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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ELLA HENNING and LEA AMMIANO,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

LUXURY BRAND PARTNERS, LLC,  
Defendant.

Case No. 3:22-cv-07011-TLT

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: November 19, 2024  
Time: 2:00 p.m.  
Courtroom: 9  
Judge: Hon. Trina L. Thompson

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 19, 2024, at 2:00 p.m., or as soon  
3 thereafter as this matter may be heard in Courtroom 9 of the above captioned Court, located at  
4 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs Ella Henning and Lea Ammiano  
5 (“Plaintiffs”) will move, and hereby do move the Court for an order granting final approval of  
6 the Class Settlement Agreement (“Settlement”) (ECF No. 59-1) entered into in this action.

7 This motion is based on: this notice of motion and motion; the accompanying  
8 memorandum of points and authorities; the Settlement, including all exhibits thereto (ECF No.  
9 59-1); the Joint Declaration of Class Counsel, filed herewith; the papers filed in support of  
10 preliminary settlement approval; the Court’s Preliminary Approval Order (ECF No. 65); the  
11 argument of counsel; all papers and records on file in this matter; and such other matters as the  
12 Court may consider.

13 As discussed in the accompanying memorandum, the requested relief is appropriate  
14 because the Settlement satisfies the standards for final approval under Fed. R. Civ. P. 23 and  
15 Ninth Circuit precedent.

16 Dated: August 2, 2024

Respectfully submitted,

17 **BURSOR & FISHER, P.A.**

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The Court previously granted Preliminary Approval<sup>1</sup> of the Settlement reached by the Parties in this Action and approved the proposed Notice Program. (ECF No. 65). Notice is being disseminated to the Settlement Class members as directed by the Court. By this motion, Plaintiffs respectfully request that the Court conduct a final review of the Settlement, and approve the Settlement as fair, reasonable, and adequate.

As previously reported, the Settlement was reached after a full-day mediation with a court-appointed mediator, Howard A. Herman of JAMS, followed by roughly six months of additional arms-length negotiations. The Settlement provides a real and substantial monetary benefit to the Settlement Class.

The Settlement here resolves claims on behalf of a nationwide class. Pursuant to the terms of the Settlement, Defendant will pay \$850,000.00 to create a non-reversionary common Settlement Fund, from which Cash Payments will be made to Settlement Class Members.

All Settlement Class members who purchased one or more of the relevant IGK Products are eligible to submit a Claim for a Cash Payment. Claimants who include Proof of Purchase with the Claim Form will be entitled to a full refund of the purchase price for as many IGK Products for which Proof of Purchase is provided. Claimants who do not include Proof of Purchase with the Claim Form will be entitled to Cash Payments of \$4.00 for each IGK Product purchased, for a maximum of five IGK Products, or \$20.00. This is an excellent result for Settlement Class Members.

The Settlement also provides for a robust class notice program—approved by the Court and being implemented by the Settlement Administrator and the Parties—that includes a robust social media and Internet notice program and establishment of a Settlement Website and toll-free number.

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<sup>1</sup> The Settlement is on file at ECF No. 59-1. Capitalized terms not defined here have the meanings given in the Settlement.

1 Dissemination of Notice commenced on June 3, 2024. The deadline for Settlement Class  
2 members to request exclusion or object is September 6, 2024. To date, not a single Settlement  
3 Class Member has either objected to the Settlement or opted out of the Settlement. Weisbrot  
4 Decl. ¶¶ 16-17.

5 For the foregoing reasons and the others detailed below, the Settlement meets the  
6 standards for Final Approval and should be approved.

## 7 **II. PROCEDURAL AND FACTUAL BACKGROUND**

8 On October 31, 2022, Valisure submitted a Citizens Petition to the Food and Drug  
9 Administration, alleging that it tested several brands and batches of dry shampoo products and  
10 allegedly found that many contained harmful levels of the alleged carcinogen benzene, and  
11 requested governmental intervention and action. *See* Joint Declaration of Class Counsel (“JD.”)  
12 ¶ 4. Defendant was one of the businesses whose products were tested and found to allegedly  
13 contain harmful levels of benzene. *Id.* As a result, Defendant was named a defendant in this  
14 Action arising from its alleged manufacture, distribution, and sale of allegedly contaminated dry  
15 shampoo products. *Id.* ¶ 3. Defendant at all times has denied and disputed the allegations in this  
16 Action.

17 On November 8, 2022, Plaintiff Ella Henning commenced this putative class action  
18 captioned on behalf of herself, a nationwide class, a California subclass, and a consumer fraud  
19 multi-state subclass against Defendant. ECF No. 1. Plaintiff Henning alleged that third party  
20 testing found benzene concentrations as high as 2.49 ppm in IGK Products, which is above any  
21 legal limit that may be applicable to IGK Products. ECF No. 1 ¶ 51. Further, Plaintiff Henning  
22 alleged she purchased an IGK Product that was worthless because it was adulterated and illegally  
23 sold, and she would not have purchased the IGK Product, or would have paid less for it, but for  
24 Defendant’s misrepresentations that the IGK Product did not contain benzene and/or Defendant’s  
25 failure to disclose the presence of benzene. *Id.* ¶ 99; *see, e.g., id.* ¶¶ 6, 9, 99–101.

26 On February 1, 2023, Defendant filed a Motion to Dismiss the Complaint. ECF No. 17.  
27 Plaintiff Henning filed her memorandum in opposition to Defendant’s Motion to Dismiss on  
28 March 1, 2023. ECF No. 28. Defendant’s reply in support of the motion to dismiss was filed on

1 March 22, 2023. ECF No. 34. On May 11, 2023, the Court issued an Order granting in part and  
2 denying in part Defendant’s Motion to Dismiss. ECF No. 37.

3 Thereafter, counsel for the Parties engaged in substantial arm’s-length negotiations in an  
4 effort to resolve this action. JD. ¶¶ 9, 30. On June 23, 2023, Plaintiff Henning and Defendant  
5 participated in a full day mediation with court-appointed mediator Howard A. Herman of JAMS.  
6 While the mediation was unsuccessful, the Parties continued to engage in settlement discussions  
7 and case discovery over the following months before finally reaching a settlement in principle in  
8 December 2023. *Id.* ¶ 22.

9 Plaintiff’s counsel was also retained by Lea Ammiano, a Florida resident who purchased  
10 IGK First Class Charcoal Detox Dry Shampoo in approximately March 2023. ECF No. 58 ¶ 10.  
11 On February 8, 2024, Plaintiffs filed a First Amended Complaint (“FAC”) adding Plaintiff  
12 Ammiano as a Class Representative, re-alleging a nationwide class, and adding a proposed  
13 Florida subclass. *See generally* ECF No. 58.

14 On February 9, 2024, Plaintiffs filed their Motion for Preliminary Approval. ECF No.  
15 59. On April 23, 2024, the Court entered a Preliminary Approval Order granting preliminary  
16 approval of the Settlement, certifying the Settlement Class for settlement purposes, and directing  
17 that, under Fed. R. Civ. P. 23(e)(1), class notice be disseminated pursuant to the Settlement’s  
18 Notice Program. ECF No. 63.

### 19 **III. THE SETTLEMENT**

20 The full Settlement terms are set forth in the Class Settlement Agreement, which is on  
21 file at ECF No. 59-1. The following is a summary of the Settlement terms.

#### 22 **A. The Settlement Class**

23 The Settlement Class here, as provisionally certified by the Court, is defined as:

24 [A]ll persons in the United States who, during the Class Period,  
25 purchased one or more of the IGK Products for personal, family, or  
household use and not for resale.

26 Settlement ¶ 73.

27 Excluded from the Settlement Class are (a) Defendant’s employees, directors, officers,  
28 agents, subsidiaries, and affiliated companies; (b) persons or entities who purchased the IGK

1 Products for resale; (c) governmental entities; and (d) the Court, the Court's immediate family,  
2 and Court staff. *Id.*

3 **B. Monetary Relief**

4 Defendant has agreed to pay a non-reversionary common fund of \$850,000.00 to cover  
5 all Claims filed by Settlement Class Members as well as all Settlement Administration Costs,  
6 Notice, Service Awards, and attorneys' fees, costs, and expenses. Settlement ¶ 79(a). Claimants  
7 who include Proof of Purchase with their Claim Form will be entitled to a full refund of the  
8 purchase price for as many IGK Products for which Proof of Purchase is provided while  
9 claimants who do not include Proof of Purchase will be entitled to \$4.00 for each IGK Product  
10 purchased, for a maximum of five IGK Products, or \$20.00. *Id.* ¶ 79(b)(ii)–(iii). There may be  
11 a *pro rata* reduction to the amount of each Settlement Class Member's Cash Payment, depending  
12 upon the total number and total dollar value of Valid Claims. *Id.* ¶ 79(c).

13 **C. Release**

14 In exchange for the relief described above, Defendant and each of its related and affiliated  
15 entities as well as all "Released Persons," as defined in Settlement ¶ 67, will receive a full release  
16 of all claims arising out of or related to the alleged adulteration or contamination of any of the  
17 IGK Products, and/or the purchase of any of the IGK Products. *See* Settlement ¶ 110 for full  
18 release language.

19 **D. Incentive Awards**

20 Subject to the Court's approval, Defendant has agreed to pay incentive awards to each  
21 Plaintiff in the amount of \$2,500.00. Settlement ¶ 105. Plaintiffs have spent substantial time on  
22 this action, have assisted with the investigation of this action and the drafting of the complaints,  
23 have been in contact with counsel frequently, and have stayed informed of the status of the action,  
24 including settlement. *JD.* ¶ 48; *see also Evans v. Church & Dwight Co., Inc.* Case No. 1:22-cv-  
25 06301, ECF No. 74 (N.D. Ill. Oct. 16, 2023) (granting request for \$5,000 incentive award in class  
26 action settlement based on alleged presence of benzene in dry shampoo products). Plaintiffs will  
27 petition the Court for the \$2,500.00 incentive awards as part of Plaintiffs' Motion for Attorneys'  
28 Fees, Expenses, and Service Awards, which is being filed concurrently with this motion.

1           **E. Attorneys' Fees And Expenses**

2           Class Counsel are filing concurrently with this motion, Plaintiffs' Motion for Attorneys'  
3 Fees, Expenses, and Service Awards, requesting, *inter alia*, an award of attorneys' fees of up to  
4 25% (or \$212,500.00) of the monetary value of the Settlement Fund, and up to \$600.00 in  
5 litigation costs.

6           **F. Administrative Costs**

7           The Settlement Administration Costs—for implementing the Notice Program,  
8 administering the Claims process, mailing checks to Claimants, and performing the other  
9 administrative tasks described in the Settlement—will be paid from the Settlement Fund. The  
10 Settlement Administrator has agreed to provide notice and administration for a fixed fee amount  
11 of \$225,000.00. This amount is reasonable for the proposed services to be provided. JD.  
12 ¶ 45.

13 **IV. THE NOTICE PROGRAM DIRECTED BY THE COURT IS BEING**  
14 **IMPLEMENTED AND SATISFIES ALL APPLICABLE STANDARDS**

15           The Notice Program set forth in Section VII of the Settlement Agreement and approved  
16 by the Court in the Preliminary Approval Order (ECF No. 65), is being implemented. JD. ¶ 45.  
17 The Court-approved Notice Program satisfies all applicable standards, including Fed. R. Civ. P.  
18 23(e)(1) and 23(c)(2)(B), and includes the following:

19           **A. Publication, Media, and Internet Notice**

20           Notice was provided via a media and Internet notice program, including banner ads on  
21 search engines and social media websites targeted to the Settlement Class members. This  
22 campaign obtained roughly 34.66 million individual notice impressions, representing a 75.01%  
23 reach. Weisbrot Decl. ¶ 8.

24           **B. Settlement Website And Toll-Free Number**

25           Before sending the Notices, the Settlement Administrator established the Settlement  
26 Website ([www.igkdryshampoosettlement.com](http://www.igkdryshampoosettlement.com)), where Settlement Class members can view the  
27 Settlement, the Long Form Notice, other key case documents, an online Claim Form, and a list  
28 of important dates. Settlement Class members can submit Claims electronically via the

1 Settlement Website. The Settlement Website also contains a Settlement email address and toll-  
2 free telephone line in addition to the Settlement Administrator’s contact information, where Class  
3 Members can submit questions and receive further information and assistance.

4 **C. CAFA Notice**

5 The Settlement Administrator timely served notice of the proposed Settlement, in  
6 accordance with 28 U.S.C. § 1715, upon the appropriate State and Federal officials. JD. ¶ 5.

7 **D. Class Members’ Response**

8 It has been two months since the Settlement Website was made public and the Notice  
9 Program began. The deadline to submit a Claim is November 19, 2024. The Objection Period  
10 and Opt-Out Period end on September 6, 2024. As of August 1, 2024, not a single Class Members  
11 has either objected to or opted out of the Settlement. JD. ¶¶ 16-17. Plaintiffs will provide the  
12 Court with a supplemental declaration in advance of the November 19, 2024 Final Approval  
13 Hearing which documents the following information: (1) the number of Settlement Class  
14 Members who submitted Valid Claims; (2) the number of Settlement Class members who elected  
15 to opt out of the Class; and (3) the number of Settlement Class Members who objected to or  
16 commented on the Settlement.

17 **V. THE SETTLEMENT WARRANTS FINAL APPROVAL**

18 The Ninth Circuit recognizes the “strong judicial policy that favors settlement,  
19 particularly where complex class action litigation is concerned.” *In re Syncor ERISA Litigation*,  
20 516 F.3d 1095, 1101 (9th Cir. 2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1277 (9th  
21 Cir. 1992). The strong preference for class action settlements is precipitated by the  
22 overwhelming uncertainties of the outcome, expense, management, and difficulties in proof  
23 inherent in class action lawsuits. *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th  
24 Cir. 1976) (noting that class action settlements are especially favorable in light of “an ever  
25 increasing burden to so many federal courts and which frequently present serious problems of  
26 management and expense.”).

1 The overarching standard for class settlement approval is whether the proposed settlement  
2 is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). As part of that determination, Rule  
3 23(e)(2) directs courts to consider whether:

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

14 In the Ninth Circuit, courts traditionally also use a multi-factor balancing test to analyze  
15 whether a given settlement is fair, adequate, and reasonable. That test includes the following  
16 factors: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely  
17 duration of further litigation; (3) the risk of maintaining class action status throughout the trial;  
18 (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the  
19 proceedings; (6) the experience and views of counsel; and (7) the reaction of the class members  
20 to the proposed settlement. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)  
(the “*Hanlon Factors*”).

21 The Rule 23(e)(2) factors and the traditional Ninth Circuit factors overlap somewhat, and  
22 courts look to both when deciding whether to grant final approval of a class action settlement,  
23 while remaining ultimately focused on the underlying question of whether the settlement is fair,  
24 reasonable, and adequate. *See Wong v. Arlo Techs., Inc.*, 2021 WL 1531171, at \*5–\*10 (N.D.  
25 Cal. Apr. 19, 2021) (discussing interplay between factors and considering both to grant final  
26 approval to class action settlement); *Littlejohn v. Copland*, 819 F. App’x 491, 493 (9th Cir. 2020).



1           **A.       The Settlement Class Meets The *Hanlon* Factors**

2                   **1.       *Hanlon* Factor 1 – The Strength Of Plaintiffs’ Case**

3           In determining the likelihood of a plaintiff’s success on the merits of a class action, “the  
4 district court’s determination is nothing more than an amalgam of delicate balancing, gross  
5 approximations and rough justice.” *Officers for Justice v. Civ. Serv. Comm’n of City & Cnty. of*  
6 *S.F.*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983) (internal quotations  
7 omitted). The court may “presume that through negotiation, the Parties, counsel, and mediator  
8 arrived at a reasonable range of settlement by considering Plaintiff’s likelihood of recovery.”  
9 *Garner v. State Farm. Mut. Auto. Ins. Co.*, 2010 WL 1687832, at \*9 (N.D. Cal. Apr. 22, 2010)  
10 (citing *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

11           Here, as set forth in the Joint Declaration of Class Counsel, Class Counsel engaged in  
12 arms-length negotiations with Defendant’s counsel and with the assistance of a neutral mediator,  
13 and Class Counsel was thoroughly familiar with the applicable facts, legal theories, and defenses  
14 on both sides. JD. ¶¶ 9, 14–22, 30, 32. Although Plaintiffs and Class Counsel had confidence in  
15 their claims, a favorable outcome was not assured. *Id.* ¶¶ 33–34. They also recognized that they  
16 would face risks at class certification, summary judgment, and trial. *Id.* ¶¶ 34–35. Defendant  
17 vigorously denies Plaintiffs’ allegations and asserts that neither Plaintiffs nor the Settlement  
18 Class suffered any harm or damages. In addition, Defendant would no doubt present a vigorous  
19 defense at trial, and there is no assurance that the Settlement Class would prevail—even if they  
20 did, they would not be able to obtain an award of damages significantly more than achieved here  
21 because only the claims of the California class survived Defendant’s Motion to Dismiss. (ECF  
22 No. 37). Thus, in the eyes of Class Counsel, the proposed Settlement provides the Settlement  
23 Class with an outstanding opportunity to obtain significant relief at this stage in the Action. *Id.*  
24 The Settlement also abrogates the risks that might prevent them from obtaining any relief. *Id.*;  
25 *see also Curtis-Bauer v. Morgan Stanley & Co., Inc.*, 2008 WL 4667090, at \*4 (N.D. Cal. Oct.  
26 22, 2008) (“Settlement avoids the complexity, delay, risk and expense of continuing with the  
27 litigation and will produce a prompt, certain, and substantial recovery for the Plaintiff class.”).  
28 Accordingly, this factor is met.

1                   **2. Hanlon Factor 2 – The Risk, Expense, Complexity, and**  
 2                   **Likely Duration of Further Litigation**

3                   As referenced above, proceeding in this Action in the absence of settlement poses various  
 4 risks such as failing to certify a class, having summary judgment granted against Plaintiffs, or  
 5 losing at trial. Such considerations have been found to weigh heavily in favor of settlement. *Id.*;  
 6 *see Rodriguez*, 563 F.3d at 966. Even assuming Plaintiffs were to survive summary judgment,  
 7 they would face the risk of establishing liability at trial in light of conflicting expert testimony  
 8 between their own expert witnesses and Defendant’s expert witnesses. The experience of Class  
 9 Counsel has taught them that these considerations can make the ultimate outcome of a trial highly  
 10 uncertain.

11                   Moreover, even if Plaintiffs *prevailed* at trial, in light of the possible damage theories that  
 12 could be presented by both sides and the fact that only the claims of the California class survived  
 13 Defendant’s Motion to Dismiss (ECF No. 37), there is a substantial likelihood that Settlement  
 14 Class Members may not have been awarded more (and they likely would have been awarded  
 15 *less*) than is offered to them under this Settlement on an individual basis. All Settlement Class  
 16 members—which covers the entire United States as opposed to just California—will be eligible  
 17 to receive either a full refund for an unlimited amount of IGK Products with Proof of Purchase  
 18 or \$4 per IGK Product purchased, for up to five IGK Products, or \$20.00. Settlement ¶ 79(b).

19                   The Settlement provides prompt, certain, and meaningful relief to Settlement Class  
 20 Members, all of whom purchased IGK Products before April 23, 2024. Continued litigation  
 21 would likely add several more years before there is a resolution.

22                   **3. Hanlon Factor 3 – The Risk of Maintaining Class Action**  
 23                   **Status Throughout the Trial**

24                   In addition to the risks of continuing to litigate the Action, Plaintiffs would also face risks  
 25 in certifying a class and maintaining class status through trial. Even if the Court were to grant a  
 26 motion for class certification, the class could still be decertified at any time. *See In re Netflix*  
 27 *Privacy Litig.*, 2013 WL 1120801, at \*6 (N.D. Cal. Mar. 18, 2013) (“The notion that a district  
 28 court could decertify a class at any time is one that weighs in favor of settlement.”) (internal  
 citations omitted). From their prior experience, Class Counsel anticipates that Defendant would

1 likely appeal the Court's decision pursuant to Fed. R. Civ. P. 23(f), and/or move for  
2 decertification at a later date.

3 **4. Hanlon Factor 4 – The Amount Offered in Settlement**

4 By any measure, the Settlement here offers meaningful relief for the Settlement Class.  
5 Defendant has agreed to settle this matter for \$850,000.00, which, given the “finality and speed  
6 of recovery under the parties’ agreement,” is reasonable and preferable to continued litigation.  
7 *Deaver v. Compass Bank*, 2015 WL 8526982, at \*7 (N.D. Cal. Dec. 11, 2015) (granting final  
8 approval of settlement fund of \$500,000.00).

9 Based on their experience in other benzene litigation, Plaintiffs’ Counsel believes that the  
10 \$850,000.00 non-reversionary common fund here represents approximately a 19% to 32%  
11 recovery as compared to the Settlement Class’s best day at trial, which is well within the range  
12 of reasonableness found by Courts in this Circuit. JD. ¶¶ 41–42; *see also, e.g., Woodard v.*  
13 *Labrada*, 2019 WL 6998775, at \*6 (C.D. Cal. Oct. 7, 2019) (collecting cases and stating “[a]  
14 recovery of approximately 22% of the damages the Settlement Class could have recovered is  
15 consistent with and exceeds amounts routinely found to be fair and reasonable”); *In re Mego*  
16 *Financial Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement that was  
17 16.67% of the potential recovery); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, \*10 (C.D.  
18 Cal. Feb. 16, 2017) (approving a settlement where net recovery to class members was  
19 approximately 7.5% of the projected maximum recovery amount); *Ahmed v. Beverly Health &*  
20 *Rehab. Servs., Inc.*, 2018 WL 746393, at \*10 (E.D. Cal. Feb. 7, 2018) (approving settlement that  
21 was 1% of the potential recovery). Further, all Settlement Class Members will be eligible to  
22 either receive a full refund with Proof of Purchase for as many IGK Products purchased or \$4  
23 per IGK Product purchased, for up to five IGK Products, which is very similar to the relief sought  
24 by Plaintiffs in the FAC. Settlement ¶ 79(b). As such, this factor is satisfied.

25 **5. Hanlon Factor 5 – The Extent of Discovery Completed  
26 and the Stage of the Proceedings**

26 Under this factor, courts evaluate whether class counsel had sufficient information to  
27 make an informed decision about the merits of the case. *See In re Mego Fin. Corp. Sec. Litig.*,  
28

1 213 F.3d at 459. Plaintiffs, through their counsel, have conducted research, discovery, and  
2 investigation during the prosecution of this Action, including: (i) the review of written documents  
3 produced by Defendant; (ii) the review of publicly available reports, journal articles, and other  
4 publications concerning Defendant’s products; (iii) the review of publicly available information  
5 regarding Defendant and its business practices; and (iv) negotiating and drafting a stipulated  
6 protective order. This discovery was sufficient for Class Counsel to appreciate the merits of  
7 Plaintiffs’ claims before negotiations. The Parties held numerous telephonic and written  
8 discussions regarding Plaintiffs’ allegations, discovery, and settlement, as well as a full day  
9 mediation with Howard A. Herman of JAMS. JD. ¶¶ 14–22, 30, 32. The Settlement is the result  
10 of fully informed negotiations. *Vega v. Weatherford U.S., Ltd. P’ship*, 2016 WL 7116731, at \*9  
11 (E.D. Cal. Dec. 7, 2016) (noting the fifth *Hanlon* factor weighed in favor of final approval where  
12 “[g]iven the discovery completed by the parties, it appears that the parties made informed  
13 decisions, which lead to resolution of the matter with a mediator”).

14 **6. *Hanlon* Factor 6 – The Experience and Views of Counsel**

15 “The recommendations of plaintiffs’ counsel should be given a presumption of  
16 reasonableness.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008).  
17 Deference to Class Counsel’s evaluation of the Settlement is appropriate because “[p]arties  
18 represented by competent counsel are better positioned than courts to produce a settlement that  
19 fairly reflects each party’s expected outcome in litigation.” *Rodriguez*, 563 F.3d at 967. Here,  
20 the Settlement was negotiated by counsel with extensive experience in consumer class action  
21 litigation. *See* (ECF No. 59-1). Based on their experience, Class Counsel concluded that the  
22 Settlement provides exceptional results for the Settlement Class while sparing the Settlement  
23 Class from the uncertainties of continued and protracted litigation.

24 **7. *Hanlon* Factor 7 – The Reaction of the Class Members to  
the Settlement**

25 It has been two months since the settlement website was made public and the Notice  
26 Program began. The deadline to submit a Claim is November 19, 2024. The Objection Period  
27 and Opt-Out Period end on September 6, 2024. As of August 1, 2024, no Class Members have  
28

1 either objected to or opted out of the Settlement (Weisbrot Decl. ¶¶ 16–17), which “raises a strong  
 2 presumption that the terms of a proposed class settlement action are favorable to the class  
 3 members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1043. Plaintiffs will provide the  
 4 Court with a supplemental declaration in advance of the November 19, 2024 Final Approval  
 5 Hearing that documents the reaction of the Settlement Class members to the Settlement, including  
 6 the following information: (1) the number of Settlement Class Members who submitted Valid  
 7 Claims; (2) the number of Settlement Class members who elected to opt out of the Class; and (3)  
 8 the number of Settlement Class Members who objected to or commented on the Settlement.

9 In sum, the *Hanlon* factors weigh in favor of granting Final Approval of the Settlement.

10 **B. The Settlement Class Meets All Of The Rule 23(e)(2) Factors**

11 **1. Rule 23(e)(2)(A) – The Class Representatives and Class  
 12 Counsel Have Adequately Represented the Class**

13 “The Ninth Circuit has explained that ‘adequacy of representation ... requires that two  
 14 questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest  
 15 with other class members and (b) will the named plaintiffs and their counsel prosecute the action  
 16 vigorously on behalf of the class?’” *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at \*6 (N.D.  
 17 Cal. Dec. 18, 2018) (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 462). This prong is  
 18 met for the same reasons that Plaintiffs and Class Counsel meet the adequacy prong under Fed.  
 19 R. Civ. P. 23(a)(4). *See* § VI.A.4, *infra*; *see also Hilsley v. Ocean Spray Cranberries, Inc.*, 2020  
 20 WL 520616, at \*5 (S.D. Cal. Jan. 31, 2020) (“Because the Court found that adequacy under Rule  
 21 23(a)(4) has been satisfied above, due to the similarity, the adequacy factor under Rule  
 22 23(e)(2)(A) is also met.”).

23 **2. Rule 23(e)(2)(B) – The Proposal was Negotiated at Arm’s Length**

24 “Before approving a class action settlement, the district court must reach a reasoned  
 25 judgment that the proposed agreement is not the product of fraud or overreaching by, or collusion  
 26 among, the negotiating parties.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1290 (9th Cir.  
 27 1992); *see also* Fed. R. Civ. P. 23(e)(2)(B). A court may “presume that through negotiation, the  
 28 Parties, counsel, and mediator arrived at a reasonable range of settlement by considering

1 Plaintiff's likelihood of recovery." *Garner*, 2010 WL 1687832, at \*9 (citing *Rodriguez*, 563 F.3d  
2 at 965).

3 Here, both Class Counsel and counsel for Defendant are experienced in class action  
4 litigation, and were "thoroughly familiar with the applicable facts, legal theories, and defenses  
5 on both sides." *Hilsley*, 2020 WL 520616, at \*5. Further, "the Settlement was reached as a  
6 result of informed and non-collusive arms-length negotiations [over a number of months]  
7 facilitated by a neutral mediator." *Kramer v. XPO Logistics, Inc.*, 2020 WL 1643712, at \*1 (N.D.  
8 Cal. Apr. 2, 2020); *G. F. v. Contra Costa Cnty.*, 2015 WL 4606078, at \*13 (N.D. Cal. July 30,  
9 2015) ("[T]he assistance of an experienced mediator in the settlement process confirms that the  
10 settlement is non-collusive.") (internal quotations omitted); *Satchell v. Fed. Express Corp.*, 2007  
11 WL 1114010, at \*4 (N.D. Cal. Apr. 13, 2007) (same); *see also* JD. ¶¶ 14–22, 30, 32. Thus, this  
12 prong is met.

### 13 3. Rule 23(e)(2)(C) – The Relief Provided for the Class is Adequate

14 Rule 23(e)(2)(C) requires that the Court consider whether "the relief provided for the  
15 class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the  
16 effectiveness of any proposed method of distributing relief to the class, including the method of  
17 processing class-member claims; (iii) the terms of any proposed award of attorney's fees,  
18 including timing of payment; and (iv) any agreement required to be identified under Rule  
19 23(e)(3)." "The amount offered in the proposed settlement agreement is generally considered to  
20 be the most important consideration of any class settlement." *Hilsley*, 2020 WL 520616, at \*6.  
21 Each prong is met.

22 ***The Costs, Risks, and Delay of Trial and Appeal.*** Plaintiffs established this factor is met  
23 above. *See* §§ V.B.1–V.B.3, *supra*.

24 ***The Effectiveness of any Proposed Method of Distributing Relief to the Class.*** "The  
25 goal of any distribution method is to get as much of the available damages remedy to class  
26 members as possible and in as simple and expedient a manner as possible." *Hilsley*, 2020 WL  
27 520616, at \*7. As described above, the Notice Program and Claims procedure is straightforward  
28 and comports with due process. *See* Section IV. The Notice Program was proposed by

1 experienced and competent counsel and ensures “the equitable and timely distribution of a  
2 settlement fund without burdening the process in a way that will unduly waste the fund.” *In re*  
3 *GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 695 (S.D.N.Y. 2019) (internal quotations  
4 omitted).

5 ***The Terms of any Proposed Award of Attorneys’ Fees.*** Class Counsel are filing  
6 concurrently with this motion, Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Awards,  
7 requesting an award of attorneys’ fees of up to 25% of the Settlement Fund (or \$212,500.00.00),  
8 plus litigation costs of up to \$600.00. Settlement ¶ 106. The proposed award of attorneys’ fees  
9 is reasonable for the reasons set forth in that motion.

10 ***Any Agreement Required to be Identified by Rule 23(e)(3).*** This prong asks whether  
11 there was “any agreement made in connection with the proposal.” *In re GSE Bonds Antitrust*  
12 *Litig.*, 414 F. Supp. 3d 686, 696 (S.D.N.Y. 2019). Here, other than the Settlement, no such  
13 agreement exists.

14 In light of the foregoing, the Settlement provides adequate relief to the Settlement Class  
15 under Rule 23(e)(2)(C).

16 **4. Rule 23(e)(2)(D) – The Proposal Treats Class Members Equitably  
17 Relative To Each Other**

18 Under this factor, courts consider whether the Settlement “improperly grant[s]  
19 preferential treatment to class representatives or segments of the class.” *Hefler*, 2018 WL  
20 6619983, at \*8. Although Settlement Class Members with Proof of Purchase will be eligible to  
21 receive compensation for as many IGK Products as they have proof for—as opposed to being  
22 limited to four IGK Products—that does not mean Settlement Class Members are treated  
23 inequitably. *Theodore Broomfield v. Craft Brew All., Inc.*, 2020 WL 1972505, at \*9 (N.D. Cal.  
24 Feb. 5, 2020) (finding “the method of distribution is equitable and class representatives do not  
25 receive preferential treatment” where class members with proof of purchase could make claims  
26 for up to \$20, versus up to \$10 without proof of purchase). Indeed, such a limitation on  
27 Settlement Class Members without Proof of Purchase is necessary to deter fraudulent claims and  
28 ensure as much of the Settlement Fund is available to Settlement Class Members with Proof of

1 Purchase as possible. JD. ¶ 43. Further, all Settlement Class Members' Claims are subject to an  
 2 upward or downward *pro rata* adjustment if they exceed the available Settlement Fund. A *pro*  
 3 *rata* distribution has been found by courts in this Circuit to be equitable. *See, e.g., Perks v.*  
 4 *Activehours, Inc.*, 2021 WL 1146038, at \*6 (N.D. Cal. Mar. 25, 2021) ("This *pro rata* distribution  
 5 is inherently equitable because it treats Class Members fairly based on the amount of each  
 6 member's potential damages."); *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at  
 7 \*8 (N.D. Cal. July 22, 2019) (finding a *pro rata* distribution equitable); *Hawkins v. Kroger Co.*,  
 8 2022 WL 345639, at \*2, \*8 (S.D. Cal. Feb. 4, 2022) (same).

## 9 VI. FINAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

10 The Court previously provisionally certified the Settlement Class as part of the  
 11 Preliminary Approval Order. ECF No. 65. The Court should reaffirm certification of the  
 12 Settlement Class for settlement purposes because the standards of Rule 23(a) and Rule 23(b)(3)  
 13 are satisfied. *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 253 (N.D. Cal. 2015)  
 14 ("In the Court's Order granting preliminary approval of the settlement, the Court found that the  
 15 putative class satisfied the numerosity, commonality, typicality, and adequacy of representation  
 16 requirements of Rule 23(a). The Court is unaware of any changes ... Thus, the Court concludes  
 17 that all four of Rule 23(a)'s requirements have been met.") (internal citations omitted). Further,  
 18 courts have granted final approval of similar consumer product class action settlements involving  
 19 defendants allegedly failing to disclose to consumers that their respective products contain  
 20 benzene. *See, e.g., Evans v. Church & Dwight Co.*, Case No. 1:22-cv-6301, ECF No. 75 (N.D.  
 21 Ill. Oct. 16, 2023) (Kendall, J.); *Goldstein v. Henkel Corp.*, Case No. 3:22-cv-164, ECF No. 97  
 22 (D. Conn. Dec. 13, 2023); *Bangoura v. Beiersdorf, Inc.*, Case No. 1:22-cv-291, ECF No. 40  
 23 (E.D.N.Y. Jan. 10, 2023).

### 24 A. The Requirements of Rule 23(a) Are Satisfied

#### 25 1. Fed. R. Civ. P. 23(a)(1) – Numerosity

26 A class must be so numerous that joinder of all members individually is impractical. Fed.  
 27 R. Civ. P. 23(a)(1). "[G]enerally, forty or more members will satisfy the numerosity  
 28 requirement." *Millan v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 603 (E.D. Cal. 2015). Here,



1 the Settlement Class is comprised of tens of thousands of consumers who purchased the IGK  
2 Products—a number that more than satisfies the numerosity requirement. JD. ¶ 15. Accordingly,  
3 numerosity is easily met.

## 4 **2. Fed. R. Civ. P. 23(a)(2) – Commonality**

5 “Commonality requires the plaintiff to demonstrate that the class members have suffered  
6 the same injury.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011). “This  
7 requirement has been construed permissively, and all questions of fact and law need not be  
8 common to satisfy the rule.” *In re Yahoo! Inc. Customer Data Security Breach Litig.*, 2020 WL  
9 4212811, at \*2 (N.D. Cal. July 22, 2020) (“*In re Yahoo!*”) (internal quotations omitted). “Indeed,  
10 for purposes of Rule 23(a)(2), even a single common question will do.” *Id.*

11 Here, common questions include, but are not limited to, whether Defendant’s alleged  
12 failure to disclose that the IGK Products contained benzene was “reasonably likely to deceive  
13 consumers.” *Hilsley*, 2020 WL 520616, at \*2 (concluding that commonality was satisfied where  
14 there was a common question of whether Ocean Spray’s representations of “No Artificial  
15 Flavors” were likely to deceive consumers); *see also Goldstein v. Henkel Corp.*, Case No. 3:22-  
16 cv-00164 (ECF Nos. 92, 97) (approving class action settlement where a common predominating  
17 question was “whether Defendants’ failure to disclose the presence of benzene in the Covered  
18 Products was likely to deceive reasonable consumers”). Resolution of this common question  
19 would require evaluation of the question’s merits under a single objective standard. Thus,  
20 commonality is satisfied.

## 21 **3. Fed. R. Civ. P. 23(a)(3) – Typicality**

22 Rule 23(a)(3) requires that the claims of the representative plaintiffs be “typical of the  
23 claims ... of the class.” *See Fed. R. Civ. P. 23(a)(3)*. “Under the rule’s permissive standards,  
24 representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class  
25 members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020. In short, to meet  
26 the typicality requirement, the representative plaintiffs simply must demonstrate that the  
27 members of the settlement class have the same or similar grievances. *See Gen. Tel. Co. of Sw. v.*  
28 *Falcon*, 457 U.S. 147, 161 (1982).

1 Here, Plaintiffs' claims, legal theories, and evidence are identical to those of other  
2 members of the Settlement Class. Plaintiffs, like all members of the Settlement Class, purchased  
3 the IGK Products during the Class Period and suffered damages because of Defendant's alleged  
4 material misstatements and omissions. Accordingly, the Rule 23(a)(3) typicality requirement is  
5 satisfied.

6 **4. Fed. R. Civ. P. 23(a)(4) – Adequacy of Representation**

7 The final requirement of Rule 23(a) is that “the representative parties will fairly and  
8 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “To determine whether  
9 the representation meets this standard, we ask two questions: (1) do the representative plaintiffs  
10 and their counsel have any conflicts of interest with other class members, and (2) will the  
11 representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?”  
12 *Staton v. Boeing Co.*, 327 F.3d 938, 958 (9th Cir. 2003). Adequacy is presumed where a fair  
13 settlement was negotiated at arm's-length. NEWBERG ON CLASS ACTIONS § 11.28, at 11–59.

14 *First*, Plaintiffs and Class Counsel have no conflicts of interests with the Settlement Class.  
15 Rather, the named Plaintiffs, like each absent Settlement Class Member, have a strong interest in  
16 proving Defendant's common course of conduct, and recovering damages allegedly caused by  
17 Defendant's wrongful conduct. *See* JD. ¶ 43.

18 *Second*, Plaintiffs and Class Counsel have vigorously and competently pursued the  
19 Settlement Class Members' claims. Class Counsel has engaged in significant, arm's-length  
20 negotiations over the course of many months, including with the assistance of a certified  
21 mediator, Howard A. Herman. JD. ¶¶ 14, 18, 30; *see also Villegas v. J.P. Morgan Chase & Co.*,  
22 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) (use of mediator “tends to support the  
23 conclusion that the settlement process was not collusive”). Class Counsel have extensive  
24 experience and expertise in prosecuting complex class actions. Class Counsel are active  
25 practitioners who are highly experienced in consumer class actions. *See* (ECF No. 59-1).  
26  
27  
28

1 Thus, in pursuing this Action, Class Counsel and Plaintiffs have advanced and will  
2 continue to advance and fully protect the common interests of all members of the Settlement  
3 Class. Accordingly, Rule 23(a)(4) is satisfied.

4 **B. The Requirements Of Rule 23(b)(3) Are Satisfied**

5 In addition to the requirements of Rule 23(a), at least one of the prongs of Rule 23(b)  
6 must be satisfied. Here, Plaintiffs seek certification under Rule 23(b)(3), which requires that  
7 “questions of law or fact common to the class members predominate over any questions affecting  
8 only individual members, and that a class action is superior to other available methods for fairly  
9 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Certification under Rule  
10 23(b)(3) is appropriate and encouraged “whenever the actual interests of the parties can be served  
11 best by settling their differences in a single action.” *Hanlon*, 150 F.3d at 1022.

12 The Ninth Circuit favors class treatment of claims stemming from a “common course of  
13 conduct,” like those alleged in this Action. *See In re First Alliance Mortg. Co.*, 471 F.3d 977,  
14 989 (9th Cir. 2006). Also, as the Supreme Court explained, “[c]onfronted with a request for  
15 settlement-only class certification, a district court need not inquire whether the case, if tried,  
16 would present intractable management problems.” *Amchem Prods., Inc. v. Windsor*, 521 U.S.  
17 591, 620 (1997).

18 Here, predominance is met because “common questions ... present a significant aspect  
19 of the case and [] can be resolved for all members of the class in a single adjudication.” *Murillo*  
20 *v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 476 (E.D. Cal. 2010). These common questions  
21 include, but are not limited to: (1) whether Defendant’s failure to disclose that the IGK Products  
22 contained benzene was likely to deceive reasonable consumers; (2) whether Defendant violated  
23 the CLRA, UCL, FAL, and other consumer protection statutes; and (3) whether Plaintiffs and the  
24 Class have been injured by the wrongs complained of, and if so, whether Plaintiffs and the Class  
25 are entitled to damages. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 563 (9th Cir.  
26 2019) (finding predominance met where “the class claims turn on the automakers’ common  
27 course of conduct—their fuel economy statements”); *Hawkins v. Kroger Co.*, 337 F.R.D. 518,  
28 541 (S.D. Cal. 2020) (predominance met where “common and cohesive issue is whether Kroger

1 wrongfully labeled its breadcrumbs as containing ‘0g Trans Fat’); *Hilsley v. Ocean Spray*  
 2 *Cranberries, Inc.*, 2018 WL 6300479, at \*11 (S.D. Cal. Nov. 29, 2018) (predominance satisfied  
 3 where “Plaintiff’s UCL, FAL and CLRA claims depend on whether the labels are unlawful,  
 4 unfair, deceptive, or misleading to reasonable consumers”) (internal quotations omitted).

5 Turning to superiority, “[t]he purpose of the superiority requirement is to assure that the  
 6 class action is the most efficient and effective means of resolving the controversy.” *Wolin v.*  
 7 *Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). A class action is the  
 8 superior method for the fair and efficient adjudication of these claims. Plaintiffs’ claims are  
 9 shared by tens of thousands of consumers nationwide, and resolution of all Settlement Class  
 10 Members’ claims in a single proceeding promotes judicial efficiency and avoids inconsistent  
 11 decisions. Further, it is unlikely that any Settlement Class member would be willing or able to  
 12 pursue relief on an individual basis. *See In re Yahoo*, 2020 WL 4212811, at \*7 (“In cases where  
 13 Plaintiffs are unable to proceed individually because the disparity between litigation costs and  
 14 the recovery sought is too high, the class-action device may be an effective means to pool claims  
 15 which would be uneconomical to litigate individually.”).

## 16 VII. CONCLUSION

17 For the foregoing reasons, Plaintiffs respectfully request that the Court grant Final  
 18 Approval of the proposed Settlement.

19 Dated: August 2, 2024

Respectfully submitted,

**BURSOR & FISHER, P.A.**

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