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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

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13 **THE PEOPLE OF THE STATE OF**
14 **CALIFORNIA,**
15
16 **v.**
17
18 **VITOL INC.; SK ENERGY AMERICAS,**
19 **INC.; SK TRADING INTERNATIONAL**
20 **CO. LTD.; AND DOES 1- 30, INCLUSIVE,**
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22
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Plaintiff,
Defendants.

Case No. CGC-20-584456

**THE PEOPLE'S MEMORANDUM IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF PARENS PATRIAE
SETTLEMENT**

Date: February 28, 2025
Time: 10:00 a.m.
Dept: 606
Judge: The Honorable Jeffrey S. Ross

Action Filed: May 4, 2020

1 **TABLE OF CONTENTS**

2 **Page**

3 Introduction 1

4 Background 2

5 Settlement and Plan of Distribution 4

6 Notice and Claims Process 4

7 Motion for Attorneys’ Fees 6

8 Argument 7

9 I. The Settlement Is Fair, Reasonable, and Adequate and Should Be

10 Approved 7

11 A. The Settlement Is Presumptively Fair 8

12 B. The Settlement Is Fair, Adequate, and Reasonable 10

13 II. The Notice Provided Complied with the Cartwright Act 13

14 III. The Distribution Plan Complies with the Cartwright Act 14

15 Conclusion 15

16

17

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

7-Eleven Owners for Fair Franchising v. Southland Corp.
(2001) 85 Cal.App.4th 1135 8

Archibald v. Cinerama Hotels
(1976) 15 Cal.3d 853 14

California v. eBay, Inc.
(N.D. Cal., Sept. 3, 2015, No. 5:12-cv-05874-EJD) 2015 U.S. Dist. LEXIS
118060..... 7, 10

Carter v. City of Los Angeles
(2014) 224 Cal.App.4th 808 7, 8, 9

City of Detroit v. Grinnell Corp.
(2d Cir. 1974) 495 F.2d 448..... 11

Couser v. Comenity Bank
(S.D. Cal. May 17, 2015, No. 12cv2484-MMA-BGS) 125 F.Supp.3d 1034..... 13

Dunk v. Ford Motor Co.
(1996) 48 Cal.App.4th 1794 7, 8, 9, 10

Edwards v. Andrews
(9th Cir. 2021) 846 Fed.Appx. 538..... 14

Edwards v. National Milk Producers Federation
(N.D. Cal., June 26, 2017, No. 11-CV-04766-JSW) 2017 WL 3623734 14

Ellis v. Naval Air Rework Facility
(N.D. Cal. 1980) 87 F.R.D. 15 10

In re California Gasoline Spot Mkt. Antitrust Litigation
(N.D. Cal., May 6, 2020, No. 20-CV-03131-JSC) (“Federal Class Action”)..... 2, 5, 6

In re: Cathode Ray Tube (Crt) Antitrust Litigation
(N.D. Cal., Dec. 17, 2015, No. 14-CV-2058 JST) 2015 WL 9266493..... 15

In re: Cathode Ray Tube (Crt) Antitrust Litigation
(N.D. Cal., July 7, 2016, No. C-07-5944 JST) 2016 WL 3648478 11

In re Currency Conversion Fee Antitrust Litigation
(S.D.N.Y., Nov. 8, 2006, No. 01 MDL 1409) 2006 WL 3247396 11

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
3	<i>In re Facebook Biometric Info. Privacy Litig.</i>	
4	(N.D. Cal. Feb. 26, 2021, No. 15-cv-03747-JD) 522 F.Supp.3d 617	13
5	<i>In re Lorazepam & Clorazepate Antitrust Litig. v. Mylan Labs</i>	
6	(D. D.C. 2002) 205 F.R.D. 369	10
7	<i>In re TFT-LCD (Flat Panel) Antitrust Litig.</i>	
8	(N.D. Cal., Apr. 3, 2013, No. M 07-1827-SI) 2013 U.S. Dist. LEXIS 49885	7
9	<i>In re Toys R Us Antitrust Litigation</i>	
10	(E.D.N.Y. 2000) 191 F.R.D. 347	10
11	<i>In re Vitamin Cases</i>	
12	(2003) 107 Cal.App.4th 820	13
13	<i>Kullar v. Foot Locker Retail</i>	
14	(2008) 85 Cal.App.4th 116	8, 10
15	<i>Rieckborn v. Velti PLC</i>	
16	(N.D. Cal., Feb. 3, 2015, No. 13-CV-03889-WHO) 2015 WL 468329	15
17	<i>Rodriguez v. West Publishing Corp.</i>	
18	(9th Cir. 2009) 563 F.3d 948.....	11
19	<i>Shane Group, Inc. v. Blue Cross Blue Shield of Michigan</i>	
20	(E.D. Mich., Sept. 30, 2019, No. 10-CV-14360) 2019 WL 4746744.....	11
21	<i>Sullivan v. DB Invs., Inc.</i>	
22	(3d Cir. 2011) 667 F.3d 273.....	13
23	<i>Wershba v. Apple Computer, Inc.</i>	
24	(2001) 91 Cal.App.4th 224	9
25	<i>Zepeda v. PayPal, Inc.</i>	
26	(N.D. Cal., March 24, 2017. No. C 10-2500 SBA) 2017 U.S. Dist. LEXIS	
27	43672.....	14
28	STATUTES	
	Bus. & Prof. Code	
	§ 16760, subd. (b)	3, 7
	§ 16760, subd. (b)(1).....	13
	§ 16760, subd. (c).....	3, 7, 13
	§ 16760, subd. (e)(1)	15
	§ 17206, subd. (c).....	4, 11

1
2
3
4
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6
7
8
9
10
11
12
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15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
California Commodity Law	3
Cartwright Act.....	<i>passim</i>
Clayton Act	7
Commodity Exchange Act.....	3
Unfair Competition Law (UCL)	<i>passim</i>
OTHER AUTHORITIES	
4 Newberg and Rubenstein on Class Actions (2022) § 13:45	9

1 **INTRODUCTION**

2 The People of the State of California hereby request that the Court approve their Settlement
3 with defendants Vitol, Inc., SK Energy Americas, Inc., and SK Trading International Co. Ltd.
4 (“SKTI”) (collectively, “Defendants”). The Settlement is the result of a thorough investigation,
5 three years of litigation, extensive and voluminous discovery, and lengthy, arm’s-length
6 settlement negotiations. It includes a \$50,000,000 cash payment, including \$37,500,000 to be
7 distributed to eligible California consumers. This Court entered an Amended Order Granting the
8 People’s Motion to Give Notice of *Parens Patriae* Settlement (“Amended Order”) on September
9 17, 2024, conditionally approving the Settlement, and finding that the Plan of Allocation and
10 Notice Program satisfies the requirements of due process and complies with applicable law.
11 Since then, the Settlement has been received extraordinarily well by Californians, millions of
12 whom submitted claims. Having implemented the Court-approved notice plan, the People now
13 move for Final Approval. If approved, this Settlement will resolve the entire litigation.

14 The Attorney General brought this enforcement action under the Unfair Competition Law,
15 and as *parens patriae* under the Cartwright Act on behalf of California natural persons who
16 purchased gasoline at inflated prices due to Defendants’ conduct. The People alleged that
17 Defendants took advantage of a market disruption following a February 2015 explosion at a
18 gasoline refinery in Torrance, California to engage in a scheme to manipulate gasoline price
19 indices for their own benefit. The Settlement releases those claims and provides recovery for
20 natural persons residing in California who purchased gasoline in Southern California between
21 February 20, 2015 and November 10, 2015.

22 Since the Amended Order, evidence of the fairness, adequacy, and reasonableness of the
23 Settlement has only grown. The notice plan, already found to satisfy the Cartwright Act and due
24 process, was successful: notice was widely distributed to an estimated 88% of Californians. In
25 addition to the Court-approved notice program, the Attorney General himself made social media
26 posts and participated in interviews, further increasing public awareness. The results of the
27 claims process indicate that notice of the Settlement was widely and favorably received: it
28 achieved high claims rate, few exclusions, and no objections.

1 The People respectfully request that the Court enter the accompanying Proposed Order
2 Granting the Motion for Final Approval and the Parties’ Proposed Final Judgment. The Attorney
3 General has also requested Attorneys’ Fees and Costs in a separate motion set for hearing
4 concurrently with this Motion. Should the Court find that it can grant these motions on the
5 papers, the People would not require a hearing.

6 BACKGROUND

7 The People filed this case on May 4, 2020, following an investigation into the California
8 gasoline market. The case alleged a conspiracy whereby Defendants—large multinational oil and
9 gas trading conglomerates—manipulated the California-specific gasoline market for their own
10 financial gain. The Complaint alleges that Defendants traded small volumes of gasoline products
11 for artificially high prices, with the intention of spiking the California gasoline price indices,
12 ultimately benefitting their own large sales contracts that were priced based on those indices.
13 These price spikes caused higher retail gasoline prices, harming Californians. (Jorgenson Decl. ¶
14 4.) Numerous putative class actions alleging the same conduct were later filed by private
15 plaintiffs in federal court and consolidated into *In re California Gasoline Spot Mkt. Antitrust*
16 *Litigation* (N.D. Cal., May 6, 2020, No. 20-CV-03131-JSC) (“Federal Class Action”).

17 At the time of settlement, the case had progressed significantly through litigation. Factual
18 and legal issues were well-developed, as the record of motion practice and fact discovery reflects.
19 The People successfully defeated Defendants’ demurrer to the Complaint, while the Court also
20 denied the People’s demurrer to Defendants’ cross-complaint. Following nearly six months of
21 jurisdictional discovery, the People also defeated SKTI’s Motion to Quash, through a number of
22 appeals. Both sides completed significant fact discovery over the course of two and a half years:
23 the Parties collectively produced more than two million documents, subpoenaed approximately
24 30 non-parties, yielding over 500,000 documents, and took more than 50 depositions of party and
25 non-party witnesses. Discovery also significantly clarified the relevant factual matters; the Court
26 presided over seven informal discovery conferences and two motions to compel. (*Id.* at ¶ 11-12.)

27 In addition to the well-developed factual record, Defendants and the People each presented
28 numerous expert opinions. The People served four opening expert reports, three rebuttal reports,

1 and four reply reports. Defendants collectively served five opening expert reports, five rebuttal
2 reports, and five reply reports. The Peoples' expert case showed that Defendants' conduct caused
3 \$127.8 million in harm from inflated gasoline prices to California natural persons, based on the
4 periods impacted by Defendants' conduct and estimates of gasoline purchases by California
5 residents. (*Id.* at ¶¶ 13-14.)

6 In March and April 2023, shortly before the Parties attended mediation and entered into an
7 agreement in principle, Defendants filed nine separate motions for summary adjudication or
8 summary judgment. These motions raised a number of legal challenges to the People's case:
9 inadequate evidence of antitrust impact, proximate cause, or an illegal agreement; no violations of
10 the California Commodity Law and the Commodity Exchange Act to support liability under the
11 Unfair Competition Law ("UCL"); and, violations of due process based on the Cartwright Act's
12 *parens patriae* provision allowing for proof of aggregate damages. Defendant SKTI also moved
13 for summary judgment, contending it had not done illegal acts, and was not subject to agency or
14 alter ego liability. Finally, Defendants also filed a *Sargon* motion to exclude the People's
15 causation expert. (*Id.* at ¶ 15.)

16 Pursuant to the Court's order, the Parties attended mediation in front of the Honorable Layn
17 Phillips on May 2, 2023. (Order after November 16, 2022 CMC.) Following an approximately
18 12-hour mediation, the Parties reached an agreement in principle. The Parties then spent over a
19 week negotiating a detailed term sheet, requiring numerous telephone conferences and written
20 exchanges with the mediator's team, and then several months negotiating a final agreement. The
21 Parties signed the final settlement on October 11, 2023. (Jorgenson Decl. ¶¶ 7-10.)

22 As *parens patriae* settlements require that natural persons be given notice and the
23 opportunity to exclude themselves (Bus. & Prof. Code, § 16760, subs. (b), (c)), the People filed
24 a Motion to Give Notice¹ on July 9, 2024. The Court granted that motion on September 4, 2024,
25 making non-substantive amendments in its Amended Order of September 17, 2024.

26 _____
27 ¹ Because the Attorney General has statutory authority to sue in *parens patriae*, he does not need
28 to bring a class action, nor is he bound by rules requiring a class to move for preliminary
approval. The Attorney General nevertheless sought the Court's preliminary review of the
settlement and notice process to ensure that they were within the range of likely approval.

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SETTLEMENT AND PLAN OF DISTRIBUTION

Defendants made a one-time cash payment of \$50,000,000 into an escrow account to satisfy the People’s claims. Of that, \$12,500,000 is designated as a civil penalty to satisfy the People’s UCL claim, and will be split between the Attorney General’s Office and the City of County of San Francisco to fund enforcement of antitrust and consumer protection laws by those entities in accordance with statutory requirements. (Bus. & Prof. Code § 17206, subd. (c).) The remaining \$37,500,000 is allocated to a “Cartwright Act Settlement Fund,” to be distributed to California natural persons under the Court-approved Plan of Allocation, attached to the Amended Order as Exhibit A. (Jorgenson Decl. ¶¶ 16-17; Ex. A-B.)

All natural persons who purchased gasoline in the ten counties in Southern California where the People’s experts found consumer impact between February 20, 2015 and November 10, 2015 and were a resident of California at any point between May 4, 2020 and the present are eligible to receive a distribution from the Cartwright Act Settlement Fund (“Eligible Consumer”). Those who submitted a valid claim will receive a pro rata portion of the Cartwright Act Settlement Fund. Any residual funds will be distributed *cy pres* to a University of California or California State University study for developing tools to detect and deter future gasoline market manipulation, or increase the study of the California gasoline and transportation energy market in California. No funds will revert to Defendants. (Jorgenson Decl. ¶¶ 17, 20, 21, 24; Ex. B.)

NOTICE AND CLAIMS PROCESS

The notice program was, in every aspect, conducted in accordance with the Amended Order and Plan of Allocation and Notice Program approved by the Court. (Cooley Decl. ¶ 4.) Verita commenced a comprehensive notice program on October 2, 2024. (Jorgenson Decl. ¶ 22; Cooley Decl. ¶¶ 9-17.) Direct notice was provided via postcards and emails: 8,557,553 notice postcards addressed to “Resident” were mailed to all residential addresses in Southern California, and 8,905,330 notice emails were sent to individuals known to have been located within Southern California during 2015.² (Cooley Decl. ¶¶ 9-10.) Both notices provided the most salient information and directed recipients to the Settlement Website to learn more.

² 857,690 emails (fewer than 10% of total emails sent) were unable to be delivered.

1 Verita also provided several forms of indirect notice. A summary notice was placed as an
2 eighth-page or quarter-page ad under 27 newspaper mastheads throughout Southern California (in
3 English and Spanish, as appropriate for the newspaper), as publication notice. (Cooley Decl. ¶
4 12.) Additionally, starting on October 2, 2024 and for 63 days after, over 81.3 million digital
5 media impressions targeting adults 25 years and older in California (who would have been at least
6 16 during the conspiracy period) were delivered on desktop and mobile devices. These
7 impressions were in the eight most common languages used in Southern California, and a portion
8 of the ad impressions were targeted to a geofence of devices currently in Southern California, or
9 previously were in Southern California within the last four years. (*Id.* ¶ 14.) A further 575,000
10 digital media impressions were purchased to appear in Spanish on Spanish-language news
11 websites covering Southern California. (*Id.* ¶ 13.) Like direct notice, indirect notice provided the
12 most salient information and directed recipients to the Settlement Website.

13 Verita also released a national press release in both English and Spanish to press outlets, in
14 coordination with the Federal Class Action. (Cooley Decl. ¶ 11.) Separately, and in addition to
15 the notice described in the Plan of Allocation and Notice Program, the Attorney General released
16 two press releases, made social media posts, and participated in press interviews about the
17 Settlement, urging California residents eligible to file a claim to do so. (Jorgenson Decl. ¶ 23.)

18 Verita maintained an informational website for the benefit of California natural persons
19 (“Settlement Website”). The Settlement Websites contains case documents, including all notice
20 documents, how to access the Court docket, important case dates and deadlines, Frequently
21 Asked Questions, instructions to contact Verita, and PDF and online forms to either file a claim
22 or request an exclusion. The Settlement Website also directed those who may have been eligible
23 for a payment through the Federal Class Action to the appropriate website, to minimize the
24 potential for invalid claims. From October 2, 2024 through January 30, 2025, the Settlement
25 Website was accessed 12,262,362 times. Verita also maintained a case-specific toll-free number
26 providing pre-recorded information and live operators, which received 34,013 calls, passing 8,008
27 callers to a live operator. Verita also responded to email and mail inquiries, including, where
28 appropriate, inquiries made directly to the Attorney General’s Office. (Cooley Decl. ¶¶ 17-20.)

1 To make it as easy as possible for Eligible Consumers to receive their distribution, and
2 because Californians were unlikely to retain relevant records, the Attorney General elected not to
3 require proof of purchase to submit a claim. With no proof required, it is possible that through
4 fraud or accident, a person may submit claims that exceed their entitlement. Accordingly,
5 Settlement Administrator Verita has employed a rigorous and proprietary system for detecting
6 duplication and fraud amongst the submitted claims, which it is deploying in stages due to the
7 volume of claims received. (Cooley Decl. ¶¶ 21-27.)

8 The Notice Program was extremely successful. Verita estimates that 88% of Californians
9 received notice of the Settlement. (Cooley Decl. ¶¶ 16.) After the first stage of its claims
10 analysis, Verita estimates that as many as 3,730,152 unique and valid claims were submitted. (*Id.*
11 ¶ 21.) Only 253 requests for exclusion were submitted, and no objections to the Settlement were
12 filed.³ (*Id.* ¶¶ 28-29.) Verita estimates that the final claims' filing percentage will be between
13 16.6% and 24.9%, based on an estimated count of 14,000,000 eligible consumers. (*Id.* ¶ 27.)
14 Such analyses and corresponding winnowing of submitted claims is inherent in claims processes
15 designed to be accessible to all Californians and reflect efforts to ensure that all Eligible
16 Consumers receive their appropriate distribution.

17 MOTION FOR ATTORNEYS' FEES

18 Separately, the Attorney General's Office filed a Motion for Attorneys' Fees and Costs.
19 The Attorney General's Office has limited its request for fees and costs to \$9.375 million, or 25%
20 of the Cartwright Act Settlement Fund. (Jorgenson Decl. ¶ 25.) Class counsel in the Federal
21 Class Action also requested an award of \$3 million, or 8% of the Cartwright Act Settlement Fund.
22 (*Id.*) Both motions were filed on Friday, December 6, 2024 and were placed on the Settlement
23 Website the next business day, Monday, December 9, 2024. (*Id.*; Cooley Decl. ¶ 18.) They were
24 also publicly accessible on the San Francisco Superior Court case docket as soon as they were
25 accepted for filing by the Clerk of Court. (Jorgenson Decl. ¶ 25.)

26
27 ³ These numbers are current as of January 31, 2025, and reflect preliminary anti-fraud and de-
28 duplication efforts. Late-received forms that were timely mailed, as well as further anti-fraud and
de-duplication measures may change these numbers. (Cooley Decl. ¶¶ 21-26.)

1 **ARGUMENT**

2 The California Attorney General alleged claims under the UCL and Cartwright Act. The
3 Cartwright Act requires that the Court approve a *parens patriae* settlement, the manner of giving
4 notice, and the appropriate distribution of any monetary relief recovered. (Bus. & Prof. Code, §
5 16760, subs. (b), (c).) Though the UCL does not require court-approval of a settlement, because
6 the settlement described herein is the complete resolution of all claims asserted in this action, the
7 Parties are seeking approval of the Settlement Agreement in full.

8 **I. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE**
9 **APPROVED.**

10 The Cartwright Act does not specify how the Court should determine whether to finally
11 approve a *parens patriae* settlement. (Bus. & Prof. Code §§ 16760, subd. (c).) Courts to
12 previously decide the issue have applied the same standard used in class action cases to
13 settlements in *parens patriae* cases brought by state attorneys general. (See, e.g., *California v.*
14 *eBay, Inc.* (N.D. Cal., Sept. 3, 2015, No. 5:12-cv-05874-EJD) 2015 U.S. Dist. LEXIS 118060, *5
15 [“Neither the Clayton Act nor the Cartwright Act sets forth a standard by which proposed *parens*
16 *patriae* settlements are approved, thus federal courts have adopted the approval procedure and
17 standards used for approval in class action settlements...”]; *In re TFT-LCD (Flat Panel) Antitrust*
18 *Litig.*, (N.D. Cal., Apr. 3, 2013, No. M 07-1827-SI) 2013 U.S. Dist. LEXIS 49885, *48 [granting
19 final approval to a combined class and *parens patriae* settlement using class action standards].)

20 Pursuant to that framework, after giving notice, a court should grant final approval upon a
21 finding that the proposed settlement is “fair, reasonable, and adequate.” (*Dunk v. Ford Motor Co.*
22 (1996) 48 Cal.App.4th 1794, 1801 [approving settlement of California class action].) A
23 settlement is presumed to meet this standard where “(1) the settlement is reached through arm’s-
24 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the trial
25 court to act intelligently; (3) counsel is experienced in similar litigation and (4) the percentage of
26 objectors is small.” (*Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 820.)

27 In addition to this presumption, the Court must “make an independent assessment of the
28

1 reasonableness of the terms to which the parties have agreed,” including an evaluation of (1) the
2 strength of the People’s case; (2) the risk, expense, complexity and the likely duration of further
3 litigation; (3) the amount offered in settlement; and (4) the reaction of California natural persons
4 to the proposed settlement. (*Kullar v. Foot Locker Retail* (2008) 85 Cal.App.4th 116, 133 [the
5 court must consider “the nature and magnitude of the claims being settled, as well as the
6 impediments to recovery,” sufficient “to make an independent assessment of the reasonableness
7 of the terms to which the parties have agreed.”]; see also *Dunk* (1996) 48 Cal.App.4th at 1801.)

8 Courts favor settlements to resolve litigation, particularly in complex cases which will
9 involve significant determinations of fact. (See *7-Eleven Owners for Fair Franchising v.*
10 *Southland Corp.* (2001) 85 Cal.App.4th 1135, 1151) Accordingly, in evaluating whether to grant
11 final approval, the court’s inquiry is “limited to the extent necessary to reach a reasoned judgment
12 between the agreement is not a product of fraud or overreach by, or collusion between, the
13 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to
14 all concerned.” (*Id.* at 1145, quoting *Dunk*, 48 Cal.App.4th at 1801.)

15 **A. The Settlement Is Presumptively Fair**

16 Consistent with the policy favoring settlements, “there is a presumption of fairness when
17 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
18 sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in
19 similar litigation and (4) the percentage of objectors is small.” (*Carter v. City of Los Angeles*
20 (2014) 224 Cal.App.4th 808, 820.) Here, these factors underscore the fairness of this Settlement.

21 **Arm’s Length Bargaining.** The Settlement was reached through arm’s-length bargaining
22 between experienced lawyers in the Attorney General’s antitrust section and skilled and resourced
23 counsel for Defendants. These settlement negotiations took place during a 12 hour in-person
24 mediation conducted by one of the nation’s preeminent mediators, the Honorable Layn Phillips.
25 After reaching an agreement in principle at mediation, the Parties negotiated a detailed term sheet
26 the following week. These negotiations included telephone conferences between the Parties and
27 additional written correspondence with the mediator’s team. The Parties devoted considerable
28 time and resources to negotiating the final Settlement Agreement. (Jorgenson Decl. ¶¶ 5-10.)

1 The process by which this Settlement was reached—long negotiations, by experienced
2 counsel, and facilitated by a respected mediator—emphasizes that this settlement represents not
3 fraud, collusion, or overreach, but experienced counsel entering into a hard-fought compromise to
4 resolve the case. (See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
5 [presumption of fairness afforded where the parties engaged in “extensive and hard-fought
6 adversarial negotiations” facilitated by “well-respected retired judges” serving as neutral
7 mediators].) Courts have long held that these sorts of arm’s length negotiations “support[] a
8 presumption that the settlement is fair.” (4 Newberg and Rubenstein on Class Actions (2022) §
9 13:45; accord *Dunk*, 48 Cal.App.4th at 1803.)

10 **Completed Discovery and Late State of Proceedings.** At the time of settlement, the Parties
11 had completed all of fact and most of expert discovery, which clarified many relevant factual and
12 legal issues and allows the parties and the Court to make an informed judgment regarding the
13 Settlement. Defendants made significant document productions, and the People produced
14 documents obtained during their investigation, together totaling over two million documents.
15 (Jorgenson Decl. ¶ 12.) The Parties subpoenaed 30 non-parties, yielding another 500,000
16 documents, and took more than 50 party and non-party depositions. (*Id.*) Defendants and the
17 People presented numerous expert opinions, further clarifying facts and legal issues that would be
18 relevant at trial. Importantly, discovery revealed that the Defendants have left the California
19 gasoline market. The People’s expert case showed that Defendants’ conduct caused \$127.8
20 million in harm from inflated gasoline prices to California natural persons, allowing the Parties to
21 properly value the case in mediation. (*Id.* ¶ 13.) Following fact and expert discovery, Defendants
22 filed multiple motions for summary judgment and summary adjudication, which brought clarity to
23 the legal issues that Defendants intended to contest at trial, and potentially beyond. (*Id.* ¶ 15.)

24 In light of the significant progression of the case, the Parties were in a strong position to
25 determine the Settlement is fair, reasonable, and adequate, and the Court is well-positioned to
26 confirm this analysis. (See *Carter*, 224 Cal.App.4th at 821 [“adequate investigation and
27 discovery by experienced counsel” supported the presumption of fairness].)

28 **Experience and Views of Counsel and Presence of a Governmental Participant.** The

1 judgment of experienced counsel that the negotiated settlement is a fair, reasonable, and adequate
2 result is entitled to considerable weight. (See *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980)
3 87 F.R.D. 15, 18, *aff'd* (9th Cir. 1981) 661 F.2d 939.) In this case, the Settlement was negotiated
4 by attorneys in the Attorney General’s antitrust section, who have considerable experience in
5 antitrust, complex, and class action litigation. (Jorgenson Decl. ¶¶ 2, 3, 10.)

6 The judgment of experienced counsel for the People is entitled to additional weight here, as
7 the Attorney General has been charged by the California Legislature with protecting the state and
8 its citizens. The Court may place greater weight on the opinion of experienced counsel when “a
9 settlement [was] negotiated by government attorneys committed to protecting the public interest.”
10 (*In re Lorazepam & Clorazepate Antitrust Litig. v. Mylan Labs* (D. D.C. 2002) 205 F.R.D. 369,
11 380; accord, e.g. *State of California v. eBay, Inc.* (N.D. Cal. Sept. 3, 2015, No. 5:12-cv-05874-
12 EJD) 2015 U.S. Dist. LEXIS 118060, *16 [in final approval, when government lawyers
13 negotiated the settlement, the judgment of experienced counsel is entitled to considerable weight,
14 “as the State [of California] is charged with the trust of protecting the state and its citizens.”]; *In*
15 *re Toys R Us Antitrust Litigation* (E.D.N.Y. 2000) 191 F.R.D. 347, 351 [“The participation of the
16 State Attorneys General furnishes extra assurance that consumers’ interests are protected.”].)

17 **No Objections.** California natural persons have filed no objections to this settlement,
18 another indication of the Settlement’s fairness. The absence of objections, particularly in
19 combination with the small number of exclusions and high claims rate (discussed *infra*, I.b.)
20 demonstrates that California natural persons want to participate in the settlement distribution.
21 This further confirms that the Settlement should be afforded the presumption of fairness.

22 **B. The Settlement Is Fair, Adequate, and Reasonable**

23 The amount of the Settlement, the risk of further litigation, and the reaction of the class
24 members to the Settlement confirm that the Settlement is in fact “fair, adequate, and reasonable.”
25 (*Dunk* (1996) 48 Cal.App.4th at 1801; see also *Kullar*, 168 Cal.App.4th at 133 [in assessing
26 settlement, “the court is not to try the case, [but should] consider and weigh the nature of the
27 claim, the possible defenses, the situation of the parties, and the exercise of business judgment in
28 determining whether the proposed settlement is reasonable.”] (internal citations omitted).)

1 **Amount of Settlement.** The Settlement itself is an excellent result for the California natural
2 persons. The \$37,500,000 of the Settlement apportioned to the *parens patriae* claim represents
3 29.3% of the \$127.8 million in damages the People intended to ask the jury to award. (Jorgenson
4 Decl. ¶¶ 13, 16, 19.) The monetary recovery is in the upper range of recovery rates in antitrust
5 settlements approved by courts. (See, e.g., *Shane Group, Inc. v. Blue Cross Blue Shield of*
6 *Michigan* (E.D. Mich., Sept. 30, 2019, No. 10-CV-14360) 2019 WL 4746744, at *7 [approving
7 settlement providing 25% of the estimated overcharge, noting that “[c]ourts have approved
8 settlements in class action antitrust settlements anywhere between 5.35% to 28% of estimated
9 damages in [] complex antitrust class actions.”]; *In re: Cathode Ray Tube (Crt) Antitrust*
10 *Litigation* (N.D. Cal., July 7, 2016, No. C-07-5944 JST) 2016 WL 3648478, at *7 [settlement for
11 20% of single damages is “without question a good recovery and firmly in line with the
12 recoveries in other cases.”]; *In re Currency Conversion Fee Antitrust Litigation* (S.D.N.Y., Nov.
13 8, 2006, No. 01 MDL 1409) 2006 WL 3247396, at *6 [approving settlement for “roughly 10-
14 15%” of the allegedly illegal fees collected from the class].) Consumers will also receive a cash
15 payment, rather than a coupon or other benefit—a strong indicator of a beneficial settlement.
16 (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 964.)⁴

17 In addition to the monetary recovery to Eligible Consumers, the Settlement provides
18 forward-looking benefits to all California natural persons, even those who are not eligible to
19 receive a payment. The \$12,500,000 in UCL civil penalties will be split between the Attorney
20 General’s Office and the City and County of San Francisco, funding enforcement of antitrust and
21 consumer protection laws by those entities, to the benefit of all California citizens. (Bus. & Prof.
22 Code § 17206, subd. (c).) (Jorgenson Decl. ¶ 16.) Additionally, any funds remaining after
23 attempted distribution of the Cartwright Act Settlement Fund will be awarded through a *cy pres*
24 grant, which will increase market knowledge and tools to prevent future market manipulation,
25 also to the benefit of all Californians. (*Id.* at ¶ 17.) Though Defendants have represented that

26 ⁴ Courts assess the reasonableness of settlements, including antitrust settlements, by comparing
27 the settlement to *actual* damages only, not treble damages. (See *Rodriguez v. West Publishing*
28 *Corp.* (9th Cir. 2009) 563 F.3d 948, 964). Considering treble damages effectively “force[s]
defendants automatically to concede guilt at the outset” and gives too great an advantage to
plaintiffs. (*City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 459.)

1 they have left the California gasoline market, they have agreed to ensure that, should they reenter
2 the market, they will ensure adequate processes to comply with their legal obligations. (*Id.* at ¶
3 18.) And all market participants, including Defendants, should they reenter the market, will be
4 bound by new industry regulations⁵ that grew out of this litigation. (*Id.* at ¶ 26.)

5 **The Risk, Expense, and Likely Duration of Further Litigation.** In determining that
6 Settlement was in the best interests of California natural persons, the Attorney General reasonably
7 analyzed and considered the risks of continuing to trial, the resources that would be required to
8 litigate the case to its conclusion, and the likelihood that even if the case were to resolve in the
9 People’s favor, compensation to natural California persons might still be many years away,
10 following appeals on any ruling adverse to Defendants. (Jorgenson Decl. ¶¶ 15, 19, 28.)

11 Despite the Attorney General’s overall confidence in this case, he recognized that
12 significant hurdles would need to be overcome to prevail at trial. At the time of settlement,
13 Defendants had filed nine motions for summary judgment and summary adjudication, as well as
14 one *Sargon* motion. Those motions raised some significant legal questions, particularly as to
15 first-impression legal issues as to aggregate and “umbrella” damages in *parens patriae* claims.
16 The loss of any one of these motions could well have significantly limited the case. The absence
17 of cooperating witnesses and gaps in the evidentiary record revealed during discovery also would
18 have posed significant challenges at trial. (*Id.* ¶ 15, 27.)

19 The cost of proceeding to trial also factored into the Attorney General’s decision to settle
20 the case. The costs, in terms of the personnel resources of the Attorney General’s Office that
21 would have needed to be dedicated to the case, and the cost of outside economic experts, would
22 have been considerable. Those resources would not have been available to devote to other
23 enforcement matters affecting the public interest. (*Id.* ¶ 29.) Finally, even if the People were to
24 prevail at trial, they would likely have faced appeals on any ruling adverse to Defendants, further
25 delaying any compensation to California natural persons. (*Id.* ¶ 28.) These factors weighed in

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27 ⁵ In parallel with this litigation, the Attorney General sought to regulate the industry in other
28 ways, including co-sponsoring and drafting legislation (SBx1-2). The new legislation was signed
into law on March 28, 2023. These regulations add strict new regulatory requirements for traders
(and others) transacting in the California gasoline market and further regulate oil refineries.

1 favor of a settlement that provided significant and immediate compensation to Californians.

2 **Very Positive Reaction of California Natural Persons.** Perhaps the strongest indication of
3 this Settlement’s fairness, reasonableness, and adequacy comes from the overwhelmingly positive
4 reaction of California natural persons: a very high claims rate, coupled with few requests for
5 exclusion and no objections to the Settlement. After the significant notice campaign, discussed
6 *supra*, the Settlement yielded an uncommonly high claims rate—16.6%-24.9%—significantly
7 higher than estimates. Moreover, the high claims rate occurred alongside only 253 requests for
8 exclusion and no objections to the Settlement. (Cooley Decl. ¶¶ 27-28.)

9 The public reaction to this Settlement ranks among the top tier of other cases in which
10 settlements were approved, and far exceeds the sort of response that other courts have found
11 sufficient. (See *In re Facebook Biometric Info. Privacy Litig.* (N.D. Cal. Feb. 26, 2021, No. 15-
12 cv-03747-JD) 522 F.Supp.3d 617, 629 [a 22% claims rate in a class of 6.9 million, with 109 opt-
13 outs and three objections, was “an unprecedentedly positive reaction by the class” that “weighs in
14 favor of final approval.”].) Indeed, a claims rate of over 7% is considered “large” or “higher than
15 average.” (*Couser v. Comenity Bank* (S.D. Cal. May 17, 2015, No. 12cv2484-MMA-BGS) 125
16 F.Supp.3d 1034, 1043-1044; *Sullivan v. DB Invs., Inc.* (3d Cir. 2011) 667 F.3d 273, 329 n.60 (en
17 banc) [“claims rates in consumer class action settlements ‘rarely exceed 7%, even with the most
18 extensive notice campaigns.’”].) This very positive reaction of California natural persons to this
19 settlement validates the fundamental fairness, reasonableness, and adequacy of the Settlement,
20 and confirms that the Settlement should be approved.

21 **II. THE NOTICE PROVIDED COMPLIES WITH THE CARTWRIGHT ACT**

22 The Cartwright Act requires that California natural persons on whose behalf the claims
23 were brought must be notified of a settlement and given the opportunity to exclude themselves.
24 (Bus. & Prof. Code §§ 16760, subs. (b)(1) and (c).) The notice must satisfy due process, and
25 must be given at least by publication. (*Id.*) Due process requires “notice reasonably calculated to
26 apprise interested parties of the pendency of the action affecting their property interest and an
27 opportunity to present their objections.” (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 829.)
28 Though notice need not be given to each affected person individually, notice consistent with due

1 process must have “a reasonable chance of reaching a substantial percentage of [affected
2 persons].” (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 861 (internal citations and
3 quotations omitted).) When indirect notice methods are required because the identity of injured
4 people are unknown, federal courts have noted that “notice plans estimated to reach a minimum
5 of 70 percent [of eligible claimants] are constitutional.” (*Edwards v. National Milk Producers
6 Federation* (N.D. Cal., June 26, 2017, No. 11-CV-04766-JSW) 2017 WL 3623734, at *4.)

7 The People supplied notice to California natural persons in a manner approved by the Court
8 in its Amended Order. The Court found the notice program proposed in the People’s Plan of
9 Allocation and Notice Program “constitute[d] the best notices practicable under the
10 circumstances” which “satisfies the requirements of due process, and complies with applicable
11 law.” (Amended Order. at p. 2.) Indeed, Verita’s robust notice campaign is estimated to have
12 reached 88% of California natural persons. Verita’s notice campaign was supplemented by press
13 releases, social media posts, and news interviews from the Attorney General. (Jorgenson Decl. ¶
14 23.) As the Court previously confirmed, the notice documents were clear, understandable, and
15 apprised California natural persons of all relevant information needed to make a claim, exclude
16 themselves, or object. (Amended Order at p.2.)

17 The success of the notice campaign confirms that notice was broadly received and
18 understood. Verita estimates that the final claims rate will be between 16.6%-24.9%, far above
19 expectations, and far exceeding claims rates that courts have previously found indicative of
20 adequate notice. (Cooley Decl. ¶ 27; see, e.g. *supra*, I.b.; *Zepeda v. PayPal, Inc.* (N.D. Cal.,
21 March 24, 2017. No. C 10-2500 SBA) 2017 U.S. Dist. LEXIS 43672, *48-49 [observing that a
22 3.8% claims rate “indicate[s] that the notice process has been remarkably successful].) In sum,
23 the notice given meets all requirements of the Cartwright Act’s *parens patriae* provisions.

24 **III. THE DISTRIBUTION PLAN COMPLIES WITH THE CARTWRIGHT ACT**

25 As detailed previously in the Motion to Give Notice, any natural person who: (1) purchased
26 gasoline in the ten counties in Southern California where the People’s experts found consumer
27 impact between February 20, 2015 and November 10, 2015, and (2) was a resident of California
28 at any point between May 4, 2020 and the present, was eligible to file a claim and receive a pro

1 rata portion of the Cartwright Act Settlement Fund. The method of distribution and pro rata
2 allocation are reasonable methods of apportioning the funds. Given that the identities of
3 individuals, dates of purchase, and the precise amounts of gasoline purchased in 2015 are not
4 reasonably ascertainable, it is reasonable to afford each natural-person California resident who
5 purchased gasoline in Southern California between February 20 and November 10, 2015 an
6 equivalent opportunity to recover out of the net settlement fund. (*Rieckborn v. Velti PLC* (N.D.
7 Cal., Feb. 3, 2015, No. 13-CV-03889-WHO) 2015 WL 468329, at *8 [“[A]n allocation formula
8 need only have a reasonable, rational basis, particularly if recommended by experienced and
9 competent counsel.”].) Use of a pro rata allocation plan “has frequently been determined to be
10 fair, adequate, and reasonable in comparable cases.” (See *In re: Cathode Ray Tube (Crt)*
11 *Antitrust Litigation* (N.D. Cal., Dec. 17, 2015, No. 14-CV-2058 JST) 2015 WL 9266493, at *8.)

12 The Attorney General intends to distribute the entire Cartwright Act Settlement Fund, less
13 attorneys’ fees, taxes, and administration expenses, to California natural persons who filed a valid
14 claim. Any funds that remain after electronic payment and paper check distribution methods are
15 attempted will be provided as a *cy pres* grant to a University of California or California State
16 University study for developing tools to detect and deter future gasoline market manipulation, or
17 increase the study of the California gasoline and transportation energy market in California.

18 The Attorney General’s plan has been thoroughly considered and does ensure that the
19 California residents who were injured by the conduct alleged in the Complaint are “afforded a
20 reasonable opportunity to secure his or her appropriate portion of the monetary relief” or are
21 otherwise “provid[ed] value” through “*cy pres* or fluid recovery mechanisms” as required under
22 the Cartwright Act. (Bus. & Prof. Code § 16760, subd. (e)(1).)

23 CONCLUSION

24 This Settlement is a strong result that provides meaningful benefits to California natural
25 persons. It represents a hard-fought settlement, after three years of contentious litigation, and has
26 prompted an unprecedentedly positive reaction from California natural persons. Accordingly, the
27 People respectfully request that Court enter the accompanying Proposed Order Granting the
28 Motion for Final Approval and the Proposed Final Judgment.

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Dated: January 31, 2025

Respectfully submitted,

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