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

CHRISTOPHER O'BRIEN and TIFFANY
KIPIKASHA, individually and on behalf of all
others similarly situated,

 Plaintiffs,

 v.

SUNSHINE MAKERS, INC., a California
corporation,

 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 SERVICE AWARDS TO
SETTLEMENT CLASS
REPRESENTATIVES**

Hearing Information
Date: September 21, 2021
Time: 10:00 a.m.
Dept.: S-26

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After months of zealous advocacy on behalf of the settlement class, and in the midst of a global pandemic which has made life difficult for many Americans, including Plaintiffs and Settlement Class Representatives Michelle Moran,¹ Christopher O’Brien, and Tiffany Kipikasha (“**Plaintiffs**” and/or “**Settlement Class Representatives**”), this settlement could not be more timely. The Settlement Class Representatives’ hard work and service to the class have resulted in a fantastic settlement that provides the class with meaningful injunctive relief and restitution. Pursuant to the Settlement Agreement, they are each permitted to apply for awards to compensate them for their service in an amount of \$5,000. As set forth below, their service merits reasonable incentive awards in the amount of \$5,000 each (totaling \$15,000).

II. THE PROPOSED SERVICE AWARDS TO PLAINTIFFS ARE REASONABLE

Under California law, it is well-established that named class representatives are eligible for reasonable incentive awards. *See Golba v. Dick’s Sporting Goods, Inc.*, 238 Cal.App.4th 1251, 1253 (2015) (“Incentive awards to class representatives are intended to compensate class representatives for the work and risk undertaken on behalf of the class, to reimburse expenses incurred in the class litigation, and sometimes to recognize the willingness of class representatives to act as a private attorney general.”); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 412 (2010); *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393 (2010) (hereinafter “*Cellphone Cases*”); *Clark v. American Residential Services LLC*, 175 Cal.App.4th 785, 804-06 (2009); *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004). These awards are discretionary, and “the 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.

¹ Michelle Moran has been added as a settlement class representative for initiating and prosecuting this action against Defendant Sunshine Makers, Inc. (“**Defendant**”), with the same Settlement Class Counsel, in a prior parallel federal proceeding pursuant to the Settlement Agreement. Moon Decl. at **Exhibit 1** [Settlement Agreement] at p.1, ¶ 1-2, and ¶ 1.2 (Class Representatives); Preliminary Approval Order, 5/17/2021, at ¶ iii.

1 An incentive award is appropriate “if it is necessary to induce an individual to participate in
2 the suit.” *Clark*, 175 Cal.App.4th at 804. In determining the amount of such an award, courts may
3 consider the following criteria: (1) the risk to the class representative in commencing suit, both
4 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
5 representative; (3) the amount of time and effort spent by the class representative; (4) the duration
6 of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as
7 a result of the litigation. *See Cellphone Cases*, 186 Cal.App.4th at 1394-95 (citing *Van Vranken v.*
8 *Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995)).

9 Here, the Settlement Class Representatives’ involvement was critical to the success of the
10 case. Moon Decl. ¶ 40; Moran Decl. at ¶ 8; O’Brien Decl. at ¶ 8; Kipikasha at ¶ 8. They took
11 significant time away from work and personal activities to initiate, champion, and litigate this action.
12 *Id.* They were prepared to litigate this case to verdict if necessary. *Id.* They took on a significant
13 risk in bringing this heavily contested class action. *Id.* And their dedication and efforts have
14 conferred a significant benefit on millions of consumers across the United States. *Id.*

15 **A. The Risks in Commencing Suit and Difficulties Encountered by the Settlement**
16 **Class Representatives Justify Reasonable Incentive Awards**

17 Incentive awards are used to compensate class representatives for “financial or reputational
18 risk” encountered in pursuing the action. *See Cellphone Cases*, 186 Cal.App.4th at 1394. In this
19 matter, the Settlement Class Representatives faced significant financial risk in the form of the cost
20 burden borne from an unsuccessful class action. *See Early v. Sup. Ct.*, 79 Cal.App.4th 1420, 1433
21 (2000). Discussing the risk of such an outcome, the California Supreme Court explained that:

22 [w]hile imposition of the entire cost burden on the named plaintiffs may have a chilling
23 effect on the willingness of plaintiffs to bring class action suits, this effect easily may
24 be outweighed by the potential recovery. All potential litigants [i.e., the representative
25 plaintiffs] must weigh costs of suit against likelihood of success and possible recovery
before deciding to file suit. Those who choose to take the risks of litigation should be
the ones who bear the cost when they are unsuccessful.

26 *Id.* at 1433-34; *see also Golba*, 238 Cal.App.4th at 1253. The Settlement Class Representatives
27 nevertheless chose to pursue this action almost entirely for the sole benefit of the class.

1 In addition to taking on the risk of costs in this litigation, the Settlement Class Representatives
2 also faced reputational risk in pursuing this matter. Indeed, in commencing suit against Defendant
3 regarding its advertising and packaging of the Covered Products—cleaning products marketed,
4 advertised, and distributed nationwide by a well-known company as “Non-Toxic”—Plaintiffs took
5 the risk associated with attaching their names to a matter very much in the public eye. This required
6 a great deal of courage, given that the products are well-known and the issues of this matter dealt
7 with advertising and marketing claims related to protecting consumer rights. In light of the personal
8 nature of the subject matter at the heart of this lawsuit and the reputational perils, reasonable
9 incentive awards are further warranted by the prominent risk of embarrassment facing Plaintiffs.
10 *Cellphone Cases*, 186 Cal.App.4th at 1394.

11 **B. An Enhancement Payment Is Warranted by the Time and Effort Expended by**
12 **the Class Representatives Almost Entirely, if Not Exclusively, to the Benefit of**
13 **the Class**

14 The class representatives and class counsel play an essential role in assuring adequate
15 representation of millions of absentee consumers that also satisfies due process concerns. *See*
16 *Hansberry v. Lee*, 311 U.S. 32, 45, 61 S. Ct. 115, 85 L.Ed. 22 (1940); *Clark*, 175 Cal.App.4th at
17 804 (“Since without a named plaintiff there can be no class action, such compensation as may be
18 necessary to induce him to participate in the suit [i.e. an “incentive award”] could be thought the
19 equivalent of the lawyers’ . . . case-specific expenses, . . . which are reimbursable.”). As such,
20 incentive awards compensate class representatives for work done by them on behalf of the class.
21 *See Cellphone Cases*, 186 Cal.App.4th at 1393-94. This lawsuit, and the exceptional result of the
22 settlement, would not have been possible without the efforts of Plaintiffs.

23 Plaintiffs have been actively involved in this case since its inception and were responsible for
24 contacting counsel and initiating this suit against Defendant. Moon Decl. at ¶ 3; Moran Decl. at ¶ 8;
25 O’Brien Decl. at ¶ 8; Kipikasha at ¶ 8. In the midst of the COVID19 global pandemic, Plaintiffs
26 invested many hours in this litigation, which included conducting and overseeing detailed research
27 and investigation regarding the advertising and labeling of the Covered Products, as well as the sales
28 generated from “Non-Toxic” labels; regularly conferring with Settlement Class Counsel regarding

1 case status and strategy; reviewing the pleadings and papers filed in this action; reviewing
2 documents related to the case; interviewing with Settlement Class Counsel to build the case and
3 otherwise making themselves available to do work on behalf of the class; considering the pros and
4 cons of a highly complex national settlement and notice and claims process; and carefully reviewing
5 the settlement documents in order to understand, prior to approving, the terms of the settlement,
6 including balancing the benefits to the class, against the consideration afforded to Defendant, and
7 factoring in the risks and costs entailed in continued protracted litigation. *Id.* Their service was
8 necessary to procure an exceptional result for the class, after a combined total of nearly 2 years in
9 litigation, and were instrumental in protecting the interests of absentee class members throughout
10 the litigation. *Id.*; *see also* Motion for Final Approval at § IV.

11 To be sure, the Settlement Class Members’ investment of resources, in the face of large-scale
12 litigation risks, was almost entirely, if not exclusively, for the benefit of the absentee class members.
13 Aside from any incentive or service award granted, Plaintiffs stood to personally recover only the
14 few dollars they lost in the premium they paid for Covered Products misleadingly advertised as
15 “Non-Toxic.” This individual benefit pales in comparison to their efforts and the risks they
16 undertook, such that a reasonable incentive or service award is justified to compensate them for
17 championing this class action.

18 Given the amount of time and the nature of their involvement, an incentive award of \$5,000
19 for each Settlement Class Representative is reasonable, justified, and consistent with awards
20 approved by other courts under similar circumstances. *See, e.g., Munoz*, 186 Cal.App.4th at 412
21 (approving \$5,000 enhancement awards to each of the two class representatives to be paid from \$1.1
22 million common fund); *Cellphone Cases*, 186 Cal.App.4th at 1393 (upholding incentive awards of
23 \$10,000 to each of four named class representatives); *Simon v. Toshiba Am.*, No. C 07-06202 MHP,
24 2010 WL 1757956, at *5 (N.D. Cal. Apr. 30, 2010) (finding “incentive payments of \$5,000 are
25 presumptively reasonable”); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 454-55
26 (E.D. Cal. 2013) (awarding \$5,000 to each class representative for bringing claim to class counsel’s
27 attention, searching for relevant documents, explaining employment practices, and giving
28 interviews regarding their experience); *Garcia v. Gordon Trucking*, No. 1:10-CV0324-AWI-SKO,

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2012 WL 5364575, at *11 (E.D. Cal. Oct. 29, 2012) (awarding \$15,000 to each class representative for assisting in investigation, preparation of complaint, producing documents, providing deposition testimony, responding to discovery, and assisting with settlement).

III. CONCLUSION

Based on the foregoing, Plaintiffs and Settlement Class Representatives respectfully request that the Court grant their request for a class representative service award in the amount of \$5,000 each representative (\$15,000 in total).

Dated: August 26, 2021

Respectfully submitted,

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