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12
 13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 SOUTHERN DIVISION

16 DANIEL TUROCY, et al., Individually)
 and on Behalf of All Others Similarly)
 17 Situated,)

18 Plaintiffs,)

19 vs.)

20 EL POLLO LOCO HOLDINGS, INC.,)
 et al.,)

21 Defendants.)

Case No. 8:15-cv-01343-DOC-KES
 (Consolidated)
CLASS ACTION
 ORDER PRELIMINARILY
 APPROVING SETTLEMENT AND
 PROVIDING FOR NOTICE [184]

1 WHEREAS, an action is pending before this Court entitled *Daniel Turocy, et*
2 *al. v. El Pollo Loco Holdings, Inc., et al.*, Case No. 8:15-cv-01343-DOC-KES (the
3 “Litigation”);

4 WHEREAS, the parties having made application, pursuant to Federal Rule of
5 Civil Procedure 23(e), for an order preliminarily approving the settlement of this
6 Litigation, in accordance with a Stipulation of Settlement dated April 3, 2019 (the
7 “Stipulation”), which, together with the Exhibits annexed thereto, sets forth the terms
8 and conditions for a proposed settlement of the Litigation and for dismissal of the
9 Litigation with prejudice upon the terms and conditions set forth therein; and the Court
10 having read and considered the Stipulation and the Exhibits annexed thereto; and

11 WHEREAS, unless otherwise defined, all terms used herein have the same
12 meanings as set forth in the Stipulation.

13 NOW, THEREFORE, IT IS HEREBY ORDERED:

14 1. After a preliminary review, the Court has concluded that it may be able to
15 approve the Settlement under Rule 23(e)(2) as fair, adequate and reasonable. The
16 Court finds probative that the Settlement was negotiated at arm’s length under the
17 oversight of an experienced mediator. The Settlement warrants notice thereof as set
18 forth below and a full hearing on the Settlement. Accordingly, the Court does hereby
19 preliminarily approve the Stipulation and the Settlement set forth therein, subject to
20 further consideration at the Settlement Hearing described below.

21 2. A hearing (the “Settlement Hearing”) shall be held before this Court on
22 August 21, 2019, at 8:30 a.m., at the United States District Court for the Central
23 District of California, Southern Division, Ronald Reagan Federal Building and United
24 States Courthouse, 411 West Fourth Street, Courtroom 9D, Santa Ana, CA 92701, for
25 the following purposes:

26 (a) to determine whether the Settlement is fair, reasonable, and
27 adequate, and should be approved by the Court;

28

1 (b) to finally determine whether Judgment as provided under ¶1.18 of
2 the Stipulation should be entered, dismissing the Third Amended Complaint on the
3 merits and with prejudice, and to determine whether the release by the Class of the
4 Released Defendant Parties as set forth in the Stipulation, should be ordered, along
5 with a permanent injunction barring efforts to bring any Released Plaintiffs' Claims or
6 Released Defendants' Claims extinguished by the Settlement;

7 (c) to finally determine whether the proposed Plan of Allocation for
8 the distribution of the Net Settlement Fund is fair, reasonable, and adequate and
9 should be approved by the Court;

10 (d) to consider any application of Lead Counsel for an award of
11 attorneys' fees and expenses, and any application for an award to Lead Plaintiffs
12 pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the
13 Class;

14 (e) to consider any Class Members' timely objections to the
15 Settlement, Plan of Allocation or application for fees and expenses; and

16 (f) to rule upon such other matters as the Court may deem appropriate.

17 3. The Court may adjourn the Settlement Hearing without further notice to
18 the Members of the Class, and reserves the right to approve the Settlement with such
19 modifications as may be agreed upon or consented to by the parties and without
20 further notice to the Class where to do so would not impair Class Members' rights in a
21 manner inconsistent with Rule 23 and due process of law. The Court further reserves
22 the right to enter its Judgment approving the Settlement and dismissing the Third
23 Amended Complaint and Released Plaintiffs' Claims, on the merits and with
24 prejudice, regardless of whether it has approved the Plan of Allocation or awarded
25 attorneys' fees and expenses or made awards to Lead Plaintiffs.

26 4. The Court approves, as to form and content, the Notice of Pendency and
27 Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the
28 "Proof of Claim") and the Summary Notice ("Summary Notice"), annexed hereto as

1 Exhibits A-1, A- 2, and A-3, respectively, and finds that the mailing and distribution
2 of the Notice and publishing of the Summary Notice, substantially in the manner and
3 form set forth in ¶¶7-8 of this Order, meet the requirements of Federal Rule of Civil
4 Procedure 23 and due process, and is the best notice practicable under the
5 circumstances and shall constitute due and sufficient notice to all Persons entitled
6 thereto.

7 5. The firm of Gilardi & Co. LLC (“Claims Administrator”) is hereby
8 appointed to supervise and administer the notice procedure as well as the processing
9 of claims as more fully set forth below.

10 6. El Pollo Loco shall provide, or cause to be provided, to Lead Counsel or
11 the Claims Administrator, at no cost to Lead Plaintiffs, the Settlement Fund, Lead
12 Counsel or the Claims Administrator, within five (5) calendar days after the Court
13 enters this Order, documentation or data in the possession of El Pollo Loco or its
14 present or former stock transfer agents sufficient to identify to the extent available the
15 record holders of El Pollo Loco common stock or exchange-traded call options, or
16 who sold exchange-traded El Pollo Loco put options, during the period from May 15,
17 2015 through August 13, 2015, inclusive, and their last known addresses or other
18 similar information. El Pollo Loco shall provide this documentation in an electronic
19 searchable form, such as Excel.

20 7. Lead Counsel, through the Claims Administrator, shall commence
21 mailing the Notice and Proof of Claim, substantially in the forms annexed hereto,
22 within ten (10) calendar days after the Court signs this Order (the “Notice Date”), or
23 by May 23, 2019, by first-class mail to all Class Members who can be identified with
24 reasonable effort, and to be posted on the Settlement website at
25 www.ElPolloLocoSecuritiesSettlement.com.

26 8. Not later than ten (10) calendar days after the Notice Date, the Claims
27 Administrator shall cause the Summary Notice to be published once in the national
28 edition of *The Wall Street Journal* and once over a national newswire service.

1 9. At least seven (7) calendar days prior to the Settlement Hearing, Lead
2 Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit
3 or declaration, of such mailing and publishing.

4 10. Nominees who purchased or acquired El Pollo Loco common stock or
5 exchange-traded call options, or who sold exchange-traded El Pollo Loco put options
6 ("Securities") for the beneficial ownership of Class Members during the Class Period
7 shall: (a) within seven (7) calendar days of receipt of the Notice and the Proof of
8 Claim ("Notice Packet"), request from the Claims Administrator sufficient copies of
9 the Notice Packet to forward to all such beneficial owners and within seven (7)
10 calendar days of receipt of those copies of the Notice Packets forward them to all such
11 beneficial owners; or (b) within seven (7) calendar days of receipt of the Notice
12 Packet, send a list of the names and addresses of all such beneficial owners to the
13 Claims Administrator in which event the Claims Administrator shall promptly mail
14 the Notice Packet to such beneficial owners. Lead Counsel shall, if requested,
15 reimburse banks, brokerage houses or other nominees solely for their reasonable out-
16 of-pocket expenses actually incurred in providing notice to beneficial owners who are
17 Class Members out of the Settlement Fund up to a maximum of \$0.70 per notice,
18 which expenses would not have been incurred except for the sending of such notice,
19 subject to further order of this Court with respect to any dispute concerning such
20 compensation.

21 11. In order to be entitled to participate in the recovery from the Settlement
22 Fund after the Effective Date, each Class Member shall take the following action and
23 be subject to the following conditions:

24 (a) A properly completed and executed Proof of Claim must be
25 submitted to the Claims Administrator, at the post office box or electronic mailbox
26 indicated in the Notice and Proof of Claim, postmarked no later than seventy-five (75)
27 calendar days from the Notice Date. Such deadline may be further extended by Order
28 of the Court. Each Proof of Claim shall be deemed to have been submitted when

1 legibly postmarked (if properly addressed and mailed by first-class mail) provided
2 such Proof of Claim is actually received before the filing of a motion for an Order of
3 the Court approving distribution of the Settlement Fund. Any Proof of Claim
4 submitted in any other manner shall be deemed to have been submitted when it was
5 actually received by the Claims Administrator at the address designated in the Notice.

6 (b) The Proof of Claim submitted by each Class Member must satisfy
7 the following conditions: (i) it must be properly filled out, signed and submitted in a
8 timely manner in accordance with the provisions of the preceding subparagraph; (ii) it
9 must be accompanied by adequate supporting documentation for the transactions
10 reported therein, in the form of broker confirmation slips, broker account statements,
11 an authorized statement from the broker containing the transactional information
12 found in a broker confirmation slip, or such other documentation as is deemed
13 adequate by the Claims Administrator or Lead Counsel; (iii) if the person executing
14 the Proof of Claim is acting in a representative capacity, a certification of his current
15 authority to act on behalf of the Class Member must be provided with the Proof of
16 Claim; and (iv) the Proof of Claim must be complete and contain no material deletions
17 or modifications of any of the printed matter contained therein and must be signed
18 under penalty of perjury.

19 (c) Once the Claims Administrator has considered a timely submitted
20 Proof of Claim, it shall determine whether such claim is valid, deficient or rejected.
21 For each claim determined to be either deficient or rejected, the Claims Administrator
22 shall send a deficiency letter or rejection letter as appropriate, describing the basis on
23 which the claim was so determined. Persons who timely submit a Proof of Claim that
24 is deficient or otherwise rejected shall be afforded a reasonable time (at least seven (7)
25 calendar days) to attempt to cure such deficiency if it shall appear that such deficiency
26 may be cured.

27 (d) For the filing of and all determinations concerning their Proof of
28 Claim, each Class Member shall submit to the jurisdiction of the Court.

1 12. Any Class Member who does not timely submit a valid and timely Proof
2 of Claim within the time provided for, shall be barred from sharing in the distribution
3 of the proceeds of the Settlement Fund, but will in all other respects be subject to and
4 bound by the provisions of the Stipulation and the Judgment, if entered.
5 Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not the
6 obligation) to accept late-submitted claims for processing by the Claims Administrator
7 so long as distribution of the Settlement Fund to Authorized Claimants is not
8 materially delayed thereby, but will bear no liability for failing to accept such late
9 claims.

10 13. Any Member of the Class may enter an appearance in the Litigation, at
11 their own expense, individually or through counsel of their own choice. If they do not
12 enter an appearance, they will be represented by Lead Counsel.

13 14. All Class Members shall be bound by all determinations and judgments
14 in this Litigation, whether favorable or unfavorable, unless such persons request to be
15 excluded, or “opt out,” from the Class. A Class Member wishing to be excluded from
16 the Class must submit to the Claims Administrator a request for exclusion (“Request
17 for Exclusion”), by first-class mail, or otherwise hand-deliver it, such that it is
18 postmarked no later than twenty-one (21) calendar days prior to the Settlement
19 Hearing, or July 31, 2019, to the addresses listed in the Notice. A Request for
20 Exclusion must be signed and must legibly state: (a) the name, address, and telephone
21 number of the Person requesting exclusion; (b) the number of shares of El Pollo Loco
22 Securities that the Person requesting exclusion (i) owned as of the opening of trading
23 on May 15, 2015, and (ii) purchased, acquired and/or sold during the Class Period, as
24 well as the dates and prices for each such purchase, acquisition and sale; and (c) that
25 the Person wishes to be excluded from the Class in *Daniel Turocy, et al. v. El Pollo*
26 *Loco Holdings, Inc., et al.*, Case No. 8:15-cv-01343-DOC-KES. All Persons who
27 submit valid and timely Requests for Exclusion in the manner set forth in this
28 paragraph shall have no rights under the Stipulation, shall not share in the distribution

1 of the Net Settlement Fund, and shall not be bound by the Stipulation or any
2 Judgment. Unless otherwise ordered by the Court, any Class Member who does not
3 submit a valid and timely written Request for Exclusion as provided by this paragraph
4 shall be bound by the Stipulation.

5 15. The Claims Administrator or Lead Counsel shall cause to be provided to
6 Defendants' Counsel copies of all Requests for Exclusion within five (5) calendar
7 days of receipt.

8 16. The Court will consider comments or objections to the Settlement, the
9 Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and
10 expenses, including Lead Plaintiffs' request for an award pursuant to 15 U.S.C. §78u-
11 4(a)(4) in connection with their representation of the Class, only if such comments or
12 objections and any supporting papers are served by hand or sent by first-class mail,
13 and are received at least twenty-one (21) calendar days prior to the Settlement
14 Hearing, or July 31, 2019, to:

15 ***Co-Lead Counsel for the Class***

16 Robbins Geller Rudman & Dowd LLP
17 Ryan A. Llorens
18 655 West Broadway, Suite 1900
19 San Diego, CA 92101

20 ***Counsel for Defendants***

21 Skadden, Arps, Slate, Meagher & Flom LLP
22 Jason D. Russell
23 300 S. Grand Avenue, Suite 3400
24 Los Angeles, CA 90071

25 Those comments or objections and any supporting papers must also be filed with the
26 Clerk of the United States District Court for the Central District of California,
27 Southern Division, Ronald Reagan Federal Building and United States Courthouse,
28 411 West Fourth Street, Santa Ana, CA 92701, at least twenty-one (21) calendar days
prior to the Settlement Hearing, or July 31, 2019. Attendance at the Settlement
Hearing is not necessary but any Person wishing to be heard orally in opposition to the

1 Settlement, the Plan of Allocation, or the application for attorneys' fees and expenses
2 or awards to Lead Plaintiffs are required to indicate in their written objection whether
3 they intend to appear at the Settlement Hearing. The notice of objection must include
4 documentation establishing the objecting Person's membership in the Class, including
5 the number of shares of El Pollo Loco Securities that the objecting Person (i) owned
6 as of the opening of trading on May 15, 2015, and (ii) purchased, acquired and/or sold
7 during the Class Period, as well as the dates and prices for each such purchase,
8 acquisition or sale, and state with specificity the grounds for the objection, copies of
9 any papers, briefs, or other documents upon which the objection is based, and the
10 objector's signature, even if represented by counsel. The objection must state whether
11 it applies only to the objector, to a specific subset of the Class or to the entire Class.
12 Any Member of the Class who does not make his, her or its objection in the manner
13 provided shall be deemed to have waived such objection and shall forever be
14 foreclosed from making any objection to the reasonableness, fairness or adequacy of
15 the Settlement as set forth in the Stipulation, to the Plan of Allocation, or to the award
16 of attorneys' fees and expenses to Lead Counsel or awards of the Lead Plaintiffs,
17 unless otherwise ordered by the Court. Class Members do not need to appear at the
18 Settlement Hearing or take any other action to indicate their approval of the
19 Settlement, the Plan of Allocation, or the application for attorneys' fees and expenses
20 or awards to Lead Plaintiffs.

21 17. All funds held by the Escrow Agent shall be deemed and considered to be
22 in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court,
23 until such time as such funds shall be distributed pursuant to the Stipulation and/or
24 further order(s) of the Court.

25 18. All opening briefs and supporting documents in support of the
26 Settlement, the Plan of Allocation, and any application by counsel for the Lead
27 Plaintiffs for attorneys' fees and expenses or by Lead Plaintiffs for an award pursuant
28 to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class shall be

1 filed and served no later than thirty-five (35) calendar days before the Settlement
2 Hearing, or July 17, 2019. Replies to any objections shall be filed and served at least
3 seven (7) calendar days prior to the Settlement Hearing, or August 14, 2019.

4 19. The Released Defendant Parties shall have no responsibility for the Plan
5 of Allocation or any application for attorneys' fees or expenses submitted by Lead
6 Counsel or Lead Plaintiffs, and such matters will be considered separately from the
7 fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding
8 relating to the Plan of Allocation or any application for attorneys' fees or expenses, or
9 any appeal from any order relating thereto or reversal or modification thereof, shall
10 not operate to terminate or cancel the Stipulation, or affect or delay the finality of the
11 Judgment approving the Stipulation and the settlement of the Litigation and Released
12 Plaintiffs' Claims.

13 20. At or after the Settlement Hearing, the Court shall determine whether the
14 Plan of Allocation proposed by Lead Counsel, and any application for attorneys' fees
15 or payment of expenses shall be approved.

16 21. All reasonable expenses incurred in identifying and notifying Class
17 Members, as well as administering the Settlement Fund, shall be paid as set forth in
18 the Stipulation.

19 22. Neither the Stipulation, nor any of its terms or provisions, nor any of the
20 negotiations or proceedings connected with it, shall be construed as an admission or
21 concession by the Defendants of the truth of any of the allegations in the Litigation, or
22 of any liability, fault, or wrongdoing of any kind.

23 23. If the Stipulation and the Settlement set forth therein is not approved or
24 consummated for any reason whatsoever, the Stipulation and Settlement and all
25 proceedings had in connection therewith shall be without prejudice to the rights of the
26 Settling Parties *status quo ante*.

27 24. Pending final determination of whether the proposed Settlement should
28 be approved, neither the Lead Plaintiffs, nor any Class Member, directly or indirectly,

1 representatively, or in any other capacity, shall commence or prosecute against any of
2 the Released Defendant Parties, any action or proceeding in any court or tribunal
3 asserting any of the Released Plaintiffs' Claims.

4 25. The Court's orders entered during this Litigation relating to the
5 confidentiality of information shall survive this Settlement.

6 IT IS SO ORDERED.

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8 DATED: May 15, 2019

David O. Carter

THE HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

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