

GOMEZ TRIAL ATTORNEYS
JOHN H. GOMEZ (SBN 171485)
john@gomeztrialattorneys.com
DEBORAH S. DIXON (SBN 248965)
ddixon@gomeztrialattorneys.com
655 West Broadway, Suite 1700
San Diego, California 92101
Telephone: (619) 237-3490
Facsimile: (619) 237-3496

LAW OFFICES OF RONALD A. MARRON, APLC
RONALD A. MARRON (SBN 175650)
ron@consumersadvocates.com
WILLIAM B. RICHARDS, JR. (SBN 298552)
bill@consumersadvocates.com
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

THE GOETZ FIRM, LLC
DEAN A. GOETZ (SBN 65949)
dgoetz12@gmail.com
603 N. Coast Hwy 101, Ste. H
Solana Beach, California 92075
Telephone: (858) 481-8844
Facsimile: (858) 481-2139

Class Counsel

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

KIM ALLEN, LAINIE RIDEOUT, and
KATHLEEN HAIRSTON, on behalf of
themselves, all others similarly situated,
and the general public,

Plaintiffs,

v.

SIMILASAN CORPORATION,

Defendant.

CASE NO.: 3:12-cv-00376-BAS (JLB)
CLASS ACTION

DECLARATION OF RONALD A. MARRON IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS

(HEARING DATE SET BY ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [ECF NO. 258])

Hearing: August 7, 2017
Time: 10:30 a.m.
Judge: Hon. Cynthia A. Bashant
Courtroom: 4B (4th Floor - Schwartz)

1 I, Ronald A. Marron, declare:

2 1. I am Class Counsel and retained counsel for Plaintiffs in this lawsuit. I am a
3 member in good standing of the State Bar of California; the United States District Courts
4 for the Southern, Central, Eastern and Northern Districts of California; and the United States
5 Court of Appeals for the Ninth Circuit. I submit this declaration in support of Plaintiffs’
6 Motion for Attorney’s Fees, Costs, and Incentive Awards (“Fee Motion”). I make this
7 Declaration based on personal knowledge and if called to testify, I could and would
8 competently testify to the matters contained herein.

9 2. I have practiced civil litigation for over 22 years. My work experience and
10 education began in 1984 when I enlisted in the United States Marine Corps (Active Duty
11 1984-1988, Reserves 1988-1990) and thereafter received my Bachelor of Science in
12 Finance from the University of Southern California (1991). While attending Southwestern
13 University School of Law (1992-1994), I also studied Biology and Chemistry at the
14 University of Southern California and interned at the California Department of Corporations
15 with emphasis in consumer complaints and fraud investigations. I was admitted to the State
16 Bar of California in January of 1995 and have been a member in good standing since that
17 time.

18 3. In 1998, I started my own law firm with an emphasis in consumer fraud. Over the
19 years, I have acquired extensive experience in class actions and other complex litigation
20 and have obtained large settlements as lead counsel. My firm devotes most of its practice
21 to the area of consumer protection, including false and misleading labeling of food,
22 nutrition, dietary supplements, and over-the-counter (“OTC”) drug products.

23 4. My firm currently employs six full-time attorneys, two law clerks, two paralegals,
24 and support staff. My firm has an in-depth knowledge of litigating food, drug, and dietary
25 supplement cases, including class action cases involving homeopathic products. The
26 attorneys at my firm have years of experience litigating class action cases, and are experts,
27 in particular, in the respective merits and risks of consumer class actions regarding the
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1 product advertising at issue in this case. Attached hereto as **Exhibit 1** is a true and correct
2 copy of my firm's current resume.

3 5. My firm originated this case and litigated it for approximately four years before
4 retaining co-counsel. The total lodestar for my firm is **\$1,029,618.00**, exclusive of costs,
5 based on 2,417.8 total hours of work (1989.6 attorney hours, 239.8 law clerk hours, and
6 188.4 paralegal/legal assistant hours). *See* Fee Motion, App. 1.

7 My firm's requested rates are as follows:

8 Attorney	Position	Hourly Rate
9 Ronald A. Marron	Partner	\$745
10 Skye Resendes	Associate	\$475
11 Alexis Wood	Associate	\$475
12 Kas Gallucci	Associate	\$450
13 William Richards	Associate	\$450
14 Marshall Lurtz	Associate	\$440
15 Beth Goodman	Associate	\$440
16 Maggie Realin	Associate	\$440
17 Erin Minelli	Associate	\$440
18 Mike Houchin	Associate	\$440
19 Law Clerks		\$245
20 Paralegals and Legal Assistants		\$215

21 6. Among other tasks, my firm's lodestar includes time billed for pre-filing research
22 and investigation; drafting CLRA letter and Class Action Complaint; drafting and opposing
23 several motions and pleadings; propounding and responding to discovery; reviewing
24 voluminous produced documents; engaging in extensive settlement negotiations and
25 discussions, including attending mediation conferences; briefing class certification;
26 preparing for, taking, and defending numerous depositions (including expert witnesses)
27 across the country; editing disclaimer and settlement release language; strategy discussions
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1 with co-counsel; attending numerous hearings and proceedings; client communications;
2 case management; and much more.

3 7. My firm's practice is to keep contemporaneous records for each timekeeper and
4 to regularly record time records in the normal course of business; and we kept time records
5 in this case consistent with that practice. Moreover, my firms' practice is to bill in 6-minute
6 (tenth-of-an-hour) increments. My firm's billing records are voluminous, but shall be
7 provided for *in camera* review if the Court deems it necessary.

8 8. Prior to finalizing my firm's lodestar, we carefully reviewed our hours and made
9 cuts for time entry errors, duplications, and instances where we determined the hours should
10 be reduced or not billed.

11 9. The hours billed in this action by my firm are reasonable, reflect the intensity with
12 which issues were disputed in this case, and the amount of work necessary for this litigation
13 to culminate in the successful resolution of monetary and injunctive relief on behalf of the
14 Class.

15 10. My firm's requested rates are consistent with the prevailing rates for attorneys and
16 support staff of similar experience, skill and reputation in this geographical region. For
17 example, survey data confirms the reasonableness of such rates. A 2010 survey by the
18 National Law Journal (NLJ) shows rates of firms in Los Angeles from \$495-\$820 for
19 partners and \$270-\$620 for associates; and in Irvine from \$395-\$710 for partners and \$285-
20 \$450 for associates. A 2011 survey by the NLJ shows partner rates of \$275-\$860 in the
21 Southern California area, with a range of \$205-\$635 for associates in the same geographic
22 region. Copies of the NLJ surveys are in my firm's possession but are not being filed due
23 to their volume. As this evidence shows, Class Counsel's requested attorney rates for 2013-
24 2014 fall within the average prevailing market rates within the community. A summary
25 chart of the NLJ surveys from 2010-2012 is attached hereto as **Exhibit 2**.

26 11. Attached hereto as **Exhibit 3** is a true and correct copy of the *2014 Report on the*
27 *State of the Legal Market* put out by The Center for the Study of the Legal Profession at the
28 Georgetown University Law Center and Thomson Reuters Peer Monitor (Peer Monitor

1 Report). The Peer Monitor report shows that “from the third quarter of 2010 through
2 November 2013 . . . firms increased their standard rates by 11 percent[,] from an average of
3 \$429 per hour to \$476 per hour.” This average rate, *see id.*, support’s Class Counsel’s
4 hourly rates.

5 12. My requested principal rate of \$745, and requested associate rates of \$440 to \$475
6 per hour, based on experience, fall at and below the average/mean range of the typical rates
7 of a San Diego law firm that practices complex litigation. *See id.*; *see generally Catala v.*
8 *Resurgent Capital Servs., L.P.*, 2010 U.S. Dist. LEXIS 63501, at *19 n.3 (S.D. Cal. June
9 22, 2010) (relying on same to award fees).

10 13. Courts have also recognized that my law firm’s attorney’s hourly rates are
11 reasonable for counsel with similar experience and expertise within the Southern California
12 area; for example:

13 14. On November 16, 2015, the Honorable Maxine M. Chesney, Senior District Court
14 Judge for the Northern District of California, approved the same hourly rates requested in
15 this case (Ronald Marron at \$745, Skye Resendes at \$475, Alexis Wood at \$475, Kas
16 Gallucci at \$450, William Richards at \$440, Marshall Lurtz at \$440, Erin Minelli at \$440,
17 law clerks at \$245, and legal assistants/paralegals at \$215), in the case of *Johnson v. Triple*
18 *Leaf, Inc.*, Case No. 3:14-cv-01570-MMC. The Court found that the fee requested was
19 “reasonable when judged by the standards in this circuit,” and also that my firm’s attorney,
20 law clerk and staff rates were “reasonable in light of the complexity of this litigation, the
21 work performed, Class Counsel’s reputation, experience, competence, and the prevailing
22 billing rates for comparably complex work by comparably-qualified counsel in the relevant
23 market.” ECF No. 65.

24 15. On August 6, 2015, the Honorable Kenneth R. Freeman of the Superior Court of
25 California, County of Los Angeles, approved the following hourly rates for Class Counsel:
26 Ronald Marron at \$745, Skye Resendes at \$475, Alexis Wood at \$475, Kas Gallucci at
27 \$450, William Richards at \$440, Marshall Lurtz at \$440, Erin Minelli at \$440, and law
28 clerks at \$290 in the case of *Perry v. Truong Giang Corp.*, No. BC58568, a true and correct

1 copy of which is attached hereto as **Exhibit 4**. In so holding, the Court noted that “the
2 attorneys displayed skill in researching and settling this case, which provides a benefit not
3 only to Class Members but to the public at large, and that in so doing, the attorneys
4 undertook significant risk by spending time on this litigation on a contingency basis.”).

5 16. On August 7, 2015, the Honorable Brendan Linehan Shannon of the United States
6 Bankruptcy Court for the District of Delaware approved the following hourly rates for Class
7 Counsel: Ronald Marron at \$745, Skye Resendes at \$475, Alexis Wood at \$475, Kas
8 Gallucci at \$450, William Richards at \$440, Marshall Lurtz at \$440, Beth Goodman at \$440,
9 Erin Minelli at \$440, and law clerks at \$290 in the case of *In re: LEAF123, INC. (f/k/a*
10 *NATROL, INC.), et al.*, No. 14-11446 (BLS), a true and correct copy of which is attached
11 hereto as **Exhibit 5**. The court found the settlement in that case “fair, reasonable and
12 adequate,” which settlement included an award of \$799,000 in fees and a \$1,000 incentive
13 award for the named plaintiff.

14 17. On September 22, 2014, the Honorable Christina A. Snyder of the U.S. District
15 Court for the Central District of California approved my hourly rate of \$715 per hour, Ms.
16 Resendes’ rate of \$440 per hour, Ms. Wood’s rate of \$425 per hour, Ms. Minelli and Ms.
17 Gallucci’s rates of \$400 per hour, and Mr. Marron’s law clerk and paralegal rates of \$245
18 and \$215 per hour, respectively. *See Vaccarino v. Midland Nat. Life Ins. Co.*, 11 CV-5858-
19 CAS MANX, 2014 WL 4782603, at ¶ 11 (C.D. Cal. Sept. 22, 2014); *see also* Dkt. No. 407.

20 18. On July 29, 2014, the Honorable Richard Seeborg of the Northern District of
21 California approved the following hourly rates for Class Counsel: Ronald Marron at \$715,
22 Skye Resendes at \$440, Kas Gallucci at \$400, and law clerks at \$290 in the case of *In re*
23 *Quaker Oats Litig.*, No. C 10-0502 RS, 2014 WL 12616763, at *1 (N.D. Cal. July 29, 2014).

24 19. On March 13, 2014, the Honorable Gonzalo P. Curiel of the Southern District of
25 California approved my hourly rate of \$715 per hour; Ms. Resendes’ rate of \$440 per hour;
26 Ms. Wood’s rate of \$425 per hour; Ms. Minelli and Ms. Gallucci’s rates of \$400 per hour;
27 Ms. Danielle Eisner’s post-Bar law clerk rate of \$290 per hour; and \$215 per hour for legal
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1 assistants in *Mason v. Heel, Inc.*, No. 3:12-cv-3056-GPC-KSC, 2014 WL 1664271 (S.D.
2 Cal. Mar. 13, 2014); *see also* ECF Nos. 30-1 & 37.

3 20. On October 31, 2013, the Honorable Michael M. Anello of the Southern District
4 of California awarded me fees of \$680 per hour, Ms. Resendes fees of \$400 per hour, Ms.
5 Wood fees of \$385 per hour, Ms. Minelli fees of \$385 per hour, and Ms. Gallucci fees of
6 \$385 per hour in a homeopathic drug consumer class action case; and also approved \$280
7 per hour for patent agent/post-Bar law clerk Danielle Eisner; \$245 per hour for regular law
8 clerks; and \$215 hourly rates for support staff such as paralegals. *Nigh v. Humphreys*
9 *Pharmaceutical Incorporated*, 3:12-cv-02714-MMA-DHB, 2013 WL 5995382 (S.D. Cal. Oct.
10 23, 2013); *see also* ECF No. 30.

11 21. On March 13, 2013, the Honorable David O. Carter of the Central District of
12 California awarded me fees of \$680 per hour, Ms. Resendes fees of \$400 per hour, and
13 former associate, Maggie Realin, fees of \$375 per hour in a dietary supplement consumer
14 fraud class action case; and also approved \$245 per hour for law clerks and \$215 hourly
15 rates for support staff such as paralegals. *Bruno v. Quten Research Inst., LLC*, No. 8:11-
16 cv-00173-DOC-E, 2013 WL 990495, at *4-5 (C.D. Cal. Mar. 13, 2013) (“Class Counsel, .
17 . . the Law Offices of Ronald A. Marron displayed competence and diligence in the
18 prosecution of this action, and their requested rates are approved as fair and reasonable.”);
19 *see also id.* at *4 (“The Court notes that, in addition to the monetary relief obtained by Class
20 Counsel for class plaintiffs, there is a high value to the injunctive relief obtained in this case.
21 New labeling practices affecting hundreds of thousands of bottles per year, over ten years,
22 bring a benefit to class consumers, the marketplace, and competitors who do not mislabel
23 their products.”).

24 22. On October 31, 2012, the Honorable John A. Houston of the Southern District of
25 California awarded me fees of \$650 per hour and Ms. Resendes fees of \$385 per hour in a
26 homeopathic drug consumer fraud class action case. *Gallucci v. Boiron, Inc.*, No.
27 11CV2039 JAH NLS, 2012 WL 5359485, at *9 (S.D. Cal. Oct. 31, 2012) (“The Court finds
28 the [foregoing] hourly billing rates reasonable in light of the complexity of this litigation,

1 the work performed, Class Counsels' reputation, experience, competence, and the prevailing
2 billing rates for comparably complex work by comparably-qualified counsel in the relevant
3 market.”).

4 23. On August 21, 2012, the Honorable Thomas J. Whelan awarded me fees of \$650
5 per hour, Ms. Resendes at \$385 per hour and Ms. Realin at \$375 per hour, in the consumer
6 dietary supplement class action of *Burton v. Ganeden*, No. 11-cv-1471 W (NLS), ECF Nos.
7 52, 48, 45.

8 24. On July 9, 2012, the Honorable Marilyn L. Huff awarded me fees of \$650 per
9 hour, and approved the rates of my associate attorneys, Ms. Resendes at \$385 per hour, and
10 former associate, Maggie Realin, at \$375 per hour in the consumer food class action of *In*
11 *re Ferrero*, Case No. 3:11-cv-00205 H (KSC) (S.D. Cal.), ECF No. 127. Judge Huff noted
12 that the fees requested were “appropriate given the contingent nature of the case and the
13 excellent results obtained for the Class, and because no enhancement or multiplier was
14 sought above the actual amount of Class Counsel's lodestar. The Court concludes the billing
15 rates used by Class Counsel to be justified by prior awards in similar litigation and the
16 evidence presented with their motion showing these rates are in line with prevailing rates in
17 this District.”

18 25. Similarly, several California district courts have approved specific fee rates
19 similar to those of Class Counsel. These rates are consistent with the prevailing rates for
20 attorneys of similar experience, skill and reputation. For example, several courts in this
21 district have approved fee ranges into which Class Counsel's rates easily fall. For example,
22 in *Hartless v. Clorox Co.*, 273 F.R.D. 630, 644 (S.D. Cal. 2011), the Honorable Cathy Ann
23 Bencivengo affirmed the rate of “\$675 for an experienced partner's time.” *Id.* at 644.¹

24 26. Other California district courts have approved even higher attorney fee rates. For
25 example, in *CLRB Hanson Indus., LLC v. Weiss & Assocs., PC*, 2012 WL 20539 (N.D. Cal.
26 Jan. 5, 2012), the court found the hourly rates of two top billers reasonable at \$1100 and

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28 ¹ See *Hartless v. Clorox Co.*, No. 06-cv-2705-CAB (S.D. Cal.), ECF Nos. 82, 84-85, 87-
88 (declarations in support of motion for attorney's fees).

1 \$850. Case No. C05-03649, ECF No. 342. Even though the defendants appealed the
 2 attorneys' fees award, the Ninth Circuit affirmed the district court's finding that the
 3 requested fees were justified. *CLRB Hanson Indus., LLC v. Weiss & Assocs., PC*, 2012 WL
 4 20539, at * 1.

5 27. Finally, my firm's law clerk rate of \$245 and legal assistant/paralegal rate of \$215
 6 is in a range commonly approved by other courts in this district. *See, e.g., Craft v. County*
 7 *of San Bernardino*, 624 F. Supp. 2d 1113, 1122 (C.D. Cal. 2008) (finding \$200 hourly rate
 8 reasonable for law clerks and up to \$225 hourly rate reasonable for paralegals); *Vasquez*,
 9 2011 U.S. Dist. LEXIS 83696, at *6 (approving rates between \$160 and \$210 for
 10 paralegals); *Iorio*, 2011 U.S. Dist. LEXIS 21824, at *32 (finding \$195 rate reasonable for
 11 paralegals) (S.D. Cal); *Create-A-Card*, 2009 WL 3073920, at *2 (approving rates of \$150-
 12 \$235 for paralegals) (N.D. Cal); *Quten*, 2013 WL 990495, at *4-5 (approving \$215 rate for
 13 paralegals and legal assistants and \$245 for law clerks); *Gallucci*, 2012 WL 5359485, at *9
 14 (approving \$215 rate for paralegals and legal assistants and \$245 for law clerks). These
 15 rates have been approved by many courts. *See* Exs. 4 & 5 hereto.

16 28. The Federal Judicial Center published a report in 1996 entitled, *Empirical Study*
 17 *of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee*
 18 *on Civil Rules* ("FJC Report"). The study was requested by the Judicial Conference
 19 Advisory Committee on Civil Rules when it was considering proposals to amend Rule 23
 20 of the Federal Rules of Civil Procedure. The study is based on 407 class action lawsuits that
 21 either settled or went to verdict in the two-year period from July 1, 1992 to June 30, 1994
 22 in the following four federal judicial districts: the Eastern District of Pennsylvania
 23 (Philadelphia); the Southern District of Florida (Miami); the Northern District of Illinois
 24 (Chicago); and the Northern District of California (San Francisco). FJC Report at 3-4, 7-8.
 25 For the 407 class actions, the FJC Report reports the following regarding class certification:

- 26 • In 59 cases (14.5%), the class claims were certified for settlement purposes
 27 only. *Id.* at 35.
- 28 • In 93 cases (22.85%), the class claims were certified unconditionally. *Id.*

- Therefore, a total of 152 cases (37.35%) had certified classes, and the other 255 (62.65%) did not. *Id.*
- In at least 23 of the certified classes, the outcome was unfavorable to the plaintiffs. This is based on Table 39 of the FJC Report at 179, which lists the following outcomes adverse to plaintiffs in certified class cases (excluding classes certified for settlement purposes only): nine dismissals by motion, one stipulated dismissal, one non-class settlement, and twelve summary judgments. *Id.* at 179, App. C, Table 39.

Thus, in sum, the successful class claims from the total 407 filed class actions totaled 129 or less (152 minus 23). Using the number 129/407 to get a percentage, 31.7% or less of the filed cases resulted in successful class outcomes for plaintiffs. This does not account for degree of success (i.e., some cases could have resulted in minimal or partial success and would still be in the successful claim category).

29. My firm also incurred statutorily recoverable costs, as well as costs reasonably necessary to conduct this litigation, in a total amount of **\$71,683.13**, as follows:

Description	Amount
Court Filing Fees	\$455.00
Service of Process Fees	\$400.50
Court Reporter Fees	\$1,046.31
Deadlines.com	\$249.00
Deposition Fees	\$200.05
Expert Witness Fees	\$60,650.65
Flights	\$1,920.27
FOIA Requests	\$478.05
Lodging	\$1,732.68
Meals	\$201.60
Mileage Reimbursement	\$725.25
Parking Expenses	\$140.20
Postage	\$173.69
Printer fees and photocopies	\$613.00
Research Fees (Westlaw)	\$52.00
Transcripts	\$1,851.72
Transportation (train, bus, taxi, etc.)	\$793.16
Total:	\$71,683.13

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 23rd day of June 2017 in San Diego, California

/s/ Ronald A. Marron
RONALD A. MARRON
ron@consumersadvocates.com
LAW OFFICES OF RONALD A. MARRON
651 Arroyo Drive
San Diego, California 92101
Telephone: (619) 696-9006
Facsimile: (619) 564-6665