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

ANTHONY BUSH, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

RUST-OLEUM CORPORATION,

Defendant.

Case No. 3:20-cv-03268-LB
Complaint Filed: May 13, 2020
FAC Filed: August 24, 2020

*Assigned for all Purposes to Hon. Laurel
Beeler, United States Magistrate Judge*

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Information:
Date: April 17, 2025
Time: 9:30 a.m.
Courtroom: B

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 17, 2025, at 9:30 a.m., in Courtroom B of the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Ave., San Francisco, CA 94102, the Honorable Laurel Beeler presiding, Plaintiff Anthony Bush will and hereby does move for an Order pursuant to the Federal Rules of Civil Procedure granting preliminary approval of the proposed settlement with Defendant Rust-Oleum Corporation.

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below, the accompanying Declaration of Bahar Sodaify, the exhibit thereto, the pleadings and records on file in this action, and other relevant matters and argument as the Court may consider at the hearing of this motion.

Dated: February 24, 2025

CLARKSON LAW FIRM, P.C.

By: /s/ Bahar Sodaify
Ryan J. Clarkson
Bahar Sodaify
Alan Gudino

MOON LAW APC

By: /s/ Christopher D. Moon
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MEMORANDUM OF POINTS AND AUTHORITES

I. INTRODUCTION

Plaintiff Anthony Bush (“Plaintiff”) has reached a nationwide class settlement with Defendant Rust-Oleum Corporation (“Defendant”) that provides meaningful injunctive relief and monetary compensation for consumers who purchased Defendant’s Krud Kutter cleaning products labeled as “Non-Toxic” and “Earth Friendly.” The settlement follows nearly five years of rigorous litigation, including extensive fact and expert discovery, class certification briefing, motions to exclude expert testimony, and summary judgment briefing.

Plaintiff alleged that Defendant deceptively labeled, marketed, and sold various Krud Kutter products as “Non-Toxic” and “Earth Friendly” despite containing ingredients that could cause harm to humans, animals, and the environment (the “Products”). (ECF No. 26.) Plaintiff pursued claims under California’s Unfair Competition Law (“UCL”), False Advertising Law (“FAL”), and Consumers Legal Remedies Act (“CLRA”), as well as claims for breach of express warranty and unjust enrichment. (*Id.* ¶¶ 66-161.) During this litigation, the Court certified a class of California consumers (ECF No. 189) for injunctive relief and monetary damages, and it denied Defendant’s motion for summary judgment (ECF No. 186), motion to exclude expert testimony (ECF No. 190), and motion for leave to file motion for reconsideration (ECF No. 207).

With class certification granted and continued litigation presenting risks and delays, Plaintiff has achieved a comprehensive resolution that would provide timely and certain relief for consumers nationwide. The Settlement¹ ensures that Defendant will modify its labeling practices by removing the “Non-Toxic” representation and adding a qualifier to the “Earth Friendly” claim on the Products’ labels to eliminate the alleged deception. (Ex. A § 5.1.) Defendant also has agreed to establish a \$1.5 million non-reversionary Settlement Fund to compensate consumers. (*Id.* § 2.1.) The monetary relief allows Class Members who submit valid claims to receive cash payments based on their Product purchases. (*Id.* § 4.1.) Any remaining funds will be distributed *cy pres* to Earthjustice, a nonprofit environmental law organization dedicated to protecting public health and the

¹ See Settlement Agreement (“Settlement”), attached as Exhibit A (“Ex. A”) to the Declaration of Bahar Sodaify (“Sodaify Decl.”).

1 environment, and Mamavation, a consumer advocacy group focused on environmental health and
2 toxin-free living. (*See id.* § 4.2.)

3 Plaintiff now seeks preliminary approval of the Settlement, conditional certification of the
4 nationwide Settlement Class, and approval of the proposed Notice Plan to inform Class Members
5 of their rights. This Settlement provides substantial benefits while avoiding the risks and
6 uncertainties associated with further litigation. Accordingly, Plaintiff requests that the Court grant
7 preliminary approval of the Settlement, approve the proposed Notice Plan, and establish a schedule
8 for the dissemination of notice, the claims process, and a fairness hearing to determine final approval
9 of the Settlement, including the payment of attorneys' fees, cost reimbursements, and the incentive
10 award.

11 **II. FACTUAL AND PROCEDURAL BACKGROUND**

12 **A. Plaintiff Filed This Action to Challenge Defendant's Deceptive Labeling**

13 On May 13, 2020, Plaintiff filed this class action against Defendant in the United States
14 District Court for the Northern District of California, alleging violations of the UCL, FAL, CLRA,
15 as well as claims for breach of express warranty and unjust enrichment. (ECF No. 26 ¶¶ 66-161.)
16 Plaintiff asserted that Defendant deceptively marketed and sold its Krud Kutter cleaning Products
17 as "Non-Toxic" and "Earth Friendly" despite containing ingredients Plaintiff alleged cause harm to
18 humans, animals, and the environment. (*Id.* ¶¶ 1-10, 14-20.)

19 **B. Defendant's Motion to Dismiss Was Denied**

20 Defendant subsequently moved to dismiss Plaintiff's First Amended Complaint, arguing,
21 among other things, that Plaintiff failed to sufficiently allege deception, standing, and the
22 plausibility of consumer harm. (ECF No. 29.) Defendant contended that the Products' labels
23 contained sufficient disclaimers, and that no reasonable consumer would be misled by the
24 challenged representations. (*Id.*) Plaintiff opposed the motion by noting that the "Non-Toxic" and
25 "Earth Friendly" claims were prominently displayed and conveyed false assurances about the
26 Products' safety. (ECF No. 33.) The Court denied Defendant's motion in full, finding that Plaintiff
27 had adequately pled consumer deception, injury, and entitlement to relief under all asserted causes
28 of action, and that reasonable consumers could be misled by Defendant's labeling. (ECF No. 51.)

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C. The Parties Engaged in Extensive Discovery and Expert Analysis

Following the denial of Defendant’s motion to dismiss, the parties engaged in extensive fact and expert discovery. (Sodaify Decl. ¶ 6.) The parties exchanged written discovery, reviewed thousands of pages of internal corporate documents and marketing materials, and deposed key witnesses, including corporate representatives and experts. (*Id.*) Plaintiff retained expert witnesses, including survey researchers and chemists, to analyze consumer perception of the challenged label claims and the chemical composition of the Products. (*Id.*) Meanwhile, Defendant retained rebuttal experts to challenge Plaintiff’s scientific and economic conclusions. (*Id.*)

D. The Court Certified the CA Class and Denied Defendant’s Dispositive Motions

In February 2024, Plaintiff moved to certify a California class for injunctive relief under Rule 23(b)(2) and for damages under Rule 23(b)(3). (ECF No. 95.) Before the Court ruled on Plaintiff’s motion for class certification, Defendant moved for summary judgment, arguing that disclaimers on the Products’ labels purportedly contradicted Plaintiff’s allegations and that Plaintiff’s expert testimony failed to establish consumer deception. (ECF No. 116.) Defendant contended that no reasonable consumer could be misled by the Products’ claims and that Plaintiff lacked evidence of an injury. (*Id.*) In response, Plaintiff relied on a consumer perception survey and expert testimony to demonstrate that consumers were likely to be misled by the “Non-Toxic” and “Earth Friendly” claims. (ECF No. 142.)

While Defendant’s summary judgment motion was pending, the Court granted Plaintiff’s motion for class certification, finding that Plaintiff met all Rule 23 requirements, as the case involved uniform representations on the Products’ labels that applied to all Class Members equally. (ECF No. 189.) The Court also determined that Plaintiff had standing to seek injunctive relief and that damages could be determined on a class-wide basis. (*Id.*) Subsequently, the Court denied Defendant’s motion for summary judgment, ruling that factual disputes remained regarding whether the labeling was deceptive and whether consumers paid a price premium due to the challenged representations. (ECF No. 186.)

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E. Defendant Sought Interlocutory Appeal and Moved for Leave to File a Motion for Reconsideration, Both of Which Were Denied

After the Court granted Plaintiff’s motion for class certification, Defendant petitioned the Ninth Circuit for permission to appeal the Court’s class certification order under Rule 23(f). (ECF No. 191-1.) While that petition was pending, Defendant moved for leave to file a motion for reconsideration of the Court’s summary judgment ruling, reiterating its arguments regarding consumer deception and asserting that Plaintiff’s expert evidence was insufficient. (ECF No. 199.) Defendant also contended that new case law and additional clarifications about consumers’ understanding of the challenged claims warranted reconsideration. (*Id.*) The Ninth Circuit then denied Defendant’s petition (ECF No. 204), and shortly thereafter, the Court denied Defendant’s motion for leave to file a motion for reconsideration, holding that Defendant had not presented any new evidence or legal grounds to justify reconsideration (ECF No. 207).

F. Parties Achieved Settlement Through Arms-Length Mediation and Negotiation

On July 22, 2024, the parties participated in a full-day mediation with experienced mediator Hunter Hughes of Alternative Dispute Resolution. (Sodaify Decl. ¶ 10.) Although the mediation did not immediately resolve the case, it facilitated further negotiations with the continued involvement of the mediator, which ultimately led to an agreement in principle. (*Id.*) The parties later formalized the Settlement, which provides for injunctive relief and the establishment of a \$1.5 million non-reversionary Settlement Fund. (Ex. A §§ 2.1, 5.1.) The injunctive relief requires Defendant to remove the “Non-Toxic” representation from its Products’ labels and modify the “Earth Friendly” representation by adding qualifying language to eliminate the deception. (*Id.* § 5.1.) The Settlement also provides monetary relief to Class Members who submit valid claims. (*Id.* § 4.1.) Plaintiff now submits this motion for preliminary approval of the Settlement to bring this Action to a final and equitable resolution.

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1 **III. THE SETTLEMENT TERMS**

2 The key terms of the Settlement are summarized as follows:

3 **A. Class Definition**

4 The “Settlement Class” includes:

5 “All persons in the United States of America who purchased one or more of Defendant’s
6 Covered Products at any time during the Class Period. Excluded from the Settlement Class are any
7 officers, directors, or employees of Defendant, and the immediate family members of any such
8 person. Also excluded is any judge who may preside over this case.” (*Id.* § 1.9.)

9 **B. Injunctive Relief Addressing the Claims in the Complaint**

10 Defendant has agreed to implement significant labeling and marketing changes to address the
11 allegations in the Complaint. Specifically, Defendant will remove the “Non-Toxic” representation
12 from the packaging and labeling of the Products. (*Id.* § 5.1.) Additionally, Defendant will add an
13 asterisk to the “Earth Friendly” representation on the Products’ front labels to direct consumers to
14 the back label where it will state: “Contains no inorganic phosphates, hazardous solvents, or
15 environmentally harmful surfactants,” or similar qualifying language. (*Id.*) Defendant is required to
16 implement these changes as part of the Settlement’s injunctive relief to ensure that future product
17 labeling comports with the claims made to consumers. To facilitate this transition, the Settlement
18 permits Defendant and its successors to sell through existing inventory without requiring the
19 withdrawal, destruction, or recall of previously manufactured Products or promotional materials.
20 (*Id.* § 5.1.1.) This transition ensures that the labeling changes take effect moving forward while
21 avoiding unnecessary waste.

22 **C. Monetary Relief Through a Non-Reversionary Settlement Fund**

23 Defendant also agrees to establish a non-reversionary Settlement Fund totaling \$1.5 million
24 (the “Total Settlement Fund”), which will be used to pay: (1) any necessary taxes and tax expenses,
25 (2) all costs and expenses associated with disseminating Class Notice, (3) all costs and expenses
26 associated with the administration of the Settlement, including but not limited to processing claims
27 and fees of the Settlement Administrator, (4) any attorneys’ fees and expenses awarded by the Court
28 to Class Counsel, (5) any service award made by the Court to Plaintiff, and (6) cash payments

1 distributed to Claimants who submit timely, valid, and approved claims. (*Id.* § 2.1.) The Settlement
2 provides direct monetary relief to Class Members based on the number of Products they purchased.
3 (*Id.* § 4.1.3.) Class Members who submit valid claims with proof of purchase will receive \$1.00 per
4 product purchased, with no cap on the number of claims. (*Id.*) Class Members who submit claims
5 without proof of purchase are eligible to receive \$1.00 per product for up to eight (8) products per
6 household. (*Id.*) Payments will be distributed electronically via PayPal, Venmo, Zelle, ACH
7 transfer, or a prepaid digital Mastercard, with an option for a mailed check. (*Id.* § 4.1.4.)

8 If the total value of approved claims exceeds the available funds, payments will be reduced
9 pro rata to ensure equitable distribution among claimants. (*Id.* § 4.1.5.) Conversely, if total claims
10 are less than the available funds, payments will be increased pro rata, subject to a cap of two times
11 the original per-product claim amount (*i.e.*, a maximum of \$2.00 per product). (*Id.*) Interest accrued
12 on the Settlement Fund will inure to the benefit of the Settlement Class. (*Id.* § 2.2.) Defendant will
13 fund the Total Settlement Fund within 30 days following the Court's Preliminary Approval Order.
14 (*Id.* § 2.3.) Any unclaimed funds after the initial distribution will be donated *cy pres* in equal shares
15 to Earthjustice and Mamavation. (*Id.* § 4.2.)

16 **D. Class Release of Claims**

17 Upon the Court's entry of the Final Approval Order and the Effective Date, and the full
18 funding of the Settlement amount, the Action will be dismissed with prejudice, and all Released
19 Claims will be conclusively settled, compromised, and released against the Released Parties. (*Id.* §
20 8.1.) The relief provided by the Settlement will be the sole and exclusive remedy for all Settlement
21 Class Members with respect to the Released Claims. (*Id.*)

22 The Settlement provides that Settlement Class Members release and discharge the Released
23 Parties from all actual, potential, or unasserted claims arising out of or related to the advertising,
24 marketing, labeling, and sale of the Products. (*Id.* § 8.2.) The release extends to both known and
25 unknown claims, including those Settlement Class Members may not be aware of at the time of
26 settlement, subject to the waiver provisions under California Civil Code § 1542 and similar laws.
27 (*Id.* § 8.3.) The release does not, however, extend to claims for bodily injury, wrongful death, or
28 emotional distress arising from bodily injury none of which were alleged in this Action. (*Id.* § 8.2.)

1 Plaintiff has also executed an individual release to resolve all claims arising from this Action and
2 any personal purchase or use of the Products before the Settlement Effective Date. (*Id.* § 8.8.) The
3 Court will retain jurisdiction over the implementation and enforcement of the Settlement to ensure
4 compliance with its terms and to facilitate resolution of any related disputes. (*Id.* § 8.6.)

5 **E. Class Notice and Administration**

6 The Settlement provides for a comprehensive Notice Plan to ensure Class Members are
7 informed of their rights. Digital Settlement, LLC has been selected as the Settlement Administrator
8 and is subject to Court approval. (*Id.* § 6.1; *id.*, Ex. 4.) The Settlement Administrator will oversee
9 and execute all aspects of the notice and claims administration process in compliance with the terms
10 of the Settlement and orders of the Court. (Ex. A § 6.1.)

11 The Class Notice will be disseminated through a multi-channel approach, including internet
12 and social media advertisements, to ensure broad reach and compliance with due process
13 requirements. (*Id.* § 6.2.) The advertisements will direct consumers to the Settlement Website,
14 which will provide additional details about the Settlement, including how to file a claim, opt-out, or
15 object. (*Id.*) Published notice will be implemented for 30 days following the Settlement Notice Date.
16 (*Id.*)

17 The Settlement Administrator's responsibilities include: (1) establishing and operating the
18 Settlement Fund; (2) implementing the Class Notice Plan in accordance with the Agreement and
19 Court approval; (3) distributing notices to the U.S. Department of Justice and State Attorneys
20 General as required by the Class Action Fairness Act; (4) responding to inquiries from Settlement
21 Class Members and directing them to Class Counsel as necessary; (5) processing requests for
22 exclusion from the Settlement; (6) establishing and maintaining a Settlement Website with relevant
23 case details; (7) creating and maintaining a toll-free hotline for Settlement Class Members;
24 (8) reviewing and validating claims submitted by Class Members and distributing settlement
25 payments; (9) providing periodic status updates to the Parties' counsel; (10) preparing a sworn
26 declaration attesting to compliance with the Notice Plan and claims administration; and
27 (11) administering all other aspects of the Settlement process as directed by the Court. (*Id.* § 6.3;
28 *see id.*, Exs. 1-4.)

1 Class Notice will commence within 30 days of the Court’s Preliminary Approval Order. (Ex.
2 A § 6.4.) Settlement Class Members who wish to opt out must submit a valid request for exclusion
3 by the Opt-Out Deadline. (*Id.* § 6.5.) Mass or class opt-outs will not be permitted. (*Id.*) The
4 Settlement Administrator will track and report exclusions to the Parties’ counsel. (*Id.*) And Class
5 Members who do not opt out will be bound by the Settlement and its terms, including the release of
6 claims. (*Id.*)

7 Settlement Class Members may also submit objections to the Settlement in writing. (*Id.* §
8 6.6.) To be considered by the Court, objections must be postmarked by the Objection Deadline and
9 contain specific information, including the basis of the objection and any supporting legal or factual
10 arguments. (*Id.*) Objectors may appear at the Final Approval Hearing if they comply with the filing
11 and notice requirements. (*Id.*)

12 **F. Service Award for Plaintiff**

13 Class Counsel will request a Service Award for Plaintiff in recognition of his contributions
14 to the litigation, including participation in discovery, attending his deposition, and assisting Class
15 Counsel throughout the case. (*Id.* § 3.3.) The requested Service Award will not exceed \$5,000 and
16 will be paid from the Settlement Fund. (*Id.*)

17 **G. Attorneys’ Fees, Costs, and Expenses**

18 Pursuant to Rule 23(h), Class Counsel will apply for an award of Attorneys’ Fees not to
19 exceed \$500,000. (*Id.* § 3.1.) Class Counsel will also apply for reimbursement of reasonable
20 litigation costs and expenses to be paid from the Settlement Fund. (*Id.*) This request is based on the
21 extensive work performed by Class Counsel in litigating the case, successfully certifying the Class,
22 and negotiating the Settlement. The Parties have not agreed on the amount of any attorneys’ fees,
23 costs or expenses, and Defendant reserves the right to oppose or object to such amounts. (*Id.*)

24 **IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

25 Plaintiff respectfully requests that the Court conditionally certify a nationwide Settlement
26 Class for purposes of approving this Settlement. This Court has already certified a California class
27 (ECF No. 189), but Plaintiff now seeks to certify a broader nationwide Settlement Class to provide
28 uniform relief to all consumers affected by Defendant’s alleged deceptive marketing and labeling

1 practices related to the “Non-Toxic” and “Earth Friendly” representations on the Products.
 2 Conditional certification of a nationwide class for settlement purposes only will ensure that all
 3 similarly situated consumers receive the benefits of the Settlement while preserving their rights to
 4 opt out if they so choose.

5 When granting preliminary approval of a class action settlement, it is appropriate for a court
 6 to certify a class for settlement purposes only. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591,
 7 620 (1997); *see also In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal.
 8 2008) (“Parties may . . . stipulate that a defined class be conditionally certified for settlement
 9 purposes.”). Here, the Parties have agreed to certification of the following Settlement Class for
 10 settlement purposes only: “All persons in the United States of America who purchased one or more
 11 of Defendant’s Covered Products at any time during the Class Period. Excluded from the Settlement
 12 Class are any officers, directors, or employees of Defendant, and the immediate family members of
 13 any such person. Also excluded is any judge who may preside over this case.” (Ex. A § 1.9.)

14 This proposed Settlement Class encompasses all consumers who were exposed to and
 15 allegedly misled by Defendant’s marketing and labeling of the Products across the United States.
 16 Nationwide certification is appropriate given that Defendant’s labeling practices were uniform
 17 nationwide and affected all consumers in the same manner.

18 **A. The Requirements of Fed. R. Civ. P. 23(a) Are Satisfied**

19 Rule 23(a) sets forth the following prerequisites for certifying a class: “(1) the class is so
 20 numerous that joinder of all members is impracticable, (2) there are questions of law or
 21 fact common to the class, (3) the claims or defenses of the representative parties are typical of the
 22 claims or defenses of the class, and (4) the representative parties will fairly and adequately
 23 protect the interests of the class.” Fed. R. Civ. P. 23(a). These requirements are satisfied here.

24 **1. The Class Is Sufficiently Numerous**

25 Class certification under Rule 23(a)(1) is appropriate where a class is so “numerous that
 26 joinder of all members is impracticable.” Fed. R. Civ. P. 23; *see also Hanlon v. Chrysler Corp.*, 150
 27 F.3d 1011, 1019 (9th Cir. Cal. 1998). Impracticability does not mean impossibility, but rather that
 28 joinder would be unreasonably difficult or inconvenient. *Harris v. Palm Springs Alpine Estates*,

1 *Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). Generally, as few as 40 people are enough to certify a
2 class. *See Keegan v. Am. Honda Motor Co., Inc.*, 284 F.R.D. 504, 522 (C.D. Cal. 2012) (noting that
3 “[a]s a general rule . . . classes of 40 or more are numerous enough.”).

4 Here, numerosity is unquestionably met. The Court previously certified a California class,
5 finding that the number of consumers who purchased the Products in California alone was sufficient
6 to satisfy this requirement. (ECF No. 189 at 3:23-25.) Expanding the Class nationwide for purposes
7 of this Settlement further reinforces the impracticability of joinder. Given the scale of distribution
8 and sales, it is reasonable to infer that the number of Class Members far exceeds the threshold
9 typically required for numerosity. Accordingly, the numerosity requirement is satisfied.

10 **2. Questions of Law and Fact Are Common to the Class**

11 Rule 23(a)(2) requires the presence of a common question of law or fact that is capable of
12 class-wide resolution and central to the validity of all Class Members’ claims. *Wal-Mart Stores, Inc.*
13 *v. Dukes*, 564 U.S. 338, 349-50 (2011). Not every question of fact and law must be identical among
14 Class Members; rather, it is sufficient that there exists a common core of facts or legal theories that
15 unite the Class. *In re ConAgra Foods, Inc.*, 90 F. Supp. 3d 919, 972 (C.D. Cal. 2015), *aff’d sub*
16 *nom. Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017).

17 Here, common questions of law and fact predominate, as all Class Members were subjected
18 to the same misleading representations on Defendant’s labeling and marketing of the Products. The
19 main allegations in the First Amended Complaint are that Defendant’s labeling of the Products as
20 “Non-Toxic” and “Earth Friendly” was deceptive and misleading to reasonable consumers, in
21 violation of California’s consumer protection laws. (*See* ECF No. 26 ¶¶ 2, 10-11, 29.) The
22 Settlement Class Members share several common legal and factual issues, including but not limited
23 to: (1) Whether Defendant’s marketing, advertising, and labeling of the Products violated the UCL,
24 FAL, and CLRA; (2) Whether Defendant breached express warranties by making false
25 representations regarding the safety and environmental impact of the Products; and (3) Whether
26 Settlement Class Members paid a price premium due to the alleged misrepresentations on the
27 Products. (*Id.* ¶ 59.)

28 //

1 These questions are common to all Class Members because they arise from the same alleged
2 deceptive conduct by Defendant and will be resolved through the same legal and evidentiary
3 analysis. Accordingly, the commonality requirement is met.

4 3. Plaintiff's Claims Are Typical of the Class Claims

5 The typicality requirement is satisfied when “the claims or defenses of the representative
6 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). A plaintiff's
7 claims are considered typical if they arise from the same conduct that gives rise to the claims of
8 other class members and are based on the same legal theories. *Hunt v. Check Recovery Sys., Inc.*,
9 241 F.R.D. 505, 511 (N.D. Cal. 2007). To establish typicality, a plaintiff must show that other class
10 members suffered similar injuries resulting from the same course of conduct and that the named
11 plaintiff is not subject to unique defenses. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th
12 Cir. 2011). However, claims “need not be substantially identical” but only “reasonably co-extensive
13 with those of absent class members.” *Hanlon*, 150 F.3d at 1020.

14 Plaintiff's claims here are typical of those of the Settlement Class because they arise from the
15 same alleged misrepresentations made by Defendant regarding the Products. Plaintiff, like all other
16 Settlement Class Members, purchased Defendant's Products, which were marketed and labeled as
17 “Non-Toxic” and “Earth Friendly.” (ECF No. 26 ¶¶ 10-11.) Plaintiff alleges that these
18 representations were deceptive and misleading because the Products contained ingredients that
19 could cause harm to humans, animals, or the environment. (*Id.* ¶¶ 31-34, 39-44.) The claims of all
20 Settlement Class Members are premised on the same legal theories, including violations of
21 California's consumer protection statutes, breach of express warranties, and unjust enrichment. (*Id.*
22 ¶¶ 66-161.)

23 Moreover, Plaintiff's injury of paying a premium for the Products based on the alleged
24 misrepresentations is the same injury suffered by all Class Members. (*Id.* ¶¶ 94, 103, 120.) The
25 evidence used to prove Plaintiff's claims, including Defendant's marketing materials, product
26 labeling, and expert analyses of consumer perception, will be the same evidence used to establish
27 liability for the entire Class. (*See generally* ECF No. 95.) Because Plaintiff's claims arise from the
28 same alleged misconduct and legal theories as the claims of all Class Members, the typicality

1 requirement is satisfied.

2 **4. Plaintiff and Class Counsel Will Adequately Represent the Class**

3 The adequacy requirement is satisfied when the class representative will fairly and adequately
4 protect the interests of the class. Fed. R. Civ. P. 23(a)(4). This requirement ensures that the named
5 plaintiff has no conflicts of interest with the proposed Settlement Class and that class counsel is
6 competent and qualified to litigate on behalf of the Class. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
7 454, 462 (9th Cir. 2000); *Hanlon*, 150 F.3d at 1020; *Ellis*, 657 F.3d at 985 (finding adequacy is met
8 where there is “an absence of antagonism between representatives and absentees, and a sharing of
9 interest between representatives and absentees”).

10 Plaintiff here is an adequate representative of the Settlement Class. Plaintiff is a member of the
11 proposed nationwide Class, purchased the Products during the relevant period, and alleges he suffered
12 the same type of injury as other Class Members (*i.e.*, paying a price premium due to Defendant’s
13 alleged misrepresentations that the Products were “Non-Toxic” and “Earth Friendly”). (ECF No. 95-2
14 ¶¶ 5, 6.) There is no evidence of any conflict between Plaintiff and other Class Members, as Plaintiff’s
15 interests are fully aligned with the Class in seeking meaningful injunctive and monetary relief. (*Id.* ¶¶
16 3, 4.) Additionally, Plaintiff has actively participated in this litigation by working with Class Counsel,
17 assisting in discovery, sitting for deposition, and evaluating the terms of the Settlement to ensure it is
18 fair, reasonable, and in the best interests of the Class. (*See id.* ¶ 3.) Plaintiff understands and accepts
19 his obligations as a class representative and has demonstrated a commitment to advocating on behalf
20 of the Class. (*Id.*)

21 Furthermore, Plaintiff is represented by experienced Class Counsel who have extensive
22 expertise in complex class action litigation, including consumer protection and false advertising cases.
23 (ECF Nos. 95-15, 95-16.) Class Counsel have vigorously prosecuted this action, successfully obtained
24 class certification, and engaged in substantial discovery and motion practice, including defeating
25 Defendant’s motion for summary judgment. (Sodaify Decl. ¶¶ 6-9.) Their experience and demonstrated
26 success in this case ensure that the Settlement Class is well-represented.

27 In sum, Plaintiff has no conflicts of interest with the Class and is represented by highly qualified
28 and experienced counsel who have vigorously prosecuted this case on behalf of consumers. This Court

1 has already determined that both Plaintiff and Class Counsel meet the adequacy requirement. (ECF No.
2 189 at 7:25 (“The plaintiff and his counsel satisfy the adequacy requirement.”)). Because nothing has
3 changed to undermine this Court’s prior finding, the Court should reaffirm its previous ruling and find
4 that Plaintiff and Class Counsel remain adequate representatives for the Settlement Class.

5 **B. The Requirements of Rule 23(b)(3) Are Satisfied**

6 Rule 23(b)(3) requires that “questions of law or fact common to the members of the class
7 predominate over any questions affecting only individual members of the class, and that a class
8 action is superior to other available methods for the fair and efficient adjudication of the
9 controversy.” Fed. R. Civ. P. 23(b)(3). These requirements were intended to cover cases where a
10 class action “would achieve economies of time, effort, and expense, and promote . . . uniformity of
11 decision as to persons similarly situated, without sacrificing procedural fairness or bringing about
12 other undesirable results.” *Amchem Products, Inc.*, 521 U.S. at 615 (quoting Fed. R. Civ. P. 23(b)(3)
13 Adv. Comm. Notes to 1966 Amendment). Both requirements are met here.

14 **1. Common Questions Predominate Over Questions Affecting Individual**
15 **Class Members**

16 Class certification under Rule 23(b)(3) is appropriate where “questions of law or fact
17 common to class members predominate over any questions affecting only individual members.”
18 Fed. R. Civ. P. 23(b)(3). The inquiry focuses on whether the class is “sufficiently cohesive to
19 warrant adjudication by representation.” *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v.*
20 *Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Central to this question is “the notion
21 that the adjudication of common issues will help achieve judicial economy.” *Zincser v. Accufix*
22 *Research Institute, Inc.*, 253 F.3d 1188, 1189 (9th Cir. 2001) (citation omitted), *amended* 273 F. 3d
23 1266 (9th Cir. 2001).

24 The predominance requirement of Rule 23(b)(3) is met when common legal and factual issues
25 present a significant aspect of the case and can be resolved for all class members in a single
26 adjudication. *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 957 (9th Cir.
27 2009). The key issues in this litigation include whether Defendant’s labeling and advertising claims
28 were false or misleading, whether those claims deceived reasonable consumers, and whether Class

1 Members suffered a financial loss as a result. (ECF No. 26 ¶ 59.) These issues are common to the
2 entire Class and predominate over any individualized inquiries. *See Chamberlan v. Ford Motor Co.*,
3 223 F.R.D. 524, 526-27 (N.D. Cal. 2004) (certifying class where common issues included whether
4 product design was defective, whether the defendant knew of the defect, and whether it had a duty
5 to disclose); *Banks v. Nissan N. Am., Inc.*, 301 F.R.D. 327, 335 (N.D. Cal. 2013) (same).
6 Furthermore, the question of whether Defendant’s conduct violated California’s consumer
7 protection statutes and other applicable legal theories (*e.g.*, breach of express warranty and unjust
8 enrichment) is a legal issue that will be resolved based on common proof, such as Defendant’s
9 product labels, marketing materials, and internal documents regarding consumer perception and
10 product safety. (*See* ECF No. 26 ¶¶ 66-161.)

11 Since the principal liability issues can be resolved on a class-wide basis and do not require
12 individualized inquiries into each consumer’s experience, common questions of law and fact
13 predominate, and certification under Rule 23(b)(3) is appropriate.

14 2. The Class Is Superior to Alternative Methods for Resolving This 15 Controversy

16 Rule 23(b)(3) requires that a class action be “superior to other available methods for the fair and
17 efficient adjudication of the controversy,” and sets forth four factors for consideration:

18 (A) the class members’ interest in individually controlling the prosecution or
19 defense of separate actions; (B) the extent and nature of any litigation concerning
20 the controversy already begun by or against class members; (C) the desirability or
21 undesirability of concentrating the litigation of the claims in this forum; and (D)
22 the likely difficulties in managing a class action.

23 *See* Fed. R. Civ. P. 23(b)(3). However, when evaluating class certification in the settlement context,
24 courts do not need to consider manageability concerns related to trial. *Amchem Prods., Inc.*, 521 U.S.
25 at 619.

26 A class action in this instance is the most fair and efficient method for resolving the claims of
27 Settlement Class Members. Given the relatively small financial loss suffered by each individual Class
28 Member stemming from Defendant’s alleged misrepresentations regarding the Products, few, if any,
would have the resources or incentive to pursue individual litigation. As the Supreme Court has
recognized, class actions allow plaintiffs to pool claims that would be uneconomical to litigate

1 individually, while ensuring that individuals who otherwise could not afford to bring claims still have
2 access to justice. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (“[C]lass actions . . .
3 permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [in such
4 a case,] most of the plaintiffs would have no realistic day in court if a class action were not available.”).

5 Moreover, allowing thousands of individual lawsuits to proceed separately would create an
6 enormous burden on the courts that would lead to duplicative litigation, inconsistent rulings, and
7 unnecessary expenditure of judicial resources. A nationwide settlement class ensures a uniform
8 resolution for all affected consumers while avoiding the inefficiencies of piecemeal litigation. *See*
9 *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (finding that class
10 certification was appropriate where “recovery on an individual basis would be dwarfed by the cost of
11 litigating on an individual basis”).

12 Concentrating the litigation in this forum is also desirable because the Court has already certified
13 a California class, overseen extensive litigation, and ruled on key substantive motions, including
14 Defendant’s motion for summary judgment and Plaintiff’s motion for class certification. (*See* ECF Nos.
15 186, 189.) The Court is well-versed in the legal and factual issues at issue in this case, and so this forum
16 is ideal for final resolution. For these reasons, class-wide resolution through a settlement class is the
17 most practical, efficient, and fair method of adjudicating the claims, and the superiority requirement of
18 Rule 23(b)(3) is satisfied.

19 **V. THE PRELIMINARY APPROVAL STANDARD IS SATISFIED**

20 Public policy strongly favors settlement as a method to resolve litigation. *See Utility Reform*
21 *Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989). This is especially true in
22 complex class actions like this one, where “substantial resources can be conserved by avoiding the
23 time, cost, and rigors of formal litigation.” *Fontes v. Heritage Operating, L.P.*, 2016 WL 1465158,
24 at *3 (S.D. Cal. Apr. 14, 2016) (citation omitted); *see also In re Synoc ERISA Litig.*, 516 F.3d 1095,
25 1101 (9th Cir. 2008) (Public policy “strong[ly] . . . favors settlements, particularly where complex
26 class action litigation is concerned.”); *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir.
27 1989) (“[O]verriding public interest in settling and quieting litigation” is “particularly true in class
28 action suits.” (internal quotations omitted)).

1 Courts evaluate class action settlements through a two-step process: (1) preliminary
 2 approval, followed by (2) final approval after a fairness hearing. Manual for Complex Litigation §
 3 21.632. (4th ed. 2004). At the preliminary approval stage, the Court determines whether the
 4 proposed settlement is fair, reasonable, and adequate. *Id.*; *see also* Fed. R. Civ. P. 23(e). A proposed
 5 settlement should be preliminarily approved if it (1) appears to be the product of serious, informed,
 6 and non-collusive negotiations; (2) does not improperly grant preferential treatment to the named
 7 plaintiff or a subset of the class; (3) falls within the range of possible approval; and (4) contains no
 8 obvious deficiencies. *Lilly v. Jamba Juice Co.*, 2015 WL 1248027, at *7 (N.D. Cal. Mar. 18, 2015);
 9 *Gatchalian v. Atl. Recovery Sols., LLC*, 2023 WL 8007107, at *7 (N.D. Cal. Nov. 16, 2023).

10 At the final approval stage, the Court will consider several factors, including: the strength
 11 of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk
 12 of maintaining class certification throughout trial; the amount offered in settlement; the extent of
 13 discovery completed and the state of proceedings; the experience and views of counsel; and the
 14 reaction of class members to the settlement. *See Lilly*, 2015 WL 1248027, at *7. In some cases, one
 15 factor alone may be sufficient to support approval. *Curtis-Bauer v. Morgan Stanley & Co.*, No. C
 16 06-3903 TEH, 2008 WL 4667090, at *3 (N.D. Cal. Oct. 22, 2008) (citing *Torrisi v. Tucson Elec.*
 17 *Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993)).

18 An evaluation of the preliminary approval factors here demonstrates that the Settlement is
 19 fair, reasonable, and adequate. The Court should therefore grant preliminary approval and authorize
 20 the dissemination of notice to the Class.

21 **A. The Settlement Resulted from Serious, Informed, Non-Collusive Arm's Length**
 22 **Negotiations**

23 Courts consider whether Class Counsel had adequate information to evaluate the strengths
 24 and risks of the case before reaching a settlement. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
 25 at 459. This case has been actively litigated for nearly five years, during which Class Counsel
 26 engaged in extensive discovery and motion practice. (Sodaify Decl. ¶¶ 4-9.) The litigation included
 27 depositions of Plaintiff and Defendant's Rule 30(b)(6) witnesses, as well as their experts, the
 28 production and review of thousands of pages of documents, and the exchange of expert reports. (*Id.*

¶ 6.) In addition, the parties briefed and argued multiple substantive motions, including Defendant’s motion to dismiss, motion for summary judgment, and motion for class certification. (*Id.* ¶¶ 7-9.) As a result, Class Counsel has had ample opportunity to analyze the Court’s rulings, assess the strengths and risks of continued litigation, and determine that settlement is in the best interest of the Class.

Despite the extensive discovery and motion practice, continued litigation presented significant risks to class-wide recovery. Although Plaintiff remains confident in the strength of his claims, Defendant has vigorously disputed liability and maintains that the science does not support Plaintiff’s allegations. Defendant was prepared to argue, as it has in the past, that the Products are properly labeled, that consumers were not misled, and that Plaintiff’s expert testimony was insufficient to establish deception or injury on a class-wide basis. (*See, e.g.*, ECF Nos. 29, 116, 163, 199.) At trial, these issues would have resulted in a battle of experts, which is inherently risky and unpredictable for both sides. Even if Plaintiff prevailed at trial, Defendant would likely challenge class-wide damages, appeal an adverse judgment, and continue fighting certification. Because of these risks, the Settlement secures injunctive and monetary relief now, rather than leaving Class Members’ recovery to the unpredictability of trial and potential appellate proceedings.

The Settlement secures injunctive relief, a remedy that directly addresses the allegations in this case by requiring Defendant to remove the “Non-Toxic” representation from its labeling and modifying the “Earth Friendly” claim with a qualifying disclosure. (Ex. A § 5.1.) Additionally, the Settlement provides a \$1.5 million non-reversionary fund to compensate Class Members for their overpayment of the Products. (*Id.* § 2.1.)

Importantly, settlements that follow meaningful discovery and arms-length negotiations are presumed fair. *See In re Wireless Facilities, Inc.*, 253 F.R.D. 607, 610 (S.D. Cal. 2008); *White v. Experian Info. Sols., Inc.*, 2009 WL 10670553, at *13 (C.D. Cal. May 7, 2009). This Settlement was reached only after the parties engaged in a mediation session and months of rigorous negotiations. (Sodaify Decl. ¶ 10.) The parties participated in a full-day mediation with Hunter Hughes, an experienced and highly respected mediator, and continued negotiations for several months thereafter with the continued involvement of Mr. Hughes. (*Id.*) The presence of an experienced neutral

1 mediator throughout these negotiations further supports the fairness of the Settlement. *See In re*
2 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (“[The] presence of a
3 neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness.”); *Kline v.*
4 *Dymatize Enters., LLC*, 2016 WL 6026330, at *5 (S.D. Cal. Oct. 13, 2016) (“That the settlement
5 was reached with the assistance of an experienced mediator further suggests that the settlement is
6 fair and reasonable.”).

7 As a result of this litigation and the mediation process, Class Counsel fully investigated the
8 claims and defenses, which allowed them to candidly assess the risks and benefits of settlement.
9 (Sodaify Decl. ¶ 10.) Where, as here, a settlement is reached through arms-length negotiations
10 conducted by experienced counsel, courts apply a presumption of fairness. *See In re Pac. Enters.*
11 *Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). This factor therefore strongly supports preliminary
12 approval of the Settlement.

13 **B. The Settlement Does Not Provide Preferential Treatment**

14 The Settlement provides both monetary and injunctive relief to all Settlement Class Members,
15 thereby ensuring that no subset of the Class receives preferential treatment. The injunctive relief
16 requires that Defendant remove the “Non-Toxic” representation from the Products and modify the
17 “Earth Friendly” claim with a qualifying disclosure (Ex. A § 5.1.) This injunctive relief benefits all
18 Class Members equally.

19 Although Plaintiff intends to request an incentive award of \$5,000 for his role as Class
20 Representative, the Ninth Circuit has held that service awards are permissible and do not render a
21 settlement unfair or unreasonable. *Harris v. Vector Mktg. Corp.*, 2011 WL 1627973, at *9 (N.D.
22 Cal. Apr. 29, 2011) (citing *Stanton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003)). While the
23 requested incentive award may be greater than the individual monetary relief received by some
24 Class Members, “[i]ncentive payments to class representatives do not, by themselves, create an
25 impermissible conflict between class members and their representatives.” *Campbell v. Facebook*
26 *Inc.*, 2017 WL 3581179, at *4 (N.D. Cal. Aug. 18, 2017), *aff’d*, 951 F.3d 1106 (9th Cir. 2020)
27 (quoting *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015)).

28 //

1 Plaintiff has actively participated in the litigation, sat for a deposition, assisted with
2 discovery, and maintained regular contact with Class Counsel throughout the case. (ECF No. 95-2
3 ¶ 3.) The substantial relief secured for the Class reflects his efforts over several years, and the
4 requested incentive award is proportionate to his involvement. Courts have approved similar or
5 higher service awards where plaintiffs dedicated substantial time assisting counsel, sitting for
6 depositions, or participating in mediation. *See, e.g., Rivera v. Agreserves, Inc.*, 2016 WL 5395900,
7 at *8 (E.D. Cal. Sept. 26, 2016) (affirming \$7,500 award where plaintiff “spent a substantial amount
8 of time assisting counsel and participating in the litigation,” including sitting for a deposition and
9 attending mediation); *Bruno v. Quten Rsch. Inst., LLC*, 2013 WL 990495, at *3 (C.D. Cal. Mar. 13,
10 2013) (affirming \$8,000 award where plaintiff “submitted to depositions, investigations, and an
11 involved litigation schedule”).

12 Because the Settlement provides uniform benefits to all Class Members and any incentive
13 award is justified by Plaintiff’s efforts, this factor weighs in favor of granting preliminary approval.

14 **C. The Settlement Falls Within the Range of Possible Approval**

15 To determine whether a settlement “falls within the range of possible approval,” courts focus
16 on its substantive fairness and adequacy by weighing the expected recovery against the value of the
17 settlement. *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *7 (N.D. Cal. Nov. 21,
18 2012) (citing *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007)). Here,
19 the Settlement provides both injunctive and monetary relief that directly addresses the claims
20 asserted in this Action and makes it a fair and reasonable resolution.

21 Plaintiff alleges that Defendant deceptively marketed and labeled the Products as “Non-
22 Toxic” and “Earth Friendly” despite the presence of ingredients that could cause harm to humans,
23 animals, or the environment. (ECF No. 26 ¶¶ 10-11, 29-38.) The injunctive relief obtained in the
24 Settlement ensures that Defendant will remove the “Non-Toxic” representation from the Products
25 and modify the “Earth Friendly” claim with a qualifying disclosure to prevent Defendant from
26 engaging in similar conduct in the future. (Ex. A § 5.1.) Courts have approved settlements that
27 secure similar injunctive relief to stop deceptive practices and ensure transparency in labeling. *See*
28 *Grant v. Capital Mgmt. Servs., L.P.*, 2014 WL 888665, at *4 (S.D. Cal. Mar. 5, 2014) (approving a

1 settlement that stopped the allegedly unlawful practices and barred the defendant from similar
2 practices in the future).

3 Additionally, this Settlement provides significant monetary relief through a \$1.5 million non-
4 reversionary fund that will compensate Class Members who submit valid claims. (Ex. A § 2.1.)
5 Unlike cases where only injunctive relief is provided, this Settlement secures both meaningful
6 business practice changes and direct financial compensation for affected consumers. Class Members
7 who submit valid claims with proof of purchase will receive \$1.00 per Product purchased, with no
8 cap on the number of claims. (*Id.* § 4.1.3.) Those who submit claims without proof of purchase are
9 eligible to receive \$1.00 per product for up to eight (8) products per household. (*Id.*) If the total
10 value of approved claims exceeds the available funds, payments will be reduced pro rata to ensure
11 equitable distribution among claimants. (*Id.* § 4.1.5.) Conversely, if total claims are less than the
12 available funds, payments will be increased pro rata, subject to a cap of two times the original per-
13 product claim amount (*i.e.*, a maximum of \$2.00 per product). (*Id.*)

14 The Settlement was reached through rigorous arms-length negotiations facilitated by an
15 experienced mediator, Hunter Hughes, and follows extensive litigation, including class certification,
16 discovery, and motion practice. (Sodaify Decl. ¶¶ 6, 10, 11.) Courts have found that settlements
17 reached after substantial litigation and formal mediation are strong indicators of fairness and
18 adequacy. *See Dennis v. Kellogg Co.*, 2013 WL 1883071, at *5 (S.D. Cal. May 3, 2013) (finding
19 that a settlement was “within the range of possible approval” where “it appears to be the product of
20 arms-length negotiations by experienced counsel, was reached after considerable litigation and
21 discovery into the asserted claims, and provides . . . relief”).

22 Moreover, given the risks associated with continued litigation (such as the possibility of
23 Defendant prevailing on further motions or at trial) this Settlement provides a fair compromise that
24 offers immediate and tangible benefits to the Class. Similar settlements have been approved where
25 injunctive relief meaningfully addresses the alleged deceptive practices and monetary relief is
26 provided to affected consumers. *See In re Ferrero Litig.*, 2012 WL 2802051, at *4 (S.D. Cal. July
27 9, 2012), *aff'd*, 583 F. App’x 665 (9th Cir. 2014) (approving settlement where “Defendant agreed
28 to modify the product label to address the fundamental claim raised in Plaintiffs’ complaint”); *Carr*

1 v. *Tadin, Inc.*, 2014 WL 7497152, at *7 (S.D. Cal. Apr. 18, 2014) (approving settlement with no
2 monetary relief where “the injunctive relief offered will provide the Settlement Class with the relief
3 they most desire—a change in product labeling”); *Johnson v. Triple Leaf Tea Inc.*, 2015 WL
4 8943150, at *5 (N.D. Cal. Nov. 16, 2015) (approving settlement that required substantial revisions
5 to product labeling).

6 Given the combination of monetary and injunctive relief, the procedural fairness of the
7 negotiations, and the risks associated with further litigation, the Settlement is well within the range
8 of possible approval and warrants preliminary approval.

9 **D. The Settlement Has No Deficiencies**

10 A settlement is generally considered fair and reasonable when it provides immediate relief
11 while also mitigating the risks and uncertainties of continued litigation. *See Stathakos v. Columbia*
12 *Sportswear Co.*, 2018 WL 582564, at *5 (N.D. Cal. Jan. 25, 2018) (approving settlement where
13 “continued litigation could not result in any greater injunctive relief to the class and would only
14 deprive the class of immediate relief”); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080
15 (“Based on th[e] risk and the anticipated expense and complexity of further litigation, the court
16 cannot say that the proposed settlement is obviously deficient.”).

17 Here, the injunctive relief secured through the Settlement represents a strong outcome for the
18 Class. Under the Settlement, Defendant will remove the “Non-Toxic” representation from the
19 Products and modify the “Earth Friendly” claim with a qualifying statement. (Ex. A § 5.1.) These
20 changes directly address Plaintiff’s allegations that Defendant’s labeling and marketing were
21 deceptive and misleading to consumers. (*See generally* ECF No. 26.) The relief aligns with
22 Plaintiff’s goals for this litigation and ensures that Defendant’s labeling practices are transparent to
23 prevent similar representations in the future.

24 Additionally, unlike settlements that provide only injunctive relief, this Settlement also
25 includes a \$1.5 million non-reversionary fund to compensate Class Members who submit valid
26 claims. (Ex. A § 2.1.) The combination of label modifications and monetary relief ensures that the
27 Settlement Class receives a meaningful and secured benefit, which could be delayed or uncertain if
28 the litigation continued, particularly given the risks associated with trial and appeal. *See Lilly v.*

1 *Jamba Juice Co.*, 2015 WL 2062858, at *4 (N.D. Cal. May 4, 2025) (approving settlement providing
 2 solely injunctive relief where only a Rule 23(b)(2) class was certified); *Goldkorn v. County of San*
 3 *Bernardino*, 2012 WL 476279, at *6-7 (C.D. Cal. Feb. 13, 2012) (approving settlement providing
 4 injunctive relief, attorneys' fees, costs, and damages to named plaintiffs).

5 The Settlement fully addresses Plaintiff's allegations, provides both injunctive and monetary
 6 relief, and avoids any obvious substantive deficiencies, it is therefore fair, reasonable, and supports
 7 preliminary approval.

8 **VI. PROPOSED SCHEDULE OF EVENTS**

9 Plaintiff proposes the following schedule of events leading to the Fairness Hearing:

Event	Date
Deadline for Settlement Website to go live	21 calendar days following entry of this Preliminary Approval Order
Deadline to commence Notice Plan ("Settlement Notice Date")	21 calendar days following entry of this Preliminary Approval Order
Deadline for Claim Forms to be postmarked or submitted online	60 calendar days after the Settlement Notice Date
Deadline for Objections to be postmarked	60 calendar days after the Settlement Notice Date
Deadline for Opt-Out Requests to be postmarked	60 calendar days after the Settlement Notice Date
Deadline for Plaintiff's application for attorneys' fees and costs and Plaintiff's service award	30 calendar days after Settlement Notice Date
Deadline for Plaintiff to file motion for final approval of class action settlement	14 calendar days prior to Final Approval Hearing

1 2 3 4 5 6 Deadline for Parties to file all papers in response to any timely and valid Objections	14 calendar days prior to Final Approval Hearing
Final Approval Hearing	120 calendar days after entry of this Preliminary Approval Order of class action settlement (or the earliest date thereafter available on the Court's calendar)

7 **VII. CONCLUSION**

8 For the reasons discussed above, this unopposed Motion for Preliminary Approval should be
9 granted, and the Court should enter the Proposed Order submitted herewith.

10 Dated: February 24, 2025

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