

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARABELLA LEMUS, individually and on
behalf of all others similarly situated,

No. C 09-3179 SI

Plaintiff,

**ORDER GRANTING PLAINTIFFS’
ADMINISTRATIVE MOTION AND
GRANTING PLAINTIFFS’ MOTION
FOR RECONSIDERATION;
MODIFYING ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND AWARDING
ATTORNEYS’ FEES AND INCENTIVE
AWARDS**

v.

H&R BLOCK ENTERPRISES LLC., a Missouri
corporation,

Defendant.

Plaintiffs have filed an administrative motion seeking leave to file a motion for reconsideration of this Court’s Order Granting Final Approval of Class Action Settlement and Awarding Attorneys’ Fees and Incentive Awards. Plaintiffs contend that the Court erred by not awarding a risk multiplier when granting fees to plaintiffs’ counsel.


“Under Ninth Circuit law, the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994)). “Courts may compare the two methods of calculating attorney’s fees in determining whether fees are reasonable.” *Fischel v. Equitable Life Assur. Society of the United States*, 307 F.3d 997, 1007 (9th Cir. 2002). “A district court generally has discretion to apply a multiplier to the attorney’s fees calculation to compensate for the risk of nonpayment.” *Id.* at 1008. “It is an abuse of discretion to fail to apply a risk multiplier, however, when (1) attorneys take a case with the expectation that they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence that the case was risky.” *Id.*

1 The Court originally awarded plaintiffs' counsel their lodestar of \$3,983,134, which represented
2 approximately 20% of the total amount paid by defendant to fund the settlement. The Court did not
3 apply a risk multiplier. Upon further review, the Court finds that plaintiffs' counsel have demonstrated
4 that they are entitled to a risk multiplier because counsel have submitted declarations showing that this
5 case was risky, that the lawyers' hourly rates do not reflect that risk, and that counsel took this case with
6 the expectation that they would receive a risk enhancement if they prevailed. The Court finds it
7 appropriate to award a risk multiplier of 1.3, resulting in a fee award of \$5,178,074.20, which is
8 approximately 25% of the total amount paid by defendant to fund the settlement.¹ See *Vizcaino*, 290
9 F.3d at 1047 (stating that in common fund cases the "benchmark" award is 25%).

10 This order resolves Docket No. 165.

11
12 **IT IS SO ORDERED.**

13
14 Dated: September 10, 2012

15 
16 _____
17 SUSAN ILLSTON
18 United States District Judge
19
20
21
22
23
24
25

26 _____
27 ¹ By awarding fees of \$5,178,074.20, the Net Settlement Amount is \$29,399,862.30, with
28 50.42%, or approximately \$14,823,410.57, distributed to the class. Based upon these figures, defendant
pays a total of approximately \$20,423,548.27, and the fee award is approximately 25% of the total
amount paid by defendant to fund the settlement.