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2 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
3 FOR MULTNOMAH COUNTY
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5
6 **TOM POPE**
7 **ELENA POPE**
8 individually and on behalf
9 of others similarly situated

10 Plaintiffs

11 vs

12 **CURA PARTNERS INC.**

13 Defendant
14

Case No. 20CV05932

**UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

ORCP 32

Hearing Date and Time:
January 12, 2022, 10:00am PST

Oral Argument: Requested
Estimated Time: 10 Minutes
Court Reporting: Requested

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16 **UTCR 5.050 STATEMENT**

17 The parties request oral argument estimated to last 10 minutes and official
18 court reporting services.

19 **MOTION**

20 Under ORCP 32, the parties respectfully seek preliminary approval of this
21 class action settlement. Attached to this motion is the settlement agreement, the
22 declaration of class counsel, the declaration of the settlement administrator,
23 proposed notices to the class members, and a proposed order.¹
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28 ¹ The proposed order attached to this motion is very similar in substance and form to prior orders granting preliminary approval of class action settlements entered by this Court in similar consumer protection cases brought by class counsel under ORCP 32 over the years. *See, e.g.*, Case No.'s 16CV27621, 17CV49816, 18CV44864, 19CV09628, 19CV03276, etc.

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2 **CASE BACKGROUND**

3 **1. Class Action Complaint**

4 On January 31, 2020, representative plaintiffs and class counsel filed this
5 putative class action against defendant under Oregon’s Unlawful Trade Practices
6 Act (UTPA), ORS 646.638. The complaint alleged that defendant mislabeled
7 thousands of units of cannabis oil products, in violation of the UTPA. Defendant
8 denies violating the UTPA. On February 28, 2020, class counsel provided defendant
9 formal notice under ORCP 32 H.
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12 **2. Mediation and Discovery**

13 In June of 2020, after nearly 6 months of private investigation, document
14 review, interviewing witnesses, consulting experts, and confidential document and
15 information exchanges, the parties agreed to attend formal mediation with Eric
16 English with Resolution Strategies® LLP. The case did not immediately settle. After
17 multiple months of continued arms-length negotiations, Mr. English was able to
18 bring the parties together to reach a \$500,000 settlement for the putative class of
19 Oregon consumers who bought the 186,000 product units at issue. Only after
20 substantive relief for the class members was agreed upon did Mr. English negotiate
21 that class counsel would apply to be paid through 25% of the common fund, and
22 representative plaintiffs would apply for incentive awards to be paid separately from
23 the common fund.
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2 **3. Settlement**

3 Material settlement terms were finalized on July 27, 2021. Notice of
4 settlement was filed with the Court on August 5, 2021. A formal settlement
5 agreement was signed December 27, 2021.
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7 As part of the settlement agreement, defendant paid \$500,000 to the class
8 common fund, currently held in trust by the settlement administrator. Each
9 approved claim shall be paid \$200, or less depending on how many claims are
10 submitted.
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12 In addition to the \$500,000 payment to the class common fund, defendant
13 shall be responsible for the following additional payments: payment of the costs of
14 class notice and class administration, including costs associated with locating class
15 members and paying settlement funds to them, and the costs of mediation, and
16 payment of any approved incentive awards to the representative plaintiffs. As
17 negotiated by Mr. English, class counsel will apply for an attorney fee of 25% of the
18 common fund.
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21 This settlement proposes to release the claims of Oregon consumers based on
22 defendant's alleged omission that 186,000 units of its products contained botanical
23 terpenes, as alleged in the class action complaint filed January 31, 2020. Based on
24 verified information from defendant, the class consists of Oregon consumers who
25 purchased approximately 186,000 units of mislabeled product in Oregon, the product
26 at issue is a controlled substance, all purchases took place from independent third-
27 party resellers, purchases were cash-only, and no customer lists are available.
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2 Accordingly, after consulting class administrators, despite best efforts to notify the
3 class members, the parties expect a claims rate of under 1%, given historic class
4 claims rate data under similar circumstances in prior cases. Each approved claim
5 shall be paid \$200, or less depending on how many claims are submitted. If the
6 claims approved exhaust the common fund, each claim shall be paid pro rata until
7 the common fund is exhausted. Any unclaimed funds or uncashed checks from the
8 settlement shall be distributed as follows: half to the Oregon State Bar, half to the
9 Oregon Consumer League. Representative plaintiffs and class counsel are entitled
10 to back out of the settlement if the number of approved claims is so high that each
11 class member would receive less than \$20 each, which is the approximate cost of the
12 products at issue.
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16 **LEGAL POINTS AND AUTHORITIES**

17 A trial court’s determination that a case may settle as a class action “is largely
18 a decision of judicial administration” and “the trial court is customarily granted wide
19 latitude” in making such decisions. *See, e.g., Pearson v. Philip Morris, Inc.*, 358 Or
20 88, 107 (2015).
21

22 The parties to this class action have reached a mediated settlement, pending
23 Court approval, according to the attached settlement agreement. Based on the
24 authorities below, under ORCP 32 and this Court’s inherent authority, this Court
25 should grant conditional class certification, and appoint attorney Michael Fuller
26 with the law firm of OlsenDaines as class counsel, and preliminarily approval the
27 class settlement.
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2 **1. All ORCP 32 A requirements are met.**

3 Each of the requirements for class settlement under ORCP 32 A are met.
4 ORCP 32 A(1) is met because joinder of an estimated 186,000 class members is
5 impracticable and unnecessary. ORCP 32 A(2) and A(3) are met because the claims
6 of each class member arise under the same statute, ORS 646.638, under the same
7 legal theory of liability in alleged violation of ORS 646.608, and are based on the
8 same uniform labels. ORCP 32 A(4) is met because representative plaintiffs and
9 class counsel have already invested considerable time and resources to prosecute
10 this case, they have the time and resources necessary to continue prosecuting this
11 case through entry of final judgment, and only as a result of this class action
12 settlement, each class member who submits a valid claim will recover fair
13 compensation, without having to incur any litigation costs or risks, including the
14 risk that many class members would simply never become aware of the claims at
15 issue and thus recover nothing. Attorney Michael Fuller has experience handling
16 class action litigation and consumer protection cases and is qualified and competent,
17 and has vigorously prosecuted this litigation, and his interests are not antagonistic
18 or in conflict with the interests of the class. The parties negotiated compensation for
19 reasonable attorney fees and costs only after substantive relief for the class members
20 was negotiated at an arm's length through repeated attempts at mediation with a
21 neutral who is experienced in settling consumer class action cases. Based on this
22 evidence, the Court should find that all ORCP 32 A requirements for class
23 certification are met.
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2 **2. ORCP 32 B is satisfied.**

3 After notice has been given and the class members have had a fair opportunity
4 to respond, the parties should be allowed to resolve this dispute through a class
5 settlement, without the need for further litigation expenses or thousands of separate
6 individual actions. The ORCP 32 B factors below all show that a class action is
7 superior to other available methods for the fair and efficient adjudication of this
8 controversy. Certification and approval of the class settlement would provide fair
9 compensation to each class member without the need to individually litigate their
10 claims, eliminate the need for continued litigation or individual settlements, and
11 provide defendant finality in the form of a release of all claims by the Oregon
12 consumers affected by the advertising materials and labels at issue in this case.
13 Further, maintaining settlement of this case as a class avoids the risk of inconsistent
14 rulings or varying injunctions that could occur if the litigation continued on
15 individual bases. The proposed settlement will ensure equal relief to all class
16 members, and provide adequate incentive to the class representatives who
17 researched and documented the issue, retained class counsel, risked their reputation
18 by filing a public complaint, and risked an award of attorney fees against them if
19 they lost, and worked for over two years to see the class action through to a fair
20 resolution. Finally, no individual class member has any interest or benefit in
21 prosecuting this dispute outside of this class action because the proposed settlement
22 provides for up to \$200 in compensation, which exceeds by 10-fold the approximate
23 amount each class member paid for the cannabis oil products at issue.
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2 As of the date of this motion, no individual actions over the same controversy
3 are known to be pending, the parties are aware of no other ongoing litigation related
4 to this case, and expect no additional cases to be filed, as the filing fee and service
5 costs alone would exceed the maximum statutory damages permitted under ORS
6 646.638. As explained throughout this motion, the proposed settlement provides fair
7 compensation to the putative class members. The proposed settlement is also
8 equitable, as defendant has ceased the behavior that gave rise to this class action,
9 and any unclaimed amount of the \$500,000 common fund will be received by local
10 consumer protection nonprofit groups through cy pres under ORCP 32 O.
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13 **CONCLUSION**

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15 Based on the legal authorities and facts presented in this motion, the Court
16 should grant preliminary approval of this class action settlement.
17

18 January 8, 2022

19 **RESPECTFULLY FILED,**

20 s/ Michael Fuller
21 **Michael Fuller, OSB No. 09357**
22 Lead Trial Attorney for Plaintiffs
23 OlsenDaines
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2 **CERTIFICATE OF SERVICE**

3 This document was delivered to the following:
4

5 **Cura Partners Inc.**
6 **c/o attorney Joseph Mabe**
7 **Slinde Nelson**
8 **425 NW 10th Avenue, Suite 200**
9 **Portland, Oregon 97209**
10 **joe@slindenelson.com**

11 January 8, 2022

12 /s/ Michael Fuller
13 **Michael Fuller, OSB No. 09357**
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