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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SAN BERNARDINO**

19 CHRISTOPHER O'BRIEN and TIFFANY
20 KIPIKASHA, individually and on behalf of all
21 others similarly situated,

22 Plaintiffs,

23 v.

24 SUNSHINE MAKERS, INC., a California
25 corporation,

26 Defendant.

COPY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

APR 23 2021

By 
LASHONDRA RICHARDSON, DEPUTY

Case No.: CIV-SB-2027994
Case Filed: December 18, 2021

Assigned for all purposes to Hon. David Cohn

**DECLARATION OF MARK SCHEY IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Information

Date: May 17, 2021
Time: 10:00am
Dept.: S-26

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DECLARATION OF MARK SCHEY

I, MARK SCHEY, hereby declare under penalty of perjury as follows:

1. I am a founding partner of Digital Settlement Group, LLC (“DSG”), a company that provides class action notice and claims administration. The following statements are based on my personal knowledge and information provided by other DSG principals and employees working under my supervision, and if called upon to do so, I could and would testify competently about these issues.

2. DSG was retained to provide notice and claims administration services for the proposed settlement in this action.

3. Digital Settlement Group has served as a court-approved notice provider in numerous state and federal court class actions and has worked in the class action category for over a decade. DSG has provided expertise in Internet notice to some of the largest class action administration companies in the industry.

4. A sample of class action settlements where DSG has provided class notice and administration services is listed below:

- a. *Eggnatz et al v. The Kellogg Company et al*, Case No. 1:12-cv-21678 (S.D. Fla. 2015) (Nationwide class of purchasers of Kashi brand cereal products)
- b. *Garcia v. Iovate Health Sciences USA Inc.* (Santa Barbara County Superior Court 2016) (National indirect purchaser class of a consumer product at retail)
- c. *Amy Rehak, et al. v. Telebrands Corporation & Walgreen Co.*, Case No. 1522-CC10756 (Circuit Court of the City of St. Louis, State of Missouri 2017)
- d. *Jan Harrison, et al. v. E. I. Du Pont De Nemours and Company, et al.*, Case No. 5:13-cv-01180-BLF (N.D. Cal. 2017)
- e. *Iglesias vs. Ferrara Candy Co.*, Case No. 3:17-cv-00849-VC (N.D. Cal. 2018) (Nationwide class of purchasers of candy products)
- f. *Liptai v. Spectrum Brands Holdings, Inc., et al.*, Case No. 2018CV000321 (Wis. Cir. Ct. 2018) (Nationwide class of purchasers of coffee maker and household products)

1 g. *Hart v. BHH LLC, et al*, Case No. 1:15-cv-04804-WHP (S.D.N.Y. 2020)
2 (Nationwide class of purchasers of “pest repeller” products)

3 h. *Mateski, et al. v. Just Born, Inc.*, Case No. CIVDS1926742 (Cal. Super Ct.
4 2020) (Nationwide class of purchasers of candy products)

5 5. In approving *In Re: Wellnx Marketing & Sales Practices* (a national, 18 state
6 multidistrict class action litigation with a substantial indirect purchaser class), the Court noted: “the
7 effort to provide notice to the class went well beyond what due process would require at its
8 minimum. In fact, it was both an intelligent and effusive, if I can use that word, notification process,
9 which has given me new some ideas for similar cases in the future for the proper way of giving
10 notice in a case like this where it is hard to otherwise ascertain the identity of the class members.”

11 6. Additionally, Digital Settlement Group has over twenty years of marketing experience
12 with a specialty in television and Internet advertising, including managing the official online sites
13 for 20th Century Fox on behalf of News Corporation from 1993 to 1996. Our founders have served
14 as marketing consultants to a variety of consumer product companies, where responsibilities
15 included creative directing national marketing campaigns and producing and directing national
16 television commercials (which have been featured in trade magazines, like *Advertising Age*, and
17 generated hundreds of millions of dollars in retail revenue). Digital Settlement Group personally
18 managed tens of millions of dollars in Internet advertising for consumer products. Due to the
19 extensive Internet marketing experience, our area of specialty is providing class notice in cases
20 where the identities of individual Class Members is not known, including classes comprised of
21 purchasers of consumer products. *See Arreguin v. Telebrands*, No. CIVRS1307798 (San Bernardino
22 County Superior Court) (Indirect purchaser class of nationwide Pocket Hose consumer product.);
23 and *Eggnatz et al v. The Kellogg Company et al*, No. 1:12-cv-21678 (S.D. Fla.). (Indirect purchaser
24 class of nationwide Kashi products with no direct mail component.)

25 7. This declaration will describe the notice program that my colleagues and I suggest
26 using in this matter, including the considerations that informed the development of the plan and why
27 it will provide Due Process of Law to the Class Members. This case’s Notice Plan will largely mirror
28 but improve upon *Iglesias v. Ferrara Candy Company*, No. 3:17-cv-00849-VC (N.D. Cal.)

1 (National purchaser class products sold mainly at retail similar to this case) based on information
2 learned through the Notice and Claims Administration process of that case.

3 **SUMMARY OF NOTICE PROGRAM**

4 8. This Litigation involves products sold predominantly at retail, so the identity of
5 purchasing Class Members is not readily known. In such cases, Internet and publication notice are
6 the best ways to inform Class Members about the Settlement. Digital Settlement Group relies
7 heavily on recommendations from the Federal Judicial Center’s Judges’ Class Action Notice and
8 Claims Process Checklist and Plain Language Guide (“Claims Guide”) in designing its notice plans.

9 9. DSG developed a comprehensive notice program consisting of efficient media vehicles with
10 the objective of reaching a substantial portion of Class Members. A detailed breakout of the notice plan is
11 outlined in the Service Agreement. DSG believes this provides the best practicable methods to reach potential
12 class members and has seen successful results in similar plans with similar class members.

13 10. Before any of the notices begin, DSG will review all materials and work with Counsel to
14 help comply with Claims Guide recommendations and timelines. All the advertisements will direct potential
15 Class Members to the Settlement Website, where they will be able to download all important documents,
16 review frequently asked questions, and file a claim either online and/or send via postal as stated in the
17 agreement. Administration will notify claimants of any missing or invalid claim information after the
18 Approval Hearing. The print advertisements will also have address and phone in case individuals cannot
19 access a computer. A toll-free number with an Interactive Voice Response (“IVR”) system will also be
20 available to answer potential questions.

21 11. One of the concerns noted in the Claims Guide is that claims administrators are “often
22 accountants by training and may lack personal knowledge or the training to conduct reach analyses.”
23 Digital Settlement Group, however, has extensive expertise in marketing and media-planning that
24 is essential to conducting reach analysis that has been approved by Courts in similar cases with a
25 large indirect purchaser class.

26 12. The notice plan is supported by “unbiased evidence supporting the plan’s adequacy” as
27 recommended by the Claims Guide. DSG uses data from industry-standard reporting tools GfK MRI and
28 comScore. GfK MRI is part of the GfK Group, the fourth largest market research organization worldwide.

1 They're a leader in supplying the audience data for almost all national print campaigns in the country and
2 their Survey of the American Consumer produces one of the country's largest and most current database of
3 consumer behavior, media usage and consumer motivations. comScore is the leading cross-platform
4 measurement company that provides independent data, metrics, products and services to clients in the media,
5 advertising and marketing industries. They provide digital media analytics that help advertisers understand
6 the composition, reach, and frequency of consumer media audiences. The accuracy of reporting from both
7 GfK MRI and comScore has been approved by Courts in previous notice plans we've plan.

8 13. Our notice programs create the best practicable plan because they are designed in the
9 same way a company would design an advertising campaign to sell that very same product.
10 Specifically, we used industry standard advertising tools to identify media properties where
11 purchasers of "household cleaning products" were most likely to be located. In addition, the
12 methods used have been approved in multiple cases with a substantial indirect purchaser class.

13 **CLASS DEFINITION**

14 14. The "Settlement Class" includes: all persons, in the United States, who purchased
15 products sold by the Defendant labeled "Non-Toxic," at any time between May 12, 2016 and entry
16 of an Order preliminarily approving the settlement, including: (1) Simple Green All-Purpose
17 Cleaner; (2) Simple Green All-Purpose Cleaner (Fresh); (3) Simple Green All-Purpose Cleaner
18 (Lemon); (4) Simple Green All-Purpose Cleaner (Lavender); (5) Simple Green Oxy Solve Total
19 Outdoor Cleaner; (6) Simple Green Oxy Solve House and Siding Cleaner; (7) Simple Green Oxy
20 Solve Concrete and Driveway Cleaner; (8) Simple Green Oxy Solve Deck and Fence Cleaner; (9)
21 Simple Green Wash & Wax; (10) Simple Green All-Purpose Wipes; (11) Simple Green All-Purpose
22 Wipes (Lemon); (12) Simple Green Multi-Purpose Foaming Cleaner; (13) Simple Green Carpet
23 Cleaner; (14) Simple Green Marine All-Purpose Boat Cleaner; (15) Simple Green Heavy Duty BBQ
24 & Grill Cleaner; (16) Simple Green Heavy Duty BBQ & Grill Cleaner (Aerosol); (17) Simple Green
25 Oxy Dog Stain & Odor Oxidizer; (18) Simple Green Bio Dog; (19) Simple Green Advanced Dog
26 Bio Boost Stain & Odor Remover; (20) Simple Green Cat Pet Stain & Odor Remover; and (21)
27 Simple Green Outdoor Odor Eliminator, and all sizes and packaging types of those products. The
28 following people, however, are excluded from the Settlement Class: (1) Defendant's officers,

1 directors, or employees and their immediate family members; (2) any judge who has presided of
2 this case; and (3) any persons who timely opt-out of the settlement. *See* Bruce Decl. at **Exhibit 1**
3 [Settlement Agreement] at ¶¶ 1.11 [Class Period], 1.14 [Covered Products], 1.15 [Defendant], 1.25
4 [Notice Response Deadline], 1.26 [Opt-Out Date], 1.30 [Person], 1.39 [Request for Exclusion], 1.41
5 [Settlement Class], 1.43 [Settlement Class Member], 8.4 [Opt Out Procedure].

6 **SETTLEMENT WEBSITE**

7 15. Digital Settlement Group will create and maintain a dedicated web site for the Class
8 Members to learn about the Settlement. It will feature the ability to download all relevant documents
9 (in industry standard PDF format), including Claim Forms, Important Dates, Frequently Asked
10 Questions, Long Form Notice, and the Short Form notice. The site will be designed for broad
11 compatibility with browsers and platforms using best practices.

12 16. All traffic to the site will be monitored with proprietary fraud detection systems,
13 similar to those used on e-commerce platforms, to help ensure legitimate Class Members receive
14 the maximum benefit. A 3rd party monitoring service will check the site at regular intervals to
15 ensure the site is functioning properly and, if required, provide an independent report on the total
16 up-time of the site. The Settlement Web Site will be updated in a timely manner, based upon the
17 Court-approved schedule. For example, when the deadline for filing a claim has passed, that option
18 will be removed from the site.

19 **CONSUMER PUBLICATION**

20 17. The print publication was selected for its efficiency and reach with the targeted class. While
21 the Internet has a high saturation of consumer product customers (and continues to grow), a targeted print
22 publication element has been proposed to ensure potential class members with limited Internet access or
23 usage are not neglected. To develop the print notice, both proprietary data from previous notice plans and
24 GfK MRI were used to evaluate the reach to the class. As noted earlier, the goal of the campaign is to reach
25 the defined class. In addition to raw data, an extensive marketing analysis was performed to ensure
26 publications targeted this class. By targeting a widely read publication with a high index the print publication
27 portion is designed to effectively supplement the Internet notice portion of the plan and help provide
28 additional reach especially to consumers that are less likely to be online.

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18. The print publication selected is *Real Simple*. This publication is more likely than average to have “household cleaner consumers” as readers and has a circulation of 1,975,000. The publication will be presented in 1/3 page vertical format.

PRESS RELEASE

19. DSG will release a press release, with language to be agreed upon by Counsel, through PR Newswire. PR Newswire is the industry’s largest content distribution network reaching more than 4,000 US websites, nearly 3,000 media outlets, and more than 550 news content systems. The network also includes PR Newswire for Journalists, an exclusive, media-only community with over 20,000 daily unique visitors.

INTERNET ADVERTISEMENTS

20. The Internet is an extremely powerful tool for reaching potential class members and driving them to the settlement website. According to Pew Research (2019), 90% of all adults in the United States use the Internet, up from 79% in 2010. Over a decade of Internet marketing experience has been leveraged to design the most effective plan.

21. DSG will target Class Members with impressions on the *ComScore Ranked Tier 1 websites* over the course of 30 days defined in the agreement. An impression is defined as when the internet ad is shown or loaded on a Website. The sites selected for the Internet notice reach at least 70% or higher of the Internet population and are the most popular on the United States Internet, based upon comScore data. This notice plan will deliver impressions using interest, and/or behavioral targeting. Whenever possible and cost effective, behavioral and “transactional targeting” from the site, networks or 3rd party data sources will be used to deliver advertisements to users who have purchased the product or shown interest in a specific product or category. Digital Settlement Group will also use targeted native ads to help provide information to those individuals that may not fall into the other targeted segments. Unlike more traditional media (like print publications), this allows the Internet notice plan to target potential class members more accurately with fewer “wasted” impressions.

22. In addition, targeted “search terms” advertisements on popular search engines and networks will be incorporated into the plan. Per the *Claims Guide*, this is to help satisfy “extra effort” where the class is “highly concentrated.” Whenever possible and cost effective, settlement notice advertisements will be

1 targeted based on past user behavior. In addition, contextual, in-market, topic and affinity targeting are used
2 to ensure the most relevant audience is reached. This type of advertising targets the right potential class
3 members at the right time.

4 23. The Internet notice program will consist of over 55 million targeted Internet impressions on
5 Tier 1 properties (e.g. Verizon, Google, Facebook), using third-party tools to verify reach and frequency.
6 Behaviors, interests, and topics will be used to target the notice in the most efficient manner. For example,
7 targeting will include adults in the United States who are known to have purchased “household cleaning
8 products”.

9 24. The notice advertisements are designed to “command class members attention” and
10 “are written in a clear, concise and easily understood language.” Clicking on the links will direct
11 the Class Member to the Settlement Website where they will have quick access to a printable and
12 online Claim Form. Examples of the Internet advertisements can be seen in **Exhibit 4** to the
13 Declaration of Katherine A. Bruce. Digital Settlement Group will report detailed statistics weekly
14 to Counsel and adjust the notice plan on an as needed basis.

15 **CONCLUSION**

16 25. The notice plan has been designed to reach the largest target audience in a cost-
17 efficient and timely manner. Furthermore, the notice plan provides the best notice practicable, with
18 similar reach to other Court-approved notice plans in the same product category. It has been
19 designed to reach at least 70% of the class, allowing for duplication across medium and utilizing 3rd
20 party-reporting tools that have been accepted in similar cases.

21 26. Based on Digital Settlement Group’s class action notice planning experience,
22 described above in Paragraphs above the methods utilized in this Notice Program will be consistent
23 with other effective class action settlement notice plans that our team has developed. And it is my
24 professional opinion that the Class Action Notice Plan will provide the best notice practicable and
25 meets the desire to actually inform. Furthermore, it provides the same reach and frequency evidence
26 that Courts have approved in previous settlements.

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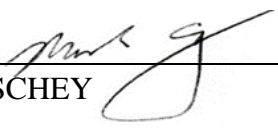
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27. It is my opinion that the Notice Program provides Class Members Due Process of Law and is the best notice that is practicable under the circumstances and is fully in accordance with California class action procedures.

28. DSG's cost to manage and effect Class Notice, Claims Administration and distribution is \$530,000, plus any unanticipated postage and check based distribution cost overages. Unanticipated overages will be correlated to the number of overall claims filed.

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

Executed this 22nd day of April, 2021.



MARK SCHEY