

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

**CLARKSON LAW FIRM, P.C.**  
Ryan J. Clarkson (SBN 257074)  
*rclarkson@clarksonlawfirm.com*  
Shireen M. Clarkson (SBN 237882)  
*sclarkson@clarksonlawfirm.com*  
Katherine A. Bruce (SBN 288694)  
*kbruce@clarksonlawfirm.com*  
Lauren E. Anderson (SBN 329173)  
*landerson@clarksonlawfirm.com*  
22525 Pacific Coast Highway  
Malibu, California 90265  
Tel: (213) 788-4050  
Fax: (213) 788-4070

*Attorneys for Plaintiffs*

**MOON LAW APC**  
Christopher D. Moon (SBN 246622)  
*chris@moonlawapc.com*  
Kevin O. Moon (SBN 246792)  
*kevin@moonlawapc.com*  
600 West Broadway, Suite 700  
San Diego, California 92101  
Tel: (619) 915-9432  
Fax: (650) 618-0478

*Attorneys for Plaintiffs*

**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

*Assigned for all purposes to the Hon. Nathanael  
M. Cousins*

**DECLARATION OF KATHERINE A.  
BRUCE IN SUPPORT OF PLAINTIFFS'  
AMENDED MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

**REDACTED AND PUBLICLY FILED**

1 **DECLARATION OF KATHERINE A. BRUCE**

2 I, KATHERINE A. BRUCE, hereby declare under penalty of perjury as follows:

3 1. I am a partner at Clarkson Law Firm, P.C. (“**Clarkson**”), counsel of record for  
4 Plaintiffs Steven Prescott and Mike Xavier (collectively, “**Plaintiffs**”). I make this declaration in  
5 support of Plaintiffs’ amended motion for preliminary approval of class action settlement. I make  
6 the following statements based on my own personal knowledge, except where indicated as based  
7 upon information and belief. If called to testify to the following matters, I could and would do so  
8 competently.

9 2. I have submitted concurrently herewith true and correct copies of the following  
10 documents:

- 11 a. **Exhibit 1**: Settlement Agreement, fully executed on July 12, 2021, by Plaintiffs  
12 and Defendants Bayer Healthcare LLC (“**Bayer**”) and Beiersdorff, Inc.  
13 (“**Beiersdorff**”) (collectively, “**Defendants**”), governing all terms of the proposed  
14 class-wide settlement that is the subject of Plaintiffs’ amended motion for  
15 preliminary approval, including the exhibits thereto—Exhibit A (Claim Form),  
16 Exhibit B (Notice Plan, including Exhibit B1 (Long Form Notice), Exhibit B2  
17 (Short Form Notice), and Exhibit B3 (Online Advertisements)), Exhibit C  
18 (Proposed Order Granting Preliminary Approval), and Exhibit D (Proposed Order  
19 Granting Final Approval) (hereinafter, the “**Amended Settlement Agreement**”)<sup>1</sup>;
- 20 b. **Exhibit 2**: Clarkson’s firm resume that accurately sets forth its attorneys’  
21 qualifications to serve as class counsel for the Settlement Class<sup>2</sup> (hereinafter, the

22 <sup>1</sup> All capitalized and bold defined terms are intended to be, and should be read as, consistent with  
23 the Amended Settlement Agreement submitted as Exhibit 1 and all papers filed in support of  
24 Plaintiffs’ amended motion for preliminary approval of the class settlement, including the notice of  
25 motion, memorandum of points and authorities, declarations submitted in support thereof, and  
26 proposed order.

27 <sup>2</sup> The term “**Settlement Class**” or “**Class**” is effectively defined under the terms of the Amended  
28 Settlement Agreement as: all retail consumers who purchased in the United States one or more of  
the Products, for use and not for resale, prior to the date that the Class is first notified of the  
settlement pursuant to the Court’s preliminary approval order (the “**Notice Date**”). See Exhibit 1  
[Am. Settlt. Ag.] at ¶¶ 2.13 (Excluded Persons), 2.23 (Notice Date), 2.26 (Online Notice), 2.32  
(Preliminary Approval), 2.33 (Products), 2.39 (Settlement Class). The term “**Products**” means  
Coppertone sunscreen products that included “Mineral-Based” on the label, in various sizes and

1                   “**Clarkson Resume**”);

- 2                   c. **Exhibit 3**: The firm resume for Moon Law, APC (“**Moon**”), which accurately sets  
3                   forth its attorneys’ qualifications to serve as class counsel for the Settlement Class  
4                   (hereinafter, the “**Moon Resume**”);
- 5                   d. **Exhibit 4**: the docket report printed on July 13, 2021, from PACER for *Miller v.*  
6                   *Ghiradelli Chocolate Company*, Case No. 3:12-cv-04936-LB (N.D. Cal.)
- 7                   e. **Exhibit 5**: the docket report printed on July 13, 2021, from PACER for *Fitzhenry-*  
8                   *Russell v. The Coca-Cola Company*, Case No. 5:17-cv-00603-EJD (N.D. Cal.)
- 9                   f. **Exhibit 6**: the docket report printed on July 13, 2021, from PACER for *Gergetz*  
10                  *v. TeleNav, Inc.*, Case No. 5:16-cv-04261-BLF (N.D. Cal.)
- 11                  g. **Exhibit 7**: the docket report printed on July 13, 2021, from PACER for *Maxin v.*  
12                  *RHG & Company, Inc.*, Case No. 3:16-cv-02625-JLS-BLM (N.D. Cal.)
- 13                  h. **Exhibit 8**: the docket report printed on July 13, 2021, from PACER for *Hazlin v.*  
14                  *Botanical Laboratories, L.L.C., et. al.*, Case No. 3:13-cv-00618-KSC (S.D. Cal.)
- 15                  i. **Exhibit 9**: the docket report printed on July 13, 2021, from PACER for *Howerton*  
16                  *v. Cargill, Inc.*, Case No. 1:13-cv-00336-LEK-BMK (D.Haw.)
- 17                  j. **Exhibit 10**: the docket report printed on July 13, 2021, from PACER for *Loomis*  
18                  *v. Slenderstone*, Case No. 3:19-cv-00854-MMA-KSC (S.D. Cal.)

19                  3. **Discovery & Investigation.** Immediately after Defendants answered the First  
20 Amended Complaint (“**FAC**”), on August 19, 2020, Plaintiffs served Defendants with substantial  
21 requests for documents and interrogatories. On August 21, 2020, Defendants similarly served  
22 Plaintiffs with requests for documents and interrogatories. The Parties exchanged initial disclosures  
23 on September 4, 2020. Then, on October 2, 2020, Defendants each served responses to Plaintiffs’  
24 discovery requests. On October 2, 2020, Defendant Beiersdorf produced documents, which included  
25 comprehensive market research, trade strategy, and advertising designs, as well as formulation  
26 information, all of which informed Plaintiffs’ case strategy and settlement position. In addition,

27 \_\_\_\_\_  
28 forms: Coppertone Water Babies Pure & Simple, Coppertone Kids Tear Free, and Coppertone Sport Face.

1 Defendants provided Plaintiffs with comprehensive Product sales data. On October 5, 2020,  
2 Plaintiffs likewise served responses to Defendants' discovery requests. Plaintiffs' counsel  
3 proceeded to evaluate Defendants' discovery, defenses, and the merits of Plaintiffs' claims,  
4 consulted with damages experts, conducted extensive research into comparison product labels,  
5 market pricing, and retail sales, and conducted a comprehensive analysis of Defendants' sales data  
6 to determine maximum case value assuming full liability, as well as reasonable settlement value in  
7 light of the risks of litigation and likely price premium attributable to the false mineral-based label  
8 of the sunscreen products at issue.

9       4.     **Extensive Arms' Length and Informed Settlement Negotiations Mediated by an**  
10 **Acting Magistrate Judge.** On September 25, 2020, December 11, 2020, and December 14, 2020,  
11 Plaintiffs' counsel at Clarkson and Moon Law participated in three settlement conferences with the  
12 Honorable Virginia K. DeMarchi, a Magistrate Judge for the United States District Court for the  
13 Northern District of California. *See also Exhibit 1* [Am. Settlmt. Ag.] at ¶ 1.5; Minute Entry,  
14 9/28/2020, Dkt. 65 (9/25/2020 Settlement Conference); Minute Entry, 12/14/2020, Dkt. 72  
15 (12/11/2020 Settlement Conference); Minute Entry, 12/15/2020, Dkt. 73 (12/14/2020 Settlement  
16 Conference). Prior to the settlement conferences, the parties exchanged comprehensive mediation  
17 briefs and submitted confidential settlement letters to the Court that extensively detailed their legal  
18 and factual support. The first two conferences entailed a full-day of settlement negotiations and the  
19 third conference entailed a half-day of settlement negotiations, all of which Judge DeMarchi  
20 mediated. At the conclusion of the last settlement conference, Plaintiffs and Defendants reached a  
21 tentative settlement in principle for key terms. Subsequently, Plaintiffs spent approximately three  
22 months negotiating the finer details and language of the original settlement agreement, including  
23 the Claim Form, Long Form and Short Form Notices, Online Advertisements, and Proposed Orders  
24 Granting Preliminary and Final Approval. After the Court denied Plaintiffs first motion for  
25 preliminary approval of class action settlement on April 29, 2021 (Dkt. 87), the parties engaged in  
26 further negotiations over the course of two months and participated in two additional settlement  
27 conferences with Judge DeMarchi before reaching agreement on the terms reflected in the Amended  
28 Settlement Agreement that is the subject of the instant motion. Throughout this process, neither

1 counsel for Plaintiffs nor Plaintiffs colluded with Defendants or their counsel to undermine the  
2 interests of the Class. At all times, the parties negotiated at arms' length and Plaintiffs and Plaintiffs'  
3 counsel strenuously negotiated for the benefit of the Class. As discussed above, Plaintiffs' counsel  
4 have received, examined, and analyzed information, documents, and materials that enabled them to  
5 assess the likelihood of success on the merits. These efforts included detailed interrogatory  
6 responses and documents concerning all critical aspects of the case, including issues relevant to both  
7 merits and class certification, consultation with experts and an independent investigation and  
8 analysis of sales data. Consequently, the Amended Settlement Agreement is the result of fully-  
9 informed negotiations based on a vast amount of information obtained during discovery and  
10 mediation, as well as multiple rounds of review and vigorous negotiation.

11 5. **Cy Pres Award.**

- 12 a. **No Ownership Interest in LGFB.** Clarkson, including its owners, executive  
13 officers, and employees, do not have an ownership or financial interest in Look  
14 Good Feel Better Foundation (“**LGFB Foundation**”).
- 15 b. **No Control Over LGFB.** Clarkson, including its owners, executive officers, and  
16 employees, are not officers, directors, or employees of LGFB Foundation and  
17 therefore do not have any right or ability to control how LGFB Foundation would  
18 administer or allocate any *cy pres* award that it may receive under the terms of the  
19 proposed settlement in this action.
- 20 c. **No Donations to LGFB.** Clarkson, including its owners, executive officers, and  
21 employees, have not donated money, services, or goods to LGFB Foundation.
- 22 d. **No Collusion.** Clarkson, including its owners, executive officers, and employees,  
23 have not engaged in any sort of collusion with any party, their counsel, or LGFB  
24 Foundation to use or steer any *cy pres* award to LGFB Foundation to serve the  
25 personal, corporate, or financial interests of any party or their counsel.
- 26 e. **Reason for Designation.** Clarkson, including its partners who serve as counsel of  
27 record in this action, agreed to the designation of LGFB Foundation as a *cy pres*  
28 award recipient under the terms of the proposed settlement in this action solely

1 based on the belief that the charitable organization, which combats cancer, would  
2 use the award in a manner that serves the interests of the class of consumers who  
3 purchase sunscreen (and the products at issue in this case), which are products  
4 primarily designed to provide sun protection and, therefore, prevent cancer.

5 6. **Plaintiffs' Service.** Plaintiffs participated in the pre-suit investigation phase,  
6 including verifying their adequacy as class representatives, evaluating potential conflicts of  
7 interests, ensuring their claims are typical of the Class, and contributing to the drafting of the  
8 complaint. They also engaged in the discovery process, including conducting a reasonable and  
9 diligent investigation and search for documents and information, reviewing discovery responses,  
10 and certifying the accuracy and completeness of responses to interrogatories. Additionally, they  
11 actively engaged in the settlement process, including preparing for settlement negotiations,  
12 attending a full-day settlement conference, conferring with counsel regarding settlement offers and  
13 demands, and evaluating the proposed settlement to ensure it constitutes a fair, reasonable, and  
14 adequate settlement for the Class. Plaintiffs were fully informed of the benefits and risks before  
15 entering into the Amended Settlement Agreement.

16 7. **Motion for Attorneys' Fees & Costs and Incentive/Service Awards.** Settlement  
17 Class Counsel will justify any request for attorneys' fees with a loadstar-multiplier, consistent with  
18 awards for common-fund settlements, under which fees are a percentage of the fund. In further  
19 consideration of the Class's interests, Plaintiffs and Class Counsel may apply for awards below the  
20 maximum amount allowable under the terms of the Amended Settlement Agreement, depending on  
21 the number of Settlement Class claims.

22 8. **Notice & Claims Administrator's Budget.** The notice and claims administrator,  
23 Digital Settlement Group ("DSG"), submitted a reasonable bid of \$530,000 plus postage to  
24 administer notice and claims consistent with the terms of the Amended Settlement Agreement. In  
25 my firm's experience, the budget is on par with other bids and actual—at the time of final  
26 approval—costs incurred for the administration of a notice and claims program of the type  
27 contemplated in the Amended Settlement Agreement, for similar nationwide class settlements  
28 involving common household goods where customer lists are unavailable. Plaintiffs' counsel

1 conducted a competitive bidding process wherein counsel reviewed three different bids from various  
 2 reputable and experienced notice and claims administrators that have been appointed to administer  
 3 consumer class action settlements. Plaintiffs' counsel evaluated each bid, the estimated reach, and  
 4 the reliability of those estimates based on an in-depth evaluation of the proposed methods. Plaintiff's  
 5 counsel also reviewed each budget to evaluate what is, and what is not, included in the estimated  
 6 total, alongside the total estimated claims and how that would impact the final cost, including all  
 7 overages and postage. Based on Plaintiffs' counsel's evaluation, Plaintiffs' counsel determined that  
 8 DSG's budget is not only reasonable, but is also consistent with market rates and costs typically  
 9 incurred for similar consumer class action settlements.

10       9. **Monetary Relief Per Amended Settlement Agreement.** Under the terms of the  
 11 Amended Settlement Agreement, Defendant shall pay \$2.25 million into a fund that shall be  
 12 exhausted by: (1) Class Members' valid claims, (2) notice and claims administration costs, (3)  
 13 Plaintiff's attorneys' fees and costs, and (4) incentive or service awards to Plaintiffs (the  
 14 "**Settlement Fund**"). *See* Exhibit 1 [Am. Settlmt. Ag.] at ¶¶ 2.38 (Settlement Benefit), 2.40  
 15 (Settlement Fund). If the Settlement Fund is under- or over-subscribed, each valid claim will receive  
 16 a *pro rata* upwards (for a maximum multiplier of nine (9)) or downwards adjustment per Product,  
 17 respectively. *Id.* ¶ 3.13. Any remaining funds shall be disbursed *cy pres* to a charitable organization.  
 18 *Id.* No money reverts to Defendants. *Id.* ¶ 2.40. Class Members who cannot produce proof of  
 19 purchase may submit a claim to receive \$2.50 per unit of Product, for up to four (4) units per  
 20 household, which totals \$10.00. *Id.* ¶ 3.4. Class Members who submit proof of purchase with their  
 21 claim may receive \$2.50 per unit of Product, without limitation to the number of units. *Id.*

22       10. **Monetary Relief Valuation.** Whether the monetary component of the proposed  
 23 settlement is adequate, fair, and reasonable may be evaluated in two ways.

24       a. **Price Premium.** First, Plaintiffs' best-case recovery would be the price  
 25 "premium" consumers paid for the alleged falsely advertised product attribute—  
 26 its mineral-based quality. Based on my firm's independent research, conducted in  
 27 late-2020, regarding the advertised retail prices for major brick and mortar and  
 28 ecommerce retailers (such as CVS, RiteAid, Target, Walmart, Amazon, Instacart,



1 and Google Shopping), the average retail price for each Product falls within a  
 2 range of approximately \$7.44 and \$9.89, which averages across all Products to  
 3 approximately \$8.88. The \$2.50 refund for Products that cost approximately \$8.88  
 4 is equal to a 28.2% price premium, which is within the range of a reasonable  
 5 estimated price premium based on my firm and my co-counsel's collective  
 6 experience in litigating false advertising cases and having conjoint analyses  
 7 conducted to determine the price premium for an every-day household good where  
 8 the challenged advertising claim is not the primary purpose of the product (which,  
 9 here, is sun protection and not mineral active ingredients).

10 b. **Settlement Fund Percentage of Total Sales.** Second, based on the sales data  
 11 provided by Defendant, the \$2.25 million Settlement Fund represents nearly [REDACTED] %  
 12 of Defendants' sales of approximately [REDACTED], for approximately [REDACTED]  
 13 [REDACTED] products, over the course of approximately 5 years. If one were to assume  
 14 that a full refund of the purchase price is the Class's best-case scenario (which far  
 15 exceeds actual damages or restitution absent proof that the Products do not provide  
 16 any sun protection—i.e., Class Members received absolutely no benefit in  
 17 exchange for their money), then one would conclude Defendants' total sales  
 18 represent the maximum monetary value of the case. Although Plaintiffs' counsel  
 19 does not suggest that Defendants' total sales is equivalent to Defendants'  
 20 maximum exposure for the actual economic losses suffered by the Class (i.e.,  
 21 actual damages being the portion of the sales price that consumers paid solely for  
 22 the falsely advertised "Mineral-Based" attribute), it represents the absolute outer-  
 23 limits to the Class's economic losses recoverable in this action assuming the price  
 24 premium was 100% of the sales price and the Class were entitled to a complete  
 25 refund for Products that failed to provide any benefit at all.

26 11. **Injunctive Relief & Valuation.** In addition to the monetary relief, the Amended  
 27 Settlement Agreement requires Defendants to change its practices in a manner that benefits Class  
 28 Members and other consumers by ensuring transparency in the challenged "Mineral-Based" labeling



1 claim. Defendants have removed “Mineral-Based” from the Products’ labels and, under the terms  
2 of the proposed settlement, Defendants have agreed that if the term “Mineral-Based” is used on  
3 Coppertone sunscreen Product labels at any point after the preliminary approval of this settlement  
4 and through December 31, 2023, and the Products contain both mineral sunscreen active ingredients  
5 and other active ingredients, then Defendants will include a statement on the Product packaging that  
6 states the Product contains other sunscreen active ingredients. Exhibit 1 [Am. Settlmt. Ag.] at ¶¶  
7 1.4, 4.1. The cessation of the mineral-based claim, and agreement to add labeling statements that  
8 ensure transparency, provide a significant benefit to consumers, regardless of whether they submit  
9 a claim or seek exclusion from the Settlement Class. The proposed injunctive relief not only benefits  
10 the Settlement Class, but it provides a significant benefit to all consumers, a fairly functioning  
11 marketplace, and the public that is extraordinarily valuable. Transparency and honesty in advertising  
12 facilitates a highly visible and competitive marketplace by promoting credibility and fair  
13 competition. It raises the floor of truth telling in advertising by major competitors elevating the  
14 customary standard of practice across the industry. It serves fidelity to consumer protection laws  
15 designed to prevent consumer fraud.

16       12. **Continued Costs and Risks in Strongly Contested Litigation.** Proceeding in this  
17 litigation in the absence of settlement poses significant risks, such as failing to certify a Class, having  
18 summary judgment granted against Plaintiffs, or losing at trial.

- 19       a. **Battle of Experts.** Even assuming that Plaintiffs were to satisfy certification, and  
20 the inevitable motion for summary judgment, they would face the risk of  
21 establishing liability at trial if there is any conflicting expert testimony. Not only  
22 would the parties’ experts battle over consumer perceptions of the challenged  
23 “Mineral-Based” labeling claims, but they would battle over whether consumers  
24 paid a premium for the “Mineral-Based” attributes, including what, if any, dollar  
25 amount should be assigned to that premium. Because Defendants strongly dispute  
26 consumers’ perceptions, that any price premium exists, and the amount of the  
27 price premium, any testimony from the parties’ experts necessary to establish or  
28 refute these issues would diverge wildly. In this “battle of experts,” it is virtually

1 impossible to predict with any certainty which testimony would be credited, and  
2 ultimately, which expert's version would be accepted by the jury. The experience  
3 of Plaintiffs' counsel has taught them that these considerations can make the  
4 ultimate outcome of a trial highly uncertain.

5 b. **Appellate Risks and Delays.** Moreover, even if Plaintiffs were to prevail at trial,  
6 the Class would face additional risks if Defendants appeal or move for a new trial.  
7 *See, e.g., In re Apple Computer Sec. Litig.*, No. C-84-20148(A)-JW, 1991 WL  
8 238298, 1991 U.S. Dist. LEXIS 15608, at \*2-3 (N.D. Cal. Sept. 6, 1991) (the jury  
9 rendered a verdict for plaintiffs exceeding \$100 million, however, the court  
10 overturned the verdict and ordered a new trial with respect to the corporate  
11 defendant). By settling, Plaintiffs and Class Members avoid these risks and the  
12 delays of the appellate process.

13 c. **Risks of Decertification.** Plaintiffs also face risks in certifying a class and  
14 maintaining that class status through trial. Even assuming that the Court were to  
15 certify a class, the class could still be decertified at any time. *See, e.g., In re Netflix*  
16 *Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 U.S. Dist. LEXIS 37286, 2013 WL  
17 1120801, at \*6 (N.D. Cal. Mar. 18, 2013) ("The notion that a district court could  
18 decertify a class at any time is one that weighs in favor of settlement.") (internal  
19 citations omitted). From their prior experience, Plaintiffs' counsel anticipate that  
20 Defendants would likely move for reconsideration, attempt to appeal the Court's  
21 decision pursuant to Rule 23(f), and/or move for decertification at a later date.  
22 Here, the Amended Settlement Agreement eliminates these risks by ensuring  
23 Class Members a recovery that is certain, immediate, and eliminates the risk that  
24 Class Members would be left without any recovery at all.

25 d. **Expert Costs.** In addition, the expense to prosecute this case is substantial in light  
26 of the need for expert testimony from multiple disciplines, including economics,  
27 conjoint analysis, and marketing. The costs associated with these experts,  
28 including expert investigation, analysis, surveys, reports and rebuttal reports,

1           depositions, oppositions to any *Daubert* challenges, testimony, and any associated  
2           costs such as travel expenses, would quickly accumulate. The accumulation of  
3           such costs could quickly lead to a scenario in which settlement might not be  
4           economically feasible for either party.

5           e. **Trial Delays to Relief & Ongoing/Continued Harm.** Finally, because trial  
6           would likely not occur until June 22, 2022 (*see* Case Management Scheduling  
7           Order, 8/20/2020, Dkt. 54) or later, any monetary and injunctive relief achieved  
8           as a result of trial, would not occur for another one and one-half years (1.5 years)  
9           or more. In the meantime, Defendants could continue to deceptively label the  
10          Products with impunity to the financial detriment of Class Members and  
11          consumers.

12          13. **Achieved Primary Litigation Objectives.** In sum, Plaintiffs dual primary objectives  
13          in litigation have been achieved: (1) fair and adequate monetary compensation to consumers misled  
14          into purchasing the Products based on the false “Mineral-Based” labels; and (2) a change in  
15          Defendants’ marketing practices that will ensure honesty and transparency with all consumers.

16          14. **Plaintiffs’ Counsel’s Qualifications, Experience, and Views.** Plaintiffs’ counsel are  
17          experienced consumer advocates and are well qualified to serve as Class Counsel. *See* Exhibit 2  
18          [Clarkson Law Firm Resume]; Exhibit 3 [Moon Law Firm Resume]. They have vast experience  
19          successfully representing plaintiffs and classes in complex class-action litigation, specifically in  
20          consumer product mislabeling cases. Exhibit 2 [Clarkson Law Firm Resume]; Exhibit 3 [Moon Law  
21          Firm Resume]. Plaintiffs’ counsel have diligently prepared this matter for class certification and  
22          trial in accordance with the Court’s schedule and presented this settlement to the Court in conformity  
23          with this District’s guidelines. The proposed settlement was negotiated by Plaintiffs’ counsel who  
24          have extensive experience in consumer class action litigation. Exhibit 2 [Clarkson Law Firm  
25          Resume]; Exhibit 3 [Moon Law Resume]. The settlement reflects the realities of each side’s case  
26          and the information obtained during the discovery and mediation process. The settlement is the  
27          result of extensive, informed, arms-length negotiations between counsel with substantial litigation  
28          experience, who are fully familiar with the legal and factual issues in this case, and who have

1 specific experience litigating and settling complex and class action cases. Accordingly, based on  
2 their collective experience, Plaintiffs’ counsel concluded that the proposed settlement provides  
3 exceptional results for the Class while sparing the Class from the uncertainties and costs of  
4 continued and protracted litigation.

5       15.   **Class Certification Elements.**

6           a.   **Numerosity.** It is undisputable that there are thousands or tens of thousands of  
7           Class Members throughout the United States, as more than two million products  
8           have been sold in the past approximately five years. The estimated units of  
9           Products sold is based on Defendants’ sales data designated as confidential.

10          b.   **Plaintiffs’/Counsel’s Fair & Adequate Representation.** Plaintiffs and their  
11          counsel do not have any conflicts with Class Members and have vigorously  
12          prosecuted this case through their pre-litigation investigation, complex motion  
13          practice, fact discovery, settlement negotiations, and structuring of the proposed  
14          settlement. *See also, supra*, ¶¶ 3-4. Plaintiffs agreed to serve in a representative  
15          capacity, communicated frequently with their attorneys, responded to discovery  
16          requests, contributed to the preparation of the complaint, and actively participated  
17          in settlement negotiations. *See also, supra*, ¶ 3-5. Plaintiffs’ counsel are qualified  
18          to serve as Settlement Class Counsel. *See also, supra*, ¶ 13.

19          c.   **Superiority.** Class Members lack the incentive to bring their own cases against  
20          Defendants, given the potential recovery for each Class Member, when the  
21          estimated average retail price, per Product, ranges between \$7 and \$10, which  
22          represents the absolute maximum conceivable actual damages (actual consumer  
23          economic losses) that may be recovered in this action. Plaintiffs Counsel have  
24          monitored federal filings throughout this proceeding to identify any similar cases  
25          and have found none. Defendants have not reported any related cases to Plaintiffs  
26          pursuant to N.D. Cal. Civ. L.R. 3-12.

27        ///

28        ///

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

I declare the foregoing is true and correct under the penalty of perjury of the laws of the United States of America.

Executed this 17th day of March, 2021.

/s/ Katherine A. Bruce  
KATHERINE A. BRUCE