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*Attorneys for Plaintiffs, Settlement Class
Representatives, 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 for all purposes to the Hon. Nathanael
M. Cousins*

**DECLARATION OF PLAINTIFF AND
SETTLEMENT CLASS
REPRESENTATIVE MIKE XAVIER IN
SUPPORT OF PLAINTIFFS' MOTIONS
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS**

DECLARATION OF MIKE XAVIER

I, Mike Xavier, declare and state as follows:

1. I am a Settlement Class Representative and named-plaintiff in this action. 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. I have personal knowledge of all facts stated herein, and if called to testify as a witness, I could and would competently testify to them.

2. **Settlement Class Member/Typicality.** I am a member of the Settlement Class (consumers who purchased one or more Products in the United States prior to the date notice of the Settlement Agreement was first distributed on September 17, 2021), for purposes other than resale.¹ I previously purchased the Coppertone Sport Face Mineral-Based Sunscreen Lotion and Coppertone Kids Mineral-Based Sunscreen Lotion (both of which are Covered Products) during the Class Period in the State of California. In making my purchases, I relied upon the “Mineral-Based” representations. If I had known that the Products were not truly “Mineral-Based,” I would not have purchased them.

2. **Motivation to Prevent Consumer Fraud.** I decided to be a plaintiff in this case because I believe that companies should truthfully label and advertise their products so that consumers know what they are buying and spending their money on. Thus, I have volunteered to represent the class in this lawsuit because I believe that Defendants Bayer Healthcare LLC’s and Beiersdorf, Inc.’s alleged false advertising of the Products as “Mineral-Based” is wrong, that companies should not be allowed to make false advertising claims about their products to trick consumers into buying or paying more for them, and consumers have a right to know what they are buying.

5. **Compliance with Class Representative Duties.** I understand that as part of this settlement, I was preliminarily appointed as a Settlement Class Representative. Throughout the

¹ See Exhibit 1 to the Declaration of Katherine A. Bruce filed in support of Plaintiffs’ amended preliminary approval motion, filed on July 14, 2021 (Dkt. 99-11), which is hereinafter referred to as “**Settlement Agreement**” and/or “**Ag.**” Capitalized terms set forth herein shall have the same meaning set forth in the Settlement Agreement unless expressly stated otherwise.

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1 prosecution of this action including the pursuit of any settlement, I have understood and agreed to
2 the following:

- 3 a. A class representative represents the interests of all members of the class;
- 4 b. A class representative always considers the interests of the class just as he or she
- 5 would consider his or her own interests;
- 6 c. A class representative participates in the lawsuit, such as by testifying at
- 7 deposition and trial, answering written questions and providing documents,
- 8 complying with all discovery obligations, and staying generally informed of the
- 9 status and progress of the lawsuit; and
- 10 d. No compensation to me for my services in pursuing this action, and no litigation
- 11 outcomes, can, or have been, guaranteed.

12 In accord with the foregoing, I have, and will continue to be, willing and able to represent the
13 interests of the Settlement Class.

14 6. **No Conflicts of Interest.** I have no conflicts of interest with any other member of the
15 Settlement Class. For example, I am not employed by Defendants, Defendants’ attorneys,
16 Settlement Class Counsel, the settlement administrator Digital Settlement Group, or the *cy pres*
17 beneficiary, Look Good Feel Better. My only involvement with the Products and Defendants is
18 limited to buying products as a consumer and bringing this action against Defendants.

19 7. **Settlement Terms.** I believe that the proposed settlement is a fair, adequate, and
20 reasonable. It not only appears to provide significant monetary benefits (including the \$2.25 million
21 cash payment) and non-monetary benefits (including transparency and truthfulness in advertising),
22 but it provides finality and the certainty of a recovery for the Settlement Class.


23 8. **Personal Time Investment.** I have been actively involved, worked diligently with
24 my attorneys, and have devoted significant hours to the case. In the midst of the COVID19 global
25 pandemic, I invested many hours in this litigation, which included conducting and overseeing my
26 attorneys’ detailed research and investigation regarding the advertising and labeling of the Covered
27 Products; contributing to the drafting of the complaint; participating in the discovery process,
28 including conducting a reasonable and diligent investigation and search for documents and

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1 information, reviewing discovery responses, and certifying the accuracy and completeness of
2 responses to interrogatories; regularly conferring with my attorneys regarding case status and
3 strategy; reviewing relevant pleadings and papers filed in this action; reviewing documents related
4 to this case; interviewing with my attorneys to build the case and otherwise making myself available
5 to do work on behalf of the class; considering the pros and cons of a highly complex national
6 settlement and notice and claims process embodied in the Settlement Agreement and Amended
7 Settlement Agreement; and carefully reviewing the settlement documents in order to understand the
8 terms, prior to approving them, including balancing the benefits to the Settlement Class, against the
9 \$2.25 million cash payment and discontinuation of the “Mineral-Based” claims from the Covered
10 Products’ advertising, and factoring in the risks and costs entailed in continuing with lengthy
11 litigation. To accomplish all of this, I took time away from work and personal activities to initiate,
12 champion, litigate, and reach a settlement in this action.

13
14 I declare under penalty of perjury under the laws of the State of California and the United
15 States that the foregoing is true and correct.

16
17 Executed on this 3rd day of November 2021, in the State of California.

18
19 By: 
20 Mike Xavier