

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SUSAN SWETZ, individually on	:	CASE NO. 7:20-cv-04731-NSR
behalf of herself and all others similarly	:	
situated,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
GSK Consumer Health, Inc.,	:	
	:	
Defendant.	:	
	X	

**DECLARATION OF CHRISTOPHER D. MOON IN SUPPORT OF PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF SETTLEMENT AND MOTION FOR
ATTORNEYS’ FEES, LITIGATION COSTS AND SERVICE AWARDS**

I, Christopher D. Moon, hereby declare and state as follows:

1. I am a managing partner at the firm of Moon Law APC (“Moon Law”), one of the law firms representing Plaintiffs in this litigation and in *White v. GlaxoSmithKline Consumer Healthcare Holdings (USA) LLC*, (No. 5:20-cv-04048) (N.D. Cal.) (“the *White Action*”), a similar case against Defendant GlaxoSmithKline Consumer Healthcare Holdings (USA) LLC (“GSK”) pending in the United States District Court for the Northern District of California (collectively, “the Benefiber Litigation”).¹

2. I submit this declaration in support of: (i) Plaintiffs’ Motion for Final Approval of Settlement; and (ii) Plaintiffs’ Motion for Attorneys’ Fees, Litigation Costs and Service Awards. I

¹ Unless otherwise indicated, capitalized terms shall have the same meaning as they do in the Settlement Agreement. References to “§” are to sections of the Settlement Agreement, ECF No. 46-1, and all Settlement Agreement exhibits are referred to as “Ex #.”

am personally familiar with the facts set forth in this declaration. If called as a witness I could and would competently testify to the matters stated herein.

3. Moon Law has prosecuted the Benefiber Litigation solely on a contingent-fee basis and has been at risk of not receiving any compensation for prosecuting claims against GSK.

I. INVESTIGATION AND MANAGEMENT OF THE BENEFIBER LITIGATION

4. Moon Law began its investigation into GSK's false advertising in May 2020. Moon Law reviewed publicly available documents, conducted product and legal research, communicated with potential and retained class representatives, and conferred with other counsel in advance of filing the complaint in the *White* Action on June 17, 2020.

5. Since its inception, Moon Law has actively participated in all aspects of the Benefiber Litigation, including, but not limited to: (1) case investigation; (2) drafting of the initial complaint; (3) opposing GSK's motion to transfer venue; (4) opposing GSK's motion to dismiss; (5) appearing at the hearing on GSK's motion; (6) drafting amended complaints; (7) preparing written discovery; (8) participating in case strategy decisions; (9) reviewing settlement discovery; (10) participating in mediation and settlement negotiations; (11) communicating frequently with defense counsel regarding litigation and settlement matters; (12) drafting the settlement agreement; and (13) preparing the settlement approval documents.

6. Additionally, Moon Law participated in regular calls with Class Counsel. During these calls, various aspects of the Benefiber Litigation were discussed.

II. MEDIATION AND SETTLEMENT

7. Shortly after the Court's ruling on GSK's motion to transfer venue and motion to dismiss in the *White* Action, the Parties engaged in settlement discussions. Moon Law and Class Counsel engaged in several months of arms'-length negotiations.

8. As part of the settlement negotiations, two mediation sessions took place with Judge Denlow (Ret.). The Parties participated in a mediation with Judge Denlow on January 21, 2021. The Parties were unable to resolve the lawsuits at this mediation session. However, the parties—with the assistance of Judge Denlow—continued to pursue settlement discussions for several weeks. On February 10, 2021, the parties participated in a second mediation session with Judge Denlow.

9. The matter did not resolve at mediation, however, the parties—with the assistance of Judge Denlow—continued to pursue settlement discussions for several weeks until they reached a settlement in principle. The parties then spent months working out the details in the Agreement, which is the product of hard-fought, arm's length negotiations.

10. On May 10, 2021, a settlement was reached between the Parties.

11. At all times, the months'-long negotiations and extensive efforts, which ultimately resulted in the settlement presented to the Court, were adversarial, non-collusive, and conducted at arm's length.

III. MOON LAW'S LODESTAR AND LITIGATION EXPENSES

12. This declaration generally summarizes the work performed by Moon Law for Plaintiffs and the Settlement Class Members in the Benefiber Litigation. As demonstrated below, Moon Law has worked diligently to perform tasks throughout the entire course of the Benefiber Litigation, including initial case investigation, filing the initial complaint, opposing a transfer motion and pleadings challenges, filing amended complaints, discovery, settlement discussions, and preparing the settlement agreement and motions for settlement approval.

a. Before initiating any action and throughout the Benefiber Litigation, Class Counsel conducted a thorough investigation of the claims, both legal and factual. Specifically, Moon Law researched the legal landscape of nationwide and California claims for false

advertising, consumer fraud and consumer protection, breach of warranty, unjust enrichment, and fraud or misrepresentation, including liability, remedies, defenses, and certification related issues; the industry and scientific literature regarding the manufacturing process to derive wheat dextrin and the efficacy of fiber supplements to reduce appetite or otherwise “curb cravings”; the Better Business Bureau’s National Advertising Division and National Advertising Review Board’s reports regarding their investigation and analysis of Benefiber’s natural and satiety claims; the advertising of Benefiber in all mediums; and the market segment for fiber supplements, including past and projected sales for the Covered Products and nationwide marketing and sales trends, practices, and patterns for the industry. Class Counsel not only used this research and investigation to draft and file the complaint, first amended complaint, and second amended complaint on June 17, August 27, and November 30, 2020 (*White*, ECF 1, 23, 44), but also to evaluate the risks, benefits, and likelihood of outcomes in prosecuting the Benefiber Litigation in comparison to a potential early resolution.

b. In response to GSK’s motion to transfer and motion to dismiss or stay the *White* Action filed on August 13 and September 24, 2020 (*White*, ECF 15-17, 33-34), Moon Law extensively researched, drafted, and filed oppositions on October 8, 2020 (*White*, ECF 36-37), concerning a variety of complex legal and factual matters, including the proper forum and GSK’s citizenship, and operational structure and presence throughout the nation; primary jurisdiction and the United States Food and Drug Administration’s (“FDA’s”) regulatory history concerning “natural” dietary supplements; California’s legislative history and enactment of the Consumers Legal Remedies Act, codified at Cal. Civ. Code §§ 1750, *et seq.*, including pre-litigation notice obligations; Article III standing to assert claims for injunctive relief despite knowledge that products were previously falsely advertised; and the underlying rationale and precedence regarding

courts' equitable jurisdiction, the classification of remedies as equitable or legal, and California legislative history and precedence classifying remedies authorized under California's consumer protection statutes.

c. In addition, Moon Law engaged in discovery in the *White* Action. On September 22, 2020, the parties completed the initial Fed. R. Civ. P. 26(f) attorney-conference. On September 30, 2020, Plaintiff White served interrogatories and document requests to GSK designed to gather evidence necessary to certify the Benefiber Litigation as a class action and prepare it for trial on the merits. On September 25, 2020 and January 5, 2021, the parties exchanged initial Fed. R. Civ. P. 26(a)(1) disclosures. The parties agreed to hold the outstanding discovery in abeyance in exchange for GSK's production of critical documents prior to the initiation of any settlement negotiations, including documents regarding the Covered Products' labels throughout the Class Period, GSK's substantiation of the claims at issue, including their manufacturing process, GSK's market research and related marketing campaign information, and the Covered Products' sales figures. Moon Law thoroughly investigated and researched the claims, defenses, and potential outcomes of the Benefiber Litigation at class certification and trial, which allowed Class Counsel to better evaluate the factual claims regarding GSK's representations on the Covered Products.

13. Not including the time expended in preparing the application for fees and expenses, the table below details the hours billed and the amount billed at current rates through August 1, 2021 for Moon Law's attorneys:²

² If the Court wishes, Moon Law can provide more detailed time entries describing the work of these attorneys, as well as Moon Law's expenses.

Attorney	Total Hours	Hourly Rate	Amount
Christopher D. Moon	239.3	\$850.00	\$203,405
Kevin O. Moon	197.9	\$850.00	\$168,215
Total:	437.2		\$371,620

This summary was prepared from time records maintained by Moon Law.

14. The attorneys of Moon Law billed this case at their usual and customary hourly billing rates, which are commensurate with the prevailing market rates of attorneys of comparable experience and skill handling complex litigation.

15. During the course of the Benefiber Litigation, Moon Law incurred \$2,400 in unreimbursed expenses. These expenses were reasonably and necessarily incurred in connection with the prosecution of the Benefiber Litigation. These expenses are reflected in the books and records of Moon Law and are a true and accurate summary of the expenses for this case. The chart below details the expenses incurred by category:

CATEGORY	EXPENSE AMOUNT
<i>Pro Hac Vice</i> Admission Fees	\$400
Pro Rata Costs for Private Mediation	\$2,000
TOTAL	\$2,400

IV. MOON LAW ATTORNEYS ARE EXPERIENCED CONSUMER ADVOCATES

16. Moon Law attorneys have successfully represented plaintiffs and classes in numerous complex class-action lawsuits, particularly product mislabeling cases, such as this one. A true and correct copy of the Moon Law Firm Resume is attached as Exhibit A. Moon Law attorneys have also previously been appointed class counsel in a number of consumer-protection class-action cases. *See* Exhibit A. Further, Moon Law has the experience, resources, and ability to adequately represent the class members in this class-action lawsuit. Moon Law's firm resume demonstrates that the attorneys in this case have successfully adjudicated many important product-

mislabeling class action lawsuits throughout the United States, and are well qualified to serve as Class Counsel.

I hereby declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge.

Dated: August 3, 2021

/s/ Christopher Moon
Christopher D. Moon

EXHIBIT A



MOON LAW^{APC}

FIRM RESUME

Moon Law APC is a class-action law firm that represents plaintiffs in a variety of consumer protection actions, including mislabeled products, products liability, and multilevel marketing schemes. With offices in the San Francisco Bay Area and San Diego, Moon Law has successfully prosecuted numerous class-action lawsuits throughout the country, including in California, New York, New Jersey, Washington D.C., Illinois, Michigan, Delaware, and Missouri. As a result of Moon Law's efforts, millions of consumers have been provided valuable relief from the unlawful business practices of some of America's largest corporations.

NOTABLE CLASS-ACTION CASES

- *White v. GlaxoSmithCline Consumer Healthcare Holdings (US) LLC*, Case No. 5:2020-cv-04048 (N.D. Cal)
- *Do v. Earthwhile Endeavors, Inc.*, Case No. 3:2020-cv-03480 (N.D. Cal.)
- *Robinson et al v. General Motors LLC*, Case No. 1:2020-cv-00663 (D. Del.)
- *Bush v. Rust-Oleum*, Case No. 3:2020-cv-3:2020-cv-03268 (N.D. Cal.)
- *Martinez v. FCA US, LLC*, Case No. 2:20-cv-11164 (E.D. Mich.)
- *Moran v. Sunshine Makers, Inc.*, Case No. 4:22020-cv-03242 (N.D. Cal.)
- *In Re: S.C. Johnson & Son, Inc. Windex Non-Toxic Litigation*, Case No. 4:2020-cv-03184 (N.D. Cal.)
- *Powell v. Subaru of America, Inc.*, Case No. 1:19-cv-19114 (D. N.J.)
- *Penhall v. Young Living Essential Oils, LC*, Case No. 3:2019-cv-02340 (S.D. Cal.)
- *Prescott v. Bayer Healthcare Pharmaceuticals Inc.*, Case No. 5:2020-cv-00102 (N.D. Cal.)
- *Goldstein v. General Motors LLC*, Case No. 3:2019-cv-01778 (S.D. Cal.)
- *Stemm v. Tootsie Roll Industries, Inc.*, Case No. 1:2018-cv-02289 (N.D. Ill.)
- *Hatch v. Ferrara Candy Co.*, Case No. 1:2018-cv-02118 (N.D. Ill.)
- *Mattocks v. Kimberly Clark Corp.*, Case No. 7:2017-cv-08417 (S.D. N.Y.)
- *Sebastian v. Kimberly Clark Corp.*, Case No. 3:2017-cv-00442 (S.D. Cal.)

ATTORNEYS

CHRISTOPHER D. MOON

Christopher D. Moon is a founding member of Moon Law APC. Over the years, Mr. Moon has successfully litigated a variety of consumer class-action cases on behalf of plaintiffs in state and federal courts across the country, achieving millions of dollars in damages for the class. Mr. Moon was appointed class counsel in *Trentham v Continental Mills, Inc.*, Case No. 16PH-CV01563 (Phelps Co. Mo.); *Hawkins v Pearson Candy Company*, Case No. 16PH-CV01565 (Phelps Co. Mo.); and *Skornia v Wm. Wrigley Jr. Company*, Case No. 16AC-CC00453 (Cole Co. Mo.).

Prior to founding Moon Law APC, Mr. Moon was a Deputy District Attorney for eight years in San Diego County, where he tried dozens of cases to jury verdict, including a number of high-profile prosecutions. In recognition of his success in those cases, Mr. Moon was awarded the District Attorney's Office Outstanding Achievement Award, as well as received the County of San Diego Proclamation from the San Diego County Board of Supervisors.

Prior to working as a prosecutor, Mr. Moon was an associate at the international law firms of Covington & Burling and Heller Ehrman. Mr. Moon earned both his B.A. and J.D. at the University of California, Berkeley, and was a member of the *California Law Review*.

KEVIN O. MOON

Kevin O. Moon is a founding member and principal attorney at Moon Law APC. His practice focuses on consumer class-action litigation, representing plaintiff classes in unfair business practices, false and deceptive advertising, and product liability cases. Mr. Moon has represented plaintiffs in numerous class-action proceedings in California and throughout the country, in both state and federal courts.

Before founding Moon Law APC, Kevin practiced at international law firms, where he specialized in complex and class-action litigation. Kevin has extensive experience representing clients in state and federal courts, as well as in arbitration and mediation. Kevin has been recognized as a Northern California "Rising Star" by Super Lawyers Magazine.

Kevin earned his J.D., *magna cum laude*, from the University of San Diego School of Law, where he was an Executive Editor for the *San Diego Law Review*. Kevin earned his B.A. with high honors from the University of California, Berkeley.