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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

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

Case No. CGC-20-584456

**MEMORANDUM OF POINTS
AUTHORITIES IN SUPPORT OF MOTION
TO GIVE NOTICE OF PARENS PATRIAE
SETTLEMENT**

Date: August 2, 2024
Time: 10:00 A.M.
Dept: 613
Judge: The Honorable Andrew Y.S.
Cheng
Action Filed: May 4, 2020

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1 **I. INTRODUCTION**

2 The People of the State of California request that the Court preliminarily assess the
3 settlement reached with defendants Vitol Inc., SK Energy Americas Inc., and SK Trading
4 International Co. Ltd. (collectively “Defendants”) and approve the proposed notice plan. After a
5 thorough investigation, three years of litigation, extensive and voluminous discovery, and lengthy
6 settlement negotiations, the People of the State of California have reached a precedent-setting
7 settlement with Defendants for \$50,000,000 dollars, including \$37,500,000 to be distributed to
8 eligible California consumers and a \$12,500,000 civil penalty. If finally approved, the Settlement
9 will resolve all of the state court claims and cross-claims raised in this litigation, including
10 California’s allegations.

11 The Attorney General brought this action in his capacity as the chief law enforcement
12 officer of California under the Unfair Competition Law, and as *parens patriae* under the
13 Cartwright Act on behalf of natural persons in California who purchased gasoline at inflated
14 prices due to Defendants’ conduct. The People alleged that Defendants took advantage of market
15 disruption following a February 2015 explosion at a gasoline refinery in Torrance, California to
16 engage in a scheme to manipulate gas price indices for their own profit.

17 The settlement releases those claims and provides recovery for natural persons residing in
18 California who purchased gas in Southern California between February 20, 2015 and November
19 10, 2015. The People submit that the recovery afforded to natural persons in the settlement will
20 likely be found fair, reasonable, and adequate at final approval such that the Court should approve
21 issuing notice of the settlement. The plan of notice and distribution to eligible consumers
22 comports with the statutory requirements of the Cartwright Act and with due process, and is more
23 than adequate to provide an opportunity for California natural persons to submit a claim or
24 exclude themselves from the settlement.

25 The People respectfully request that the Court enter the accompanying proposed order
26 which (1) finds the settlement to be sufficiently fair and reasonable for the Court to approve
27 issuing notice of the settlement; (2) finds that the proposed plan of allocation and notice program
28

1 comports with Business and Professions Code section 16760, subdivisions (b)(1) and (e)(1) and
2 due process; and (3) set a final approval schedule.

3 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

4 This case was filed following the Attorney General’s years-long investigation of market-
5 spiking conduct in the California gasoline market that occurred following a major refinery
6 explosion in early 2015. As part of that investigation, the Attorney General corresponded with
7 more than 20 different entities and agencies, obtained more than 2.6 million documents, and
8 conducted numerous witness interviews. (Declaration of Michael Jorgenson (“Jorgenson Decl.”)
9 ¶ 4.)

10 The complaint filed in this case on May 4, 2020 alleged a lengthy conspiracy whereby
11 Defendants—large multinational oil and gas trading conglomerates—manipulated the California-
12 specific gas market for their own pecuniary benefit. The People alleged that the Defendants
13 traded small volumes of gasoline products at artificially high prices with the intent of spiking the
14 California gasoline price indices to benefit their own large volume sales of gasoline products that
15 were pegged to those indices. Spikes in the gasoline price index caused higher prices for retail
16 gasoline, harming Californians who paid inflated prices for gasoline at the pump. The People
17 sought damages on behalf of California residents, penalties, and injunctive relief.

18 Initial motion practice was hotly contested. Defendants filed a demurrer to the Complaint,
19 which the Court denied. Defendants filed a sweeping cross-complaint. The People filed a
20 demurrer to the cross-complaint, which the Court also denied. Defendant SK Trading
21 International Co. Ltd. (“SKTI”) filed a motion to quash service of summons for lack of personal
22 jurisdiction. Following nearly six months of jurisdictional discovery, plagued by late-produced
23 records and additional briefing, the Court denied the motion to quash. (Jorgenson Decl. ¶ 7.)
24 SKTI appealed to the Court of Appeal, which affirmed the Court’s order in a published decision.
25 (*SK Trading International Co. Ltd. v. Superior Court of San Francisco County* (2022) 77
26 Cal.App.5th 378, 392 [292 Cal.Rptr.3d 246, 256], review denied (July 13, 2022).) SKTI then
27 filed a Petition for Review to the California Supreme Court, which ultimately denied the Petition.
28 In total, the People filed three appellate briefs. (*Ibid.*)

1 Fact discovery taken by both sides during two and a half years of litigation was extensive.
2 (Jorgenson Decl. ¶ 8.) The parties collectively produced more than 2,000,000 documents,
3 subpoenaed documents from approximately 30 third-parties, and took more than 50 depositions.
4 The parties each served multiple sets of requests for production, interrogatories, and requests for
5 admission. Discovery was also hard-fought, with the Court presiding over seven informal
6 discovery conferences and two motions to compel. (*Ibid.*)

7 Both sides presented fully developed expert opinions. (Jorgenson Decl. ¶ 10.) The People
8 served four opening expert reports, three rebuttal reports, and four reply reports. Defendants
9 collectively served five opening expert reports, five rebuttal reports, and five reply reports. The
10 People’s experts opined that \$127.8 million in harm from inflated gas prices was attributable to
11 Defendants’ conduct. (*Ibid.*) By the time of the parties’ preliminary settlement, the parties had
12 also conducted six expert depositions. (Jorgenson Decl. ¶ 11.)

13 Defendants filed nine separate motions for summary adjudication or summary judgment in
14 March and April 2023. (Jorgenson Decl. ¶ 12.) Defendants argued that a host of legal issues
15 precluded liability under the Cartwright Act, including that the People lacked standing to bring
16 Cartwright Act claims premised on the impact of defendant’s alleged index-manipulation conduct
17 in the market for retail gasoline, i.e., “umbrella damages,” and that the Cartwright Act’s *parens*
18 *patriae* provision allowing for proof of aggregate damages did not comport with due process.
19 Defendants also challenged the People’s Unfair Competition Law (UCL) claims, arguing that,
20 *inter alia*, the Commodities Exchange Act was inapplicable to the challenged conduct, the People
21 lacked reliable evidence of violations of either the Commodities Exchange Act or the California
22 Commodities Law, and the UCL claim could not stand where the predicate Cartwright Act claim
23 failed. Defendant SKTI also moved for motion for summary judgment, contending that the
24 evidence adduced by the People was insufficient to prove alter ego or agency liability. Finally,
25 Defendants also filed a *Sargon* motion to exclude the People’s causation expert. (*Ibid.*)

26 Shortly before the People’s deadline to file oppositions to Defendants’ summary judgment
27 and summary adjudication motions, the parties attended a mediation in front of the Honorable
28

1 Layn Phillips on May 2, 2023.¹ (Jorgenson Decl. ¶ 15.) Following an approximately 12 hour
2 mediation, the parties reached a tentative settlement framework. (*Ibid.*) Negotiations on a
3 detailed term sheet continued for more than a week thereafter. After extensive back and forth
4 negotiations, a final settlement was ultimately signed by all parties on October 11, 2023 (the
5 “Settlement”). (*Ibid.*) The Settlement is attached to the Declaration of Michael Jorgenson in
6 support of this Motion to Give Notice of *Parens Patriae* Settlement as Exhibit A.

7 **III. SUMMARY OF SETTLEMENT TERMS**

8 **A. Monetary Terms**

9 Defendants have agreed to make a one-time cash payment of \$50 million to satisfy the
10 People’s claims, \$37.5 million of which goes to a *parens patriae* “Cartwright Act Settlement
11 Fund,” and \$12.5 million of which is paid as a civil penalty into a “Section 17206 Settlement
12 Fund.” (Settlement Agreement, Exhibit A.) The Cartwright Act Settlement Fund will also cover
13 any award for attorneys’ fees and expenses and all costs associated with administration of the
14 settlement. (Settlement Agreement §§ 2.6, 14.) The People are solely responsible for
15 administration of claims. (*Id.* § 2.7.) No funds will revert to Defendants.

16 **B. Forward-Looking Conduct Terms**

17 Defendants have repeatedly represented to the People and the Court in their filings that they
18 have left the California gas market (see e.g., Defs.’ Separate Statement Undisputed Facts Supp.
19 Mot. Summ. Adj. re: Count 3 of Defs.’ Cross-Compl. at ¶¶ 2, 4), which significantly reduces the
20 need for injunctive relief against them. (Jorgenson Decl. ¶ 14.) However, Defendants have
21 agreed that, “to the extent they trade, sell, buy, or import Relevant Products in California in the
22 future, [Defendants] will ensure that they have adequate processes in place to comply with their
23 legal obligations.” (Settlement Agreement § 12.)

24 In parallel with this litigation, the Attorney General sought to regulate the industry in other
25 ways, including co-sponsoring and drafting legislation (SBx1-2). The new legislation was signed
26 into law by Governor Newsom on March 28, 2023. It adds strict new regulatory requirements for

27 ¹ The Parties scheduled and attended this mediation in compliance with this Court’s order that the
28 parties complete their first session of mediation no later than May 31, 2023. (Order after
November 16, 2022 Case Management Conference, *People v. Vitol et. al.*, CGC-20-584456.)

1 traders (and others) transacting in the California gas market and creates a new industry watchdog
2 (the Division of Petroleum Market Oversight contained within the California Energy
3 Commission) with far-reaching investigative and subpoena authority. These reporting and
4 monitoring regulations will substantially improve detection and prosecution of misconduct in the
5 California gas industry, including the spot market trading activity that spurred this litigation. This
6 groundbreaking legislation captures all of the additional reporting and monitoring types of relief
7 that the People would have potentially sought in the form of injunctive relief here.

8 Combined with the reporting and monitoring functions implemented by way of SBx1-2,
9 Defendants now have an affirmative obligation to both comply with their legal obligations and to
10 also ensure that they put in place all of the necessary internal processes to comply. Thus, while
11 the People are not asking the Court to place Defendants under a specific injunction as part of the
12 Settlement, all of the injunctive relief that the People may have otherwise sought is being
13 obtained through the Settlement's terms. (Jorgenson Decl. ¶ 14.)

14 **C. Scope of Release**

15 In consideration of the settlement payment, the People and Defendants each agree to release
16 all claims that were or could have been asserted in this action or that relate to the facts and
17 conduct alleged in the action, including claims of natural persons residing in the state of
18 California on whose behalf the Cartwright Act claim was brought. (Settlement Agreement § 8.)

19 **IV. PROPOSED PLANS OF ALLOCATION, NOTICE, AND DISTRIBUTION**

20 Proposed plans for allocating, noticing, and distributing the settlement fund are presented
21 below. The detailed Plan of Allocation and Notice Program, for which the People seek approval,
22 is attached as Exhibit B to the Jorgenson Declaration.

23 **A. Proposed Plan of Allocation**

24 The \$37.5 million portion of the Settlement allocated to the People's *parens patriae*
25 Cartwright Act claim (net of Court-approved attorneys' fees, litigation and settlement
26 administration expenses) will be distributed to natural person California residents who purchased
27 gasoline in the ten counties comprising Southern California between February 20, 2015 and
28 November 10, 2015 ("Eligible Consumers"), as described in the Allocation Plan and Notice

1 Program. (See Jorgenson Decl., Exhibit B.) Because it is not practicable to ascertain the amount
2 of gasoline purchased by any particular natural person nine years ago, nor whether such gasoline
3 was purchased on the specific days most impacted by the alleged conduct in this case, no
4 additional weighting will be applied. (Jorgenson Decl. ¶ 22.) Instead, each California resident
5 who attests that they purchased gasoline in any of the impacted counties in Southern California
6 between February 20, 2015 and November 10, 2015 and submits a valid claim will be entitled to a
7 pro rata portion of the settlement fund. (*Ibid.*)

8 The settlement funds available for distribution will depend on the costs of notice and
9 distribution, and the amount of attorneys’ fees and litigation expenses awarded by the court. The
10 costs of notice and distribution are estimated between 2.8 and 3.2 million dollars, depending on
11 the number of claims filed. (See Declaration of Zachary Cooley (“Cooley Decl.”) ¶ 33.) The
12 attorneys’ fees and litigation expenses requested by the Attorney General will be itemized in a
13 forthcoming motion preceding the final approval hearing, but will not collectively exceed 25% of
14 the \$37.25 million Cartwright Settlement Fund. (Jorgenson Decl. ¶ 25.) The People understand
15 that counsel for the putative federal class action in the Northern District of California, *In re*
16 *California Gasoline Spot Market Antitrust Litigation*, Case No. 20-cv-03131, in which a
17 Settlement Agreement was signed on May 30, 2024, may additionally seek a fee award out of the
18 Cartwright Act Settlement Fund in this case. (*Id.* at 26.) The People take no position at this time
19 on the legal propriety of such a motion, but note that putative federal class counsel materially
20 contributed to fact and expert development that benefitted the natural persons whose claims will
21 be released by the Settlement.

22 Any remaining uncashed checks or otherwise undistributed funds following the primary
23 distribution will be dedicated to a *cy pres* fund for a University of California or California State
24 University study for developing tools to detect and deter future market manipulation, or increase
25 the study of the California gas and transportation energy market in California. (Jorgenson Decl. ¶
26 24.)

1 **B. Proposed Plan of Notice and Distribution**

2 California has retained Verita Global, LLC (“Verita”),² a company specializing in
3 providing notice in class action cases, addressing consumer inquiries, and processing claims, to
4 administer the settlement. Verita has extensive experience in state and federal class actions.
5 (Cooley Decl. ¶¶ 3, 5.)

6 To eliminate potential consumer confusion and realize potential synergies, the People have
7 worked together with federal class counsel in *In re California Gasoline Spot Market Antitrust*
8 *Litigation* to coordinate certain aspects of notice.³ All forms of notice provided in both cases will
9 link to a single Settlement Website, where visitors can be funneled to the appropriate settlement.
10 (Cooley Decl. ¶27.) A joint press release will be issued to general media outlets and journalists
11 nationwide. (Cooley Decl. ¶26, Exhibit 5.) Additionally, the digital media notice campaigns will
12 coincide. (Cooley Decl. ¶¶22-25.) The digital media campaign employed by putative federal
13 class counsel may also reach California Residents.

14 The Notice Program will fully apprise California Residents⁴ of the claims asserted by
15 California, the Settlement, and the information needed to make informed decisions about the
16 Settlement. The People’s Notice Program includes two forms of direct notice—a Postcard Notice
17 and an E-mail Notice—sent directly to Southern California households and residents, providing the
18 most salient details concerning the case, settlement, and legal rights. (Cooley Decl. ¶¶ 12-17,
19 Exhibits 1 and 2.) The Notice Program also includes a Publication Notice for newspaper
20 publication, and a Digital Media Notice for online ad impressions. (Cooley Decl. ¶¶ 18-26,
21 Exhibits 3 and 4.) The Long Form Notice will be published on California’s Settlement website,
22 together with supporting documents. (Cooley Decl. ¶ 27, Exhibit 6.)

23 The Postcard Notice will be mailed to potential claimants via standard mail to all
24 households in 10 Southern California counties (Los Angeles, San Diego, Orange, Riverside, San

25 _____
26 ² Formerly, KCC Class Action Services, LLC.

27 ³ Federal Class Counsel’s motion for preliminary approval was filed on July 1, 2024, and a
28 preliminary approval hearing is scheduled for August 9, 2024.

⁴ As used in this brief, California Residents means “natural persons residing in the state” on
whose behalf this action was brought as used in Business and Professions Code, section 16760,
subdivision (a).

1 Bernardino, Kern, Ventura, Santa Barbara, San Luis Obispo, and Imperial). (Cooley Decl. ¶ 8.)
2 The email notice will be sent to all email addresses that were associated with addresses in the 10
3 Southern California counties during 2015. (*Id.* at ¶ 14-15.)

4 Verita will publish the Publication Notice in 31 major newspapers throughout California,
5 including seven Spanish-Language Newspapers or websites covering Southern California. (*Id.* at
6 ¶ 19-21.) The Digital Media Notice will be displayed during a targeted 63-day digital media
7 campaign that will include 81.3 million digital media impressions distributed over various
8 websites, mobile apps, and Facebook. (*Id.* at ¶ 22.) The impressions will be primarily targeted to
9 adults present in Southern California (likely Eligible Claimants) but a portion will also be shown
10 to adults located elsewhere in California as well as those associated with a prior Southern
11 California location. (*Id.* at ¶ 23.)

12 The Postcard Notice, the E-mail Notice, and the Publication Notice describe the litigation
13 with varying levels of detail, and explain California Residents' options and deadlines to file a
14 claim or exclude themselves from the Settlement. (*Id.* at ¶¶ 12, 15, 19, Exhibits 1-3.) The Digital
15 Media Notice briefly informs California Residents about the Settlement and directs viewers to a
16 Settlement website address to learn more. (Cooley Decl., ¶ 22, Exhibit 4.)

17 The Long Form notice provides additional information about the nature of the litigation;
18 advises impacted persons of their rights and how any action or inaction will affect those rights;
19 provides instructions on submitting a claim form or exclusion form; advises impacted persons that
20 they may appear at the approval hearing; includes contact information for the settlement
21 administrator; and advises impacted persons that, in their application for attorneys' fees and costs,
22 the Attorney General's Office will seek reimbursement of attorneys' fees and costs of up to 25%
23 of the monetary component of the Settlement, and that federal plaintiffs' counsel may
24 additionally request a fee award. (Cooley Decl., Exhibit 1.)

25 All forms of notice inform California Residents of the Settlement Website, at
26 www.CalGasLitigation.com. The Settlement Website will host the Complaint, the Settlement,
27 other relevant court documents, including this Motion, the Long-Form Notice, and the claim and
28 exclusion forms. (Cooley Decl. ¶ 27.) A toll-free telephone number, and an email address will

1 be maintained by Verita so that California Residents may conveniently request Settlement-related
2 information or documents. (*Id.* at ¶ 30.) California will also post a press release on the website
3 of the Attorney General, which will be accessible to media and news outlets and to California
4 Residents and will link to the Settlement Website with notice documents and other relevant
5 materials. (*Id.* at ¶ 21.)

6 Claim forms will be available on the Settlement Website and can either be submitted
7 electronically or printed out and mailed to the Settlement Administrator. To submit a claim,
8 claimants must certify, under penalty of perjury: (a) they purchased gasoline between February 20
9 and November 19, 2015 in one or more Southern California counties; and (b) their status as a
10 California Resident. (Jorgenson Decl. ¶ 19; Cooley Decl. ¶ 8, Exhibit 7.) Given the challenges of
11 proving a purchase that occurred approximately nine years ago, no proof of purchase is required.
12 (Jorgenson Decl. ¶ 22.) To minimize the possibility of fraud, claimants will be required to
13 provide their drivers' license state and number, and Verita will employ back-end techniques to
14 detect digital indicators of fraud. (Cooley Decl. ¶ 28, Exhibit 7; Jorgenson Decl. ¶ 22.)

15 Exclusion forms will also be available on the Settlement Website and can be submitted
16 electronically or via mail. (Cooley Decl. ¶ 27.) Exclusion requests must set forth the name of the
17 individual seeking exclusion and be signed or submitted physically or electronically by the
18 individual seeking exclusion (or his or her individual legal representative, but not counsel
19 purporting to act collectively on behalf of capable individuals who have not consented to such
20 representation). (Cooley Decl., Exhibit 6 at p.4.)

21 After submitted claims have been reviewed, Verita will prepare a Distribution Report for
22 review and approval by the Court at the final approval hearing. (*Id.* at ¶ 29.) The Distribution
23 Report will provide the results of the notice campaign, tally all submissions deemed valid, and
24 estimate the pro rata payment based on the estimated net settlement fund and number of claims
25 filed. (*Id.*) Upon final approval of a distribution plan from the Court, Verita will calculate the
26 final net settlement funds and distribute them on a pro rata basis to Eligible Consumers. (*Id.*)
27 Both check and electronic payment will be available at claimants' option. (*Id.*)

28

1 **V. LEGAL STANDARD**

2 *Parens patriae* actions require that natural persons be given notice and the opportunity to
3 exclude themselves from settlements, and also require the Court to approve a final settlement.
4 (Bus. & Prof. Code, § 16760, subs. (b), (c).)⁵ Although the Cartwright Act does not require any
5 form of settlement approval before issuing notice, it logically follows that preliminary Court
6 review and assessment of a settlement is appropriate so that the time and expense of notice is not
7 wasted on a settlement that is unlikely to be approved. This is consistent with class action
8 procedure under California law, which allows parties to move for preliminary approval of a
9 settlement before issuing notice. (Cal. Rules of Court, rule 3.769(c)[“Any party to a settlement
10 agreement may serve and file a written notice of motion for preliminary approval of the
11 settlement.”]).

12 The *parens patriae* statute does not specify the procedure or standard to apply in
13 determining whether to approve or preliminarily approve a settlement. (Bus. & Prof. Code, §
14 16760, subd. (c) [“An action under paragraph (1) of subdivision (a) shall not be dismissed or
15 compromised without the approval of the court, and notice of any proposed dismissal or
16 compromise shall be given in any manner as the court directs.”].) There are also no published
17 California cases setting forth the standard to apply in determining whether to grant preliminary
18 approval before issuing notice.

19 Federal courts have typically adopted class action procedures and standards to evaluate
20 settlements in *parens patriae* actions brought by state attorneys general. (See *In re Mid-Atlantic*
21 *Toyota Antitrust Litigation* (D. Md. 1983) 564 F.Supp. 1379, 1383; see also *California v. eBay,*
22 *Inc.* (N.D. Cal., Sept. 3, 2015, No. 5:12-CV-05874-EJD) 2015 WL 5168666, at *2 [“Neither the
23 Clayton Act nor the Cartwright Act sets forth a standard by which proposed *parens patriae*
24 settlements are approved, thus federal courts have adopted the approval procedure and standards
25 used for approval in class action settlements.”].)

26
27 ⁵ The Parties agree that Court approval is not required with respect to settlement of the UCL
28 claims; however, the settlement reflected herein is a complete resolution of the claims asserted in
this Action and the parties are seeking approval of the Settlement Agreement in full.

1 A federal court determining whether preliminary approval is appropriate does not finally
2 determine whether the settlement is fair. (*In re Mid-Atlantic Toyota Antitrust Litigation, supra*,
3 564 F.Supp. at p. 1384, citing Manual for Complex Litigation § 1.46.) Instead, preliminary
4 approval “is simply a determination that there is, in effect, ‘probable cause’ to submit the
5 proposal to members of the class and to hold a full-scale hearing on its fairness.” (*Ibid.*)

6 **VI. ARGUMENT**

7 **A. Notice is Appropriate Because the Settlement is Likely to be Approved.**

8 Preliminary approval is appropriate “if the preliminary evaluation of the proposed
9 settlement does not disclose grounds to doubt its fairness or other obvious deficiencies . . . and
10 appears to fall within the range of possible judicial approval.” (*UFCW & Employers Benefit*
11 *Trust, et al. v. Sutter Health et al.*, (Super. Ct. S.F. City and County, 2014, CGC-14-538451,
12 Order Granting Plaintiffs’ Motion for Preliminary Approval of Settlement [March 9, 2021]); *In re*
13 *NVIDIA Corp. Derivative Litigation* (N.D. Cal., Dec. 22, 2008, No. C-06-06110-SBA(JCS)) 2008
14 WL 5382544, at *2, quoting Manual for Complex Litigation § 30.41, at 237 (3d ed. 1995).)

15 **1. The Settlement was negotiated at arm’s length, supported by** 16 **extensive discovery, and conducted by experienced counsel**

17 There is no reason to doubt the Settlement’s fairness. The Settlement was the result of
18 careful negotiations conducted by experienced counsel following years of investigation and
19 litigation, on the eve of potentially dispositive summary judgment rulings.

20 The Settlement was reached through arms-length negotiation between experienced lawyers
21 in the Attorney General’s antitrust section, who have considerable experience in antitrust,
22 complex, and class action litigation. (Jorgenson Decl. ¶¶ 2, 15.) Settlement negotiations were
23 conducted during a 12-hour in-person mediation, conducted by one of the nation’s preeminent
24 mediators, the Honorable Layn Phillips. Following a tentative agreement at the mediation, a
25 detailed term sheet was worked out over numerous telephone conferences and exchanges of
26 written communications with the mediator’s team over the following week. (*Id.* at ¶ 15-16.) The
27 process was contested and conducted in good faith. Experienced counsel’s judgment that the
28 settlement is fair, reasonable and adequate is entitled to great weight. (See *Ellis v. Naval Air*

1 *Rework Facility* (N.D. Cal. 1980) 87 F.R.D.15, 18, *aff'd* (9th Cir. 1981) 661 F.2d 939 [“The fact
2 that experienced counsel involved in the case approved the settlement after hard-fought
3 negotiations is entitled to considerable weight.”].) Indeed, “courts have long held that the process
4 of an arms-length negotiation supports a presumption that the settlement is fair.” (4 Newberg and
5 Rubenstein on Class Actions (2022) § 13:45.) This Court should accord additional weight to this
6 presumption here as the Attorney General, who has been charged by our Legislature with the trust
7 of protecting the state and its citizens, negotiated the Settlement. (See *Dunk v. Ford Motor Co.*
8 (1996) 48 Cal.App.4th 1794, 1801 [56 Cal.Rptr.2d 483], as modified (Sept. 30, 1996) [presence
9 of governmental participant is a relevant factor in determining whether a settlement is fair];
10 accord, e.g., *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 336 [145 Cal.Rptr.3d
11 454] [same]; *California v. State of California v. eBay, Inc.* (N.D. Cal., Aug. 29, 2014, No. 5:12-
12 CV-05874-EJD) 2014 WL 4273888, at *6 [in granting preliminary approval, “the fact that the
13 [California] Attorney General is involved is given great weight”]; *In re Toys R Us Antitrust*
14 *Litigation* (E.D.N.Y. 2000) 191 F.R.D. 347, 351 [“The participation of the State Attorneys
15 General furnishes extra assurance that consumers’ interests are protected.”].)

16 The Attorney General conducted substantial discovery in the course of this case (Jorgenson
17 Decl. ¶¶ 7-11), a fact that this Court may take into account in granting preliminary approval of the
18 Settlement (see *Reed, supra*, 208 Cal.App.4th 336 [145 Cal.Rptr.3d 454]). The Attorney General
19 took 56 depositions, reviewed more than 2.5 million documents in party discovery, and more than
20 500,000 documents from third parties. (Jorgenson Decl. ¶¶ 8-9.) The Attorney General
21 conducted extensive expert discovery, including obtaining the opinions of four experts, and
22 reviewing and analyzing the opinions of the six experts collectively retained by Defendants. (*Id.*
23 at ¶¶ 10-11.) The Attorney General also reviewed numerous documents, deposition transcripts,
24 and expert reports produced in the parallel federal class action proceeding. (*Id.* at ¶ 9.) Based on
25 his investigation and review of discovery, the Attorney General has determined that while this
26 case appears to be a strong one, it could still have encountered significant hurdles, including:
27 challenges associated with disentangling the effects of Defendants’ conduct on the spot market
28 price of gasoline products; the inherent difficulty of piecing together the actions of individuals

1 nine years ago based on a written record with significant gaps; the inherent risk of putting on a
2 jury trial, exacerbated here due to the absence of cooperating witnesses; and, even if the Attorney
3 General were to prevail at trial, the likelihood of appeals, particularly as to first-impression legal
4 issues as to aggregate and “umbrella” damages in *parens patriae* claims raised in Defendants’
5 motions for summary adjudication. (*Id.* at ¶ 13.) While the Attorney General has confidence in
6 the strength of his case, collectively these factors weighed in favor of a settlement that provides
7 immediate benefits to California consumers. (*Id.* at ¶ 16.)

8 Accordingly, there is every reason to believe that the Settlement can and will be finally
9 approved after an approval hearing. (Cf. *Reed v. United Teachers Los Angeles* (2012) 208
10 Cal.App.4th 322, 336–337 [145 Cal.Rptr.3d 454] [recognizing a presumption of fairness in the
11 final approval process when (1) the settlement is reached through arm’s-length bargaining; (2)
12 investigation and discovery are sufficient to allow counsel and the trial court to act intelligently;
13 (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small].)

14 **2. The Settlement Falls Within the Range of Reasonableness**

15 The amount of relief obtained for California natural persons is eminently reasonable and is
16 within the range likely to be finally approved. (Cf. *In re TracFone Unlimited Service Plan*
17 *Litigation* (N.D. Cal. 2015) 112 F.Supp.3d 993, 1001 [“[T]he most important variable in
18 assessing a class settlement is the amount of relief obtained for the class.”]. The \$37.5 million
19 apportioned to the *parens patriae* claims represents 29.3% of damages the People intended to ask
20 the jury to award under the Cartwright Act.⁶ (Jorgenson Decl. ¶ 17.) The damages calculation
21 was based on work conducted by two experts retained by the People, who opined that

22 _____
23 ⁶ In assessing the reasonableness of settlements, including antitrust settlements, courts compare
24 the recovery to actual damages, not treble damages. (See *Rodriguez v. West Publishing Corp.*
25 (9th Cir. 2009) 563 F.3d 948, 964 [“[C]ourts do not traditionally factor treble damages into the
26 calculus for determining a reasonable settlement value.”]; *In re Lorazepam & Clorazepate*
27 *Antitrust Litigation* (D.D.C. 2002) 205 F.R.D. 369, 376, fn. 12 [“[T]he standard for evaluating
28 settlement involves a comparison of the settlement amount with the estimated single damages.”];
County of Suffolk v. Long Island Lighting Co. (2d Cir. 1990) 907 F.2d 1295, 1324 [same].)
Courts have reasoned that requiring that a settlement be compared against treble damages
“distort[s] the entire theoretical foundation which underlies the settlement process” because it
effectively “force[s] defendants automatically to concede guilt at the outset of negotiations” and
“upset[s] the delicate settlement balance by giving too great an advantage to the claimants.” (*City*
of Detroit v. Grinnell Corp. (2d Cir. 1974) 495 F.2d 448, 459.)

1 Defendants' conduct impacted the retail price of gasoline in Southern California, and, based on
2 estimated gasoline purchases by California residents during the periods impacted by Defendants'
3 conduct, cost California residents \$127.8 million in gasoline overcharges. (Jorgenson Decl. ¶ 10.)
4 The monetary recovery is in the upper range of the recovery rates in antitrust settlements
5 approved by courts. (See, e.g., *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan* (E.D.
6 Mich., Sept. 30, 2019, No. 10-CV-14360) 2019 WL 4746744, at *7, *aff'd sub nom. Shane Group*
7 *Inc v. Blue Cross Blue Shield of Michigan* (6th Cir. 2021) 833 Fed.Appx. 430 [approving
8 settlement providing 25% of the estimated overcharge, noting that “[c]ourts have approved
9 settlements in class action antitrust settlements anywhere between 5.35% to 28% of estimated
10 damages in [] complex antitrust class actions.”]; *In re: Cathode Ray Tube (Crt) Antitrust*
11 *Litigation* (N.D. Cal., July 7, 2016, No. C-07-5944 JST) 2016 WL 3648478, at *7 [settlement for
12 20% of single damages is “without question a good recovery and firmly in line with the
13 recoveries in other cases.”]; *In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d
14 1036, 1042 [approving settlement in which class received payments in excess of 6% of potential
15 damages]; *In re Currency Conversion Fee Antitrust Litigation* (S.D.N.Y., Nov. 8, 2006, No. 01
16 MDL 1409) 2006 WL 3247396, at *6 [approving settlement for “roughly 10-15%” of the
17 allegedly illegal fees collected from the class].)

18 The terms of the monetary recovery are also highly favorable. The monetary portion of the
19 Settlement is in cash; it does not involve coupons or in-kind recovery. (*Rodriguez v. West*
20 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 964 [“The [monetary recovery] is in cash, not in
21 kind, which is a good indicator of a beneficial settlement.”].)

22 The Settlement also provides important additional benefits to all California Residents,
23 including those that did not purchase gasoline in 2015 in Southern California and are therefore
24 not entitled to make a claim against the Cartwright Act Settlement Fund. First, the portion of the
25 Settlement allocated to civil penalties under the UCL will benefit all Californians in the form of
26 funds provided for future antitrust and unfair competition enforcement efforts by the Attorney
27
28

1 General.⁷ Second, any residual funds after the Cartwright Act Settlement Fund is distributed will
2 be distributed as a *cy pres* award to a University of California or California State University
3 Study to study the gas and transportation energy market in California or develop tools to detect
4 and deter future market manipulation, which will benefit all Californians. Third, all Californians
5 will benefit from the forward-looking conduct agreement, together with the reporting and
6 monitoring functions implemented by way of SBx1-2.

7 In total, the Settlement reflects a substantial benefit to the People of California and is well
8 within the range of reasonableness warranting approval.

9 **B. The Court Should Approve the Proposed Allocation Plan and Notice**
10 **Program.**

11 The People seek the Court’s approval of the proposed Allocation Plan and Notice Program
12 for the \$37.5 million portion of the settlement fund allocated to the Attorney General’s *parens*
13 *patriae* Cartwright Act claims. (See Jorgenson Decl., Exhibit A; see also Settlement § 4.3
14 [requiring the Attorney General to seek Court approval of a “proposed notice program and plan of
15 allocation”].)

16 The Court has discretion to approve any plan of allocation that “insure[s], to the extent
17 possible, that each person be afforded a reasonable opportunity to secure his or her appropriate
18 portion of the monetary relief” or are otherwise “provid[ed] value” through “cy pres or fluid
19 recovery mechanisms.” (Bus. & Prof. Code § 16760, subd. (e)(1).)

20 California natural person residents on whose behalf the claims were brought must be
21 notified of a settlement and given an opportunity to exclude themselves. (Bus. & Prof. Code §§
22 16760, subs. (b)(1) and (c).) Section 16760, subdivision (b)(1) requires notice “by publication.”
23 The manner and content of the notice are otherwise entirely at the discretion of the Court,
24 provided due process standards are satisfied. (Bus. & Prof. Code §§ 16760, subd. (b)(1)
25 [directing the Attorney General to give notice by publication “in any manner and with any content
26 as the court may direct”].) Due process is satisfied by notice “reasonably calculated to apprise

27 ⁷ The other half of the amount allocated to UCL penalties will go to the City and County of San
28 Francisco for the enforcement of consumer protection laws, providing benefits to those city and
county residents.

1 interested parties of the pendency of the action affecting their property interest and an opportunity
2 to present their objections.” (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 829 [132
3 Cal.Rptr.2d 425].)

4 California’s proposed Allocation Plan and Notice Program fully comply with California
5 state law and due process requirements.

6 **1. The Proposed Plan of Allocation Complies With the *Parens Patriae***
7 **Statute.**

8 California’s plan of allocation provides that any natural person California resident who
9 purchased gasoline in Southern California between February 20 and November 10, 2015 will
10 receive a pro rata payment of the portion of the settlement fund allocated to the *parens patriae*
11 claims. (Jorgenson Decl., Exhibit B.) This is consistent with the Cartwright Act’s directive that
12 “each person be afforded a reasonable opportunity to secure his or her appropriate portion of the
13 monetary relief.” (Bus. & Prof. Code § 16760, subd. (e)(i).) In the class action context, pro rata
14 distribution plans are routinely held to be reasonable mechanisms for distribution. (See *In re:*
15 *Cathode Ray Tube (Crt) Antitrust Litigation* (N.D. Cal., Dec. 17, 2015, No. 14-CV-2058 JST)
16 2015 WL 9266493, at *8 [use of a pro rata allocation plan “has frequently been determined to be
17 fair, adequate, and reasonable in comparable cases”] (collecting cases).)

18 Given that the identities of individuals, dates of purchase, and the precise amounts of
19 gasoline purchased in 2015 are not reasonably ascertainable, it is reasonable to afford each
20 natural-person California resident who purchased gasoline in Southern California between
21 February 20 and November 10, 2015 an equivalent opportunity to recover out of the net
22 settlement fund. (*Rieckborn v. Velti PLC* (N.D. Cal., Feb. 3, 2015, No. 13-CV-03889-WHO)
23 2015 WL 468329, at *8 [“[A]n allocation formula need only have a reasonable, rational basis,
24 particularly if recommended by experienced and competent counsel.”].)

25 The Settlement requires a release of all claims brought in this litigation, including claims
26 based on purchases of gasoline anywhere in California, but only natural-person California
27 residents who purchased gasoline in Southern California between February 20, 2015 and
28 November 10, 2015 may recover monetary relief from the Settlement. Disparities in entitlement

1 to recovery are permissible so long as they “are rationally based on legitimate considerations.”
2 (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1162
3 [102 Cal.Rptr.2d 777] (internal citations omitted).) The proposed plan of allocation is rational in
4 light of the expert opinions obtained in this litigation, which concluded that the conduct alleged
5 increased the retail price for gasoline purchased in Southern California during discrete periods all
6 falling between February 20 and November 10, 2015, and did not affect the retail price of
7 gasoline sold in other parts of the state or during the broader conspiracy period alleged in the
8 pleadings.

9 In sum, the allocation plan provides for a logical, straightforward, and equitable allocation
10 of the net settlement fund to natural-person California residents.

11 **2. The Proposed Notice and Notice Program Comply with the *Parens***
12 ***Patriae* Statute and Due Process.**

13 Section 16760 requires adequate notice as a prerequisite to settlement approval. (Bus. &
14 Prof. Code § 16760, subs. (b)(1), (b)(3), (c).) The notice must be sufficient to advise of the
15 proposed settlement and provide instruction sufficient for an individual on whose behalf the
16 action was brought to exclude from adjudication the portion of monetary recovery attributable to
17 him or her. Section 16760, subdivision (b)(1) requires notice “by publication,” with additional
18 notice required only if the court finds “that notice given solely by publication would deny due
19 process of law to any person or persons.” Due process requires “notice reasonably calculated to
20 apprise interested parties of the pendency of the action affecting their property interest and an
21 opportunity to present their objections.” (*In re Vitamin Cases, supra*, 107 Cal.App.4th at p. 829
22 [132 Cal.Rptr.2d 425].) The content and manner of notice is, in all other respects, at the
23 discretion of the Court. (Bus. & Prof. Code § 16760, subs. (b)(1), (c); cf. *Chavez v. Netflix, Inc.*
24 (2008) 162 Cal.App.4th 43, 57 [75 Cal.Rptr.3d 413] [holding in the class action context that “the
25 trial court ‘has virtually complete discretion as to the manner of giving notice to class
26 members.’”].)

27 The Postcard, E-mail, and Publication Notices adequately apprise potential claimants of
28 both the terms of the Settlement and the options available to them. (Cooley Decl., Exhibits 1, 2,

1 3.) Each notice includes a brief summary of the Settlement and actions a recipient must take to
2 claim or exclude themselves from the Settlement, and directs California residents to the
3 Settlement Website for more information. (*Id.*) The Digital Media Notice includes the subject of
4 the Settlement and directs California residents to the Settlement Website for more information.
5 (Cooley Decl., Exhibit 4.) The proposed Long Form Notice states in plain, easily understood
6 language, (i) the nature of the action; (ii) the claims; (iii) the basic terms of the Settlement
7 Agreement, including the terms of the release; (iv) who is eligible for compensation; (v) the
8 process for filing a notice of election with the court to exclude from adjudication the portion of
9 the claim for monetary relief attributable to him or her; (vi) the claim-filing process and a
10 description of the allocation plan; (vii) the maximum request for an award of attorneys' fees,
11 reimbursement of costs, and settlement administration fees; and (viii) how affected persons may
12 provide comments to the Court to be considered at the Final Approval Hearing. (Cooley Decl.,
13 Exhibit 6.) The notices “provide all of the detail required by statute or court rule, in a highly
14 accessible form,” and are consistent with notices that have been approved in other cases. (See
15 *Chavez, supra*, 162 Cal.App.4th at p. 57–58 [75 Cal.Rptr.3d 413] [approving summary settlement
16 notice providing similar details about a settlement and directing class members to a website for
17 further information].)

18 The combination of notice by publication and direct notice is more than adequate to satisfy
19 the requirements of Business and Professions Code, section 16760 *et seq.* and due process. As
20 required under section 16760, subdivision (b)(1), the notice program includes “publication” of the
21 Settlement. Although no statute or published case explains what is required to satisfy the
22 “publication” requirement, the notice proposed here is adequate to satisfy this requirement under
23 any reasonable construal of the term. The Publication Notice will be published in major
24 newspapers throughout California (including Spanish-Language Newspapers). (Cooley Decl. ¶¶
25 19-21.) The Digital Media Notice will be published online through a targeted digital media
26 campaign. (Cooley Decl. ¶¶ 22-24.) To supplement notice by publication, the Attorney General
27 will also cause the Postcard Notice to be sent to all household addresses in the ten Southern
28 California counties, and the E-mail Notice will be sent to as many email addresses associated

1 with Southern California in 2015 that can be ascertained. (Cooley Decl. ¶¶ 12-17.) The Postcard
2 Notice is estimated to reach virtually all adults currently residing in Southern California
3 (including 97-98% of Eligible Consumers) and the Digital Media Notice is expected to reach
4 approximately 74.7% of California Residents. (Cooley Decl. ¶¶ 9-10.) These redundant forms of
5 notice are more than sufficient to satisfy due process, as they have “a reasonable chance of
6 reaching a substantial percentage of [affected persons].” (*Cartt v. Superior Court* (1975) 50
7 Cal.App.3d 960, 974 [124 Cal.Rptr. 376]; see also *Free Range Content, Inc. v. Google, LLC*
8 (N.D. Cal., Mar. 21, 2019, No. 14-CV-02329-BLF) 2019 WL 1299504, at *6 [“Notice plans
9 estimated to reach a minimum of 70 percent are constitutional.”] (brackets and quotations
10 omitted).)

11 **C. The Court Should Set a Final Approval Schedule**

12 The last step in the approval process is the final approval hearing, wherein the People will
13 present to the Court the results of the notice campaign, tally valid claims, estimate the pro rata
14 payment, and request final approval of the proposed Settlement. To that end, the People request
15 that the Court issue a scheduling order, establishing the dates for the Final Approval hearing
16 itself, as well as dates leading up to the hearing, including the start of notice, claims filing,
17 exclusion, and comment deadlines. The dates the Court sets will be incorporated into the
18 Postcard, E-mail, Publication, and Long Form Notices.

19 In order to facilitate coordination of notice between this action and the federal class action,
20 the People have proposed that the Court set deadlines that are triggered off either the Court’s
21 order granting this Motion, or when a preliminary approval order is entered in the federal class
22 action, whichever is later. If no preliminary approval order has been entered in the federal class
23 action within 60 days of entry of an order in this case, the People shall file a status report
24 explaining the status and recommending an appropriate course of action. The People’s
25 recommended schedule is set forth in the accompanying Proposed Order.

26 **VII. CONCLUSION**

27 The Settlement is a significant result that follows three years of contentious litigation. The
28 Court should determine that the settlement is likely to be approved, approve the People’s

1 Allocation Plan and Notice Program, grant this Motion to Give Notice of *Parens Patriae*
2 Settlement, and set a final approval schedule.

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Respectfully submitted,

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/s/
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