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15 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN BERNADINO**

17 CHRISTOPHER O'BRIEN and TIFFANY
18 KIPKASHA, individually and on behalf of all
19 others similarly situated,

20 Plaintiffs,

21 v.

22 SUNSHINE MAKERS, INC., a California
23 corporation,

24 Defendant.

Case No.: CIV-SB-2027994
Case Filed: December 18, 2020

Assigned to the Hon. David Cohn

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS**

Hearing Information

Date: September 21, 2021
Time: 10:00 a.m.
Dept.: S-26
Judge: Hon. David Cohn

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs and Settlement Class Representatives Michelle Moran, Christopher O’Brien, and
4 Tiffany Kipikasha (“**Class Representatives**” or “**Plaintiffs**”), by and through their counsel of
5 record appointed as Settlement Class Counsel, Clarkson Law Firm, P.C. (“**Clarkson**”) and Moon
6 Law APC (“**Moon**”) (“**Class Counsel**”), have achieved an excellent result for a nation of consumers
7 who purchased Simple Green cleaning products,¹ between May 16, 2016 and preliminary approval
8 of the settlement on May 17, 2021 (“**Class Period**”), which were deceptively labeled as “Non-
9 Toxic” (the “**Settlement Class**”).²

10 Under the settlement, Defendant must modify the Covered Products’ labels to remove the
11 misleading “Non-Toxic” advertising claim, thereby avoiding any future consumer deception. Moon
12 Decl. at **Exhibit 1** [Settlmt. Ag.] at ¶ 4.1.1 (Chang. Pract.). Defendant has also agreed to pay \$4.35
13 million into a common fund, with no right to reversion, to reimburse the class for past economic
14 losses and which will be exhausted to pay: (1) valid class member claims; (2) notice and claims
15 administration costs up to \$530,000, plus postage; (3) service awards up to \$5,000 for each Plaintiff
16 (totaling \$15,000), subject to Court approval; (4) attorneys’ fees and costs up to one-third of the
17 common fund (\$1,450,000), plus costs and expenses, subject to Court approval; and (5) a *cy pres*
18 award for uncashed checks to charitable organizations.³ Each class member who makes a claim and
19 submits proof of purchase may receive \$3.00 per Covered Product, without limitation; and each
20 class member who cannot provide proof of purchase may submit a claim for \$3.00 per unit of
21

22 _____
23 ¹ The products at issue include all Simple Green cleaning products sold by Defendant and labeled
24 as “Non-Toxic,” which are defined as the “**Covered Products**” in the Settlement Agreement. *See*
25 Moon Decl. at **Exhibit 1** [Settlmt. Ag.] at ¶ 1.14 (Cov. Prods.).

26 ² The following people are excluded from the Settlement Class: (1) Defendant’s officers, directors,
27 or employees and their immediate family members; (2) any judge who has presided over this case;
28 and (3) any persons who timely opt-out of the settlement. Moon Decl. at **Exhibit 1** [Settlmt. Ag.] at
¶¶ 1.11 (Class Per.), 1.14 (Cov. Prods.), 1.15 (Def.), 1.25 (Not. Resp. Date), 1.26 (Opt-Out Date),
1.30 (Person), 1.39 (Req. Excl.), 1.41 (Settlmt. Class), 1.43 (Settlmt. Class Memb.), 8.4 (Opt-Out
Proc.).

³ *See* Moon Decl. at **Exhibit 1** [Settlmt. Ag.] at ¶¶ 1.2 (Admin. Cost), 1.5 (Claim Fund), 1.18 (Fee
& Cost Appl.), 1.14 (Total Mon. Settlmt. Amt.), 1.34 (Qualify’g Settlmt. Claim Form), 1.45 (Valid
Claim), 4.2.6 (*Cy Pres*), 4.2.7 (No Reversion), 5.1.1 (Admin. Costs Cap), 5.1.3.1 (Settlmt. Webs.),
9.1 (Atty Fees & Costs Cap), 9.2 (Incent. Aw. Cap).

1 Covered Product purchased, for a maximum of ten (10) units (\$30.00).⁴ Payments for valid claims
2 will be adjusted *pro rata* if the fund is over or under subscribed. *Id.*

3 Class Counsel achieved this result after investing considerable time and resources into
4 bringing litigation on multiple fronts against highly experienced counsel, and a deep-pocketed
5 Defendant, who hotly contested liability and damages. Prosecuting these consumer claims required
6 the exercise of a high degree of specialized skill, experience, and diligence, in the face of exorbitant
7 litigation risks. Class Counsel have dedicated themselves to this litigation since early 2020,
8 incurring to date a lodestar, based on comparable market billing rates, of \$1,012,160 in billable
9 professional time, without receiving any compensation for their time and effort in the interim. Class
10 Counsel have also incurred \$25,389.95 in out-of-pocket litigation expenses, which, without a
11 victory, would go uncompensated. The fee sought represents one-third of the \$4.35 common fund
12 with a “multiplier” of 1.43, which is well within (if not lower than) the range of fees previously
13 approved for similar settlements. When compared to the total monetary value of the settlement,
14 including the avoidance of future economic losses, the requested fees are less than a 10%. Moreover,
15 following notice of the preliminarily approved settlement contemplating a one-third fee, plus costs,
16 award to Class Counsel, *no Settlement Class Members have objected to the award*. In sum, the fees
17 and costs requested are reasonable in light of the outstanding settlement result and the risks Class
18 Counsel assumed by taking on a difficult case with no assurance of compensation. This is especially
19 true where, as here, this case represents the *first* nationwide class-action settlement concerning
20 misleading “Non-Toxic” cleaning product labels. Accordingly, Class Counsel seeks an award of
21 \$25,389.95 for litigation costs incurred, and \$1,450,000 in attorneys’ fees (representing one-third
22 of the common fund).

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 **A. Settlement Negotiations and Litigation Summary**

25 After considerable pre-suit investigation, including consultation with well-respected experts
26 in toxicology, consumer behavior, statistical analyses, and damages, on May 12, 2020, Plaintiff
27 Moran, by and through Class Counsel, initiated this litigation by filing a nearly identical complaint
28

⁴ Moon Decl. at **Exhibit 1** [Settlmt. Ag.] at ¶¶ 1.35 (Receipt), 4.2.2 (Amt. Valid Claim).

1 against Defendant in the case titled *Moran v. Sunshine Makers, Inc.*, United States District Court,
2 Northern District Case No. 4:20-cv-0324. Moon Decl. at ¶ 4. Following the exchange of discovery,
3 analysis of critical data regarding liability and damages, extensive meet and confer efforts, preparing
4 an opposition to a dispositive motion to dismiss, and amended pleadings, the parties agreed to
5 mediation with a third-party neutral. *Id.* at ¶¶ 3-5.

6 On December 7, 2020, the parties engaged in a full-day mediation with Emmanuel Quinn at
7 JAMS, where they reached an agreement in principle. *Id.* Over the course of several months, the
8 parties negotiated the details of the Settlement Agreement, consulted with the Court-appointed
9 notice and claims administrator, Digital Settlement Group (“DSG”) to develop a robust notice and
10 claims program, and prepared the claim forms, class notices, and online advertisements, as well as
11 filed the instant action on December 18, 2020, to include additional participants who have informed
12 Class Counsel’s investigation, Christopher O’Brien and Tiffany Kipikasha, as named-plaintiffs. *Id.*
13 at 12; Complaint, 12/18/2020. The terms of the proposed settlement were finalized in a fully
14 executed Settlement Agreement on March 16, 2021. Moon Decl. at ¶ 5 and Exhibit 1 [Settlement
15 Agreement]. At all times, settlement negotiations were vigorous and conducted at arms’ length by
16 experienced counsel, and involved hotly contested issues on the merits. *Id.* On April 23, 2021,
17 Plaintiffs filed their motion for preliminary approval of the settlement, which the Court granted on
18 May 17, 2021.

19 **B. Class Counsel Expended Considerable Time and Resources**

20 Since the initiation of this case, Class Counsel have spent over 1,287 hours and \$25,389.95
21 in out-of-pocket expenses on:

- 22 (1) Obtaining and analyzing all key documentation regarding the labeling, advertising,
23 formulation, and sale of the Covered Products;
- 24 (2) Researching and analyzing relevant scientific studies and published research
25 regarding the toxicity of numerous ingredients contained in Covered Products;
- 26 (3) Working extensively with a well-respected toxicology expert to analyze the
27 ingredients in the Covered Products, including the ingredients’ toxicological effects
28 on humans, animals, and the environment;
- 26 (4) Researching and analyzing the United States Federal Trade Commission’s (“FTC’s”) “Green Guides” and various iterations thereof, including attendant federal regulations, federal register, and market research and consumer surveys;
- 27 (5) Researching and analyzing the Federal Hazardous Substances Act, codified at 15 U.S.C. 1261, *et seq.* (“FHSA”) and its application to the Covered Products;
- 28 (6) Obtaining and analyzing the materials safety data sheets, Defendant’s scientific

- 1 evidence supporting the “non-toxic” claims, and formulations for each Covered Product;
- 2 (7) Researching and analyzing relevant decisions of the Better Business Bureau’s
- 3 National Advertising Division (“NAD”) and National Advertising Review Board
- 4 (“NARB”) to evaluate the industry standards for advertising household consumer
- 5 goods;
- 6 (8) Researching and analyzing prior legal actions concerning Defendant and the Covered
- 7 Products;
- 8 (9) Reviewing the Environmental Working Group (“EWG”)’s analyses of the Covered
- 9 Products;
- 10 (10) Analyzing the Covered Products’ sales and related documents, in consultation with
- 11 experts in consumer behavior, statistical analysis, and market research designed to
- 12 isolate the premium consumers pay for falsely advertised common household goods,
- 13 to determine the maximum value recoverable for economic losses to the Settlement
- 14 Class;
- 15 (11) Conducting extensive legal research to evaluate the prospective merits and
- 16 weaknesses of the case through class certification and trial;
- 17 (12) Preparing a class action complaint, written discovery, and an opposition to a
- 18 dispositive motion to dismiss;
- 19 (13) Researching and analyzing potential class-wide damages based on a review of price
- 20 premiums attributed to similar false and deceptive advertising claims regarding
- 21 household consumer goods;
- 22 (14) Reviewing the history of various advertising claims and “language models” to identify
- 23 and procure reasonable and practical changes to Defendant’s advertising of the
- 24 Covered Products to eliminate consumer deception;
- 25 (15) Conducting extensive legal research of law applicable to the claims asserted in the
- 26 complaint and the potential defenses thereto;
- 27 (16) Reporting to Plaintiffs pertinent case developments, including an analysis of any
- 28 impact on certification, liability, damages, and prospects of success, and the pros and
- cons of Class Counsel’s recommendations regarding case strategy and further
- activities; and
- (17) Preparing for mediation, vigorously negotiating all aspects of this settlement, and
- preparing for and filing paperwork necessary to complete settlement and recover the
- \$4.35 million settlement proceeds and a complete cessation of the challenged “Non-
- Toxic” labeling claims.

Moon Decl. at ¶¶ 3-5; Bruce Decl. at ¶ 3.

The benefits of the **\$4.35 million dollar settlement** and elimination of future consumer fraud through changed practices [REDACTED] are substantial, particularly given the risks of continued litigation for the class. Moon Decl. at ¶ 9; *see also* Fin. Appr’l Mot., at p. 11. Defendant has heavily contested liability and the existence and extent of any economic losses, arguing that consumers do not interpret the “Non-Toxic” label to mean that the Covered Products do not present a risk of harm to people, animals, and the environment; the “Non-Toxic” claim was not material to consumers in deciding to buy the Covered Products; reliable scientific evidence substantiates the “Non-Toxic” claim; consumers did not pay a premium for the “Non-Toxic” product attribute; and any such premium, assuming it exists, is *de minimus*. *Id.* at ¶ 5.

1 Thus, Class Counsel invested significant resources in the face of substantial risks, justifying
2 the requested award of fees and costs incurred in prosecuting this action.

3 **III. ARGUMENT**

4 **A. The Law Entitles Class Counsel to an Award of Attorneys’ Fees and Costs**

5 This Court should approve the requested award of \$1,450,000 in attorneys’ fees and
6 \$25,389.95 in costs, consistent with the Settlement Agreement. Moon Decl. at **Exhibit 1** [Settlement
7 Agreement] at ¶¶ 9.1-9.1.1 (permitting payment of \$1.45 million (one-third \$4.35 million common
8 fund) in fees, plus reimbursement of costs). An award is authorized on three independent grounds:
9 (1) the “common fund” equitable doctrine; (2) California Consumers Legal Remedies Act, codified
10 at Cal. Civ. Code §§ 1750, *et seq.* (“**CLRA**”); and (3) California Code of Civil Procedure, section
11 1021.5.

12 **First**, when an action results in class relief, whether by settlement or by contested judgment,
13 class counsel is entitled to its reasonable fees for services rendered. *Wershba v. Apple Computer*,
14 91 Cal.App.4th 224, 254-255 (2001); *Lealao v. Beneficial Cal.*, 82 Cal.App.4th 19, 26-34 (2000);
15 *Serrano v. Priest*, 20 Cal.3d 25, 34-48 (1977). Class counsel is also entitled to reimbursement for
16 litigation expenses reasonably incurred. *Bussey v. Affleck*, 225 Cal.App.3d 1162, 1166 (1990).
17 Indeed, when a settlement or litigation results in the establishment of a common fund for the benefit
18 of a class, attorneys who created or contributed to the class benefit obtained are entitled to fees and
19 costs as a matter of equity. *See, e.g., Serrano*, 32 Cal.3d at 627-32; *In re Sutter Health Uninsured*
20 *Pricing Cases*, 171 Cal.App.4th 495, 512 (2009); *Lealao*, 82 Cal.App.4th at 27. Here, Class Counsel
21 are the only attorneys who have prosecuted this action to achieve the \$4.35 million common fund
22 settlement and injunctive relief under the Settlement Agreement, entitling them to reasonable fees
23 and costs incurred in this pursuit as a matter of equity.

24 **Second**, the CLRA also mandates an award of attorneys’ fees and costs to the prevailing
25 Plaintiffs. *See* Cal. Civ. Code § 1780(e) (“The court shall award court costs and attorney’s fees to a
26 prevailing plaintiff in litigation filed pursuant to this section.”); *Kim v. Euromotors West/The Auto*
27 *Gallery*, 149 Cal.App.4th 170, 178 (2007). Here, Plaintiffs are the “prevailing plaintiff” under the
28 CLRA because they have achieved the primary dual aims of litigation. Under the Settlement

1 Agreement, Defendant is prohibited from labeling the Covered Products as “Non-Toxic” and
2 required to pay \$4.35 million to compensate the Settlement Class for their economic losses in paying
3 a premium for falsely advertised “Non-Toxic” cleaning products.

4 **Third**, section 1021.5 of the California Code of Civil Procedure authorizes an award of
5 attorneys’ fees and costs to a “successful party” in any action that “has resulted in the enforcement
6 of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or
7 nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity
8 and financial burden of private enforcement are such as to make the award appropriate, and (c) such
9 fees should not in the interest of justice be paid out of the recovery, if any.” Cal. Civ. Proc. Code §
10 1021.5; *see also Lyons v. Chinese Hosp. Ass’n*, 136 Cal.App.4th 1331, 1344 (2006) (“Although
11 section 1021.5 is phrased in permissive terms (the court ‘may’ award), the discretion to deny fees
12 to a party that meets its terms is quite limited.”) Here, Plaintiffs satisfy Section 1021.5’s
13 requirements:

- 14 1. Plaintiffs qualify as a “successful party” for the same reasons that they qualify as a “prevailing
15 plaintiff” under the CLRA. They have achieved the primary purposes of prosecuting this lawsuit:
16 enjoining false advertising and restitution to the class. *See Lyons*, 136 Cal.App.4th at 1346 (“A
17 ‘successful’ party means a ‘prevailing’ party.”).
- 18 2. Plaintiffs’ case has conferred a significant benefit on a large class of persons by making \$4.35
19 million dollars in monetary relief available to scores of consumers throughout the nation who
20 bought the Covered Products. Additionally, Plaintiffs have also conferred a significant benefit
21 for a large class of persons and the public at large by making Defendant change its advertising
22 and labeling practices to remove the deceptive “Non-Toxic” advertising claims, thereby
23 enforcing important rights to transparency and accuracy in marketing, avoiding continued
24 consumer fraud, and discouraging unfair and misleading advertising campaigns. *See Graham v.*
25 *Daimler Chrysler Corp.*, 34 Cal.4th 553, 578 (2004) (“It is well settled that attorney fees under
26 section 1021.5 may be awarded for consumer class action suits benefiting a large number of
27 people.”).
- 28 3. Without the incentive of an attorney fees award, Plaintiffs and Settlement Class Members could
not have afforded lawyers to litigate this case because their individual economic losses in an
amount far below \$100 does not warrant the expenditure of several hundred thousand dollars to
prosecute their claims. *See Ryan v. California Interscholastic Fed’n*, 94 Cal.App.4th 1033, 1044
(2001) (“As to the necessity and financial burden of private enforcement, an award *is appropriate*
where the cost of the legal victory transcends the claimant’s personal interest; in other words,
where the burden of pursuing the litigation is out of proportion to the plaintiffs individual stake
in the matter.”).

///
///

1 **B. The Amount of Fees Requested Are Fair and Reasonable**

2 Courts recognize two methods for determining the reasonableness of attorneys’ fees in
3 common fund class actions: “percentage of recovery” and “lodestar.” *See Laffitte v. Robert Half*
4 *Int’l Inc.*, 1 Cal.5th 480, 489, 503-504 (2016).

5 **1. A One-Third Fee Is an Appropriate “Percentage of Recovery”**

6 Where class benefits are readily valued in monetary terms, a percentage of those benefits is
7 an appropriate measure of a reasonable fee. *See Laffitte*, 1 Cal.5th at 503 (“We join the
8 overwhelming majority of federal and state courts in holding that when class action litigation
9 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
10 powers awards class counsel a fee out of that fund, the court may determine the amount of a
11 reasonable fee by choosing an appropriate percentage of the fund created.”). Indeed, state courts
12 often award attorneys’ fees equaling one-third of the settlement fund because of the results achieved,
13 the risks of litigation, the benefits the settlement provides beyond the settlement fund, the contingent
14 nature of the fee, and the financial burden carried by the plaintiff. *See, e.g., Lealao*, 82 Cal.App.4th
15 at 42; *Laffitte.*, 1 Cal.5th at 506 (upholding attorneys’ fees of one-third of the common fund where
16 the trial court reasonably used a benchmark percentage plus consideration of counsel’s time spent
17 on the case).⁵ California courts include the requested attorneys’ fees when calculating the total value
18 of the settlement fund. *Lealao*, 82 Cal.App.4th at 33. Thus, “the sum of the two amounts ordinarily

19 _____
20 ⁵ *See also Principe v. Ukropina*, 47 F.3d 373, at 378-379 (9th Cir. 1995) (affirming one-third fee of
21 \$12 million fund); *Morris v. Lifescan, Inc.*, 54 F.App’x 663, 664 (9th Cir. 2003) (affirming one-
22 third fee of \$14.8 fund); *Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCx), 2020
23 WL 5668935, *8-9 (C.D. Cal. Sept. 18, 2020) (“An attorney fee of one third of the settlement fund
24 is routinely found to be reasonable in class actions. ‘Nationally, the average percentage of the fund
25 award in class actions is approximately one-third.’”) (quoting *Multi-Ethnic Immigrant Workers Org.*
26 *Network v. City of Los Angeles*, No. CV 07-3072 AHM (FMMx), 2009 WL 9100391, at *4 (C.D.
27 Cal. Jun. 24, 2009)); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL
28 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (“fee awards in class actions average around one-third of
the recovery”) (quoting Rubenstein, 4 *Newberg On Class Actions* § 14.6 (4th ed. 2007)); *Figueroa*
v. Capital One, N.A., No. 18cv692 JM(BGS), 2021 WL 211551, at *9 (S.D. Cal. Jan. 21, 2021)
 (“‘California courts routinely award attorneys’ fees of one-third of the common fund.’”) (quoting
Beaver v. Tarsadia Hotels, No. 11-cv-01842-GPC-KSC, 2017 WL 4310707, at *9 (S.D. Cal. Sept.
28, 2017)); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, No. 1:13-cv-00474-DAD-BAM,
2017 WL 749018, at *6-8 (E.D. Cal. Feb. 27, 2017) (awarding one-third of common fund);
Jiangchen v. Rentech, Inc., No. CV 17-1490-GW(FFMx), 2019 WL 5173771, at *9-11 (C.D. Cal.
Oct. 10, 2019) (awarding one-third of common fund); *Deaver v. Compass Bank*, No. 13-cv-00222-
JSC, 2015 WL 8526982, at *10-14 (N.D. Cal. Dec. 11, 2015) (awarding 33% of common fund);
Marshall, 2020 WL 5668935, at *8-9 (cataloguing awards of one third of common fund).

1 should be treated as a settlement fund for the benefit of the class . . .” *Consumer Privacy Cases*,
2 175 Cal.App.4th 545, 554 (2009) (quoting the Manual for Complex Litigation § 21.71 at 525 (4th
3 21ed. 2008)). Here, Plaintiffs seek attorneys’ fees and costs of \$1,450,000, plus litigation expenses
4 incurred, which represents approximately one-third of the total monetary recovery of \$4.35 million,
5 without consideration of the millions of dollars in value the injunctive relief provides through the
6 avoidance of ongoing and extensive consumer fraud. This percentage falls squarely within the range
7 of reasonable attorneys’ fees and costs awarded in other similar settlements. *See, supra*, fn. 5. The
8 risks, benefits provided by the settlement, contingent nature of the fee, and financial burden to
9 Plaintiffs discussed *infra* likewise warrant the fee.

10 **2. A Lodestar Cross-Check Supports Approval of Class Counsel’s Fees**

11 California courts also use the “lodestar” method to determine the reasonableness of
12 attorneys’ fees. *Graham*, 34 Cal.4th at 579 (2004); *Ketchum v. Moses*, 24 Cal.4th 1122, 1134 (2001).
13 Under this approach, an initial “lodestar” is calculated by multiplying the reasonable hours
14 expended by a reasonable hourly rate for each attorney who performed the work. *Lealao*, 82
15 Cal.App.4th at 26. Once the court has fixed the lodestar, it may increase or decrease that amount by
16 applying a positive or negative “multiplier,” taking into account a variety of other factors, including
17 the quality of the representation, the novelty and complexity of the issues, the results obtained, and
18 the contingent risk presented. *See* Richard M. Pearl, *California Attorney Fee Awards* at §§ 13.1-
19 13.7 (2d ed.1998).

20 **a. The Number of Hours and Billing Rates Are Reasonable**

21 The starting point for the determination of the reasonable number of hours meriting
22 compensation is the evidence of the actual number of hours spent on the litigation. *Horsford v.*
23 *Board of Trustees*, 132 Cal.App.4th 359, 396 (2005). As outlined in the declarations submitted by
24 Class Counsel, they spent more than 1,287 hours litigating this case. Moon Decl. at ¶ 28. The
25 number of hours was reasonable and efficient given the complexity of this case, need for a robust
26 investigation to evaluate liability and damages, and the complicated nature of designing a class
27 action settlement that satisfies due process and protects absentee class members’ interests. *Id.*
28 Additionally, as further outlined in the declarations of Class Counsel, their hourly rates are on par

1 with contemporary rates charged in California for comparable complex class action work performed
2 by individuals with similar backgrounds, experience, and abilities. Moon Decl. at ¶ 25, Exhibits 4-
3 11.

4 **b. *While a Multiplier Is Not Necessary to Justify Class Counsel’s Fees***
5 ***in Light of the Total Monetary Value of the Settlement, Courts***
6 ***Commonly Approve Them, Further Meriting Approval of the***
 Requested Award

7 Courts apply multipliers to class counsel’s lodestar to account for the risks and delayed
8 payment counsel took on to prosecute the action on a contingency-fee basis. *Behrens v. Wometco*
9 *Enterprises, Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir. 1990) (“If this
10 ‘bonus’ methodology did not exist, very few lawyers could take on the representation of a class
11 client given the investment of substantial time, effort, and money, especially in light of the risks of
12 recovering nothing.”). As Judge Posner aptly explained: “It has been argued that contingent fees are
13 often exorbitant. But it is easy to be misled here. A contingent fee must be higher than a fee for the
14 same legal services paid as or after they are performed. The contingent fee compensates the lawyer
15 not only for the legal services he renders but for the loan of those services. The implicit interest rate
16 on such a loan is high because the risk of default (the loss of the case, which cancels the client's debt
17 to the lawyer) is much higher than in the case of conventional loans, and the total amount of interest
18 is large not only because the interest rate is high but because the loan may be outstanding for years—
19 and with no periodic part payment, a device for reducing the risk borne by the ordinary lender.”
20 Richard A. Posner, *Economic Analysis of Law* 783 (8th ed. 2011).

21 Thus, courts have approved multipliers in the range of 1.9 to 5.1, and even as high as 12 in
22 appropriate cases. In *Wershba*, 91 Cal.App.4th at 255 the court found “[m]ultipliers can range from
23 2 to 4 or even higher.” *See also City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988)
24 (affirming a multiplier of 2.34). Similarly, the court in *Sternwest Corp. v. Ash*, 183 Cal.App.3d 74,
25 76 (1986) reversed a fee award based only on the hours worked, finding the trial court abused its
26 discretion in failing to consider a lodestar multiplier and remanded the case to determine the
27 appropriateness of a lodestar enhancement of “two, three, four or otherwise.” Multipliers ranging
28 between one and two percent are frequently deemed “modest” and “courts typically approve

1 percentage awards based on lodestars cross-checks of 1.9 to 5.1 or even higher.” *Amaro v. Gerawan*
2 *Farming Inc.*, No. 1:14-cv-00147-DAD-SAB, 2020 WL 6043936, at *8 (E.D. Cal. 2020) (finding
3 1.02 multiplier “extremely modest and appropriate”).⁶

4 Here, Plaintiffs seek \$1,450,000 in attorneys’ fees, which contemplates either: (1) a positive
5 multiplier of 1.43 in comparison to the \$4.35 million monetary relief, or (2) a negative multiplier of
6 [REDACTED] in comparison to the combined monetary value of this cash payment *and* the value
7 received as a result of the injunctive relief component. Moon Decl. at ¶¶ 17-19. The positive
8 multiplier is not only consistent with previously approved multipliers, but it is “modest” and
9 particularly justified given the large and complicated nature of this class action. *Id.* “The range of
10 lodestar multipliers in large and complicated class actions runs from a low of 2.26 to a high of 4.5.”
11 *Behrens*, 118 F.R.D. at 549 (citations omitted). *See also supra*, fn. 6. “Most lodestar multiples
12 awarded in cases like this are between 3 and 4.” *Behrens*, 118 F.R.D. at 549 (listing cases). “The
13 application of a multiple of 3.0 here compares favorably with the multiples used in these other
14 complex cases.” *Id.*; *see also In re Avon Prods., Inc. Sec. Litig.*, No. 89 Civ. 6216 (MEL), 1992 WL
15 349768, at *3 (S.D.N.Y. Nov. 6, 1992) (“If the lodestar method of determining fees were to be
16 applied, a multiplier of 2 to 3 would not be inappropriate since counsel are being compensated on a
17 wholly contingent basis.”); *In re RJR Nabisco, Inc. Sec. Litig.*, MDL No. 818 (MBM), 1992 WL
18 210138, at *15-*16 (S.D.N.Y Aug. 24, 1992) (in awarding percentage fee, reasoning that fee
19 represented a multiplier of 6); *Lealao*, 82 Cal.App.4th at 42 (citing multiplier of 4 in *Arenson v.*
20 *Board of Trade*, 372 F.Supp. 1349, 1358 (N.D .Ill. 1974)); *Craft v. County of San Bernardino*, 624
21 F.Supp.2d 1113, 1123 (C.D. Cal. 2008) (applying 5.2 multiplier). Accordingly, it is well within the
22 Court’s discretion, and appropriate here, to award the fee amount sought by Class Counsel.

23
24 ⁶ *See also Gonzalez v. CoreCivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2020 WL
25 5891592, at *10 (E.D. Cal. Oct. 5, 2020) (finding 1.19 multiplier “modest and appropriate”); *Dakota*
26 *Medical, Inc. v. RehabCare Group, Inc.*, No. 1:14-cv-02081-DAD-BAM, 2017 WL 4180497, at *8-
27 9 (E.D. Cal. Sept. 21, 2017) (approving percentage fee embodying a multiplier of 3.0, observing
28 that “courts typically approve percentage awards based on lode star cross-checks of 1.9 to 5.1 or
even higher, and the multiplier of 1.9 is comparable to multipliers used by the courts”) (citing
Rubenstein, 4 Newberg on Class Actions at § 14.7); *see also Rubenstein*, 5 Newberg on Class
Actions, at § 15.89 (5th Ed. 2021) (summarizing empirical data regarding lodestar multipliers
typically ranging between 1.9 and 5.1). Indeed, a California court has applied a multiplier as high
as 12 to class counsel’s lodestar. *See, e.g., Glendora Community Redevelopment Agency v. Demeter*,
155 Cal.App.3d 465 (1984) (multiplier of 12 approved).

1 However, “[w]hen determining the value of a settlement, courts consider *both* the monetary
2 and nonmonetary benefits that the settlement confers.” *Miller v. Ghirardelli Chocolate Co.*, No. 12-
3 CV-04936-LB, 2015 WL 758094, at *5 (N.D. Cal. Feb. 20, 2015) (emphasis added); *see also*
4 *Pokorny v. Quixtar, Inc.*, No. C 07-0201 SC, 2013 WL 3790896, *1 (N.D. Cal. July 18, 2013) (“The
5 court may properly consider the value of injunctive relief obtained as a result of settlement in
6 determining the appropriate fee.”); *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 WL
7 1120801, at *7 (N.D. Cal. Mar. 18, 2013) (settlement value “includes the size of the cash
8 distribution, the *cy pres* method of distribution, and the injunctive relief”).

9 Here, the value of the injunctive relief [REDACTED]
10 [REDACTED]. Moon Decl. at ¶¶ 9, 17.
11 Combined with the \$4.35 million cash recovery, the fees requested falls *far below* one-third of the
12 total monetary value of the settlement. *Id.* at ¶ 17 [REDACTED]
13 [REDACTED]. Fee requests that produce an inverse or negative lodestar multiplier (i.e.,
14 multipliers that entail a downwards adjustment from the contemplated percentage of the total
15 recovery) support an inference of reasonableness. *See, e.g., In re Portal Software, Inc. Sec. Litig.*,
16 No. C-03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (“The resulting so-
17 called negative multiplier suggests that the percentage-based amount is reasonable and fair based
18 on the time and effort expended by class counsel.”); *Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-
19 00616-AWI-SKO, 2012 WL 2117001, at *23 (E.D. Cal. June 11, 2012) (“An implied negative
20 multiplier supports the reasonableness of the percentage fee request.”). Certainly a fee of *less than*
21 10% of the total monetary value of the settlement is fair and reasonable.

22 C. **Class Counsel Conferred Significant Benefits to a Large Class of Persons and**
23 **Are Therefore Entitled to Compensation**

24 The total value of the benefits to the class, i.e. the “success achieved,” includes all positive
25 results achieved by the litigation. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 61 (2008)
26 (explaining that the “success achieved” in a class settlement includes, *inter alia*, the dollar value of
27 the settlement, the absolute size of the class of persons who are eligible for the benefit, and changes
28 in company policies). The settlement achieved by Class Counsel confers substantial benefits on the

1 class and accomplishes the primary purposes of consumer protection laws—to stop and prevent
2 unfair competition and provide redress to consumers harmed thereby. Moon Decl. at ¶ 34. This
3 factor alone supports Class Counsel’s fee request.

4 More than **132,000** Settlement Class Members submitted claims, exceeding Class Counsel
5 and DSG’s expectations. *Id.* at ¶ 36; DSG Decl. at ¶ 25. ***No objections or valid requests for***
6 ***exclusion*** were received, further demonstrating class members had a positive reaction to the
7 settlement. Moon Decl. at ¶ 13; DSG Decl. at ¶ 22. The entirety of net monetary proceeds to
8 Settlement Class Members is approximately \$2.355 million minus relatively nominal costs for
9 postage and Class Counsel’s incurred expenses, with any unclaimed funds to be distributed to the
10 Court-approved charitable organizations *cy pres*. DSG Decl. at 25-26.

11 Added to the exceptional cash component, the settlement provides the class with significant
12 injunctive relief by prohibiting Defendant’s use of “Non-Toxic” advertising claims and avoiding
13 the exponentially increasing economic harm to consumers from the future sale of millions of
14 products throughout the nation misleadingly labeled as “Non-Toxic.” Moon Decl. at ¶ 9 [REDACTED]
15 [REDACTED]. The injunctive relief not only benefits the
16 Settlement Class Members directly, but it also provides a significant benefit to all consumers, a
17 fairly functioning marketplace, and the public by increasing honesty in advertising, raising the floor
18 of truth telling, and preventing harm to humans, animals, and the environment through inadvertent
19 use of the Covered Products. *Id.*

20 **D. Novelty and Difficulty of the Issues and Class Counsel’s Skill in Prosecuting**
21 **Them Warrant Approval of the Requested Attorneys’ Fees**

22 This case involves complicated issues on the merits. Plaintiffs and Class Counsel have faced
23 substantial complexities to prosecute this action, including issues involved with liability, damages,
24 and class certification. Moon Decl. at ¶ 5. Class Counsel is unaware of any false advertising class
25 actions premised on a deceptive “Non-Toxic” cleaning product theory that have been fully litigated
26 through trial or certified as a class action on a contested motion. *Id.* Prosecution of this action has
27 required expertise in class certification and false advertising legal issues that abound in cases based
28 on years of evolving marketing campaigns and strategies; an understanding of highly technical

1 regulations, scientific literature, and testing from a variety of endpoints to evaluate the immediate
2 and residual harm resulting from exposure to toxic ingredients; and the analysis of sales data to
3 isolate and approximate the total economic losses to consumers misled into buying purportedly
4 “non-toxic” products. *Id.*

5 Further, the demonstrated expertise of Class Counsel merits the requested fee award. *See*
6 *Serrano*, 20 Cal.3d at 49; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 2008). Here, the
7 reputation, experience, and ability of Class Counsel were essential to the success of this litigation,
8 and as detailed in Class Counsel’s declarations and firm resumes, they have extensive experience
9 litigating class actions, false advertising cases, and other complex civil litigation. *Id.* at ¶ 14 and
10 **Exhibit 2** [Clarkson Resume] and **Exhibit 3** [Moon Resume]. Class Counsel’s history of
11 successfully prosecuting consumer class actions is a testament to their commitment to pursue this
12 litigation until it achieved a fair result for the Class. *Id.* Class Counsel have also consistently
13 displayed a high level of skill regarding the complex legal issues presented in this matter in their
14 filings to-date as well as the exceptional settlement achieved through their efforts. *Id.* They have
15 worked diligently to craft a settlement encompassing all class members that ensures real and
16 substantial benefits. *Id.*

17 **E. The Court Should Consider the Extent to Which the Nature of the Litigation**
18 **Precluded Other Employment by the Attorneys**

19 From the very beginning, this nationwide class action initiated almost two years ago has
20 demanded a great deal of attention from Class Counsel, evidenced by the hours invested. Moon
21 Decl. at ¶ 28. Due to their considerable expenditure of time, efforts, and resources—including
22 significant pre- and post-filing investigations, preparation and analysis of discovery on a wide range
23 of topics, extensive consultation with experts, and mediation—Class Counsel had to manage their
24 workflow to avoid taking on additional cases that would overextend their resources and undermine
25 the quality and vigor of their prosecution of this action. *Id.* at ¶ 33. Additionally, Class Counsel will
26 continue to devote time and resources to monitor the distribution of settlement proceeds, respond to
27 class member inquiries, prepare for and attend the final fairness hearing, and respond to any
28 objectors or formal appeals. *Id.* As such, the requested fee is reasonable and appropriate and does

1 not account for the additional time and resources Class Counsel will devote to this case as a result
2 of these post-settlement activities.

3 **F. The Contingent Nature of the Fee Award Supports Its Approval**

4 Fee enhancements are “necessary” to compensate for the risk of loss in contingency cases
5 brought on behalf of a class. By choosing to litigate a large-scale class action against Defendant
6 involving complex issues and claims, Class Counsel assumed significant risks, including the loss of
7 millions of dollars in attorney time and costs necessary to prevail. Moon Decl. at ¶ 29. As described
8 *supra*, Defendant contested liability, damages, and certification for trial purposes, which necessarily
9 entails the proverbial “battle of the experts.” *Id.* It is impossible to predict whose expert testimony
10 the Court and any jury would credit on contested motions and at trial. *Id.* The experience of Class
11 Counsel has taught them that these considerations make the ultimate outcome of a class action and
12 trial highly uncertain, amplifying the risks that Class Counsel would receive nothing in exchange
13 for their work. *Id.*; see also, e.g., *In re Warner Commc’ns Sec. Litig.*, 618 F. Supp. 735, 744-745
14 (S.D.N.Y. 1985) (“[I]t is virtually impossible to predict with any certainty which testimony would
15 be credited, and ultimately, which damages would be found to have been caused by actionable,
16 rather than the myriad non-actionable factors such as general market conditions” that affect pricing
17 and complicate the isolation of a premium consumers paid for allegedly falsely advertised subsidiary
18 benefits). Notwithstanding Class Counsel’s confidence that the Court and any jury would endorse
19 their experts’ testimony, there exists a strong possibility that the Court would not certify a
20 nationwide class for trial stemming from issues of trial manageability, Defendant may obtain a
21 favorable verdict, or a successful appeal would reverse or reduce a judgment in favor of the class,
22 or otherwise require the relitigation of various issues on remand. Moon Decl. at ¶ 5. Thus, Class
23 Counsel has borne significant risks of losing substantial resources in prosecuting this costly and
24 uncertain action, with no guarantee of any compensation, whether immediate or delayed from years
25 of litigation. *Id.* Given the contingent nature of the fee in this case, the requested fee award is
26 reasonable and justified. See *Rader v. Thrasher*, 57 Cal.2d 244, 253 (1962) (“[A] contingent fee
27 contract, since it involves a gamble on the result, may properly provide for a larger compensation
28 than would otherwise be reasonable.”).

1 **IV. CLASS COUNSEL SHOULD BE REIMBURSED FOR INCURRED COSTS**

2 In addition to fees for time spent, courts reimburse costs class counsel incurred “in the
3 ordinary course of prosecuting [the] case.” *See, e.g., In re Businessland Sec. Litig.*, No. C-90-20476-
4 RFP, 1991 WL 427887, at *3 (N.D. Cal. June 14, 1991) (awarding class counsel \$90,574.78 in costs
5 and expenses in addition to attorneys’ fees). Further, California’s Consumers Legal Remedies Act,
6 Cal. Civ. Code §§ 1750 *et seq.*, expressly allows prevailing plaintiffs to recoup their litigation costs
7 in addition to an award of attorneys’ fees. *See* Cal. Civ. Code § 1780(e) (“[t]he court shall award
8 court costs and attorney’s fees to a prevailing plaintiff.”). Here, Class Counsel have incurred costs
9 to date in the amount of \$25,389.95, which include consultation with experts, filing fees, service of
10 process, mediation costs, and other reasonably necessary expenses outlined in counsel’s declaration
11 submitted in support of this motion. Moon Decl. at ¶¶ 16-18. The current amount does not include
12 the costs and expenses Class counsel expects to incur to file this motion. *Id.* This requested costs
13 award should be granted because all costs and expenses are reasonable in amount and were
14 necessarily incurred to prosecute this the complex false advertising class action and obtain the
15 proceeds afforded to the class under the Settlement Agreement. *Id.*

16 **V. CONCLUSION**

17 Based on the foregoing, Plaintiffs respectfully requests that this Court grant Class Counsel’s
18 request for an award of attorneys’ fees in the amount of \$1,450,000 and costs in the amount of
19 \$25,389.95.

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Dated: August 26, 2021

Respectfully submitted,

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