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20 *Class Counsel*

21 **UNITED STATES DISTRICT COURT**
 22 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

23 KIM ALLEN, LANIE RIDEOUT, and
 24 KATHLEEN HAIRSTON, all others
 25 similarly situated, and the general
 26 public,

27 Plaintiffs,

28 SIMILASAN CORPORATION,

Defendant

Case No.: 3:12-cv-00376-BAS-JLB

CLASS ACTION

Filed: February 10, 2012

**DECLARATION OF DEBORAH S.
 DIXON IN SUPPORT OF
 PLAINTIFFS' APPLICATION FOR
 ATTORNEYS' FEES, COSTS, AND
 INCENTIVE AWARDS**

Hearing: August 7, 2017
 Judge: Hon. Cynthia A. Bashant
 Courtroom: 4B

1 I, Deborah S. Dixon, hereby declare:

2 1. I am an attorney licensed to practice law in the State of California, and I am
3 a Senior Trial Attorney with Gomez Trial Attorneys, trial counsel for Plaintiffs Lanie
4 Rideout and Kathleen Hairston and the putative class members (“Plaintiffs”). I have
5 personal knowledge of the facts set forth in this declaration.

6 2. The Settlement Agreement in this case was negotiated extensively with
7 Similasan’s counsel. I was the primary attorney for Plaintiffs negotiating with counsel
8 for Similasan and in reaching the detailed settlement preliminary approved by this
9 Court. The fee was negotiated separately, only after the parties had reached agreement
10 on the principal terms of the injunctive relief.

11 3. Our firm alone has invested 248.7 hours, totaling \$139,900 in fees. The fee
12 and cost request by our firm in this case is supported by detailed billing records for time
13 spent investigating, prosecuting, and negotiating this matter. My firm’s lodestar is
14 based on 248.7 hours of work already expended (220 attorney hours and 28.7 paralegal
15 hours), with additional time necessary to complete final approval papers, hearing and
16 claim distribution.

17 4. Class Counsel’s requested rates are as follows:

Name	Position	Hourly Rate	Hours Worked
John H. Gomez	Owner	\$1,000.00	5.4
Deborah S. Dixon	Senior Trial Attorney	\$600.00	214.6
Kelly A. McDaniel	Paralegal	\$200.00	28.7

22 Attached hereto as **Exhibit 1** is my firm’s updated resume, supporting the rates
23 listed above.

24 5. My firm’s lodestar to date includes, among other tasks, time billed for: (i)
25 researching, drafting and editing motions, oppositions to motions, including motion for
26 summary judgment and decertification; (ii) reviewing discovery responses and
27 voluminous documents produced; (iii) preparing for and taking depositions; (iv)
28 extensive negotiations and settlement discussions, including attending mediation

1 conferences; (v) preparing for and participating in meetings and discussing strategy; (vi)
2 ascertaining the scope and breadth of the class and analyzing class certification
3 elements; (vii) attending hearings before this court; (viii) preparing for trial, including
4 strategy, witness selection and experts; (ix) preparing pretrial disclosures; witness lists,
5 exhibits, objections to defense exhibits; meeting and conferring on same and all trial
6 filings; (x) negotiating settlement; (xi) editing settlement and release language; (xii)
7 carefully reviewing and negotiating the class notice and notice plan; and (xiii)
8 communications and meetings among the parties and counsel.

9 6. My firm is uniquely qualified to litigate this type of class action and be
10 designated as trial counsel for the class. I, along with John Gomez of my firm, have
11 litigated and tried a similar case relating to federal and state laws governing dietary
12 supplements, including the federal Food, Drug, and Cosmetic Act and California
13 Sherman Law. We completed a three-week federal class action trial in September 2015
14 with similar issues before Central District Court Judge Gee (12-cv-1150-DMG-MANx).
15 *See also* Ex. 1 hereto. In addition, my firm has extensive experience handling complex
16 consumer class actions. *See id.* We completed a multiple week state court class action
17 jury trial in May 2016 before Judge Styn (37-2011-00091935-CU-CD-CTL) relating to
18 a product statutory defect claim. In addition, my firm has extensive experience handling
19 complex consumer class actions. Based on that experience and the circumstances of
20 this case, the Settlement Agreement put forward for this Court's final approval
21 represents a positive result for the Class and the general public.

22 7. I, as well as John Gomez and Gomez Trial Attorneys, have been attorneys
23 of record in numerous actions in various California Superior Courts and the U.S.
24 Federal Courts in the Southern District. Specifically, Gomez Trial Attorneys has been
25 in leadership positions and lead counsel in many complex and multi-district litigation
26 cases. *See* Ex. 1.

27 8. Devoting nearly 250 attorney and staff hours and costs to this action
28 necessarily precluded my firm from taking on other employment. There was significant

1 risk that my firm, despite committing these resources, would not have received any
2 compensation for its services. Class Counsel's ability to collect compensation was
3 entirely contingent upon prevailing. Accordingly, the substantial risk of non-recovery
4 inherent in class action litigation cannot be minimized or discounted in arriving at a fair
5 fee for contingent fee cases. From the outset of this litigation to the present, my firm
6 litigated this matter on a contingent basis and placed its own resources at risk to do so.

7 9. The time expended in connection with this litigation by me, as set forth
8 herein, is within the contingency fee as outlined in the retainer fee agreement, is
9 reasonable in amount, particularly when compared to the complexity of this litigation
10 and the quality of the result achieved on behalf of the class.

11 10. Paralegal Kelly McDaniel spent approximately 28.7 hours *of billable time*
12 working on this case. She invested other time that was deemed administrative and we
13 are not seeking recovery of such time. Ms. McDaniel's billing rate is \$200 per hour and
14 based on my experience and knowledge of paralegal rates in San Diego, her rate is
15 reasonable and appropriate. Ms. McDaniel has nearly 10 years of experience as a
16 litigation paralegal. Ms. McDaniel previously worked as a settlement paralegal for
17 Bernstein Litowitz Berger & Grossmann LLP working exclusively in class action
18 matters.

19 11. The work my staff and I performed on this case was necessary to ensure the
20 successful prosecution of this litigation. I have time records itemizing the time spent by
21 each attorney and paralegal which can be presented to the Court at a hearing, if
22 necessary.

23 12. I have personally reviewed and have knowledge of the time Ms. McDaniel
24 incurred in this case working directly for me and at my direction and supervision.

25 13. In addition, I am personally aware of the time incurred and recorded by Mr.
26 Gomez in this case. I am aware he invested 5.4 hours of time dedicated to strategy and
27 upcoming trial planning. Mr. Gomez and I worked on this case together developing
28 trial strategy. Mr. Gomez charges \$1,000 per hour, a rate that is reasonable and

1 appropriate given his level of experience, education and his practice in this community.

2 *See Ex. 1.*

3 14. I was the lead attorney at our firm responsible for handling the day-to-day
4 litigation and personally billed 214.6 hours (\$128,760.00) on this matter, up through
5 June 19, 2017. I expect to include additional hours working on final approval, the
6 hearing and assisting the Claims Administrator with class claims.

7 15. I personally prepared for depositions, handled research and writing of
8 motions, prepared for and argued the oppositions to the motion for summary judgment
9 and decertification. I prepared litigation strategy, as well as trial strategy with John
10 Gomez. I completed the pretrial disclosures and all the pretrial filings and final trial
11 conference filings, including exhibits, jury instructions, verdict forms, objections to
12 exhibits, deposition designations, met and conferred with counsel on exhibits, jury
13 instructions and verdict forms, and began preparing witnesses for trial. I attended both
14 settlement conferences with Judge Burkhardt in 2015 and then exclusively worked with
15 Ms. Gillette in negotiating the resolution of this case. In addition, I was primarily
16 responsible for briefing preliminary approval.

17 16. I am a Senior Trial Attorney at Gomez Trial Attorneys. Gomez Trial
18 Attorneys does not have traditional labels of “associate” or “partner” but Senior Trial
19 Attorney is the most senior position, other than John Gomez’s position. Attached as
20 Exhibit 1 is a resume detailing the relevant work experience for John Gomez and
21 myself. I am familiar with reasonable rates in San Diego and within federal districts for
22 complex cases, such as this one. I believe, based on my experience, the complexities of
23 this case, the results achieved and the risk associated with contingency class actions,
24 that my rate of \$600 is appropriate.

25 17. In addition, I have personally reviewed the cost invoices and itemization
26 incurred by Gomez Trial Attorneys. My firm incurred the following out-of-pocket
27 expenses in this case:

28

Product/Service	Total Amount
Defendant's Depositions	\$20,875.34
DTI – Document Storage for voluminous document production	\$5,961.60
Travel/Lodging	\$372.77
Service Fees	\$130.00
Expert Fees	\$2,119.28
Copies	\$680.24
TOTAL:	\$30,139.23

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 23rd day of June 2017, in San Diego, California.



Deborah S. Dixon