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12 [Additional counsel appear on signature page.]

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 EVANSTON POLICE PENSION FUND,
 16 Individually and on Behalf of All Others
 Similarly Situated,

17 Plaintiff,

18 vs.

19 MCKESSON CORPORATION, et al.,
 20

21 Defendants.

) Case No. 3:18-cv-06525-CRB

) CLASS ACTION

) REPLY MEMORANDUM AND
) STATEMENT OF NON-OPPOSITION IN
) FURTHER SUPPORT OF: (1) LEAD
) PLAINTIFF’S MOTION FOR FINAL
) APPROVAL OF CLASS ACTION
) SETTLEMENT AND APPROVAL OF PLAN
) OF ALLOCATION, AND (2) LEAD
) COUNSEL’S MOTION FOR AN AWARD
) OF ATTORNEYS’ FEES AND EXPENSES

22 JUDGE: Honorable Charles R. Breyer
 23 DATE: July 14, 2023
 24 TIME: 10:00 a.m.
 (via videoconference)

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1 Lead Plaintiff Pension Trust Fund for Operating Engineers (“Lead Plaintiff”) and Lead
 2 Counsel Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) respectfully submit this reply
 3 memorandum in further support of: (1) Final Approval of the Class Action Settlement and Approval
 4 of the Plan of Allocation (ECF 282) (“Final Approval Motion”); and (2) an Award of Attorneys’
 5 Fees and Expenses (ECF 283) (“Attorneys’ Fees Motion”).¹

6 **I. INTRODUCTION**

7 The May 12, 2023 deadline for objections to the \$141,000,000 all-cash Settlement has now
 8 passed. Lead Counsel is pleased to report that no Class Member has lodged an objection to the
 9 Settlement, the Plan of Allocation, or Lead Counsel’s fee and expense application, and only eight
 10 putative Class Members have requested exclusion from the Class. This lack of objections “is
 11 perhaps the most significant factor to be weighed in considering [the Settlement’s] adequacy,” *In re*
 12 *Rambus Inc. Derivative Litig.*, 2009 WL 166689, at *3 (N.D. Cal. Jan. 20, 2009); is a testament to
 13 the fairness, adequacy, and reasonableness of the proposed Settlement, the proposed Plan of
 14 Allocation, and Lead Counsel’s fee and expense application; and further underscores why each
 15 warrants the Court’s approval.

16 **II. ARGUMENT**

17 **A. The Notice Provided to the Class Met All Due Process Requirements**

18 As detailed in prior submissions, the comprehensive notice program approved by the Court
 19 and implemented here was “the best notice that [was] practicable under the circumstances, including
 20 individual notice to all members who [could] be identified through reasonable effort.” Fed. R. Civ.
 21 P. 23(c)(2)(B); *see* ECF 275, §VI., ECF 282, §V. To date, the Claims Administrator has mailed a
 22 total of 510,574 copies of the Postcard Notice and 288 copies of the Notice Packet to potential Class
 23 Members and Nominees; the Summary Notice was published in *The Wall Street Journal* and
 24 transmitted over *Business Wire*; and all pertinent information has been posted and made generally
 25 available on the website dedicated to the Settlement. *See* Declaration of Ross D. Murray Regarding
 26 _____

27 ¹ Unless otherwise noted, all capitalized terms not defined herein have the same meaning set
 forth in the Stipulation of Settlement dated November 30, 2022 (ECF 277).

1 (A) Notice Dissemination; (B) Publication/Transmission of Summary Notice; and (C) Requests for
 2 Exclusion Received to Date (“Murray Decl.”) (ECF 284-2), ¶¶11-15, and Supplemental Declaration
 3 of Ross D. Murray Regarding (A) Notice Dissemination; (B) Requests for Exclusion Received to
 4 Date; and (C) Claims Received (“Murray Suppl. Decl.”), ¶4, submitted herewith.

5 This notice program is indistinguishable from that which was employed in connection with *In*
 6 *re: Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2019 WL 2077847 (N.D.
 7 Cal. May 10, 2019) (“*Volkswagen Securities*”). In the *Volkswagen Securities* case, the claims
 8 administrator mailed 217,587 notice packets by first-class mail to potential class members and
 9 nominees; published the summary notice in *Investor’s Business Daily* and transmitted it over *PR*
 10 *Newswire*; and posted all pertinent information on a website dedicated to the settlement. *See*
 11 *Declaration of Alexander Villanova Regarding (A) Mailing of the Notice and Claim Form; (B)*
 12 *Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, In*
 13 *re: Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 3:15-md-02672-
 14 CRB, ECF 6112-3 (N.D. Cal. Apr. 5, 2019) (“*Volkswagen Villanova Decl.*” or “*Villanova*
 15 *Declaration*”), ¶¶8-9, 14; *see also Volkswagen Securities*, 2019 WL 2077847, at *3 (citing the
 16 *Volkswagen Villanova Decl.*). After reviewing the Villanova Declaration, this Court determined the
 17 settlement was administratively fair, reasonable, and adequate. *See Volkswagen Securities*, 2019
 18 WL 2077847, at *3-*4 (overruling objection to the notice’s format). As it did there, the Court
 19 should conclude that Lead Counsel here has provided “the best notice that [was] practicable,” as
 20 Rule 23 requires and due process demands. *See also, e.g., Destefano v. Zynga, Inc.*, 2016 WL
 21 537946, at *7 (N.D. Cal. Feb. 11, 2016) (finding individual notice mailed to class members
 22 combined with summary publication constituted “the best form of notice available under the
 23 circumstances”).

24 **B. The Reaction of the Class Strongly Supports Approval of the**
 25 **Settlement and Plan of Allocation**

26 Federal Rule of Civil Procedure 23(e)(2) and *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th
 27 Cir. 1998), provide factors that the Court must consider when assessing whether to approve a class
 28 action settlement. As explained in both Lead Plaintiff’s Final Approval Motion and Unopposed
 REPLY MEMO & STMT OF NON-OPPOSITION IN FURTHER SUPPORT OF: (1) LP’S MOT FOR
 FINAL APPR OF CLASS ACTION STLMT & PLAN OF ALLOC, & (2) LEAD COUNSEL’S MOT
 FOR AN AWARD OF ATTYS’ FEES & EXPENSES - 3:18-cv-06525-CRB

1 Motion for Preliminary Approval of Proposed Settlement (“Preliminary Approval Motion”), the
2 proposed Settlement readily satisfies the relevant factors, as the Settlement resulted from Lead
3 Plaintiff’s and Lead Counsel’s diligent representation of the Class throughout this years-long
4 litigation; the Settlement was negotiated at arm’s length following extensive document discovery
5 and with the assistance of an experienced mediator; and the Settlement provides an excellent
6 recovery considering the costs, risk, and delay of further litigation. *See* ECF 275, §IV.; ECF 282,
7 §III.C.-D.; *see also Volkswagen Securities*, 2019 WL 2077847, at *1-*3.

8 Similarly, Lead Plaintiff’s Final Approval Motion and Preliminary Approval Motion
9 explained that the Plan of Allocation provides an equitable basis to allocate the Net Settlement Fund
10 among all Authorized Claimants. *See* ECF 275, §IV.C.5.; ECF 282, §IV. In particular, the Plan
11 treats Class Members equitably by providing that each will receive a proportional *pro rata* amount of
12 the Net Settlement Fund depending on when each Class Member bought McKesson stock during the
13 Class Period and whether and when they sold their shares.

14 In determining whether to approve the Settlement and Plan of Allocation, the Court may now
15 assess the final *Hanlon* factor given that the May 12, 2023 objection deadline has long since passed:
16 “the reaction of the class members to the proposed settlement.” *Hanlon*, 150 F.3d at 1027. That
17 reaction – as measured by objections and requests for exclusion – has been overwhelmingly positive
18 and further supports final approval of the Settlement. *See id.* (“[T]hat the overwhelming majority of
19 the class willingly approved the offer and stayed in the class presents at least some objective positive
20 commentary as to its fairness.”).

21 No Class Member has objected to any aspect of the Settlement. This “unanimous, positive
22 reaction to the Proposed Settlement is compelling evidence that the Proposed Settlement is fair, just,
23 reasonable, and adequate.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529
24 (C.D. Cal. 2004). Simply stated, this absence of objections “raises a strong presumption that the
25 terms of [the] proposed class settlement action are favorable to the class members.” *In re*
26 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008). In fact, “[c]ourts have
27 repeatedly recognized that the absence of a large number of objections to a proposed class action

1 settlement raises a strong presumption that the terms of a proposed class action settlement are
2 favorable to the class members.” *Foster v. Adams & Assocs., Inc.*, 2022 WL 425559, at *6 (N.D.
3 Cal. Feb. 11, 2022); *accord AdTrader, Inc. v. Google LLC*, 2022 WL 16579324, at *5 (N.D. Cal.
4 Nov. 1, 2022) (“A court may appropriately infer that a class action settlement is fair, adequate, and
5 reasonable when few class members object to it.”) (citation omitted). Similarly, the lack of
6 objections to the proposed Plan of Allocation provides firm support for its approval. *See In re*
7 *Heritage Bond Litig.*, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005) (“The fact that there has
8 been no objection to this plan of allocation favors approval of the Settlement.”).

9 In addition, Lead Counsel received only eight requests for exclusion from the Settlement,
10 none of which explained why the Class Members chose not to participate. In contrast, the Claims
11 Administrator has received over 357,300 Claims from potentially eligible Class Members. *See*
12 *Murray Suppl. Decl.*, ¶7. Such a low number of exclusions – representing an approximately 0.002%
13 opt-out rate – supports the presumption that the Settlement is favorable to Class Members. *See In re*
14 *Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 2212780, at *10
15 (N.D. Cal. May 17, 2017) (finding that 640 putative class members representing 0.11% opting out
16 “strongly favors final approval”); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852
17 (N.D. Cal. 2010) (holding a 4.86% opt-out rate “strongly support[ed]” approval); *see also Churchill*
18 *Vill. LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (approving a settlement with 500 opt-outs
19 from a 90,000-person class). Further, “a low number of exclusions representing a small fraction of
20 shares in the public float also supports the reasonableness” of the Settlement. *Destefano*, 2016 WL
21 537946, at *14. The eight requests for exclusion amount to only 58,443.164 shares² out of a float of
22 over 225 million (as measured on October 27, 2016, the last day of the Class Period), or a mere
23 0.000025% of the public float. Finally, only one of the eight requests for exclusion came from an
24 institutional investor. The overwhelmingly positive reaction from institutional investors is
25 persuasive evidence that the Settlement is fair. *Cf. In re Regulus Therapeutics Inc. Sec. Litig.*, 2020

26 _____
27 ² One request for exclusion did not include the number of shares purchased during the Class
Period.

1 WL 6381898, at *6 (S.D. Cal. Oct. 30, 2020) (“Many potential class members are sophisticated
2 institutional investors; the lack of objections from such institutions indicates that the settlement is
3 fair and reasonable.”).

4 In short, “[t]he small number of objections” (*zero*) “and opt outs” (*eight*) “supports that the
5 settlement and plan of allocation are fair, reasonable, and adequate.” *Volkswagen Securities*, 2019
6 WL 2077847, at *3 (approving \$48 million securities fraud class action settlement where “[o]nly one
7 class member objected to the settlement and only 16 potential class members opted out of the
8 settlement”). As this Court did in the *Volkswagen Securities* case, the Court should approve the
9 Settlement and Plan of Allocation here as fair, adequate, and reasonable.

10 **C. The Reaction of the Class Strongly Supports Approval of the**
11 **Requested Attorneys’ Fees and Expenses**

12 The Notice identified that Lead Counsel intended to seek a benchmark fee of 25% of the
13 Settlement Fund and payment of litigation expenses not to exceed \$1,500,000. As explained in Lead
14 Counsel’s Attorneys’ Fees Motion, the \$141,000,000 all-cash Settlement is an excellent result given
15 the highly complex and uncertain nature of this securities fraud class action and the potential for
16 years of additional litigation absent the Settlement, and it required skill and high quality work to
17 attain. *See also* ECF 283, §III.B. (discussing relevant factors). The appropriateness of Lead
18 Counsel’s fee request is confirmed with a cross check against its lodestar, which reflects a modest
19 1.28 multiplier. *See Volkswagen Securities*, 2019 WL 2077847, at *4 (over one objection that
20 requested fee was “unreasonably high,” the court awarded a 25% fee representing a 1.59 multiplier
21 where “Plaintiffs’ Counsel vigorously litigated this action, and the requested award reflects their
22 effort, the contingency risks they assumed, and the results they achieved”).

23 No Class Member has objected to Lead Counsel’s request for attorneys’ fees and payment of
24 litigation expenses. Again, this lack of objections weighs strongly in favor of both approval and
25 granting of the requested attorneys’ fees and expenses. *See Destefano*, 2016 WL 537946, at *18
26 (“[T]he lack of objection by any Class Members also supports the 25 percent fee award.”); *In re*
27 *Nuvelo, Inc. Sec. Litig.*, 2011 WL 2650592, at *3 (N.D. Cal. July 6, 2011) (finding only one
28 objection to fee request to be “a strong, positive response from the class”); *Omnivision*, 559 F. Supp.
REPLY MEMO & STMNT OF NON-OPPOSITION IN FURTHER SUPPORT OF: (1) LP’S MOT FOR
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1 2d at 1048 (“None of the objectors raised any concern about the amount of the fee. This factor . . .
2 also supports the requested award of 28% of the Settlement Fund.”). Accordingly, the Court should
3 approve Lead Counsel’s request for attorneys’ fees of 25% of the Settlement Fund and payment of
4 \$1,027,452.95 for litigation expenses.

5 **III. CLAIMS INFORMATION TO DATE**

6 To be timely, Proofs of Claim must have been postmarked (if mailed) or electronically
7 submitted by May 10, 2023. See Murray Supp. Decl., ¶7. As of July 6, 2023, the Claims
8 Administrator has received over 357,300 Claims that appear potentially eligible. *Id.* Based on the
9 Claims Administrator’s preliminary review of the Claims received to date, they cover purchases of
10 approximately 191,000,000 shares of McKesson common stock during the Class Period. *Id.* Given
11 the deadline was nearly two months ago, counsel expects that the number of Claims will not
12 materially change.

13 **IV. CONCLUSION**

14 Lead Counsel obtained a very good result for the Class, and the Class agrees. For the reasons
15 set forth above and in their previously filed briefs and declarations, Lead Plaintiff and Lead Counsel
16 respectfully request that the Court approve the proposed Settlement and Plan of Allocation, as well
17 as the request for attorneys’ fees and payment of expenses. Proposed orders are submitted herewith.

18 DATED: July 7, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on July 7, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Spencer A. Burkholz

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Mailing Information for a Case 3:18-cv-06525-CRB Evanston Police Pension Fund v. McKesson Corporation et al

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Manual Notice List

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