

BESHADA FARNESE LLP
Peter J. Farnese (SBN 251204)
pjf@bflplaw.com
700 S. Flower St., Suite 1000
Los Angeles, California 90017
Telephone: 310-356-4668
Facsimile: 310-388-1232

Attorneys for Plaintiffs and the Proposed Settlement Class

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

CRISTIE RAMIREZ and NATALIE
LINARTE, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

HB USA HOLDINGS INC. dba HUDA
BEAUTY, and DOES 1-10, Inclusive,

Defendants.

CASE NO. 5:20-cv-01016-JGB-SHK

Judge: Hon. Jesus G. Bernal

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR AWARD OF ATTORNEYS’ FEES
AND COSTS TO BESHADA FARNESE
LLP**

[Declaration of Peter J. Farnese filed
concurrently herewith]

Date: March 21, 2022

Time: 9:00 a.m.

Crtn: 1

Trial Date: November 9, 2021

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on March 21, 2022 at 9:00 a.m., or as soon as
3 thereafter as the matter may be heard in the above-captioned court, located at George E.
4 Brown, Jr. Federal Building and United States Courthouse, 3470 Twelfth Street
5 Riverside, CA 92501-3801, Courtroom 1, Plaintiff Natalie Linarte (“Plaintiff”) will, and
6 hereby does move, pursuant to Fed. R. Civ. P. 23(e), for an order awarding Beshada
7 Farnese LLP reasonable attorneys fees in the amount of \$467,000.00 and reimbursement
8 of costs and expenses in the amount of \$883.90.

9 This motion is based on the attached Memorandum of Points and Authorities, the
10 accompanying Declarations of Peter J. Farnese, all pleadings and papers on file herein,
11 and any other written and oral arguments that may be presented to the Court.

12
13 Dated: December 17, 2021

BESHADA FARNESE, LLP

14 By: /s/Peter J. Farnese
15 Peter J. Farnese

16 Attorneys for Plaintiffs and the Proposed
17 Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2021, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to the email addresses registered in the CM/ECF system.

Executed on December 17, 2021 at Los Angeles, California.

By: s/ Peter J. Farnese
Peter J. Farnese

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pjf@bflplaw.com
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Los Angeles, California 90017
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CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS
TO BESHADA FARNESE LLP**

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21 William B. Rubenstein,
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 22 § 14:037

1 Plaintiff Natalie Linarte (“Plaintiff”) respectfully submits the following points and
2 authorities in support of her motion for an award of attorneys’ fees and costs to Beshada
3 Farnese LLP (“BF”) in connection with their work in achieving the class settlement (the
4 “Settlement”) for purchasers of Defendant HB USA Holdings, Inc. dba Huda Beauty’s
5 (“Defendant” or “Huda Beauty”) Neon Obsessions makeup palettes¹.

6 **I. INTRODUCTION**

7 This is not a case that has dragged on for years, only for the Class to recover pennies
8 on the dollar. Instead, in this class action settlement BF secured:

- 9 1. **“Full Refund” Cash Payments:** Class members can claim
10 refunds equal to the retail price (\$29.00) of the Neon Obsessions
11 makeup palettes (the “Products”) up to 3 units if they received a
12 direct notice or provide Proof of Purchase—\$29.00 per unit is
13 more than Class Members would likely recover under the
14 consumer protection laws²;
- 15 2. **Tailored Injunctive Relief:** Huda Beauty will make substantial
16 modifications to its marketing of the Products or substantially
17 similar future products (including clear and prominent disclosures
18 on the Product packaging);
- 19 3. **Class Notice Program & Streamlined Claims Process:** The
20 Settlement Administrator has disseminated comprehensive direct
21 and publication notice plan that, coupled with a straightforward
22 claims process, will likely result in a substantial total settlement
23 payout to claimants once the audit process is completed; and,
- 24 4. **No Reversion of Settlement Funds:** There is no “clear sailing”
25 provision for Plaintiffs’ fee and cost applications. There is no
26 reversion of Settlement funds as Defendant will pay all Valid
27 Claims.

28 In sum, this Settlement is a “grand slam” for the Settlement Class.

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

28 ² Without Proof of Purchase, Class Members can obtain \$10 per unit—an amount
that essentially equals Huda Beauty’s approximate per-unit profit for the Products.

1 BF negotiated this resolution and was primarily responsible for obtaining Court
2 approval. *See* Dkt. 36. BF performed this work on a contingency, and (contrary to almost
3 all other class action settlements) without any “clear sailing provision” related to its
4 attorneys’ fees. In other words, BF began working on this matter in November 2019 and
5 although this action settled at a relatively early stage, BF continues to bear the risk of
6 nonpayment as Huda Beauty may oppose BF’s fee request.

7 As set forth herein, BF's hourly rates are reasonable, its lodestar is reasonable, and
8 its requested multiplier is reasonable—especially considering the results obtained for the
9 Class. *See, e.g., Hill v. Canidae Corp.*, No. EDCV 20-1374 JGB (SPx), Dkt. No. 79,
10 (C.D. Cal. Sept. 28, 2021)(approving 2.0 multiplier on a \$481,655.00 lodestar on a \$5 per
11 household cash payment settlement on a claims-made basis). BF respectfully requests
12 that the Court award the firm \$467,000.00 in attorney’s fees representing its \$233,817.50
13 lodestar with an approximate 2.0 multiplier, and \$883.90 as reimbursement of costs and
14 litigation expenses.

15 As explained below, both the lodestar method and the percentage of the benefit
16 cross-check confirm that BF’s request for attorneys’ fees and expenses is fair, reasonable,
17 and supported by the law of this Circuit.

18 **II. BRIEF SUMMARY OF THE SETTLEMENT BENEFITS**

19 **1. Cash Payments for Settlement Class Members**

20 Class Members who receive direct notice or provide a Proof of Purchase are
21 eligible for a payment of \$29.00 for each Product, up to a maximum of three (3) Products,
22 for a maximum total payment of \$87.00. Settlement Agreement at ¶¶5.1.1 – 5.1.2.

23 Class Members who are unable to provide Proof of Purchase shall be eligible to
24 submit a claim for payment of a total of \$10.00 per household for all Products claimed,
25 up to a maximum of three (3) Products, for a maximum total payment to each Settlement
26 Class Member without Proof of Purchase of \$30.00. *Id.* at ¶5.1.3. There is no cap on
27 total cash payments.

28

1 **2. Injunctive Relief**

2 For a period of five years, if Huda Beauty re-releases the Products in the U.S.
3 market or releases any substantially similar “pressed pigment” products marketed for use
4 in the eye area, Huda Beauty agrees as follows:

5 (a) Huda Beauty will include a disclosure visible on the rear panel of
6 the U.S. Product packaging which states: “*WARNING for U.S.
7 Customers: may contain color additives that are not approved by the
8 F.D.A. for use in the eye area” or similar language, to the extent consistent
9 with current regulatory guidance in the United States.

10 (b) In addition, on the label, Huda Beauty will append a “*” symbol to
11 each specific shade at issue that links to the above disclaimer.

12 (c) Huda Beauty will include the disclosure on the U.S. version of its
13 website.

14 (d) For all U.S.-facing marketing and advertising (including any third-
15 party retailers) where the Products are shown being used around the eye,
16 Huda Beauty will include the [above] disclosure.

17 *Id.* at ¶5.2.

18 **III. PLAINTIFFS ARE ENTITLED TO AN AWARD OF ATTORNEY’S FEES**

19 Under Fed. R. Civ. P. 23(h), “the court may award reasonable attorney’s fees and
20 nontaxable costs that are authorized by law or by the parties’ agreement.” Like every other
21 aspect of the settlement, attorneys’ fees provisions included in class action settlement
22 agreements are subject to the determination of the requested fees and costs are
23 “fundamentally fair, adequate, and reasonable.” *Staton v. Boeing Co.*, 327 F.3d 938, 963
24 (9th Cir 2003) (quoting Fed. R. Civ. P. 23(e)). Here, the Settlement Agreement provides
25 that Huda Beauty agrees to pay the attorneys’ fees and costs awarded by the Court. *See*
26 Settlement Agreement at ¶8.

27 Further, “[u]nder California law, ‘[i]t is undisputed that relief obtained through a
28 settlement may qualify a plaintiff as the prevailing party.’” *Skaff v. Meridien N. Am.*
Beverly Hills, LLC, 506 F.3d 832, 844 (9th Cir. 2007) (citation omitted). As prevailing
parties, Plaintiffs are entitled to an award of reasonable attorneys’ fees and costs pursuant
to the California Consumers Legal Remedies Act (“CLRA”). Specifically, Cal. Civ. Code

1 § 1780(e) provides that such an award is mandatory: “[t]he court shall award court costs
2 and attorney’s fees to a prevailing plaintiff in litigation filed pursuant to this section.”

3 Plaintiffs are also entitled to recover attorneys’ fees under Cal. Civ. Code § 1021.5,
4 as they have achieved a “substantial benefit” to a large class of persons. *See* Cal. Civ.
5 Code § 1021.5; *see also Mendoza v. Hyundai Motor Co., Ltd.*, No. 15-CV-01685-BLF,
6 2017 WL 342059, at *14 (N.D. Cal. Jan. 23, 2017) (holding that “Class Counsel is entitled
7 to an award of attorneys’ fees” under the CLRA and Cal. Civ. Code § 1021.5); *Graham*
8 *v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 578 (2004), *as modified* (Jan. 12, 2005) (“It
9 is well settled that attorney fees under section 1021.5 may be awarded for consumer class
10 action suits benefiting a large number of people.”).

11 **IV. PLAINTIFF’S FEE AND EXPENSE REQUEST SHOULD BE APPROVED**

12 Courts utilize two methods for evaluating attorney fees: (1) the lodestar method;
13 and (2) the percentage of recovery method. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
14 1029 (9th Cir. 1998).

15 Under the lodestar method, attorneys’ fees are “calculated by multiplying the
16 number of hours the prevailing party reasonably expended on the litigation (as supported
17 by adequate documentation) by a reasonable hourly rate for the region and for the
18 experience of the lawyer.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941
19 (9th Cir. 2011)

20 The lodestar figure is “presumptively reasonable” and may be increased or
21 decreased by a multiplier that reflects factors such as “the quality of representation, the
22 benefit obtained for the class, the complexity and novelty of the issues presented, and the
23 risk of nonpayment.” *Id.* at 942 (internal quotation marks omitted). The foremost
24 consideration is the benefit obtained for the class. *Id.*

25 Under the percentage-of-recovery method, attorneys are awarded fees in the
26 amount of a percentage of the common fund recovered for the class. *Id.* Courts applying
27 this method “typically calculate 25% of the fund as the benchmark for a reasonable fee
28 award, providing adequate explanation in the record of any special circumstances

1 justifying a departure,” *id.* (internal quotation marks omitted), and “20-30% [i]s the usual
2 range,” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

3 **A. The Requested Fees Are Reasonable Under the Lodestar Method**

4 In the Ninth Circuit, the lodestar method is the preferred approach for determining
5 whether a fee request is reasonable when there is no common fund or when it is difficult
6 to assess the monetary value of the settlement with certainty. *In re Hyundai & Kia Fuel*
7 *Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (approving of lodestar method when “it is
8 difficult to estimate the settlement value’s upper bounds.”); *see also Hanlon*, 150 F.3d at
9 1029 (affirming choice of lodestar method where calculation of value of common fund
10 was uncertain). Here, the lodestar method is appropriate “because the Settlement does
11 not establish a common fund and consumer statutes at issue provide a basis in the law for
12 an award of attorneys’ fees.” *Broomfield v. Craft Brew All., Inc.*, No. 17-cv-01027-BLF,
13 2020 U.S. Dist. LEXIS 74801, at *32 (N.D. Cal. Feb. 5, 2020)

14 “The lodestar method requires ‘multiplying the number of hours the prevailing
15 party reasonably expended on the litigation (as supported by adequate documentation) by
16 a reasonable hourly rate for the region and for the experience of the lawyer.’” *In re Online*
17 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (internal quotation
18 omitted). Next, the Court must decide whether to adjust the “presumptively reasonable”
19 lodestar figure based upon the factors listed in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d
20 67, 69–70 (9th Cir. 1975), *abrogated on other grounds by City of Burlington v. Dague*,
21 505 U.S. 557 (1992), that have not been subsumed in the lodestar calculation. *See Caudle*
22 *v. Bristow Optical Co., Inc.*, 224 F.3d 1014, 1028–29 (9th Cir. 2000). Here, Plaintiffs
23 move for an award of attorneys’ fees in the amount of \$467,000.00 based on their
24 presumptively reasonable lodestar of \$233,817.50, with an approximate 2.0 multiplier.

25 **1. Class Counsel’s Hourly Rate and Hours Expended Are** 26 **Reasonable**

27 When determining an attorney’s reasonable hourly rate, courts weigh the
28 “experience, skill, and reputation of the attorney requesting fees,” and compare the

1 requested rates to prevailing market rates of the relevant community. *Chalmers v. City of*
2 *Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir. 1986), *op. am. on denial of reh'g*, 808 F.2d
3 1373 (9th Cir. 1987); *see also Blum v. Stenson*, 465 U.S. 886, 895 n.11, 104 S. Ct. 1541,
4 79 L. Ed. 2d 891 (1984). The relevant community is typically the forum in which the
5 district court sits. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).

6 Here, Class Counsel's rates are reasonable and comparable to the fees generally
7 charged by attorneys with similar experience, ability, and reputation for work on similar
8 matters in this judicial district. *See* Farnese Decl. ¶¶30-31; *see also Johnson v. Saul*,
9 2020 WL 1223539, at *3 (C.D. Cal. Feb. 3, 2020) (“[T]he Central District of California
10 has repeatedly found reasonable fees with effective hourly rates exceeding \$1,000 per
11 hour”); *Radford v. Berryhill*, 2017 WL 4279217, at *3 (C.D. Cal. Sept. 26, 2017)
12 (approving fees amounting to \$1,197.92 per hour of attorney time); *Palos v. Colvin*, 2016
13 WL 5110243, at *2 (C.D. Cal. Sept. 20, 2016) (approving fees amounting to \$1,546.39
14 per hour of attorney time); *Daniel v. Astrue*, 2009 WL 1941632, at *2-3 (C.D. Cal. July
15 2, 2009) (approving fees amounting to \$1,491.25 per hour of attorney time); *McKibben*
16 *v. McMahon*, 2019 WL 1109683, at *14 (C.D. Cal. Feb. 28, 2019) (finding hourly rates
17 of up to \$1,230 per hour reasonable depending on attorney experience).

18 Further, the hours expended are reasonable. Class Counsel’s pre-filing
19 investigation placed them in a position to efficiently prosecute this action and negotiate a
20 favorable settlement for the Class at an early stage. In that regard, counsel did not
21 undertake extraneous work nor was there an incentive to do so. *Moreno v. City of*
22 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (“It must also be kept in mind that
23 lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of
24 inflating their fees. The payoff is too uncertain, as to both the result and the amount of the
25 fee.”). In fact, the exact opposite is the case here-- Class Counsel conducted an extensive
26 pre-filing background investigation and skillfully obtained a settlement at an early stage
27 of the action.

28

1 Although this matter settled early on, Class Counsel prosecuted this case for over
2 two years in the face of considerable risk. *See* Farnese Decl. This is particularly true
3 because there is no “clear sailing” agreement and thus, BF’s contingent risk of non-
4 payment remains as Huda Beauty is free to oppose Plaintiff’s fee application. Courts have
5 recognized that risks of the litigation remain for work performed even after a settlement
6 in principle was reached. *See Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015
7 WL 3863625, at *3 (N.D. Cal. June 22, 2015) (holding that “if the settlement is not
8 approved, ‘there is risk that the Court may deny class certification or, following initial
9 certification, subsequently decertify the class based on unanticipated individualized issues
10 or manageability concerns.’”) (citation omitted).

11 2. The Requested Multiplier Is Reasonable and Warranted

12 Although the lodestar figure is “presumptively reasonable,” the “district court may
13 then adjust the resulting [lodestar] figure upward or downward to account for various
14 factors [...] including the quality of the representation, the benefit obtained for the class,
15 the complexity and novelty of the issues presented, and the risk of nonpayment.” *In re*
16 *Hyundai*, 926 F.3d at 570-71 (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70
17 (9th Cir. 1975))³. The Court has “broad discretion” in its “use of the multipliers” and
18 determination of a reasonable fee. *Id.* at 572.

19 In a historical review of numerous class action settlements, the Ninth Circuit found
20 that lodestar multipliers normally range from 0.6 to 19.6, with most (83%) falling between
21 1 and 4. *See Vizcaino*, 290 F.3d at 1051, n.6; *see also* Alba Conte & Herbert B. Newberg,
22 *Newberg on Class Actions* § 14:03 (3d ed. 1992) (recognizing that multipliers of 1 to 4
23

24 ³ These factors include the following: (1) the time and labor required, (2) the novelty
25 and difficulty of the question involved, (3) the skill requisite to perform the legal service
26 properly, (4) the preclusion of other employment by the attorney due to acceptance of
27 the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time
28 limitations imposed by the client or the circumstances, (8) the amount involved and the
results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the
"undesirability" of the case, (11) the nature and length of the professional relationship
with the client, and (12) awards in similar cases. *Kerr*, 526 F.2d at 69.

1 are frequently awarded). In non-common fund cases, “[m]ultipliers in the 3-4 range are
2 common in lodestar awards for lengthy and complex class action litigation.” *Van Vranken*
3 *v. Alt. Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995). In considering the
4 reasonableness of attorneys’ fees and any requested multiplier, the Ninth Circuit has
5 directed district courts to consider the time and labor required, the novelty and complexity
6 of the litigation, the skill and experience of counsel, the results obtained, and awards in
7 similar cases. *Kerr*, 526 F.2d at 70; *Blum v. Stenson*, 465 U.S. 886, 898-900 (1984).

8 Here, the risk of nonpayment, novelty and complexity of the litigation, the skill and
9 experience of counsel, the results obtained, and awards in similar cases support the
10 requested award of fees. *Kerr*, 526 F.2d at 70.

11 **a. The Contingent Nature of the Representation**

12 “Courts find multipliers to be appropriate particularly in cases like this where the
13 contingent nature of the fee creates a significant risk of non-recovery.” *Herrera v. Wells*
14 *Fargo Bank, Nat'l Ass'n*, No. 8:18-cv-00332-JVS-MRW, 2021 U.S. Dist. LEXIS 221364,
15 at *39 (C.D. Cal. Nov. 16, 2021). “It is an established practice in the private legal market
16 to reward attorneys for taking the risk of non-payment by paying them a premium over
17 their normal hourly rates for ... contingency cases.” *In re Wash. Pub. Power Supply Sys.*
18 *Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

19 Throughout this case, Class Counsel has expended substantial time and resources
20 (that precluded paid hourly work) to prosecute this suit with no guarantee of compensation
21 or reimbursement of prevailing against a sophisticated, well-financed Defendant
22 represented by high caliber attorneys at the Gibson Dunn law firm—including Mr. Chorba
23 who is considered one of the leading class action defense attorneys in California. *In re*
24 *Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab.*
25 *Litig.*, No. 8:10ML 02151 JVS (FMOx), 2013 WL 12327929, at *32 (C.D. Cal. July 24,
26 2013) (holding that the skill of counsel factor “weighs in favor of approving the entire
27 proposed fee award” when “class counsel faced an exceptionally skilled adversary with
28 substantial resources.”).

1 Class Counsel obtained a superior result for the Settlement Class, knowing that if
2 its efforts were ultimately unsuccessful, it would receive no compensation or
3 reimbursement for its costs. As discussed above, the lack of any “clear sailing” clause on
4 attorneys’ fees demonstrates that this risk continues even after the parties have reached
5 the proposed settlement in this action. This fact alone supports the reasonableness of the
6 fee request.

7 **b. Class Counsel Achieved An Exceptional Result for the Class**

8 The “benefit obtained for the class” is the “[f]oremost” factor when considering the
9 propriety of a multiplier. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942
10 (9th Cir. 2011).

11 As described above, the result achieved for the Class is exceptional. The immediate
12 relief afforded to the Class, which provides a greater cash recovery than Class Members
13 could have received on a per unit basis at trial, alongside changes to the Products’ future
14 packaging and advertising, demonstrates the significant value of the Settlement. *See*
15 *Shames v. Hertz Corp.*, No. 07-CV-2174-MMA(WMC), 2012 WL 5392159, at *7, *21
16 (S.D. Cal. Nov. 5, 2012) (approving plaintiff’s fee request of \$5,123,336.00 under a
17 claims-made settlement which provided a cash recovery of 67% of actual damages). On
18 top of the monetary relief, Class Counsel ensured that the vast majority of the Class
19 received a direct email or mail notice by issuing a subpoena for contact information from
20 Sephora USA and ensuring that the Settlement was well-publicized.

21 **c. Novelty and Complexity of the Litigation and Skill Demonstrated**
22 **By Counsel**

23 This was not a run-of-the-mill class action. In fact, it appears to be one of the first,
24 if not the first, consumer action to challenge the marketing and labeling on a cosmetic
25 arising from color additives not approved for “eye area” use. Thus, this matter not only
26 involved complex issues related to class certification, but also threshold issues related
27 preemption and primary jurisdiction, FDA regulations, as well as liability and damages
28 under the consumer protection statutes. As discussed in the preliminary and final

1 approval papers, this action also raised unique issues given that Huda Beauty is a digital
2 brand that operates worldwide, and relies on social media to market its products—those
3 facts complicated the application of U.S. regulatory and advertising law should apply to
4 such an entity. Moreover, Huda Beauty was prepared to argue that this action involved a
5 relatively sophisticated purchaser class of makeup enthusiasts and niche products such
6 that a “heightened” standard of deception should apply to their claims. These are all
7 issues that required skill by Class Counsel to navigate to achieve a recovery for the Class.
8 *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d. 1036, 1047 (N.D. Cal 2008) (The
9 litigation of a complex, multiparty, nationwide class action “requires unique legal skills
10 and abilities.”)

11 **d. Awards in Similar Cases**

12 For contingent consumer class actions like this one, California courts have
13 approved fee awards with multipliers of 2 and even higher. *See, e.g., Wershba v. Apple*
14 *Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or
15 even higher.”); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 (2008) (same). Similarly,
16 in the Ninth Circuit, multipliers “ranging from one to four are frequently awarded [...]”
17 when the lodestar method is applied.” *Vizcaino*, 290 F.3d at 1051 n.6 (internal quotation
18 marks omitted); *see also Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298–99
19 (N.D. Cal. 1995) (holding that multiplier of 3.6 was “well within the acceptable range for
20 fee awards in complicated class action litigation” and explaining that “[m]ultipliers in the
21 3–4 range are common”). And in *In re Hyundai*, the Ninth Circuit recently held that a
22 1.5521 multiplier was “modest or in-line with others we have affirmed.” 926 F.3d at 572
23 (9th Cir. 2019).

24 Consistent with this authority, this Court, in *Hill v. Canidae Corp.*, No. 5:20-cv-
25 1374-JGB (SPx), Dkt. No. 79, (C.D. Cal. Sept. 28, 2021) approved a 2.0 multiplier on a
26 \$481,655.00 lodestar based on the contingent nature of the representation and that the
27 case precluded other employment. *See Hill*, Dkt. 79 at p. 17 (awarding \$953,740.00 in
28 fees). Notably, unlike this action, in *Hill*, defendant provided a “clear sailing” provision,

1 agreeing not to oppose a \$1,300,000 fee; and the class benefit was substantially lower at
2 \$5.00 per household without proof of purchase— with an estimated 48,000 claims
3 submitted). Thus, BF’s request here is squarely in line with similar awards in this Circuit,
4 this District, and this Court⁴.

5 In sum, the risk of nonpayment, novelty and complexity of the litigation, the skill
6 and experience of counsel, the results obtained, and awards in similar cases support the
7 requested award of fees in the amount of \$467,000 to BF.

8 **B. The Percentage of Recovery Cross Check Supports the Reasonableness**
9 **of the Requested Fees**

10 As a cross-check, the percentage of recovery analysis confirms the reasonableness
11 of the requested attorneys' fees. Courts applying this method "typically calculate 25% of
12 the fund as the benchmark for a reasonable fee award, providing adequate explanation in
13 the record of any special circumstances justifying a departure." *In re Bluetooth*, 654 F.3d
14 at 942 (internal quotation marks omitted). The constructive fund to conduct this cross-
15 check may include settlement administration costs, litigation expenses, and the allotment
16 for attorneys’ fees in its valuation of a constructive fund for its percentage of recovery
17 cross-check analysis because this is the “total amount defendants were willing to spend
18 to settle the case.” *In re Bluetooth*, 654 F.3d at 945 (including allotment for attorneys'
19 fees, incentive awards, *cy pres* award, and other fees in constructive common fund for
20 percentage of recovery cross-check); *see Corzine v. Whirlpool Corp.*, No. 15-CV-05764-
21 BLF, 2019 U.S. Dist. LEXIS 223341, 2019 WL 7372275, at *12 (N.D. Cal. Dec. 31,
22 2019) (including attorneys' fees, costs, and incentive award in valuation of settlement for
23 cross-check purposes); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 953 (“The
24

25 ⁴ *See, also, Gergetz v. Telenav, Inc.*, No. 16-CV-04261-BLF, 2018 WL 4691169, at *7
26 (N.D. Cal. Sept. 27, 2018) (approving 2.625 multiplier on lodestar in class action
27 settlement “in light of the facts that Class Counsel accepted this case on a contingency
28 basis, had to forego other work to litigate this case, and achieved a truly excellent result
for the class.”); *Sheikh v. Tesla, Inc.*, No. 17-CV-02193-BLF, 2018 WL 5794532, at *8
(N.D. Cal. Nov. 2, 2018) (“[A] multiplier of 2.36 is within the range of
reasonableness.”).

1 district court did not abuse its discretion in calculating the fee award as a percentage of
2 the total settlement fund, including notice and administrative costs, and litigation
3 expense.”).

4 “Ninth Circuit precedent requires courts to award class counsel fees based on the
5 total benefits being made available to class members rather than the actual amount that is
6 ultimately claimed.” *See, e.g., Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936-
7 LB, 2015 WL 758094, at *5 (N.D. Cal. Feb. 20, 2015); *Broomfield*, 2020 U.S. Dist.
8 LEXIS 74801, at *49 (same). BF’s requested fees of \$467,000 pass the so-called
9 percentage of the benefits “cross check”. Here, based on Huda Beauty’s authorized
10 retailer sales⁵ coupled with the notice and administration costs of up to \$545,000, the total
11 settlement benefits exceed \$4 million (excluding counsel’s fees). Farnese Decl. ¶¶25, 27;
12 *see also Broomfield* at *51 (“[I]n conducting this percentage of recovery cross-check, the
13 Court will compare the requested fees to the sum of the amount of potential recovery,
14 settlement administration costs, litigation expenses, and allotment for attorneys' fees.”).
15 *Broomfield* at *50. Thus, the requested fee (\$467,000) falls well-below the Ninth Circuit’s
16 25% benchmark of the total settlement benefits obtained here (greater than \$4 million)⁶.

17
18
19 ⁵ Huda Beauty produced its total sales to authorized retailers through July 2020.
20 Farnese Decl. ___. Huda Beauty marked this information as “Confidential” and Plaintiff
21 will provide the exact figures at the Court’s request. But, for purposes of the “cross-
22 check” of BF’s fee request, the exact figures are not necessary given that the request is
substantially below the 25% benchmark.

23 ⁶ The Court should consider the value of the injunctive relief. *See Pokorny v. Quixtar,*
24 *Inc.*, No. C 07-0201 SC, 2013 WL 3790896, at *1 (N.D. Cal. July 18, 2013) (“The court
25 may properly consider the value of injunctive relief obtained as a result of settlement in
26 determining the appropriate fee.”). Although Plaintiff does not propose to calculate any
27 specific monetary value of the proposed injunctive relief, the relief is significant not
28 just to the Settlement Class, but to the public at large, particularly the requirements for
any substantially similar future products. 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*, No. SACV
11-00173 DOC(Ex), 2013 U.S. Dist. LEXIS 35066, at *10 (C.D. Cal. Mar. 13, 2013).

1 **C. Class Counsel’s Expenses Were Reasonably and Necessarily Incurred**
2 **In the Prosecution of This Action**

3 The Ninth Circuit allows recovery of litigation expenses in the context of a class
4 action settlement. *See Staton*, 327 F.3d at 974. Class Counsel is entitled to reimbursement
5 for standard out-of-pocket expenses that an attorney would ordinarily bill a fee-paying
6 client. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). “Expenses such as
7 reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls,
8 computer legal research, postage, courier service, mediation, exhibits, document
9 scanning, and visual equipment are typically recoverable.” *Rutti v. Lojack Corp., Inc.*,
10 2012 WL 3151077, at *12 (C.D. Cal. July 31, 2012).

11 Here, Class Counsel seeks \$883.90 in costs. Farnese Decl. at ¶34. Each of these
12 expenses was necessary and reasonably incurred to bring this case to a successful
13 conclusion and is typically recoverable in litigation.

14
15 **V. CONCLUSION**

16 Plaintiff respectfully requests that the Court grant her motion for an award of
17 attorneys’ fees and costs.

18
19 Dated: December 17, 2021

BESHADA FARNESE, LLP

By: /s/Peter J. Farnese
Peter J. Farnese

Attorneys for Plaintiffs and the Proposed
Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2021, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to the email addresses registered in the CM/ECF system.

Executed on December 17, 2021 at Los Angeles, California.

By: s/ Peter J. Farnese
Peter J. Farnese

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BESHADA FARNESE LLP
Peter J. Farnese (SBN 251204)
pjf@bfillplaw.com
700 S. Flower St., Suite 1000
Los Angeles, California 90017
Telephone: 310-356-4668
Facsimile: 310-388-1232

Attorneys for Plaintiffs and the Proposed Settlement Class

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

CRISTIE RAMIREZ and NATALIE
LINARTE, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

HB USA HOLDINGS INC. dba HUDA
BEAUTY, and DOES 1-10, Inclusive,

Defendants.

CASE NO. 5:20-cv-01016-JGB-SHK

Judge: Hon. Jesus G. Bernal

CLASS ACTION

**DECLARATION OF PETER J.
FARNESE IN SUPPORT MOTION FOR
AWARD OF ATTORNEYS’ FEES AND
COSTS**

Date: March 21, 2022
Time: 9:00 a.m.
Crtm: 1

Trial Date: November 9, 2021

DECLARATION OF PETER J. FARNESE

I, Peter J. Farnese, declare and state as follows:

1. I am partner of the law firm Beshada Farnese LLP, co-counsel of record for Plaintiffs, and am licensed to practice in all courts within the State of California.

2. I make this declaration based on my own personal knowledge or upon information and belief and, if called upon to testify, would testify competently as to the matters contained therein.

3. I submit this declaration in support of Plaintiffs’ Motion for Award of Attorneys’ Fees and Costs.

4. With respect to this application for fees, after meeting and conferring with counsel for Plaintiff Ramirez, each Plaintiff’s firm agreed to file separate fee applications. In addition, prior to filing this motion, I met and conferred with counsel for Defendant on Plaintiff’s lodestar and the amount of fees we intended to seek.

5. This litigation involved two separate actions (*Linarte* and *Ramirez*) that proceeded independently prior their consolidation before this Court. My firm, representing Ms. Linarte, began working on this matter in November 2019, issuing a pre-suit demand letter to Huda Beauty pursuant to the California Consumers Legal Remedies Act (“CLRA”).

6. When Huda Beauty engaged counsel to respond to Plaintiff’s demand in early 2020, we agreed that we would keep our discussions, along with the existence of the CLRA demand, confidential in order to facilitate our discussions about Plaintiff’s claims. Given that nature of that agreement, I was unaware of Ms. Ramirez and her claims against Huda Beauty. Ultimately, we agreed to resolve Plaintiff’s claims with Huda Beauty on a classwide basis and present the terms to Plaintiff Ramirez and her counsel for their participation. But, suffice it to say, the two actions proceeded independently of one another prior to this Court’s consolidation order.

7. I incorporate by this reference my declarations in support of Preliminary Approval (Dkt. 46-2) and Final Approval (Dkt. 54-2) rather than regurgitate the summary

1 of my firm’s investigation, the settlement negotiations, and the settlement benefits judged
2 against the risks of continued litigation contained in those documents.

3 **Beshada Farnese LLP Is Experienced and Qualified Class Counsel**

4 8. Beshada Farnese LLP (“BF”) maintains a nationwide practice representing
5 both plaintiffs and defendants in class action litigation, regulatory investigations, and
6 other commercial matters. BF specializes in complex litigation involving advertising
7 claims, business disputes, employment matters, intellectual property, and product defects.

8 9. BF has served as counsel to consumers, corporations, and corporate officers
9 in class actions and multi-district litigation; Federal Trade Commission/State Attorney
10 General investigations; investigations by the Consumer Product Safety Commission;
11 advertising challenges instituted before the National Advertising Division of the Better
12 Business Bureau (“NAD”), as well as the Electronic Retailing Self-Regulation Program
13 (“ERSP”), and the Children’s Advertising Review Unit (“CARU”). In addition, the firm
14 has represented defendants in litigation involving claims under California’s Proposition
15 65, as well as class actions brought under the California Invasion of Privacy Law and the
16 Americans with Disabilities Act.

17 10. A copy of my firm’s resume, which includes more detailed information
18 about our practice, qualifications, and class action representations is attached as **Exhibit**
19 **1**.

20 11. For over fourteen years, I have devoted my practice almost exclusively to
21 the prosecution and defense of consumer class actions. I graduated from the University
22 of Notre Dame and earned my law degree from Pepperdine University School of Law.
23 Before practicing, I served as judicial extern to the Honorable Marjorie O. Rendell of the
24 United States Court of Appeals for the Third Circuit.

25 12. My practice has a particular emphasis on litigation involving direct-response
26 advertising, as well as the advertising and regulation of dietary supplements, cosmetics,
27 and other health-related products. I have represented both consumers and corporations a
28 variety of actions alleging false advertising and labeling of consumer products. In

1 addition, I have represented corporate defendants in California state regulatory
2 proceedings under the California Unfair Competition Law and False Advertising Law.

3 13. With BF, I have been appointed plaintiffs' class counsel in the following
4 matters:

5 a. *Attlesey, et al. v. Optimum Nutrition, Inc.* (Cal. Super. Ct. Case No.
6 BC484769)(Consumer class action challenging defendant's false and
7 deceptive advertising of protein powder products. Obtained nationwide
8 common fund settlement securing restitution and advertising and labeling
9 changes for multiple products regarding the digestive enzyme Aminogen);

10 b. *Burmeister v. NAC Marketing, LLC* (Cal. Super. Ct. Case No.
11 CIVDS1213282)(Consumer class action challenging defendant's false and
12 deceptive advertising of the Ageless Male dietary supplement. Obtained
13 nationwide settlement providing consumers the ability to claim full
14 restitution, reformulation of the product, and agreement to discontinue
15 certain advertising claims);

16 c. *Jensen v. Bainbridge & Knight, LLC* (Cal. Super. Case No.
17 BC472174)(Consumer class action challenging the advertising of the weight
18 loss supplement Lichi);

19 d. *Keller v. Gaspari Nutrition, Inc.* (C.D. Cal. Case No. CV11-06158-
20 GAFSHx)(Consumer class action alleging that Novadex XT dietary
21 supplement was illegally marketed and sold with "non-dietary" ingredient.
22 Obtained nationwide common fund settlement securing restitution,
23 destruction of supplies of offending products, and reformulated products for
24 consumers.);

25 e. *Steiner, et al. v. Rawlings Sporting Goods Co., Inc.* (D.N.J. Case No. CV12-
26 2531- MCA)(Consumer class action challenging advertising claims for the
27 Rawlings Power Balance Bracelet. Obtained nationwide settlement.);

28 f. *Taromina, et al. v. Gaspari Nutrition, Inc.* (C.D. Cal. Case No. CV12-05424-

1 JAKMANx)(Consumer class action alleging that Spirodex dietary
2 supplement was illegally marketed and sold with “non-dietary” ingredient.
3 Obtained nationwide settlement securing restitution and agreement to
4 discontinue sale of product and DMAA ingredient);

5 g. *Wike v. HCG Platinum, LLC, et al.* (Cal. Super. Case No.
6 BC451080)(Consumer class action alleging false and misleading weight loss
7 claims for the HCG Platinum homeopathic product. Obtained nationwide
8 settlement securing full restitution for consumers and injunctive relief.)

9 14. Prior to forming BF, I worked as plaintiffs’ class or co-class counsel in the
10 following matters: *Wally v. CCA Industries, Inc.* (Los Angeles Super. Ct. BC422833)
11 (Nationwide settlement of action challenging advertising of the “Mega-T” dietary
12 supplement); *Williams, et al. v. Biotab Nutraceuticals, Inc.* (Los Angeles Super. Ct. Case
13 No. BC414808)(Nationwide settlement of action challenging advertising of the “Extenze”
14 dietary supplement); *Ceballos v. Fuze Beverage, LLC* (Los Angeles Super. Ct. Case No.
15 BC 394521)(Nationwide settlement of action challenging advertising of the “Fuze
16 Healthy Infuzions” beverages); *Salcido v. Iomedix* (Los Angeles Super. Ct. Case No.
17 BC387942)(Nationwide settlement of action challenging advertising of the “ColdMD”
18 dietary supplement); and *Fallon v. E.T. Browne Drug Co., Inc.* (Los Angeles Super. Ct.
19 Case No. BC 411117)(Nationwide settlement of action challenging advertising of the
20 “Palmer’s brand” Cocoa Butter for Stretch Marks).

21 **Plaintiff’s Investigation, Discovery, and Litigation**

22 **Background Investigation**

23 15. Because we take on only selected consumer contingency matters each year,
24 we devote a significant amount of time “up front” before filing any action to thoroughly
25 research the legal and factual issues before proceeding.

26 16. We began investigating the Huda Beauty Neon Obsessions Products (the
27 “Products”) and Huda Beauty in November 2019.

28 17. In addition to working with a cosmetic chemist consultant and cosmetics

1 manufacturing consultant on understanding the formulation and regulatory issues related
2 to the Products and their pricing/costs, our background investigation included:

- 3 a. obtain and review of hundreds of electronic images and hard copies of
4 website, social media, packaging and advertisements of the
5 Products;
- 6 b. “field” research at various Sephora locations in California and other
7 states to obtain evidence of in-store displays, marketing, and
8 placements for the Products;
- 9 c. review of sales and related documents;
- 10 d. review of information regarding the chemical formulation of the
11 Products (including both US and international regulatory schemes for
12 the color additives at issue);
- 13 e. extensive research as to the respective merits and weaknesses of the
14 case;
- 15 f. preparation of a class action complaint;
- 16 g. analysis of potential class-wide damages;
- 17 h. review of advertising claims history, comparative products and various
18 “language models” for changes to the packaging and advertising of the
19 Products; and
- 20 i. extensive legal research and evaluation of the applicable law with
21 respect to the claims asserted in the complaint and the potential
22 defenses thereto, including FDA regulations and their California
23 equivalents.

24 18. Our pre-suit investigation enabled us to be in a position to negotiate a prompt
25 settlement for the Class without the necessity of obtaining the necessary information
26 through several months, if not years, of litigation. In addition, because the Products
27 ultimately were removed from Huda Beauty’s webpage, the investigation preserved
28 critical information (including information which appeared on various internet websites

1 and social media).

2 **Litigation, Settlement, and Discovery**

3 19. Though our discussions with Huda Beauty, we confirmed that, in the United
4 States, the Products were sold through certain authorized retailers, including the Huda
5 Beauty website and through Sephora store (both on its website, and in its standalone retail
6 stores as well as its “Sephora in JC Penney” locations), with a very limited amount of
7 sales through a specialty beauty retailer called Naime’s.

8 20. In addition, we obtained confirmatory discovery from Huda Beauty to verify
9 the representations on its U.S. sales of the Products made during the course of the Parties’
10 settlement discussions. We confirmed that the retail sales price of the Products was \$29.00
11 each along with the total nationwide sales of the Products through Huda Beauty’s
12 authorized retailers (which demonstrated that the Class includes tens of thousands of
13 consumers).

14 21. Ultimately, after assessing the strengths and weaknesses of the action, along
15 with the substantial uncertainties related to the COVID-19 pandemic for companies like
16 Huda Beauty (particularly in mid-2019 through the summer/fall of that year), we reached
17 a settlement with Huda Beauty and filed a Notice of Settlement.

18 22. In addition to the preparation and filing of the class action complaint, we:

- 19 a. Worked with Ramirez counsel on the filing of the consolidated
20 complaint and subsequent pleadings;
- 21 b. Extensive settlement negotiations Huda Beauty and drafting of the
22 settlement agreement and related documents;
- 23 c. Monitoring the sales and advertising of the products during the
24 pendency of the action;
- 25 d. Legal research on developments in the Ninth Circuit on consumer
26 class settlements, the California Unfair Competition Law,
27 preemption and primary jurisdiction issues for consumer cosmetics
28 claims, as well as keeping tabs on the legal arguments advanced by

1 defense counsel in other matters;

2 e. Drafted multiple pleadings and motions (including taking the lead on
3 drafting the motions for preliminary and final approval);

4 f. Issued a subpoena to Sephora USA and communicated with
5 Sephora's counsel regarding production of class member contact
6 information;

7 g. Worked with the counsel and the Settlement Administrator to design
8 and draft the class notice and related documents;

9 h. Monitored the class notice program (including social media), the
10 settlement website, and fielded calls from Settlement Class Members
11 regarding the Settlement and provided assistance in submitting
12 claims.

13 **The Settlement Benefits and Reaction of the Settlement Class**

14 **Settlement Benefits**

15 23. Although more fully discussed in the motions for preliminary and final
16 approval, the settlement provides substantial benefits to Settlement Class members in the
17 form of cash payments, injunctive relief, and a broad class notice program, all in the face
18 of substantial risks to no recovery at all.

19 24. In terms of the cash payments, the \$29.00 benefit represents suggested retail
20 price of the Products. There can be no legitimate debate that on a per-unit basis, this
21 recovery is a remarkable achievement. Likewise, the \$10 benefit per unit (for those who
22 cannot provide a Proof of Purchase) represents the approximate revenue that Huda Beauty
23 realized per unit. Again, given how restitution and damages are calculated, this amount
24 represents an excellent result.

25 **“Constructive Fund” Value of the Settlement Benefits**

26 25. Although this Settlement does not create a common fund, there is no cap on
27 payments of all Valid Claims. Given Huda Beauty's representations in discovery, U.S.
28 sales of the Products through authorized retailers until July 2020 coupled with the notice

1 and administration costs secured by the Settlement (\$545,000) exceed \$4 million. Huda
2 Beauty marked its discovery responses as “Confidential” and Plaintiff will provide any
3 specific figures at the Court’s request¹.

4 **Reaction of the Settlement Class**

5 26. The reaction of the Settlement Class to date indicates that they
6 overwhelmingly approve of the Settlement, with over 117,833 visits to the Settlement
7 Website, no objections submitted and a single request for exclusion.

8 27. While the claim forms received are still subject to audits for validity and
9 duplicates, it is worth noting that 12,502 claimants submitted claims indicating that they
10 either received a notice or provided a proof of purchase, for a total of 27,783 products
11 claimed. At the \$29.00 benefit level for such claims, this amounts to a value of
12 \$805,707.00— a figure that approaches 20% of total authorized sales. It is clear that the
13 Class approves of the Settlement.

14 **BF’s Lodestar and Costs**

15 28. We handled this matter on a contingent basis. I have reviewed the attorney
16 time and cost records associated with this case, and I participated in the investigation that
17 my firm has undertaken in this action. Based on my experience in class actions, and given
18 the substantial benefits provided by this settlement, the fees requested by Class Counsel
19 are reasonable under the either the lodestar or percentage of the benefit analysis.

20 29. Below is a summary² of attorney time spent by BF litigating this action from
21 November 2019 through December 2021:

22
23 _____
24 ¹ Our investigation indicates that there are third parties that sold the Products during
25 this time (and until this day), thus sales through authorized outlets may not capture the
total sales of the Products during the Class Period (which runs until August 2021).

26 ² Counsel need only submit summaries of their hours incurred; submission of billing
27 records is not required. *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 64 (2008)
28 (“timesheets are not required of class counsel to support fee awards in class action
cases.”); *Lobatz v. U.S. W. Cellular of Cal., Inc.*, 222 F.3d 1142, 1148-49 (9th Cir.
2000) (the court may rely on summaries of the total number of hours spent by counsel).

| <u>Attorney</u> | <u>Title</u> | <u>Rate</u> | <u>Hours</u> | <u>Total</u> |
|-------------------|----------------|---------------------|--------------|---------------------|
| Donald A. Beshada | Partner (1997) | \$875 | 41.5 | \$36,312.50 |
| Peter J. Farnese | Partner (2007) | \$675 | 292.6 | \$197,505.00 |
| | | <u>TOTAL</u> | | \$233,817.50 |

30. With respect to the rates, based on my experience in class actions, over the last 14 years, BF’s rates are reasonable and comparable to the fees generally charged by attorneys with similar experience, ability, and reputation for work on similar matters in this judicial district and throughout California. *See Hefler v. Wells Fargo & Co.*, No. 16-CV-05479- JST, 2018 U.S. Dist. LEXIS 213045, at *38 (N.D. Cal. Dec. 17, 2018) (approving rates from \$650 to \$1,250 for partners or senior counsel, \$400 to \$650 for associates); *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 U.S. Dist. LEXIS 39115, at * (N.D. Cal. Mar. 17, 2017) (\$275 to \$1,600 for partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals); *Schneider v Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 601 (N.D. Cal. Nov. 4, 2020) (\$830 to \$1,275 for partners and \$425 to \$695 for associates).

31. The hourly rates comport with what my firm normally charges clients for hourly defense work in complex matters. Mr. Beshada’s rate in particular is lower than what he typically charges for such engagements.

32. Because we are a small firm and are somewhat unique in that we do both plaintiff and defense class action work, we declined several opportunities for paid hourly defense work during the pendency of this action due to the time and resource commitments needed for this matter.

33. The hours and lodestar incurred by my firm will increase because, as Class Counsel, my firm is responsible for any further briefing in this case, attending the final approval hearing, and the post hearing work, including claims administration.

34. In addition, BF has incurred the following litigation costs and expenses:

| <u>Expense</u> | <u>Amount</u> |
|---------------------|-----------------|
| Filing Fees | \$400.00 |
| Attorney Service | \$423.80 |
| Lexis Nexis / PACER | \$30.20 |
| Postage / Fedex | \$29.90 |
| <u>TOTAL</u> | \$883.90 |

35. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

36. In addition, the lodestar and expenses figures do not include the time associated with settlement administration and notice process, the work required to prepare for the final approval hearing and oversee the settlement implementation process, including the final claims review, fielding inquiries from claimants, and distribution of the settlement benefits to claimants-- which will take several more months to complete.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 17, 2021, at Los Angeles, California.

By: /s/Peter J. Farnese
Peter J. Farnese

EXHIBIT 1

EXHIBIT 1

January 2021

FIRM RESUME

Beshada Farnese LLP (“BF”) maintains a nationwide practice representing both plaintiffs and defendants in class action litigation, regulatory investigations, and other commercial matters. BF specializes in complex litigation involving advertising challenges, business disputes, employment matters, intellectual property, and product defects. The firm’s attorneys have served as counsel to consumers, corporations, and corporate officers in class actions; multi-district litigation; Federal Trade Commission/State Attorney General investigations; investigations by the Consumer Product Safety Commission; and advertising challenges instituted before the National Advertising Division of the Better Business Bureau (“NAD”), as well as the Electronic Retailing Self-Regulation Program (“ERSP”), and the Children’s Advertising Review Unit (“CARU”). In addition, the firm has represented defendants in litigation involving claims under California’s Proposition 65, as well as class actions brought under the California Invasion of Privacy Law and the Americans with Disabilities Act. BF is frequently retained to consult with corporate defendants as well as class counsel to develop creative class action settlement strategies and to negotiate class settlements.

Some highlights of the firm’s recent representations include the following matters:

- BF currently serves as plaintiffs’ co-counsel in the California Judicial Council Coordinated Proceeding styled *Lash Boost Cases* pending in San Francisco Superior Court. The coordinated class actions challenge defendant’s marketing and sale of its Lash Boost eyelash serum as an unlawful drug under the California Health & Safety Code.
- From 2016-2020, the firm served as national coordinating counsel to a leading direct-response retailer in the successful defense and resolution of a series of class actions filed against the company in various state and federal courts throughout the country (and multiple concurrent state attorney general investigations) challenging the company’s advertising and “reference”/discounted pricing practices for its products. The actions sought several hundred million dollars in damages and civil penalties.
- In 2020, BF obtained dismissal of class action alleging that charges associated with a consumer products company’s “Everyday Savings” program were not authorized by consumers in violation of the New Jersey Consumer Fraud Act. The plaintiff voluntarily dismissed the action shortly after BF filed a motion to dismiss, attaching the transcript of Plaintiff’s telephone call to BF’s client where she agreed and authorized of the very “Everyday Savings” program charges she attempted to challenge in her complaint.
- In 2019, BF defeated class certification of action alleging violations of the California Invasion of Privacy Act (“CIPA”) in connection with the alleged unauthorized recording of customer service telephone calls. Plaintiff sought recovery of over \$87 million in statutory damages from BF’s client. BF subsequently obtained a stipulated dismissal of the action with no monetary payment to Plaintiff or his counsel.

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- In 2019, BF represented dietary supplement company in action alleging violations of California Proposition 65 in connection with the sale of certain dietary supplement and protein supplement products. BF defended and successfully negotiated a settlement and stipulated judgment.
- In 2018, BF represented a consumer products company in a multi-year litigation brought by product inventor alleging breach of contract and intellectual property claims, as well as claims for indemnification in a separate, related patent infringement action. The plaintiff inventor sought over \$17 million in damages from BF's client. The firm defeated plaintiff's summary judgment motions and favorably resolved the matter on the eve of trial.
- In 2017, BF represented a consumer products company in a two-week breach of contract arbitration before the American Association of Arbitration, where the petitioner sought over \$20 million in damages from BF's client. BF successfully defended the action and its client was deemed the prevailing party.
- In 2015, BF represented dietary supplement company and corporate officers in California state enforcement action under Cal. Bus. Prof. Code 17200 brought by District Attorneys of ten California counties alleging false advertising of dietary supplement products. BF successfully negotiated a stipulated settlement and consent judgment.
- In 2012, BF represented a class of consumers in a class action challenging defendant's false and deceptive advertising of the Ageless Male dietary supplement. BF obtained a nationwide settlement providing restitution to consumers valued at over \$24 million, reformulation of the product, and agreement by defendant to discontinue certain advertising claims in future advertising.

Class Action Representations

Some of BF's recent class action representations include:

- *Burns v. Allstar Products Group* (Cal. Super Ct. Case No. 37-2017-00006728-CU-FR-NC)(Class action alleging false and misleading advertising of "Juggle Bubbles" product);
- *Choo, et al. v. Wellnx Life Sciences, Inc.* (E.D. Cal Case No. 2:17-cv-02517-KJM-CMK)(Consumer class action challenging the advertising of Nature's Science "100% Pure Garcinia Cambogia" dietary supplement);
- *Geraci v. Eagle Eye Marketing Group, Inc.* (D. Conn. Case No. 3:17-cv-01839-MPS)(Consumer class action challenging advertising of Hydro Mouse "liquid" lawn seed product);
- *Hernandez v. Telebrands*, (C.D. Cal. Case No. 2:16-cv-08046)(Consumer class action challenging advertising of the "Smart Swab" product)

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- *Huff v. Allstar Products Group*, (Cal Super. Case No. 37-2019-00048333-CU-PL-NC) (Consumer class action asserting false advertising and product liability claims regarding the “Ice Genie” products);
- *Hudson, et al. v. Ontel Products Corp.* (E.D. Cal. Case No. CV15-02264-JAM-CKD)(Class action asserting false advertising, breach of warranty claims related to the “Wonder Wax” product);
- *Jackson, et al. v. Telebrands Corp.* (C.D. Cal. Case No. 2:17-cv-04107-PSG-KS)(Consumer class action challenging advertising of “Grassology” grass seed product);
- *Jensen v. Bainbridge & Knight, LLC* (Cal. Super. Case No. BC472174)(Consumer class action challenging the advertising of the weight loss dietary supplement Lichi);
- *Kai v. Allstar Products Group* (Cal Super. Case No. 37-2019-00048333-CU-PL-NC) (Consumer class action asserting false advertising and product liability claims regarding the “Reheatza” product);
- *Love v. Permission Interactive, et al.*, (Cal. Super. Ct.)(Consumer class action challenging advertising of the “Yoshi Blade” product);
- *Machel et al v. Ontel Products Corporation*, (N.D. Ohio Case No. 4:16-cv-03095) (Consumer class action challenging advertising of the “Five Second Fix” product)
- *Martinez-Leander v. Wellnx Life Sciences, Inc.* (C.D. Cal. Case No. 2:16-cv-08220-SJO-Ex)(Consumer class action challenging advertising of garcinia cambogia dietary supplements);
- *Murphy, et al. v. Ideavillage Products Corp.* (C.D. Cal. Case No. CV15-01638-AB-DTB)(Consumer class action challenging advertising of “Copperfit” products);
- *Ortiz v. Ideavillage Products Corp.* (D. N.J. Case No. 2:15-cv-03365-ES-JAD)(Consumer class action challenging advertising of “Copperfit” products)
- *Puckett, et al. v. My Pillow, Inc.* (D. Minn. Case No. 17-cv-00029-MJD-BRT)(Consumer class action challenging “buy one get one free” pricing practices of consumer products company);
- *Rosales v. Wellnx Life Sciences Inc.* (Cal. Super. Ct. Case No. BC534808) (Consumer class action challenging the labeling of gummy weight loss supplement);
- *Rosenbloom v. Telebrands Corp.* (D.N.J. Case No. 2:19-cv-17872-BRM-JAD)(Consumer class action challenging alleged unauthorized charges for Everyday Savings Plan);

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- *Wuest v. My Pillow, Inc.* (N.D. Cal. Case No. CV18-03658-WHA)(Consumer class action alleging violations of California Invasion of Privacy Law);
- *Young, et al. v. Platinum US Distribution, Inc.* (N.D. Cal. Case No. 3:16-CV-06522-VC)(Class action alleging misleading advertising of “Slimquick” dietary supplement).

Since the firm’s founding in 2010, BF has prosecuted several class actions on behalf of consumers. The firm has secured class action settlements recovering millions of dollars for consumers in addition to injunctive relief that changed defendants’ business practices. BF has appointed as lead or co-lead plaintiff’s counsel, including in the following matters:

- *Attlesey, et al. v. Optimum Nutrition, Inc.* (Cal. Super. Ct. Case No. BC484769) (Consumer class action challenging defendant’s false and deceptive advertising of protein powder products. Obtained nationwide common fund settlement securing restitution and advertising and labeling changes for multiple products regarding the ingredient Aminogen.)
- *Burmeister v. NAC Marketing, LLC* (Cal. Super. Ct. Case No. CIVDS1213282)(Consumer class action challenging defendant’s false and deceptive advertising of the Ageless Male dietary supplement. Obtained nationwide settlement providing consumers the ability to claim full restitution, reformulation of the product, and agreement to discontinue certain advertising claims);
- *Keller v. Gaspari Nutrition, Inc.* (C.D. Cal. Case No. CV11-06158-GAF-SHx) (Consumer class action alleging that Novadex XT dietary supplement was illegally marketed and sold with “non-dietary” ingredient. Obtained nationwide common fund settlement securing restitution, destruction of supplies of offending products, and reformulated products for consumers.)
- *Steiner, et al. v. Rawlings Sporting Goods Co., Inc.* (D.N.J. Case No. CV12-2531-MCA) Consumer class action challenging advertising claims for the Rawlings Power Balance Bracelet. Obtained nationwide settlement.)
- *Taromina, et al. v. Gaspari Nutrition, Inc.* (C.D. Cal. Case No. CV12-05424-JAK-MANx) (Consumer class action alleging that Spirodex dietary supplement was illegally marketed and sold with “non-dietary” ingredient. Obtained nationwide settlement securing restitution and agreement to discontinue sale of product and DMAA ingredient)
- *Wike v. HCG Platinum, LLC, et al.* (Cal. Super. Case No. BC451080) (Consumer class action alleging false and misleading weight loss claims for the HCG Platinum homeopathic product. Obtained nationwide settlement securing full restitution for consumers and injunctive relief.)

ATTORNEY BIOGRAPHIES

Donald A. Beshada

Prior to forming BF with Mr. Farnese in 2010, Mr. Beshada was equity partner with the national law firm of Drinker, Biddle & Reath LLP (now Faegre Drinker Biddle & Reath LLP). For nearly twenty-five years, his practice has focused on complex commercial litigation. He has served as lead defense counsel to several corporations in consumer and employment class actions in state and federal courts throughout the country. In addition, Mr. Beshada has extensive experience on the plaintiffs' side of the practice. He has tried complex commercial cases to verdict in state and federal court, including cases involving allegations of false advertising. For the better part of the last fifteen years, his practice has focused on the litigation (both private and regulatory) of advertising claims for consumer products, dietary supplements, and "as-seen-on-TV" products.

He has represented companies and corporate officers in state and federal regulatory proceedings, including governmental enforcement actions under state consumer fraud statutes, litigation and commercial arbitrations. He regularly is asked to speak on the topics of class actions and advertising law. Most recently, he presented at the 2019 Antitrust & Consumer Protection In-House Institute sponsored by the ABA's Section of Antitrust Law.

Mr. Beshada is a member of the state bar of New Jersey and is admitted to practice before the United States District Court for the District of New Jersey.

Peter J. Farnese

Mr. Farnese founded BF with Mr. Beshada in 2010. For over thirteen years, Mr. Farnese's practice has focused, almost exclusively, on the prosecution and defense of consumer class actions. He has experience in litigation involving direct response advertising, as well as the advertising of dietary supplements, cosmetics, and other health-related products. In addition to his class action practice, Mr. Farnese maintains an active intellectual property litigation practice.

Mr. Farnese graduated from the University of Notre Dame and earned his law degree from Pepperdine University School of Law. During law school, he was research assistant to Professor Janet E. Kerr for the article, "Sustainability Meets Profitability: The Convenient Truth of How the Business Judgment Rule Protects a Board's Decision to Engage in Social Entrepreneurship," 29 *Cardozo L. Rev.* 623 (2007). Before beginning his practice, Mr. Farnese served as a judicial extern to the Honorable Marjorie O. Rendell of the United States Court of Appeals for the Third Circuit.

From 2015-2017, Mr. Farnese was included on the list of Southern California "Rising Stars" in Class Actions by *Super Lawyers* Magazine published by Thomson Reuters. He has been a contributor to "Advertising Disputes & Litigation and Consumer Protection Committees' Recent Litigation Developments" - a publication by the American Bar Association Section of Antitrust Law, which summarizes the latest court decisions and filings affecting advertising law.

Mr. Farnese is a member of the state bar of California and is admitted to practice before the United States District Courts for the Central, Eastern, Northern, and Southern Districts of California, as well as the United States Court of Appeals for the Ninth Circuit.

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2021, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to the email addresses registered in the CM/ECF system.

Executed on December 17, 2021, at Los Angeles, California.

By: s/ Peter J. Farnese
Peter J. Farnese

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