he/she purchased the Kona Beers during the Class
 19 Period, and that he/she was over 21 years old at the time of purchase(s). *Id.*, ¶ 82. Claim Forms,
 20 which can be found on the Settlement Website, can be submitted by mail or electronically via the
 21 Settlement Website, to the Settlement Administrator. *Id.* ¶ 81. Class Members shall have 90 days
 22 from the date that Internet banner notice ads are first published (Notice Date) to submit Claim
 23 Forms. *Id.*, ¶¶ 35, 57, 81. Class members who submit valid and timely Claim Forms will be paid
 24 by check or via electronic deposit, whichever option they prefer, consistent with Settlement
 25 Guidelines ¶ 3. *Id.*, ¶ 91.

26 2. Estimated Claims Rate

27 Regarding paragraph 1(g) of the Settlement Guidelines, and based on its experience
 28 administering other class action settlements and its review of consumer survey data and research,

1 CPT estimates that there are approximately 7,800,000 Class members. Green Decl., ¶ 11. While it
2 is impossible to state a precise claims rate at this juncture, CPT estimates a claims rate of between
3 1% - 7%. Green Decl., ¶ 29. This estimate is consistent with the experience of Class Counsel, who
4 also believe an estimated claims rate of between 1% - 7% is likely here. Peter Decl., ¶ 12; Wand
5 Decl., ¶¶ 18-19. Based on these estimates, Class Counsel anticipates that between 78,000 to 546,000
6 Claims will be submitted. Given the comprehensive notice plan designed to reach approximately
7 90 percent of the Class, the anticipated claims number should not pose a barrier to preliminary
8 approval of the Settlement. Regardless of the ultimate claims number, the alternative to the proposed
9 Settlement is trial. Even if Plaintiffs prevailed at trial on all of their claims, some sort of similar
10 claims procedure would be necessary to distribute the damages recovered. There is no reason to
11 believe that the claims number after trial would be any higher than the claims number that will result
12 from this Settlement, particularly in light of the comprehensive notice plan provided for under the
13 Settlement.

14 **E. Objections And Exclusions**

15 **1. Objections**

16 In compliance with the Settlement Guidelines, ¶ 5, the Long Form and Summary Notices
17 inform Class Members of their right to object to the Settlement. The Objection must be signed by
18 the Class Member and include: (a) information sufficient to identify and contact the objecting Class
19 Member; (b) whether the person intends to appear the Final Approval Hearing; (c) whether the
20 Objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class,
21 or to the entire Settlement Class; (d) the legal and factual arguments supporting the Objection; (e)
22 verification that the person has standing as a Class member; and (f) a list of any other objections
23 submitted by the Settlement Class Member, or his/her counsel, to any proposed class action
24 settlements. Settlement Agreement, ¶ 97. Class Members must submit their written Objection
25 within 90 days after the Notice Date (the “Objection/Exclusion Deadline”). Settlement Agreement,
26 ¶ 61. Class Members who fail to timely make Objections in the manner specified shall be deemed
27 to have waived any objections and shall be foreclosed from making any objections (whether by
28 appeal or otherwise) to the Settlement. *Id.* at ¶ 100.

1 2. Exclusions

2 Class Members will have the opportunity to exclude themselves from the Settlement by
3 submitting a written, signed request to the Settlement Administrator or by selection on the
4 Settlement Website. Settlement, ¶¶ 69, 101-03. Class Members must submit their written Request
5 for Exclusion within 90 days after the Notice Date (the “Objection/Exclusion Deadline”).
6 Settlement Agreement, ¶ 69. Notice given to Class Members of the right to exclude is fully
7 compliant with the Settlement Guidelines, ¶ 4.

8 **VII. PROPOSED SETTLEMENT IMPLEMENTATION DATES**

9 Assuming the Court grants preliminary approval on June 13, 2019, Plaintiffs propose (and
10 CBA does not object to) the following settlement implementation dates:

Event	Date
Notice Date	July 8, 2019 (or no later than 25 calendar days from preliminary approval)
Deadline to File Motion for Attorneys’ Fees and Costs and Class Representative Service Awards	September 2, 2019
Claims Deadline & Objection/Exclusion Deadline	October 7, 2019
Deadline to File Motion for Final Approval	October 28, 2019
Hearing on Motion for Final Approval	December 5, 2019 at 9:00 a.m. (or at the Court’s convenience)

19
20 **VIII. CONCLUSION**

21 For the reasons set forth above, Plaintiffs respectfully request that the Court grant this
22 Motion and preliminarily approve the Settlement.

23
24 DATED: May 23, 2019

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