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14  
15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
17

18 IN RE: THE HONEST COMPANY,  
19 INC., SODIUM LAURYL SULFATE  
20 (SLS) MARKETING AND SALES  
21 PRACTICES LITIGATION

Case No. 2:16-ML-02719 AB (RAOx)

**CLASS ACTION**

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

22 THIS DOCUMENT RELATES TO:  
23 ALL ACTIONS  
24

Date: July 24, 2017  
Time: 10:00 a.m.  
Crtrm.: 7B

Judge: Hon. André Birotte Jr.

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1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on July 24, 2017 at 10:00 a.m. or as soon  
3 thereafter as the matter may be heard in the Courtroom of the Honorable André  
4 Birotte Jr., United States District Court, Central District of California, Western  
5 Division, Plaintiffs Staci Seed, Margo Smith, Amy Glover, Alvaro Alhadeff, Mario  
6 Aliano, Alan Klarik, Monica Gomez, Michael Cesarini, Julie Sanchez and Tiffanie  
7 Woodward (“Plaintiffs”) will and hereby do move the Court, pursuant to Federal  
8 Rule of Civil Procedure 23(e), for the entry of an Order:

9 1. Preliminarily approving the Settlement Agreement between Plaintiffs  
10 and Defendant The Honest Company, Inc.;

11 2. Approving the form, manner, and content of the notice for the proposed  
12 settlement to the Class;

13 3. Setting a time and date of the Fairness Hearing;

14 4. Staying all proceedings in the Action against Honest until the Court  
15 renders a final decision on approval of the Settlement and setting a briefing schedule  
16 for the papers in support of the final approval order;

17 5. Provisionally certifying the Class under Rule 23(b)(3) of the Federal  
18 Rules of Civil Procedure, for settlement purposes;

19 6. Finding that Honest has complied with 28 U.S.C. § 1715(b);

20 7. Conditionally appointing Plaintiffs as the class representatives for  
21 settlement purposes only; and

22 8. Conditionally appointing the law firms of Pearson, Simon & Warshaw,  
23 LLP and Freed Kanner London & Millen LLC as Interim Co-Lead Class Counsel  
24 for settlement purposes only.

25 The grounds for this motion are that the proposed settlement is within the  
26 necessary range of reasonableness to justify granting preliminary approval.

27 This motion is based upon this Notice of Motion and Motion for Preliminary  
28 Approval of Class Action Settlement, the pleading and papers on file in this action,



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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This class action is centered on allegations that Defendant The Honest Company, Inc. (“Honest”) made false and misleading representations in violation of consumer protection laws by claiming that its laundry detergent, dish soap and multisurface cleaner (collectively “Products”) do not contain the chemical sodium lauryl sulfate (“SLS”). Honest acknowledges that its Products contain sodium coco sulfate (“SCS”), which it has represented as a “gentler alternative” to SLS, but Plaintiffs contend that SLS is a component of SCS. Plaintiffs filed class actions<sup>1</sup> individually, and in their representative capacities on behalf of all others similarly situated against Honest, which were consolidated in this Court.

Rather than litigate this case through class certification and trial, and face the uncertainties that come therewith, the parties engaged in arm’s-length settlement negotiations with the assistance of a respected and experienced neutral, the Hon. Edward A. Infante (ret.). As a result of these settlement negotiations, Plaintiffs have obtained a nationwide class action Settlement,<sup>2</sup> which provides substantial monetary relief to purchasers of the Products and changes to the advertising and formulation of the Products.

The Settlement Agreement creates a \$1.55 million non-reversionary common fund in which Class Members can participate and obtain a pro-rata share of the Net Settlement. Under the Settlement, Class Members will be allowed to make claims

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<sup>1</sup> See *infra*, Section II for the procedural history of these actions.

<sup>2</sup> All capitalized terms herein shall have the definitions set forth in the Settlement Agreement unless otherwise stated. The Settlement Agreement is attached as Exhibit 1, to the concurrently filed Declaration of Daniel L. Warshaw (“Warshaw Decl.”).



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1 without proof of purchase for Product purchases of up to \$50.00. Class Members  
2 with valid proof of purchase will be able to file claim for purchases in excess of  
3 \$50.00. Class members can choose to obtain their settlement payments either by  
4 check, or in the form of a Settlement Credit usable for purchases on Honest.com.  
5 Honest.com credits will be valued at 1.5 times the dollar recovery amount.

6 Additionally, the Settlement requires Honest to reformulate the Products so  
7 that they contain neither SLS nor SCS, and precludes Honest from marketing any of  
8 its products containing SCS as being free of SLS. This non-monetary relief directly  
9 addresses the allegations in this lawsuit and ensures that consumers will be able to  
10 make more informed purchasing decisions regarding the Products.

11 When weighed against the risks, costs, and uncertainties of continuing the  
12 litigation, the Settlement constitutes an excellent result that is fair, adequate, and  
13 reasonable, and comports with all of the criteria for preliminary approval.  
14 Furthermore, the notice plan contemplated by the Settlement and detailed herein  
15 complies with the applicable law and is the best notice practicable for this case.  
16 Accordingly, Plaintiffs request that the Court grant preliminary approval to the  
17 proposed Settlement, direct distribution of notice to the Class Members, and set a  
18 schedule for final approval of the Settlement.

19 **II. FACTUAL AND PROCEDURAL HISTORY**

20 Starting on or about March 17, 2016 multiple putative class actions were filed  
21 against Honest by Plaintiffs asserting claims that Honest labeled the Products in a  
22 misleading manner by representing the Products were free of SLS, even though the  
23 Products' ingredients include SCS. The crux of Plaintiffs' lawsuit is that they  
24 contend that SLS is a major component of SCS, and thus Honest's claim that the  
25 Products were SLS free is false and misleading (*See, e.g., Staci Seed v. The Honest*  
26 *Company, Inc.*, 16-cv-01835, Dkt. 1, ¶ 1.) Plaintiffs alleged that Honest marketed  
27 its Products based on this false representation, among other ways, by stating that its  
28 Products are "Honestly Free of SLS" on the Product labels, Internet blog posts, its

1 official company and third party websites, and via the Instagram and Twitter  
 2 accounts of its co-founders. (*Id.*) Plaintiffs further alleged that each of the Products  
 3 contains SLS, which they contend is a known skin irritant. (*Id.*) Plaintiffs contend  
 4 that Honest represented SCS, a “gentler alternative” to SLS; when in fact it contains  
 5 SLS. (*Id.*, ¶ 2.) As a result of Honest’s alleged material misrepresentations,  
 6 Plaintiffs and other similarly situated consumers were induced into purchasing or  
 7 paying more for Honest’s Products than they otherwise would have. (*Id.*)

8 On April 11, 2016, plaintiff Seed filed a petition pursuant to 28 U.S.C. § 1407  
 9 before the Judicial Panel on Multidistrict Litigation to centralize her action *Seed v.*  
 10 *The Honest Company, Inc.*, Case No. 16-cv-01835 (C.D. Cal.) (filed March 17,  
 11 2016)—with the following actions in the Central District of California: *Smith v. The*  
 12 *Honest Company, Inc.*, Case No. 16-cv-00406 (E.D. Mo.) (filed March 24, 2016);  
 13 *Glover v. The Honest Company, Inc.*, Case No. 16-cv-00812 (S.D. Cal.) (filed April  
 14 5, 2016); *Alhadeff v. The Honest Company, Inc.*, Case No. 16-cv-02361 (C.D. Cal.)  
 15 (filed April 6, 2016); *Aliano v. The Honest Company, Inc.*, Case No. 16-cv-02394  
 16 (C.D. Cal.) (filed April 7, 2016); *Gomez v. The Honest Company, Inc.*, 16-cv-02439  
 17 (C.D. Cal.) (filed April 8, 2016).

18 On or about August 5, 2016, the Judicial Panel on Multidistrict Litigation  
 19 granted Ms. Seed’s 28 U.S.C. § 1407 petition and ordered the actions of *Smith*,  
 20 *Glover*, *Alhadeff*, *Aliano*, *Klarik*, and *Gomez* transferred to the Central District of  
 21 California for coordinated or consolidated proceedings. (Dkt. 1.) The transfer order  
 22 noted that the actions filed by plaintiffs *Cesarini*, *Sanchez* and *Woodward* were  
 23 potential “tag-along” actions to the multidistrict proceeding. (*Id.*)

24 On or about January 25, 2017, pursuant to a stipulation of the parties, the  
 25 Plaintiffs’ actions were ordered consolidated under the case name *In re: The Honest*  
 26 *Company, Inc., Sodium Lauryl Sulfate (SLS) Marketing & Sales Practices Litigation*  
 27 and number 16-ML-02719 AB (RAOx) (“Action”). (Dkt. 20.)

28 On May 31, 2017 Plaintiffs filed a Consolidated Amended Complaint

1 (“CAC”), which lists as the sole defendant The Honest Company, Inc. (Dkt. 31).  
 2 The Consolidated Amended Complaint asserts the following causes of action: (1)  
 3 violation of the California Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750  
 4 *et. seq.*); (2) negligent misrepresentation; (3) violation of the California False  
 5 Advertising Law (Cal. Bus. & Prof. Code §§ 17500 *et. seq.*); (4) violation of the  
 6 California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et. seq.*); and  
 7 (5) breach of express warranty. Contemporaneously with the filing of this Motion,  
 8 plaintiffs Glover, Sanchez and Woodward dismissed without prejudice Jessica  
 9 Warren (aka Jessica Alba) from the Action. (*See* Dkt. 33.)

10 Rather than engage in protracted litigation, on January 11, 2017, the parties  
 11 attended a full day mediation session with Judge Infante. This initial mediation did  
 12 not result in a successful resolution of the case. However, the parties, with the  
 13 assistance of Judge Infante, continued to engage in settlement talks.

14 Under Judge Infante’s supervision, the parties ultimately reached agreement  
 15 on the essential terms of a settlement with a full and complete understanding of the  
 16 relevant facts and circumstances surrounding this litigation. The parties filed their  
 17 Notice of Settlement on February 15, 2017. (Dkt. 21.) The parties did not discuss  
 18 or reach any agreement on attorneys’ fees, costs, or incentive awards prior to  
 19 finalizing the principle terms of the relief to the Class Members. The parties  
 20 finalized the memorialization of the Settlement Agreement on May 31, 2017. (*See*  
 21 Settlement Agreement.)

### 22 **III. SUMMARY OF THE SETTLEMENT**

23 The Settlement Agreement provides for a \$1.55 million non-reversionary  
 24 common fund that will be used to pay Class Member claims, administration costs,  
 25 attorneys’ fees, and expenses in this litigation. Under the Settlement Agreement,  
 26 participating Class Members will receive a pro rata share of the Net Settlement  
 27 amount after deduction of costs, fees and expenses. The Settlement Agreement also  
 28 provides significant non-monetary relief by requiring that Honest reformulate the

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1 Products such that they do not contain SCS or SLS, and agree that it will not market  
 2 any products containing SCS as being free from SLS. The material terms of the  
 3 Settlement Agreement are set forth below.

4 **A. Class Member Relief**

5 **1. Monetary Relief**

6 Pursuant to the Settlement Agreement, Honest will provide a payment to  
 7 Class Members who submit a timely and valid Claim Form. The Settlement allows  
 8 claimants to choose either to receive this settlement payment by check or in the form  
 9 of a Settlement Credit usable for purchases at Honest.com. Honest.com credits will  
 10 be valued at 1.5 times the dollar recovery amount.

11 Settlement Class Members will be eligible to obtain monetary relief either  
 12 with or without proof of purchase. For Class Members who purchased the Products  
 13 online from Honest.com, Honest will verify their purchases based on its records, for  
 14 the purpose of determining class membership and recovery. Thus Class Members  
 15 will be able to verify their Honest.com purchases without providing additional proof  
 16 or documentation. Claimants may also verify retail purchases by providing receipts.  
 17 The amount of the payments to each participating Class Member will be calculated  
 18 based on each Class Member’s proportional share of the Net Settlement.

19 Each Class Member who submits a valid and timely claim will be assigned a  
 20 certain number of “points.” Points will be allocated to Claimants based on the  
 21 amount spent on Products and whether the amount spent is verified. The point  
 22 allocation will be as follows:

Level	Points Allotted to the Claim
Unverified Claim or Verified Claim for \$0.01 - \$50.00 in Purchases	1 point
Verified Claim for \$50.01 – \$100.00 in Purchases	2 points

1	Verified Claim for \$100.01 – \$150.00 in Purchases	3 points
2	Verified Claim for \$150.01 – \$200.00 in Purchases	4 points
3	Verified Claim for \$200.01 + in Purchases	5 points

4  
5  
6 The Net Settlement will be divided by the total number of points validly  
7 claimed by all Class Members to arrive at the dollar value of each point. (*See*  
8 Settlement Agreement § 6.3.) Each Class Member will receive a settlement  
9 recovery that corresponds with the number of points associated with their claim. If  
10 a Class Member chooses to receive a Settlement Credit, it will be in the amount of  
11 1.5 times the dollar value of their claim. Thus the Settlement Agreement has a  
12 dollar value of \$1.55 million. (*Id.*)

13 The Settlement Fund created by the Settlement Agreement is designed to  
14 maximize the recovery of Class Members and prevent reversion to Defendants. As  
15 such all moneys available in the Net Settlement amount will be distributed to the  
16 Class Members. Moreover, any residual from uncashed Settlement checks will be  
17 redistributed to the Class Members, or if the residue is so minimal as to make further  
18 distribution unfeasible, the funds will be donated to the skin research charity, the  
19 Dermatology Foundation. (*See* Settlement Agreement § 6.5.) Under no  
20 circumstance will any of the funds revert back to Honest. (*Id.*)

21 **2. Revised Marketing Practices and Reformulation of the**  
22 **Products**

23 The Settlement requires Honest to certify that it has reformulate the Products  
24 to remove SCS, and certify that the reformulated products do not contain SLS. (*See*  
25 Settlement Agreement § 2.1.) Honest must also refrain from marketing SCS  
26 containing products as being SLS free. (*Id.*) This non-monetary relief is significant  
27 because it directly addresses and remedies the central allegation in Plaintiffs' Action  
28

1 for future purchasers—that Honest made misleading representations in connection  
 2 with sale of the SCS containing Products based on its promise that they were SLS  
 3 free.

4 **B. Narrowly Tailored Release**

5 The Settlement Agreement contains a narrowly tailored Class Member release  
 6 that is specifically limited to the claims arising out of or relating to the Complaint  
 7 during the Class Period. (*Id.* §§ 1.9-1.10.) As set forth herein, these allegations are  
 8 limited to Plaintiffs’ claims that Honest misrepresented the SLS content of its  
 9 Products. Significantly, the release explicitly excludes unrelated claims asserted by  
 10 plaintiffs in the following consumer class actions currently pending against Honest:  
 11 *Michael v. The Honest Company, Inc.*, C.D. Cal. Case No. 15-cv-07059 (filed Sept.  
 12 7, 2015) (consolidated with *Rubin v. The Honest Company, Inc.*, C.D. Cal. Case No.  
 13 15-cv-09091, originally N.D. Cal. Case No. 15-cv-04036 (filed Sept. 3, 2015));  
 14 *Buonasera v. The Honest Company, Inc.*, S.D.N.Y. Case No. 16-cv-01125 (filed  
 15 Feb. 12, 2016); *Kellman v. The Honest Company, Inc.*, Cal. Super. Ct., Alameda  
 16 Cty. Case No. RG16813421 (filed Apr. 27, 2016); and *Hiddlestone v. The Honest*  
 17 *Company, Inc.*, C.D. Cal. Case No. 16-cv-07054 (Sept. 20, 2016).

18 **C. Cost of Administration and Class Notice**

19 Under the Settlement Agreement, all costs and expenses of administering the  
 20 Settlement and providing Notice in accordance with the Preliminary Approval Order  
 21 shall be distributed from the Settlement Amount. (Settlement Agreement §§ 1.21;  
 22 6.2.) The parties have selected Dahl Administration, LLC (“Dahl”) as the claims  
 23 administrator, after a competitive bidding process.

24 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE**  
 25 **SETTLEMENT**

26 **A. Standard for Preliminary Approval**

27 Rule 23(e) requires court approval of any settlement of claims of a settlement  
 28 class. It is well-settled that there is “a strong judicial policy that favors settlements,



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1 particularly where complex class action litigation is concerned.” *Class Plaintiffs v.*  
2 *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *see also Churchill Vill., L.L.C.*  
3 *v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *In re Syncor ERISA Litig.*, 516  
4 F.3d 1095, 1101 (9th Cir. 2008).

5 To grant preliminary approval of a class action settlement, a court need only  
6 find that the settlement is within “the range of reasonableness” to justify publishing  
7 and sending notice of the settlement to Class Members and scheduling final  
8 approval proceedings. *See In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078,  
9 1079-80 (N.D. Cal. 2007); Newberg on Class Actions § 13:15 (5th ed.). Preliminary  
10 approval should be granted where “the proposed settlement appears to be the  
11 product of serious, informed, non-collusive negotiations, has no obvious  
12 deficiencies, does not improperly grant preferential treatment to class  
13 representatives or segments of the class, and falls within the range of possible  
14 approval.” *Vasquez v. Coast Valley Roofing, Inc.*, 670 F.Supp.2d 1114, 1125 (E.D.  
15 Cal. 2009).

16 The approval of a proposed class action settlement “is committed to the sound  
17 discretion of the trial judge.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th  
18 Cir. 1998). In exercising this discretion, however, courts must give “proper  
19 deference to the private consensual decision of the parties” because “the court’s  
20 intrusion upon what is otherwise a private consensual agreement negotiated between  
21 the parties to a lawsuit must be limited to the extent necessary to reach a reasoned  
22 judgment that the agreement is not the product of fraud or overreaching by, or  
23 collusion between, the negotiating parties, and the settlement, taken as a whole, is  
24 fair, reasonable and adequate to all concerned.” *Id.* at 1027.

25 In making a preliminary determination of the fairness, reasonableness, and  
26 adequacy of a class action settlement, the trial court must balance a number of  
27 factors, including:

28 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity,

1 and likely duration of further litigation; (3) the risk of maintaining class  
 2 action status throughout the trial; (4) the amount offered in settlement;  
 3 (5) the extent of discovery completed and the stage of the proceedings;  
 4 (6) the experience and views of counsel; (7) the presence of a  
 governmental participant; and (8) the reaction of the Class Members to  
 the proposed settlement.

5 *Churchill Vill.*, 361 F.3d at 575; *see also Torrissi v. Tucson Elec. Power Co.*, 8 F.3d  
 6 1370, 1375 (9th Cir. 1993). At the preliminary approval stage, a final analysis of  
 7 the settlement's merits is not warranted. Instead, a more detailed assessment is  
 8 reserved for final approval, after class notice has been sent and Class Members have  
 9 had the opportunity to object to, or opt out of, the settlement. *See Moore's Fed.*  
 10 *Prac.* § 23.165 (3d ed. 2009).

11 **B. The Settlement Provides Substantial Relief to the Class and**  
 12 **is Well Within the Necessary Range of Reasonableness**

13 The Settlement in this case is fair, reasonable, and adequate and should be  
 14 approved by the Court because it provides substantial monetary relief to Class  
 15 Members, as well as modifications to Honest's practices. Significantly, the  
 16 Settlement Agreement will provide uncapped payments in a choice of cash or credits  
 17 to Class Members (until the Net Settlement fund is exhausted), requires Honest to  
 18 reformulate its products, and precludes Honest from marketing SCS containing  
 19 products as SLS free. As detailed below, the factors to be considered by the Court  
 20 weigh heavily in favor of preliminary approval, because the Settlement Agreement  
 21 adequately remedies the false advertising claims alleged by Plaintiffs in this class  
 22 action lawsuit.

23 **1. The Strength of Plaintiffs' Case Compared to the Risk,**  
 24 **Expense, Complexity, and Likely Duration of Further**  
 25 **Litigation**

26 Although risks and expenses apply to any lawsuit, these elements were  
 27 significant in this case and weigh strongly in favor of approving the Settlement. As  
 28



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1 set forth above, Plaintiffs’ Action alleges that Honest misled consumers because the  
2 Products contained SLS, contrary to Honest’s representations. The basis for  
3 Plaintiffs’ Action was that the claim that SCS contains SLS, and therefore Honest’s  
4 representations that its SCS containing products were SLS free was false and  
5 misleading.

6 Honest vigorously defended its product formulation and asserted that  
7 Plaintiffs’ claims were without merit. Specifically, Honest claimed that SCS is  
8 scientifically distinct from SLS and constitutes a safer and gentler alternative to  
9 SLS. Thus, Honest claimed that the Products were accurately advertised and  
10 represented as being SLS free. Honest further claimed that the representation that  
11 the Honest Products were SLS free did not induce Class Members to purchase or  
12 pay a price premium for the Products. Moreover, Honest has argued that the terms  
13 of service for their purchase at Honest.com included an arbitration clause with a  
14 class-action waiver, which would prevent class-wide recovery for these purchases.

15 If the parties did not reach a settlement, Honest would have undoubtedly  
16 asserted additional legal and factual defenses at class certification, summary  
17 judgment, and trial. Thus, there was no guarantee that Plaintiffs would have been  
18 able to certify a nationwide class and obtain any recovery on behalf of the Class  
19 Members. As such, in the absence of the Settlement, Plaintiffs would have faced  
20 significant litigation risks and no substantial prospect of obtaining a better result on  
21 behalf of the Class Members.

22 Plaintiffs would have also incurred substantial litigation expenses in order to  
23 litigate this case through class certification and trial. In addition to ordinary  
24 litigation expenses (e.g. filing fees, travel, court reporters, etc.), Plaintiffs would  
25 have likely incurred expert fees and conducted substantial expert discovery in order  
26 to demonstrate the Products did not contain SLS, and Plaintiffs’ claims could be  
27 litigated through trial on a class-wide basis.

28 Finally, Plaintiffs would have had to litigate this case for a lengthy and

1 unknown duration of time in order to prevail at class certification and trial. A  
 2 successful result at trial may have also resulted in a post-trial appeal by Honest.  
 3 Therefore, this Settlement provides complete relief to the Class without the delay  
 4 and risk of further litigation.

5 Accordingly, the litigation risks, expense, complexity, and duration of further  
 6 litigation weigh heavily in favor of granting preliminary approval, especially when  
 7 weighed against the substantial monetary and non-monetary relief provided by the  
 8 Settlement. *See Hanlon*, 150 F.3d at 1027 (“Settlement is the offspring of  
 9 compromise; the question we address is not whether the final product could be  
 10 prettier, smarter or snazzier, but whether it is fair, adequate and free from  
 11 collusion.”).

## 12 **2. The Amount Offered in Settlement**

13 The benefits offered by the Settlement Agreement also weigh heavily in favor  
 14 of preliminary approval. As detailed above, the Settlement Agreement creates a  
 15 \$1.55 million non-reversionary common fund that provides substantial monetary  
 16 relief to the Class Members. The amount of the settlement fund was driven by the  
 17 Product sales data for Honest.com and reseller purchases, the class member  
 18 damages attributed to the SLS misrepresentations, and the Honest’s defenses  
 19 articulated above.

20 The Settlement Agreement allows online customers, who Honest claims  
 21 would otherwise be barred from proceeding on a class-wide basis by the arbitration  
 22 agreement, to receive a pro rata share of the Net Settlement fund. The Settlement  
 23 Agreement also allows Class Members to file claims without any proof of purchase  
 24 to monetary compensation, if they swear or affirm that they purchased one or more  
 25 Honest Products during the Class Period. (Settlement Agreement § 4.5.) This  
 26 option for recovery is significant because it ensures that Class Members can  
 27 participate in a manner that is convenient and does not require them to maintain or  
 28 submit receipts of past retail purchases.

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1 Class Members will also benefit from additional relief that requires Honest to  
2 eliminate SLS from its Product formulation and refrain from marketing any of its  
3 SCS containing products as SLS free. (Settlement Agreement § 2.1.) This non-  
4 monetary relief specifically remedies the misrepresentations alleged in the Action,  
5 and ensures that future consumers will make informed decisions relating to the  
6 purchase of the Products.

7 When viewed in light of the risks and costs of further litigation, these  
8 remedies constitute an exceptional result for the Class and justify granting  
9 preliminary approval of the Settlement.

10 **3. The Risk of Maintaining Class Action Status Through Trial**

11 As set out more fully below, Plaintiffs submit that this action could be  
12 properly maintained as a class action. However, Honest would have undoubtedly  
13 vigorously opposed class certification, and there was no guarantee that Plaintiffs  
14 would be able to certify the Class and maintain class action status through trial. The  
15 arguments asserted by Honest in opposition to class certification would have likely  
16 included attacks on almost every factor of class certification, including typicality,  
17 adequacy of representation, and the existence and predominance of common issues.  
18 Defendant would have likely argued that common issues did not predominate  
19 because of variations in injuries, and damages and Class Members’ reliance on the  
20 alleged misrepresentations regarding the SLS content of the Products. Plaintiffs’  
21 ability to maintain class certification status through trial could have also been  
22 impacted by an unforeseen intervening change in law.

23 Although Plaintiffs are confident that this action could be certified as a class  
24 action, the risk of maintaining class action status throughout trial weighs in favor of  
25 preliminary approval. *See Perez v. Asurion Corp.*, 501 F.Supp.2d 1360, 1381 (S.D.  
26 Fla. 2007) (approving settlement, and noting that “[a]bsent a settlement, Defendants  
27 would have defended these [ ] lawsuits vigorously, with potential success and no  
28 recovery of any kind for Plaintiffs.”).



1 Class are represented by court appointed co-lead counsel from Pearson, Simon &  
 2 Warshaw, LLP and Freed Kanner London & Millen LLC, who have extensive  
 3 experience in class action litigation, have negotiated numerous other class action  
 4 settlements, and have the ability to litigate this case on a class-wide basis through  
 5 trial if necessary. (*See* Dkt. 16, Order Granting Plaintiffs’ Motion for Appointment  
 6 of Pearson, Simon & Warshaw, LLP and Freed Kanner London & Millen LLC as  
 7 Interim Co-Lead Counsel). Counsel were satisfied with the Settlement Agreement  
 8 only after conducting intensive settlement negotiations with the assistance of Judge  
 9 Infante and a thorough investigation into the factual and legal issues raised in this  
 10 case. (Warshaw Decl. ¶¶ 10-12). The case only settled after further intensive  
 11 negotiations following a full day mediation. (*Id.*) Counsel drew on their  
 12 considerable experience and expertise in negotiating and evaluating the Settlement,  
 13 and determining that the Settlement Agreement provided substantive relief to the  
 14 Class. (*Id.*).<sup>3</sup>

15 **V. THE COURT SHOULD CERTIFY A SETTLEMENT CLASS**  
 16 **FOR SETTLEMENT PURPOSES**

17 Before granting preliminary approval of a settlement, the Court must  
 18 determine that the proposed settlement Class is a proper class for settlement  
 19 purposes. Manual for Complex Litig. (4th ed. 2004) § 21.632; *Amchem Prods., Inc.*  
 20

21  
 22 <sup>3</sup> *See Larsen v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at \*5  
 23 (N.D. Cal. July 11, 2014) (“The opinions of counsel should be given considerable  
 24 weight both because of counsel’s familiarity with this litigation and previous  
 25 experience with cases.”); *Glass v. UBS Fin. Servs., Inc.*, No. 06-cv-4068-MMC,  
 26 2007 WL 221862, at \*5 (N.D. Cal. Jan. 26, 2007) (“The settlement was negotiated  
 27 and approved by experienced counsel on both sides of the litigation, with the  
 28 assistance of a well-respected mediator . . . [and] this factor supports approval of the  
 settlement.”).

1 *v. Windsor*, 521 U.S. 591, 620 (1997). Certification is appropriate where the  
 2 proposed class and the proposed class representatives meet the four requirements of  
 3 Rule 23(a)—numerosity, commonality, typicality and adequacy of representation—  
 4 and one of the three requirements of Rule 23(b).

5 Here, Plaintiffs seek certification pursuant to Rules 23(a) and 23(b)(3) on  
 6 behalf of the settlement Class, consisting of: “all persons residing in the United  
 7 States who purchased, and did not subsequently return, the Products during the [time  
 8 from January 17, 2012 through the date the Court enters the Preliminary Approval  
 9 Order]. Excluded from the Class are companies that purchased the Products at  
 10 wholesale for resale, Defendant’s Counsel, Defendant’s officers and directors, and  
 11 the judge presiding over the Action” (Settlement Agreement §§ 1.8, 1.9.) For the  
 12 reasons set forth below, all of the required elements of class certification are  
 13 satisfied.

14 **A. The Requirements of Rule 23(a) Are Satisfied**

15 “Rule 23(a) ensures that the named plaintiffs are appropriate representatives  
 16 of the class whose claims they wish to litigate.” *Wal-Mart Stores, Inc. v. Dukes*, 131  
 17 S. Ct. 2541, 2550 (2011). Under Rule 23(a), the party seeking certification must  
 18 demonstrate that:

- 19 (1) the class is so numerous that joinder of all members is impracticable;  
 20 (2) there are questions of law or fact common to the class;  
 21 (3) the claims or defenses of the representative parties are typical of the  
 22 claims or defenses of the class; and  
 23 (4) the representative parties will fairly and adequately protect the interests of  
 24 the class.

25 Fed. R. Civ. P. 23(a).

26 **1. Numerosity**

27 Rule 23(a)(1) requires that the class be “so numerous that joinder of all  
 28 members is impracticable.” Fed. R. Civ. P. 23(a)(1). “Where the exact size of the



1 class is unknown, but general knowledge and common sense indicate that it is large,  
 2 the numerosity requirement is satisfied.” *In re Abbott Labs. Norvir Anti-trust Litig.*,  
 3 Nos. 04-cv-1511-CW, 04-cv-4203-CW, 2007 WL 1689899, at \*6 (N.D. Cal. June  
 4 11, 2007). Here, there are thousands of Class Members, which easily satisfies the  
 5 numerosity requirement.

## 6 **2. Commonality**

7 Rule 23(a)(2) requires that there be “questions of law or fact common to the  
 8 class.” Fed. R. Civ. P. 23(a)(2). “Commonality requires the plaintiff to demonstrate  
 9 that the Class Members ‘have suffered the same injury.’” *Dukes*, 131 S. Ct. at 2551  
 10 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). Class members’  
 11 claims “must depend upon a common contention . . . that is capable of classwide  
 12 resolution—which means that determination of its truth or falsity will resolve an  
 13 issue that is central to the validity of each one of the claims in one stroke.” *Id.*  
 14 “What matters to class certification . . . is not the raising of common ‘questions’—  
 15 even in droves—but, rather the capacity of a classwide proceeding to generate  
 16 common *answers* apt to drive the resolution of the litigation.” *Id.*

17 Here, the claims of all Class Members depend upon a common contention that  
 18 Honest sold its Products based on its misrepresentation that the Products were SLS  
 19 free. All Class Members’ claims are based upon the same alleged conduct by  
 20 Honest, resulting in the litigation of common legal issues. Further, the common  
 21 questions of law and fact presented in this case could only be efficiently resolved in  
 22 a classwide proceeding that would generate common answers to those questions.

## 23 **3. Typicality**

24 Rule 23(a)(3) is satisfied if “the claims or defenses of the representative  
 25 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3).  
 26 “Under the rule’s permissive standards, representative claims are ‘typical’ if they are  
 27 reasonably co-extensive with those of absent Class Members; they need not be  
 28 substantially identical.” *Hanlon*, 150 F.3d at 1020. “The test of typicality is

1 whether other members have the same or similar injury, whether the action is based  
 2 on conduct which is not unique to the named plaintiffs, and whether other Class  
 3 Members have been injured by the same course of conduct.” *Hanon v.*  
 4 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotations  
 5 omitted).

6 Here, all of the Plaintiffs are consumers who purchased one or more of the  
 7 Products. (See CAC, Dkt. 31, ¶¶3-12.) Like similarly situated Class Members,  
 8 Plaintiffs were exposed to and relied on Honest’s claims that the Products were SLS  
 9 free on the packaging and promotional campaigns related to the Products. (*Id.*)  
 10 Plaintiffs’ experiences are not unique, but rather illustrative of the experience of  
 11 other Class Members. Accordingly, Plaintiffs’ claims are typical of the claims of  
 12 the Class.

#### 13 4. Adequacy of Representation

14 Rule 23(a)(4) permits class certification only if “the representative parties will  
 15 fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4).  
 16 “This factor requires: (1) that the proposed representative plaintiffs do not have  
 17 conflicts of interest with the proposed class, and (2) that Plaintiffs are represented by  
 18 qualified and competent counsel.” *Dukes*, 603 F.3d at 614, *rev’d on other grounds*,  
 19 131 S. Ct. 2541 (2011) (quoting *Hanlon*, 150 F.3d at 1020).

20 Plaintiffs do not have any conflicts of interest with the proposed Class. Each  
 21 of the Plaintiffs purchased one or more of the Honest Products in reliance on  
 22 Honest’s alleged false and misleading representations regarding the Products being  
 23 free from SLS. (See CAC, Dkt. 31, ¶¶ 1-12.) The Plaintiffs are all seeking to stop  
 24 Honest’s misleading representations regarding the Products being SLS free, and  
 25 recover the purchase price premium resulting therefrom. (*Id.*) Thus, Plaintiffs’  
 26 claims are identical to the claims of other Class Members and arise from the same  
 27 conduct by Honest. Plaintiffs and other Class Members have suffered the same  
 28 injury, and Plaintiffs seek relief equally applicable and beneficial to the Class. As



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1 this Court has already recognized in appointing Pearson, Simon & Warshaw, LLP  
2 and Freed Kanner London & Millen LLC as interim co-lead counsel, Plaintiffs are  
3 represented by qualified and competent counsel who have the experience and  
4 resources necessary to vigorously pursue this action. (*See* Order Appointing Lead  
5 Counsel, Dkt. 16.) Plaintiffs and their counsel are able to fairly and adequately  
6 represent the interests of the Class.

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

8 In addition to meeting the prerequisites of Rule 23(a), a class action must  
9 satisfy at least one of the three conditions of Rule 23(b). Plaintiffs submit that the  
10 settlement Class satisfies Rule 23(b)(3). Under Rule 23(b)(3), a class action may be  
11 maintained if: “[1] the court finds that the questions of law or fact common to Class  
12 Members predominate over any questions affecting only individual members, and  
13 [2] that a class action is superior to other available methods for fairly and efficiently  
14 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). *See Hanlon*, 150 F.3d at  
15 1022-23.

16 Here, common questions predominate over any individualized inquiries  
17 relating to Class Members. Plaintiffs’ claims are based upon the same conduct of  
18 Honest: misrepresenting the true SLS content of its Products. The class claims  
19 predominate over any individual inquiry; as Plaintiffs’ central claim is that Honest  
20 marketed its Products and justified its price-premium over similar cleaning products  
21 based on its claim that they were free of SLS.

22 The questions of law and fact surrounding this ultimate issue outweigh any  
23 individualized issues regarding Class Members. Therefore, this action is appropriate  
24 for class certification for settlement purposes, embodying all the hallmarks, both in  
25 form and in substance, of class actions routinely certified in this Circuit.

26 **VI. THE SETTLEMENT PROVIDES PROPER NOTICE TO THE**  
27 **CLASS**

28 Rule 23(e)(1) states that “[t]he court must direct notice in a reasonable

1 manner to all Class Members who would be bound by a proposed settlement,  
 2 voluntary dismissal, or compromise.” Notice to the class must be “the best notice  
 3 that is practicable under the circumstances, including individual notice to all  
 4 members who can be identified through reasonable effort.” Fed. R. Civ. P.  
 5 23(c)(2)(B); *see also Amchem Prods.*, 521 U.S. at 617; *Mullane v. Cen. Hanover*  
 6 *Bank & Trust Co.*, 229 U.S. 306, 314 (1950). The notice must contain the following  
 7 information: (1) the nature of the action; (2) the definition of the class; (3) the class  
 8 claims, issues, or defenses; (4) that any class member may appear at the fairness  
 9 hearing through an attorney; (5) that the court will exclude from the class any  
 10 member who requests exclusion; (6) the time and manner for requesting exclusion;  
 11 and (7) the binding effect of a judgment on Class Members. Fed. R. Civ. P.  
 12 23(c)(2)(B).

13 Here, Honest directly sold its Products to a substantial number of Class  
 14 Members through its website, Honest.com. In making these purchases, these Class  
 15 Members provided Honest with an email address. Therefore, the primary means of  
 16 notice in this case will be via email to the Class Members on Known Class Member  
 17 List, based on Honest’s records of online purchases. (Settlement Agreement § 4.2.)  
 18 For all such Class Members to whom the Claims Administrator sends an email  
 19 notice, but then receives notification that the email was not ultimately delivered (a  
 20 “hard bounce”), the Settlement Agreement provides that a postcard notice will sent  
 21 via U.S. Mail. (*Id.*; *see also* Declaration of Mark A. Fellows in Support of  
 22 Plaintiffs’ Motion for Preliminary Approval of Settlement (“Fellows Decl.”).)

23 In addition to the aforementioned direct notice, the Settlement Agreement  
 24 provides for a publication notice plan, in order to capture and provide notice to  
 25 Class Members who did not purchase products directly from Honest.com and there  
 26 is no direct contact information. As set forth in the Fellows Decl., the publication  
 27 notice plan will primarily utilize targeted online media notice that is designed to  
 28 reach persons who match the characteristics of the putative Class Members utilizing,

1 banner advertisements on targeted websites, social media advertisements on the  
2 Facebook network, and Google and Bing search engine advertisements. (*See*  
3 *Fellows Decl.* ¶¶ 7-9.) “The publication notice plan is intended to be dynamic,  
4 allowing for adjustments during the course of the campaign in order to emphasize  
5 the most effective and successful notice available.” (*Id.* ¶ 8.) The notice plan is  
6 projected to deliver reach more than 75% of the targeted audience that includes  
7 Class Members with a frequency of 2.5x. (*Id.*)

8 The Claims Administrator will set up a Settlement Website and post the  
9 Complaint, Settlement Agreement, Preliminary Approval Order, Full Notice,  
10 downloadable (i.e., PDF) Claim Form, and within three (3) Court days after it is  
11 filed, Class Counsel’s fee application. (*Id.* ¶ 10) The Email Notice and U.S. Mail  
12 notice will both contain the Settlement Website address. (*Id.*) Class Members will  
13 be able to easily access the Settlement Website to participate in the settlement and  
14 exercise their rights thereunder.

15 The content of the notice complies with the requirements of Rule 23(c)(2)(B).  
16 As seen in the Full Notice, Email Notice and U.S. Mail Notice attached to the  
17 Settlement Agreement, the notice describes the nature of the action, states the  
18 definition of the class, explains the binding effect of the judgment on Class  
19 Members, and provides all of the necessary information for Class Members to  
20 appear at the fairness hearing, file a claim, object to the settlement, and/or exclude  
21 themselves from the Class. (*See* Settlement Agreement, Exhs. B-E.)

22 Accordingly, the Court should approve the proposed notice plan.

23 **VII. ATTORNEYS’ FEES, COSTS AND INCENTIVE AWARDS**

24 The Settlement Agreement states that Class Counsel may apply to the Court  
25 for an award of attorneys’ fees and costs in an amount not to exceed twenty-five  
26 percent (25%) of the \$1.55 million Settlement Amount (i.e. up to \$387,500) and  
27 expenses and verified costs in an amount not to exceed \$30,000. (Settlement  
28 Agreement, § 2.4.) The Settlement Agreement also allows each of the ten named

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1 Plaintiffs to apply to the Court for an individual settlement award of up to \$1,000.  
 2 (Settlement Agreement, § 2.3.) The individual settlement awards are designed to  
 3 compensate the class representatives for their service to the Class, and are consistent  
 4 with Ninth Circuit precedent that holds enhancement awards cannot be conditioned  
 5 on class representatives’ support for the settlement. *See Radcliffe v. Experian Info.*  
 6 *Solutions, Inc.*, 715 F.3d 1157, 1161 (9th Cir. 2013).

7 The Notice explains the forthcoming motion for attorneys’ fees, costs, and  
 8 enhancement award so that Class Members will be aware of the proposed requests.  
 9 The motion for attorneys’ fees, costs, and enhancement awards will be filed a  
 10 reasonable time before the deadline for objections. *See In re Mercury Interactive*  
 11 *Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010) (holding that Class Members  
 12 should have adequate time to review motion for attorneys’ fees before the deadline  
 13 for objections).

14 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING**  
 15 **SCHEDULE**

16 The last step in the settlement approval process is the final approval hearing,  
 17 at which the Court may hear all evidence and argument necessary to evaluate the  
 18 proposed settlement. At that hearing, proponents of the settlement may explain and  
 19 describe their terms and conditions and offer argument in support of settlement  
 20 approval. Members of the Class—or their counsel—may be heard in support of or  
 21 in opposition to the settlement. Plaintiffs propose the following schedule for final  
 22 approval consistent with the Settlement Agreement:

Deadline	Action
Within 45 days after entry of the Order Granting Preliminary Approval	Establish Settlement Website, Provide Email Notice and Commence Online Media Notice Plan
Within 60 days after entry of the Order	Provide Supplemental Notice to the Class Members Whose Email Notice were

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Granting Preliminary Approval	Returned Undeliverable via U.S. Mail
Within 90 days after entry of the Order Granting Preliminary Approval	Deadline to file Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Incentive Awards
Within 105 days after entry of the Order Granting Preliminary Approval	Deadline for Class Members to file a claim, opt-out, or object to the Settlement Agreement and Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Incentive Awards
14 days before the Fairness Hearing	Deadline to file Plaintiffs’ Motion for Final Approval of the Settlement Agreement and deadline for the parties to respond to any objection to Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Incentive Awards
Set by the Court	Final approval/fairness hearing

**IX. CONCLUSION**

Based on the foregoing, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement Agreement, approve the proposed notice plan, and establish a final approval hearing schedule.

DATED: June 5, 2017

**PEARSON, SIMON & WARSHAW, LLP**  
**DANIEL L. WARSHAW**

By:           /s/ Daniel L. Warshaw            
 DANIEL L. WARSHAW

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