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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MATIN SHALIKAR and ALEXANDER PANVINI, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ASAHI BEER U.S.A., INC.,

Defendant.

Case No. BC702360

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES, EXPENSES, COSTS, AND CLASS REPRESENTATIVE INCENTIVE AWARD

[Declaration of Benjamin Heikali, Declaration of Kenneth Jue, and [Proposed] Final Approval Order and Judgment filed concurrently herewith]

Date: July 16, 2019
Time: 10:00 a.m.
Judge: Hon. Amy Hogue
Dept.: 007

Action Filed: April 16, 2018

By Fax

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Matin Shalikar and Alexander Panvini ("Plaintiffs")[1] hereby move the Court for entry of an order granting final approval of the proposed nationwide class action settlement in this matter.

I. INTRODUCTION

On December 20, 2018, this Court issued an order preliminarily approving the proposed settlement as fair, reasonable, and adequate to the Settlement Class and meriting notice to the Settlement Class Members for consideration. With the notice program commencing on January 3, 2019, the Settlement Class responded with tremendous support, filing over 95,000 nonduplicative claim forms with not a single objection and only a single request for exclusion received. The overwhelmingly positive response of the Settlement Class, alongside the endorsement of Class Counsel and counsel for Defendant, strongly supports final approval of the settlement. As discussed in detail below, the settlement agreement not only provides consumers with the monetary redress necessary to put the Settlement Class in its rightful position, but it also establishes modifications to Defendant's labeling, thereby ensuring that consumers will not be subject to any possible confusion in the future. Because the settlement is fair, reasonable, and adequate, the Parties respectfully request that the Court grant final approval of the settlement agreement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Summary of Plaintiff's Allegations and Claims

Plaintiffs brought this class action, alleging that Defendant Asahi Beer U.S.A., Inc. ("Defendant") (together with Plaintiffs, herein referred to as the "Parties") falsely and deceptively labeled, packaged, and advertised its Asahi Super Dry beer ("Asahi Beer" or "Products")[2] in a manner indicating that the Products are brewed in Japan, when the Products are actually brewed in Canada. As a result of Defendant's deceptive labeling practices, Plaintiffs, on behalf of themselves

[1] All capitalized terms have the same definition as provided in the second revised Settlement Agreement and Release (the "Settlement Agreement"), which was originally filed on December 3, 2018 in response the Court's October 30, 2018 tentative ruling, unless otherwise specified. Declaration of Benjamin Heikali (Heikali Decl.") at ¶ 8, Ex. 1.

[2] As defined in the Settlement Agreement, "Asahi Beer" or "Products" or "Asahi Beer Products" means all bottles and/or cans of Canadian Asahi Beer sold in the United States, including: 21.4 ounce bottles, 6-packs of bottles or cans, 12-packs of cans, and 24-packs of cans. Heikali Decl. at ¶ 8, Ex. 1, II.C.

and all others similarly situated, pleaded claims under Cal. Civ. Code 1770, *et seq*. ("CLRA"), as well as common law claims for unjust enrichment. Plaintiffs sought injunctive relief, as well as monetary relief in the form of restitution for the Products purchased during the Class Period.[3]

B. Preliminary Approval of the Settlement Agreement

The Parties filed their motion for preliminary approval with the Court on May 30, 2018. On July 10, 2018, the Court requested the Parties to file a revised settlement agreement, including a cap on attorney's fees and costs that Class Counsel may seek, in addition to any fee splitting agreement Class Counsel may have. In furtherance of the Court's order, the Parties engaged in a settlement conference with the Honorable James R. Dunn and successfully negotiated a cap on attorney's fees and costs of $765,000 on September 28, 2018.

On October 1, 2018, Plaintiffs filed their revised settlement agreement resolving the issues raised by the Court. On October 30, 2018, the Court conditionally granted preliminary approval, requiring further briefing discussing the valuation of the Settlement Agreement's monetary relief, injunctive relief, narrowing the scope of release, disclosing that the amounts sought for class administration would not exceed a certain amount, and limiting the enhancement award to Plaintiffs. On December 3, 2018, Plaintiffs submitted their Response to the Court's October 30, 2018 Tentative Ruling, providing the Court with a valuation of the settlement's monetary relief, the estimated value of the injunctive relief to Settlement Class Members, and further providing the court with the operative Settlement Agreement which narrowed the scope of release and disclosed the recovery limits for class administration and enhancement awards in the Publication Notice and Long Form Notice. Settlement Agreement, at ¶ VIII; *Id.* at ¶ XI.A.9. The Court subsequently granted preliminary approval and conditionally certified the Settlement Class in its December 20, 2018 Minute Order (the "Preliminary Approval Order.")

III. THE SETTLEMENT TERMS

A. The Settlement Class

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[3] A complete account of this Action's summary of allegations, procedural history, investigations, and settlement discussions are discussed in Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion"), filed on May 30, 2018, and the Declaration of Benjamin Heikali in Further Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, filed on October 1, 2019.

The Settlement Class conditionally certified by the Court in its order granting the Preliminary Approval Motion consists of "[a]ll consumers who purchased Asahi Beer in the United States, its territories, or at any United States military facility or exchange, for personal, family, or household purposes and not for re-sale, during the Class Period. Settlement Agreement, at ¶ II.W. The Settlement Agreement also provides for certification of the following California Settlement Class for settlement purposes only: "[a]ll consumers who purchased Asahi Beer in California, for personal, family, or household purposes and not for re-sale, during the Class Period." *Id.* at ¶ II.X.

B. The Settlement Consideration

1. Injunctive Relief

As part of the Settlement Agreement, Defendant agrees to bold the term "Product of Canada" on the neck of the label of newly produced Products for three years. Settlement Agreement, at ¶ V.A. On October 30, 2018, the Court conditionally granted preliminary approval, but required further briefing on the value of the Settlement Agreement's injunctive relief. On December 3, 2018, Plaintiffs' submitted their Response to the October 30, 2018 Tentative Ruling, providing the Court with an estimated value of injunctive relief based on the estimated price premium commanded by the Product's allegedly deceptive representations.

2. Monetary Relief

The Settlement Agreement provides for the following monetary restitution: (1) $.50 per 6-pack of the Products; (2) $0.10 per Big Bottle of the Products; (3) $1.00 per 12-pack of cans of the Products; and (4) $2.00 per 24-pack of cans of the Products. *Id.* at ¶ V.B.9.[4] As demonstrated *infra*, courts have routinely found similar monetary relief to be fair and reasonable. *See* Section III.B.2; Preliminary Approval Order, at 8 (finding that, based on the "potential recovery had Plaintiff prevailed at trial," the aforementioned monetary relief is "within the 'ballpark' of reasonableness.")

C. Releases

As the Court requested in its October 30, 2018 Tentative Ruling, Class Counsel narrowed the scope of release so that it would not encompass claims beyond those based on the facts asserted

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[4] The amount of cash recovery is subject to a $10 maximum refund per Settlement Class Household. *Id.* Further, as the Court recognized, "it is difficult to provide a definite value of the settlement recovery" given that there is "no cap to the amount that Settlement Member may recover." Preliminary Approval Order, at 8-9.

in the operative complaint. *See* Settlement Agreement, at ¶ VIII (releasing Settlement Class Members' claims against Defendant "on the basis of, arising from, or relating to the claims alleged or that could have been alleged based on the facts asserted in the operative complaint[.]").

IV. NOTICE TO THE CLASS AND CLAIMS ADMINISTRATION

Defendant, at its own cost, retained KCC Class Action Services, LLC ("KCC" or "Settlement Administrator") to provide legal notice and claims administration as the Settlement Administrator and class notice provider. KCC worked closely with the Parties to develop proper notice to the Settlement Class Members. *See generally* Declaration of Kenneth Jue In Support Of Plaintiffs' Motion for Final Approval ("Jue Decl."). Pursuant to the Preliminary Approval Order, KCC has facilitated the following:

(a) On January 3, 2019, KCC established a toll-free number (1-866-447-6219) to the public, where callers could listen to Frequently Asked Questions about the Settlement Agreement and request a Claim Form to be mailed to them. *Id.* at ¶ 6;

(b) On January 3, 2019, KCC opened the settlement website (www.AsahiBeerSettlement.com) to the public, where Class Members were able to submit online Claim Forms, view and print copies of the Claim Form, Notice, Exclusion Form, Order Granting Preliminary Approval, contact KCC for contact and mailing information, and consult answers to frequently asked questions. *Id.* at ¶ 3, Exs. A-B (Notice and Claim Form);

(c) Caused notice of the Summary Notice to be published in *Car and Driver* magazine, *ESPN The Magazine*, and *Time* magazine on February 19, February 15, and January 25, 2019, respectively. *Id*. at ¶ 5, Ex. C; and

(d) Caused the Notice Plan to be disseminated via online advertisements, running from January 3, 2019 to March 4, 2019, via Google Display Network, Facebook, and social media outreach. *Id.* at ¶ 4.

Because Defendant is unable to obtain a list of purchasers of the Covered Products, the Parties were unable to provide direct notice to any potential Settlement Class Members. Nonetheless, the notice plan achieved outstanding results for the Settlement Class. As of the

Claims Deadline of May 3, 2019, KCC received 119,347 submitted claim forms from potential Settlement Class Members. *Id*. at ¶ 9.[5] As of yet, KCC has not received *any* objections, and only a single class member requested exclusion. *Id.* at ¶¶ 7-8.[6]

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. Legal Standards

The procedures for settlement of class actions in California is set forth under California Rules of Court, Rule 3.769. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009). After class notice, but before final approval, the "court must conduct an inquiry into the fairness of the proposed settlement." California Rules of Court, ("C.R.C.") Rule 3.769(g). At final approval, the trial court confirms its prior preliminary determination regarding "whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234–35 (2001).

In reaching its determination, "[d]ue regard should be given to what is otherwise a private consensual agreement between the parties." *Nordstrom Comm'n Cases* 186 Cal. App. 4th 576, 581 (2010). California courts have consistently expressed strong support for the settlement of complex class action litigation. *Id; see also 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1145 (2000) ("[T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" of the claims at issue.) Instead, the determination of the Court should be based on whether the settlement, "taken as a whole, is fair, reasonable, and adequate to all concerned." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).

B. The Settlement Agreement Is Fair, Adequate, And Reasonable

1. The Settlement Is Entitled To A Presumption Of Fairness

A "presumption of fairness exists" where (1) the settlement was the result of arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Cellphone Fee Cases*, 180 Cal. App. 4th at 1118.

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[5] After removing duplicated claim forms, 95,473 claims remained. *See* Jue Decl., at ¶ 11.

[6] The exclusion deadline has passed on June 25, 2019. The objection deadline is July 16, 2019.

a. The Settlement Agreement Was The Product of Arms-Length Negotiations By Counsel Having Sufficient Information To Act Intelligently

Beginning in November 2017, the Parties and their counsel have engaged in contentious, adversarial, informed, arms-length negotiations. Heikali Decl. at ¶ 5. As the Court recognized in its Preliminary Approval Order, these negotiations followed investigations (starting in July 2016) and discovery which were sufficient to allow counsel and the Court to act intelligently, including but not limited to: investigating the Products' labeling, packaging, and advertising, reviewing Defendant's website and electronic marketing platforms, commissioning a survey gauging consumers' perception of the Products' labels; reviewing legal precedent regarding similar misleading representations on beer products, and reviewing discovery to assess the merits of the claims and determine how to best serve the interests of putative class members. Preliminary Approval Order, at 7; Heikali Decl. at ¶¶ 5-7. These investigations allowed Plaintiffs to ultimately defeat Defendant's attempt to dismiss this Action. *Id.* at ¶ 4. For these reasons, the Settlement Agreement is the result of a fully informed, contentious, and arms-length negotiations and the Parties have the information necessary to make an informed and intelligent determination.

b. Counsel Is Experienced In Similar Litigation

As the Court recognized, Class Counsel "has experience litigating and resolving national consumer class actions, particularly in the field of food and beverage labeling." Preliminary Approval Order at 7. Indeed, Class Counsel has successfully litigated numerous class actions representing consumers in highly similar litigation. Heikali Decl. at ¶¶ 10-11; Declaration of Michael R. Reese in Support of Motion for Final Approval ("Reese Decl.") at ¶1; Exhibit 1; *see Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 53 (2008) (weighing factor in favor of approving settlement when the parties' counsel "had substantial experience litigating consumer class actions and other complex cases.") These experiences allowed Class Counsel to critically assess the merits and risks of the case and conclude that the proposed settlement is fair, reasonable, and adequate.

c. No Objections And Only A Single Exclusion Were Received

Courts have held that when a limited number of class members have chosen to object or opt out of the settlement, the factor weighs in favor of approval. *See 7-Eleven*, 85 Cal. App. 4th at

1152-53 (settlement agreement response was "overwhelmingly positive" when 8 out of 5,454 class members chose to opt out); *Netflix*, 162 Cal. App. 4th at 53 (same, when 1,234 out of almost 700,000 class members opted out). After the exclusion deadline, June 25, 2019, KCC has only received a single exclusion. Jue Decl. at ¶ 7. As of yet, KCC has not received a single objection. *Id.* at ¶ 8. Therefore, this factor weighs heavily in support of final approval of the settlement.

2. The Settlement Is Fair, Adequate, And Reasonable In Light Of The Parties' Respective Legal Positions And Risks Of Continued Litigation

In addition to the presumption of fairness established above, the context of this case demonstrates that the Settlement Agreement is fair, adequate, and reasonable. In determining whether the settlement is fair, the court should consider the following relevant factors:

> [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Sutter Health Uninsured Pricing Cases, 171 Cal. App. 4th 495, 504-05 (2009). These factors are not exhaustive, and the Court should interpret the factors in the context of the action. *Id.* at 505. These factors, discussed below, demonstrate that the Settlement Agreement is fair, adequate, and reasonable when compared to the risks and expenses associated with continued litigation.

a. The Strength Of Plaintiff's Case And The Risk, Expense, Complexity And Likely Duration Of Further Litigation

Although Class Counsel is confident in the merits of Plaintiffs' claims, the overwhelming approval of the settlement terms by Settlement Class Members and the immediacy of providing monetary and injunctive relief to the Settlement Class Members and the public weighs in favor of settlement. Heikali Decl. at ¶¶ 6, 14-15. This is particularly true when considering the complex nature of class actions. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D.Cal. 2004) (stating that, unless the settlement is clearly inadequate, the acceptance and approval of class actions are preferably to lengthy and expensive litigation with uncertain results) (citing to 4 A Conte & H. Newberg, Newberg on Class Actions, § 11:50 at 155 (4th ed. 2002)).

The benefits gained by the Settlement Agreement must be compared against the risks and

expenses of continued litigation. For example, as the Court acknowledged, continued litigation would have likely resulted in the Parties engaging in a "financially costly 'battle of the experts'" regarding the existence and valuation of a price premium. Preliminary Approval Order at 7-8; s*ee* *Morales v. Conopco, Inc.*, No. 2:13-2213 WBS EFB, 2016 WL 6094504, at *22 (E.D. Cal. July 11, 2016) (granting plaintiffs' settlement motion, stating that "establishing that all class members paid a price premium" and that "quantifying this premium would have involved a battle of the experts.") Indeed, Faruqi & Faruqi, LLP is well-aware of the substantial costs involved with such litigation, having previously litigated, certified, and settled a highly similar class action regarding geographical misrepresentations on a consumer beer product. Heikali Decl. at ¶ 15.

Plaintiffs would also be required to defend against attacks on class certification, such as demonstrating commonality, materiality, and reliance. *See Mass. Mutual Life Ins. Co. v. Super. Ct.*, 97 Cal. App. 4th 1282, 1292 (2002). While Plaintiffs firmly believe that a reliable damages model could be established, and that the Settlement Classes could be certified, the risks inherent in complex class action litigation involves a possibility that Defendant could prevail on this issue, leaving the Settlement Class Members without any remedy. Preliminary Approval Order, at 8 (discussing "risk of decertification.") For these reasons, the risks and dangers inherent in the litigation process favor granting final approval.

b. The Amount Offered In Settlement

The settlement benefits provided to the Settlement Class, discussed in Sections III.B.2-3, are adequate, fair and reasonable. Because "[c]ompromise is inherent and necessary" during the settlement process, the settlement does not need to obtain all the damages sought "in order to be fair and reasonable." *Wershba*, 91 Cal. App. 4th at 250. Indeed, courts have routinely approved settlements providing consumers with similar recovery as fair and adequate given the risks inherent with continued litigation. *Weeks v. Kellogg Co.*, No. CV 09-08102 MMM RZX, 2013 WL 6531177, at *15 (C.D. Cal. Nov. 23, 2013) (granting final approval of settlement offering class members $15 per household, and noting that "[g]iven the relatively low cost of [the product]."); *see also EK Vathana v. Everbank*, No. 09-CV-02338-RS, 2016 WL 3951334, at *2 (N.D. Cal. July 20, 2016) (stating that "[a]ll in all, the risk at trial would have been great, and while the total recovery for some

plaintiffs may seem modest, it is far better than $0 that might have resulted.") As discussed in Plaintiffs' December 3, 2018 Response to the Court's October 30 Tentative Response, the settlement benefits reflect approximately 33%-50% of the potential recovery had Plaintiffs prevailed at trial. Given the risks of continued litigation, the settlement benefits are reasonable, as recognized by the Court in its Preliminary Approval Order. Preliminary Approval Order, at 8.

The Court should also consider the value of the Settlement Agreement's injunctive relief. *See Colgan v. Leatherman Tool Grp., Inc.*, 135 Cal. App. 4th 663, 703 (2006) (stating that "[t]he lawsuits also resulted in a significant benefit for a substantial number of people by causing [Defendant] to change its labeling and advertising practices and by enjoining it from making future misleading representations."). Thus, this factor weighs heavily in support of granting final approval.

c. The Extent Of Discovery Completed And The Stage Of Proceedings

As discussed in Section V.B.1.A., Plaintiff and Class Counsel have conducted extensive investigations, beginning in July 2016, into all corners of this litigation, ensuring that Class Counsel was well-equipped with the information necessary to act intelligently on behalf of the Settlement Class. *See 7-Eleven*, 85 Cal. App. 4th at 1150 (when parties have "sufficient information to make an informed decision about settlement," it "is not the law" that "no class action can be settled until the last particle of discovery has been completed and analyzed."); Preliminary Approval Order, at 7 (finding that the discovery reviewed and investigations conducted by Class Counsel were sufficient to allow counsel and the Court to act intelligently.") Therefore, this factor weighs in favor of granting final approval.

d. The Experience And Views Of Counsel

Class Counsel are experienced and respected class action attorneys and endorse the settlement as fair, adequate, and reasonable. A class counsel's endorsement of the settlement is "entitled to significant weight and support approval of the settlement agreement." *Torchia v. W.W. Grainger, Inc.*, 304 F.R.D. 256, 270 (E.D. Cal. 2014); *Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) ("Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation.") Therefore,

Class Counsel's endorsement, which came after extensive arms-length negotiations, thorough investigations into the Products and consumer perception, and experience in highly similar complex consumer class actions, weighs in favor of final approval.

e. The Presence Of A Governmental Participant

Because there is no governmental participant in this class action, this factor should not apply to the Court's analysis. *See DIRECTV*, 221 F.R.D. at 528.

f. The Reaction Of Class Members To The Proposed Settlement

As discussed in Section V.B.1.c, the lack of a single objection, with only one request for exclusion, strongly supports final approval. *See DIRECTV*, 221 F.R.D. at 529 (C.D. Cal. 2004) (holding that the absence of a single objection to the proposed settlement supports final approval); *see 7-Eleven*, 85 Cal. App. 4th at 1152-53 (reaction was "overwhelmingly positive" when 8 out of 5,454 class members chose to opt out."); *see also Vathana*, 2016 WL 3951334, at *6 (finding that "[t]he class members' silence in this case speaks to the fairness and reasonableness of the outcome.")

C. Notice To The Settlement Class Was Adequate

The standard for whether class notice is adequate is "whether the notice has a 'reasonable chance of reaching a substantial percentage of the class members.'" *Wershba*, 91 Cal. App. 4th at 251 (quoting *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 974 (1975)). Furthermore, it is not required that each member of a nationwide class to have received notice. *Wershba*, 91 Cal. App. 4th at 251. The Court has a great deal of discretion in applying this standard. *See Netflix*, 162 Cal. App. 4th at 57 ("[T]he manner of giving notice is subject to the trial court's virtually complete discretion.").

As established earlier in this motion, the Parties, with the assistance of KCC, have executed the notice plan approved by the Court.[7] As detailed in Section IV.A, KCC's efforts to disseminate notice of the Settlement Agreement were substantial, covering publication in several popular magazines, online advertisements (including Google and Facebook), and social media outreach. These efforts lead to over 95,000 nonduplicative claim forms submitted by Settlement Class Members after deduplication of repeated forms. Jue Decl. at ¶¶ 9, 11. The Settlement Agreement

[7] In its October 30, 2018 Tentative Ruling on Preliminary Approval, the Court requested the notice plan disclose that the Settlement Administrator's fees and costs will not exceed $300,000. The Settlement Agreement explicitly states this disclosure. Settlement Agreement, at ¶ XI.A.9.

also establishes that class notice and related documents, such as final judgment, will be published on the settlement website. Settlement Agreement, at ¶ XI.A.1.d. As the Notice Plan was executed precisely as ordered by the Court, the Parties abided by the plan that the Court found would provide best notice possible under the circumstances. Therefore, this factor weighs in favor of final approval.

D. The Court Should Confirm Certification Of The Settlement Class And Appointment Of Class Counsel

The Court has "conditionally certified" the Settlement Class, finding that the "prerequisites of class certification have been satisfied". Preliminary Approval Order, at 11. The Court also appointed Faruqi & Faruqi, LLP, Halunen Law, and Reese LLP as Class Counsel. *Id*. Since the entry of the Preliminary Approval Order, no circumstances have changed to alter the propriety of the Court's certification and appointment. As demonstrated below and further in the Preliminary Approval Order, the proposed Settlement Class merits certification for settlement purposes.

1. The Settlement Class Is Ascertainable

To determine whether a class is ascertainable, the court examines: (1) the class definition; (2) the means available for identifying the class members; and (3) whether the class is sufficiently numerous. *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987).

a. The Settlement Class Is Defined By Objective Characteristics Providing Means To Identify the Settlement Class Members

As discussed in Section III.A, the Settlement Class is comprised of all persons who purchased the Products in the United States, its territories, or at any United States military facility or exchange during the Class Period. This class definition is objectively defined, limited by geography and time period, and is defined in such a way that makes self-identification possible. Preliminary Approval Order, at 11 (holding that Settlement Class was "objectively defined" when "limited by geography and relevant class period" and the Products' "labeling remained uniform.")

b. The Settlement Class Is Sufficiently Numerous

A class is sufficiently numerous to warrant class treatment when it is impracticable to bring all members of the class before the court. *See* Cal. Civ. Proc. Code § 382. The exact number of parties necessary for a class action is indefinite and may be "construed liberally." *Rose v. City of*

Hayward, 126 Cal. App. 3d 926, 934 (1981). Here, more than 90,000 claims have been made. *See* Section V.C. As the Court recognized in its Preliminary Approval Order, numerosity is satisfied: "As alleged in the CAC and confirmed in discovery, Defendant has sold at least thousands of units of the products to its distributors nationwide and in California, which were ultimately sold to customers through various retailers." Preliminary Approval Order, at 11.

2. A Well-Defined Community Of Interest Exists

The California Supreme Court identifies three factors which embody the community of interest requirement: (1) predominating questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the Class. *Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 470 (1981). Each is satisfied here.

a. Common Issues Of Law And Fact Predominate

As the Court recognized, common issues of law and fact predominate in this Action as they focus on "whether Defendant engaged in false and misleading conduct" which is "based on uniform representations made prominently on the Products during the class period, capable of being seen by every Settlement Class Member." Preliminary Approval Order, at 11; *see also Vasquez v. Super. Crt. Of San Joaquin Cty.*, 4 Cal. 3d 800,810 (1971) (class certification is proper where the common issues represent the "principal issues in any individual action, both in terms of time to be expended on their proof and of their importance.") Indeed, Defendant's liability is subject to common questions and evidence stemming from the Products' uniform misrepresentations, and therefore, common issues of law and fact predominate.

b. Plaintiff's Claims Are Typical Of The Settlement Class' Claims

The typicality requirement does not require "that the class representative must have identical interests with the class members… [but rather only] that the class representative be similarly situated." *Richmond*, 29 Cal. 3d at 470. Here, Plaintiffs' and Settlement Class Members' claims are typical to each other because their claims concern the same questions of law and fact and arise from the same representation on the Covered Products' labeling.

c. Plaintiff And Plaintiff's Counsel Adequately Represent The Settlement Class

“Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interest of the class.” *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976). This Court previously recognized Class Counsel is adequate given our “experience[] in class action litigation, including consumer class actions.” Preliminary Approval Order, at 11. Plaintiffs are also adequate class representatives as their interests are not antagonistic to the interests of the Settlement Class and their claims arise from the same standardized conduct of Defendant as those of the proposed Settlement Class. Accordingly, Plaintiff satisfies the adequacy requirement. *See McGhee*, 60 Cal.App.3d at 450.

3. A Class Action Is The Superior Method Of Adjudication

A class action is superior when the amount at issue is not enough to warrant an individual filing. *See Newberg on Class Actions* § 4:30 (4th ed. 2002). Individual consumers may be discouraged from taking individual action when the amount at issue is minimal, and if they do they would burden the court with duplicative proceedings regarding the same arguments and evidence, resulting in “a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants.” *See Sav-on Drug Stores, Inc. v. Super. Ct*., 34 Cal. 4th 319, 340 (2011). Here, consumers would be disincentivized to initiate litigation individually on behalf of a consumer product in this price range. Therefore, a class action is the superior method of adjudication.

VI. CLASS COUNSEL’S REQUEST FOR $765,000 NEGOTIATED BY JUDGE DUNN FOR CLASS COUNSEL’S FEES SHOULD BE APPROVED

This settlement was achieved only after the Action has been vigorously litigated by Class Counsel for nearly two years. This is of no surprise given that Defendant is a well-funded corporation that hired defense counsel from a prestigious law firm that has vigorously fought this matter, continuing to today, resulting in Class Counsel to expend a great amount of time and resources in representing the Settlement Class. Accordingly, the settlement was achieved only after Class Counsel engaged in extensive investigation; significant motion practice; discovery; cooperation with the professional mediator John Bates of JAMs, and the services of Judge Dunn of the Los Angeles Superior Court. After a full day of a settlement conference on the issue of fees and expenses, Judge Dunn recommended, and the Parties accepted, a cap to Class Counsel’s fee and expenses request of

$765,000. For the reasons stated below, Class Counsel now respectfully request this Court grant Class Counsel's motion for $765,000 in fees and expenses as negotiated by Judge Dunn.[8]

A. Class Counsel Are Entitled To The Requested Amount

The $765,000 in requested attorneys' fees and expenses is commensurate with the time, effort, and skill expended in this matter. The requested award of attorneys' fees/costs is reasonable, given the amount of work performed litigating this action on behalf of the Class.

In this Court's Preliminary Approval Order it stated that "the award of attorneys fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate." Order at 11, citing *PLCM Group, Inc. v. Drexler* (2000), 22 Cal. 4th 1084, 1095-96; *Ramos v. Countrywide Home Loans, Inc.*, (2000), 82 Cal. App. 4th 615, 622; *Ketchum III v. Moses* (2000) 24 Cal. 4th 1122, 1132-36. Class Counsel also note that California law provides that, at a minimum, Plaintiff's Counsel ***are entitled*** to their lodestar and costs. Cal. Civil Code § 1780(e) ("The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section."); *Kim v. Euromotors W./The Auto Gallery*, 149 Cal. App. 4th 170, 178 (2007) (Section 1780 of the CLRA provides that "[t]he court ***shall*** award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to [that] section. . . . [A] mandatory construction of the word "shall" . . . is consistent with the legislative purpose underlying the statute.")

Here, as a negotiated compromise based upon the recommendation of Judge James Dunn, Class Counsel are willing to take slightly less than their lodestar, even though they are entitled to more as a matter of law, in order for this settlement to be finalized and completed. Accordingly, the reasonableness of the fee here is evident. In total, Class Counsel have expended $838,989.75 in lodestar on this matter and $24,555.54 in expenses. *See* Heikali Decl. ¶¶ 16-17, 28; Reese Decl. ¶ 31; Boyle Decl. ¶¶ 5-7. Class Counsel's lodestar reflects a negative multiplier of 0.91, reinforcing the reasonableness of Class Counsel's fee request. *See e.g., Chun-Hoon v. Mckee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (reasoning that a negative multiplier suggests a reasonable and fair valuation of the services provided by class counsel).

[8] As previously disclosed to the Court, and as stated in its Preliminary Approval Order, this amount shall be allocated as follows: 25% to Halunen Law; 37.5% to Faruqi & Faruqi LLP; and, 37.5% to Reese LLP. Preliminary Approval Order, at 13.

Class Counsel's lodestar and expenses reflect the tremendous amount of work expended by Class Counsel over the course of litigating this action. It reflects the resources expended to extensively investigate the claims prior to filing. It also reflects that the litigation was hard-fought by Defendant on all fronts. Defendant moved to dismiss the action, which was only denied through Class Counsel's significant efforts, including, but not limited to, the retention of a consumer survey expert. Class Counsel filed an opposition to the motion to dismiss and made oral argument on the matter and ultimately prevailed, defeating Defendant's motion to dismiss. Plaintiff's counsel also engaged in discovery, preparing and serving numerous discovery requests. Class Counsel also engaged in lengthy negotiations over the settlement agreement, and appeared three times before the Court on the motion for preliminary approval. Class Counsel continue to diligently work on this matter, including the review of samples of claims made by class members; fighting efforts by defense counsel to disqualify legitimate claims; as well as drafting the motion for final approval.

Additionally, it should be noted that Class Counsel have taken this matter entirely on contingency and have been paid nothing to date for their efforts. The significant outlay of Class Counsel's resources has been completely at risk. Payment for their services was dependent on obtaining a benefit for consumers. Despite these risks, Class Counsel persevered and pressed ahead with their representation of the Class. This risk underscores why Class Counsel should be paid the amount recommended by Judge Dunn. *Ramos*, 82 Cal. App. 4th at 622 (2000). Accordingly, Class Counsel should be awarded the $765,000 for their fees and costs as negotiated by Judge Dunn.[9]

VII. CONCLUSION

For the reasons set forth above, the Parties have demonstrated that the proposed Settlement Agreement is fair, adequate, and reasonable. Accordingly, the Parties respectfully request that the Court issue an order granting final approval of the Settlement Agreement. Class Counsel further requests the Court award Class Counsel's fee and cost request of $765,000 and further grant an enhancement award of $2,750 to each named Plaintiff.

[9] Without the participation of the Class Representatives, there would be no case, and the Class would receive nothing. As seen in their declarations, the Class Representative worked diligently on this matter. It is unopposed that they should receive $2,750 each for their efforts representing the Class. *See* Declaration of Matin Shalikar (attached hereto as Exhibit A); *see also* Declaration of Alexander Panvini (attached hereto as Exhibit B).

Dated: July 1, 2019

FARUQI & FARUQI, LLP

By:________________________

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) *ss.:*
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10866 Wilshire Boulevard, Suite 1470, Los Angeles, California 90024.

On July 1, 2019, I caused the following document to be served which is described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND COSTS
[Attachments: Exhibit A-B]

DECLARATION OF BENJAMIN HEIKALI IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND COSTS
[Attachments: Exhibit 1-5]

DECLARATION OF MICHAEL R. REESE IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
[Attachments: Exhibit 1-2]

DECLARATION OF AMY E. BOYLE IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
[Attachments: Exhibit 1-2]

DECLARATION OF KENNETH JUE
[Attachments: Exhibit A-E]

[PROPOSED] ORDER

by delivering true copies addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY ELECTRONIC SERVICE VIA ONELEGAL. A true and correct copy of the documents listed above were electronically served on counsel of record in the attached service list by transmission through OneLegal. Notice to counsel by OneLegal will constitute service of the above-listed documents.

☐ BY FACSIMILE TRANSMISSION. I caused a facsimile machine transmission from facsimile machine telephone number (424) 256-2885 to the facsimile machine telephone number(s) listed on the attached Service List. Upon completion of said facsimile machine

transmission(s), the transmitting machine issued a transmission report(s) showing the transmission(s) was/were complete and without error.

☒ BY ELECTRONIC SERVICE. I emailed the above document(s) from e-mail address smarton@faruqilaw.com to the respective e-mail addresses listed in the attached service list, from Los Angeles, California.

☐ BY U.S. MAIL. I caused such envelope(s) to be mailed with postage thereon fully prepaid. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.

Executed on July 1, 2019, at Los Angeles, California.

Susanna Marton

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