UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KIERAN O'HARA, on behalf of himself and all other similarly situated individuals,

Plaintiff,

v.

DIAGEO BEER COMPANY USA & DIAGEO NORTH AMERICA, INC.

Defendants.

Case No. 15-14139

PLAINTIFF'S ASSENTED-TO MOTION FOR PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT

NOW comes Plaintiff, Kieran O'Hara ("O'Hara" or "Plaintiff") and hereby provides this memorandum in support of his *Assented-To Motion for Preliminary Approval of a Proposed Class Action Settlement*.

O'Hara has attached a memorandum of law in support of his Motion, and a copy of the *[Proposed] Settlement Agreement* ("Agreement") is attached thereto as **Exhibit A**.

WHEREFORE, for the reasons set forth in the attached and incorporated memorandum of law, Plaintiff respectfully requests that this Court enter an Order: (1) provisionally certifying the proposed settlement class under Rule 23 of the Federal Rules of Civil Procedure with respect to the claims brought against Defendants; (2) granting preliminary approval of the class Settlement Agreement; (3) appointing Plaintiff's Counsel as Class Counsel; (4) directing execution of the proposed Notice plan; (5) approving Kroll Settlement Administration as the Settlement Administrator; and (6) setting the final fairness hearing for a date.

Plaintiff by his Counsel,

/s/ *Kevin J. McCullough*

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DATED: June 1, 2021

CERTIFICATE OF SERVICE

I, Kevin J. McCullough, Esq., certify that on June 1, 2021, 2021 this document was filed electronically through the ECF system and thereby delivered by electronic means to all counsel of record.

/s/ *Kevin J. McCullough*
Kevin J. McCullough

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PLAINTIFF'S MEMORANDUM IN SUPPORT OF HIS ASSENTED-TO MOTION FOR PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT

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- Broomfield et al. v. Craft Brew Alliance, Inc., *Order Granting Motion to Certify Class*, 2018 WL 4952519 (N.D. Cal. Sept. 25, 2018).
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- Weiss v. York Hosp., 745 F.2d 786 (3d Cir. 1984).
- Valentino v. Carter-Wallace, Inc., 97 F.3d 1227 (9th Cir. 1996).

TABLE OF EXHIBITS

1. **Exhibit A** – *Settlement Agreement*
2. **Exhibit B** – *[Proposed] Preliminary Approval Order*

NOW comes Plaintiff, Kieran O'Hara ("O'Hara" or "Plaintiff") and hereby provides this memorandum in support of his *Assented-To Motion for Preliminary Approval of a Proposed Class Action Settlement*. A copy of the *[Proposed] Settlement Agreement* ("Agreement") is attached hereto as **Exhibit A**.

After over five (5) years of active litigation, and as a result of arm's length negotiations, the Parties have reached a comprehensive Class Action Settlement Agreement, which Agreement resolves all claims asserted in this action by O'Hara and a Settlement Class of Massachusetts Consumers against Defendants.

Accordingly, O'Hara respectfully requests that the Court enter an Order:

1) Provisionally certifying the proposed settlement class under Rule 23 of the Federal Rules of Civil Procedure, as outlined in the exhibits hereto and below;

2) Granting preliminary approval of the Settlement Agreement, attached as **Exhibit A**;

3) Appointing Forrest, Mazow, McCullough, Yasi & Yasi, P.C. as Class Counsel of the proposed settlement Class;

4) Directing distribution of the proposed Claim Form and Notice(s) of Settlement of Class Action Lawsuit and Fairness Hearing ("Notice"). The [Proposed] Notices and Claim Form are attached to the Settlement Agreement as Exhibit 2(a); Exhibit 2(b); and Exhibit 2(c);

5) Approving Kroll Settlement Administration as the Settlement Administrator; and

6) Setting the Fairness Hearing for a date no later than one hundred and twenty (120) days after the date of the entry of the Preliminary Approval Order.

In support of his *Motion for Preliminary Approval*, Plaintiff submits the following:

I. INTRODUCTION

Plaintiff filed the present action alleging that Defendants deceptively marketed Guinness Extra Stout ("GES") in an effort to convince consumers that all GES sold in the United States (in particular Massachusetts) was sourced, brewed, bottled-in, and imported from St. James's Gate Brewery, Dublin, Ireland. The plaintiff alleges that all GES sold in the United States during the

Class Period was sourced (i.e., contained ingredients such as water and yeast), brewed, bottled-in, and imported from Canada.[1] Both Diageo Beer Company USA & Diageo North America, Inc. (collectively "Defendants") deny the allegations asserted by O'Hara in the Complaint and/or deny any liability therefrom.

II. PROCEDURAL BACKGROUND

On December 15, 2015, O'Hara filed a putative *Class Action Complaint* against Defendants alleging violations of various common laws. See, Docket No. 1. Thereafter, on January 14, 2016, O'Hara filed a *First Amended Class Action Complaint* alleging that Guinness's actions also violated M.G.L. c. 93A. See, Docket No. 4.

On or about March 21, 2016, Guinness moved to dismiss *Plaintiff's First Amended Class Action Complaint* ("*Amended Complaint*") pursuant to Rules 12(b)(1); 12(b)(6); and 23(d)(1)(D). See, Docket No. 17 and 18.

On March 29, 2018, the Court issued its ruling on *Defendants' Motion to Dismiss*, denying it in part and allowing the dismissal of certain claims. See, Docket No. 36. ("Court's Order"). In its order, the Court held:

> Defendants' Motion to Dismiss (Docket No. 17) is DENIED as to Count I, alleging misrepresentation, and as to Counts III and IV to the extent that they allege that statements on defendants' website violated Mass. Gen. Laws Chapter 93A. The Motion to Dismiss is ALLOWED as to Count II, with respect to Counts III and IV to the extent that they allege the statements on Extra Stout's bottle and carton labels violate Chapter 93A, and as to the remaining counts in their entirety. The prayers for injunctive and declaratory relief are also DISMISSED.

See, Docket No. 36, page 50 of 50.

On June 15, 2018, per order of the Court, O'Hara filed a *Motion to Amend the First Amended Class Action Complaint* and *Plaintiff's Second Amended Complaint*; as well as *Plaintiff's*

[1] GES was brewed and bottled in New Brunswick, Canada, from approximately the year 2000 through September 3, 2015.

Motion for Reconsideration relating to the dismissal of certain counts. See, Docket No. 44-15. On March 30, 2019, the Court allowed *Plaintiff's Motion for Reconsideration* relating to the dismissal of certain counts. See, Id. In addition, the Court allowed, in part, *Plaintiff's Motion to Amend the First Amended Class Action Complaint* with respect to renaming the Defendant and amending the class definition; however, the motion was denied, without prejudice, with respect to the addition of a new Chapter 93A claim related to the Tariff Act. See, Docket No. 60.

Thereafter, on April 16, 2019, and consistent with the Court's Order on *Plaintiff's Motion to Amend the First Amended Class Action Complaint*, Plaintiff filed *Plaintiff's Revised Second Amended Class Action Complaint and Demand for Jury Trial* ("*Revised SAC*"). See, Docket No. 63. On May 6, 2019, Defendants filed their Answer denying liability and asserting defenses. See, Docket No. 66. Subsequently, the Parties engaged in extensive written discovery, document production, and depositions.

On July 29, 2019, the Court, at the request of the Parties, entered a Stay, so that the Parties could mediate the claims raised in this action. See, Docket No. 75. On September 18 and September 19, 2019, the Parties participated in a mediation with the Hon. Margaret R. Hinkle (ret.); however, the Parties were unable to resolve the claims at that time. Then, at the request of the Parties, on November 6, 2019, the Court lifted the Stay and amended the scheduling order. See, Docket No. 78; and 79.

Thereafter, on December 23, 2019, O'Hara filed *Plaintiff's Motion for Class Certification*. See, Docket Nos. 84; and 85.

On April 20, 2020, Defendants filed their Opposition to *Plaintiff's Motion for Class Certification*; and simultaneously filed their *Motion to Exclude Opinion of Expert Stefan Boedeker*. See, Docket Nos. 101-103. Plaintiff filed his *Reply in Support of Class Certification*; his

Opposition to Motion to Defendants' Motion Exclude Opinion of Expert Stefan Boedeker; and concurrently filed a *Motion to Exclude Defendants' Expert*. See, Docket Nos. 108-111. On August 17, 2020, Defendants filed their *Reply in Support of their Motion Exclude Opinion of Expert Stefan Boedeker*; and *Opposition to Plaintiff's Motion to Exclude Defendants' Expert*. See, Docket No. 116-117.

On March 15, 2021, the Court heard argument on the Parties' respective pending motions. See, Docket No. 131. As a result of the hearing, the Court held as follows:

> Electronic Clerk's Notes for proceedings held before Judge Mark L. Wolf: denying without prejudice 102 Motion to Exclude Opinion of Expert Stefan Boedeker; denying 109 Motion to Strike Expert filed by Kieran O'Hara. Motion Hearing held on 3/15/2021 by videoconference re 109 Motion to Strike Expert filed by Kieran O'Hara, 102 Motion to Exclude Opinion of Expert Stefan Boedeker filed by Diageo Beer Company USA, Diageo North America, Inc., and 84 Motion to Certify Class filed by Kieran O'Hara. Counsel present argument, court denies without prejudice 102 Motion to Exclude Opinion of Expert Stefan Boedeker; denies 109 Motion to Strike Expert filed by Kieran O'Hara; denies 84 Motion to Certify Class as to nationwide and MA class claims based on negligent misrepresentation. Court reserves ruling on motion to certify class based on 93A claim. Parties shall confer and report as to possibility of settlement by 3/29/21. Parties shall submit further briefing by 4/5/21, any replies shall be filed by 4/12/21. Parties shall order transcript. This case is hereby STAYED. (Court Reporter: Linda Walsh at lwalshsteno@gmail.com.)(Attorneys present: McCullough, Forrest, Kostyshak, Gilman, Danon, Struck) (Loret, Magdalena) (Entered: 03/16/2021).

Id.

Thereafter, the Parties reengaged in settlement discussions in accordance with the Court's suggestions, which resulted in the comprehensive settlement agreement now before the Court.

WHEREFORE, for the reasons set forth herein, Plaintiff respectfully requests that this Honorable Court allow Plaintiff's request for Preliminary Approval; and thereafter, enter the [Proposed] Order for Preliminary Approval, attached hereto as **Exhibit B**.

III. SUMMARY OF THE TERMS OF THE SETTLEMENT AND RELIEF SOUGHT

A. Proposed Settlement Class:

The Settlement Agreement defines the Massachusetts Settlement Class as follows:

> All individuals who purchased a six-pack or twelve-pack of Guinness Extra Stout in the Commonwealth of Massachusetts between December 15, 2011 and September 3, 2015.

The Settlement Class excludes any individuals who purchased Guinness Extra Stout for resale, including distributors and retailers. In addition, the following are excluded from the Settlement Class: (i) Defendants; (ii) any entity in which Defendants have a controlling interest; (iii) Defendants' officers, directors, legal representatives, successors, subsidiaries, and assigns; and (iv) any individual who timely and validly opts-out of the Settlement Class.

B. Settlement Class Relief:

For any Settlement Class Member who follows the procedures set forth in Section 3 of the Agreement; and who submits a valid Claim Form (and attestation of his or her purchase under penalty of perjury), Defendants will pay a monetary benefit as follows:

1. **Without Proof of Purchase**. For Settlement Class Members who submit a valid Claim Form without Proof of Purchase, but who submit attestation of his or her purchase of Guinness Extra Stout in the Commonwealth of Massachusetts between December 15, 2011 and September 3, 2015 under penalty of perjury, Defendants will pay $0.50 per six-pack (whether purchased as a six-pack or as part of a twelve-pack) up to a maximum of $10.00 per household; or

2. **With Proof of Purchase**. For Settlement Class Members who submit a valid Claim Form, along with Proof of Purchase establishing purchase of Guinness Extra Stout in the Commonwealth of Massachusetts between December 15, 2011 and September 3, 2015, Defendants will pay $0.50 per six-pack (whether purchased as a six-pack or as part of a twelve-pack) up to a maximum of $20.00 per household.

For purposes of settlement, individuals residing in the same household are limited to one claim per household and shall not be permitted to submit multiple claims for each member of the household.

C. Release of Claims:

In exchange for the foregoing relief, the Settlement Class Members who do not opt out of the Settlement will release Defendants and their current, former, and future affiliates, parents, and subsidiaries from all Released Claims that were raised or could have been raised in this Action.

D. Settlement Claim Process:

All Settlement Class Members who are eligible and who submit a valid Claim Form shall be sent cash awards by the Settlement Administrator within forty-five (45) of the Effective Date. Defendants shall pay the Settlement Administrator the aggregate value of all cash awards to be distributed to Settlement Class Members no later than thirty (30) days after the Effective Date. All cash awards to Settlement Class Members will be in the form of electronic payment or checks. To be eligible to receive the Class Benefit under the Settlement Agreement, Settlement Class Members must submit a claim to the Settlement Administrator by electronically completing, certifying, and submitting the Claim Form on the Settlement Website. The Claim Form must be electronically submitted no later than the Claims Deadline.

Claim Forms submitted after the Claims Deadline shall be denied by the Settlement Administrator, and Defendants will not be obligated to make any payment on such claims. No Claim Form will be deemed valid unless it is signed electronically by the Settlement Class Member under penalty of perjury and is submitted on or before the Claims Deadline.

The Settlement Administrator shall review all submitted Claim Forms within a reasonable time to determine each Settlement Class Member's eligibility for the Class Benefit, and the amount of such relief, if any. Copies of submitted Claim Forms shall be provided to Defendants' Counsel and to Class Counsel upon request. Settlement Class Members who submit valid Claim Forms shall be entitled to relief as set forth in Section 2 of the Settlement Agreement. Settlement Class

Members who submit a Claims Form that do not meet the eligibility requirements described herein shall not be entitled to such relief. The Settlement Administrator will track Claim Forms with unique security identifiers or control numbers issued to individuals who seek to file a claim.

With respect to fraudulent claims, the Settlement Administrator shall utilize all reasonable and appropriate anti-fraud measures and reject claims it determines, based on its reasonable judgment, to present indicia of fraud, subject to review by Class Counsel and, if requested by Class Counsel, the Court. In the event a claim is believed to be fraudulent, the Settlement Administrator shall notify any claimant *via* email of a rejection. If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within 10 Business Days from receipt of the rejection, email the Settlement Administrator a notice and statement of reasons indicating the grounds for contesting the rejection along with any supporting documentation, requesting further review by the Settlement Administrator, in consultation with Defendants' Counsel and Class Counsel, of denial of the claim. The Settlement Administrator, in consultation with Defendants' Counsel and Class Counsel, shall notify the claimant of its decision by email within 10 Business Days from receipt of the claimant's reply contesting the rejection. If the rejection is upheld, the claimant shall have 10 Business Days from receipt of that notice to file a motion with the Court disputing the rejection.

With respect to incomplete forms, submitted Claim Forms containing inaccurate or disqualifying information, and/or submitted Claims Forms omitting required information shall be returned via email by the Settlement Administrator to the Settlement Class Member's email address indicated on the Claim Form as part of a Notice of Missing or Inaccurate Information. Settlement Class Members whose Claim Forms are returned shall have until the end of the Claims Period, or 30 days from when the Notice of Missing or Inaccurate Information was emailed,

whichever is later, to reply to the Notice of Missing or Inaccurate Information and provide a revised Claim Form that includes all required information.

Thereafter, if a Settlement Class Member fails to respond by the end of the Claims Period or within 30 days from when the Notice of Missing or Inaccurate Information was emailed, whichever is later, or the Settlement Administrator is unable to return the submitted Claim Form as a result of the omitted information, the Settlement Administrator will reject such Settlement Class Member's claim, and Defendants will not be obligated to make any payment on such claim.

IV. Legal Argument

A. Standard of Review and Procedures for Preliminary Approval.

By this Motion for Preliminary Approval, the Parties seek preliminary approval of the Settlement Agreement. "Compromises of disputed claims are favored by the courts." Williams v. First Nat'l Bank, 216 U.S. 582, 595 (1910); see also, Durett v. Housing Auth. of Providence, 896 F.2d 600, 604 (1st Cir. 1990); In re Viatron Computer Sys. Corp., 614 F.2d 11, 15 (1st Cir. 1980); and In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 317 (3d Cir. 1998) ("Prudential II"). Settlement spares the litigants the uncertainty, delay, and expense of a trial, while simultaneously reducing the burden on judicial resources. Federal Rule 23(e) provides that the Court must approve any settlement of a class action. Id.

Thus, in a class action, the "court plays the important role of protector of the [absent members'] interests, in a sort of fiduciary capacity." In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 785 (3rd Cir. 1995) ("GM Trucks"). The ultimate determination though of whether a proposed class action settlement warrants approval resides in the Court's discretion. Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968).

As discussed more fully below, at this stage of preliminary approval, there is clear evidence that the Settlement Agreement is a benefit to the Settlement Class.

Rule 23(e) of the Federal Rules of Civil Procedure provides the mechanism for settling a class action, including, as here, through a class certified for settlement purposes. The rule states as follows:

> The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
>
> (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
>
> (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
>
> (4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
>
> (5) Any class member may object to the proposal if it requires court approval under Federal Rule of Civil Procedure 26(e); the objection may be withdrawn only with the court's approval.

FED. R. CIV. P. 23(e); see also, Amchem Prods. v. Windsor, 521 U.S. 591, 617 (1997); and Durett, 896 F.2d at 604.

In determining whether preliminary approval is warranted, the primary issue before the Court is whether the proposed settlement is within the range of what might be found fair, reasonable, and adequate, so that notice of the proposed settlement should be given to class members, and a hearing scheduled to determine final approval. See, Manual for Complex Litigation, Fourth, § 13.14, at 172-73 (2004) ("Manual Fourth"). The Court reviews the settlement

proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. Id.

If so, the final decision on approval is made after the hearing. At the hearing on this Motion for Preliminary Approval, the Court is not required to make a final determination. Instead:

> The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.

Id. at § 21.632, at 321.

Thus, preliminary approval is the first step in a two-step process required before a class action may be finally settled. Id. at 320. At step one, courts make a preliminary evaluation of the fairness of the settlement, prior to notice. Id. at 320-21. In some cases, this initial assessment can be made on the basis of information already known to the court and then supplemented by briefs, motions, and an informal presentation from the settling parties. Id.

There is an initial strong presumption that a proposed class action settlement is fair and reasonable when it is the result of arm's length negotiations. Durett, 896 F.2d at 604 (reversing denial of approval of settlement as an abuse of discretion and noting that "district court's discretion [in denying approval of settlements] is restrained by 'the clear policy in favor of encouraging settlements'").

In deciding whether a settlement should be approved under Rule 23, courts look to whether there is a basis to believe that the more rigorous, final approval standard will be satisfied. "Once the judge is satisfied as to the certifiability of the class and the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, notice of a formal Rule 23(e) fairness hearing is given to the class members." MANUAL FOURTH at § 21.633, at 321. Preliminary approval permits notice of the hearing on final settlement approval to be given to the class

members, at which time class members and the settling parties may be heard with respect to final approval. Id. at 322. The standard for final approval of a settlement consists of showing that the settlement is fair, reasonable, and adequate. See e.g., Durett, 896 F.2d at 604; Prudential II, 148 F.3d at 316-17; In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 785 (3rd Cir. 1995) ("GM Trucks").

1. The Settlement Agreement reached in this case is fair, reasonable, and adequate.

Before granting approval of a proposed class action settlement, the Court must find that the settlement is fair, reasonable, and adequate. See e.g., FED. R. CIV. P. 23(e); Durett, 896 F.2d at 604.

A "strong initial presumption" of fairness arises where the parties can show that "the settlement was reached after arms-length negotiations, that the proponents' attorneys have experience in similar cases, that there has been sufficient discovery to enable counsel to act intelligently, and that the number of objectors or their relative interest is small." Rolland v. Cellucci, 191 F.R.D. 3, 6 (D. Mass. 2000); see also, City P'ship Co. v. Atlantic Acquisition Ltd. P'ship, 100 F. 3d 1041, 1043 (1st Cir. 1996). However, "there is no single test in the First Circuit for determining the fairness, reasonableness and adequacy of a proposed class action settlement." In re Relafen Antitrust Litig., 231 F.R.D. 52, 71-72 (D. Mass. 2005) (internal quotations omitted).

In the First Circuit, Court's rely upon a number of factors, the most common of which include: (1) the complexity, expense, and duration of litigation; (2) the amount of the proposed settlement compared to the amount at issue; (3) reaction of the class to the settlement; (4) the stage of proceedings and the amount of discovery completed; (5) the plaintiffs' likelihood of success on the merits and recovering damages on their claims; (6) whether the agreement provides benefits which the plaintiffs could not achieve through protracted litigation; (7) good faith dealings and the

absence of collusion; and (8) the settlement's terms and conditions. See, e.g., In re Lupron Mktg. & Sales Practices Litig., 228 F.R.D. 75, 93 (D. Mass. 2005); Celluci, 191 F.R.D. at 8-9; and M. Berenson Co. v. Faneuil Hall Marketplace, Inc., 671 F. Supp. 819, 822-833 (D. Mass. 1987).

In the case at bar, an examination of each of these factors demonstrates that the proposed settlement is fair, reasonable, and adequate to the members of the class, and should be preliminarily approved by the Court.

First, with respect to complexity, expense, and duration of litigation, it is clear that the prosecution of this case would continue to be lengthy and expensive. That is, after over five (5) years of litigation, if this settlement is not approved, the Parties will face extended and expensive litigation regarding the issue of certifiability, the merits of the Class' M.G.L. c. 93A, § 2 claims, and Defendants' liability.

The Parties have already exchanged thousands of pages of documents, multiple sets of interrogatories and requests for admissions asked and answered, and numerous depositions conducted. If the settlement is not approved, the Parties may need to conduct additional discovery in preparation for trial; and would potentially face a lengthy and costly class action trial. Further, if this case does not settle, it would likely take years to resolve, generating enormous legal fees before reaching final resolution, including exhaustion of all appeals.

Second, with respect to the amount of the proposed settlement compared to the amount at issue, the Parties believe that the value of the settlement is fair and reasonable given the various challenges facing the parties.

That is, the terms of the Settlement entitle all class members who submit a claim form to the following: (1) Settlement Class Members who submit a valid Claim Form without Proof of Purchase, but who submit the necessary attestation shall receive $0.50 per six-pack purchased

(whether purchased as a six-pack or as part of a twelve-pack) up to a maximum of $10.00 per household; and (2) Settlement Class Members who submit a valid Claim Form, along with Proof of Purchase shall receive $0.50 per six-pack (whether purchased as a six-pack or as part of a twelve-pack) up to a maximum of $20.00 per household. Thus, the putative class shall be compensated in an amount that fairly reflects the alleged depreciation in value Plaintiff suggests occurred based upon the alleged misrepresentations as to location of brewing.

Further, given the very real risk that Plaintiff and the putative class could recover nothing if this litigation were to proceed, the Parties agree that this settlement amount is entirely appropriate and very favorable to the Plaintiff and the putative class members; particularly as members of the Settlement Class shall be able to claim their award by way of self-attestation; or conversely, proof of purchase so as to be eligible for the larger award amount.

Third, with respect to the reaction of the class to the Settlement, the Court will be able to evaluate this factor after the notice period has expired and all potential objections and/or opt-outs have been analyzed. However, as of the filing of this Motion, no objections have been made.

Fourth, with respect to the stage of proceedings and the amount of discovery completed, Class Counsel received thousands of pages of written discovery responses, and the parties conducted numerous depositions throughout the United States. Further, many of the legal issues, including class certification, have been briefed and argued before the Court. As such, the risks of litigation, for both Parties, have been more clearly defined. Thus, the Parties have determined that settlement under the terms of the Agreement is not only fair and reasonable but provides a definite and predictable outcome for the Parties without the need for further protracted discovery or litigation.

Further, the Parties engaged in a multi-day mediation with the Hon Hinkle, J. (Ret.), as well as additional extensive arm's-length discussions regarding the relevant facts and legal merits of the claims asserted in the case. The negotiations have highlighted a number of practical and legal issues presented by this case, and this proposed settlement resolves the risks which the Parties fully appreciate at this point in the litigation.

Fifth, with respect to the Plaintiff's likelihood of success in obtaining class certification and in recovering on the merits of the case, Plaintiff believes strongly in his case, but recognizes that there are uncertainties regarding the certification of the state claims. Plaintiff's counsel appreciates the issues raised by the Court and Defendant regarding the concept of "injury" for the purposes of M.G.L. c. 93A, § 2. And while, Counsel believes that Massachusetts Certification would be allowed; and thereafter, liability established, the Agreement now proposed eliminates risks to the Parties and provides a certain result.

Sixth, with respect to whether the agreement provides benefits which Plaintiff could not achieve through protracted litigation, the settlement grants the benefit of a prompt and fair resolution to all claims in the operative Complaint, and the avoidance of delay to the class members' receiving their portion of the settlement amount. This is particularly true where Plaintiff has obtained what he sought: recovery of the price-premium he believes he paid for Guinness Extra Stout.

Seventh, with respect to whether the settlement was reached as the result of good faith dealings and the absence of collusion, the Parties submit that the settlement was the result of good faith negotiations and involved no collusion.

Further, both Plaintiff and Defendants are represented by experienced counsel in consumer protection litigation, who have litigated large and complex cases zealously and successfully on

behalf of their respective clients.[2] See, e.g., Cotton v. Hinton, 559 F.2d 1326 (5th Cir. 1977); In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions, 410 F.Supp. 659 (D. Minn. 1974) ("The recommendation of experienced antitrust counsel is entitled to great weight."); Fisher Brothers v. Phelps Dodge Industries, Inc., 604 F. Supp. 446 (E.D. Pa. 1985) ("The professional judgment of counsel involved in the litigation is entitled to significant weight.").

Here, the Settlement was negotiated by experienced counsel in a manner that was meant to assure all class members their rights under the applicable laws; and further, the settlement was not the product of collusive dealings. Rather, the Agreement was reached by the vigorous prosecution of the case by experienced and qualified counsel.

For these reasons, it is apparent that the result obtained for Class Members is well within the reasonable standard. Accordingly, the standards for preliminary approval are met in this case and the parties request the Court grant preliminary approval.

B. Provisional Certification of the Settlement Class is Appropriate.

The United States Supreme Court and various circuit courts have recognized that the benefits of a proposed settlement can only be realized through the certification of a settlement class. See e.g., Amchem, 521 U.S. at 591; In re Lupron Marketing and Sales Practices Litigation,

[2] Plaintiff's Counsel has successfully represented consumer classes in the following matters. See e.g., Garcia et al. v. 15 Taylor, LLC, et al., CA No. 3:17-cv-10891-MGM (Allowed, October 4, 2018); Khun et al. v. Sleepy's, LLC, et al., CA No. 1:17-cv-10110-FDS; Doe et al., v. The Medical Treatment Center of Revere, et al., CA No. SUCV-2014-3487A (Allowed May 15, 2018, Campo, J.); Butler et al. v. Salisbury Five C's, Inc., et al., CA No. ESCV-1777-CV-1127C (Allowed April 17, 2018, Lu, J.); Topham et al. v. Roberts Towing, Inc. d/b/a Roberts Towing, CA No. SUCV-2017-0386-BLS1 (Allowed February 21, 2018, Kaplan, J.); Cabrera v. Progressive Direct Ins. Co., CA No. SUCV-2016-03716-BLS2 (Allowed February 14, 2018, Salinger, J.); Polanik et al. v. Boston Hill Donuts, LLC, et al., CA No. 1784CV00914-BLS2 (Allowed, September 28, 2017, Leibensperger, J.); Hyman et al. v. Metropolitan Property & Casualty Ins. Co., et al., CA No. SUCV-1684CV00488-BLS2 (Allowed, August 23, 2017, Sanders, J.); Kappotis et al. v. Bertucci's, Inc. et al., CA No. SUCV-1584CV03821-BLS1 (Allowed, February 24, 2017, Kaplan, J.); Reis et al. v. Knight's Airport Limousine Service, Inc., et al., CA No. WOCV2014-01558C (Allowed, November 10, 2015); and Fama et al. v. Bactes Imaging Solutions, Inc., Suffolk Superior Court, C.A. No.: 13-01435-BLS1, consolidated with 13-00681-BLS1; 13-04165-BLS1; and 14-00352-BLS1 (Allowed, May 4, 2015, Kaplan, J.).

345 F. Supp. 2d 135, 137 (D. Mass. 2004) (citing MANUAL FOURTH); see also, Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998); and Prudential II, 148 F.3d at 283.

Specifically, the First Circuit has established that where there is a "common disputed issue," courts should "view the issue . . . in favor of class action status." Tardiff v. Knox County, 365 F.3d 1, 5 (1st Cir. 2004); see also, In re New Motor Vehicles Canadian Export Antitrust Litigation, 522 F.3d 6, 23 (1st Cir. 2008) (noting "existence of a common disputed issue weighs in favor of class certification, not against it). This is also the preference in other circuits. See e.g., Eisenberg v. Gagnon, 766 F.2d 770 (3d Cir.1985) ("[t]he interests of justice require that in a doubtful case . . . any error, if there is to be one, should be committed in favor of allowing a class action"). Here, as set forth below, all of the elements of Rule 23 are met with respect to the proposed settlement, which, accordingly, merits class certification.

1. The Elements of Rule 23(a) are Satisfied in the Present Case.

In order for a lawsuit to be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, a named plaintiff must establish each of the four threshold requirements of subsection (a) of the Rule, which provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R Civ. P. 23(a). See e.g., Key v. Gillette Co., 782 F.2d 5, 7 (1st Cir. 1986) ("all four requirements of Rule 23(a) must be met in order for certification of a class to be proper"); Barnes v. American Tobacco Co., 161 F.3d 127 (3d Cir. 1998); Prudential II, 148 F.3d at 308-09. Here, for purposes of settlement, all four elements are easily satisfied. The proposed Settlement Class consists of the following:

> All individuals who purchased a six-pack or twelve-pack or Guinness Extra Stout in the Commonwealth of Massachusetts between December 15, 2011 and September 3, 2015.
>
> The Settlement Class excludes any individuals who purchased Guinness Extra Stout for resale, including distributors and retailers. In addition, the following are excluded from the Settlement Class: (i) Defendants, (ii) any entity in which Defendants have a controlling interest, (iii) Defendants' officers, directors, legal representatives, successors, subsidiaries, and assigns; and (iv) any individual who timely and validly opts-out of the Settlement Class.

2. The Requirements of Numerosity Are Met Under Rule 23(a)(1).

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Plaintiff is not required to come before the Court and detail, to the person, the exact size of the class or to demonstrate that joinder of all class members is impossible. "'Impracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." Advertising Special. Nat. Ass'n v. Federal Trade Comm'n, 238 F.2d 108, 119 (1st Cir. 1956) (citing 3 MOORE'S FEDERAL PRACTICE 3423 (2d ed. 1948).; see also Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp., 149 F.RD. 65, 73 (D.N.J. 1993) (stating that "[i]mpracticability does not mean impossibility" and "precise enumeration of the members of a class is not necessary"). Furthermore, "numbers alone" are not determinative of numerosity, but rather, "the facts and circumstances of each case are to be taken into account to determine numerosity under Rule 23(a)(1)." Andrews v. Bechtel Power Corp., 780 F.2d 124, 131-32 (1st Cir. 1985). In the case *sub judice* the numerosity requirement is easily met. During the Class Period, Defendants sold thousands of cases of Guinness Extra Stout to Massachusetts consumers.

3. The Requirements of Commonality Are Met Under Rule 23(a)(2).

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." The commonality requirement is met if the plaintiff's grievances demonstrate "that there are common questions of law or fact in the case." So. States Police Benevolent Ass'n, Inc. v. First Choice

Armor & Equip., Inc., 241 F.R.D. 85, 87 (D. Mass. 2007) (characterizing commonality requirement as a "low hurdle" that "can be met by even a single common legal or factual issue").[3]

Here, for settlement purposes, commonality is met insofar as the claims of Plaintiff and Class Members are all predicated on the core common issue: whether Defendants' alleged marketing and packaging scheme misled consumers into believing GES was brewed, sourced, bottled and distributed from the St. James's Gate Brewery, Dublin, Ireland. See e.g., Broomfield et al. v. Craft Brew Alliance, Inc., *Order Granting Motion to Certify Class*, 2018 WL 4952519, *5 (N.D. Cal. Sept. 25, 2018) (certifying a class of persons who purchased beer alleged to misrepresent the location of brewing and origin under theories of common law fraud, fraudulent misrepresentation, negligent misrepresentation, quasi-contract/unjust enrichment, and California's consumer protection laws). As such, the claims of Plaintiff and the putative Class all arise out of a common relationship to an alleged definite wrong. See e.g., Overka v. Am. Airlines, Inc., 265 F.R.D. 14, 18 (D. Mass. 2010) ("Commonality is satisfied where the lawsuit challenges a systemwide practice or policy that affects all of the putative class members."); and George v. Nat'l Water Main Cleaning Co., 286 F.R.D. 168, 175 (D. Mass. 2012); see also, Kirby v. Cullinet Software, Inc., 116 F.R.D. 303, 306 (D. Mass. 1987) (stating evidence of commonality need not be "exhaustive," but only "illustrative") quoting, Berenson v. Faneuil Hall, 100 F.R.D. 468, 470

[3] Plaintiff is not required to show that all class members' claims are identical to each other as long as there are common questions at the heart of the case; "despite some factual differences between the members of the class, commonality can still exist for purposes of 23(a)(2)." In re Dehon, Inc., 298 B.R. 206, 214 (Bankr. D. Mass. 2003) (holding that because one "can reasonably infer that certain defenses of the individual members of the putative class to Dehon's subordination strategy will be available to every other member…is established").

Indeed, only a single common question is sufficient to satisfy the requirements of Rule 23(a)(2). See, e.g., 1 Robert Newberg, NEWBERG ON CLASS ACTIONS, § 3.10; accord So. States Police Benevolent Ass'n, 241 F.R.D. at 87. "The test or standard for meeting the Rule 23(a)(2) prerequisite is qualitative rather than quantitative; that is, there need be only a *single issue common* to all members of the class. Therefore, this requirement is easily met in most cases." Natchitoches Parish Hosp. Servs. Dist. v. Tyco Int'l., Ltd., 247 F.R.D. 253, 264 (D. Mass. 2008) (quoting 1 Newberg, NEWBERG ON CLASS ACTIONS, § 3.10) (emphasis added).

(D. Mass. 1984). Moreover, Plaintiff alleges that all members of the Class were similarly injured by being subjected to Defendants' deceptive marketing and packaging scheme, and further, by paying a price premium for GES as a result of that deception.

4. The Requirements of Typicality Are Met Under Rule 23(a)(3).

Rule 23(a)(3) requires that a representative of plaintiff's claims be "typical" of those of other class members.[4] The typicality requirement is satisfied when the class members' claims "arise[] from the same event or practice or course of conduct that gives rise to the claims of other class members, and . . . are based on the same legal theory." Garcia-Rubiera v. Calderon, 570 F.3d 443, 460 (1st Cir. 2009) (quoting In re Am. Med. Sys., Inc., 75 F.3d 1069, 1082 (6th Cir. 1996); see also Marisol A. v. Giuliani, 126 F.3d 372 (2d Cir. 1997) (typicality requirement "is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability"). Notably, a "finding of typicality will generally not be precluded even if there are 'pronounced factual differences' where there is a strong similarity of legal theories." In re Carbon Black Antitrust Litig., 2005 WL 102966, *12 (D. Mass. Jan. 18, 2005) (quoting In re Linerboard Antitrust Litig., 203 F.R.D. 197, 207 (E.D. Pa. 2001)); see also, Hayworth v. Blondery Robinson & Co., 980 F.2d 912, 923 (3d Cir. 1992) ("Factual differences will not render a claim atypical if the claim arises from the same event or

[4] The commonality and typicality requirements of Rule 23(a) "tend to merge." Gen.Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 157 n. l3 (1982). The requirement of this subdivision of the rule, along with the adequacy of representation requirement set forth in subsection (a)(4), is designed to assure that the interests of unnamed class members will be protected adequately by the named class representative. See e.g., Id.; In re Screws Antitrust Litigation, 91 F.R.D. 52, 56 (D. Mass. 1981) (highlighting requirement that class interests be adequately protected); Prudential II, 148 F.3d at 311; Bogosian v. Gulf Oil Corp., 561 F.2d 434 (3d Cir. 1977); Asbestos School Litig., 104 F.R.D. at 429-30.

practice of course of conduct that gives rise to the claims of the class members, and it is based on the same legal theory.").[5]

Here, the claims of all putative Class Members are based upon the exact same course of alleged unlawful and deceptive conduct alleged to have been committed by Defendants: the alleged misleading/deceptive marketing and packaging scheme. Therefore, Plaintiff's claims are "typical" when compared to the claims of the entire Settlement Class as all Class Members' claims are based upon Defendants' purported Consumer Protection Act violations.

As such, Plaintiff contends that if the matter were to proceed to trial, O'Hara, along with each Class Member, would present essentially the same evidence regarding Defendants' alleged misleading and deceptive marketing and packaging scheme.

Thus, Plaintiff's claims are "typical" with regard to the entire class. Further, this requirement is met by the proposed settlement class as Plaintiff seeks to allege that the claims allegedly all arise from a common course of conduct by Defendants. Accordingly, Plaintiff submits that for the purpose of settlement, the typicality requirement for class certification is satisfied.

5. The Requirements of Adequacy Are Met Under Rule 23(a)(4).

The final requirement of Rule 23(a) is set forth in subsection (a)(4), which requires that "the representative parties will fairly and adequately protect the interests of the class." In the First Circuit, "[t]he requirement of adequate representation is met [where] [1] the named plaintiffs' interests are not antagonistic with those of the rest of the class but rather involve the identical legal issue, and [2] the plaintiffs' attorneys are qualified to conduct the litigation." Bouchard v. Sec. of

[5] In other words, "[t]he 'typicality' requirement focuses less on the relative strengths of the named and unnamed plaintiffs' case than on the similarity of the legal and remedial theories behind their claims." In re Relafen Antitrust Litig., 231 F.R.D. 52, 69 (D. Mass. 2005) (quoting Jenkins v. Raymark Indus., 782 F.2d 468, 472 (5th Cir. 1986)); Weiss v. York Hosp., 745 F.2d 786, 809-10 (3d Cir. 1984).

Health & Human Servs., 1982 WL 594675, at *7 (D. Mass. Jan. 11, 1982); see also Andrews v. Bechtel Power Co., 780 F.2d 124, 130 (1st Cir. 1985) (stating Rule 23(a)(4) requires "that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation"). These two components are designed to ensure that absentee class members' interests are fully pursued.

For settlement purposes, adequacy is met in the instant action as Plaintiff's attorneys, proposed Class Counsel, are experienced in complex litigation and have an established track record in consumer protection law and class actions. See, fn. 2, supra.

In turn, the class representative has served this putative class over five (5) years of litigation and has shown no interests that are antagonistic to the Class. Further, O'Hara has demonstrated his allegiance to this litigation through his patience and participation in the settlement process (including mediation) on behalf of all of the putative class members.

Having demonstrated that each of the mandatory requirements of Rule 23(a) are satisfied here, Plaintiff now turns to consideration of the factors which, independently justify class treatment for settlement purposes of this action under subdivision 23(b)(3) of the rule.

6. The Predominance Requirements of Rule 23(b)(3) Are Met in the Settlement Context.

Plaintiff's proposed settlement class also meet the requirements of Rule 23(b)(3). Under 23(b)(3) a class action may be maintained if:

> The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to the findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begin by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

FED. R CIV. P. 23(b)(3).

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U. S. at 623. Although Rule 23(b)(3) requires that common issues of law and fact predominate, it does not require that there be an absence of any individual issues. Smilow v. Sw. Bell Mobile Sys., Inc., 323 F.3d 32, 39 (1st Cir. 2003) (noting "courts have usually certified Rule 23(b)(3) classes even though individual issues were present"); In re Sugar Ind. Antitrust Litig., 73 F.R.D. 322, 344 (E.D. Pa. 1976).

The Court must find that "the group for which certification is sought seeks to remedy a common legal grievance." Hochschuler v. G.D. Searle & Co., 82 F.R.D. 339 (N.D. Ill. 1978); see also, In re TJX Cos. Retail Sec. Breach Litig., 246 F.R.D. 389, 398 (D. Mass. 2007) ("Need for individualized damages decisions does not ordinarily defeat predominance requirement for class certification where there are disputed common issues as to liability."); Dietrich, 192 F.R.D. at 119 (in determining whether common issues of fact predominate, "a court's inquiry is directed primarily toward whether the issue of liability is common to members of the class"). Rule 23(b)(3) does not require that all questions of law or fact be common. See e.g., Smilow, 323 F.3d at 39 (1st Cir. 2003) (pointing out Rule 23(b)(3) "requires merely that common issues predominate"); In re Telectronics Pacing Systems, 172 F.R.D. 271, 287-88 (S.D. Ohio 1997). In this regard, courts generally focus on the liability issues and whether these issues are common to the class. If so, particularly in the settlement context, common questions are held to predominate over individual questions. See, Id.

Plaintiff asserts that common questions of law and fact predominate over the claims of the Massachusetts class of consumers for whom settlement approval is now sought. Here, "'irrespective of the individual issues which may arise, the focus of the litigation' concerns 'the

alleged common course' of unfair conduct embodied in [Defendants'] alleged scheme to maximize" sales through its deceptive marketing and packaging. See, In re Checking Account Overdraft Litig., 275 F.R.D. 666, 676 (S.D. Fla. 2011) (internal citations omitted). According to Plaintiff, this presents common operative facts and common questions of law which predominate over any factual variations as they relate to individual putative class members.

More precisely, common questions of law and fact regarding a single course of conduct predominate over the claims of all members of the proposed Class. Namely, all of the claims of the proposed Class arise out of Defendants' alleged uniformly false and deceptive marketing and packaging scheme. See, In re M3 Power Razor Sys. Mktg. & Sales Practice Litig., 270 F.R.D. 45, 56 (D. Mass. 2010) ("In this case, it is clear that the issues common to the class predominate over those that are personal to individual class members. The dominant common questions include whether [defendant's] advertising was false or misleading, whether the [defendant's] conduct violated the statutory and/or common law causes of action delineated in the Amended Complaint, and whether the class members suffered damages as a result of this conduct."); see also e.g., In re ConAgra Foods, Inc., 302 F.R.D. 537, 569 (C.D. Cal. 2014) ("Because all class members were exposed to the statement and purchased [the] products, there is 'a common core of salient facts.'").

Accordingly, were this claim to proceed to trial, the alleged deceptive marketing and packaging scheme would be established by common proof and evidence (packaging labels, carton labels and website pages). This evidence will remain the same regardless of class size or the composition of the class; and therefore, a sufficiently cohesive common grievance would warrant adjudication by representation.

C. The Proposed Notice Provides Adequate Notice to the Class of the Settlement.

Settlement Notices proposed must conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable law, and shall otherwise be in the manner and form approved by the Court. Under Fed. R. Civ. P. 23(e), class members are entitled to notice of any proposed settlement before it is ultimately approved by the Court.

Under Rule 23(e) and the relevant due process considerations, adequate notice must be given to all absent class members and potential class members to enable them to make an intelligent choice as to whether they wish to opt-out of the settlement. See e.g., Weinberger v. Great Northern Nekoosa Corp., 925 F.2d 518, 523 (1st Cir. 1991) (stating "the court's power to approve or reject a settlement under Rule 23(e) enables the court to ensure fairness for the class members" (quoting 3B MOORE'S FEDERAL PRACTICE ¶ 23.91 at 23-533 to 23-534)); Prudential II, 148 F.3d at 326-27; and Valentino v. Carter-Wallace, Inc., 97 F.3d 1227 (9th Cir. 1996).

Here, the proposed Notice provides information on the nature of the proposed settlement, the principal terms and provisions of the Settlement Agreement, the monetary and other relief the settlement will provide class members, the procedures, and deadlines for opting-out of the settlement and submitting objections, the consequences of taking or foregoing the various options available to class members, and the date, time, and place of the final settlement approval hearing. Further, pursuant to FED. R. CIV. P. 23(h), the proposed class notice sets forth the maximum attorneys' fees and costs which may be sought by Plaintiff and his counsel.

The Parties also agree that the Notice fulfills the requirement of neutrality in class notices. See, 4 NEWBERG ON CLASS ACTIONS at § 8.39. It summarizes the proceedings necessary to provide

context for the Settlement Agreement and summarizes the terms and conditions of the settlement in an informative, coherent, and easy-to-understand manner, all in compliance with the Manual for Complex Litigation's requirement that "the notice contain a clear, accurate description of the terms of the settlement." MANUAL FOURTH at §21.312. Here, the Notice plan proposed provides class members with easy-to-understand instruction and information about the proposed class settlement; and moreover, provides simple instruction related to the submission of a claim under the terms of the *Agreement*.

More precisely, the content of the [Proposed] Settlement Notices will be substantially in the forms attached to this Agreement as **Exhibit 2(a)** (long-form Notice) and **Exhibit 2(b) (**short-form Notice). Thereafter, upon preliminary approval of this Agreement, Settlement Notice shall be made as follows:

1. **Website Notice**: On the Settlement Website, the Settlement Administrator will post links to the Settlement Notice, this Settlement Agreement, the Claim Form, and information relating to filing a claim, objecting to the Settlement, opting out of the Settlement, and deadlines relating to the Settlement.

2. **Other Internet Notice**: The Settlement Administrator will purchase Internet banner notice ads that will allow access to the Settlement Website through an embedded hyperlink contained within the banner notice ad.

   As more fully described in the Settlement Administrator's media plan, (**Ex. 2(d)** of the Agreement**)**, banner notice ads will be served over desktop display, mobile, and tablet on a programmatic platform across multi-channel and inventory sources.

   The proposed ads will target beer drinkers, including Guinness drinkers, in Massachusetts and Google keyword and search topics including, but not limited to, Guinness Extra Stout, Guinness Settlement, Guinness Class Action, Guinness, and more. The Settlement Administrator will also include a Facebook, Instagram, and Twitter ad campaign targeting Massachusetts users who follow Guinness's Facebook pages, Instagram pages, and Twitter handles, as well as other relevant webpages.

See, *Agreement* at Art. 4.3.

Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a settlement class notice disseminated under authority of the Court. See e.g., 4 NEWBERG ON CLASS ACTIONS at §§8.21, 8.39; MANUAL FOURTH at §§21.311-21.312.

D. Settlement Administrator

Defendants will pay all costs of administering the settlement and for disseminating notice, which are estimated at $175,000. Plaintiff requests that the Court appoint Kroll Settlement Administration to serve as the Settlement Administrator, which was chosen by Defendants after consultation with Class Counsel.

E. A Final Fairness Hearing Should be Scheduled.

The Court should schedule a final fairness hearing to determine that class certification is proper for settlement purposes and whether to approve the settlement. The fairness hearing will provide a forum to explain, describe or challenge the terms and conditions of the class certification and settlement, including the fairness, adequacy, and reasonableness of the settlement. At that time, Class Counsel will present their application for their fees and expenses pursuant to Rule 23(h).

Accordingly, the Parties request that the Court schedule the final fairness hearing for no later than one hundred and twenty (120) days after the date of the entry of the preliminary approval Order at the United States District Court for the District of Massachusetts, Boston Division.

V. Conclusion

For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order: (1) provisionally certifying the proposed settlement class under Rule 23 of the Federal Rules of Civil Procedure with respect to the claims brought against Defendants; (2) granting preliminary approval of the class Settlement Agreement; (3) appointing Plaintiff's Counsel as Class Counsel; (4)

directing execution of the proposed Notice plan; (5) approving Kroll Settlement Administration as the Settlement Administrator; and (6) setting the final fairness hearing for a date.

Respectfully submitted,
Plaintiff by his Counsel,

/s/ *Kevin J. McCullough*
_____
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DATED: June 1, 2021

CERTIFICATE OF SERVICE

I, Kevin J. McCullough, Esq., certify that on June 1, 2021, 2021 this document was filed electronically through the ECF system and thereby delivered by electronic means to all counsel of record.

/s/ *Kevin J. McCullough*
Kevin J. McCullough