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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

13 **(UNLIMITED JURISDICTION)**

14 COORDINATED PROCEEDINGS SPECIAL  
15 TITLE [RULE 3.550]

16 SEPHORA WAGE AND HOUR CASES

17 Included actions:

18 *Burnthorne-Martinez v. SEPHORA USA, Inc.*  
19 (San Francisco OGC-16-55-894)

20 *Provencio v. SEPHORA USA, Inc.*  
21 (Santa Clara 16CV294112)

22 *Hernandez et al. v. SEPHORA USA, Inc.*  
23 (San Francisco OGC-17-557031)

24 *Duran v. Sephora USA, Inc.*  
25 (San Francisco CGC-17-561452)

Judicial Counsel Coordinated Proceeding  
No. 4911

**CLASS ACTION**

***SUPPLEMENTAL BRIEF ON  
APPLICATION FOR SERVICE  
AWARDS FOR THE REPRESENTATIVE  
PLAINTIFF***

Judge: Hon. Andrew Y.S. Chang  
Dept.: 613

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and the Plaintiff Class

1                   **SUPPLEMENTAL BRIEF ON APPLICATION FOR SERVICE AWARDS FOR THE**  
2   **REPRESENTATIVE PLAINTIFF**

3                   The Court has requested additional briefing on the Class Representative Service Awards.

4                   The Settlement Agreement permits Plaintiffs to request an enhancement award of up to  
5 \$20,000 per Named Plaintiff from the Settlement Fund. (Class Action Settlement Agreement, ¶  
6 8.5.) The Court, in its April 6, 2022 Tentative Ruling, expressed concerns that the proposed  
7 \$20,000 enhancement awards are approximately 37 times the average recovery class members will  
8 receive in the amount of \$542.01.

9                   The Court recognized the following factors were used when assessing the reasonableness of  
10 a class representative awards: 1) the risk to the class representative in commencing suit, both  
11 financial and otherwise; 2) the notoriety and personal difficulties encountered by the class  
12 representative; 3) the amount of time and effort spent by the class representative; 4) the duration of  
13 the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a  
14 result of the litigation. *See Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394–  
15 1395.

16                   In their Motion for Fees, Costs and Service Awards, Plaintiffs explained why they believe a  
17 \$20,000 award is justified based on these factors. *See Coordinated Plaintiffs’ Motion for Fees,*  
18 *Costs and Service Awards* at p. 14:10-15:10. Without repeating that content here, Plaintiffs  
19 continue to believe that the factors support a \$20,000 award under the circumstances of this case.  
20 The litigation lasted over four years. It involved multiple sets of written discovery being  
21 propounded upon and responded to by each of the named Plaintiffs. It required each of the named  
22 Plaintiffs to sit for one, and often two, days of deposition. Plaintiffs successfully certified a class of  
23 over 13,000 employees. Plaintiffs opposed a decertification motion and a dispositive motion by  
24 Defendant. Plaintiffs prepared and filed their own dispositive motion. Lastly, Plaintiffs participated  
25 in a prolonged and contentious mediation process and many months of active negotiations  
26 thereafter.

27                   Each of the named Plaintiffs incurred the risk that they would be responsible for potentially  
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1 hundreds of thousands of dollars of costs each. While Plaintiffs do not know how much Defendant  
2 incurred in recoverable costs if it had prevailed, the size of class counsels' costs application –  
3 approaching \$300,000 – makes it clear that it would have been quite substantial.

4 Each of the Plaintiffs also took on the risk that their participation would deter future  
5 employers from hiring them. Many of the Plaintiffs depended on their makeup skills for their  
6 livelihood. Sephora is one of the largest and most well-known names in this industry. It was brave  
7 for the Class Representatives to put their names on the complaint and the associated settlement  
8 notice knowing it would advertise their involvement to over 13,000 other makeup artists and  
9 workers in the same industry.

10 Against this backdrop, Plaintiffs and their counsel believe a \$20,000 award is justified and  
11 reasonable under the circumstances and when viewed against the factors cited above.

12 The fact that the enhancement award is disproportionate to the average Class Member  
13 payment does not, in and of itself, seem to justify a reduction.

14 In *Staton v. Boeing*, the Ninth Circuit recognized that the district court “considered this  
15 disparity carefully because excessive payments to named class members can be an indication that  
16 the agreement was reached through fraud or collusion.’ Indeed, “[i]f class representatives expect  
17 routinely to receive special awards in addition to their share of the recovery, they may be tempted  
18 to accept suboptimal settlements at the expense of the class members whose interests they are  
19 appointed to guard.” *Staton v. Boeing Co.*, 327 F.3d 938, 975.

20 The concern in *Staton v. Boeing* was perhaps well founded. The Ninth Circuit observed  
21 that, under the proposed consent decree, the “class receives a total monetary award of \$ 7.3  
22 million. Out of the approximately 15,000-member class, a group of 264 individuals -- less than two  
23 percent of the class -- made up of the named plaintiffs and other class members identified by class  
24 counsel as having actively participated in the litigation (together, the ‘individually identified  
25 recipients’ or ‘IIRs’) is to receive \$ 3.77 million, more than half the monetary award.” Indeed, the  
26 “29 named class representatives” were “designated to receive payments totaling \$ 890,000” which  
27 was 12.2% of the total settlement fund. *See Staton v. Boeing Co.*, 327 F.3d 938, 977.

28

1           The present Settlement with Sephora does not present the same degree of disproportionality  
2 or implicate the other concerns noted in *Staton*. If the Court were to approve a \$20,000 award to  
3 each of the five named Plaintiffs in this lawsuit it would result in a total of \$100,000 being paid  
4 from a settlement fund of \$12,750,000. If approved, the \$100,000 in service awards would amount  
5 to just 0.7% of the gross settlement amount (\$100,000/\$12,750,000). Additionally, all Class  
6 Members will share in the settlement fund in the same proportion, based on their work weeks, and  
7 there is no group being singled out to receive the lion's share of the proceeds.

8           There is no evidence whatsoever that the class representatives sold out the class members in  
9 exchange for a larger enhancement, which is the primarily concern noted by many of the appellate  
10 courts that discussed the issue. *See e.g. Clark v. American Residential Services LLC*, 175 Cal. App.  
11 4th 785, 804-806. The 13,000 Class Members were informed of the amount being applied for and  
12 none of them objected in response to the notice.

13           The holding in *Munoz v. BCI Coca Cola Bottling Company of Los Angeles*, 186  
14 Cal.App.4th 399, 412 (2010) does not change this analysis. *Munoz* simply restated the concerns  
15 identified in *Staton*. *Munoz*, 186 Cal. App. 4th at 412.

16           Likewise, *Clark v. American Residential Services, LLC*, 175 Cal.App.4th 785 does not  
17 require a reduction from \$20,000 where such an award is indeed supported by an evidentiary  
18 record. In *Clark*, the two named plaintiffs were each rewarded a \$25,000 incentive award. *Id.*, 804-  
19 805. The Court of Appeal reversed, not merely because of disproportionality, but rather because of  
20 the lack of evidence supporting such large awards in that case. "Here, we simply cannot sanction,  
21 as within the trial court's discretion, incentive awards totaling \$50,000, with nothing more than pro  
22 forma claims as to 'countless' hours expended, 'potential stigma' and potential risk.'" *Id.* at 807.

23           In *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-1394 the First  
24 Appellate District affirmed an award of \$10,000 each for four class representatives despite the fact  
25 that this was 114 times the average settlement payout of \$87.50. *Id.* at 1388. The appellate court  
26 indicated this was still within the trial court's discretion: "Given the familiarity of the trial court  
27 with the history of the lengthy litigation and the evidence before the court that the representatives  
28

1 had, over the course of the litigation, assisted with investigation, responded to discovery requests,  
2 reviewed documents and pleadings, and testified either in deposition or at trial, we find no abuse of  
3 discretion in these awards.”


4 Plaintiffs and their counsel respectfully request that the Court approve the \$20,000 awards  
5 for each of the named Plaintiffs. Plaintiffs believe it is fully justified based on their participation,  
6 the risks undertaken, the results achieved and all of the remaining factors from the Cellphone  
7 Termination Cases.

8 **CONCLUSION**

9 For all of the foregoing reasons, Plaintiffs respectfully request this Court enter an order  
10 granting Coordinated Plaintiffs’ Motion for Attorneys’ Fees, Costs and Service Awards, including  
11 its application for Legal Aid At Work to be appointed as the *cy pres* beneficiary pursuant to Cal.  
12 Code. Of Civ. Proc. Section 384 and its application for a \$20,000 service award to each of the five  
13 named Plaintiffs.

14 Dated: May 5, 2022

ALLEN ATTORNEY GROUP PC

15  
16 By   
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