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1 **I. INTRODUCTION**¹

2 After more than a dozen years of litigation, including two significant merits rulings from the
3 United States Court of Appeals for the Ninth Circuit, and denial of *certiorari* from the United States
4 Supreme Court,² this important case has upheld vital protections for consumers nationwide³ and will
5 provide a benefit to Class Members which could not have been otherwise attained.⁴ Final approval
6 of the operative Settlement Agreement⁵ was scheduled and held on April 17, 2023, approximately
7 one month before the close of the claims period on May 22, 2023. Prior to the hearing, the appointed
8 claims administrator, JND Legal Administration, Inc. (“JND”), reported a deluge of potentially-
9 fraudulent claims filed in batches up to and exceeding 1,000,000,000 units each, which JND flagged
10 pursuant to its anti-fraud review processes. *See* Supp. Decl. of Gretchen Eoff Regarding Settlement
11 Administration Status (ECF No. 821) (“Eoff’s Supp. Decl.”). In consultation with the Parties, JND
12 has completed its claim verification procedures. According to JND, after removing invalid claims,
13 274,360 claims for 6,536,436 units are payable resulting in a *per unit payment of approximately*
14 **\$0.14866**. *See* August 17, 2023, Third Supp. Decl. of Gretchen Eoff in Support of Final Approval
15 (ECF No. 831-1) (“Eoff’s Third Decl.”), ¶ 8.

16
17 ¹ Plaintiffs hereby incorporate by reference the facts and arguments presented in their Motion and
18 Memorandum in Support of Final Approval of the New Settlement and Award of Attorneys’ Expenses
19 and Plaintiffs’ Service Awards filed March 3, 2023 (ECF No. 813) (“Motion for Final Approval”).

20 ² *See Briseño v. ConAgra Foods, Inc.*, 674 F. App’x 654 (9th Cir. 2017); *Briseño v. ConAgra*
21 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017), *cert. denied* 138 S. Ct. 313 (2017).

22 ³ *E.g., Briseño v. ConAgra Foods, Inc.*, 844 F.3d at 1133 (rejecting defendant’s invitation to require
23 the implementation of an “ascertainability” requirement as a prerequisite to class certification in
24 small-good consumer products cases).

25 ⁴ *See* Plaintiffs’ Opposition to Motion of M. Todd Henderson for Award of Attorneys’ Fees,
26 Reimbursement of Expenses, and Objector Service Award filed March 27, 2023 (ECF No. 815)
27 (noting that Conagra was “on the verge of filing motions to decertify the eleven state classes that
28 took Class Counsel years of litigation and substantial expense to achieve” and how the proposed
New Settlement was a way to ensure that class members would “receive *something* out of the
case”).

⁵ The operative settlement agreement was executed on or about September 30, 2022 (“New Settlement
Agreement” or “S.A.”) (ECF No. 807-2).

1 Plaintiffs submit this Renewed Motion for Final Approval as an update to the Court regarding
2 JND’s claims verification process and recommendation for *pro rata* distributions to qualifying class
3 members. Notably, there are no objections to the New Settlement. Based on the information herein
4 and Plaintiffs’ Motion for Final Approval, final approval of the New Settlement Agreement should
5 be granted.

6 **II. ARGUMENT**

7 “Rule 23(e) imposes on district courts an independent obligation to ensure that any class
8 settlement is ‘fair, reasonable, and adequate,’ accounting for the interests of absent class members.”
9 *Briseño v. Henderson*, 998 F.3d 1014, 1022 (9th Cir. 2021) (quoting Fed. R. Civ. P. 23(e)(2)). Here,
10 the Court has determined that: (i) the class representatives and class counsel have adequately
11 represented the class; (ii) the proposal was negotiated at arm’s length; (iii) the \$3 million pro rata
12 common fund provided for the class is adequate; and (iv) the proposal treats class members equitably
13 relative to each other. Fed R. Civ. P. 23(e)(2)(A-D). There are no objections to the New Settlement.
14 The only remaining issue delaying final approval of the New Settlement Agreement was calculation
15 of the per-unit pro rata disbursement from the \$3 million common fund.⁶

16 **A. Fraud in the class action claims process is increasingly common but responsibly**
17 **managed by settlement claims administrators.**

18 As this Court is aware, fraud in the class action claims process is increasingly common and
19 anti-fraud procedures have become one of the vital services provided by court-appointed class action
20 claims and settlement administrators in this District and throughout the country. Large numbers of
21 fraudulent claims, as JND identified here, corrupt the process by artificially driving up the claims rate
22 and cost of the settlement, undermining the legitimacy of the process, and potentially affect recovery
23 for legitimate class members. While fraud can occur in many types of class action settlements, it is

24 _____
25 ⁶ During the final approval hearing, Plaintiffs anticipated that the *pro rata* distribution to verified
26 class members would be in the realm of \$.15 per unit. In response, the court stated: “If that's the
27 case, [] I'll be ready to approve it.” Apr. 17, 2023 Hearing Trans. ECF No. 824 at 26.

1 anticipated, and can be responsibly managed. Declarations filed by claims administrators in this
2 Court, in this District, and throughout the country, suggest that this type of fraud is common in class
3 actions involving low-cost consumer goods. *See, e.g.*, Decl. of Mark Schey Re: Class Notice and
4 Claims Administration, *Ramirez, et al. v. HB USA Holdings Inc.*, No. 20-cv-01016 (C.D. Cal.) [ECF
5 No. 74]; Decl. of Lana Lucchesi in Response to Unopposed Administrative Motion for Direction
6 Regarding Potentially Fraudulent Claims, *Opperman, et al. v. Kong Techs., Inc., et al.*, No. 13-cv-
7 00453 (N.D. Cal.) [ECF No. 921]; Decl. of James R. Prutsman in Support of Plaintiff’s Motion for
8 Class Certification, *Carrera v. Bayer Corp.*, No. 08-cv-04716 (D.N.J.) [ECF No. 81-1]; Brief *Amicus*
9 *Curiae* of Angeion Group, LLC, *Carrera v. Bayer Corp.*, No. 12-2621, 2013 WL 5606438 (3d. Cir.
10 Oct. 4, 2013).

11 **B. JND anti-fraud review identified a significant volume of potentially fraudulent**
12 **claims.**

13 Prior to the hearing on final approval, JND identified *billions* of claims with indices of fraud
14 and other validity issues including: duplicate claims; claims filed in clusters from the same mailing
15 address; claims filed from the same Internet Protocol (IP) address; slight name variations to avoid
16 duplicate detection; and larger than reasonably possible number of units purchased (recovery under
17 the new Settlement is expressly limited to “household use”).⁷ *See* Eoff’s Supp. Decl., ¶ 6. JND
18 reported that potentially-fraudulent claims had been filed in batches up to and exceeding 1 billion
19 units each, which JND flagged pursuant to its anti-fraud review processes. *Id.*

20 As detailed below and in Eoff’s Third Decl., on or about June 1, 2023, pursuant to Section
21 2.35 of the New Settlement Agreement and the agreement of the Parties, JND sent emails to 1,498,820
22 claimants who claimed more than 30 units purchased requesting additional information. Eoff’s Third
23 Decl., ¶ 6. JND received 5,742 timely responses. *Id.* According to JND, after removing invalid
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25 ⁷ S.A. § 4.1.1(e) (“Class Members must submit a Claim Form that the information provided is true
26 and correct to the best of each Class Member’s knowledge, information, and belief, stating:
27 Purchases were for household use and not catering or commercial purposes.”).

1 claims, 274,360 claims for 6,536,436 units are payable resulting in a per unit payment of
2 approximately \$0.14866. *Id.* at ¶ 8.

3 **C. JND’s anti-fraud procedures are established and effective.**

4 Although anti-fraud mechanisms have been employed in class action claims administration
5 for some time, anti-fraud procedures in the age of artificial intelligence have become increasingly
6 sophisticated. JND is an experienced claims administrator that has repeatedly been appointed by
7 courts, including this one. JND has established anti-fraud procedures here to reasonably and as best
8 it can protect against fraud. *See* July 28, 2023, Second Supp. Decl. of Gretchen Eoff (ECF No. 828-
9 1) at ¶¶ 6, 11, 13-14. The anti-fraud procedures implemented by JND are consistent with those utilized
10 by other court-appointed claims administrators in similar circumstances and approved by courts in
11 this District and across the United States.

12 Last year, in *Ramirez, et al. v. HB USA Holdings Inc.*, No. 20-cv-01016 (C.D. Cal.), the claims
13 administrator reported that the number of units claimed was in excess of the total units sold as
14 represented by the defendant. *See* Supp. Decl. of Mark Schey re: Final Claims Admin., *Ramirez v.*
15 *HB USA*, No. 20-cv-01016 (ECF No. 91) ¶ 3. As here, the Parties and settlement administrator in
16 *Ramirez* established a claims verification procedure, and this Court delayed final approval pending
17 conclusion of the anti-fraud procedures implemented by the claims administrator. Pursuant to the
18 agreement of the parties and the duties prescribed in the settlement agreement, the court allowed the
19 claims administrator to identify “abnormal claims activity” and request verification information from
20 all claimants seeking reimbursement in excess of the reasonable number of units (three) agreed to by
21 the parties. *See* Decl. of Mark Schey Re: Class Notice and Claims Administration, *Ramirez v. HB*
22 *USA*, No. 20-cv-01016 (ECF No. 74) ¶ 10. Claimants who did not respond or could not respond
23 sufficiently were excluded from the class, and their claims were denied in full. In *Ramirez*, this Court
24 relied on the anti-fraud experience and expertise of the court-appointed claims administrator and
25 granted final approval. July 20, 2022 Order Granting Plaintiffs’ Motion for Final Approval of Class
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1 Action Settlement, etc., *Ramirez v. HB USA*, No. 20-cv-01016 (ECF No. 92). The relevant issues and
2 facts here are directly analogous to those in *Ramirez*.

3 *Ramirez* was decided just last year. This Court and others have been relying on court-
4 appointed claims administrators to create mechanisms and procedures to identify fraudulent claims
5 in class action cases for years. In *Wilson v. Airborne, Inc.*, No. 07-cv-00770, 2008 WL 3854963
6 (C.D. Cal. Aug. 13, 2008), more than fifteen years ago, the claim administrator identified what
7 appeared to be the submission of false claims for reimbursement based on various indices of fraud
8 including inappropriately large numbers of units being claimed. 2008 WL 3854963, at *8 (“Rust
9 Consulting also has rejected and audited apparently fraudulent claims and appears to be reviewing
10 the claims with appropriate rigor.”). As here, pursuant to the agreement of the parties, the court-
11 appointed claims administrator contacted claimants for additional verification of claims and excluded
12 those who did not or could not sufficiently respond by a reasonable deadline. In *Wilson*, the potential
13 fraud was identified before final approval, and in *Ramirez*, this Court allowed the claims administrator
14 to perform its verification procedures before ruling. In both *Ramirez* and *Wilson*, this Court relied on
15 the anti-fraud expertise of the court-appointed claims administrator and granted final approval. July
16 20, 2022 Order Granting Plaintiffs’ Motion for Final Approval of Class Action Settlement, etc.,
17 *Ramirez v. HB USA*, No. 20-cv-01016 (C.D. Cal.) [ECF No. 92]; *Wilson*, 2008 WL 3854963, at *8.

18 *Wilson* and *Ramirez* represent just two—one of the first and one of the most recent—of many
19 determinations by *this Court* establishing that the proper mechanism for addressing fraud during the
20 claims administration process is to allow and rely on court-appointed claims administrators to validate
21 and invalidate claims. Parallel reasoning and holdings based on largely identical facts can be found
22 across the country. *See, e.g.*, Decl. of Lana Lucchesi in Response to Unopposed Administrative
23 Motion for Direction Regarding Potentially Fraudulent Claims, *Opperman, et al. v. Kong Techs., Inc.*
24 *et al.*, No. 13-cv-00453 (N.D. Cal.) (ECF No. 921) ¶ 2 (“The purpose of this declaration is to provide
25 [] the Court with updated details and the result of [the claims administrator’s] evaluation of the
26 potentially duplicative/fraudulent claims previously identified.”); Decl. of James R. Prutsman in
27

1 Support of Plaintiff’s Motion for Class Certification, *Carrera v. Bayer Corp.*, No. 08-cv-04716
2 (D.N.J.) (ECF No. 81-1) (outlining numerous methods used by claims administrators to detect
3 fraudulent claims); and Brief *Amicus Curiae* of Angeion Group, LLC, *Carrera v. Bayer Corp.*, No.
4 12-2621, 2013 WL 5606438, at *5-6 (3d. Cir. Oct. 4, 2013) (defending programmatic audits used by
5 settlement administrators to identify duplicate and fraudulent claims).

6 In each of the cases cited above, and hundreds of others including the instant action, court-
7 appointed claims administrators have implemented anti-fraud procedures fundamentally equal to
8 those implemented in this case. One of the primary roles of a class action claims administrator is to
9 verify claims in conformity with the operable settlement agreement when granted such authority in a
10 settlement agreement, as is the case here. S.A. § 2.35. There is no dispute on this truism by any of the
11 Parties. This Court has supported this role for claims administrators many times and should again in
12 this case.

13 **D. JND properly implemented anti-fraud procedures to efficiently identify valid**
14 **claims by verified class members.**

15 Section 2.35 of the New Settlement Agreement defines “Valid Claims Form(s)” as “timely
16 submitted and complete claims form(s), signed by the Class Member, and verified by the Settlement
17 Administrator to meet all the requirements set forth herein and to be *free of fraud.*” S.A. § 2.35
18 (emphasis added). Pursuant to Paragraphs 2.35 of the Settlement Agreement, JND reviewed claims
19 to determine validity and completeness and continued to do so through the claims deadline. *See* Eoff
20 Supp. Decl., ¶ 6. According to JND’s claims analysis, a significant number of claims had validity
21 issues and raised potential fraud issues. These issues included: duplicate claims; claims filed in
22 clusters from the same mailing address; claims filed from the same Internet Protocol (IP) address; or
23 using slight name variations to avoid duplicate detection; and larger than expected claimed units
24 purchased. *Id.* JND identified 56 claimants seeking reimbursement for greater than one million units.
25 *Id.* Further, of the 733,075 New Settlement claims filed, 384,691 claims sought reimbursement for
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1 more than 50 units. Cumulatively, these 384,691 claims sought reimbursement for 14,577,516,474
2 units.

3 In JND’s expert analysis and experience, it is best practice and sometimes necessary to
4 conduct additional fraud assessments to weed out unusually high and potentially fraudulent claims.
5 Here, JND’s preliminary fraud review flagged an unusually high number of claimed units purchased
6 for claims that were intended to be filed for “*private, household use, and not purchases for*
7 *commercial use or catering operations.*” See Eoff’s Third Decl., ¶ 6 (emphasis added). Accordingly,
8 JND recommended the use of additional measures to assess claim validity and confirm that claims
9 demonstrate an adequate indicium of trustworthiness. *Id.* This included sending an email to claimants
10 who claimed more units than would be expected for private household use, requesting sufficient
11 confirmation of claimed units. *Id.*

12 On June 1, 2023, JND sent emails to 1,498,820 claimants requesting additional information
13 from claimants who claimed more than 30 units purchased. JND received responses from 5,742
14 claimants. *Id.* Notably, JND did not indicate that claims were fraudulent when credible information
15 was provided (even if proofs of purchase or receipts were not provided).

16 **E. The reasonableness of the \$3 million *pro rata* common fund is not in question.**

17 The reasonableness of the \$3 million pro rata common fund is not in question as the Court
18 repeatedly explained during the April 17, 2023 Final Approval hearing. See Apr. 17, 2023 Hearing
19 Trans. (ECF No. 824) at 4:14-15 (“[the Court] firmly believe[s] that a 3 million common fund is more
20 than reasonable”); 5:9-10 (“3 million is a very reasonable amount of money”); 10:22-23 (“3 million
21 is very reasonable”); 11:13-14 (“a 3 million common fund is very reasonable for this case”). The
22 only remaining issue is whether the per-unit distribution is consistent with the terms of the New
23 Settlement Agreement and the Notice of Settlement, both of which explicitly stated that the per-unit
24 distribution to class members would be calculated on a pro rata basis based on the number of verified
25 claims received.

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1 **F. Final approval should be granted.**

2 According to JND, 274,360 claims for 6,536,436 units are payable resulting in a per unit
3 payment of approximately \$0.14866.

4 This per-unit proposed distribution, calculated on a pro rata basis, is consistent with the New
5 Settlement Agreement:

6 If the total value of all Valid Claims Forms and amounts identified for direct
7 distribution exceeds or falls short of the funds available for distribution to Class
8 Members (after deducting the portion of Settlement Funds designated for New
9 York and Oregon Class Members), *then the amounts of the cash payments will
be reduced or increased pro rata*, as necessary, to use all of the remaining funds
available for distribution to Class Members.

10 S.A. § 4.1.4. (ECF No. 807-2) (emphasis added).

11 The \$0.14866 per-unit proposed distribution, calculated on a pro rata basis, is consistent with
12 the Notice of Settlement disseminated to putative class members:

13 Class Members who timely submit a valid Claim Form may receive \$0.15 per
14 unit of Wesson Oil Products purchased during the applicable Class Period,
subject to an up or down adjustment based upon the number of Claims filed.

15 ...

16 The amount of additional recovery for New York and Oregon Class Members
17 *will be adjusted pro rata according to the number of Valid Claim Forms and
18 direct distributions.*

19 Notice of Settlement (ECF No. 807-2) (emphasis added). Following the pro rata adjustment, the per-
20 unit proposed distribution remains closely aligned with the \$0.15 per unit maximum of the New
21 Settlement.

22 The \$0.14866 per-unit distribution is also consistent with the Court’s Order Granting
23 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement:

24 *The recovery amount will be adjusted pro rata if the value of valid claims
25 exceeds or falls short of the funds available for distribution to class members.*
26 Additionally, \$575,000 of the fund will be allocated to members of the New
27 York and Oregon Classes who submit valid claim forms, *in proportion to the
number of units purchased*, as compensation for statutory damages under those

1 states' consumer protection laws, *with pro rata adjustment according to the*
2 *number of claimants.*

3 Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement at 11-12 (ECF
4 No. 811) (internal citation omitted) (emphasis added).

5 Based on the discussion herein, no additional notice to putative class members is necessary
6 and final approval should be granted.

7 **III. CONCLUSION**

8 For the foregoing reasons, the Parties respectfully request that the Court grant Plaintiffs'
9 Motion and enter an order finally approving the settlement and granting Plaintiffs' request for
10 expenses and service awards.

11 Dated: August 18, 2023

Respectfully submitted,

12
13 */s/ David E. Azar*

14 David E. Azar (SBN 218319)
15 dazar@milberg.com
16 **MILBERG COLEMAN BRYSON**
17 **PHILLIPS GROSSMAN PLLC**
280 S. Beverly Drive, Suite PH
Beverly Hills, California 90212
Telephone: (213) 617-1200

18 Ariana J. Tadler (*pro hac vice*)
19 atadler@tadlerlaw.com
20 A.J. de Bartolomeo (SBN 136502)
21 ajd@tadlerlaw.com
22 **TADLER LAW LLP**
23 22 Bayview Avenue, Suite 200
24 Manhasset, New York 11030
25 Telephone: (212) 946-9453
26
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Adam J. Levitt (*pro hac vice*)
alevitt@dicellolevitt.com
Amy E. Keller (*pro hac vice*)
akeller@dicellolevitt.com
DiCELLO LEVITT LLP
Ten North Dearborn Street, Sixth Floor
Chicago, Illinois 60602
Telephone: (312) 214-7900

Class Counsel

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CERTIFICATE OF SERVICE

The undersigned certifies that, on August 18, 2023, he caused this document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of filing to registered counsel of record for each party.

Dated: August 18, 2023

/s/ David E. Azar
David E. Azar (SBN 218319)