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*Attorneys for Plaintiffs and Settlement Class
Representatives Mike Xavier and Steven
Prescott and the Settlement Class*

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

MIKE XAVIER and STEVEN PRESCOTT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BAYER HEALTHCARE LLC, a Delaware
limited liability company; BEIERSDORF,
INC., a Delaware corporation,

Defendants.

Case No. 5:20-CV-00102-NC
Case Filed: 1/3/2020
FAC Filed: 5/15/2020
SAC Filed: 7/14/2021

Assigned to the Hon. Nathanael M. Cousins

**DECLARATION OF CHRISTOPHER D.
MOON IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

DECLARATION OF CHRISTOPHER D. MOON

I, CHRISTOPHER D. MOON, declare as follows:

1. I am a managing partner at Moon Law APC (“**Moon Law**”), which along with the Clarkson Law Firm (“**Clarkson**”) have been appointed as Settlement Class Counsel in the above-entitled action, *Xavier, et al. v. Bayer Healthcare, LLC, et al.*, United States District Court for the Northern District of California, Case No. 5:20-CV-00102-NC (“*Xavier*”), and have served as counsel of record for Plaintiffs and Settlement Class Representatives Mike Xavier and Steven Prescott (“**Plaintiffs**” and/or “**Settlement Class Representatives**”) in this action regarding the Products’ alleged false and misleading “Mineral-Based” advertising claim.¹ I am licensed to practice law in all state and federal courts in the State of California. I am a member in good standing of the State Bar of California. I submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and Motion for Attorneys’ Fees, Expenses, and Service Awards. Unless otherwise indicated as based upon information and belief, I have personal knowledge of the facts stated herein or know of such facts from my review of the file in this action and from my discussions with the members of my firm. If called upon to do so, I could and would competently testify the matters set forth herein.

2. **EXHIBITS**. I have submitted true and correct copies of the following documents as exhibits concurrently filed herewith:

- a. **Exhibit 2:** Moon Law’s firm resume, which accurately summarizes pertinent background, training, experience, appointments, and similar matters that demonstrate the adequacy of Moon Law to serve as Settlement Class Counsel in this action; and
- b. **Exhibit 6:** A chart that summarizes Moon Law’s total hours expended, and corresponding hourly rates and total fees, disaggregated by each timekeeper and nature of work performed.

¹ Unless otherwise expressly stated herein to the contrary, capitalized terms have the same meaning as those set forth in the Settlement Agreement that was filed on July 14, 2021 (Dkt. 99-11), as Exhibit 1 to the Declaration of Katherine A. Bruce in support of Plaintiffs’ amended motion for preliminary approval of class action settlement (hereinafter, “**Settlement Agreement**” and/or “**Ag.**”).

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1 **CLASS COUNSEL EXPENDED CONSIDERABLE TIME AND RESOURCES:**

2 3. **Work Performed.** Since the initiation of this case, approximately two years ago,
3 Moon Law and Clarkson have spent substantial hours on the investigation, pre-suit demand
4 activities, pleadings, case management strategy and related activities, discovery, settlement
5 negotiations and conferences, and Plaintiffs’ service-related activities set forth in detail in the
6 Declaration of Katherine A. Bruce, concurrently filed in support of the Motions at issue here,
7 including those specifically set forth in Section I. of said declaration. To avoid unnecessary
8 duplication, I incorporate those statements by this reference as though fully set forth herein.

9 4. **Reasonableness & Necessity of Work Performed, Rates, Fees, and Costs**
10 **Incurred.** Settlement Class Counsel’s hours expended, hourly rates, and related fees, along with
11 the out-of-pocket expenses incurred are reasonable in amount and were reasonably necessary to
12 prosecute the Settlement Class’s claims in this litigation, as well as achieve the exemplary result
13 afforded under the Settlement Agreement.

14 **MOON LAW’S LODESTAR:**

15 5. **Materials Reviewed.** Members of Moon Law maintain time records that identify the
16 timekeeper, time spent, and activities performed, which are regularly recorded by the listed
17 timekeepers in the ordinary course of business. I have reviewed Moon Law’s time entries and cross-
18 referenced file materials and communications to (1) ensure the accuracy and reliability of the time
19 records; (2) eliminate any duplicate, unnecessary, excessive, or erroneous time entries; and (3)
20 confirm all billable hours set forth in this declaration are reasonable, accurate, and complete as of
21 the signing of this declaration.

22 6. **Lodestar by Members of Moon Law.** The chart in Exhibit 4 sets forth each member
23 of Moon Law by name, position, and/or year of graduation from law school (where applicable). It
24 also provides the number of hours, in six-minute increments (0.1), that each member worked on this
25 case and their corresponding hourly billing rate. It calculates the total fees incurred by multiplying
26 the number of hours and billing rate, including a grand total for the firm and for each member.

27 7. **Future Hours/Work.** In addition to the above, I estimate that Settlement Class
28 Counsel will incur dozens of additional hours for future work in connection with this case through

1 final approval and to ensure the Court-appointed settlement administrator satisfies all duties with
 2 respect to the settlement at issue in the instant motions. Settlement Class Counsel will continue to
 3 devote additional time and resources to this litigation. This includes, among other things: preparing
 4 and appearing for the hearing on the instant motions, including responding to any oppositions or
 5 objections; assisting Settlement Class Members in the settlement claims process and responding to
 6 Settlement Class Member inquiries; ensuring all valid claims are paid and no invalid or fraudulent
 7 claims are paid from this settlement; and monitoring the distribution of settlement monies to
 8 Settlement Class Members who submit valid claims.

9 8. **Market Rates.** Based on my knowledge and experience, the hourly rates reflected
 10 above are within the range of market rates charged by attorneys of equivalent experience, skill, and
 11 expertise. I have personal knowledge of the range of hourly rates typically charged by counsel in
 12 California and the United States, both on current and past matters, for class actions involving
 13 consumer protection matters, similar to the subject matter of this case. My understanding of said
 14 rates comes from: (1) litigating and reviewing attorneys' fee applications, declarations, supporting
 15 materials, and orders awarding or denying requested fees; (2) discussing fees with other attorneys;
 16 (3) reviewing declarations regarding prevailing market rates filed by other attorneys seeking fees;
 17 (4) reviewing surveys, articles, and empirical research regarding attorneys' fees; and (5) auditing
 18 time records. In determining Moon Law's hourly rates from year to year, Moon Law has consciously
 19 taken market rates into account and has aligned its rates with the market. Moon Law's rates are
 20 consistent with the non-contingent market rates charged by attorneys of reasonably comparable
 21 experience, skill, and reputation for reasonably comparable class action work.

22 9. **Recent Example of Fee Award to Settlement Class Counsel.** In fact, recently, in
 23 granting final approval of a nationwide class-action settlement concerning mislabeled products, the
 24 San Bernardino Superior Court considered the same hourly rates for Moon Law as here as part of a
 25 lodestar cross-check and thereafter approved an attorneys' fee award of 33% of the common fund.
 26 *See O'Brien v. Sunshine Makers, Inc.*, Superior Court for the County of San Bernardino, Case No.
 27 CIV-SB-2027994 (Order, Sept. 21, 2021).

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1 10. **Contingency-Retainer Risks.** Moon Law was retained in this action on a wholly
2 contingent basis—meaning, Moon Law has not been paid for any work performed or costs incurred
3 in the prosecution of this action. Moon Law’s compensation for work and reimbursement of
4 expenses has, at all times, been entirely contingent on the outcome of this action. As such, Moon
5 Law has undertaken the risk of expending significant resources, in hours and costs, and receiving
6 no compensation if this action resulted in no relief or recovery.

7 11. **Quality of Representation.** I believe that Settlement Class Counsel consistently
8 displayed a high level of skill regarding the complex legal and factual issues presented in this action.
9 Settlement Class Counsel worked diligently for nearly two years to prosecute this action and spent
10 many months crafting a settlement that would ensure real and substantial benefits for all class
11 members. In doing so, Settlement Class Counsel avoided years of delay associated with litigating
12 this case, as well as the risks and uncertainty inherent in taking the case to trial and ultimately
13 collecting any monetary judgment if Plaintiffs prevailed.

14 12. **Forego Employment.** From the beginning, this action has demanded a great deal of
15 Settlement Class Counsel’s attention. This action required considerable work due to its novel theory
16 and application to a number of products, including, for example, significant: pre- and post-filing
17 investigation; research and analysis of legal and factual issues; research and analysis regarding the
18 laws of different states on liability, remedies, and defenses; research and analysis of complex
19 scientific matters concerning the ingredients at issue; research and analysis of marketing efforts,
20 advertisements and labels on a number of products; consultation with experts; and mediation and
21 settlement. Due to the considerable expenditure of time, effort, and resources to prosecute this
22 action, Moon Law was required, on some occasions, to forego employment in other matters, and to
23 reallocate resources away from other competing matters, in order to allow Moon Law to commit the
24 necessary resources to prosecute this case.

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1 I declare under penalty of perjury of the laws of the United States that the foregoing is true
2 and correct. Executed on November 3, 2021, in the State of California.

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4 DATED: November 3, 2021

MOON LAW APC

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Christopher D. Moon, Esq.

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