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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

DANIELLE SKARPNES, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ELIXIR COSMETICS OPCO, LLC,

Defendants.

CASE NO. CU23-04638

Assigned for All Purposes to the Hon Tim P. Kam, Dept. 7 (effective January 1, 2024)

CLASS ACTION

NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS AND SERVICE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES

[Declaration of Peter J. Farnese; Declaration of Danielle Skarpnes filed concurrently hererwith]

Date: May 20, 2024
Time: 9:00 a.m.
Dept: 7

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 20, 2024, at 9:00 a.m. in Department 7 of the above-entitled Court, Plaintiff Danielle Skarpnes, individually and on behalf of all other similarly situated, pursuant to California Rule of Court 3.769 and the Court's preliminary approval order, will, and hereby does, move the Court for entry of an order awarding Class Counsel attorneys' fees in the amount of $800,000 and costs in the amount of $1,990.24. In addition, Plaintiff moves for an order approving a service award to Plaintiff in the amount of $2,500.

Before bringing this motion, Plaintiff met and conferred with Defendant. Counsel for Defendant advised it did not intend to object or oppose Plaintiff's application.

This motion is based on this notice, the Declaration of Peter J. Farnese, Declaration of Danielle Skarpnes, the accompanying memorandum of points and authorities, on the complete files and records in this action, and on such further oral and documentary evidence which may be submitted at the hearing, and upon any further evidence the Court may receive.

Respectfully submitted,

DATED: March 20, 2024

FARNESE P.C.

By: _____
Peter J. Farnese

Attorneys for Plainitff

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I. INTRODUCTION

By any measure, this Settlement is a success for the Settlement Class and general public. In contrast to the often-criticized "coupon" settlements, this Settlement secured a cash Settlement Fund of $2.3 million plus $300,000 in notice and administration for total settlement amount of $2.6 million. None of the $2.6 million will revert to Defendant Elixir Cosmetics. Along with the injunctive relief to the labeling and advertising of the Products, the Settlement fulfills the purposes of the consumer protection laws by both halting the alleged unfair business practice and providing consumers the opportunity to claim restitution.

This is not a case that has dragged on for years, only for the Class to recover pennies on the dollar. In fact, given the total sales at issue, the amount of the cash fund secured by Class Counsel is proportional to the amount of the settlement fund approved in *Lash Boost Cases* (JCCP No. 4981), which involved that sale of similar lash and brow products. The *Lash Boost* result took nearly five years to obtain. Here, however, Class Counsel secured this settlement at an early stage of the action in a structure that maximized recovery for Class Members and avoided many potential pitfalls for the Class at the pleading stage, at class certification, and on the merits—each of which would have afforded Elixir the chance to limit the amounts Class Members could ultimately recover at trial or escape liability altogether.

Prosecuting the claims in this case required a high degree of skill, expertise, and diligence in the face of serious risks and legal challenges by Defendant. This is particularly true given Elixir contends that the Ninth Circuit's recent decision in *Nexus Pharms., Inc. v. Central Admixture Pharm. Servs., Inc.*, 148 F. 4th 1040 (9th Cir. 2022) supports its argument that Plaintiff's state law claims are preempted by the Federal Food, Drug & Cosmetic Act ("FDCA"). That argument could have completely derailed this case at the outset. *See, e.g., Wilson v. Colourpop Cosmetics, LLC* (N.D.Cal. Sep. 6, 2023, No. 22-cv-05198-TLT) 2023 U.S.Dist.LEXIS 185688 (dismissing cosmetics action as preempted by FDCA).

Class action lawyers should be incentivized to obtain such results, and, while courts should not award plaintiffs' counsel a "windfall", they nevertheless should reward the efficiency and results of

Class Counsel as achieved here. For the reasons set forth herein, Class Counsel's request for attorneys' fees in the amount of $800,000 (30% of the total settlement fund) and costs in the amount of $1,990.24 is appropriate under the percentage of the fund and lodestar-multiplier crosscheck. In addition, a service award to Plaintiff in the amount of $2,500 should be approved as fair and reasonable.

II. BRIEF SUMMARY OF THE SETTLEMENT BENEFITS OBTAINED

As fully discussed in the motion for preliminary approval (and the forthcoming motion for final approval), the Settlement[1] provides substantial benefits to Settlement Class members in the form of cash payments, injunctive relief, and a broad class notice program, all in the face of substantial risks to no recovery at all. *See* Declaration of Peter J. Farnese ("Farnese Decl.") at ¶5.

Cash Benefit Fund and Class Notice and Administration

Defendant will establish a $2,300,000 non-reversionary Cash Settlement Fund to provide for Settlement Class Members who make timely and valid claims for Cash Benefits, Class Representative Service Payments, and Plaintiffs' Counsel's Fees and Expenses. at ¶6. On top of the Cash Settlement Fund, Defendant will separately pay all notice and administration expenses up to $300,000 (plus any additional postage). *Id.* Authorized Claimants located in Defendant's records or who provide a Proof of Purchase are eligible to claim a Cash Benefit of up to $25 per unit of Products purchased. *Id.* at ¶8. Authorized Claimants without a Proof of Purchase are limited to a maximum Cash Benefit of up to $25.00 per household. *Id.*

Thus, the Total Settlement Fund provided by the Settlement is $2.6 million. The Settlement Administrator has advised that notice and administration costs to date are $340,071.77, including postage. *Id.* at ¶7. In other words, Defendant will pay at least $2,640,071.77 in this Settlement.

Advertising and Labeling Changes

Within sixty (60) days after the Settlement Date, Defendant will make the label changes reflected in Exhibit F to the Settlement Agreement to Products currently in production, along with changes to Defendant's website and training contemplated by Exhibit F. *Id.* at ¶9.

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[1] Unless otherwise noted, all capitalized terms have the meaning assigned to them in the Settlement Agreement.

III. ARGUMENT

A. Class Counsel Is Entitled to an Award of Attorneys' Fees

Given the benefits provided by this Settlement, Class Counsel is entitled to an award of attorney's fees under the both the common fund / substantial benefit doctrine and the "private attorney general" doctrine. Counsel who represent a class and produce a benefit for the class members are entitled to be compensated for their services. As stated by the United States Supreme Court, "this Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gernert*, (1980) 444 U.S. 472, 478. This rule, known as the "common fund doctrine," has been firmly rooted in American case law for well over a century. *See, e.g., Internal Imp. Fund Trustees v. Greenough* (1881) 105 U.S. 527 26; *Central R.R & Banking Co. v. Pettus* (1885) 113 U.S. 116, 123. Under the "common fund doctrine" a reasonable fee may be based "on a percentage of the fund bestowed to the class." *Blum v. Stenson*, (1984) 465 U.S. 886, 900 n. 16. The purpose of this doctrine is that "those who benefit from the creation of a fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Washington Power Supply System Sec. Litig.* ("WPPSS"), (9th Cir. 1994) 19 F.3d 1291, 1300. In other words, the common fund doctrine/percentage approach "spread[s] litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)

Likewise, Class Counsel's fees and costs are also recoverable "private attorney general" theory pursuant to Code of Civil Procedure §1021.5. *Serrano v. Priest* (1977) 20 Cal.3d 25, 49. Fees and reasonable litigation costs are awardable under the "private attorney general" doctrine embodied in §1021.5 where: (1) the claims litigated by counsel have vindicated an important right affecting the public interest has been enforced; (2) a significant benefit has been conferred on the general public or a large class of persons; and (3) the necessity and financial burden of private enforcement are such that an award is appropriate, and, in the interest of justice, the fee should not be paid out of the recovery. *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1413. This action and the proposed

Settlement have vindicated important consumer rights and conferred important benefits on thousands of purchasers of the Products, as well as the general public.

B. The Requested Fee Is Fair and Reasonable

There are "[t]wo primary methods of determining a reasonable attorney fee in class action litigation." *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 489. First, the "percentage method calculates the fee as a percentage share of a recovered common fund or the monetary value of plaintiffs' recovery." *Id.* In the alternative, "the lodestar-multiplier method[] calculates the fee by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate," a figure that the court may then "increase or decrease . . . by applying a positive or negative 'multiplier' to take into account a variety of other factors." *Id.* (citation omitted); *see also Wershba v. Apple Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 254 ("Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method"). Regardless of whether attorneys' fees are determined using the lodestar method or awarded based on a "percentage-of-the-benefit" analysis under the common fund doctrine, "'[t]he ultimate goal ... is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation.' [Citations.]" *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270.

California courts, including the Supreme Court, have approved a percentage-based fee in common-fund settlements like this one. *See Laffitte*, 1 Cal.5th at 503; *see also Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43 ("[F]ees based on a percentage of the benefits are in fact appropriate in large class actions...."); *Vizcaino v. Microsoft Corp.*, (9th Cir. 2002) 290 F.3d 1043, 1050 ("[t]he primary basis of the fee award remains the percentage method.").

Here, the $2.6 million Total Settlement Fund constitutes a common fund. It is the total amount that Elixir will pay in settlement of this action, it will not revert to Elixir, and it is the money out of which Plaintiff's Counsel will be awarded fees and costs. *See Serrano v. Priest* (1997) 20 Cal.3d 25, 34 ("[W]hen a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."). Here the Cash Settlement Fund ($2.3 million) and the notice and administration costs ($300,000 plus postage) equals a "certain

or easily calculable sum of money." *Id.* at 35; *cf Laffitte*, 1 Cal.5th at 503 (stating that a common fund is not created when counsel is paid apart from the settlement fund or when portions of the fund that are "not distributed in claims revert to the defendant or be distributed to a third party or the state, making the fund's value to the class depend on how many claims are made and allowed").

Accordingly, Plaintiff's Counsel seeks fees under the percentage method. Should the Court decide to engage in a lodestar cross-check, that analysis too confirms that the requested fee award is reasonable.

1. The Requested Fee Is Reasonable as a Percentage of the Total Settlement Fund / Benefits

The requested award in the amount of approximately 30% of the Total Settlement Fund[2] fairly and reasonably compensates Plaintiff's counsel for their success achieved for the Settlement Class, and their investment of significant resources in this case with the risk of no recovery. It is consistent with fees awarded by California courts in other common-fund class actions.

California courts have recognized that the custom and practice in class actions is to award approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11. The Court of Appeal noted in *Chavez* that: "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."); *see also Laffitte*, 1 Cal.5th at 503-04 (affirming an award of one-third of a $19 million fund).

In sum, Class Counsel's fee request (30% of the non-reversionary Total Settlement Fund) is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California.

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[2] The Court should also consider the value of the injunctive relief. *See Pokorny v. Quixtar, Inc.*, (N.D. Cal. July 18, 2013) 2013 WL 3790896, at *1 ("The court may properly consider the value of injunctive relief obtained as a result of settlement in determining the appropriate fee."). Although Plaintiff does not propose to calculate any specific monetary value of the proposed injunctive relief, the relief is significant not just to the Settlement Class, but to the public at large. Courts have recognized that "there is a high value to the injunctive relief [resulting] in [n]ew labeling practices" because such relief confers benefits not just to Class Members, but to "the marketplace and competitors who do not mislabel their products." *Bruno v. Quten Research Inst., LLC*, (C.D. Cal. Mar. 13, 2013) 2013 U.S. Dist. LEXIS 35066, at *10.

2. A Lodestar Cross-Check Confirms the Requested Fee is Reasonable

While a "lodestar cross-check" on a percentage award is not required, "trial courts have discretion to conduct" one "on a percentage fee." *Laffitte*, 1 Cal.5th at 506. In a lodestar cross-check, the initial lodestar is calculated by multiplying the reasonable hours expended in the action by a reasonable hourly rate for each attorney. *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26-27. After the court has calculated the lodestar, "it may increase or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of other factors." *Laffitte*, 1 Cal.5th at 506. The purpose of the multiplier is to fix the attorneys' fees at the fair market value for that action. *See Ketchum v. Moses*, (2001) 24 Cal.4th 1122, 1133 ("A lawyer who bears both the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions."). "In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." *See id.*

In determining the amount of the multiplier, the Court is guided by the factors set forth in *Serrano v. Priest* 20 Cal.3d 25 (1971), which include: (1) the benefits conferred on the class; (2) the novelty and difficulty of the issues involved and the skill displayed in presenting them; (3) the extent to which the nature of the litigation precluded other employment; and (4) the contingent nature of the fee award. *See id.* at 49.

"[T]rial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Laffitte*, 1 Cal.5th at 505 (quoting 5 *Newberg on Class Actions* § 15:86). Thus, the Court may properly perform a lodestar cross-check based on information about lodestar provided in counsels' declarations. *See id.* (noting that the trial court had "exercised its discretion" by "performing the cross- check using counsel declarations summarizing overall time spent"); *see also Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ("California case law permits fee awards in the absence of detailed time sheets.").

First, for the purpose of the cross-check, Plaintiff's Counsel has used the hourly rates as recently approved in the *Lash Boost Cases* matter and as set by the Adjusted Laffey Matrix. *See* Farnese Decl. at ¶¶33-36, Ex. 2. These rates are reasonable and comparable to those generally charged by attorneys with similar experience, ability, and reputation for work on similar matters in California. *See* Farnese Decl. ¶¶37-39; Exs. 3-4. Further, the hours expended (381.3 – including paralegal time) are reasonable. Class Counsel's pre-filing investigation placed them in a position to efficiently prosecute this action and negotiate a favorable settlement for the Class at the outset of the case. In that regard, counsel did not undertake extraneous work to try to "pad" any attorneys' fees. *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 ("It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."). In fact, the exact opposite is the case here-- Class Counsel conducted an extensive pre-filing background investigation and skillfully obtained a settlement at an early stage of the action.

a. The Multiplier is Within the Range Commonly Applied by Both California and Federal Courts

For contingent consumer class actions like this one, California courts have approved fee awards with multipliers from 2 to 4 and even higher. *See, e.g., Wershba*, 91 Cal. App. 4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Chavez*, 162 Cal. App. 4th at 66 (same). Similarly, in the Ninth Circuit, multipliers "ranging from one to four are frequently awarded [...] when the lodestar method is applied." *Vizcaino*, 290 F.3d at 1051 n.6 (internal quotation marks omitted); *see also Van Vranken v. Atl. Richfield Co.*, (N.D. Cal. 1995) 901 F. Supp. 294, 298–99 (holding that multiplier of 3.6 was "well within the acceptable range for fee awards in complicated class action litigation" and explaining that "[m]ultipliers in the 3–4 range are common")[3]. Here, counsel's lodestar, when

[3] In fact, it has been found an abuse of discretion not to apply a multiplier in certain matters. *Fischel v. Equitable Life Assur. Soc'y of U.S.*, (9th Cir. 2002) 307 F.3d 997, 1008 ("It is an abuse of discretion to fail to apply a risk multiplier, however, when (1) attorneys take a case with the expectation that they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence that the case was risky").

compared to the percentage fee, yields a multiplier of 2.57. This multiplier is well-within the range of approval and, as described below is appropriate under the relevant factors.

b. Class Counsel Conferred a Significant Benefit on a Large Class of Persons

The total value of the benefits to the class, i.e. the "success achieved," includes all of the positive results achieved by the litigation. *See Chavez,* 162 Cal.App.4th at 61 (explaining that the "success achieved" in a class settlement includes, *inter alia*, the dollar value of the settlement, the absolute size of the class of persons who are eligible for the benefit, and changes in company policies).

As described above, the result achieved for the Class is exceptional. The immediate monetary relief afforded to the Class, alongside changes to the Products' future packaging and advertising, demonstrates the significant value of the Settlement. On top of the monetary relief, Class Counsel ensured that the vast majority of the Class received a direct email or mail notice and that the Settlement was well-publicized.

c. The Novelty and Difficulty of the Issues Presented and Counsel's Skill

This was not a run-of-the-mill class action. This was a large, complex class action that raised questions about the legal status and likely effects of ICP, the prostaglandin analog in the Babe Lash and Brow products. Understanding the scientific underpinnings of the Plaintiff's claims raised complex legal questions on the merits as well as class certification, in particular, how a price premium may be ascertained on a class basis. Most pointedly, this action raised complicated legal issues as what constitutes a drug under state and federal law-- which invariably raised threshold issues related to federal preemption and primary jurisdiction as well as the intricacies FDA regulations.

These are all issues that required skill by Class Counsel to navigate to achieve a recovery for the Class. *See In re Omnivision Techs., Inc.* (N.D. Cal 2008) 559 F. Supp. 2d. 1036, 1047 (The litigation of a complex, multiparty, nationwide class action "requires unique legal skills and abilities.")

d. The Extent to Which the Nature of the Litigation Precluded Other Employment

From the very beginning, this nationwide class action has demanded a great deal of attention from Class Counsel. Due to the considerable expenditure of time, effort and resources – including significant pre- and post-filing investigations, consultation with experts– Plaintiff's counsel, a solo practitioner, was required to forego other paid hourly employment in order to commit the necessary resources to the prosecution of this case. *See* Farnese Decl. at ¶48. Moreover, Class Counsel will devote additional time and resources to this litigation assisting class members in the settlement claims process, monitoring the claims process and notice plan, responding to class member inquiries, preparing final approval briefing and attending the fairness hearing. This factor, too, supports a multiplier.

e. The Contingent Nature of the Fee Award

Courts recognize that fee enhancements are "necessary" to compensate for the risk of loss in contingency cases brought on behalf of a class. *Pellegrino v. Robert Half Int'l., Inc.* (2010) 182 Cal.App.4th 278, 292. By choosing to litigate a large-scale class action against Defendant involving complex issues and claims, Plaintiff's counsel assumed significant risk. "It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for ... contingency cases." *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (9th Cir. 1994).19 F.3d 1291, 1299.

Class Counsel prosecuted this case on a contingent basis. *See* Farnese Decl. at ¶¶46-47. Throughout this case, Class Counsel has expended substantial time and resources (that precluded paid hourly work) to prosecute this suit with no guarantee of compensation or reimbursement of prevailing against a sophisticated, well-financed Defendant represented by high caliber attorneys at the Locke Lord law firm. *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.* (C.D. Cal. July 24, 2013) 2013 WL 12327929, at *32 (holding that the skill of counsel factor "weighs in favor of approving the entire proposed fee award" when "class counsel faced an exceptionally skilled adversary with substantial resources.").

Class Counsel obtained a superior result for the Settlement Class, knowing that if its efforts

were ultimately unsuccessful, counsel would receive no compensation or reimbursement for its costs. As discussed above, the lack of any "clear sailing" clause on attorneys' fees demonstrates that this risk continued even after the parties have reached the proposed settlement in this action. This fact alone supports the reasonableness of the fee request.

C. Class Counsel Should Be Awarded Reimbursement of Its Costs

Class Counsel is entitled to reimbursement for standard out-of-pocket expenses that an attorney would ordinarily bill a fee-paying client. *See, e.g., Harris v. Marhoefer*, (9th Cir. 1994) 24 F.3d 16, 19. "Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, document scanning, and visual equipment are typically recoverable." *Rutti v. Lojack Corp., Inc.*, (C.D. Cal. July 31, 2012) 2012 WL 3151077, at *12.

Here, Class Counsel seeks $1,990.24 in costs. Farnese Decl. at ¶44, Ex. 5. Each of these expenses was necessary and reasonably incurred to bring this case to a successful conclusion and is typically recoverable in litigation. Plaintiff's counsel will incur additional costs between now and the end of settlement administration, but ask only that costs be awarded up to the present. This makes an already-reasonable request for costs only more so.

D. The Service Award to Plaintiff Should Be Approved

Under California law, it is well-established that named class representatives are eligible for reasonable incentive awards. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393 (hereinafter "*Cellphone Cases*"); *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-06; *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726[4]. "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Clark*, 175 Cal.App.4th at 806; *see also Munoz*, 186 Cal.App.4th at 412.

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[4] *See also* William B. Rubenstein et al., Newberg on Class Actions § 11:38 (4th ed. 2008).

In determining the amount of such an award, courts may consider the following criteria: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *See Cellphone Cases*, 186 Cal.App.4th at 1394-95 (citing *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299); *see also Wong v. Arlo Techs. Inc.*, (N.D. Cal. Apr. 19, 2021) 2021 U.S. Dist. LEXIS 58514, 2021 WL 1531171, at *12 ("Service awards as high as $5,000 are presumptively reasonable in this judicial district.").

Here, Plaintiff faced financial risk in the form of the cost burden if this matter was unsuccessful. Though her retainer agreement provides that Class Counsel would advance such litigation costs, Plaintiff could nevertheless have had very significant costs taxed against her in the unexpected possibility that Class Counsel did not meet its obligation to cover those costs. Additionally, Plaintiff also faced reputational risk in pursuing this matter. In commencing suit involving Babe Lash and Brow– popular products marketed, advertised and distributed nationwide by a well-known company in the cosmetics industry – Plaintiff took the risk associated with attaching her name to a matter very much in the public eye. This required a great deal of courage. A reasonable incentive award is warranted by the reputational risk facing Plaintiff. *See Cellphone Cases*, 186 Cal.App.4th at 1394.

Over the past year, Plaintiff has dedicated herself to this matter and has worked diligently with Class Counsel to provide and review documents, monitor the settlement negotiations, the status of the case and settlement administration. *See* Declaration of Danielle Skarpnes at ¶¶3-4; Farnese Decl. at ¶¶53-56. The personal benefit she will receive as a Settlement Class Member is meaningful (the cash refund) but far less than the opportunity cost of the time she has spent on this case and the significant benefits to the Settlement benefits she secured based on her willingness to come forward and be a class representative. Accordingly, the requested award of $2,500 is reasonable and appropriate for Plaintiff's efforts.

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant her motion for attorneys' fees and costs, and service award.

Respectfully submitted,

DATED: March 20, 2024

FARNESE P.C.

By: _____
Peter J. Farnese

Attorneys for Plainitff