



FILED
ALAMEDA COUNTY

MAR 16 2018

CLERK OF THE SUPERIOR COURT

By *CWS* Deputy

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MAR - 2 2018

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ROHINI KUMAR, an individual, on behalf of
herself, the general public and those similarly
situated;

Plaintiff,

v.

SAFEWAY, INC.

Defendant.

CASE NO. RG 14726707

UNLIMITED CIVIL CASE

~~PROPOSED~~ ORDER GRANTING
APPLICATION FOR ATTORNEYS' FEES,
COSTS AND INCENTIVE AWARD

DATE: March 16, 2018

TIME: 10:00 a.m.

CTRM: 21

Hon. Judge Winifred Smith

1 The Court has granted final approval to the proposed class action settlement in the above
2 captioned matter. Plaintiff Rohini Kumar and her law firms, Gutride Safier LLP and Tykco &
3 Zavareei LLP, appointed by this Court as class counsel, have applied for an award of
4 \$1,307,174.55 in attorneys' fees, \$119,325.45 in reimbursement of expenses, and an incentive
5 award of \$6,490 for Ms. Kumar. Defendants do not oppose Plaintiff's application. The
6 application is supported by declarations from Adam Gutride and Hassan Zavareei. No objections
7 to the application were received from any settlement class members.

8 For **GOOD CAUSE** shown, and for each of the reasons stated at the hearing on Final
9 Approval, and for the additional reasons stated herein, Plaintiff's application for awards of
10 attorneys' fees, expenses and an incentive award is **GRANTED**.

11 Where fees are available under statute, the "lodestar" method should be used to determine
12 a statutory attorneys' fee award unless the statutory authorization for the award provides for
13 another method. In this case, fees are available by statute, and the statute—i.e., Civil Code section
14 1780(d)—does not provide for a method of computing fees, so the lodestar method is appropriate.
15 See *Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 448–449; see also
16 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 (stating "In determining the amount of
17 reasonable attorney fees to be awarded under a statutory attorney fees provision, the trial court
18 begins by calculating the 'lodestar' amount" and that the "California Supreme Court has further
19 instructed that attorney fees awards 'should be fully compensatory.'")

20 The hourly rate(s) of Class Counsel set forth in the table below are on par with those of
21 other attorneys of Class Counsel's skill and experience in the San Francisco Bay Area, where
22 Gutride Safier is based, and District of Columbia, where Tykco & Zavareei is based.¹ *Tait v. BSH*
23 *Home Appliances Corp.*, No. SACV100711DOCANX, 2015 WL 4537463, at *12 (C.D. Cal. July
24

25 ¹ These rates are 2017 rates charged by Plaintiff's counsel, which is appropriate given the
26 deferred (and contingent) nature of counsel's compensation. See *LeBlanc-Sternberg v. Fletcher*
27 (2nd Cir. 1998) 143 F.3d 748, 764 ("[C]urrent rates, rather than historical rates, should be applied
28 in order to compensate for the delay in payment....") (citing *Missouri v. Jenkins* (1989) 491 U.S.
274, 283-84); *In re Washington Pub. Power Supply Sys. Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291,
1305 ("The district court has discretion to compensate delay in payment in one of two ways: (1)
by applying the attorneys' current rates to all hours billed during the course of litigation; or (2) by
using the attorneys' historical rates and adding a prime rate enhancement.").

1 27, 2015) (approving as reasonable \$800 per hour for partners, associate time to a maximum of
 2 \$550 per hour, and paralegal time to a maximum of \$225 per hour); *Vinh Nguyen v. Radiant*
 3 *Pharm. Corp.*, 2014 WL 1802293, at *11 (C.D. Cal. May 6, 2014) (approving 2014 rates up to
 4 \$750 per hour for partners, \$550 per hour for associates, and \$225 per hour for paralegals); *see*
 5 *also Wren v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667 (N.D. Cal. Apr. 1, 2011)
 6 (finding as reasonable \$650 per hour for a 1993 graduate); *Californians for Disability Rights v.*
 7 *Cal. DOT*, 2010 U.S. Dist. LEXIS 141030 (N.D. Cal. Dec. 13, 2010) (finding as reasonable \$570
 8 per hour for a 2000 graduate, \$350 per hour for a 2007 graduate, and \$475 per hour for a 2005
 9 graduate); *Suzuki v. Hitachi*, 2010 U.S. Dist. LEXIS 22908, 2010 WL 956896 *3 (N.D. Cal.
 10 March 12, 2010) (finding as reasonable attorneys fees rates of \$650 for partner services, \$500 for
 11 associate attorney services and \$150 for paralegal services).

12 The Court credits the declarations submitted by Adam Gutride and Hassan Zavareei and
 13 finds that as of February 28, 2018, Class Counsel had spent approximately 2,360 hours litigating
 14 this matter. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 225 (declarations
 15 as to time spent, even if only estimates, are sufficient to support a fee award); *see also Dunk v.*
 16 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810. The amount of time spent on this case since
 17 then has increased and may continue to increase following final approval. Based on its experience
 18 in supervising this case, the Court finds that the tasks performed by counsel, as set forth in the
 19 Gutride and Zavareei declarations, as well as the total amount of time spent by Class Counsel,
 20 have been reasonably necessary to the prosecution of this litigation to its successful settlement.
 21 *See, e.g., Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19. Thus the Court finds that Class
 22 Counsel's reasonable lodestar of \$1,792,602.80, as described on the charts below.

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24 Timekeeper 25 (Position)	Hours	Rate	Total
26 Adam J. Gutride 27 (Partner)	376.2	\$950	\$357,390.00

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Seth A. Safier (Partner)	386.8	\$925	\$357,790.00
Kristen Simplicio (Associate)	770.8	\$775	\$597,370.00
Marie McCrary (Associate)	35.4	\$750	\$26,550.00
Matt McCrary (Associate)	13.9	\$725	\$10,077.50
Ashley Garcia (Legal Assistant)	5.5	\$250	\$1,375.00
TOTAL	1588.6		\$1,350,552.50

Timekeeper (Position)	Hours	Rate	Total
Hassan Zavareei (Partner)	114.9	\$864.00	\$99,273.60
Jeffrey Kaliel (Partner)	114.3	\$717.00	\$81,953.10
Anna Haac (Partner)	147.6	\$717.00	\$105,829.20
Andrew Silver (Associate)	292.1	\$440.00	\$128,524.00
Lauren Kelleher (Fellow)	38.9	\$343.00	\$13,342.70
Kyra Taylor (Fellow)	3.1	\$359.00	\$1,112.90

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Timekeeper (Position)	Hours	Rate	Total
Nathan Laporte (Paralegal)	18.8	\$196.00	\$3,684.80
Sydney Teng (Paralegal)	13.1	\$196.00	\$2,567.60
Amy Berkowitz (Paralegal)	23.7	\$196.00	\$4,645.20
Audrey Abate (Paralegal)	5.0	\$196.00	\$980.00
Natasha Fletcher (Paralegal)	0.7	\$196.00	\$137.20
TOTAL	772.20		\$442,050.30

Because Class Counsel's requested fee of \$1,307,174.55 represents approximately 73% of its lodestar, no multiplier is necessary. Even if this Court were inclined to reduce the lodestar below \$1,307,174.55, by, for example, disallowing certain hours or reducing rates, the requested fees would still be fair and reasonable by applying a very modest multiplier, which the Court finds would be fair and reasonable in light of the contingent nature of Class Counsel's representation of the Class (both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award), the novelty and complexity of the questions involved in this case, the value of class benefits obtained, the importance of other changed practices obtained by Class Counsel, and the special skill and experience of counsel. The Court also finds that Class Counsel bore a substantial amount of risk that it would receive no compensation for its work or reimbursement for its expenses. See *Serrano v. Priest* (Serrano III) (1977) 20 Cal.3d 25, 48-49; see also *Meister v. Regents of Univ. of Calif.* (1998) 67 Cal. App. 4th

1 437, 449; *Melnyk v. Robledo* (1976) 64 Cal. App. 3d 618; *Clejan v. Reisman* (1970) 5 Cal. App.
2 3d 224, 241; *Fed-Mart Corp. v. Pell Enterprises* (1980) 111 Cal. App. 3d 215, 22.

3 The Court is permitted but not required to “cross-check” the reasonableness of the
4 lodestar-based fee under the percentage-of-recovery (or percentage-of-benefit) approach. *See*
5 *Lealao*, 82 Cal. App. 4th at 39-40 (“in cases in which the value of the class recovery can be
6 monetized with a reasonable degree of certainty and it is not otherwise inappropriate, a trial court
7 has discretion to adjust the basic lodestar through the application of a positive or negative
8 multiplier where necessary to ensure that the fee awarded is within the range of fees freely
9 negotiated in the legal marketplace in comparable litigation”); *see also Glendora*, 155 Cal. App.
10 3d at 474. Because there were approximately 17.8 million bottles sold during the class period
11 (Prelim Gutride Decl. at ¶ 10), class members are able to obtain approximately \$8.8 million in
12 cash benefits (and an even higher amount of vouchers for future Safeway purchases). In addition,
13 Safeway is making changes to its representations and bottling practices. (Id. at ¶¶ 12, Ex. 1, § III.)
14 Plaintiff’s expert Mr. Weir has estimated that the value of the removal of the phrase “Imported
15 from Italy” to be worth \$5,279,450 to class members as the removal of the phrase is likely to lead
16 to a lower average selling price for the products. (Weir Decl. at ¶ 90.) Thus, Plaintiff is making, at
17 a minimum, nearly \$13 million available to the class. The requested fee of \$1,307,174.55 is only
18 10% of this amount, which is far below the usual range for contingent fee litigation. The Court
19 further credits the declarations of Mr. Gutride and Mr. Zavareei in establishing that Class Counsel
20 incurred \$119,325.45 in expenses in connection with the Litigation. The Court finds that these
21 expenses are reasonable and they should be reimbursed.

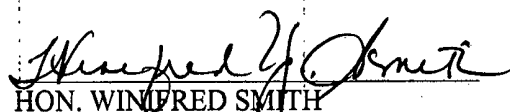
22 The Court also finds that an incentive award of \$6,490.00 for the Class Representative is
23 appropriate in light of the time he spent and risk she incurred in pursuing this Litigation and
24 settlement, and is fair and reasonable. Ms. Kumar has spent many hours working on this case,
25 including preparing for and attending her deposition; responding to numerous discovery requests;
26 communicating with counsel about motions, and settlement; and reviewing settlement
27 documentation. The award is justified in light of: “(1) the risk to the class representative in
28 commencing suit, both financial and otherwise; (2) the notoriety and personal difficulty

1 encountered by the class representative; (3) the amount of time and effort spent by the class
2 representative; (4) the duration of the litigation and; (5) the personal benefit (of lack thereof)
3 enjoyed by the class representative as a result of the litigation." *In re Cellphone Fee Termination*
4 *Cases*, 186 Cal. App. 4th 1380, 1394 (2010), *as modified* (July 27, 2010) (internal citations and
5 quotations omitted). The Court finds that these factors favor approval of the incentive award.

6 For the foregoing reasons, Defendants are ordered to pay \$1,426,500 in fees and costs to
7 Class Counsel and \$6,490 to Rohini Kumar in accordance with the terms and conditions set forth
8 in the Settlement Agreement.

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IT IS SO ORDERED this 16 day of March, 2018.


HON. WINIFRED SMITH
SUPERIOR COURT JUDGE