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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENZO FORCELLATI and LISA ROEMMICH, on Behalf of Themselves and all Others Similarly Situated,

Plaintiffs,

v.

HYLAND'S, INC., STANDARD HOMEOPATHIC LABORATORIES, INC., and STANDARD HOMEOPATHIC COMPANY,

Defendants.

Case No. 2:12-CV-01983-ODW-MRW

CLASS ACTION

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: August 14, 2017
Time: 1:30 p.m.
Courtroom: 5D, 5th Floor

Hon. Otis D. Wright, II

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Enzo Forcellati and Lisa Roemmich (the "Plaintiffs") respectfully submit this memorandum in support of Plaintiffs' Motion for Final Approval of Class Action Settlement (the "Motion").

I. INTRODUCTION

This is a class action suit brought by Plaintiffs on behalf of themselves and all others similarly situated against Defendants Hyland's, Inc., Standard Homeopathic Laboratories, Inc., and Standard Homeopathic Company (the "Defendants"), for misrepresenting that their children's products were "Safe & Effective" for treating cold and flu symptoms and that they were "100% Natural."

This Court granted preliminary approval of the Settlement[1] on February 7, 2017. The Settlement includes all persons in the United Sates who purchased the challenged Hyland's products (the "Settlement Class Products")[2] between March 8, 2008, and March 30, 2017. Under the terms of the Settlement, Defendants have agreed to pay each Settlement Class Member who submits a valid claim form either (1) a full refund of the MSRP for up to two units of the Settlement Class Products with no proof of purchase, or (2) a full refund for three or more units of the Settlement Class Products if proof of purchase is submitted. 10/14/2016 Fisher Decl., Ex. 1, III.3.1(a). The Parties have also agreed to injunctive relief in the form of Defendants including a money back guarantee on the Hyland's website. *Id.* at III.3.2.

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[1] The Stipulation of Settlement ("Settlement" or "Settlement Agreement") and its exhibits are attached as Exhibit 1 to the October 14, 2017 Declaration of L. Timothy Fisher ("10/14/2016 Fisher Decl."), Dkt. No. 275-2, filed with the Motion for Preliminary Approval, Dkt. No. 275. All capitalized terms herein that are not otherwise defined have the definitions set forth in the Settlement Agreement.

[2] The Settlement Class Products are: (i) Cold 'n Cough 4 Kids, (ii) Cough Syrup with 100% Natural Honey, (iii) Sniffles 'n Sneezes 4 Kids, (iv) Cold Relief Strips 4 Kids with Zinc, (v) Nighttime Cold 'n Cough 4 Kids, (vi) Complete Flu Care 4 Kids, (vii) Baby Teething Gel, (viii) Baby Cough Syrup, (ix) Baby Gas Drops, (x) Baby Infant Earache Drops, and (xi) Baby Nighttime Tiny Cold Syrup. 10/14/2016 Fisher Decl., Ex. A. at 1.38.

This Settlement Agreement was reached "on the eve of trial." Preliminary Approval Order, Dkt. No. 288, at *1. Furthermore, the Settlement was only reached after extended arm's-length negotiations between experienced attorneys familiar with the legal and factual issues of this case, and several full day mediation sessions before the Magistrate Judge Jay C. Gandhi. Accordingly, "Plaintiffs and their counsel had sufficient information to evaluate the strengths and weaknesses of the case and to conduct informed settlement discussions." *Id*. Most significantly, Class Counsel was aware that the plaintiffs in *Allen v. Hyland's, Inc.*, who advanced nearly identical claims against Defendants as those at issue in this Action, lost at trial on every claim. *See Allen v. Hyland's Inc.*, Case No. 12-cv-01150-DMG-MAN, Dkt. 426 (Verdict Form); *see also Lewert v. Boiron, Inc.*, Case No. 11-cv-10803, Dkt. 447 (Verdict Form). The defense verdicts in the *Allen* and *Boiron* trials are a stark illustration of the risks inherent in trial – class members recovered nothing. Despite Defendants' recent success in the *Allen* case, Class Counsel successfully negotiated a Settlement that will make near total relief available to Class Members who receive notice of this Settlement.

The response of the Class overwhelmingly favors final approval of the Settlement. In accordance with the notice program approved by the Court, direct mail and email notice were delivered to more than 1.3 million prospective Settlement Class Members. *See* Declaration of Lana Lucchesi ("Lucchesi Decl."), ¶¶ 7-12. These prospective Settlement Class Members were identified through two rounds of subpoenas that where issued to retailers nationwide. Declaration of L. Timothy Fisher in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Costs and Expenses, and Service Awards ("6/19/2017 Fisher Decl."), ¶¶ 20 and 34. Furthermore, the Settlement Administrator, Kurtzman Carson Consultants LLC ("KCC"), utilized Internet Banner ads and published notice of the Settlement in USA Today once a

week for four consecutive weeks. Lucchesi Decl.at ¶ 13. As of June 19, 2017, Settlement Class Members have submitted 129,066 claim forms, no Settlement Class Member has submitted an objection, and only fourteen have opted out. *Id*. at ¶¶ 16-18. As shown below, the Settlement not only satisfies Rule 23's "fair, reasonable, and adequate" standard, but it is an outstanding result for Plaintiffs and the Settlement Class Members. Accordingly, the Court should grant Final Approval of the Settlement.

II. BACKGROUND OF THE CASE

A. The Filing of the *Forcellati* Action

On March 8, 2012, Plaintiff Enzo Forcellati commenced a proposed class action against Defendants Hyland's, Inc., and Standard Homeopathic Company entitled *Forcellati v. Hyland's Inc. et al.*, Case No. 12-cv-1983-GHK (C.D. Cal) (the "*Forcellati* Action"). *See* Complaint, Dkt. No. 1. Plaintiff Forcellati asserted claims on behalf of himself and a proposed nationwide class of purchasers of (i) Cold 'n Cough 4 Kids, (ii) Cough Syrup with 100% Natural Honey 4 Kids, (iii) Sniffles 'n Sneezes 4 Kids, (iv) Cold Relief Strips 4 Kids with Zinc, and (v) Nighttime Cold 'n Cough 4 Kids. Plaintiff Forcellati alleged that Defendants made false and misleading statements about their children's products, such as that the products were "Safe & Effective" for treating cold and flu symptoms and that they were "100% Natural." *See generally id.* Plaintiff Forcellati further alleged that, in fact, the products are no better than a placebo because the ingredients in the products are ultra-diluted. *See generally id.* Based on his allegation that none of the products could provide natural relief from illnesses, Plaintiff Forcellati brought claims individually and on behalf of a putative class for violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, for unjust enrichment, for breach of express warranty, for breach of implied warranty, for violation of the New Jersey Consumer Fraud Act, N.J.S.A. § 58:8-1, *et seq.*, for violation of the Consumer Legal Remedies

Act ("CLRA"), California Civil Code § 1750, *et seq.*, for violation of the False Advertising Law ("FAL"), California Business & Professions Code §§ 17500 *et seq.*, and for violation of the Unfair Competition Law ("UCL"), California Business & Professions Code §§ 17200 *et seq.* *Id.*

On April 23, 2012, Defendants filed a motion to dismiss. Dkt. No. 9. On April 30, 2012, Plaintiff Forcellati opposed. Dkt. No. 16. On June 1, 2012, the Court dismissed Plaintiff's unjust enrichment claim but denied the remaining portions of Defendants' motion. Dkt. No. 27. On June 15, 2012, Defendants answered Plaintiff Forcellati's complaint. Dkt. No. 33.

On July 20, 2012, Hyland's removed an action entitled *Roemmich v. Hyland's Inc. et al.* from the Superior Court of California, County of Los Angeles to the United States District Court, Central District of California (Case No. 12-cv-6256) (the "*Roemmich* Action"). On November 8, 2012, the Court ordered that the *Forcellati* and *Roemmich* Actions be consolidated, and appointed Bursor & Fisher, P.A. and Faruqi & Faruqi LLP as co-lead counsel in the *Forcellati* and *Roemmich* Actions (hereafter the "Consolidated Action" or the "Action"). Dkt. No. 43. On December 7, 2012, Plaintiffs Enzo Forcellati and Lisa Roemmich, filed a Consolidated Amended Class Action Complaint that added Lisa Roemmich as a Plaintiff to the Action. Dkt. No. 44. In addition to the claims in Plaintiff Forcellati's Complaint, the Consolidated Amended Class Action Complaint also asserted claims for Violation of the Missouri Merchandising Practices Act, Mo. Ann. Stat. §§ 407.010, *et seq.* *Id.*

On January 7, 2013, Hyland's filed a motion to dismiss Plaintiffs' prayer for punitive damages in the Consolidated Amended Class Action Complaint. Plaintiffs opposed. Dkt. No. 49. On February 14, 2013, the Court denied Defendants' motion. Dkt. No. 56.

B. The Parties Begin Discovery and the Court Grants Plaintiffs' Motion for Class Certification

Following denial of Defendants' second motion to dismiss, Plaintiffs propounded document requests seeking documents concerning Hyland's advertisements, sales, testing of its products, and the manner in which its products are created and manufactured. *See* 6/19/2017 Fisher Decl., ¶ 13. In response to Plaintiffs' document requests, Hyland's produced and Plaintiffs' counsel reviewed more than 52,000 pages of documents. *Id*. at ¶ 14. After Plaintiffs' counsel reviewed these documents, they deposed Dr. Iris Bell, Defendants' Director of Scientific Affairs, and Thanh-Thao Minh Le, Defendants' Vice President of Marketing. *Id.* Defendants deposed Plaintiff Enzo Forcellati, and Plaintiff Lisa Roemmich. *Id.*

On September 16, 2013, Plaintiffs filed a motion for class certification. Dkt. No. 82. In support of that motion, Plaintiffs submitted an expert report from Dr. Arthur P. Grollman, a recognized clinical pharmacology expert. *Id.* After deposing Dr. Grollman on October 28, 2013, Defendants opposed Plaintiffs' motion for class certification. Dkt. No. 94. In support of their opposition, Defendants marshalled expert reports from Dr. David Stewart, Dr. David Cristofaro, Dr. Amalia Punzo, and Dr. Peter Fisher. *Id.* Before filing their reply, Plaintiffs deposed each of Defendants' experts. 6/19/2017 Fisher Decl., ¶ 14. On December 19, 2013, the Court requested that the Parties submit supplemental briefing on the issue of whether the proposed class was ascertainable, a then unsettled question of law in the Ninth Circuit. Dkt. No. 124. The Parties filed their supplemental briefs on February 3, 2014. Dkt. No. 133. Subsequently, on April 9, 2014, in a landmark ruling, the Court declined to follow Third Circuit and held that the ascertainability standard articulated in *Carrera v. Bayer Corp.*, 727 F.3d 300 (3d Cir. 2013) was inapplicable in the Ninth Circuit. Dkt. No. 144, at 5-6. The Court granted Plaintiffs' motion for class certification and certified the following Rule 23(b)(3) class for monetary relief with

respect to Plaintiffs' claims for violation of Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, breach of express warranty, breach of implied warranty, violation of the CLRA, violation of the FAL, and violation of the UCL:

> (a) A nationwide class of all persons in the United States who purchased the following Hyland's products on or after March 8, 2008: (i) Cold 'n Cough 4 Kids, (ii) Cough Syrup with 100% Natural Honey 4 Kids, (iii) Sniffles 'n Sneezes 4 Kids, (iv) Cold Relief Strips 4 Kids with Zinc, and (v) Nighttime Cold 'n Cough 4 Kids;
>
> (b) A 49-state class of all persons in the United States except for those in California who purchased Hyland's Complete Flu Care 4 Kids on or after March 8, 2008.

Dkt. No. 144. The Court appointed the law firms of Bursor & Fisher, P.A., and Faruqi & Faruqi, LLP as class counsel ("Class Counsel"). *Id.* The Court appointed Plaintiffs Enzo Forcellati and Lisa Roemmich as Class Representatives. *Id.* The Court, however, denied Plaintiffs' request to certify a Rule 23(b)(2) class for injunctive relief, and denied certification of Plaintiffs' proposed New Jersey and Missouri subclasses. *Id.* In response to the Court's decision to certify a nationwide class, on April 23, 2014, Defendants filed a petition for permission to appeal pursuant to Fed. R. Civ. P. 23(f). 6/19/2017 Fisher Decl., ¶ 19. On April 30, 2014, Plaintiffs filed an answer in opposition to Defendant's petition. *Id.* On July 8, 2014, the Ninth Circuit denied Defendant's Fed. R. Civ. P. 23(f) petition. Dkt. No. 154.

On August 4, 2014, the Court issued an Order Re Form and Dissemination of Notice to the Class. Dkt. No. 155. In that Order, the Court instructed Plaintiffs to select a claims administrator and provide the Court with evidence of the selected administrator's qualifications. *Id.* On August 11, 2014, Plaintiffs submitted a notice of their selection of Kurtzman Carson Consultants ("KCC") as claims administrator. Dkt. No. 156. Plaintiffs submitted a declaration from KCC that detailed their long

experience with class action notice and settlement administration. Dkt. No. 156-1. Based on that declaration, on August 12, 2014, the Court approved Class Counsel's retention of KCC as the claims administrator in this case. Dkt. No. 157. Thereafter, on September 18, 2014, KCC sent notice to Class Members by email and U.S. Mail. 6/19/2017 Fisher Decl., ¶ 20.

C. The Parties Complete Discovery and the Court Denies Defendants' Motion for Summary Judgment

While notice was being sent to the Class Members, the Parties continued working with experts and taking discovery. Plaintiffs deposed Defendants' marketing employees, Jennifer Jacobs and Amy Fox, as well as Mark Phillips, a Hyland's pharmacist. 6/19/2017 Fisher Decl., ¶ 21. Additionally, while this litigation was pending, a study on one of the products at issue, Cold 'n Cough 4 Kids, was in progress at the University of Washington. *Id*. To evaluate that study, Plaintiffs subpoenaed and obtained study documents from the University of Washington. *Id*. Plaintiffs also deposed the chief investigator of the study, Dr. James Taylor, after interim results were produced, and again after final results were produced. *Id*. After the results of Defendants' study were available, Plaintiffs deposed Dr. Bell a second time. *Id*. Plaintiffs' and Defendants' experts also issued opinions on the interim results of the study, and then supplemented their opinions once final results were available. *Id.* Plaintiffs also deposed Defendants' experts Dr. Paolo Bellavite, and Dr. Edward Calabrese. *Id.* Defendants deposed Plaintiffs' experts Dr. Elizabeth Howlett, Dr. Grollman, Dr. R. Barker Bausell, Dr. Edzard Ernst, and Mr. Colin Weir. *Id.* Finally, Plaintiffs deposed Hyland's CEO Dr. John Borneman. *Id.*

After the Parties completed extensive discovery, including twenty-four depositions, on September 5, 2014, Defendants filed a motion for summary judgment. *Id.* at ¶15; Dkt. No. 159. Plaintiffs opposed in a joint brief on that same

date, submitting expert reports from Dr. Grollman, Dr. R. Barker Bausell and Dr. Edzard Ernst as well as hundreds of pages of evidence from the depositions they had taken. 6/19/2017 Fisher Decl., ¶ 23. On January 12, 2015, the Court denied Defendants' motion for summary judgment. Dkt. No. 179.

D. The Parties Prepare for Trial

Since a class had been certified and Defendants' motion for summary judgment had been denied, the Parties began preparation for trial. 6/19/2017 Fisher Decl., ¶ 18. The Parties exchanged exhibit lists, witness lists, objections, motions *in limine*, pre-trial conference statements, and trial briefs. *See e.g.* Dkt. No. 204-12, 215, 224-25. Plaintiffs visited the courtroom to test their electronic presentations. 6/19/2017 Fisher Decl., ¶ 25. The Parties began to prepare their witnesses, and marked exhibits with the Court's official exhibit tags. *Id.*

On October 22, 2015, Hyland's filed an *ex parte* application to continue the trial based on their contention that Plaintiffs' trial brief raised new issues. Dkt. No. 239. On October 23, 2015, just days before the pretrial conference and the commencement of the trial, the Court vacated the trial schedule to consider Hyland's request for judicial estoppel, to consider the Parties' motions *in limine*, and to evaluate Defendants' objections to the deposition videos to be used at trial. Dkt. No. 245.

E. The Parties Lengthy Settlement Negotiations Finally Result in a Settlement in July 2016

Throughout the case, the Parties attempted to resolve this matter. As early as October 30, 2012, Plaintiffs and Hyland's participated in a full-day in-person mediation with Robert A. Meyer of Loeb & Loeb LLP. 6/19/2017 Fisher Decl., ¶ 26. On May 9, 2013, the Parties participated in a second full-day in-person mediation with Mr. Meyer. *Id.*

On February 10, 2015, Judge King ordered the Parties to participate in a settlement conference with Magistrate Judge Jay C. Gandhi. *Id.* at ¶ 27. On March 25, 2015, the Parties participated in a full-day in-person settlement conference with Judge Gandhi, but the case did not settle. Dkt. No. 189.

On September 23, 2015, Judge King ordered the Parties to participate in a second settlement conference with Judge Gandhi. Dkt. No. 216. On October 19, 2015, the Parties participated in a second full-day in-person settlement conference with Judge Gandhi, but the case again did not settle. Dkt. No. 217.

On June 2, 2016, Judge Gandhi ordered the Parties to participate in a third settlement conference with him. Dkt. No. 267. On July 6, 2016, the Parties participated in a third full-day in-person settlement conference with Judge Gandhi. Dkt. No. 268. At long last, the Parties made substantial progress towards a settlement. 6/19/2017 Fisher Decl., ¶ 30. After continuing to work with Judge Gandhi following the July 6, 2016 settlement conference, the Parties finally reached this Settlement on July 18, 2016. *Id.* There can be no question that the Parties "Agreement was reached as a result of extensive arm's length negotiations between the parties and their counsel." Preliminary Approval Order, Dkt. No. 288, at *1.

F. *Kaatz v. Hyland's Inc. et al.*, 16-cv-00237-VB (S.D.N.Y)

On January 12, 2016, Plaintiffs Marie Kaatz and Abigail Gagliardi commenced an action entitled *Kaatz v. Hyland's Inc. et al.* (United States District Court, Southern District of New York, Case No. 7:16-cv-00237-VB) (the "*Kaatz* Action"), as a proposed class action, asserting claims for violation of New York General Business Law §§ 349 and 350, the consumer protection statutes of all fifty states, and the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, as well as for breach of express warranty, for breach of implied warranty of fitness for a particular purpose, for negligent misrepresentations, and for unjust enrichment. *Kaatz* Action, Dkt. No. 1.

The *Kaatz* Action asserted claims with respect to Hyland's (i) Baby Teething Gel; (ii) Baby Cough Syrup, (iii) Baby Gas Drops, (iv) Baby Infant Earache Drops, and (v) Baby Nighttime Tiny Cold Syrup. *Id.* Like Plaintiffs Forcellati and Roemmich, the Plaintiffs in the *Kaatz* Action allege that Defendants' baby products are not effective for relieving symptoms and are not 100% natural. *Compare* Consolidated Complaint, Dkt. No. 44, ¶ 46 *with Kaatz* Complaint, Dkt. No. 1, ¶ 2. Also like the Plaintiffs in the Consolidated Action, the Plaintiffs in the *Kaatz* Action allege that the products do not provide any benefits beyond that of a placebo. *Compare* Consolidated Complaint, Dkt. No. 44, ¶ 63 *with Kaatz* Complaint, Dkt. No. 1, ¶ 2. Indeed, the Plaintiffs in the *Kaatz* Action copied word-for-word large swaths of the Consolidated Complaint in this Action. *Compare*, *e.g.*, Consolidated Complaint, Dkt. No. 44, ¶¶ 15-17, 19-20, 22-23, 25-41 *with Kaatz* Complaint, Dkt. No. 1, ¶¶ 29-34, 39- 45, 49-59.

These baby products are marketed along with Hyland's children's products because all those products are meant to fill the gap left by the FDA's determination that children under a certain age should not take traditional over-the-counter medications for their illnesses. 10/14/2016 Fisher Decl., Ex. 2, February 11, 2014 Deposition of Amy Fox, 84:8-86:14; *id.* at Ex. 3 (Exhibit 17 to Fox deposition: "'Finding safe medicines for babies and children is challenging for parents,' says Amy Fox, vice president of product innovation at Hyland's. 'It's important to feel confident and secure in what you're giving your child, which is why we put so much care into the medicines we create.'"); *id.* (specifying that that Baby Tiny Cold Tablets, and Baby Cough Syrup were safe alternatives to traditional OTC products for babies 6 months to 2 years, and that Cold 'n Cough 4Kids, Sniffles 'n Sneezes 4Kids, and Cough Syrup with 100% Natural Honey 4Kids were safe alternatives for children 2-12); *see also e.g. id.* at Ex. 2, Deposition of Amy Fox, 79:12-25; *id.* at Ex. 4 (Exhibit 15 to Fox deposition).

On July 6, 2016, the District Court for the Southern District of New York denied Defendants' motion to dismiss the Complaint in the *Kaatz* Action, but limited the New York Plaintiffs' claims under New York General Business Law §§ 349 and 350, breach of implied warranty of fitness for a particular purpose, for negligent misrepresentations, and for unjust enrichment to a putative class of New York purchasers. *Kaatz* Action, Dkt. No. 29. On July 20, 2016, Defendants filed an answer to the Complaint in the *Kaatz* Action, denying liability. *Kaatz* Action, Dkt. No. 31.

Given the substantial similarity between this litigation and the *Kaatz* Action, the Parties agreed that Plaintiffs should file a Second Amended Consolidated Class Action Complaint that includes all the children's and baby products. *See* 10/14/2016 Fisher Decl., Ex. 1, Stipulation of Settlement, Recitals CC. (discussing agreement to filing of Second Amended Consolidated Complaint); *id.* at § I. Definitions 1.36, 1.38 (defining Settlement Class and Settlement Class Products to include Defendants' baby products).

After extensive negotiation with Defendants and execution of the Settlement, on October 14, 2016, Plaintiffs filed a motion for preliminary approval of class action settlement. *See* Notice of Motion for Preliminary Approval of Class Action Settlement, Dkt. No. 275; Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement, Dkt. No. 275-1. Concurrently with the Motion for Preliminary Approval, Plaintiffs also filed their motion for leave to amend the Consolidated Complaint as discussed above. 6/19/2017 Fisher Decl., ¶ 34. Judge King granted Plaintiffs' motion for leave to amend to add the baby products but ordered that Plaintiffs' counsel obtain contact information for those purchasers by serving subpoenas on the retailers of those products. *Id.* Judge King also requested a few minor changes to the proposed notices and the preliminary approval order. *See* 11/28/2016 Transcript of Proceedings at 3:21-24; *see also*,

2/6/2017 Declaration of L. Timothy Fisher, Exhibit 1 (Dkt. No. 287-1)). Plaintiffs made Judge King's requested changes to the notices and proposed preliminary approval order. 2/6/2017 Declaration of L. Timothy Fisher, Exs. 2-5. In addition, Class Counsel also served subpoenas on the retailers of Hyland's baby products. *Id*., Ex. 6 and ¶18. These efforts secured the contact information for approximately 577,000 settlement class members who purchased the baby products. *Id.* at ¶18.

On February 7, 2017, this Court granted preliminary approval of the Settlement. Dkt. No. 288.

III. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE

The Ninth Circuit has recognized that certifying a settlement class to resolve consumer lawsuits is a common occurrence. *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1019 (9th Cir. 1998). When presented with a proposed settlement, a court must first determine whether the proposed settlement class satisfies the requirements for class certification under Rule 23. In assessing those class certification requirements, a court may properly consider that there will be no trial. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial.") (citation omitted).

In the Preliminary Approval Order, this Court provisionally certified the Settlement Class, appointed Class Representatives and appointed Co-Lead Counsel to represent Settlement Class Members, and made findings under Rule 23. Dkt. No. 288. Thus, the Court may rely on the same rationale as explained in the Preliminary Approval Order to find that class certification is appropriate under Fed. R. Civ. P. 23(a) and (b) for settlement purposes. *See In re Netflix Privacy Litig.*, 2013 U.S. Dist. LEXIS 37286, at *10 (N.D. Cal. Mar. 18, 2013). For the reasons set forth

below and in the Preliminary Approval Order, this Class meets the requirements of Rule 23(a) and (b).

A. The Requirements Of Rule 23(a) Are Met

To achieve class certification, the proposed class must meet the numerosity, commonality, typicality, and adequacy of representation requirements of Federal Rule of Civil Procedure 23(a). *See Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003). In the Preliminary Approval Order, the Court found that the requirements for certification of the Settlement Class under Rule 23(a) have been satisfied. Dkt. No. 288, at *2. There is no reason to question those findings.

B. The Requirements Of Rule 23(b) Are Met

Under Rule 23(b)(3), the court must find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). As discussed above, this litigation primarily focuses on questions common to the class as a whole. In fact, this Court held that Plaintiffs have met their burden to show that the issues common to the class predominate over questions the individual issues. Dkt. No. 288, at *2. Again, there is no reason to question those findings.

IV. THE STANDARD FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

In evaluating a class action settlement under Rule 23, a district court must determine whether the settlement is fundamentally fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). In evaluating the fairness of a class action settlement, courts are mindful that the law favors the compromise and settlement of class action suits. *See, e.g., Churchill Vill., L.L.C. v. Gen. Elec. Co.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992);

Officers for Justice v. Civil Serv. Comm'n of the City and Cty of S.F., 688 F.2d 615, 625 (9th Cir. 1982). The *Manual for Complex Litigation* states:

> The judge can encourage the settlement process by asking at the first pretrial conference whether settlement discussions have occurred or might be scheduled.

Manual, Fourth § 13.11 at 167. "Courts have afforded a presumption of fairness and reasonableness of a settlement agreement where that agreement was the product of non-collusive, arms' length negotiations by capable and experienced counsel." *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 U.S. Dist. LEXIS 37286, at *10-11 (N.D. Cal. Mar. 18, 2013). In such circumstances, counsel's assessment and judgment are entitled to a presumption of reasonableness, and the court is entitled to rely heavily upon counsel's assessment and judgment. *See Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979). Indeed, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625. Moreover, where, as here, the settlement was reached after the class was certified by the court concerns over potential for collusion are ameliorated and heightened scrutiny of the settlement is not required. *In re Ferrero Litigation*, 583 Fed. Appx. 665, 668 (9th Cir., July 16, 2014). Ultimately, however, the decision to approve a settlement is committed to the sound discretion of the trial judge. *Hanlon*, 150 F.3d at 1026.

V. THE SETTLEMENT AGREEMENT IS FAIR, ADEQUATE, AND REASONABLE

In answering the question of whether a settlement is fair, adequate and reasonable as prescribed by Rule 23(e), district courts should balance several factors:

(1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; and (7) the reaction of the class members to the proposed settlement. *Hanlon*, 150 F.3d at 1026; *Churchill*, 361 F.3d at 575. Here, the balance of the factors weighs heavily in favor of the Settlement being fair, adequate and reasonable.

A. Terms of the Settlement

1. Monetary and Non-Monetary Relief for Settlement Class Members

Pursuant to the terms of the Settlement, Settlement Class Members who submitted or submit timely claim forms could choose one of the following monetary Settlement benefits:

(1) **Without Proof of Purchase.** Claims for a full refund of the MSRP for up to two (2) unit purchases of Settlement Class Products will be paid without requiring proof of purchase.

(2) **With Proof of Purchase.** Claims for a full refund for three (3) or more unit purchases of Settlement Class Products will be paid with proof of purchase to avoid fraudulent claims. Settlement Class Members who submit proof of purchase that reveals the actual price paid for a Settlement Class Product will receive a refund of the actual price paid. If proof of purchase does not reveal the actual price paid for a Settlement Class Product, the Settlement Class Member will be receive a refund of the MSRP for each Settlement Class Product.

10/14/2016 Fisher Decl., Ex. A §III.3.1(a).

Furthermore, the Settlement also includes injunctive relief in the form of Defendants' addition of a money back guarantee on their website. *Id.* at §III.3.2.

"To assess whether the amount offered is fair, the Court may compare the settlement amount to the parties' estimates of the maximum amount of damages recoverable in a successful litigation." *See Shames v. Hertz Corp.*, No. 07-CV-2174-MMA(WMC), 2012 U.S. Dist. LEXIS 158577, at *19 (S.D. Cal. Nov. 5, 2012) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)). Here, the maximum amount of damages that each Settlement Class Member would be entitled to recover if Plaintiffs were successful at trial would be the retail price of each of the Settlement Class Products that they purchased. Since Settlement Class Members can receive full refunds with proof of purchase and two full refunds without submitting any proof of purchase, the Settlement Class Members are receiving exactly the amount that Plaintiffs sought to recover on their behalf in this Action. *Shames,* 2012 U.S. Dist. LEXIS 158577 at *20-21 (granting final approval of settlement and noting that "[w]hen compared to the estimated actual damages [of $3 a day], the $2 cash option represents a recovery of at least 67% of actual damages" and "compensates each class member for nearly all of—or slightly more than—his or her actual damages"). Therefore, the Settlement benefits are clearly fair to the Settlement Class Members.

As of June 19, 2017, Settlement Class Members have submitted 129,066 claim forms. *Id*. at ¶¶ 16-18. That number will only increase as the claim filing deadline is June 28, 2017.[3] Accordingly, the Settlement has been a resounding success.

2. Release and Discharge of Claims

The Settlement provides for the full release and discharge of any and all claims or causes of action that have been, might have been, are now, or could have been brought relating to the transactions, actions, conduct and events that are the subject of this action or settlement, arising from or related to the allegations in the

[3] After that claims deadline, Plaintiffs will submit a supplemental declaration attesting to the precise number of claims received, objections and opt-outs.

complaint filed in the Action or Defendants' marketing, advertising, promoting or distributing of the Settlement Class Products. 10/14/2016 Fisher Decl., Ex. A VII.7.1

3. Payment of Attorneys' Fees, And Costs and Expenses

The Parties have reached an agreement, in good faith, concerning the award of attorneys' fees and costs to be paid by Defendants to Class Counsel. Pursuant to the Settlement, Class Counsel will make an application to the Court for an Attorneys' Fee and Expense Award in an amount not to exceed $2.9 million, which includes reimbursement of Class Counsel's costs and expenses. *Id.* at IV.4.2. These cost and expenses amount to $754,804.19 and were reasonably incurred to secure the benefit obtained on behalf of the class. Class Counsel thus only seeks a fee award of $2,145,195.80. 6/19/2017 Fisher Decl., ¶ 44. Class Counsel's Motion for Attorneys' Fee and Expense Award is filed concurrently with this Motion. *Id.* Class Counsel's lodestar of $5,515,329.75 greatly exceeds the $2,145,195.80 requested fee award. Indeed, this reduction produces an inverse multiplier of .39. *Id.*

4. Compensation for Class Representatives

In addition to the relief discussed above, Defendants have also agreed to pay service awards to the Class Representatives, Enzo Forcellati and Lisa Roemmich, in the amount of $5,000 each. *Id.* at IV.4.1. These service awards will be paid in recognition of the time and effort that the Class Representatives expended in pursuing this Action and in fulfilling their obligations and responsibilities as Class Representatives, including responding to discovery, attending their depositions, and preparing to appear at trial. *Id.*; *In re Nucoa Real Margarine Litig.*, No. CV 10-00927 MMM (AJWx), 2012 U.S. Dist. LEXIS 189901, at *107-18 (C.D. Cal. June 12, 2012) (approving a $8,000 incentive award); C*arter v. Anderson Merchs., LP*, No. EDCV 08-0025-VAP (OPx), 2010 U.S. Dist. LEXIS 55629, at *17 (C.D. Cal.

May 11, 2010) ("Given the relatively small size of the proposed [$5000] recognition payments, the Court thus approves the recognition payments requested for both Carter and Lanasa.")

5. Payment of Notice and Administrative Costs

Under the Settlement, Defendants are responsible the costs of the Settlement Notice and Administration. *Id.* at III.3.3. KCC estimates that these costs will amount to $760,124.45. Lucchesi Decl., ¶ 19.

B. Strengths of Plaintiffs' Case

In determining the likelihood of a plaintiff's success on the merits of a class action, "the district court's determination is nothing more than an amalgam of delicate balancing, gross approximations and rough justice." *Officers for Justice*, 688 F.2d at 625 (internal quotations omitted). The court may "presume that through negotiation, the parties, counsel, and mediator arrived at a reasonable range of settlement by considering Plaintiff's likelihood of recovery." *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477, at *24 (N.D. Cal. Apr. 22, 2010) (citing *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

When Class Counsel engaged in arm's-length negotiations with Defendants' counsel, Class counsel was thoroughly familiar with the applicable facts, legal theories and defenses. 10/14/2016 Fisher Decl., ¶15. Plaintiffs' theory of recovery is that Defendants uniformly misrepresented that the Settlement Class Products were "Safe & Effective" for treating cold and flu symptoms and that they were "100% Natural." *See generally* Complaint, Dkt. No. 1. Plaintiffs further alleged that, in fact, the products are no better than a placebo because the ingredients are ultra-diluted. *See generally id.* In reliance on these representations, Plaintiffs and other Class Members purchased the Settlement Class Products at a premium and therefore suffered damages. *See generally id.*

C. Risk of Continuing Litigation

Despite Class Counsel's views regarding the strength of Plaintiffs' claims, proceeding in this litigation in the absence of settlement posed substantial risks to the Settlement Class. Although Plaintiffs continue to believe that they could prove to a jury that the products are mere placebos, the Settlement Class could recover nothing if the Class was decertified, or if Defendants were to obtain an order excluding one or more of Plaintiffs' experts on a motion in limine, succeed on other evidentiary objections, or prevail at trial or on appeal. Such considerations have been found to weigh heavily in favor of settlement. *See Rodriguez*, 563 F.3d at 966; *Curtis-Bauer v. Morgan Stanley & Co., Inc.*, No. C 06-3903 THE, 2008 U.S. Dist. LEXIS 85028, at *13 (N.D. Cal. Oct. 22, 2008) ("Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain, and substantial recovery for the Plaintiff class."). At trial, Plaintiffs would have to convince the jury to accept their and their experts' position that the Settlement Class Products are ineffective and to reject contrary testimony from Defendants' highly-qualified experts. In this "battle of experts," it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which expert opinion on efficacy of the products would be accepted by the jury. By settling Plaintiffs avoid the risk of trial and guarantee a recovery to the class. Since the risks of proceeding to trial are substantial, this bird in the hand is worth more than two in the bush, and therefore the Settlement warrants final approval. *See e.g.*, *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004).

Indeed, a jury in a similar case involving several of Defendants' other homeopathic products concluded that the plaintiffs had not met their burden of proof and found for Defendants on every claim. *See Allen v. Hyland's Inc.*, C.D. Cal. Case No. 12-cv-01150-DMG-MAN, Dkt. 426 (Verdict Form); *see also Lewert v. Boiron, Inc.*, C.D. Cal. Case No. 11-cv-10803, Dkt. 447 (Verdict Form). The *Allen* trial

makes clear that a favorable result could not be guaranteed for the class. There is no guarantee that the verdict in this action would be any different than the verdict in the *Allen* action. *See Shames*, 2012 U.S. Dist. LEXIS 158577, at *18 ("Plaintiffs faced significant uncertainty and risk of nonrecovery at trial, making a pre-trial settlement a reasonable tactical choice.").

Even if Plaintiffs were to prevail on the issue of liability, there would still be risks in establishing the existence of monetary damages at trial. The experience of Class Counsel has taught them that the above-described factors can make the outcome of trial extremely uncertain.

Not only would Plaintiffs need to be prove damages, but they would also have to collect them. Here, there are significant concerns regarding the financial instability of Defendants. Specifically, Mr. Krombrach, the then Chief Financial officer of Standard Homeopathic Company, stated "the Company's cash flow and its ability to fund its ongoing operations have been seriously compromised." 6/19/2017 Fisher Decl., ¶ 52, Ex. M, *Affiliated Health Care Assocs., P.C. v. Handit2 Network, LLC*, Case No. 1:13-cv-05782, Dkt. No. 101, the Declaration of Daniel M. Krombach (N.D. Ill Jan. 6, 2016). "[R]isk that the class will lose should the suit go to judgment on the merits justifies a compromise that affords a lower award with certainty." *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 952 (7th Cir. 2006).

Finally, even if Plaintiffs were to prevail at trial, risks to the Class remain. For example, in *In re Apple Computer Securities Litigation*, No. C-20148(A)-JW 1991 U.S. Dist. LEXIS 15608, *1 (N.D. Cal. Sept. 6, 1991), the jury rendered a verdict for plaintiffs after an extended trial. Based on the jury's findings, recoverable damages would have exceeded $100 million. *Id.* However, weeks later, the trial court overturned the verdict and ordered a new trial with respect to the corporate defendant. *Id*. at *2. By settling, Plaintiffs and the Settlement Class avoid these risks, as well as the delays and risks of the appellate process. Careful consideration

of the above risks supports approval of the Settlement as fair, adequate and reasonable.

D. The Extent of Discovery and Status of Proceedings

Under this factor, courts evaluate whether class counsel had sufficient information to make an informed decision about the merits of the case. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459. The Settlement was reached on the eve of trial, after four years of litigation, during which time, Plaintiffs completed extensive discovery. 6/19/2017 Fisher Decl., ¶¶ 6-25; *see In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016 U.S. Dist. LEXIS 115056, at *22-24 (N.D. Cal. Aug. 25, 2016) (granting final approval of class settlement where plaintiffs had engaged in years of extensive briefing and discovery, and therefore "developed an informed perspective on this case's strengths and weaknesses"); *In re Nucoa Real Margarine Litig.*, No. CV 10-00927 MMM (AJWx), 2012 U.S. Dist. LEXIS 189901, at *49-50 (C.D. Cal. June 12, 2012) ("The greater the amount of discovery that has been completed, the more likely it is that the parties have a clear view of the strengths and weaknesses of their cases.") (internal citations omitted); *Low v. Trump Univ., LLC*, No. 3:10-cv-00940-GPC-WVG, 2017 U.S. Dist. LEXIS 49739, at *15-16 (S.D. Cal. Mar. 31, 2017) (where case is near trial, and the parties have conducted extensive discovery the extent of discovery and the stage of the proceedings weigh in favor of the proposed settlement) (internal citations omitted). Given the procedural history of this Action, there can be no doubt that Class Counsel had sufficient information to make an informed decision about the merits of this case as compared to the benefit provided by the proposed Settlement. Additionally, substantial settlement negotiations have taken place between the Parties. 6/19/2017 Fisher Decl., ¶¶ 26-31. Notably, when a settlement is negotiated at arm's-length by experienced counsel, there is a presumption that it is fair and reasonable. *See In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). The Parties also worked closely with Judge

Gandhi, who ultimately led the Parties to resolution. 6/19/2017 Fisher Decl., at ¶¶ 26-31; *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) ("[The] presence of a neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness."). Thus, this factor weighs strongly in favor of final approval.

E. Experience and Views of Counsel

The recommendations of Class Counsel should be given a presumption of reasonableness. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008). Deference to Class Counsel's evaluation of the Settlement is appropriate because "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *Rodriguez*, 563 F.3d at 967 (citing *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995)).

Here, the Settlement was negotiated by counsel with extensive experience in consumer class action litigation. 10/14/2016 Fisher Decl., Exs. 5-7 (Class Counsel firm resumes). Indeed, this Court and Judge King found Class Counsel are qualified to represent the Class as co-lead Class Counsel. Dkt. No. 144, 288. Based on their collective experience, Class Counsel concluded that the Settlement provides exceptional results for the Settlement Class while sparing the Class from the numerous uncertainties that would result from continued and protracted litigation. 10/14/2016 Fisher Decl., ¶15. Moreover, the fact that the Settlement was negotiated over the course of several mediation sessions, in front of a highly experienced mediator, is one factor that demonstrates the Settlement was anything but collusive. *See, e.g.*, *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) ("The armslength negotiations, including a day-long mediation before Judge Lynch, indicate that the settlement was reached in a procedurally sound manner."); *In re M.L. Stern Overtime Litig.*, No. 07-CV-0118-BTM (JMA), 2009 U.S. Dist. LEXIS 31650, at *13 (S.D. Cal. Apr. 13, 2009) (granting preliminary approval and

stating that "the settlement was reached with the supervision and assistance of an experienced and well-respected independent mediator"); *Cohorst v. BRE Props., Inc.*, 3:10-CV-2666-JM-BGS, 2011 U.S. Dist LEXIS 151719, at *35 (S.D. Cal. Nov. 14, 2011) ("For example, voluntary mediation before a retired judge [] are highly indicative of fairness.) (internal quotation marks omitted). This factor therefore supports a finding by the Court that the Settlement is fair, adequate and reasonable.

F. Presence of a Governmental Participant

The government need not be involved with a class action settlement. However, the Class Action Fairness Act ("CAFA") requires that notice of a settlement be delivered to the Attorney General of the United States, and to each attorney general of each state where class members reside. 28 U.S.C. § 1715(b). Said notices have been sent regarding the Settlement. Lucchesi Decl., at ¶¶ 3-6. Here, no attorney general has objected. *Id.* The lack of government involvement weighs in favor of approving the Settlement as agreed to by the Parties. *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 685 (N.D. Cal. 2016) (weighing this factor in favor of approval when "neither state nor federal officials lodged any objection after receiving notice of the Settlement Agreement."); *Petersen v. CJ Am., Inc.*, No. 3:14-cv-02570-DMS-JLB, 2016 U.S. Dist. LEXIS 140187, at *8 (S.D. Cal. Sept. 30, 2016) (granting final approval of a consumer class action settlement and acknowledged that appropriate notice regarding the settlement and that "no such objections or comments were received.").

G. Reactions of Class Members

As of June 19, 2017, no Settlement Class Member has objected to the Settlement.[4] Lucchesi Decl., at ¶ 17; *see also Churchill*, 361 F.3d at 577 (weighing the low number of objectors in favor of settlement). The absence of objections raises

[4] The deadline for filing objections or opting out, June 28, 2017, has not yet occurred. After that deadline, Plaintiffs will submit a supplemental declaration attesting to the number of objections and opt-outs.

a strong presumption that the terms of the Settlement are favorable to the Class. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of the proposed class action settlement are favorable to the class members."). Furthermore, as of June 19, 2017, of those who responded to the Class notices, 129,066 individuals had submitted timely claim forms while only fourteen individuals have opted out (approximately .01% of total responses). Lucchesi Decl., at ¶¶ 16 and 18; *Churchill*, 361 F.3d at 577 (affirming settlement approval where only 45 out of approximately 90,000 class members objected); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (where "[a] total of zero objections and sixteen opt-outs (comprising 4.86% of the class) were made from the class of roughly three hundred and twenty-nine (329) members," that the reaction of the class "strongly supports settlement."). Here, since no one has objected to the Settlement and only fourteen Class Members have excluded themselves, the Court should find that the "presumption of fairness" applies in this Settlement and this factor should weigh heavily in favor of Settlement approval.

VI. NOTICE

The Parties agreed to a notice plan and the Class Notice forms, which the Court approved in its Preliminary Approval Order. *See* Dkt. No. 288 at ¶¶ 7-9. The approved notice plan informed the Settlement Class of their rights and followed a comprehensive plan for delivery of notice by U.S. postal mail, e-mail, publication notice, and internet banner ads, and therefore was the best notice practicable given the circumstances of this Action. *See* Dkt. No. 288 at ¶ 9 (The Court found this notice plan "to comply with all legal requirements, including but not limited to the Due Process Clause of the United States Constitution."). Indeed, each of these forms of notice accurately informed Settlement Class Members of the salient terms of the

Settlement, the date of the Final Approval hearing, and the rights of all parties, including Class Member rights to file objections and to opt out of the Class. 10/14/2016 Fisher Decl., Ex. 1, Stipulation of Settlement (Notices: Exs. C, D, F). This notice plan (similar if not identical to the method used in countless other class actions) was appropriate because it fairly and adequately afforded Settlement Class Members the opportunity to learn about the Settlement and to make an informed decision regarding the proposed Settlement. *Jonsson v. USCB, Inc.*, No. CV 13-8166 FMO (SHx), 2015 U.S. Dist. LEXIS 69934, at *8 (C.D. Cal. May 28, 2015) (granting final approval of settlement and finding that nearly identical notice plan "fairly and adequately informed the class members of the nature of the action" and met the requirements of Rule 23). In fact, the quality of notice afforded under the notice plan was superior to many similar class action settlements because subpoenas issued to numerous national retailers enabled KCC to provide direct notice to many Class Members. 6/19/2017 Fisher Decl., ¶¶ 20 and 34; Lucchesi Decl., ¶¶ 7-12. Thus, the notice plan previously approved by the Court and subsequently executed by KCC amply satisfies the requirements of due process.

Pursuant to the Settlement, and after the Court granted preliminary approval of the Settlement, notice of the Settlement was disseminated to the Settlement Class Members through U.S. postal mail, e-mail, publication notice, and internet banner ads. Lucchesi Decl., at ¶¶ 7-15; *Boring v. Bed Bath & Beyond of Cal. LLC*, No. 12-CV-05259-JST, 2014 U.S. Dist. LEXIS 90258, at *3 (N.D. Cal. June 30, 2014) (finding adequate notice where parties implemented the approved notice plan).

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval to the Settlement Agreement and enter the Final Approval Order in the form submitted herewith.

Dated: June 19, 2017

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