

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 12-21678-CIV-LENARD/GOODMAN

LAURA EGGNATZ and KATRINA GARCIA,
individually, and on behalf of all others similarly
situated,

Plaintiffs,

vs.

KASHI COMPANY, a California
Corporation,

Defendants.

**PLAINTIFFS' MOTION AND INCORPORATED MEMORANDUM OF LAW FOR
SERVICE AWARD FOR REPRESENTATIVE PLAINTIFFS**

PLEASE TAKE NOTICE that on January 27, 2016, at 2:30 p.m., or on such date as may be specified by the Court, in the courtroom of the Honorable Joan A. Lenard, United States District Court for the Southern District of Florida, 400 North Miami Avenue, Miami, Florida 33128, Plaintiffs Katrina Garcia and Laura Eggnatz (“Plaintiffs”), on behalf of themselves and the class, will and hereby do move for an entry of an order approving a service award to each of the class representatives.

This motion will be heard concurrent with Plaintiffs’ Motion for Final Approval of Class Action Settlement and Motion for Attorneys’ Fees and Expenses, both of which will be separately briefed.

This motion is based on this notice; the accompanying Memorandum of Points and Authorities; the Declarations of Katrina Garcia and Laura Eggnatz in Support of this Motion; Plaintiffs’ Motions for Final Approval, Attorneys’ Fees and Costs and Service Awards (filed concurrently herewith) and supporting documents and declarations; the Settlement Agreement (ECF 179-1); the Motion for Final Approval; the complete files and records in this action; and on such further oral and documentary evidence which may be submitted, and any further evidence as the Court may receive.

Dated: December 14, 2015

Respectfully submitted,

/s/ Gillian L. Wade

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Counsel for Plaintiffs and the Settlement Class

I. Introduction

The Court should approve a service award of \$5,000 to each of the Class Representatives,¹ Katrina Garcia and Laura Eggnatz (“Plaintiffs”). The detailed notice advised Class Members that Plaintiffs would apply for a service award of \$5,000 each, and no class member has objected to this reasonable request to date. *See* Declaration of Mark Schey ISO Plaintiffs’ Motion for Final Approval (“Schey Decl.”) at ¶ 19, concurrently filed herewith.

II. The Court Should Approve Service Awards for Plaintiffs

Defendant Kashi Company “Defendant” has agreed to pay Service Awards of \$5,000 for each of the Class Representatives. Agreement at § VIII(C) in recognition of their time and effort in the Litigation, and for the risks they undertook in prosecuting the Litigation. Service awards to class representatives are typical in class action cases. *See* William B. Rubenstein et al., *Newberg on Class Actions* 11:38 (4th ed. 2008); Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 U.C.L.A. L. Rev. 1303 (finding 28 percent of settled class actions between 1993 and 2002 included an incentive award to class representatives). Class representatives act as private attorneys general seeking a remedy for what appears to be a public wrong. *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1344 (S.D. Fla. Feb. 16, 2007) (awarding service awards of \$7,500 for each of three class representatives) (collecting cases). Private class action suits are a primary weapon in the enforcement of laws designed for the protection of the public. *Id.* at 1344.

The factors for determining a service award include: (1) the actions the class representative took to protect the interests of the class; (2) the degree to which the class benefited from those

¹ All capitalized terms have the same meanings as ascribed in the Agreement, which is in the record at ECF 179-1.

actions; and (3) the amount of time and effort the class representatives expended pursuing the litigation. *Braynen v. Nationstar Mortgage, LLC*, No. 14-CV-20726-JG, 2015 WL 6872519, at *18 (S.D. Fla. Nov. 5, 2015) (approving service awards).

Further, courts within the Eleventh Circuit frequently approve service awards of \$5,000 or more. *See Braynen*, 2015 WL 6872519, at *18 (awarding \$5,000 service awards to each of the three named plaintiffs); *Gevaerts v. TD Bank, N.A.*, No. 11:14-cv-20744-RLR, 2015 WL 6751061, *9 (S.D. Nov. 5, 2015) (approving \$10,000 service awards to each of two sets of plaintiffs); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1358 (S.D. Fla. Nov. 22, 2011) (collecting cases and approving service awards of \$5,000 per class representative); *David v. Am. Suzuki Motor Corp.*, No. cv-22278, 2010 WL 628362, at *6 (S.D. Fla. Apr. 15, 2010) (approving service award of \$5,000 for a class representative, in addition to a new motorcycle). Service awards are intended to “compensate named Plaintiffs for the Services they provided and the risks they incurred during the course of the class action litigation.” *Allapatah*, 454 F. Supp. 2d at 1218-19 (quoting *Ingram v. Coca-Cola*, 200 F.R.D. 685, 694 (N.D. Ga. 2001)); *see also Spicer v. Chi. Bd. Options Exchange, Inc.*, 844 F. Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving service awards ranging from \$5,000 to \$100,000 and awarding \$10,000 to each of the named plaintiffs).

Here, the Service Awards Ms. Eggnatz and Ms. Garcia seek are reasonable. They dedicated their time and effort to pursuing their claims on behalf of the putative class and demonstrated a willingness to participate in the case and undertake the responsibilities and attendant risks of bringing a representative action. The Class Representatives aided in the investigation of these claims, discovery requests and settlement. Garcia Decl. at ¶¶ 6-9; Eggnatz Decl. at ¶¶ 6-9. Each of

the Class Representatives invested many hours in this litigation, including investigating their claims, contacting counsel and conferring with them regularly. Garcia Decl. at ¶ 6; Eggatz Decl. at ¶ 6. The Class Representatives reviewed documents, responded to written discovery, diligently searched for and located documents and information, and prepared for and sat for contentious depositions. Garcia Decl. at ¶ 7; Eggatz Decl. at ¶ 7. Moreover, Plaintiffs began preparing for trial leading up to the Parties achieving the settlement and carefully reviewed the settlement documents in order to understand the terms of the settlement and the benefits to the Class. Garcia Decl. at ¶¶ 8-9; Eggatz Decl. at ¶¶ 8-9. In all, the Class Representatives each spent more than 30 hours on this case. Garcia Decl. at ¶ 10; Eggatz Decl. at ¶ 10.

Moreover, Plaintiffs' work in this Litigation resulted in a significant benefit to Class Members, as Kashi will pay \$3.99 million in cash to the Settlement Class. Agreement at § IV(A)(2)(a). As set forth in detail in Plaintiffs' Motion for Final Approval (filed concurrently herewith), the proceeds of the Settlement, less the costs of settlement administration, attorneys' fees, expenses and Service Awards will be distributed to claiming Settlement Class Members to reimburse² them for the Kashi products purchased during the Class Period. *Id.* at § IV(A)(2)(b). Kashi has also agreed to remove the 'all natural' claims from Products containing the Challenged Ingredients and to be subjected to supervised compliance with a Non-GMO Verification program for certain Products. *Id.* at § IV(C)(1). This is a tremendous result for the Settlement Class.

III. CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court approve a

² The specific amount of cash eligible claimants will receive depends on the quantity of products purchased, whether they submit receipts and the total number of valid claims received. *Id.* at § IV(A)(2)(d). The cash payment available for claiming Class Members will be at least \$2 million. *Id.* at § IV(A)(3)(a).

service award of \$5,000 to each of the Class Representatives for their time and effort in prosecuting their claims and securing the proposed settlement.

Respectfully submitted,

/s/ Gillian L. Wade

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