SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 7

BC702360 January 14, 2020
MATIN SHALIKAR ET AL VS ASAHI BEER U S A INC 2:00 PM

Judge: Honorable Amy D. Hogue
Judicial Assistant: Alfredo Morales
Courtroom Assistant: Teresa Bivins

CSR: Cheri Bullock, CSR# 4714
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Benjamin Heikali, Esq.; Michael Robert Reese

For Defendant(s): Alexander Akerman; Andrew Eugene Paris, Esq.

NATURE OF PROCEEDINGS: Hearing on Motion for Final Approval of Settlement; Hearing on Motion to Seal Reply in Further Support of Plaintiffs Motion for Attorneys Fees

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Cheri Bullock, CSR #4714, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matters are called for hearing.

The parties have been provided with copies of the Court's tentative ruling. After hearing argument of counsel the Court modifies the tentative with respect to costs and adopts the following tentative:

"TENTATIVE RULING
Grant Defendant’s Motion to Seal.

Grant Final Approval contingent on KCC providing a costs declaration. The Court Grants/Awards: (1) $745,000 in fees and costs to class counsel and (2) $5,500 ($2,750 each) for Service Awards to the Class Representatives. Further, contingent on KCC providing a costs declaration, the court awards reasonable costs up to the requested amount as supported by KCC’s costs declaration, but not in excess of the amount of $475,000. Class Counsel is ordered to provide an order consistent with this ruling and a judgment containing the class definition, release language, and the name of the class member who opted out of the settlement by January 21, 2020.

PRELIMINARY MATTERS- DEFENDANT’S MOTION TO SEAL
Unless confidentiality is required by law, court records are presumed to be open to the public, pursuant to a potent “open court” policy undergirded by the First Amendment and favoring the

public nature of court proceedings. (CRC 2.550(c); see also NBC Subsidiary (KNBC-TV), Inc. v. Superior Court of Los Angeles County (Locke) (1999) 20 Cal.4th 1178, 1199-1210.) As a result of this strong public policy, pleadings, motions, discovery documents, and other papers may not be filed under seal merely by stipulation of the parties. A prior court order must be obtained. (CRC § 2.551(a); see also H.B. Fuller Co. v. Doe (2007) 151 Cal.App.4th 879, 888.) In order to issue a sealing order, a court must make express findings that: (1) there exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest. (CRC § 2.550(d)(1)-(5), (e); McGuan v. Endovascular Technologies, Inc. (2010) 182 Cal.App.4th 974, 988.)

Defendant moves to seal portions of Plaintiff's unredacted Reply in Further Support of Plaintiff's Motion for Attorney's Fees ("Reply") lodged conditionally under seal on September 10, 2019. Plaintiff does not oppose this request and has lodged the Reply conditionally under seal based on the the parties' Amended Stipulated Confidentiality Agreement and Protective Order ("Protective Order") and Defendant's designation of its sales information as confidential in discovery.

Defendant has demonstrated that (1) Defendant has an overriding interest in protecting the confidentiality of its sales data; (2) this overriding interest supports sealing the Reply; and (3) Defendant would be harmed if its sales data were disclosed to the public.

Defendant has also demonstrated that its request is narrowly tailored. Defendant seeks to redact only Sales Data and information from which Sales could be derived at 9:10, 9:16, 10:16-17, 10:19 and 10:21 of the Reply, rather than the entire reply itself. Further, Defendant originally moved to seal this exact Sales Data contained in Plaintiffs' unredacted Response to the October 30, 2018 Tentative Ruling on December 12, 2018. This Court granted Asahi's Motion to Seal on December 20, 2018. Asahi seeks to again seal the same information previously sealed by the Court on December 20, 2018, under the same facts and authority Asahi identified in its December 12, 2018 Motion to Seal.

Based on Defendant's evidence, the Court is persuaded that no less restrictive means exists to achieve Defendant's overriding interest in protecting the confidentiality of its sales data. Accordingly, the Court GRANTS Defendant's motion to seal.

BACKGROUND

In this consumer class action case, Plaintiffs allege that Defendant Asahi Beer, USA, Inc. ("Asahi") falsely and deceptively labeled, packaged, and advertised its Asahi Super Dry beer ("Asahi Beer" or "Products") in a manner indicating that the Products are brewed in Japan, when the Products are actually brewed in Canada. Specifically, Plaintiffs allege that Defendant's use of Japanese script and characters on the labeling and packaging lead reasonable purchasers of the

Product to believe that the Product is brewed in Japan.
On April 5, 2017, Plaintiff Alexander Panvini filed a consumer fraud class action complaint against Defendant in the United States District Court for the Northern District of California, captioned Panvini v. Asahi Beer U.S.A., Inc., No. 4:17-cv-01896 (N.D. Cal.). On April 10, 2017, Plaintiff Matin Shalikar filed a substantially similar consumer fraud class action against Defendant in in the United States District Court for the Central District of California, captioned Shalikar v. Asahi Beer U.S.A., Inc., No. 2:17-cv-02713 (C.D. Cal.). Both actions, which were eventually merged into one action in the Central District, alleged that Defendant engages in deceptive and unfair business practices by labeling, packaging, and marketing the Products in a manner indicating that the Products are brewed in Japan, when the Products are brewed in Canada.
After exchanging and reviewing relevant discovery, the Plaintiffs decided that because Defendant's headquarters are in Los Angeles County, and because this matter contemplates Settlement of a California class, the appropriate venue for this action is the Superior Court of California, County of Los Angeles. Defendant had no objection to the change in forum for settlement purposes. Therefore, on April 12, 2018, Plaintiffs voluntarily dismissed their individual claims in the Shalikar Action in the Central District, and, on April 16, 2018 filed a Class Action Complaint ("CAC") in this Court. The CAC alleges the following causes of action: (1) Violation of California's Consumers Legal Remedies Act ("CLRA") California Civil Code §1750, et seq. (for the California Consumer Subclass) and (2) Quasi Contract/ Unjust Enrichment/ Restitution (for the Nationwide Class).
In November 2017, following investigation and discovery, the Parties commenced with settlement negotiations. The parties eventually participated in a 11-hour mediation session facilitated by John B. Bates, Jr., Esq. of JAMS in Los Angeles, California, which set the foundation for and principle terms of the Settlement Agreement. Subsequently, the Parties engaged in over six months of negotiations, with the aid of Mr. Bates, were able to reach a Settlement Agreement, a fully executed copy of which is attached to the Declaration of Benjamin Heikali ("Heikali Decl.") ISO Preliminary Approval as Exhibit 1.
On July 10, 2018, the Court ordered the parties to file a revised settlement agreement, with revisions, including a cap on attorney's fees and costs that Class Counsel may seek, in addition to any fee splitting agreements class counsel may have.
On September 28, 2018, the Parties engaged in a settlement conference with the Honorable James R. Dunn to negotiate a cap on attorney's fees and costs and were able ultimately to come to an agreement. A copy of the fully executed Amended Settlement Agreement is attached to the Declaration of Benjamin Heikali in Further Support of Plaintiff's Unopposed Motion for Preliminary Approval ("Heikali Supp. Decl.") ISO Preliminary Approval as Exhibit 1.
On October 30, 2018, the court conditionally granted preliminary approval for counsel to address remaining issues flagged by the Court no later than December 2, 2018 and ordered a renewed

hearing on preliminary approval.
In response, on December 20, 2018, Class Counsel filed under seal Plaintiff's Response to October 30, 2018 Tentative Ruling ("Supp. Brief.") ISO Preliminary Approval, with a redacted version filed with the Court as well. On December 3, 2018, Class Counsel also filed a Second Amended Settlement Agreement attached to the Declaration of Benjamin Heikali in Support of Plaintiff's Response to October 30, 2018 Tentative Ruling ("Heikali Second Supp. Decl.") ISO Preliminary Approval as Exhibit 1.
On December 3, 2018 Defendant filed a Reply to Plaintiff's Response to October 30, 2018 Tentative Ruling ("Defendant's Reply") ISO Preliminary Approval, wherein it stated that it does not oppose Plaintiff's Response to October 30, 2018 Tentative Ruling, however it does not "join the specifics of Plaintiff's valuation of this case and reserves its right to challenge all of Plaintiff's valuation methodologies during the attorney's fee phase of the Settlement Approval process." (Defendant's Reply ISO Preliminary Approval, 1:1-5.)
On December 20, 2019 the Court granted Preliminary Approval. Now before the Court is Plaintiff's Motion for Final Approval.

SETTLEMENT CLASS DEFINITION
"Settlement Class" means: All 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. (¶ II.W.)

"California Settlement Class" means: All consumers who purchased Asahi Beer in California, for personal, family, or household purposes and not for re-sale, during the Class Period. (¶ II.X.)
o Excluded from the Settlement Class and the California Settlement Class are all persons who validly opt out of the settlement in a timely manner (for purposes of damages claims only); counsel of record (and their respective law firms) for the Parties; Defendant and any of its parents, affiliates, subsidiaries, and all of its respective employees, officers, and directors; and the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff. (¶¶ II.W-X.)

"Settlement Class Household" For purposes of the Claims Process, a Class Member shall be treated as a "Settlement Class Household," together with any family members or extended family members living under the same roof as the Class Member. (¶ II.Y.)

"Class Period" means April 5, 2013 through the date of Preliminary Approval of Class Settlement. (¶ II.L.)

The parties stipulate to class certification for settlement purposes only. (¶ IX.)

The Parties intend for the Court to give final approval to the certification of both of the Settlement Classes. If the Court gives final approval to only one of the classes, the Agreement shall be final and binding only as to the class certified, and the Parties' and Class Administrator's obligations shall be limited to the scope of the certified class. If the Court fails to certify both the Settlement Class and the California Settlement Class, then the Agreement shall be null and void, and the Parties shall revert to the position they were in prior to seeking approval for the Agreement. (¶ IV.A.)

There are 81,041 valid Class Members who are claiming a total of $743,036.10. (Third Supplemental Declaration of Jack Hack ("Hack 3rd Supp. Decl."), ¶¶7, 9.)

TERMS OF SETTLEMENT AGREEMENT
The Settlement Agreement's essential terms are:
o Defendant is to pay up to $765,000 for attorney fees and costs (¶VII);
o Defendant is to pay up to $5,500 ($2,750 x2) for Service Awards to the Class Representatives (¶VII); and
o Defendant is to pay an estimated $300,000 to 475,000 for Administration Expenses (¶XI.A.9).
o Defendant agrees to monetary and injunctive relief as discussed further below.
• Injunctive Relief: As part of the Settlement Agreement, Defendant has agreed to bold the term "Product of Canada" on the neck of the label of the Product bottles for three years. (¶ V.A.)
• Monetary Relief: Class Members who submit timely and valid Claim Forms will receive a cash payment in the based on the number and type of Products purchased during the Class Period as follows: $.50 per 6-pack of the Products; $0.10 per Big Bottle of the Products; $1.00 per 12-pack of cans of the Products; and $2.00 per 24-pack of cans of the Products. (¶ V.B.9.)
• The amount of cash recovery is subject to a $10 maximum refund per Settlement Class Household. (Ibid)
• Cash payments will be paid by the Settlement Administrator via check or an electronic payment process (such as PayPal), at the Class Member's election. (Ibid)
• Claims Process: To be eligible for a cash payment, a Settlement Class Member and/or a California Settlement Class Member must submit a timely and valid Claim Form, which will be evaluated by the Class Action Settlement Administrator. (¶ V.B.) A copy of the Parties' proposed Claim Form is attached to the Heikali Declaration as Exhibit A.
o "Claim Period" means the time period in which Settlement Class Members and/or California Settlement Class Members may submit a Claim Form for review to the Class Action Settlement Administrator. The Claims Period shall run for 120 days from the date that Class Notice is initially disseminated. (¶ II.F.)
o The Claim Form will be: (i) included on the Settlement Website to be designed and

administered by the Settlement Administrator, and Class Members shall be allowed to complete and submit the Claim Form online; (ii) made readily available from the Settlement Administrator, including by requesting a Claim Form from the Settlement Administrator by mail, e-mail, or calling a toll-free number provided by the Settlement Administrator; and (iii) mailed to those individuals for whom Defendant has addresses. (¶ V.B.1.)

o Claim Forms must be postmarked or submitted online before or on the last day of the Claim Period, the specific date of which will be prominently displayed on the Claim Form and Class Notice. (¶ V.B.2.)

o Validity of Claim Forms. Valid Claim Forms must contain the Settlement Class Member's name and mailing address, attestation of purchase(s), and type(s) and number of Products purchased. Claim Forms that do not meet the requirements set forth in this Agreement and in the Claim Form instructions may be rejected. The Settlement Administrator will determine a Claim Form's validity.

 Where a good faith basis exists, the Settlement Administrator may reject a Settlement Class Member's Claim Form for, among other reasons, the following: (a) Failure to attest to the purchase of the Products, or purchase of products that are not covered by the terms of this Settlement Agreement; (b) Failure to provide adequate verification or additional information of the Claim pursuant to a request of the Class Action Settlement Administrator; (c) Failure to fully complete and/or sign the Claim Form; (d) Failure to submit a legible Claim Form; (e) Submission of a fraudulent Claim Form; (f) Submission of more than one Claim Form per Settlement Class Household; (g) Submission of Claim Form that is duplicative of another Claim Form; (h) Submission of Claim Form by a person who is not a Settlement Class Member or a California Settlement Class Member; (i) Request by person submitting the Claim Form to pay funds to a person or entity that is not the Settlement Class Member or California Settlement Class Member for whom the Claim Form is submitted; (j) Failure to submit a Claim Form by the end of the Claim Period; or (k) Failure to otherwise meet the requirements of this Agreement. (¶ V.B.3.)

o Attestation of Purchase Under Penalty of Perjury Required. Each Class Member shall sign and submit a Claim Form that states to the best of his or her knowledge the total number and type of purchased Products. The Claim Form shall be signed under an affirmation stating the following or substantially similar language: "I declare, under penalty of perjury, that the information in this Claim Form is true and correct to the best of my knowledge, and that I purchased the Product(s) claimed above during the Class Period for personal or household use and not for resale. I understand that my Claim Form may be subject to audit, verification, and Court review." (¶ V.B.4.)

o Verification of Purchase May Be Required. The Claim Form shall advise Class Members that while proof of purchase is not required to submit a Claim, the Settlement Administrator has the right to request verification or more information regarding the purchase of the Products for the

purpose of preventing fraud. If the Class Member does not timely comply or is unable to produce documents or additional information to substantiate the information on the Claim Form and the Claim is otherwise not approved, the Settlement Administrator may disqualify the Claim. The Parties shall have the ability to review any Claim Forms rejected by the Settlement Administrator. (¶ V.B.5.)
o Claim Form Deficiencies. The Settlement Administrator will take all reasonable and customary steps to attempt to cure defectively submitted claims and to determine the Class Member's eligibility for payment and the amount of payment. (¶ V.B.7.)
o Failure to Submit Claim Form. Unless a Class Member opts out pursuant to Section XII, any Class Member who fails to submit a timely and valid Claim Form shall be forever barred from receiving any payment pursuant to this Agreement and shall in all other respects be bound by all of the terms of this Agreement and the terms of the Final Judgment and Order Approving Settlement to be entered in the Action. Based on the Release contained in the Agreement, any Class Member who does not opt out will be barred from bringing any action in any forum (state or federal) against any of the Discharged Parties concerning any of the matters subject to the Release. (¶ V.B.8.)
• "Opt-Out Date" means the date 21 days prior to the Final Approval Hearing. (¶ II.R)
o Objections: Any Class Member who intends to object to the fairness of the Settlement may do so in writing prior to the Final Approval Hearing or in person at the Final Approval Hearing. Any written objection must be in writing; signed by the Class Member (and his or her attorney, if individually represented); and submitted to the Settlement Administrator, with a copy delivered to Class Counsel and Defendant's Counsel at the addresses set forth in the Class Notice. (¶ XII.A.1.)
• KCC Class Action Services will perform settlement administration. (¶ II.H.)
• Scope of the release: Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, and in consideration for the settlement benefits described in this Agreement, Plaintiffs and each member of the Settlement Class and/or California Settlement Class who has not validly excluded himself or herself from the Settlement pursuant to shall be deemed to fully release and discharge Defendant and all its present and former parent companies, subsidiaries, shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, affiliates, and successors, personal representatives, heirs and assigns, retailers, suppliers, distributors, endorsers, consultants, and any and all other entities or persons upstream and downstream in the production/distribution channels (together, the "Discharged Parties") from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other

source, or any claim that Plaintiffs or Settlement Class Members or California Settlement Class Members ever had, or now have, against the Discharged Parties in any other court, tribunal, arbitration panel, commission, agency, or before any governmental or administrative body, or any other adjudicatory body, on the basis of, arising from, or relating to the claims alleged or that could have been alleged based on the underlying facts asserted in the operative Complaint, including all claims related to the labeling / packaging / marketing regarding the place of origin / brewing, identity of brewer, and source of ingredients for Asahi-branded beer (the "Released Claims"). The Released Claims expressly exclude claims for personal injury against the Discharged Parties. The Released Claims expressly exclude claims for personal injury against the Discharged Parties. (¶ VIII, as amended.)

o To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement, or any other action or claim that arises out of the same factual predicate or same set of operative facts as this Action. (¶ VIII.C.)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

1. Was the settlement reached through arm's-length bargaining? Yes. The Parties participated in a mediation session facilitated by John B. Bates Jr., Esq. of JAMS, which set the foundation for and principle terms of settlement. (Heikali Decl. ISO Preliminary Approval, ¶8.) Subsequent to the mediation, the Parties engaged in over six months of arms' length negotiations, with the aid of Mr. Bates, to finalize settlement terms. (Id. at ¶9.) Further, on September 28, 2018, the Parties engaged in a settlement conference with the Honorable James R. Dunn to negotiate a cap on attorney's fees and costs and were able ultimately to come to an agreement. (Heikali Decl. ISO Final Approval, ¶8.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represent that they began investigating Defendants labeling, packaging, and advertising of products in or around July 2016, which included obtaining and reviewing the Products, including their labeling, packaging, and all other advertisements and promotions for the Products; obtaining and reviewing electronic images of Defendant's website and other electronic marketing platforms; obtaining and reviewing relevant legal precedent regarding similar false and misleading representations on products, including other beer products; obtaining and reviewing relevant filings and applications made for the Products with the Alcohol and Tobacco Tax and Trade Bureau; and Obtaining and reviewing financial information regarding the Products and Defendant. (Motion ISO Preliminary Approval, 3:21-4:8.) Counsel further represents that the negotiations came only after Plaintiffs defeated Defendant's motion to

dismiss and Class Counsel had an opportunity to obtain and review discovery, review and assess relevant law and facts to assess the merits of the claims and determine how to best serve the interests of the members of the putative classes. (Heikali Decl. ISO Preliminary Approval, ¶8.)
3. Is counsel experienced in similar litigation? Yes. Counsel represents that each of the Class Counsel firms has experience litigating and resolving national consumer class actions, particularly in the field of food and beverage labeling. (Heikali Decl. ISO Preliminary Approval, ¶18 and Exhibits 4-6 thereto.)
4. What percentage of the class has objected? Zero objectors. (Declaration of Kenneth Jue ("Jue Decl."), ¶8; Second Supplemental Declaration of Jack Hack ("Hack 2nd Supp. Decl."), ¶4.d.)

CONCLUSION: The settlement is entitled to a presumption of fairness.

B. Is the settlement fair, adequate, and reasonable?
1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)
Counsel contends that the proper measure of damages in a deceptive labeling case is the excess money paid by consumers for a product based on the challenged representation ("the price premium") commanded by the products. (See Brazil v. Dole Packaged Foods, LLC, No. 12-cv-01831-LHK, 2014WL 5794873, at *5 (N.D. Cal. Nov. 6, 2014) ("The proper measure of restitution in a mislabeling case is the amount necessary to compensate the purchaser for the difference between the product as labeled and the product as received.") Counsel contends that at issue is the amount a consumer overpaid based on the belief the products were imported from Japan, when they were actually brewed in Canada. (Supp. Brief ISO Preliminary Approval, 3:20-27.)
As the case settled before trial experts were employed to provide an evaluation of damages, counsel used a comparison of the Products at issue with similar beer products marked and sold without the Challenged representations to provide a reasonable estimate as to damages. (Supp. Brief ISO Preliminary Approval, 3:27-4:9.)
Based on those comparisons (Supp. Brief ISO Preliminary Approval, 4:10-6:19), counsel contends that it appears that consumers pay approximately $1.00 to $1.50 more, or approximately 11.2%-16.6% more per 6-pack of the Products that comparable lager style beers without the deceptive representations. Accordingly, counsel contends that if an expert conducted a damage analysis of the price premium commanded by the Products, it would have been found this premium associated with each 6-pack of the Products, which would be the amount of damages consumers are entitled to at trial. (Supp. Brief ISO Preliminary Approval, 6:20-7:2.)
Counsel further contends this estimated price premium is consistent with the price premium commanded by another Japanese marketed beer not actually brewed in Japan, and consistent

with the price prelim measure by experts in another beer labeling case. (Supp. Brief ISO Preliminary Approval, 7:3-12; Exhibits 3-4 to Heikali Second Supp. Decl. ISO Preliminary Approval.)

Therefore, class Counsel estimated that if the maximum damages per 6-pack of the Products is $1.00-$1.50, then the $.50 per 6-pack negotiated for the Settlement Class Members is approximately 33%-50% of the potential recovery had Plaintiff prevailed at trial. (Supp. Brief ISO Preliminary Approval, 7:13-15.) These estimates are within the "ballpark" of reasonableness.

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].)

4. Amount offered in settlement.

Monetary Relief: At preliminary approval, counsel represented that because there was no cap to the amount that Settlement Members may recover (meaning that Defendant will be labile for any and all valid and timely claim forms submitted by Settlement Class Members), it was difficult to provide a definite value of the settlement recovery. (Supp. Brief ISO Preliminary Approval, 2:4-6.)

However, counsel contended that one way to estimate the total potential recovery for settlement Class Members would be by using the sales information provided by Defendant in discovery. (Supp. Brief ISO Preliminary Approval, 2:6-8.)

Based on the total units sold during the class period and the recovery per unit for each of the products under the Settlement Agreement, counsel have provided a reasonable estimate of the total potential recovery for class members sufficient to justify this settlement. (Supp. Brief ISO Preliminary Approval, 2:8-20.)

At final approval, after the claims period, there are 81,041 valid Class Members who are claiming a total of $743,036.10. (Hack 3rd Supp. Decl., ¶¶7, 9.)

Injunctive Relief: As part of the Settlement Agreement, Defendant has agreed to bold the term "Product of Canada" on the neck of the label of the Product bottles for three years. (Settlement Agreement, ¶ V.A.) Counsel contends that theoretically as a result of this relief, the Products are no longer deceptively advertised and can no longer garner the price premium attributed to the misleading representations. Therefore, although it is difficult to precisely value the injunctive

relief, a reasoned estimate can be derived by looking at the economics of the matter. (Supp. Brief ISO Preliminary Approval, 8:22-27.)
Counsel contends that going forward, the market price of the Products should decrease to reflect the price without the price premium, and consumers will benefit from the difference in the price they would have paid with the price premium versus the adjusted lower price they will pay going forward. Thus, assuming sales figures in the next three years remain consistent with historical sales figures, counsel contends that a reasonable estimate of the value of injunctive relief can be calculated by multiplying the estimated number of units that will be sold over the next three years by the estimated priced premium consumers will save per units for a total value, that as established in the sales figures received by the court under seal, adds substantial value to the injunction. (Supp. Brief ISO Preliminary Approval, 9:1-16.)
2. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.
3. Experience and views of counsel. Class Counsel is of the opinion that the Class Settlement is fair, adequate, and reasonable. The settlement was negotiated and endorsed by class counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.
4. Presence of a governmental participant. This factor is not applicable here.
5. Reaction of the class members to the proposed settlement .
Number of class members: 81,041 (Hack 3rd Supp. Decl., ¶7.)
Number of Multi-Household Claims: 8,494 (Ibid.)
Number of exclusions: 1 (Jue Decl., ¶7 and Exhibit D thereto; Hack 2nd Supp. Decl., ¶4.c.)
Number of objections: 0 (Jue Decl., ¶8; Hack 2nd Supp. Decl., ¶4.d)
Participating Class Members/Valid Claims Received: 81,041 (Hack 3rd Supp. Decl., ¶7.)
Amount Claimed: The 81,041 Class Members claimed a total of $743,036.10 as broken down as follows: (Id. at ¶9)
• 66,730 Class members will be paid $10 for a total of $660,730. (Id. at ¶10.) Of those:
o 32,212/66,730 claimed exactly $10 (Ibid.)
o 34,518 claimed more than $10, but will receive $10 per the agreed cap (Ibid.)
• 14,311 Class Members claimed $75,736.10 in products qualifying for less than $10 : (Id. at ¶12.)
o Big Bottle: 42,768 products claimed for a total value of $4,276.80 (Ibid.)
o 6 Pack: 35,276 products claimed for a total value of $17,638.00 (Ibid.)
o 12 Pack: 23,511 products claimed for a total value of $23,511.00 (Ibid.)
o 24 Pack: 15,494 products claimed for a total value of $30,988.00 (Ibid.)
Claims Rate: KCC estimated that 45,000 claims would be received, therefore, the 81,041 valid claims received results in appropriately a 180% claims rate. (Hack 2nd Supp. Decl., ¶¶6-7.)

///

See Generally Jue Decl.; Supplemental Declaration of Jack Hack ("Hack Supp. Decl."); Hack 2nd Supp. Decl.; Hack 3rd Supp. Decl.

KCC received a total number of 119,747 claims. (Hack 3rd Supp. Decl., ¶7.) After various levels of investigation, of those 11,747 claims, 24,419 were duplicative, 4 were late, 4,469 were rejected as deficient, and 9,814 were Multi-Household claims excluded for payment after review. (Ibid.)

Although the 14,311 members' claims totaled $76,413.80 when counting the each of claims themselves, because of the Multi-Household rule applied, the actual payment to this group of 14,311 Class Members is $75,736.10. (Id. at ¶12.)

C. Attorney Fees and Costs
Class Counsel, Faruqi & Faruqi, LLP; Reese, LLP; and Halunen Law, request an award of $765,000 in fees and costs. (Motion ISO Final Approval, 14:1-2.) Defendant opposes this request.
The Settlement Agreement provides for fees and cost not to exceed $765,000. (Settlement Agreement ¶VII); class members were provided notice of the requested awards and none objected. (Jue Decl., ¶8 and Exhibit A thereto; Hack 2nd Supp. Decl., ¶4.d)
Counsel represent that they have agreed to split the fee as follows: Halunen Law: 25%; Reese LLP: 37.5%; and, Faruqi & Faruqi LLP: 37.5%. (Declaration of Michael R. Reese ("Reese Decl.") ISO Final Approval, ¶34.)
"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254.) Here, class counsel request attorney fees under lodestar method. (Motion ISO Final Approval, pgs. 14-15.) Counsel further contend that the fee is fair as a negotiated compromised following mediation of fees with Judge Dunn. (Motion ISO Final Approval, 14:18-19.)
In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) The California Supreme Court's decision in Laffitte, supra, Cal.5th at 503, expressly states that the decision does not address the appropriateness of using a percentage of recovery method to determine class counsel's fees when there is not a true common fund settlement. In this case,

there is not a true common fund settlement, but rather a claims made settlement.
Nevertheless, the principles articulated in Lafitte for award of fees on a percentage basis are relevant to this case. The Supreme Court states that there should be an "alignment of incentives between counsel and the class." (Ibid.) Thus, it is appropriate for counsel to bear the risk with the class when Class Counsel agrees to a reversionary settlement, and such similarly, fee calculation in a claims-made settlement should incentivize counsel to encourage maximum class member participation.
Use of a percentage of recovery yardstick for considering the reasonableness of class fees should be applied in such a way as to provide counsel with and incentive "to seek an early settlement and avoid unnecessarily prolonging the litigation." (Ibid.)
Thus, a lodestar should be considered but should not reward "overworking" a case that is of low value to the class for whatever reason, unless the "overworking" is due to unavoidable defendant tactics.
Here, although the negotiated settlement had no cap, at final approval, it is now clear what monetary compensation to the class actually is after reviewing the claims approved in this matter. Here, there were a total number of 81,04 Class Members who submitted claims totaling $743,036.10. (Hack 3rd Supp. Decl., ¶¶7, 9.) Therefore, in this matter, the actual monetary benefit, i.e. the maximum gross settlement amount which was actually obtained on behalf of class members can be calculated to be $1,983,586.10 ($1,983,586.10 = $743,036.10 claims + $300,000 – 475,000 claims administration + $5,500 enhancement awards + $765,000 for fees and costs).
Therefore, based on this calculated common fund, the fee request represents 37.3% of the gross settlement amount, which is the above the average generally awarded in class actions. (See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Further, the fee request is greater than the actual amount distributed to the class, i.e. the calculated "net."
In support of this fee and cost request, counsel has provided the following lodestar information:
Biller Rate Hours Total
REESE LLP 459 $395,155.25
Reese $875 407.25 $356,322.75
Granade $750 51.75 $38,812.50
FARUQI & FARUQI 646.60 $309,287.50
Peter $675 104.8 $70,740.00
Rohr $550 19 $10,450.00
Heikali $500 264.7 $132,350.00
Reina $450 35 $15,750.00
Nassir $375 77.4 $29,025.00

Behnke (Paralegal) $400 .25 $100.00
Giacalone (Paralegal) $350 27.10 $9,485.00
Marton (Paralegal) $350 118.25 $41,387.50
HALUNEN LAW 252.2 $134,547.00
Boyle $475 81.4 $38,665.00
Moore $430 19.9 $8,557.00
Moreland $610 2.1 $1,281.00
Pasterski $350 8.8 $3,080.00
Nemetz (Law Clerk) $175 2.3 $402.50
Vukelich-Seltz (Paralegal) $175 2.6 $455.00
Boschwitz (Law Clerk) $175 .7 $122.50
Wolchansky $610 134.4 $81,984.00
TOTAL 1,357.80 $838,989.75
(Heikali Decl. ISO Final Approval, ¶¶16-17 and Exhibit 4 thereto; Reese Decl. ISO Final Approval, ¶31 and Exhibit 2 thereto; Declaration of Amy E. Boyle ("Boyle Decl.") ISO Final Approval, ¶¶7-8 and Exhibit 2 thereto.)
It is represented that counsel worked a combined 1,357.80 hours in this matter for a combined lodestar of $838,989.75 which would require a negative multiplier as compared to the requested fee amount of $765,000. (Motion ISO Final Approval, 14:23-26.)
Further, in support of this fee and cost request, counsel represents that, to date, they incurred a total of $24,555.54 costs in this Action ($7,895.51 by Reese LLP; $9,005.32 by Faruqi & Faruqi; and $8,031.43 by Halunen Law.) (Heikali Decl. ISO Final Approval, ¶28 and Exhibit 5 thereto; Reese Decl. ISO Final Approval, ¶31 and Exhibit 2 thereto; Declaration of Amy E. Boyle ("Boyle Decl.") ISO Final Approval, ¶¶7- and Exhibit 2 thereto.)
The costs include, but are not limited to, mediation fees ($8,224.96), filing/service fees ($4,506), research ($1,841.39), expert costs ($1,450), and travel costs ($5,112.17). (Ibid.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.
Defendant opposes the fee request on the grounds that: 1) the lodestar is inflated both as to the hours claimed and the rates requested; 2) the fee request is not proportionate to the total recovery of class members; 3) and that counsel have not met their burden in showing the injunctive relief in this matter has any quantifiable monetary value. (Opposition, pgs. 5-15.)
In response, counsel contends that 1) the loadstar hours claimed are proper based on the amount of work done in this matter; 2) the rates are reasonable based on the Los Angeles Market and have previously been approved by Courts; 3) the fee request of $740,444 is reasonable as a benchmark recovery based on the value of the "common fund" in this case, which at preliminary approval counsel evaluated and disclosed to the court under seal; and 4) the fee request of $740,444 is reasonable as a benchmark recovery based on the value of the injunctive relief in this case, which at preliminary counsel evaluated and disclosed to the court under seal. (Reply, pgs.

1-10.)
First, the court is not persuaded by Class Counsel's contentions that in applying the percentage method, the court should use the total benefits available to the class as opposed to the total benefit actually obtained by the class. (Reply, pgs. 7-9.) This court has long held that the percentage of recovery methodology should be based on both the actual value of the judgment or settlement to the class and the value of cy pres awards. (See Principles of the Law of Aggregate Litigation § 3.13: Attorney's Fees (2010).)
Second, even if the Court were to apply a percentage of the funds method, the court would be skeptical at accepting counsel's calculations as to a theoretical fund without concrete evidence that that was the actual fund created.
Similarly, although the court did request an estimate as to the value of the injunctive relief in this case, the court does not place absolute credence onto this evaluation for purposes of estimating the actual benefit received by the class. Class Counsel did not proffer any expert opinion as to the value of the injunctive relief to the class, and the evaluation provided was based off of similar, but not identical situations. (See Supp. Brief ISO Preliminary Approval, 9:1-16.) As courts have previously found, "[t]he value of injunctive relief is [ ] notoriously difficult to judge." (Jaffe v. Morgan Stanley & Co., No. C06-3903 TEH, 2007 WL 4934323, at *4 (N.D. Cal. Dec. 12, 2007)). Therefore, although illustrative, the Court cannot find that the value of the injunctive relief cited by class counsel is the actual value of the benefit obtained by the class.
Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.) As discussed above, based on the percentage of the common fund of the benefit actually obtained by the class of $1,983,586, the $765,000 (even calculated as $740,444) is in excess of 37% of the common fund, and higher than the average generally awarded in such cases. However, the requested amount is less than counsel's claimed lodestar of $838,989.75.
Based on the above, the recommendation is to award $745,000 in attorney's fees and costs.

Counsel comes to this calculation after deducting the costs of $24,555.54 from the requested fee and cost of $765,000.

D. Incentive Award to Class Representative
The Class Representatives request $2,750 each for an enhancement award for a total of $5,500. (Shalikar Decl., 1:26-27; Panvini Decl., 1:24-25.)

Mr. Shalikar's contributions to this litigation include but are not limited to spending 15 hours on the matter obtaining counsel, assisting in the drafting of the complaint, reviewing the amended complaint, reviewing discovery requests, searching for documents, and participating telephonically in the settlement. (Shalikar Decl., 1:6-22.)
Mr. Panvini's contributions to this litigation include but are not limited to spending 12 hours on the matter obtaining counsel, assisting in the drafting of the complaint, reviewing the amended complaint, reviewing discovery requests, searching for documents, and participating telephonically in the settlement. (Panvini Decl., 1:5-20.)
Based on the above, as well as the benefits obtained on behalf of the class, the recommendation is to grant the enhancement payments in the requested amounts $2,750 each for a total of $5,500.

E. Claims Administration Costs
The claims administrator KCC's declarations do not clearly request an amount for costs of settlement administration. (See Generally, Jue Decl., Hack Supp. Decl., Hack 2nd Supp. Decl.; Hack 3rd Supp. Decl.)
Under the Settlement Agreement, the administration fees were estimated to be $300,000 (Settlement Agreement, ¶XI.A.9); and were disclosed to class members in the Notice, to which there were no objections. (Jue Decl., ¶8 and Exhibit A thereto; Hack 2nd Supp. Decl., ¶4.d.)
Based on the above, and contingent on KCC providing a costs declaration, the recommendation is to award reasonable costs up to the requested amount as supported by KCC's costs declaration, but not in excess of the amount of $475,000."

The motion to seal is granted. The motion for final approval is also granted. Class counsel is ordered to submit an order and judgment by 01/21/2020. Class counsel shall also file the administrator's declaration confirming final payout and execution of settlement.

Non-Appearance Case Review Re Filing of Declaration by Administrator is scheduled for 08/14/2020 at 10:00 AM in Department 7 at Spring Street Courthouse.

Notice is waived.