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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

THEODORE BROOMFIELD, *et al.*,

Plaintiffs,

v.

CRAFT BREW ALLIANCE, INC., *et al.*,

Defendants.

CASE NO.: 5:17-cv-01027-BLF

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT**

**[PROPOSED] ORDER GRANTING FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

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2  
3 Plaintiffs Theodore Broomfield and Simone Zimmer (“Plaintiffs” or “Class  
4 Representatives”) and Defendant Craft Brew Alliance, Inc. (“Defendant” or “CBA”) have entered  
5 into a Settlement Agreement, which, together with the exhibits attached thereto, set forth the terms  
6 and conditions for a proposed settlement and dismissal of the Action with prejudice as to CBA upon  
7 the terms and conditions set forth therein (the “Settlement Agreement”).

8 On June 14, 2019, the Court granted Plaintiffs’ Motion for Preliminary Approval of Class  
9 Action Settlement (“Preliminary Approval Order”) (ECF No. 120), conditionally certifying the  
10 following Settlement Class pursuant to Fed. R. Civ. P. 23:

11 All Persons who purchased any four-pack, six-pack, twelve-pack or twenty-four pack of  
12 Kona Beers in the United States, its territories, or at any United States military facility,  
during the Class Period.<sup>1</sup>

13 For the purposes of this definition, individuals living in the same household shall be deemed  
14 to be a single Class Member.

15 Excluded from the Settlement Class are: (a) CBA’s employees, officers and directors, (b)  
16 distributors, retailers or re-sellers of Kona Beers, (c) governmental entities, (d) persons who timely  
17 and properly exclude themselves from the Settlement Class as provided herein, (e) the Court, the  
18 Court’s immediate family, and Court staff, and (f) counsel of record for the Parties and their  
19 respective law firms.

20 Kona Beers are defined as all 4-pack, 6-pack, 12-pack, or 24-pack of Longboard Island  
21 Lager, Hanalei IPA, Castaway IPA, Big Wave Golden Ale, Lemongrass Luau, Wailua Wheat, Fire  
22 Rock Pale Ale, Pipeline Porter, Lavaman Red Ale, Koko Brown Ale, Kua Bay IPA, Gold Cliff IPA,  
23 Kanaha Blonde Ale, Liquid Aloha Variety Pack, Island Hopper Variety Pack, Happy Mahalo  
24 Variety Pack, and Wave Rider Tandem Pack. Excluded from this definition are all Kona Beers that  
25 are sold without packaging (i.e., loose bottles, loose cans, and draft beer).  
26

27  
28 <sup>1</sup> The Class Period is from February 28, 2013 through June 14, 2019 (the date of Preliminary  
Approval). Settlement Agreement, ECF No. 121-2, ¶ 40.

1 Pursuant to the notice requirements set forth in the Settlement Agreement and in the  
2 Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed  
3 Settlement, of the right of members of the Settlement Class to opt-out, and of the right of members  
4 of the Settlement Class to be heard at a Final Approval Hearing to determine, *inter alia*: (a) whether  
5 the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the  
6 release of the claims contemplated by the Settlement Agreement; and (b) whether judgment should  
7 be entered dismissing this Action with prejudice.

8 The Court has before it Plaintiffs' Motion for Final Approval of Class Action Settlement  
9 (ECF No. 136), Plaintiffs' Motion for Attorneys' Fees and Costs and Class Representative Service  
10 Awards (ECF No. 121), together with the Settlement Agreement and exhibits thereto, the arguments  
11 and authorities presented by the Parties and their counsel at the Final Approval Hearing held on  
12 December 19, 2019, and the record in the Action. For good cause appearing,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

14 1. The terms and phrases in this Order shall have the same meaning as ascribed to them  
15 in the Settlement Agreement, unless otherwise defined herein.

16 2. This Court has jurisdiction over the subject matter of the Action and over all Parties  
17 to the Action, including all Settlement Class Members.

18 3. The notice provided to the Settlement Class pursuant to the Settlement Agreement  
19 and Preliminary Approval Order – including (i) direct notice to the Settlement Class via U.S. Mail,  
20 (ii) the creation of the Settlement Website, and (iii) the dissemination of Notice via publication and  
21 media notice – fully complied with the requirements of Fed. R. Civ. P. 23 and due process, and was  
22 reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of  
23 the Action, their right to object to or to exclude themselves from the Settlement Agreement, and  
24 their right to appear at the Final Approval Hearing.

25 4. The Court finds that Defendant properly and timely notified the appropriate  
26 government officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of  
27 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed the substance of the CAFA notice  
28 provided by CBA, and finds that it complied with all applicable requirements of CAFA. Further,

1 more than ninety (90) days have elapsed since CBA served notice pursuant to CAFA, rendering this  
2 Order on Final Approval appropriate under 28 U.S.C. § 1715(d).

3         5.         This Court now gives final approval to the Settlement Agreement, and finds that the  
4 Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class.  
5 The settlement consideration provided under the Settlement Agreement constitutes fair value given  
6 in exchange for the release of the Released Claims against the Released Parties. The Court finds that  
7 the consideration to be paid to members of the Settlement Class is reasonable, and in the best  
8 interests of the Settlement Class Members, considering the total value of their claims compared to  
9 (i) the disputed factual and legal circumstances of the Action, (ii) affirmative defenses asserted in  
10 the Action, and (iii) the potential risks and likelihood of success of pursuing litigation on the merits.  
11 Moreover, the complex legal and factual posture of this case, the amount of discovery completed,  
12 and the fact that the Settlement is the result of arm's-length negotiations between the Parties, all  
13 support this finding. The Court finds that these facts, in addition to the Court's observations  
14 throughout the litigation, demonstrate that there was no collusion present in the reaching of the  
15 Settlement Agreement, implicit or otherwise.

16         6.         The Court has considered the requirements of Rule 23(e)(2) of the Federal Rules of  
17 Civil Procedure, including:

- 18         (A) the class representatives and class counsel have adequately represented the class;
- 19         (B) the proposal was negotiated at arm's length;
- 20         (C) the relief provided for the class is adequate, taking into account:
  - 21                 (i) the costs, risks, and delay of trial and appeal;
  - 22                 (ii) the effectiveness of any proposed method of distributing relief to the class,  
23                 including the method of processing class-member claims;
  - 24                 (iii) the terms of any proposed award of attorney's fees, including timing of  
25                 payment; and
  - 26                 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 27         (D) the proposal treats class members equitably relative to each other.

28         7.         The Court finds that all of the factors enumerated in Rule 23(e)(2) weigh in favor of  
granting final approval of the Settlement. Specifically, the Court finds that:

- a.         Plaintiffs and Class Counsel have adequately and diligently represented the  
Class;

- 1           b.       The Settlement was reached after informed arm’s length negotiations through  
2                   the assistance of an experienced mediator. Moreover, the Settlement was  
3                   reached after extensive motion practice, after considerable discovery was  
4                   taken, and after a California litigation class was certified;
- 5           c.       The Settlement provides substantial and meaningful benefits to the Class in  
6                   the form of both monetary compensation and injunctive relief requiring  
7                   changes to the Kona Beer packaging. This relief provided under the  
8                   Settlement is particularly reasonable in light of the costs and risks posed by  
9                   continued litigation absent the Settlement;
- 10          d.       The proposed method of distributing compensation to the Class is effective  
11                   and reasonable, the requested attorneys’ fees and costs are reasonable, and  
12                   there are no agreements between the Parties other than the Settlement  
13                   Agreement; and
- 14          e.       Class members are treated equitably relative to each other under the  
15                   Settlement.

16           8.       The Court has also considered the “*Churchill*” factors relevant to class action  
17 settlement approval, including: (1) the strength of the plaintiffs’ case; (2) the risk, expense,  
18 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status  
19 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and  
20 the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a  
21 governmental participant; and (8) the reaction of the class members to the proposed settlement. *In*  
22 *re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015) (quoting *Churchill Vill.*,  
23 *L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). To the extent not encompassed within the  
24 Court’s analysis of the Rule 23(e)(2) factors above, the Court hereby finds that:

- 25           a.       Class Counsel has adequately weighed the strengths of the case against the  
26                   risks and costs of proceeding through trial and potential appeals. Specifically,  
27                   the Court finds that the Settlement terms are fair, reasonable, and adequate  
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- 1 when weighed against the risk of maintaining class action status through trial,  
2 as well as the risk of defeat on the merits;
- 3 b. Class Counsel has extensive experience litigating consumer class actions, and  
4 their endorsement of the Settlement weighs in favor of approval;
- 5 c. The absence of any governmental participant opposing the Settlement is  
6 either neutral or weighs in favor of approval;
- 7 d. The reaction of Class Members to the Settlement is positive. Out of an  
8 estimated Class size of roughly 7.8 million persons, only two Class members  
9 have objected to the Settlement and only two Class members have validly  
10 opted out of the Settlement. Thus, the reaction of the Class weighs in favor  
11 of approval. *See Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577  
12 (9th Cir. 2004) (affirming approval of settlement where 45 of 90,000 class  
13 members objected and 500 class members opted out);
- 14 e. Eric Michael Lindberg has objected to the Settlement. The Court finds that  
15 none of the arguments raised in Mr. Lindberg's objection have merit and  
16 therefore his objections are overruled; and
- 17 f. Edward W. Orr has also objected to the Settlement. The Court finds that none  
18 of the arguments raised in Mr. Orr's objection have merit and therefore his  
19 objections are overruled.

20 9. The Court finds that the requirements of Rule 23(a) of the Federal Rules of Civil  
21 Procedure have been satisfied for certification of the Settlement Class because: (1) the Settlement  
22 Class Members are so numerous that joinder of all members is impracticable; (2) there are questions  
23 of law and fact common to the Settlement Class; (3) the claims and defenses of the Class  
24 Representatives are typical of the claims and defenses of the Settlement Class they represent; (4)  
25 the Class Representatives and Class Counsel have fairly and adequately protected the interests of  
26 the Settlement Class with regard to the claims of the Settlement Class they represent.

27 10. The Court finds that the requirements of Rule 23(b)(3) of the Federal Rules of Civil  
28 Procedure have been satisfied for certification of the Settlement Class. Common questions of law

1 and fact, including the question of whether a reasonable consumer was likely to be deceived by  
2 CBA's alleged misconduct and the materiality of such conduct, predominate over questions  
3 affecting only individual Settlement Class Members, rendering the Settlement Class sufficiently  
4 cohesive to warrant a class settlement. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539,  
5 559 (9th Cir. 2019) ("*Hyundai*") ("The Court also recognized that predominance is 'readily met' in  
6 cases alleging consumer fraud") (citing *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625 (1997)).

7 11. Under the Ninth Circuit's recent guidance in *Hyundai*, in assessing the predominance  
8 element in the settlement context, the Court need not conduct a choice of law analysis in order to  
9 certify the nationwide Settlement Class because neither party nor any objector has raised any choice  
10 of law issues. *See Hyundai*, 926 F.3d at 562 ("[n]o objector argued that differences between the  
11 consumer protection laws of all fifty states precluded certification of a settlement class.  
12 Consequently, neither the district court nor class counsel were obligated to address choice-of-law  
13 issues beyond those raised by the objectors, and we will not decertify a class action for lack of such  
14 analysis.") Here, neither CBA nor the two Objectors contend that certification of the proposed  
15 nationwide settlement class is improper based on choice-of-law issues or any minor variations in  
16 state laws. Therefore, the Court need not conduct a choice of law analysis here. Thus, the Court  
17 finds that predominance is satisfied in the settlement context.

18 12. In addition, pursuant to Rule 23(b)(3), the Court finds a class action settlement is  
19 superior to individual litigation and/or settlement as a method for the fair and efficient resolution of  
20 this matter.

21 13. Accordingly, the Settlement is finally approved in all respects, and the Court hereby  
22 certifies the Settlement Class.

23 14. The two persons whose names are listed in **Exhibit I** to the Declaration of Ani S.  
24 Sarich On Behalf Of CPT Group, Inc. With Respect To Notification Of Class Action Lawsuit are  
25 excluded from the Settlement Class.

26 15. The Parties are hereby directed to further implement the Settlement Agreement  
27 according to its terms and provisions. The Settlement Agreement is hereby incorporated into this  
28 Final Approval Order in full and shall have the full force of an Order of this Court.

1           16.     Upon the Effective Date of this Final Approval Order, and the Final Judgment to be  
2 entered hereon, this Action shall be dismissed on the merits and with prejudice.

3           17.     Upon the Effective Date of this Final Approval Order, and the Final Judgment to be  
4 entered hereon, Plaintiffs, each and every Settlement Class Member who has not submitted a timely  
5 and valid Request for Exclusion, and any Person claiming by or through such Settlement Class  
6 Member as his/her spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent,  
7 administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder,  
8 partner, director, employee, or affiliate (“Releasing Parties”) shall be deemed to have released CBA  
9 and all of its past, present and/or future parents, predecessors, successors, assigns, subsidiaries,  
10 divisions, departments, and affiliates, and any and all of their past, present and/or future officers,  
11 directors, employees, stockholders, partners, agents, servants, successors, attorneys, representatives,  
12 advisors, consultants, brokers, distributors, wholesalers, subrogees and assigns of any of the  
13 foregoing, and representatives of any of the foregoing (“Released Parties”), from any claim, cross-  
14 claim, liability, right, demand, suit, matter, obligation, damage, restitution, disgorgement, loss or  
15 cost, attorneys’ fee, cost or expense, action or cause of action, of every kind and description that the  
16 Releasing Party had or has, including assigned claims, whether in arbitration, administrative, or  
17 judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf  
18 of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected,  
19 latent or patent, that is, has been, could reasonably have been or in the future might reasonably be  
20 asserted by the Releasing Party in the Action against any of the Released Parties arising out of the  
21 allegations in the complaints filed in the Action (“Released Claims”). Excluded from these Released  
22 Claims is any claim for alleged bodily injuries arising after the Effective Date of this Settlement  
23 Agreement.

24           With respect to all Released Claims, Plaintiffs and each of the other Settlement Class  
25 Members who have not validly opted out of this Settlement agree that they are expressly waiving  
26 and relinquishing to the fullest extent permitted by law (a) the provisions, rights and benefits  
27 conferred by Section 1542 of the California Civil Code, which provides:  
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR  
2 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR  
3 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
4 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR  
5 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

6 and (b) any law of any state or territory of the United States, federal law, or principle of  
7 common law, or of international or foreign law, that is similar, comparable or equivalent to Section  
8 1542 of the California Civil Code.

9 18. Upon the Effective Date of this Final Approval Order, and the Final Judgment to be  
10 entered hereon, the above release of claims and the Settlement Agreement will be binding on, and  
11 will have res judicata and preclusive effect on, all pending and future lawsuits or other proceedings  
12 maintained by or on behalf of Plaintiffs and all other Settlement Class Members and Releasing  
13 Parties. All Settlement Class Members are hereby permanently barred and enjoined from filing,  
14 commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any  
15 lawsuit or other action in any jurisdiction based on or arising out of any of the Released Claims.

16 19. This Final Approval Order, the Final Judgment to be entered hereon, the Settlement  
17 Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings  
18 relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence  
19 of, an admission by or against CBA of any fault, wrongdoing, or liability on the part of CBA or of  
20 the validity for litigation of any claims that have been, or could have been, asserted in the Action.  
21 This Order, the Settlement or any such communications shall not be offered or received in evidence  
22 in any action of proceeding, or be used in any way as an admission or concession or evidence of any  
23 liability or wrongdoing of any nature or that Plaintiffs, any Settlement Class Member, or any other  
24 person has suffered any damage; provided, however, that the Settlement, this Order and the Final  
25 Judgment to be entered hereon may be filed in any action by CBA or Settlement Class Member  
26 seeking to enforce the Settlement or the Final Judgment by injunctive or other relief, or to assert  
27 defenses including, but not limited to, res judicata, collateral estoppel, release, good faith settlement,  
28 or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The  
Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in,

1 all pending and future lawsuits or other proceedings as to Released Claims and other prohibitions  
2 set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any  
3 other person subject to the provisions of this Order.

4       20. As stated in more detail in the Court's Order Granting Plaintiffs' Motion for  
5 Attorneys' Fees and Costs and Class Representative Service Awards, the Court hereby Orders that  
6 the payment of attorneys' fees, costs, and expenses in the amount of \$2,900,000.00 is fair,  
7 reasonable, and justified in light of Class Counsel's time and efforts in this Action. This award  
8 includes Class Counsel's litigation expenses of \$329,973.59. Such payment shall be made pursuant  
9 to and in the manner provided by the terms of the Settlement Agreement. The Court further Orders  
10 that the payment of Class Representative Service Awards in the amount of \$5,000.00 to each of the  
11 two Plaintiffs to compensate them for their efforts and commitment on behalf of the Settlement  
12 Class, is fair, reasonable, and justified under the circumstances of this case. Such payment shall be  
13 made pursuant to and in the manner provided by the terms of the Settlement Agreement.

14       21. The Settlement Administrator is authorized and directed to issue Settlement Benefits  
15 to Settlement Class Members who submitted timely and valid Claim Forms in accordance with the  
16 terms of the Settlement Agreement.

17       22. No later than 21 calendar days after the Settlement Benefits are distributed to the  
18 Settlement Class Members who submitted timely and valid Claim Forms, Plaintiffs shall file a Post  
19 Distribution Accounting, which includes all information required under Northern District of  
20 California Procedural Guidance for Class Action Settlements, and post the same on the Settlement  
21 Website. This Order, and the Final Judgment to be entered hereon, shall also be posted on the  
22 Settlement Website.

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23. Without affecting the finality of this Final Approval Order, the Final Judgment to be entered hereon, for purposes of appeal, until the Effective Date the Court shall retain jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Honorable Beth Labson Freeman  
United States District Judge