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21 **UNITED STATES DISTRICT COURT**  
22 **NORTHERN DISTRICT OF CALIFORNIA**  
23 **SAN FRANCISCO DIVISION**

24 IN RE KOREAN RAMEN ANTITRUST  
25 LITIGATION

Civil Action No. C-13-04115-WHO

**INDIRECT PURCHASER  
PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR FINAL  
APPROVAL OF SETTLEMENT  
WITH DEFENDANT SAMYANG  
FOODS CO. LTD., AND  
REIMBURSEMENT OF EXPENSES;  
MEMORANDUM IN SUPPORT  
THEREOF**

26 -----  
27 THIS DOCUMENT RELATES TO:  
28 INDIRECT PURCHASER ACTION

Date: August 17, 2016  
Time: 2 p.m.  
Judge: Honorable William H. Orrick

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on August 17, 2016, at 2 p.m., at the United States  
4 District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, CA  
5 94102, in Courtroom 2, 17th Floor, before the Hon. William H. Orrick, the Indirect Purchaser  
6 Plaintiffs (“IPP’s”) will, and hereby do, move the Court for an Order (1) approving the class  
7 action settlement (“Settlement”) between IPP’s and Defendant Samyang Foods Co. Ltd.  
8 (“SAMYANG”); and (2) approving partial reimbursement of expenses to Class Counsel.

9 This Motion is based on this Notice, the following Memorandum of Law in Support, the  
10 Declaration of Alan Vasquez In Support, the Declaration of Alan R. Plutzik in Support, the  
11 pleadings and papers on file in this case; and such other additional evidence and argument and  
12 may be presented to the Court at or prior to the hearing.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **SUMMARY OF ARGUMENT**

15 Pursuant to Federal Rule of Civil Procedure 23(e) and the Court’s Orders granting  
16 preliminary approval of the proposed settlements and certification of the settlement class [Dkt.  
17 No. 226], as well as the Court’s order approving Plaintiffs’ Notice Program [Dkt. No. 328], IPPs  
18 submit this memorandum in support of their motion for final approval of the Settlement with  
19 Samyang Korea, and partial reimbursement of expenses incurred in this litigation.

20 As IPPs explain below, the Samyang Settlement is “fair, reasonable and adequate.” *In re*  
21 *Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 945 (9th Cir. 2015). It provides a Settlement  
22 Fund of \$500,000.00 together with truthful testimony from Samyang witnesses about the  
23 Ramen conspiracy and a full production of relevant documents from Samyang. The Settlement,  
24 therefore, provides considerable relief to the Settlement Class and should be finally approved.

**ARGUMENT****I. FACTUAL AND LEGAL BACKGROUND**

The settlement before the Court was only reached after the IPPs' complaint survived multiple motions to dismiss by Samyang, and only with the assistance of mediator Layn Phillips. Declaration of Alan R. Plutzik In Support of Motion For Final Approval ("Plutzik Decl.") at ¶ 5. The settlement was hard-fought and was finalized only after numerous phone calls and written correspondence following an all day mediation session with Judge Philips and his staff that lasted well into the evening. On November 10, 2015, this Court preliminarily approved the settlements, and appointed Class Counsel and Class Representatives. [Dkt. No. 226] On March 23, 2016, this Court approved Plaintiffs Notice Program.<sup>1</sup> [Dkt. No. 328]

The Notice Program, insofar as it was directed to indirect purchaser class members, included (1) a summary publication notice, (2) a dedicated website with a long-form notice, (3) internet search advertising, (4) paid banner advertising; (5) social media outreach, (6) a press release, and (7) a toll free phone line. Declaration of Alan Vasquez Regarding Implementation of Notice Plan ("Vasquez Decl.") at ¶ 7. The long-form and summary Notices contained easy-to-understand information regarding the settlement reached between Plaintiffs and Samyang. The combination of these methods provided notice in a manner that meets the requirements of Rule 23.

Notice has now been disseminated as the Court directed. Vasquez Decl. at ¶ 8. No class member has either objected or opted out. (The objection and opt-out deadline was July 20, 2016). *Id.* at ¶ 35. IPPs now seek final approval of the settlement.

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<sup>1</sup> Pursuant to the Settlement Agreement, Plaintiffs received extensive cooperation with Samyang Korea, including expedited document discovery, informal interviews with Samyang Korea's counsel who was involved in the KFTC investigation, formal depositions of Samyang employees, corroborating the information provided to the KFTC, and trial testimony.

## II. THE COURT SHOULD GRANT APPROVAL OF THE SETTLEMENT

### A. The Settlement Is “Fair, Reasonable and Adequate” and Should Be Granted Final Approval.

The law favors compromises and settlements of class action suits. *See, e.g., Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “[T]he decision to approve or reject a settlement is committed to the sound discretion of the trial judge because he is ‘exposed to the litigants and their strategies, positions and proof.’” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1988) (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982)). The Court exercises its “sound discretion” when deciding whether to grant final approval. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d 939 (9th Cir. 1981).

Against this backdrop, a proposed class action settlement should be approved if the Court determines that it is “fair, reasonable and adequate.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 944 (citation omitted). To evaluate whether a settlement agreement meets these standards, the court may examine several factors, including: (1) the strength of plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (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. *Id.*, quoting *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). The applicable factors are satisfied here.

#### 1. While Plaintiffs’ Case is Strong, the Settlement Eliminates Significant Risk to the Class.

The first two factors favor approval of the settlement. While Plaintiffs believe their case is strong, the Settlement eliminates significant risks if the action were to proceed. Indeed, the settlement not only eliminates any risk of prevailing against Samyang but it reduces risk as to the remaining defendants by Samyang’s agreement to provide truthful testimony about the

1 Ramen conspiracy.

2 Moreover, unlike its co-defendants, the Samyang entity in the United States is not a  
3 wholly-owned subsidiary. *See*, D.E. 115. Thus, even if the class obtained a verdict in its favor  
4 against Samyang Korea, collecting on that judgment might well require resort to the Korean  
5 Court system and the outcome would be uncertain at best. The settlement therefore reduces the  
6 risk that IPPs would not be able to recover a judgment entered in their favor.

7 Continued litigation against Samyang also would also involve significant additional  
8 expenses and motion practice, which are avoided through the Settlement. *Larsen v. Trader*  
9 *Joe's Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at \*4 (N.D. Cal. July 11, 2014)  
10 (“Avoiding such unnecessary and unwarranted expenditure of resources and time would benefit  
11 all parties, as well as conserve judicial resources . . . . Accordingly, the high risk, expense, and  
12 complex nature of the case weigh in favor of approving the settlement.”) (citations omitted); *see*  
13 *also*, *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y.  
14 2000), *aff'd sub nom. D'Amato v. Deutsche Bank*, 236 F.3d 8 (2d Cir. 2001) (“Most class  
15 actions are inherently complex and settlement avoids the costs, delays and multitude of other  
16 problems associated with them.”).

17 The settlement avoids any risk that IPPs would not prevail against Samyang Korea or  
18 collect a judgment even if IPPs did prevail. It further reduces the risk of prevailing against the  
19 remaining defendants by Samyang's agreement to provide truthful deposition testimony, to  
20 produce documents, and to provide witnesses to testify at trial. Finally, avoids the expense of  
21 further litigation against Samyang.

22 Both the strength of Plaintiffs' case and the elimination of risk strongly support granting  
23 final approval.

## 24 **2. The Risk of Maintaining Class Action Status Throughout the Trial**

25 Antitrust actions, such as this case, are ideally suited for class action treatment. *See, In*  
26 *re TFT-LCD*, Antitrust Litig. 267 F.R.D. 583, 591 (quoting *In re Rubber Chem. Antitrust Litig.*,  
27 232 F.R.D. 346, 350 (N.D. Cal. 2005)). IPPs believe that their claims meet all of the  
28



1 requirements for certification and that such status should be maintained through trial. The  
 2 Samyang settlement, however, resolves all doubt and certifies a settlement class. Accordingly,  
 3 this factor is either neutral or weighs in favor of final approval.

### 4 **3. The Settlement Provides Considerable Relief For The Class.**

5 The Settlement Fund is substantial and provides considerable relief to the class.  
 6 Samyang agreed to pay \$1.5 million to resolve all claims, with \$500,000 to be allocated to the  
 7 IPP class<sup>2</sup>. Given Samyang's smaller market share throughout the class period, the settlement  
 8 amount roughly amounts to a 5% damages calculation<sup>3</sup> which, this Court has already found, is  
 9 in good faith. D.E. 227, p.4. Moreover, as this Court has recognized, Samyang was the first  
 10 defendant to settle with Plaintiffs in this case and the first to settle "often is entitled to a  
 11 discount in the settlement amount, particularly if cooperation in discovery is also included." *Id.*  
 12 p 5. *See, e.g., In re Linerboard Antitrust Litig.*, 292 F.Supp. 2d 631, 643 (E.D. Pa. 2003)  
 13 (citing *In re Corrugated Container Antitrust Litig.*, MDL No. 310, 1982 U.S. Dist LEXIS  
 14 11004, at \*19 (S.D. Tex. Jan. 27, 1981)) ("The Court also notes that this settlement has  
 15 significant value as an 'ice-breaker' settlement – it is the first settlement in the litigation – and  
 16 should increase the likelihood of future settlements. An early settlement with one of many  
 17 defendants can 'break the ice' and bring other defendants to the point of serious negotiations.").

18 As mentioned above, the Settlement also requires Samyang to provide deposition  
 19 testimony, documents, and witnesses at trial. The non-monetary consideration is significant and  
 20 was a material part of the agreement Plaintiffs secured. "The provision of such assistance is a  
 21 substantial benefit to the classes and strongly militates toward approval of the Settlement

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22 <sup>2</sup> The total settlement consideration to be paid for the benefit of the IPPs and the DPPs together is  
 23 \$1,500,000. Of this amount, IPPs will receive \$500,000. The IPPs and the DPPs agreed to  
 24 coordinate the dissemination of notice to members of their respective classes and to split the  
 costs of notice two-thirds to the DPPs and one-third to the IPPs.

25 <sup>3</sup> The settlement preserves Plaintiffs' right to litigate against the non-settling Defendants for the  
 26 full amount of Plaintiffs' damages based on joint and several liability, another substantial benefit  
 27 to the Settlement Class. *See In re Corrugated Container Antitrust Litig.*, MDL No. 310, 1981  
 WL 2093, at \*17 (S.D. Tex. June 4, 1981).

1 Agreement.” *In re Linerboard, supra*, 292 F. Supp. 2d at 643. In addition, “[i]n complex  
2 litigation with a plaintiff class, ‘partial settlements often play a vital role in resolving class  
3 actions.’” *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247 (7th Cir. 1992) (quoting  
4 MANUAL FOR COMPLEX LITIGATION SECOND, § 30.46 (1986)).

5 As IPPs explain above, the monetary and non-monetary consideration provided by the  
6 settlement is substantial and provides considerable relief to the class. This factor also supports  
7 final approval of the settlement.

#### 8 **4. The Extent of Discovery completed Favors Final Approval.**

9 Plaintiffs have now received and reviewed hundreds of thousands of documents  
10 produced by Samyang and its co-Defendants. Counsel has inspected the “hard-copy” document  
11 repositories that Defendant Nongshim maintained in Korea and the United States. Most of the  
12 documents produced were originally authored in Korean and Plaintiffs have translated many of  
13 those documents into English for depositions and to support their motions for class certification.

14 Plaintiffs have travelled to South Korea on three separate occasions and have taken the  
15 depositions of over 50 witnesses. Plaintiffs have also taken the depositions of witnesses that are  
16 employed by Defendants’ subsidiaries in the United States. Plaintiffs have hired experts to  
17 evaluate the damages caused by Defendants’ conspiracy. As discovery in this case is now far  
18 advanced, this factor supports approval

#### 19 **5. The Recommendation of Experienced Counsel Favors Approval.**

20 This class action has been vigorously litigated. Throughout fact discovery, Class  
21 Counsel has analyzed hundreds of thousands of pages documents produced by Samyang Korea  
22 and the non-settling Defendants, and have obtained cooperation from Samyang Korea that has  
23 already yielded significant results. Plaintiffs have retained experts to evaluate their claims and  
24 the damages suffered by the class.

25 As informed by this discovery, counsel strongly recommends and supports this  
26 settlement. Plutzik Decl. at ¶ 6. As such, Counsel’s judgment that the settlements are fair and  
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1 reasonable is also entitled to “great weight.” See *Nat’l Rural Telcomms. Coop.*, 221 F.R.D. 523,  
 2 528; accord *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 288–89 (D. Colo. 1997). As  
 3 this Court has noted previously, the recommendation of experienced counsel “should be given  
 4 considerable weight both because of counsel’s familiarity with this litigation and previous  
 5 experience with cases.” *Larsen*, 2014 WL 3404531, at \*8 .

6 Here, Class counsel is experienced in antitrust class actions and has engaged in  
 7 significant discovery. In light of Counsel’s experience and informed by the facts, Counsel  
 8 wholeheartedly recommends the Samyang settlement. This factor also supports final approval.

### 9 **6. The Class Members’ Positive Reaction Favors Final Approval.**

10 The final<sup>4</sup> factor is the reaction of class members to the proposed settlement. *Churchill*  
 11 *Village*, 361 F.3d at 575; *Hanlon*, 150 F.3d at 1026. “[T]he absence of a large number of  
 12 objections to a proposed class action settlement raises a strong presumption that the terms of a  
 13 proposed class settlement action are favorable to the class members.” *Larsen, supra*, 2014 WL  
 14 3404531, at \*5, (quoting *Nat’l Rural Telecomms.*, 221 F.R.D. at 529). A court “may  
 15 appropriately infer that a class action settlement is fair, adequate, and reasonable when few class  
 16 members object to it.” *Id.*, (quoting *Create—A—Card, Inc. v. Intuit, Inc.*, 2009 WL 3073920, at  
 17 \*15 (N. D.Cal. Sept. 22, 2009)).

18 Notice has now been provided to the class and the date to opt out or object has passed.  
 19 No objections or requests to opt out have been received. Vasquez Decl. ¶ 35. The reaction of  
 20 the class, therefore, also supports final approval of the settlement.

### 21 **III. THE COURT APPROVED NOTICE PROGRAM MEETS** 22 **APPLICABLE STANDARDS AND HAS BEEN FULLY IMPLEMENTED**

23 The Notice Program approved by this Court is commonly used in class actions like this  
 24 one. Compliance with this program provided valid, due, and sufficient notice to class members,  
 25

26 <sup>4</sup> There is no governmental participant in this proceeding. The “governmental participation”  
 27 factor, therefore, does not apply.

1 and constitutes the best notice practicable under the circumstances. The content of the notice  
2 complied with the requirements of Rule 23(c)(2)(B). The notice provided a clear description of  
3 who is a member of the Class and the binding effects of Class membership. Vasquez Decl. at  
4 ¶¶10-11. The notice explained the provisions of the Settlement, how to opt out of the  
5 Settlement, how to object to the Settlement, how to obtain copies of papers filed in the case, and  
6 how to contact Class Counsel and the Notice Administrator with any further questions or  
7 requests. *Id.*

8 The notice also explained that the Settlement itself was filed publicly with the Court and  
9 available online at [www.ramenclassaction.com](http://www.ramenclassaction.com). As a result, every provision of the Settlement  
10 was available to each Class member. In addition, other settlement documents were available at  
11 the same website.

12 The Court has already issued an order approving the Notice Program. [Dkt. No. 328]  
13 The Court found that, with the Court's suggestions, "[t]he Notice Program proposed by Plaintiffs  
14 is adequate and reasonable under the circumstances, and satisfies requirements imposed by Fed R.  
15 Civ. P. 23.

16 Class Members had a variety of methods by which to view relevant documents, contact  
17 the Notice Administrator or Class Counsel, opt out of the Settlement, or object to the  
18 Settlement. These methods included telephone, a case-specific website, social media and email.  
19 Vasquez Decl. at ¶¶ 7, 33. These methods generated a significant response. For instance, The  
20 Banner Advertisements generated 25,494 clicks to the case website. *Id.* at ¶ 23. Display  
21 Network based ads generated 6,606,468 impressions with 7,501 clicks to the case website *Id.* at  
22 ¶ 22. The Notice Administrator also received 31 calls to its toll-free telephone number. *Id.* at ¶  
23 34. All told, there were approximately 338,229 visitor hits to the case website that the  
24 administrator maintained. *Id.* ¶ 33.



