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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JOHN BARRERA, et al.,  
Plaintiffs,  
v.  
THE HOME DEPOT U.S.A., INC.,  
Defendant.

Case No. 12-CV-05199-LHK

**ORDER GRANTING PLAINTIFF’S  
MOTION FOR APPROVAL OF  
ATTORNEYS’ FEES AND COSTS AND  
CLASS REPRESENTATIVE  
ENHANCEMENT**

**I. INTRODUCTION**

On February 19, 2015, this matter came for hearing before this Court on Plaintiff Edgar Padilla’s (“Plaintiff”) Motion for Approval of Attorneys’ Fees and Costs and Class Representative Enhancement. As set forth in this Court’s Order dated February 19, 2015, the Court deferred ruling on Plaintiff’s Motion for Approval of Attorneys’ Fees and Costs and Class Representative Enhancement, as well as the Parties’ Joint Motion for Final Approval of Class Action Settlement, pending expiration of the 90-day notice period to appropriate federal and state officials in the Class Action Fairness Act Notice of Proposed Settlement (“CAFA Notice”) dated February 13, 2015. ECF No. 103.

1 After considering the moving papers, the pleadings, and the record in this case, IT IS  
2 ORDERED that Plaintiff’s Motion for Approval of Attorneys’ Fees and Costs, and Class  
3 Representative Enhancement is GRANTED for the reasons set forth herein.

4 **II. THIS COURT IS AUTHORIZED TO AWARD PLAINTIFF’S ATTORNEYS**  
5 **THEIR ATTORNEYS’ FEES ON A PERCENTAGE BASIS**

6 Courts have discretion to award attorneys’ fees to a prevailing plaintiff if: “(1) fee-shifting  
7 is expressly authorized by the governing statute; (2) the opponents acted in bad faith or willfully  
8 violated a court order; or (3) the successful litigants have created a common fund for recovery or  
9 extended a substantial benefit to a class.” *In re Bluetooth Headset Products Liability Litig.*, 654  
10 F.3d 935, 941 (9th Cir. 2011). In determining the reasonableness of the attorneys’ fees, courts  
11 should consider the factors set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir.  
12 1975), which include:

- (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

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19 *Carter v. Caleb Brett LLC*, 757 F.3d 866, 868-69 (9th Cir. 2014).

20 Here, the gross settlement amount is \$1.5 million. There is no reversion of any funds to  
21 the Defendant. All settlement class members who do not opt out will receive their pro rata share  
22 of the settlement amount without having to submit a claim form. Plaintiff’s counsel request  
23 \$375,000, or 25% of the settlement fund, as compensation for attorneys’ fees. Upon consideration  
24 of the *Kerr* factors as applied to this case, the Court determines that this request is reasonable.

25 **III. PLAINTIFF’S COUNSEL’S ATTORNEYS’ FEE REQUEST IS REASONABLE IN**  
26 **COMPARISON TO THE LODESTAR**

1 It has been noted that it is sometimes helpful to courts to “cross-check” a percentage award  
2 by employing a lodestar with a multiplier analysis. While the lodestar method is generally  
3 considered inappropriate in a common fund case where real cash benefits (as opposed to coupons  
4 or non-monetary benefits) are made available to class members, its use can provide further  
5 validation of the appropriateness of the percentage award approach. *See In re Prudential Ins. Co.*  
6 *of America Sales Practice Litigation*, 106 F. Supp. 2d 721 (D.N.J. 2000).

7 The declarations of Class Counsel state that they devoted approximately 513.5 hours of  
8 time to this litigation. *See, e.g.*, ECF Nos. 92-1 (“Lee Decl.”), 92 (“Marder Decl.”), 91-1 (“Hyun  
9 Decl.”). Applying the various hourly rates of the law firms and lawyers who dedicated their  
10 efforts to this matter, a lodestar of \$338,120 is established for the amount of work spent through  
11 final approval. (Lee Decl. ¶¶ 6-8, 10-13; Marder Decl. ¶¶ 3-5, 7-14; Hyun Decl. ¶¶ 7-9, 11-14).  
12 The percentage award sought by Class Counsel, if converted to the lodestar method, would entail  
13 a multiplier of approximately 1.1, which is reasonable in this case.

14 **IV. THE COURT APPROVES THE REQUEST FOR REIMBURSEMENT OF COSTS**

15 The request for reimbursement of costs, in the amount of \$16,391.53 is fair and  
16 reasonable. Here, the costs consists of all litigation related costs, which have been detailed in the  
17 supporting declarations of Class Counsel. (Lee Decl. ¶ 9, Exh. B; Marder Decl. ¶ 6, Exh. B;  
18 Hyun Decl. ¶¶ 10). The authority for the court to award this is the parties’ Settlement Agreement  
19 and Labor Code § 218.5. Further, pursuant to the Settlement Agreement, Defendant has agreed  
20 not to oppose any request for reimbursement of costs up to \$25,000.

21 **V. THE COURT APPROVES THE CLASS REPRESENTATIVE ENHANCEMENT**

22 This Court approves the class representative enhancement award of \$2,500 to Plaintiff  
23 Edgar Padilla. Courts have found it appropriate to recognize the role of the representative  
24 plaintiffs without whose actions and courage the benefits of the settlement, which are conferred  
25 on the class as a whole, would never have been achieved. The criteria courts may consider in  
26 relation to incentive payments include: 1) the risk to the class representative in commencing the  
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1 suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the  
2 class representative; 3) the amount of time and effort spent by the class representative; 4) the  
3 duration of the litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class  
4 representative as a result of the litigation. *See Munoz v. BCI Coca-Cola Bottling Co. of Los*  
5 *Angeles*, 186 Cal. App. 4th 399, 412 (2010) (citing *Stanton v. Boeing Co.*, 327 F.3d 938, 975 (9th  
6 Cir. 2003)); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D.  
7 Cal. 1995) (approving award of \$50,000 to named plaintiff).

8 Upon the facts of this case, this Court finds that an enhancement payment of \$2,500 to  
9 Plaintiff is fair and reasonable.

10 **VI. CONCLUSION**


11 For the reasons stated above, Plaintiff's Motion for Approval of Attorneys' Fees, Costs and  
12 Class Representative Enhancement is GRANTED. Accordingly, IT IS HEREBY ORDERED that:

13 1. The Court APPROVES payment of Class Representative Enhancement Award to  
14 Plaintiff Edgar Padilla in the amount of \$2,500.00 in accordance with the terms of the Settlement  
15 Agreement.

16 2. The Court APPROVES payment of Attorneys' Fees in the amount of \$375,000.00  
17 and Costs in the amount of \$16,391.53 to Class Counsel in accordance with the terms of the  
18 Settlement Agreement.

19 **IT IS SO ORDERED.**

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21 Dated: May 20, 2015

  
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LUCY H. KOH  
United States District Judge

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