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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SOVATANA SAUT and JOHN HISATO NAKATANI, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

MCKESSON CORPORATION, a Delaware Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 22STCV28690

Assigned for All Purposes to:
Hon. Maureen Duffy-Lewis
Dept.: 38

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT, APPROVAL OF NOTICE TO CLASS MEMBERS, APPROVAL OF SETTLEMENT ADMINISTRATOR, AND SETTING HEARING FOR FINAL APPROVAL OF SETTLEMENT

Date: October 11, 2024
Time: 9:30 a.m.

Complaint Filed: September 1, 2022
FAC Filed: August 29, 2024
Trial Date: None Set

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I. INTRODUCTION

Plaintiffs Sovatana Saut ("Saut") and John Hisato Nakatani ("Nakatani, and collectively, "Plaintiffs") seek preliminary approval of a non-reversionary $2,250,000.00 Class Action and PAGA Settlement Agreement ("Settlement") entered into with Defendant McKesson Corporation ("Defendant") (collectively with Plaintiffs, the "Parties"). The Settlement was reached after an all-day mediation session with an experienced wage and hour mediator. The Settlement satisfies all of the criteria for preliminary approval under California law, and provides substantial relief to the class members while taking into consideration the risks and expenses of further litigation. It was the result of non-collusive, arm's length, contentious, and informed negotiations between the Parties, who were represented by experienced wage and hour class action counsel.

Plaintiffs request an order preliminarily approving the Settlement as fair, adequate, and reasonable; appointing Plaintiffs as the Class Representatives; appointing Plaintiffs' Counsel as Class Counsel; provisionally certifying the Class; approving the Parties' proposed Notice of Class Action and PAGA Settlement (the "Class Notice"); appointing ILYM Group, Inc. ("ILYM") as the Settlement Administrator; and setting a schedule for proceedings with respect to final approval of the Settlement.

II. BACKGROUND

A. THE COMPLAINT AND PROCEDURAL HISTORY

On June 27, 2022, Plaintiffs filed a putative class action complaint in the Los Angeles County Superior Court titled *Sovatana Saut and John Hisato Nakatani v. McKesson Corporation.*, Case No. 22STCV20831, alleging: (1) failure to pay minimum wages; (2) failure to pay overtime owed; (3) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions; and (9) unfair competition (the "Class Action"). Defendant removed the Class Action to the United States District Court, Central District of California, Case No. 2:22-cv-05707-DMG-KES. (Declaration of Sovatana Saut ("Saut Decl.") ¶ 5; Declaration of John Nakatani ("Nakatani Decl.") ¶ 5.)

On September 1, 2022, Plaintiffs filed a related representative complaint in the Los Angeles County Superior Court, titled *Sovatana Saut and John Hisato Nakatani v. McKesson Corporation*, Case No. 22STCV28690, seeking civil penalties under the Private Attorneys General Act, Labor Code Section 2698 *et seq.* for the aforementioned Labor Code and Wage Order violations (the "PAGA Action"). (Saut Decl. ¶ 6; Nakatani Decl. ¶ 6.)

Prior to filing the related PAGA Action, on May 27, 2022 and June 27, 2022, Saut and Nakatani, respectively, submitted a letter to the California Labor and Workforce Development Agency ("LWDA") which attached a draft copy of the PAGA Action Complaint and alleged the same claims and allegations. (Saut Decl. ¶ 5; Nakatani Decl. ¶ 5.) On July 23, 2024, Nakatani filed a supplemental notice to clarify the facts and allegations previously asserted in his original notice. (Nakatani Decl. ¶ 7.)

The Parties engaged in extensive investigation and substantial discovery, including written discovery and Plaintiffs' depositions. (Declaration of James R. Hawkins ("Hawkins Decl.") ¶ 19.) After completing the formal discovery, the Parties agreed to mediation for the purpose of exploring whether a settlement could be reached of Plaintiffs' and the putative class's claims. (Hawkins Decl., ¶¶ 17, 19.) To that end, the Parties exchanged extensive informal discovery for the purpose of mediation, including time and pay records for Plaintiffs and for a representative sample of the Putative Class, and relevant policy documents. (Id.) The Parties participated in a full-day of arm's-length negotiations aided by experienced employment law mediator, Steven J. Serratore, on February 13, 2024. (Id.) Though the Parties did not reach an agreement at mediation, a Mediator's Proposal was issued that same day, which was ultimately accepted by the Parties and memorialized in a Memorandum of Understanding ("MOU"), executed on April 4, 2024. (Id.) The Parties negotiated the terms of the long-form settlement agreement and thereafter, the Parties executed the Settlement. The Parties have stipulated to the filing of a First Amended Complaint, effectively consolidating the Class and PAGA Actions for the purpose of effectuating the Settlement in one forum. The First Amended Complaint was filed on August 29, 2024.

B. VALUATION OF PLAINTIFFS' CLAIMS

Plaintiffs' claims include that Defendant: (1) failed to pay minimum wages; (2) failure to pay overtime owed; (3) failed to provide lawful meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay wages during employment; (6) failed to timely pay wages owed upon separation from employment; (7) failed to reimburse necessary expenses; (8) knowingly and intentionally failed to comply with itemized wage statement provisions; (9) unfair competition; and (10) penalties pursuant to PAGA. (Hawkins Decl. ¶ 5.)

Defendant asserted strong defenses to Plaintiffs' claims including that it provided additional paid time for employees to complete COVID screenings, that rest periods are not recorded making certification difficult, that it promulgated lawful policies, that it lawfully paid all overtime and that its incentives were properly factored into the regular rate of pay or did not need to be factored into the regular rate of pay, and that it properly paid for all hours worked. Defendant also contended that to the extent any employee used his or her cellular phone, it was a matter of preference and not Defendant's requirement because Class Members were provided with all necessary equipment and Defendant provided alternative means for employees to complete the COVID health screenings. Further, Defendant contended that Plaintiffs' penalty claims are not meritorious because Defendant had a good faith belief that its conduct was lawful, and that Plaintiffs would fail on their underlying claims. (Hawkins Decl. ¶¶ 5-11.) Plaintiffs estimated Defendant's maximum liability to be approximately $21,059,196.00 exclusive of PAGA, and $32,431,096.00 inclusive of PAGA based on a class size of 1,022 individuals who worked approximately 383,176 shifts during the Class Period. In light of the foregoing challenges, however, Plaintiffs calculated Defendant's realistic, risk-adjusted exposure at approximately $8,438,465.50, inclusive of PAGA. Each risk-adjusted claim is separately valued as follows: Unpaid wages due to off-the-clock work: $806,725.25; Underpaid overtime due to improperly calculating the regular rate of pay: $37,793.25; Underpaid meal and rest period premiums due to improperly calculating the regular rate of pay: $17,673.00; Rest period premiums: $2,183,459.50; Meal period premiums: $1,862,840.00; Wage statement penalties: $688,358.50; Waiting time penalties: $462,280.00; Unreimbursed business expenses: $325,560.00; and PAGA penalties ($100 per pay period): $2,186,200.00. (*See*, Hawkins Decl. ¶ 12.) Thus, the Settlement will provide approximately 26% of Defendant's realistic maximum exposure in immediate relief to the Class Members. (Id. ¶ 15.)

III. SUMMARY OF THE PROPOSED SETTLEMENT

The non-reversionary Gross Settlement Amount ("GSA") of $2,250,000.00, includes (1) the fees and expenses of the Settlement Administrator, estimated to be up to $13,550.00; (2) Class

Representative Service Awards of up to $10,000.00 each to Saut and Nakatani; (3) Class Counsel's fees of up to 35% of the GSA (i.e., $787.500.00); (4) litigation expenses and costs incurred by Class Counsel of no more than $50,000.00; and (5) deductions for the PAGA Fund Settlement Amount in the amount of $84,375.00.[1] (*See*, Hawkins Decl., Ex. 1, Class Action and PAGA Settlement Agreement ("Settlement"), Section 3)

After all Court-approved deductions from the GSA, the Net Settlement Amount ("NSA") of approximately $1,278,575.00 will be distributed on a pro rata basis to the Class Members based on the number of workweeks each Participating Class Member worked during the Class Period. In addition, each Aggrieved Employee's share of the remaining PAGA Fund (25% or $28,125.00) will be distributed based on the number of individual Aggrieved Employee's PAGA Pay Periods worked during the PAGA Period. (Hawkins Decl., Ex. 1, Settlement, Section 3.2.) If the settlement is finally approved with the requested allocations, the average individual class settlement payment per Class Member will be $1,251.05[2] on a net basis and $2,201.57[3] per Class Member on a gross basis. This amount compares very favorably to other class action settlements.[4]

Class Members will be provided with notice of the Settlement, its terms, their individual settlement amount, and their right to opt out, object, appear at the fairness hearing or challenge their number of pay periods worked as set out in the Class Notice. (Hawkins Decl., Ex. 1, Settlement, Section 7.4.)

Class Participants shall have 180 days to cash their checks. Any funds associated with checks remaining uncashed after 180 days will be sent to the State of California's Unclaimed Property Fund. (*See*, Hawkins Decl., Ex. 1, Settlement, Sections 4.4.1 and 4.4.3.)

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[1] This figure represents 75% of the PAGA Fund of $112,500.00, which will be paid to the LWDA. The remaining 25%, or $28,125.00 will be paid pro rata to the Aggrieved Employees.
[2] $1,278,575.00 Net Settlement Amount / 1022 Class Members = $1,251.05.
[3] $2,250,000.00 Gross Settlement Amount / 1022 Class Members = $2,201.57.
[4] *See, Salguero v. Deliv, Inc.*, Case No. 19STCV32534 (Los Angeles County Superior Court, 2021) ($635,000.00 class action and PAGA settlement for 3,021 class members with average payment on a gross basis of $210.20); *Sanderson v. A Bright Future*, Case No. 34-2019-00252816-CU-OE-GDS (Sacramento County Superior Court, 2020) ($105,000.00 class action and PAGA settlement for 471 class members with an average payment on a gross basis of $222.93); *Ortegon-Ramirez v. Cedar Fair, L.P.*, Case No. 1-13-CV-254098 (Santa Clara County Superior Court, 2015) ($4,750,000.00 class action and PAGA settlement for 31,425 class members with an average payment on a gross basis of $151.15).

All Individual Settlement Payments will be allocated as follows: (i) ten percent (10%) will be allocated as wages for which IRS Forms W-2 will be issued and all applicable withholdings shall be made; and (ii) ninety percent (90%) will be allocated as non-wages, for which IRS Forms 1099-MISC will be issued. The portion of all Individual Settlement Payments derived from the PAGA Settlement Amount will be allocated entirely as penalties, for which IRS Forms 1099-MISC will be issued. (Id., Section 3.2.4.1.)

In exchange for the GSA, Class Members will release the Released Parties from, respectively, the Released Class Claims and Released PAGA Claim. The "Released Parties" are:

> Defendant and all of its present and former parent companies, direct and indirect subsidiaries, members, joint ventures, owners, principals, agents, divisions, and their respective related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims, and Defendant's counsel of record in the Action.

(Hawkins Decl., Ex. 1, Settlement, Section 1.41.) The "Released Class Claims" are:

> All claims alleged, or reasonably could be alleged, in the Actions and ascertained in the course of the Action, including without limitation, California Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 227.3, 245, 246, 247, 248, 249, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1195, 1197, 1197.1, 1198, 2802, California Industrial Commission Wage Orders, and Business and Professions Code sections 17200, et seq., and including all claims for or related to alleged failure to provide meal periods, failure to provide rest periods, failure to pay overtime wages, failure to pay minimum wage, failure to pay all wages due to discharged and quitting employees, failure to maintain required records, failure to furnish accurate itemized wage statements, failure to indemnify employees for necessary expenditures incurred in discharge of duties, failure to provide and/or pay for accrued sick leave time, failure to produce employee records, and unfair and unlawful business practices, including, but not limited to, claims for injunctive relief, liquidated damages, penalties, interest, fees, costs, and all other claims and allegations made or which could have been made in the Actions based on the facts and allegations pled in the Actions during the Class Period.

(Hawkins Decl., Ex. 1, Settlement, Section 5.2.) The "Released PAGA Claims" are:

> All claims for PAGA penalties alleged, or reasonably could be alleged, in the Actions and the PAGA Notices and ascertained in the course of the Actions, including civil penalties pursuant to PAGA for or related to claims for failure to provide meal periods, failure to provide rest periods, failure to pay overtime wages, failure to pay minimum wage, failure to pay all wages due to discharged and quitting employees, failure to maintain required records, failure to furnish accurate itemized wage statements, failure to indemnify employees for necessary expenditures incurred in discharge of duties, failure to provide and/or pay for accrued sick leave time, and failure to produce employee records, as well as all other claims and allegations alleged in the Actions, throughout the PAGA Period.

(Id. section 5.3).

Subject to Court approval, the Parties agree to engage ILYM Group, Inc. as the Settlement Administrator. (Hawkins Decl., Ex. 1, Settlement, Section 7.1.)

Within twenty-one (21) calendar days following entry of the Preliminary Approval Order, Defendant will provide the Class Data, including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods in a readable MS Excel spreadsheet. ("Class Data"). The Class Data will be used for settlement notification and settlement administration only and shall not be used for any other purpose. The Settlement Administrator shall provide reasonable and appropriate safeguards for any personally identifiable information ("PII") that it receives from Defendant. (Hawkins Decl., Ex. 1, Settlement, Section 4.2.) Prior to mailing, the Settlement Administrator will update Class Member addresses using the National Change of Address database. Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a Class Member Address Search, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet will have an additional fourteen (14) calendar days after the Response Deadline to submit a Request for Exclusion or an Objection to the Settlement. (Id., Section 7.4.) The Response Deadline is forty-five days after mailing. (Id., Section 7.4.4.)

Using best efforts to perform as soon as possible, and no later than 35 days after the Court grants Preliminary Approval, the Settlement Administrator shall mail the Court-approved Class Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class Data. (Hawkins Decl., Ex. 1, Settlement, Section 7.4.2.)

All Class Members will be mailed a Class Notice containing: (i) information regarding the claims; (ii) a summary of the Settlement's principal terms; (iii) the Class definition; (iv) the total number of Workweeks and PAGA Pay Periods (if applicable) each Class Member worked for Defendant during the Class Period and PAGA Period; (v) each Class Member's estimated Individual Class Payment and/or Individual PAGA Payment and the formula for calculating these payments; (vi) the dates which comprise the Class Period and PAGA Period; (vii) instructions on how to submit Requests for Exclusion or Objections; (viii) the Response Deadline; and (ix) the claims to be released. (Hawkins Decl., Ex. 1, Settlement, Sections 1.11, 7.4; see Hawkins Decl., Ex. 2, "Class Notice")

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* ("*Dunk*"), 48 Cal.App.4th 1794, 1807 n.19 (1996). The reasons include that no trial is anticipated in a settlement, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the absent class members. *Id.*; *see also Officers for Justice v. Civil Serv. Comm'n*, 690 F.2d 615, 633 (1979) ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987). As discussed below, for the purposes of this settlement only, the Parties ask this Court to provisionally certify the Class under Cal. Civ. Proc. Code § 382.

A. NUMEROSITY AND ASCERTAINABILITY.

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See,* Cal. Code Civ. Proc. § 382. Ascertainability is met if the class members can be identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal.App.4th 89, 101 (2008); *see also, Sevidal v. Target Corp.*, 189 Cal.App.4th 905 (2010). The Class consists of approximately 1022 individuals who have been identified through Defendant's records. (Hawkins Decl. ¶ 15) Thus, the class is ascertainable, and large enough that joinder would be impractical.

B. WELL-DEFINED COMMUNITY OF INTEREST.

The community of interest requirement has three elements: "(1) predominant 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." *Linder v. Thrifty Oil Co.*, 23 Cal.App.4th 429, 435 (2000).

1. *Commonality*

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. See *Arenas v. El Torito Rests., Inc.*, 183 Cal.App.4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001)). Plaintiffs were material handlers for Defendant during the relevant time period. They attest that they believe that they were subject to the same common policies as the other Class Members. (Saut Decl. ¶ 5; Nakatani Decl. ¶ 5.) Indeed, Plaintiffs contend that the Class was subject to common Covid-19, meal period, rest period, overtime, minimum wage, final pay, wage statement, reimbursement, and sick leave violations, just as they were. Defendant produced evidence which Plaintiffs contend supports a finding of certain common policies, handbooks, and practices. (Hawkins Decl., ¶ 5.) While Defendant reserves its rights to object that commonality exists in this Action if the litigation were to continue, the Parties agree for the purposes of this settlement only that Plaintiffs' allegations meet the commonality requirement. (Hawkins Decl., ¶ 5.)

2. *Typicality*

Typicality "focuses on whether there exists a relationship between the Plaintiffs' claims and the claims alleged on behalf of the class." *4 Newberg on Class Actions* ("*Newberg*") § 3:13 (2002). As indicated above, Plaintiffs are members of the Class they seek to represent. Plaintiffs were materials handlers for Defendant during the relevant time period. They attest that they were subject to the same common policies and practices as the other Class Members. (Saut Decl. ¶ 5; Nakatani Decl. ¶ 5) The Parties agree for settlement purposes only that Plaintiffs' claims regarding Defendant's meal period, rest period, overtime, minimum wage, final pay, wage statement, reimbursement, and sick leave policies and practices that are at the core of the lawsuit are typical of the Class. (Declaration of Christina M. Lucio ("Lucio Decl." ¶ 8.)

3. *Adequacy of Representation*

The proposed class representative must establish that he or she will adequately represent the proposed class. *See, Barboza v. West Coast Digital GSM, Inc.*, 179 Cal.App.4th 540, 546 (2009). Specifically, Plaintiffs contend they are adequate to represent the Class because they were employed by Defendant during the Class Period, experienced the same wage and hour practices as the rest of the class, understood their duties as class representatives, have been willing to undergo the risk of litigation, and have no conflicts of interest with the other Class Members. (*See, generally,* Saut Decl.; Nakatani Decl.)

Adequacy may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Plaintiffs allege, and Defendant does not dispute for purposes of this settlement only, that Plaintiffs and the Class are represented by counsel with extensive experience in wage-and-hour litigation, including class actions. (Lucio Decl. ¶¶ 11-18; Hawkins Decl., ¶¶ 28-37.)

4. *Superiority*

Plaintiffs assert that certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to litigation of numerous individual claims because most of the claims are too small to practically litigate outside of the class context. (Hawkins Decl. ¶ 38.)

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE

A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT.

The law favors settlement. *Bush v. Superior Court*, 10 Cal.App.4th 1374, 1382 (1992). This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of litigation. However, a class action may not be settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. See Cal. R. Ct. 3.769(c), (e)-(g).

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See, Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001). Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits. . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice*, 690 F.2d at 625.

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See, Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, at 625; *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal.App.4th 734, 742 43 (2009)) (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation) (citations omitted). The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to:

> [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 . . . and the reaction of the class members to the proposed settlement.

Dunk, 48 Cal.App.4th at 1801.

The above factors are not exclusive, ". . . and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Id.* The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Id.* (citation and internal quotation marks omitted).

At the preliminary approval stage, the Court need only determine that the settlement falls within the "range of possible judicial approval," so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg* at § 11:25. Indeed, the Court should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval." *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A "presumption of fairness exists where: (1) the settlement is reached through arm's-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." *Dunk*, 48 Cal.App.4th at 1802 (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS AND REFLECTS A FAIR COMPROMISE OF CLAIMS AND RISK FACTORS.

The settlement was the product of extensive arm's length, intensive negotiations through an all-day mediation with Steven J. Serratore serving as the neutral, followed by additional negotiations aided by the neutral culminating in a mediator's proposal, which was accepted by the Parties. The Parties thereafter entered into a memorandum of understanding and in the coming months negotiated, prepared and executed the long-form Class Action and PAGA Settlement Agreement which they ask the Court to now approve. Though cordial and professional, the settlement negotiation was adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the Parties and their counsel. (Lucio Decl. ¶ 5; Hawkins Decl. ¶¶ 17, 19.)

Although Plaintiffs and their Counsel believed that there was a strong possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. (Lucio Decl., ¶ 6, Hawkins Decl., ¶ 17.) The resulting Settlement was based on calculations, risk assessment, and non-collusive negotiation; it takes the risks identified above and others into account in arriving at the settlement amount of $2,250,000.00. (See, Hawkins Decl., ¶¶ 5-14.)

C. THE EXTENT OF THE PRE-LITIGATION DISCOVERY AND INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT.

The Parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. (*See* Hawkins Decl., ¶¶ 5-14.) As described above, the Settlement was only reached after an all-day mediation, extensive formal and informal discovery, investigation, research, thorough calculations and risk evaluation, substantial exchanges of documents, a thorough evaluation of a sampling of time and payroll records, and other information relating to the size and scope of the Class, as well as data permitting Plaintiffs to fully understand the nature and scope of the allegations. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130. (Hawkins Decl. ¶ 17.)

D. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT.

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should consider "[t]he strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." *See Dunk*, 48 Cal.App.4th at 1801. As described above, Defendant has strong defenses to Plaintiffs' claims, which create a real possibility that the claims might not be certified and/or might fail on the merits. (*See*, Hawkins Decl., ¶¶ 6-11.) Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. (Id., ¶ 20.) If settlement were not achieved, continued litigation of the claims would take a substantial amount time and possibly confer no benefit on Class Members. By contrast, the Settlement will yield a prompt, certain, and substantial recovery for the Class, which also benefits the Parties and the Court. In considering these risks, the choice was overwhelmingly in favor of settlement. (Id.)

E. PLAINTIFFS' COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION.

The view of the attorneys conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008) (court must take into account "the experience and view of counsel").

Plaintiffs' Counsel is experienced in wage-and-hour class actions. (Lucio Decl. ¶¶11-18; Hawkins Decl., ¶¶ 28-37.) The Parties' counsel agree that this Settlement is fair and reasonable in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (*See*, generally, Lucio Decl.; Hawkins Decl.) Plaintiffs' Counsel find this Settlement is fair, adequate, and reasonable and in the best interests of Class Members, and should be preliminarily approved. (Id.)

F. THE SETTLEMENT IS WITHIN THE RANGE OF REASONABLENESS

In order to determine whether a class settlement is fair, adequate, and reasonable, courts must be provided with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar*, *supra*, 168 Cal.App.4th at 133. A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba*, *supra*, 91 Cal.App.4th at pp. 246, 250. Here, the proposed $2,250,000.00 Settlement is an excellent result and achieves a substantial benefit to Class Members. Plaintiffs' Counsel reached the proposed Settlement only after carefully considering the case's strengths, weaknesses, expense, and complexity. (Hawkins Decl., ¶¶ 17, 19; Lucio Decl., ¶ 9.)

In light of the claims and defenses, the Parties faced uncertainty that had to be taken into consideration when weighing potential settlement of the claims. Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. Even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," that is no bar to settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.* at p. 250 (quoting *Air Line Stewards, Local 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

As set forth in the accompanying declaration of James R. Hawkins, Plaintiffs' Counsel has satisfied the so-called "*Kullar* standard" by providing the Court with a detailed evaluation of the settlement value of the claims that were alleged in this lawsuit. (*See*, Hawkins Decl., ¶ 12.)

G. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976). Here, the Parties' notice plan is that notice of the Settlement will be disseminated directly to the Class Members by first class mail by the Settlement Administrator within 35 days after the Preliminary Approval date. (*See* Hawkins Decl., Ex. 1, Settlement, Section 7.4.2.)

The contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice includes: (1) a detailed explanation of the case, including the basic contentions or denials of the Parties, and the basic terms of the Settlement; (2) a statement that the Court will exclude the member from the Class if the member requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the Class; (4) an explanation that members of the Class can participate in the Settlement by doing nothing; (5) a statement that the Judgment, whether favorable or not, will bind all members who do not request exclusion; and (6) a statement that any member who does not request exclusion may, if the member so desires, object to the Settlement either in writing or by court appearance. (*See* Hawkins Decl., Ex. 2.) In addition, the manner of giving notice is in compliance with Cal. R. Ct. 3.766(e) because the Notice: (1) is likely to reach a majority of the Class Members; (2) contains the type of relief requested by the Class; (3) details the individual settlement payments for Class Members; (4) is the most cost efficient way of providing notice to the Class; and (5) has no prejudice to the Class because if a Class Member does not receive the notice he/she will still receive his/her Individual Settlement Payment. (Id.)

H. THE ATTORNEYS' FEES UNDER THE SETTLEMENT ARE FAIR

Plaintiffs' Counsel is requesting 35% of the GSA in attorneys' fees, totaling $787,500.00. (*See,* Hawkins Decl. ¶ 13.) Fees of up to 35% of the common fund are reasonable for a trial court to award as attorney fees in class action and PAGA settlements, and the Los Angeles County Superior Court has approved similar fee awards. *See Lopez v. Waldorf Astoria Mgmt. LLC*, No. 20STCV17212 (Los Angeles County Superior Court, 2023) (Approving 35% of the gross settlement amount in a class action and PAGA settlement); *Salguero v. Deliv, Inc.*, No. 20STCV17212 (Los Angeles County Superior Court, 2021) (Same); *Minniear v. Burke Williams*, No. 20STCV02154 (Los Angeles County Superior Court, 2023) (Same). There are two primary methods of determining a reasonable attorney fee in class action litigation, the percentage method and the lodestar method. *Laffitte v. Robert Half International, Inc.* 1 Cal.5th 480, 489 (2016). Attorneys' fees of 35% of the common fund are reasonable and should be preliminarily approved here, however given the extensive and excellent work invested by Plaintiffs' Counsel in the litigation of this matter, only a small multiplier will be required under the lodestar cross check, further justifying the fee award.

I. THE CLASS REPRESENTATIVES' SERVICE AWARD IS FAIR AND APPROPRIATE

The Settlement provides for Class Representative Service Awards of $10,000 each to Plaintiffs Saut and Nakatani. (Hawkins Decl., ¶¶ 23-24.) The proposed awards are reasonable given the time and effort that Plaintiffs devoted to this case, including making themselves available for an all-day mediation session and having their depositions taken. (Id.; Saut Decl. ¶ 11; Nakatani Decl. ¶ 12) At no time did Plaintiffs have a guarantee of any personal benefit as a result of this case. (Id.) They assumed significant risk in bringing this action, including potential liability for Defendant's costs. (Id.) The proposed award is similar to service awards typically in employment class actions. *See, e.g. Sanchez v. Brink's, Inc.*, No.

21STCV11887 (Los Angeles County Superior Court, 2023) (approving $10,000 service award to each class representative on $2.6 million gross settlement);

VI. THE COURT SHOULD APPOINT ILYM GROUP, INC. AS SETTLEMENT ADMINISTRATOR

The Parties propose that the Court appoint ILYM Group, Inc. to serve as the Settlement Administrator. (*See*, Settlement, Section 1.2.) ILYM is experienced in administering class action settlements, and has estimated its fees for this settlement to not exceed $13,550. (Id. Section 3.2.3.) If the actual settlement administration expenses are less than $13,550, the difference will be added to the NSA and distributed to the Class.

VII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

The last step in the approval process is the final approval hearing, wherein Plaintiffs will offer arguments in support of approval of the Settlement, and Class Members or their counsel may be heard in support of or in opposition to the Settlement. The parties propose that the Court schedule a hearing for final approval of the Settlement, including Plaintiffs' request for attorneys' fees, costs, and the service award, at the earliest available date at least 150 days after preliminary approval.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for preliminary approval of the Class Action and PAGA Settlement.

Respectfully submitted,

JAMES HAWKINS APLC

Dated: September 3, 2024

By:________________________
James R. Hawkins, Esq.
Christina Lucio, Esq.

Attorneys for Plaintiffs and the Putative Class

4892-4690-0945, v. 1

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Make a Reservation

SOVATANA SAUT, INDIVIDUALLY AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, et al. vs MCKESSON CORPORATION, A DELAWARE CORPORATION

Case Number: 22STCV28690 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-09-01 Location: Stanley Mosk Courthouse - Department 38

Reservation

Case Name: SOVATANA SAUT, INDIVIDUALLY AND ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, et al. vs MCKESSON CORPORATION, A DELAWARE CORPORATION	Case Number: 22STCV28690
Type: Motion re: (Motion for Preliminary Approval)	Status: RESERVED
Filing Party: SOVATANA SAUT, individually and on behalf of themselves and all others similarly situated (Plaintiff)	Location: Stanley Mosk Courthouse - Department 38
Date/Time: 10/11/2024 9:30 AM	Number of Motions: 1
Reservation ID: 796399044398	Confirmation Code: CR-CZ9L5GWZT8UFAMQSY

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00

Chat

Description	Fee	Qty	Amount
TOTAL			**$0.00**

Payment

Amount:
$0.00

Type:
NOFEE

Account Number:
n/a

Authorization:
n/a

Payment Date:
n/a

Print Receipt

Reserve Another Hearing