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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

EMMA BRENNER, JONATHON
GRINDELL, ADRIANNE HIRKA,
ADDISON HORINE, JESSICA TORRES,
CONSTANCE COFFIN, RAY GLASS,
HARVEY SITNICK, CINDY PRINCE,
KAILEE CENIS, SUZY RAMIREZ, JASON
MILLER, TODD COOK, LAURI
SINCAVAGE, PATRICK DECOLA, MISTY
STEMPLE, TRAVIS WEAVER, RAYONA
YOUNG, and MICHAEL MORELLI,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

KEVITA, INC., California company

Defendant.

CASE NO. 56-2017-00502340-CU-FR-VTA

**MEMORANDUM OF POINTS IN SUPPORT
OF ATTORNEYS FEES, COSTS &
SERVICE PAYMENT**

ASSIGNED FOR ALL PURPOSES TO:

HON. MARK S. BORRELL

DEPARTMENT 40

HEARING:

Date: January 20, 2021

Time: 8:30 a.m.

Dept: 40

Action Filed: October 4, 2017

Trial Date: None Set

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I. INTRODUCTION

This is a class action against defendant KeVita Inc. (“KeVita” or “Defendant”), currently brought on behalf of all persons in the United States and all U.S. territories who purchased KeVita Master Brew Kombucha beverages. Plaintiffs Emma Brenner, Adrienne Hirka, Addison Horine, Jessica Torres, Constance Coffin, Ray Glass, Harvey Sitnick, Cindy Prince, Kailee Cenis, Suzy Ramirez, Jason Miller, Todd Cook, Lauri Sincavage, Patrick Decola, Misty Stemple, Travis Weaver, Rayona Young, and Michael Morelli (“Plaintiffs”) challenged the sale, labeling, marketing, distribution, manufacturing, formulation, and advertising for Defendants’ Master Brew Kombucha. Plaintiffs filed this litigation alleging violations of various consumer protection statutes seeking monetary and injunctive relief.

After more than three contested years of litigation, including double-digit depositions spanning the country and more than One Hundred Thousand Dollars incurred without any compensation whatsoever (and at the risk of loss), Plaintiffs have presented a settlement to the Court which accomplished both of the main objections of the litigation. The settlement provides meaningful monetary relief whereby members of the Settlement Class are eligible to recover a maximum of Sixty Dollars (\$60) each if they submit proof of purchase and up to Nine Dollars (\$9) each without submitting any proof of purchase. (Declaration of Kiley Lynn Grombacher (“Grombacher Decl.”) at Ex 1, Settlement Agreement at ¶¶49.)

Additionally, KeVita has executed label modifications including the addition of language that the product is pasteurized and the live probiotics in the product are added or supplemented post-pasteurization. Grombacher Decl. at ¶47.

By this motion, Plaintiffs respectfully apply for an award of attorney’s fees, reimbursement of litigation costs, and approval of class representative service payments as follows:

- Attorneys’ Fees- Seven Hundred Six Thousand Six Hundred Thirty-One Dollars and Four Cents;
- Reimbursement of Costs- One Hundred Three Thousand Sixty-Eight Dollars and Ninety-Six Cents;
- Initiating Plaintiff Service Payment- Fifteen Thousand Dollars;

- Deposed Plaintiff Service Payment- Ten Thousand Dollars per deposed plaintiff¹
- Remaining Plaintiff Service Award- Five Thousand Dollars.

Plaintiffs’ ability to request these amounts was negotiated with the assistance of a well-respected mediator only after the parties had agreed on the material terms of the settlement. Given that this is not a common fund settlement, these amounts shall be paid separate and apart from the settlement monies to the class members and any reduction in the payments sought shall not increase (or in any manner affect) the amounts paid to members of the Settlement Class. As discussed below, the amounts sought are commensurate with those approved by California Courts and Plaintiffs respectfully request that this Court grant their motion in its entirety.

II. RELEVANT FACTUAL BACKGROUND

A. Brief Overview of Litigation

On October 4, 2017, Plaintiff Emma Brenner (“Plaintiff Brenner”) filed a putative class action lawsuit against KeVita, Inc. and PepsiCo, Inc. in the Superior Court of California for the County of Ventura, Case No. 56-2017-00502340-CU-VTA (the “Action”), which alleged violations of California’s Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) (the “UCL”), California’s False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*) (the “FAL”), California’s Consumer Legal Remedies Act (Cal. Civ. Code § 1750) (the “CLRA”), various consumer protection statutes throughout the United States, unjust enrichment, breach of express warranty, breach of implied warranty, and negligent misrepresentation that related to, *inter alia*, the sale, advertising, marketing, labeling, distribution, and manufacturing of KeVita Master Brew Kombucha products (the “Product” or “Products”) on behalf of a putative nationwide class of consumers, as well as numerous putative subclasses (the “Initial Complaint”).

On June 12, 2018, Plaintiff Brenner filed a Second Amended Complaint adding Jonathon Grindell, Adrienne Hirka, Addison Horine, Jessica Torres, Constance Coffin, Ray Glass, Harvey

¹ The following plaintiffs, in addition to Ms. Brenner, were deposed: Jessica Torres, Constance Coffin, Ray Glass, Harvey Sitnick, Cindy Prince, Kailee Cenis, Suzy Ramirez, Lauri Sincavage, and Rayona Young.

1 Sitnick, Cindy Prince, Kailee Cenis, Suzy Ramirez, Jason Miller, Todd Cook, Lauri Sincavage,
2 Patrick DeCola, Misty Stemple, Travis Weaver, Rayona Young, and Michael Morelli as named
3 Plaintiffs, and adding several putative subclasses under the consumer protection laws of various
4 states (the “Second Amended Complaint”).

5 Defendant filed demurrers to Plaintiffs’ Second Amended Complaint, which Plaintiffs
6 opposed and the Court denied on September 12, 2018. On February 21, 2019, after filing a motion to
7 amend that was later mooted by agreement of the parties, Plaintiffs filed the Third Amended
8 Complaint, which is the operative pleading in the Action and which amended Plaintiffs’ alleged class
9 period (the “Third Amended Complaint” or “Complaint”).

10 Plaintiffs, by and through their counsel, conducted a robust investigation into the facts and
11 law relating to the matters alleged in their Complaint, including into (i) marketing, advertising, and
12 labeling of the Products; (ii) sales, pricing, consumer, distribution, and financial data; and
13 (iii) Plaintiffs’ own documents and information relating to the Products. This investigation included
14 extensive pretrial discovery (including the production of thousands of documents, and written
15 responses to multiple sets of written discovery each containing dozens of written discovery requests,
16 including special interrogatories and requests for production); interviews of witnesses and the
17 evaluation of documents and information provided by Defendant; consultation with experts; as well
18 as legal research as to the strength and sufficiency of their claims and defenses, and appropriateness
19 of class certification.

20 At all times in this litigation, Defendant has vigorously defended against Plaintiffs’
21 allegations. This defense included collecting and reviewing thousands of documents in response to
22 Plaintiffs’ requests for document production; propounding requests for production, interrogatories,
23 and requests for admission on Plaintiffs and evaluating the documents and information provided in
24 response; deposing ten of the Plaintiffs; interviewing numerous witnesses and consulting with
25 experts; and conducting legal research as to the sufficiency of Plaintiffs’ claims and the
26 appropriateness of class certification.

27 The Parties were represented by experienced class action counsel throughout the negotiations
28 resulting in this Settlement. Plaintiffs are represented by Bradley/Grombacher LLP, which employs

1 seasoned class action attorneys who regularly litigate class actions through certification and on the
2 merits, and have considerable experience settling class actions. Defendant is represented by Gibson,
3 Dunn & Crutcher LLP, a renowned national defense firm.

4 **B. Settlement Negotiations- The Requested Fee Award and Service Payments**
5 **Resulted from Arm’s Length Negotiations**

6 The Parties engaged in extensive arms’-length settlement negotiations. After several rounds
7 of bilateral discussions, on June 24, 2019, the Parties attended an in-person mediation with a
8 respected mediator, the Honorable Richard Kramer (Ret.). Judge Kramer helped to manage the
9 Parties’ negotiations, and, after more than twelve hours of negotiation, the Parties reached agreement
10 at the mediation. Before and during these settlement discussions and mediation, the Parties had an
11 arm’s-length exchange of information sufficient to permit both parties and their counsel to evaluate
12 the claims and potential defenses and to meaningfully conduct informed settlement discussions.

13 The Settlement Agreement provides that KeVita not to oppose Class Counsel’s application for
14 Attorneys’ Fees and Expenses or undermine that request or solicit others to do so, to the extent that
15 Class Counsel does not request a total of more than Seven Hundred Thousand Dollars and Zero Cents
16 (\$700,000.00). The Agreement further provides that Class Counsel may apply for up to an additional
17 One Hundred and Thirty-Five Thousand Dollars and Zero Cents (\$135,000.00) in Attorneys’ Fees
18 and Expenses, and Defendant reserved the right to oppose Plaintiffs’ application. Class Counsel
19 agreed not to seek or accept more than eight hundred and Thirty-Five Thousand Dollars and Zero
20 Cents (\$835,000.00) in Attorneys’ Fees and Expenses.

21 The fee provision was negotiated after the agreement had been reached on the key deal terms-
22 namely the class-wide monetary relief and the injunctive label modifications and represents an
23 amount that the Parties regarded as reasonable based on consideration of, amongst other things, the
24 benefits achieved for the Class, the time and effort devoted to the litigation and applicable legal
25 authority. Grombacher Decl. at ¶57. The interests of the Class are promoted by a fee that was
26 negotiated after all class-wide relief was determined because, once the material terms of the
27 Settlement were agreed upon, the Parties’ agreement would not reduce the amount of the Class’
28 benefit. Grombacher Decl. at ¶24.

1 Class Counsel remained ready to litigate the attorneys' fees issue if the Parties could not reach
2 an agreement and, indeed, may litigate at least a portion of such fees if KeVita elects to oppose a
3 portion of this application as its right under the Settlement Agreement. Id at ¶65.

4 Presently, Class Counsel's expenses are One Hundred Five Thousand Nine Hundred Forty-
5 Three Dollars and Ninety-Six Cents (\$103,368.96). Cal. R. Court 3.769(b). Defendant agreed to pay
6 its own fees and costs incurred in the Action.

7 KeVita has also agreed to pay up to an aggregate total of One Hundred and Fifty Thousand
8 Dollars and Zero Cents (\$150,000.00) for service payments to the Plaintiffs, in individual amounts to
9 be determined by the Court based upon a matrix that accounts for, *inter alia*, time spent prosecuting
10 the action and benefits conferred. As noted above, the fee award and the service payments (including
11 the service payment matrix) were agreed upon under the auspices and with the assistance of the
12 Honorable Richard Kramer.

13 III. ARGUMENT

14 A. PLAINTIFFS ARE ENTITLED TO AN AWARD OF ATTORNEY'S FEES 15 AND COSTS UNDER THE CONSUMERS LEGAL REMEDIES ACT AND 16 THE PRIVATE ATTORNEY GENERAL STATUTE

17 1. General Entitlement to Recovery of Attorney's Fees Under the Consumers 18 Legal Remedies Act, Cal. Civ. Code § 1780(e)

19 Under the Consumer Legal Remedies Act ("CLRA"), one of the statutory claims Plaintiffs
20 alleged in this case, "[t]he court shall award court costs and attorney's fees to a prevailing Plaintiffs in
21 litigation filed pursuant to [the CLRA]." Cal. Civ. Code § 1780(e)². As the California Supreme Court
22 has observed, "the availability of costs and attorneys fees to prevailing plaintiffs is integral to making
23 the CLRA an effective piece of consumer legislation, increasing the financial feasibility of bringing
24 suits under the statute." (*Broughton v. Cigna Healthplans*, 21 Cal. 4th 1066, 1085 (1999)); see also
25 *Hayward v. Ventura Volvo*, 108 Cal. App. 4th 509 (2003) ("The provision for recovery of attorney's
26 fees allows consumers to pursue remedies in cases as here, where the compensatory damages are

27 _____
28 ² "Under California law, '[i]t is undisputed that relief obtained through a 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).

1 relatively modest.”.) “Accordingly, an award of attorney fees to ‘a prevailing Plaintiffs in an action
2 brought pursuant to the CLRA is mandatory, even where the litigation is resolved by a pre-trial
3 settlement agreement.” (*Kim v. Euromotors West/The Auto Gallery*, 149 Cal. App. 4th 170, 178-79
4 (2007).)

5 California courts have adopted two approaches to determining when a party is a “prevailing
6 plaintiff” entitled to a fee award under the CLRA. The first approach borrows from Section 1032 of
7 the California Code of Civil Procedure and determines that a Plaintiffs is the prevailing party if he or
8 she obtained a “net monetary recovery.” (*Kim*, 149 Cal. App. 4th at 179.) The second approach
9 determines prevailing party status based on whether a party succeeded on a practical level. (*Id.*; see
10 also *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 150-51 (2006).) Under this
11 pragmatic approach, plaintiffs are considered prevailing parties “if they succeed on any significant
12 issue in litigation which achieves some of the benefit the parties sought in bringing suit.” (*Graciano*,
13 144 Cal. App. 4th at 154 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)) (emphasis added
14 in *Graciano*.) Under either approach for determining prevailing party status, Plaintiffs qualify for an
15 attorneys' fee award here. Having achieved compensation for Class members through the Settlement,
16 Plaintiffs accomplished their primary litigation objective and thus are prevailing parties under both
17 the “net monetary recovery” approach and *Graciano's* pragmatic approach.

18 **2. The Private Attorney General Statute, Cal. Code Civ. P. § 1021.5**

19 Plaintiffs are also entitled to a fee award under Code of Civil Procedure § 1021.5, which the
20 California Legislature enacted to codify the private attorney general doctrine previously developed by
21 the courts. (*Vasquez v. State of California*, 45 Cal. 4th 243, 250 (2008).) The fundamental objective
22 of the private attorney general doctrine is “to encourage suits enforcing public policies by providing
23 substantial attorney fees to successful litigants in such cases.” (*Id.*) Accordingly, Section 1021.5
24 authorizes an award of attorney fees to a “successful party” in any action that “has resulted in the
25 enforcement of an important right affecting the public interest if: (a) a significant benefit, whether
26 pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b)
27 the necessity and financial burden of private enforcement are such as to make the award appropriate,
28 and (c) such fees should not in the interest of justice be paid out of the recovery, if any.” (Code of

1 Civ. Proc. § 1021.5; see also *Lyons v. Chinese Hosp. Ass'n*, 136 Cal. App. 4th 1331, 1344 (2006)
2 (“Although section 1021.5 is phrased in permissive terms (the court ‘may’ award), the discretion to
3 deny fees to a party that meets its terms is quite limited.”.) Plaintiffs satisfies request all
4 requirements for an award of attorney fees under Section 1021.5:

5 • Plaintiffs qualify as “successful parties” under the statute for the same reasons they qualify
6 as “prevailing plaintiffs” under the CLRA- they have achieved one of the primary benefits sought in
7 bringing the lawsuit. (See *Lyons*, 136 Cal. App. 4th at 1346 (“A ‘successful’ party means a
8 ‘prevailing’ party.”).)

9 • Plaintiffs’ case has conferred a significant benefit on a large class of persons by making
10 monetary relief available to scores of consumers who bought the Products. Plaintiffs have also
11 conferred a significant benefit on the public by procuring label modifications. (See *Graham v.*
12 *Daimler Chrysler Corp.*, 34 Cal.4th 553, 578 (2004) (“It is well settled that attorney fees under
13 section 1021.5 may be awarded for consumer class action suits benefiting a large number of
14 people.”).)

15 • Without the incentive of an attorney fees award, Plaintiffs and Settlement Class Members
16 could not have afforded lawyers to litigate this case; their out-of-pocket losses were not significant
17 enough to hire a lawyer and litigate an individual suit. (See *Ryan v. California Interscholastic*
18 *Federation*, 94 Cal. App. 4th 1033, 1044 (2001) (“As to the necessity and financial burden of private
19 enforcement, an award is appropriate where the cost of the legal victory transcends the claimant's
20 personal interest; in other words, where the burden of pursuing the litigation is out of proportion to
21 the plaintiffs individual stake in the matter.”).)

22 • Finally, this is not a case where, in the interests of justice, attorney fees should be paid from
23 the recovery. There is no common fund from which Plaintiffs’ counsel could be paid, and Defendant
24 has agreed to pay up to \$700,00 without opposition, and up to \$835,000 subject to the right to oppose
25 the additional amounts, for attorney fees and expenses, subject to Court approval.

26 **B. GIVEN THE SIGNIFICANT RELIEF OBTAINED FOR THE CLASS, THE**
27 **ATTORNEYS' FEES REQUESTED ARE REASONABLE AND WARRANTED**
28

1 To determine the amount of the fees to be awarded under the fee-shifting statutes at issue
2 here, California courts apply the lodestar/multiplier method, particularly here where there is no
3 common fund from which to seek fees. (See *Roos v. Honeywell Internat., Inc.*, 241 Cal. App. 4th
4 1472, 1490 (2015) (“In fee-shifting cases, requests for attorney fees are typically measured under the
5 lodestar method.”); *Meister v. Regents of Univ. of California*, 67 Cal. App. 4th 437, 448-49 (1998)
6 (“[T]he California Supreme Court intended its lodestar method to apply to a statutory attorney’s fee
7 award unless the statutory authorization for the award provided for another method of calculation”);
8 *Lealao v. Beneficial California, Inc.* 82 Cal.App.4th 19, 26 (2000) (“[T]he primary method for
9 establishing the amount of ‘reasonable’ attorney fees [in fee-shifting cases] is the lodestar method”).
10 In addition, “[f]ees awarded pursuant to [Cal. Civ. Code] § 1021.5 are determined under the lodestar
11 method.” (*Seebrook v. The Children’s Place Retail Stores, Inc.*, No. 11-837-CW, 2013 WL 6326487,
12 at *2 (N.D. Cal. Dec. 4, 2013).

13 Under this approach: “[A] court assessing attorney fees begins with a touchstone or lodestar
14 figure, based on the ‘careful compilation of the time spent and reasonable hourly compensation of
15 each attorney... involved in the presentation of the case.’ ” (*Ketchum v. Moses* (2001) 24 Cal.4th
16 1122, 1131-32.) The lodestar is produced by multiplying the number of hours reasonably expended
17 by counsel by a reasonable hourly rate. (*Wershba v. Apple Computer Inc.* (2001) 91 Cal.App.4th 224,
18 255.)

19 Once the lodestar is determined, the Court may increase that amount by applying a multiplier
20 to take into account a variety of factors. (*Id.*; see also *Thayer v. Wells Fargo Bank, NA* (2001) 92
21 Cal.App.4th 819, 833.) The purpose of the multiplier is to fix the attorneys’ fees at the fair market
22 value for that action. (See *Ketchum*, 24 Cal.4th at 1133 (“A lawyer who bears both the risk of not
23 being paid and provides legal services is not receiving the fair market value of his work if he is paid
24 only for the second of these functions.”).) “In effect, the court determines, retrospectively, whether
25 the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation
26 of the unadorned lodestar in order to approximate the fair market rate for such services.” (*Id.*)

27 In determining the amount of the multiplier, the Court is guided by the factors set forth in
28 *Serrano v. Priest* (1971) 20 Cal.3d 25, which include: (1) the benefits conferred on the class; (2) the

1 novelty and difficulty of the issues involved and the skill displayed in presenting them; (3) the extent
2 to which the nature of the litigation precluded other employment; and (4) the contingent nature of the
3 fee award. (*Id.* at 49.) Here, Class Counsel seeks compensation for 1,073.40 hours spent in this
4 action³.

5 **1. The Amount of Time Spent on this Action by Class Counsel Was Reasonable.**

6 As can be seen from the declaration of Kiley Lynn Grombacher, Class Counsel devoted
7 significant time and effort to this litigation, including, *inter alia*, successfully opposing a motion to
8 dismiss, drafting several iterations of the complaint and other pleadings, moving for leave the file
9 such amendments, taking and responding to multiple sets of comprehensive written discovery,
10 defending client depositions, reviewing thousands of pages of discovery, communicating with and
11 informally surveying thousands of potential class members, interviewing just shy of one hundred
12 putative class members, and conferring with multiple experts in various fields of relevancy.
13 Grombacher Decl., ¶¶13, 15, 16, 17. And, after engaging in a more than twelve-hour mediation that
14 included several months of negotiation, Class Counsel was able to secure this Settlement, which the
15 Court preliminarily approved on August 17, 2020. Class Counsel deftly balanced vigorous litigation
16 of this case with the benefits of minimizing unnecessary work – all with the goal of achieving the
17 best possible result for the Class. (Grombacher Decl. at ¶ 77.)

18 Counsel endeavored to divide tasks efficiently and avoid duplicative work. *Moreno v. City of*
19 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (“It must also be kept in mind that lawyers are not
20 likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The
21 payoff is too uncertain, as to both the result and the amount of the fee.”) Indeed, Class Counsel
22 vigorously litigated this case in the face of considerable risk that a class might not be certified, and
23 thus, had no incentive to devote unnecessary time to this matter. Grombacher Decl., ¶ 8. This remains
24 _____

25
26 ³Grombacher Decl. at ¶62. It should be noted that Moreover, Class Counsel’s lodestar does not
27 include the additional time that they will need to devote to implementing the Settlement (should the
28 Court grant final approval), which will include assisting Class Members with claims, communicating
with KeVita and the Settlement Administrator and overseeing settlement administration generally,
work spent on any appeal if necessary, and taking further steps to close out the litigation. Judging by
previous experience, these responsibilities will require approximately 100 hours of work.
Grombacher Decl., ¶ 42

1 true for work performed even after a settlement in principle was reached. (*Willner v. Manpower Inc.*,
2 No. 11-CV-02846-JST, 2015 WL 3863625, at *3 (N.D. Cal. June 22, 2015) (holding that “if the
3 settlement is not approved, ‘there is risk that the Court may deny class certification or, following
4 initial certification, subsequently decertify the class based on unanticipated individualized issues or
5 manageability concerns.’”) (citation omitted).)

6 In sum, the number of hours that Class Counsel devoted to this litigation are reasonable,
7 particularly in light of the excellent result obtained on behalf of the Class. (*Moreno*, 534 F.3d at 1112
8 (“[b]y and large, the court should defer to the winning lawyer’s professional judgment as to how
9 much time he was required to spend on the case; after all, he won, and might not have, had he been
10 more of a slacker.”).)

11 **2. The Hourly Rates Are Reasonable.**

12 At the hourly rates currently charged by Plaintiffs’ counsel, their lodestar is \$690,362.50
13 (Grombacher Decl. at ¶62.) Calculating the lodestar using Plaintiffs’ current billing rates is
14 appropriate given the deferred nature of counsel’s compensation. (*LeBlanc-Sternberg v. Fletcher* (2nd
15 Cir. 1998) 143 F.3d 748, 764 (“[C]urrent rates, rather than historical rates, should be applied in order
16 to compensate for the delay in payment.”) (citing *Missouri v. Jenkins* (1989) 491 U.S. 274, 283-84);
17 *Fischel v. Equitable Life Assur. Soc’y of the United States* (9th Cir. 2002) 307 F.3d 997, 1010
18 (attorneys must be compensated for delay in payment); *In re Washington Pub. Power Supply Sys.*
19 *Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291, 1305 (explaining that the court may compensate delay in
20 payment “by applying the attorneys’ current rates to all hours billed during the course of the
21 litigation.”).)

22 In making this calculation, Plaintiffs’ counsel employed reasonable hourly rates. “The
23 reasonable hourly rate is that prevailing in the community for similar work.” (*PLCM Group, Inc. v.*
24 *Drexler* (2000) 22 Cal.4th 1084, 1095.) Here, Class Counsel’s hourly rates range from \$125-\$825.
25 Grombacher Decl. at ¶68. These rates are consistent with the amounts charged by attorneys engaged
26 in comparable law practice in Southern California. Grombacher Decl. at ¶ 69, Exs. 3-6.

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1 **3. A Modest Multiplier is Appropriate**

2 The requested fee amount is below the range commonly approved by California courts.
3 Finally, the overall reasonableness of the very modest multiplier in an amount just over 1 is
4 underscored by the fact that higher multipliers are commonly awarded in similar cases. For wholly-
5 contingent consumer class actions like this one, California courts have approved fee awards with
6 multipliers of 2 and even higher. (*Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001)
7 (“Multipliers can range from 2 to 4 or even higher.”); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43,
8 66 (2008) (same).)

9 In *Wershba*, the court stated that “[m]ultipliers can range from 2 to 4 or even higher.”
10 (*Wershba*, 91 Cal.App.4th at 255; see also *City of Oakland v. Oakland Raiders* (1988) 203
11 Cal.App.3d 78 (affirming a multiplier of 2.34).) Numerous cases have applied a multiplier of between
12 4.5 and 12 to class counsel's lodestar. (*Glendora Community Redevelopment Agency v. Demeter*
13 (1984) 155 Cal.App.3d 465 (multiplier of 12 applied to counsel's hourly rate); *Wilson v. Bank of*
14 *America Nat'l Trust & Sav. Ass'n.* (Cal. Sup. Ct., Aug. 16, 1982) No. 643872 (multiplier of 10
15 applied to hourly rate) (cited in 3 Newberg on Class Actions, Attorneys' Fees § 14.03, p. 14-15 fn.
16 21).)

17 The requested fee is particularly justified here given that this is a large and complicated class
18 action. “The range of lodestar multipliers in large and complicated class actions runs from a low of
19 2.26 to a high of 4.5.” (*Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118 F.R.D. 534, 549, aff'd.
20 without op. (11th Cir. 1990) 899 F.2d 21(citations omitted).) “Most lodestar multiples awarded in
21 cases like this are between 3 and 4.” (*Id.* (listing cases).; see also *Arenson v. Board of Trade* (N.D.Ill.
22 1974) 372 F. Supp. 1349, 1358 (multiplier of 4) (cited in *Lealao v. Beneficial California Inc.* (2000)
23 82 Cal.App.4th 19, 42); *Craft v. County of San Bernardino* (C.D. Cal. Apr. 1, 2008) 624 F.Supp.2d
24 1113, 1123 (applying 5.2 multiplier).)

25 Accordingly, it is well within the Court's discretion, and appropriate here, to award fee
26 amount sought by Class Counsel particularly where there is virtually no multiplier necessary.

27 //

28 //

1 **4. Class Counsel Conferred Significant Benefits to a Large Class of Persons.**

2 Counsel who represents a class and produce a benefit for the class members are entitled to be
3 compensated for their services. The total value of the benefits to the class, i.e. the “success achieved,”
4 includes all of the positive results achieved by the litigation. (*Chavez v. Netflix, Inc.* (2008) 162
5 Cal.App.4th 43, 61 (explaining that the “success achieved” in a class settlement includes, inter alia,
6 the dollar value of the settlement, the absolute size of the class of persons who are eligible for the
7 benefit, and changes in company policies).) The settlement achieved by Class Counsel confers
8 substantial benefits on the class. Grombacher Decl. ¶¶ 27-32.

9 Turning first to the restitutionary recovery, the settlement benefits class members by
10 providing the opportunity to claim a significant cash refund of up to Sixty Dollars (\$60) per customer
11 (*not household*) with proof of purchase and up to Nine Dollars (\$9) per customer with proof of
12 purchase. (Settlement Agreement at ¶¶ 49.) There is no cap to these benefits. As such, the settlement
13 guarantees that Defendant will compensate members of the Class for money lost as a result of
14 Defendant's challenged conduct, in addition to implementing changes in their advertising and
15 marketing of the KeVita Master Brew Kombucha beverages. Accordingly, counsel's projected
16 lodestar and requested modest lodestar is reasonable, even without considering the substantial value
17 of the injunctive relief obtained by the Settlement. (*Linney v. Cellular Alaska Partnership* (N.D. Cal.
18 1997) 151 F.3d 1234 (where negotiated attorneys' fee payment of \$2,000,000 was one-third of
19 \$6,000,000 overall recovery, fees reasonable even if substantial value and benefit of injunctive relief
20 ignored).)

21 In addition to the monetary relief, Plaintiffs secured another important benefit: Defendant
22 agreed to make modifications to the labeling that go to the very heart of Plaintiffs claims in this
23 action. Grombacher Decl. ¶ 10. This modification in labeling information for KeVita Master Brew - a
24 market leader among kombucha beverage products - sets a standard for future representations
25 regarding other products, thereby providing long-lasting benefits. Plaintiffs' expert opines that the
26 value of such relief is between \$26-34,000,000 Boedeker Decl. at ¶17. The scope of the injunctive
27 relief coupled with its effects on the marketplace confirms the requested fee award is reasonable and
28 warranted. (*Chavez*, 162 Cal.App.4th at 61.)

1 **5. Novelty and Difficulty of The Issues Involved and Counsel's Skill In Presenting**
2 **Them Further Support the Fee Request.**

3 This case involves complicated issues related to preemption, class certification and the merits,
4 including establishing the materiality of the manufacturing claims. Additionally, the case would have
5 inevitably focused on complex, expert-intensive, scientific issues, and would have been reduced to a
6 classic battle of the experts over both the fact and degree of scientific substantiation, and the
7 calculation of class-wide damages. As such, Class Counsel spent a significant amount of time
8 preparing the case to navigate these novel and difficult issues. Grombacher Decl. ¶¶ 55, 61, 77.

9 Courts also consider the experience and skill of counsel in determining an appropriate fee
10 award. (*Serrano*, 20 Cal.3d ¶at 49; see also *Hanlon v. Chrysler Corp.* (9th Cir. 2008) 150 F.3d 1011,
11 1029.) Here, the reputation, experience and ability of Class Counsel were essential to the success of
12 this litigation. As forth in the declaration submitted herewith, Class Counsel have extensive
13 experience litigating class actions and other complex civil litigation-particularly litigation.
14 Grombacher Decl. at ¶¶ 48-55. Class Counsels' history of successfully prosecuting class actions made
15 particularly credible their commitment to pursue this litigation until they achieved a fair result for the
16 Class.

17 With respect to the instant action, Class Counsel has consistently displayed a high level of
18 skill regarding the complex legal issues presented in this matter. Class Counsel worked diligently
19 over a period of several months to craft a settlement that would ensure real and substantial benefits
20 for all class members. In doing so, Plaintiffs avoided years of delay associated with litigating the
21 case, as well as the risks and uncertainty inherent in taking the case to trial and ultimately collecting
22 upon a monetary judgment if Plaintiffs were to prevail.

23 **6. The Extent to Which the Nature of the Litigation Precluded Other**
24 **Employment By The Attorneys.**

25 From the very beginning, this nationwide class action has demanded a great deal of attention
26 from Class Counsel. Due to the considerable expenditure of time, effort and resources - including
27 significant pre- and post-filing investigations, preparation of discovery on a wide range of topics,
28 extensive consultation with consultants, and mediation - Plaintiffs' counsel were required on some

1 occasions to forego other employment in order to commit the necessary resources to the prosecution
2 of this case. Grombacher Decl. ¶ 63.

3 In the future, Class Counsel will devote additional time and resources to this litigation
4 assisting class members in the settlement claims process, monitoring the distribution of claims,
5 responding to class member inquiries, preparing and attending the final fairness hearing, and
6 responding to any settlement objectors (if any are filed) and formal appeals. Id. at ¶ 42. As such, the
7 requested fee is reasonable and appropriate, does not account for the additional time and resources
8 Plaintiffs' counsel will devote to this case as a result of these post-settlement activities.

9 **7. Contingent Nature of The Fee Award**

10 Fee enhancements are “necessary” to compensate for the risk of loss in contingency cases
11 brought on behalf of a class. (*Pellegrino v. Robert Half Int'l., Inc.* (2010) 182 Cal.App.4th 278, 292.)
12 By choosing to litigate a large-scaled class action against Defendants involving complex issues and
13 claims, Plaintiffs' counsel assumed significant risk. In the event that they did not succeed, Plaintiffs'
14 counsel bore a significant risk of losing substantial funds expended in litigating this costly and
15 expensive action. Given the contingent nature of the fee in this case, a straight lodestar request is
16 reasonable and certainly justified. (See *Rader v. Thrasher* (1962) 57 Cal.2d 244, 253 (“[A] contingent
17 fee contract, since it involves a gamble on the result, may properly provide for a larger compensation
18 than would otherwise be reasonable.”).

19 **IV. PLAINTIFFS' COUNSEL SHOULD BE AWARDED REIMBURSEMENT OF** 20 **LITIGATION COSTS AND EXPENSES**

21 Attorneys in a class action may be reimbursed for costs incurred “in the ordinary course of
22 prosecuting [a] case” in addition to attorneys' fees incurred. (*X-Ray Film Antitrust Litig.* (Cal. Sup.
23 Ct. Alameda County, Oct. 22, 1998) No. 960886, 1998 WL 1031494, at *11 (awarding class counsel
24 \$29,051.40 in costs and expenses); see also *In re Businessland Sec. Litig.* (N.D. Cal. June 14, 1991)
25 1991 WL 427887, at *3 (awarding class counsel \$90,574.78 in costs and expenses in addition to
26 attorneys' fees).)

27 Furthermore, California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.,
28 expressly allows plaintiffs to recoup their costs incurred during the litigation. The CLRA provides for

1 an award of court costs to Plaintiffs in addition to an award of attorney fees. (Cal. Civ. Code §
2 1780(e) (“[t]he court shall award court costs and attorney's fees to a prevailing plaintiff.”).)

3 To date, Plaintiffs’ counsel has incurred \$103,368.96 in costs. Here, Plaintiffs counsel's costs
4 and expenses include fees for filing, deposition, mediation, expert and consultant fees⁴. Grombacher
5 Decl. at ¶ 58. The current amounts do not include the costs and expenses Plaintiffs’ counsel expect to
6 incur after the filing of this Motion. Id. This request should be granted because all of the costs and
7 expenses were reasonably incurred and necessary given the complex nature and nationwide scope of
8 this case. Id.

9 **V.**

10 **THE PLAINTIFFS ARE ENTITLED TO THE SERVICE PAYMENTS SOUGHT**

11 **A. The Burden of Private Enforcement Justifies a Service Payment**

12 Both the necessity and financial burden of privately litigating this action make a fee award
13 appropriate. The “financial burden” criterion of Code Civil Proc. § 1021.5 is met when “the cost of
14 the claimant's legal victory transcends his or her personal interest, that is, when the necessity of
15 pursuing the lawsuit placed a burden on the plaintiff out of proportion to his or her individual stake in
16 the matter.” (*Woodland Hills Residents Assn., Inc. v. City Council*, 23 Cal. 3d 917, 941 (1979);
17 *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors*, 79 Cal. App. 4th 519,
18 505, 519 (2000) (“The issue, in short, is whether the cost of litigation is out of proportion to the
19 litigant's stake in the litigation.”); *Notrica v. State Compensation Ins. Fund* 70 Cal. App. 4th 911, 955
20 (1999).)

21 Here, Plaintiffs had little financial incentive to pursue this lawsuit, since their damages totaled
22 less than even the filing fee for a complaint. (See Plaintiff Declarations ¶6.) Such a meager award
23 would be wholly out of proportion to the attorneys' fees and costs they would have had to spend to
24 pursue this matter.

25 _____
26
27 ⁴ Class Counsel is not seeking reimbursement for any legal research, mileage or postage costs.
28

1 Accordingly, each of the factors for a fee award under § 1021.5 is satisfied here and the Court
2 should grant Plaintiff's motion for attorneys' fees.

3 **B. Time & Effort Expended by Plaintiff and Explanation of Risks**

4 Plaintiffs have been actively involved in this case for nearly three years (for Plaintiff Brenner
5 more than three years), and estimate having spent significant time litigating this action⁵. (*Cellphone*
6 *Termination Cases*, 186 Cal. App. 4th 1380, 1394-95 (2010) (approving \$10,00 enhancement award
7 supported by declaration attesting to the class representative's active involvement in the litigation); *cf.*
8 *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806-07 (2009) (refusing \$50,000
9 enhancement award support only by pro forma claims).)

10 In addition, ten of the named Plaintiffs sat for depositions in in this case⁶. Those depositions
11 required that the Plaintiffs travel (for example, Ms. Brenner was in school in Chico but traveled to
12 Los Angeles, nearly 500 miles away, for her deposition, at her own expense)⁷. The depositions also
13 required that many of the plaintiffs take days off work, reschedule important business activities
14 and/or arrange for childcare. Each deposed plaintiff met extensively with counsel, both in-person and
15 telephonically, to prepare for the full-day depositions and discuss them afterwards⁸. Moreover, each
16 deposed plaintiff was also required to spend time reviewing and approving the transcript of the
17 depositions⁹.

18 _____
19 ⁵ Brenner Decl. at ¶¶ 17; Grombacher Decl. ¶¶78-80; Hirka Decl. ¶¶ 13; Horine Decl. at ¶¶ 13; Torres
20 Decl. at ¶¶ 13; Coffin Decl. ¶¶ 13; Glass ¶¶ 13 Sitnick Decl. ¶¶ 13; Prince Decl. ¶¶ 14; Cenis Decl. ¶¶
21 13; Ramirez Decl. ¶¶ 13; Miller Decl. ¶¶ 14; Cook Decl. ¶¶ 14; Sincavage Decl. ¶¶ 13; Decola ¶¶ 14;
Stemple ¶¶ 14; Weaver ¶¶ 14; Young Decl. ¶¶ 13, and Morelli Decl ¶¶ 14.

22 ⁶ Brenner Decl. at ¶¶ 16-17; Grombacher Decl. ¶¶ 17; Torres Decl. at ¶¶ 13-14; Coffin Decl. ¶¶13;
23 Glass ¶¶13-14; Sitnick Decl. ¶¶13; Prince Decl. ¶¶ 14-15; , Cenis Decl. ¶¶13-14; Ramirez Decl.
¶¶13-14; Sincavage Decl. ¶¶13-14; Young Decl. ¶¶13-14.

24 ⁷ Grombacher Decl ¶¶ 17.; Brenner Decl. ¶¶ 16

25 ⁸ Brenner Decl. at ¶¶16-17; Grombacher Decl. ¶78; Torres Decl. at 13-14; Coffin Decl. 13; Glass
26 ¶¶13-14; Sitnick Decl. ¶¶13; Prince Decl. ¶¶ 14-15; Cenis Decl. ¶¶13-14; Ramirez Decl. ¶¶13-14;
Sincavage Decl. ¶¶13-14; Young Decl. ¶¶13-14.

27 ⁹ Brenner Decl. at ¶¶ 17; Grombacher Decl. ¶¶78-79; Torres Decl. at 13; Coffin Decl. ¶¶ 13; Glass
28 ¶¶13; Sitnick Decl. ¶¶13; Prince Decl. ¶¶14; Cenis Decl. ¶¶13; Ramirez Decl. ¶¶13; Sincavage Decl.
¶¶13; Young Decl. ¶¶13.

1 Throughout this case, each named plaintiff has been required to assist in discussing and
2 reviewing the pleadings in this action¹⁰. Each and every plaintiff also spent time responding to
3 multiple sets of Requests for production, interrogatories and requests for admission, including
4 supplemental responses thereto as well¹¹. Indeed, some of the discovery sought personal information
5 about the Plaintiffs including medical history and personal preferences and priorities. Plaintiffs
6 cooperated and provided meaningful responses to all such discovery in order to move the litigation
7 forward.

8 Moreover, throughout the litigation, Plaintiffs were steadfast in all settlement negotiations,
9 ensuring that they did not personally benefit at the expense of the unnamed class members. Brenner
10 Decl. ¶x, Grombacher Decl. ¶x.

11 Like Plaintiffs' counsel, Plaintiffs expended these significant efforts over the last three years
12 without any compensation whatsoever and at the risk of loss. Plaintiffs faced the risk of possible
13 negative publicity or notoriety, in addition to the risk of liability for defendant's costs if defendant
14 were to prevail in this action. Grombacher Decl. ¶ 9. Based on their significant time and effort, and
15 the financial and other risks undertaken by Plaintiffs, an enhancement award is appropriate.

16 **C. The Class Representative Enhancement is Reasonable.**

17 Plaintiff's request for an amount of \$15,000 for Ms. Brenner, \$10,000 for Plaintiffs who were
18 deposed, and \$5,000 for non-deposed Plaintiffs are commensurate with awards approved in this Court
19 and should be approved. See *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App.
20 4th 399,412 (2010); *Radcliffe v. Experian Information Solutions, Inc.*, 715 F.3d 1157, 1165 (9th Cir.
21 2013) Grombacher Decl ¶¶80-81; Ex 8.

22 _____
23
24 ¹⁰ Brenner Decl. at ¶¶17; Grombacher Decl. ¶¶78-79; Hirka Decl. ¶¶13; Horine Decl. at ¶¶13; Torres
25 Decl. at 13; Coffin Decl. 13; Glass ¶¶13; Sitnick Decl. ¶¶13; Prince Decl. ¶¶ 13; Cenis Decl.
¶¶14; Ramirez Decl. ¶¶13; Miller Decl. ¶¶14; Cook Decl. ¶¶14; Sincavage Decl. ¶¶13; Decola
¶¶14; Stemple ¶¶14; Weaver ¶¶14; Young Decl. ¶¶13, and Morelli Decl ¶¶13.

26 ¹¹ Brenner Decl. at ¶¶17; Grombacher Decl. ¶¶78-79; Hirka Decl. ¶¶13; Horine Decl. at ¶¶13; Torres
27 Decl. at 13; Coffin Decl. 13; Glass ¶¶13; Sitnick Decl. ¶¶13; Prince Decl. ¶¶ 13; Cenis Decl.
28 ¶¶14; Ramirez Decl. ¶¶13; Miller Decl. ¶¶14; Cook Decl. ¶¶14; Sincavage Decl. ¶¶13; Decola
¶¶14; Stemple ¶¶14; Weaver ¶¶14; Young Decl. ¶¶13, and Morelli Decl ¶¶13

1 As a direct result of Plaintiffs' efforts, this case has enhanced the rights of thousands of
2 consumers nationwide and effectuated the purpose of Cal. Bus. & Prof. Code § 17600. Plaintiffs
3 obtained a settlement for class members worth tens of millions of dollars, as set forth above. Judged
4 against this significant relief and their efforts in this case, the \$5,000, \$10,000 and \$15,000
5 enhancement award to Plaintiffs are entirely reasonable.

6 KeVita does not oppose the service awards, see Settlement Agreement § 2.5, to date, there
7 have been no objections to it¹², and the evidence of Plaintiff's efforts support it. The Court should
8 accordingly approve it.

9 **VI CONCLUSION**

10 The Parties have negotiated a fair and reasonable settlement of claims. Plaintiffs request that
11 the Court approve their motion for an award of attorney's fees, costs and service payments.

12
13 DATED: December 15, 2020

BRADLEY/GROMBACHER LLP

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15 By: *Kiley L. Grombacher*
16 Kiley Grombacher
17 Attorneys for Plaintiffs
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¹² See Hamill Decl. ¶ 12