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*Attorneys for Plaintiffs, Settlement Class
Representatives, and Settlement Class Members*

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN BERNADINO

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

Plaintiff,

vs.

SUNSHINE MAKERS, INC., a California
Corporation,

Defendants.

Case No.: CIV-SB-2027994
Case Filed: December 18, 2020

Assigned for all purposes to Hon. David Cohn

**DECLARATION OF KATHERINE A.
BRUCE IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND
COSTS, AND MOTION FOR SERVICE
AWARDS TO SETTLEMENT CLASS
REPRESENTATIVES**

Hearing Information

Date: September 21, 2021
Time: 10:00 a.m.
Dept.: S-26

1 **DECLARATION OF KATHERINE A. BRUCE**

2 I, KATHERINE A. BRUCE, declare as follows:

3 1. I am a partner at Clarkson Law Firm, P.C. (“**Clarkson**”), which along with Moon
4 Law APC (“**Moon**”) has been appointed as Settlement Class Counsel¹ in the above-entitled action
5 *O’Brien v. Sunshine Makers, Inc.*, Superior Court of the State of California, County of San
6 Bernardino, Case No. SB-2027994 (“**O’Brien**”) and has served as counsel of record for Plaintiffs
7 and Settlement Class Representatives Christopher O’Brien, Tiffany Kipikasha, and Michelle Moran
8 (“**Plaintiffs**” and/or “**Settlement Class Representatives**”) in *O’Brien* and/or the related action
9 *Moran v. Sunshine Makers, Inc.*, United States District Court for the Northern District of California,
10 Case No. 4:20-cv-03242-PJH (“**Moran**”) (collectively, “**this action**,” “**this case**,” and/or “**this**
11 **litigation**”), both of which were filed against the same Defendant Sunshine Makers, Inc.
12 (“**Defendant**”) regarding the Covered Products’ alleged false and misleading “Non-Toxic”
13 advertising claim.² I am licensed to practice law in all state and federal courts in the State of
14 California. I am a member in good standing of the State Bar of California. I submit this declaration
15 in support of the Motion for Final Approval of Class Action Settlement, Motion for Award of
16

17 ¹ The “**Settlement Class**” includes: “All persons in the United States who purchased one or more
18 of Defendant’s Covered Products at any time [within the “**Class Period**” between May 12, 2016
19 and entry of an Order preliminarily approving this settlement on May 17, 2021],” excluding: (1)
20 Defendant’s officers, directors, or employees and their immediate family members, (2) any judge
21 who has presided in this case, and (3) any persons who timely opt-out of the settlement. *See* Order
22 Grant Prelim. App’l, 5/17/2020; Moon Decl. at **Exhibit 1** [Settlement Agreement] at ¶¶ 1.11 (Class
23 Period), 1.14 (Covered Products), 1.15 (Defendant), 1.25 (Notice Response Deadline), 1.26 (Opt-
24 Out Date), 1.30 (Person), 1.39 (Request for Exclusion), 1.41 (Settlement Class), 1.43 (Settlement
25 Class Member), 8.4 (Opt-Out Procedure).

26 ² “**Covered Products**” include: “all products sold by Defendant and labeled “Non-Toxic,” including
27 the following: (1) Simple Green All-Purpose Cleaner; (2) Simple Green All-Purpose Cleaner
28 (Fresh); (3) Simple Green All-Purpose Cleaner (Lemon); (4) Simple Green All-Purpose Cleaner
(Lavender); (5) Simple Green Oxy Solve Total Outdoor Cleaner; (6) Simple Green Oxy Solve
House and Siding Cleaner; (7) Simple Green Oxy Solve Concrete and Driveway Cleaner; (8) Simple
Green Oxy Solve Deck and Fence Cleaner; (9) Simple Green Wash & Wax; (10) Simple Green All-
Purpose Wipes; (11) Simple Green All-Purpose Wipes (Lemon); (12) Simple Green Multi-Purpose
Foaming Cleaner; (13) Simple Green Carpet Cleaner; (14) Simple Green Marine All-Purpose Boat
Cleaner; (15) Simple Green Heavy Duty BBQ & Grill Cleaner; (16) Simple Green Heavy Duty
BBQ & Grill Cleaner (Aerosol); (17) Simple Green Oxy Dog Stain & Odor Oxidizer; (18) Simple
Green Bio Dog; (19) Simple Green Advanced Dog Bio Boost Stain & Odor Remover; (20) Simple
Green Cat Pet Stain & Odor Remover; and (21) Simple Green Outdoor Odor Eliminator, and all
sizes and packaging types of those products.” *See also* Moon Decl. at **Exhibit 1** [Settlement
Agreement] at ¶ 1.14 (Covered Products).

1 Attorneys' Fees and Costs, and Motion for Service Award to Class Representatives.³ Unless
2 otherwise indicated as based upon information and belief, I have personal knowledge of the facts
3 stated herein or know of such facts from my review of the file in these actions and from my
4 discussions with the members of my firm. If called upon to do so, I could and would competently
5 testify the matters set forth herein.

6 2. **EXHIBITS.** I have submitted true and correct copies of the following documents as
7 exhibits to the concurrently filed Declaration of Christopher Moon in Support of Motion for Final
8 Approval of Class Action Settlement, Motion for Attorneys' Fees and Costs, and Motion for Service
9 Awards to Settlement Class Representatives ("**Moon Decl.**"):

- 10 a. **Exhibit 2:** Clarkson's firm resume, which accurately summarizes pertinent
11 background, training, experience, appointments, and similar matters that
12 demonstrate the adequacy of Clarkson to serve as Settlement Class Counsel in this
13 action.

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

15 3. Since the initiation of this case, in early 2020 (approximately March 2020), Clarkson
16 and Moon have spent substantial hours and out of pocket expenses on:

- 17 (1) Obtaining and analyzing all key documentation regarding the labeling, advertising,
18 formulation, and sale of the Covered Products;
19 (2) Researching and analyzing relevant scientific studies and published research
20 regarding the toxicity of numerous ingredients contained in Covered Products;
21 (3) Working extensively with a well-respected toxicology expert to analyze the
22 ingredients in the Covered Products, including the ingredients' toxicological effects
23 on humans, animals, and the environment;
24 (4) Researching and analyzing the United States Federal Trade Commission's ("**FTC's**")
25 "Green Guides" and various iterations thereof,, including attendant federal
26 regulations, federal register, and market research and consumer surveys;
27 (5) Researching and analyzing the Federal Hazardous Substances Act, codified at 15
28 U.S.C. 1261, *et seq.* ("**FHSA**") and its application to the Covered Products;
(6) Obtaining and analyzing the materials safety data sheets, Defendant's scientific
evidence supporting the "non-toxic" claims, and formulations for each Covered
Product;
(7) Researching and analyzing relevant decisions of the Better Business Bureau's
National Advertising Division ("**NAD**") and National Advertising Review Board
("**NARB**") to evaluate the industry standards for advertising household consumer
goods;

³ Defined terms set forth in this declaration have the same meaning as those terms set forth in Settlement Agreement (attached as **Exhibit 1** to the Moon Decl.), which governs the terms of the settlement underlying the instant motions.

- 1 (8) Researching and analyzing prior legal actions concerning Defendant and the Covered Products;
- 2 (9) Reviewing the Environmental Working Group (“EWG”)’s analyses of the Covered Products;
- 3 (10) Analyzing the Covered Products’ sales and related documents, in consultation with experts in consumer behavior, statistical analysis, and market research designed to isolate the premium consumers pay for falsely advertised common household goods, to determine the maximum value recoverable for economic losses to the Settlement Class;
- 4 (11) Conducting extensive legal research to evaluate the prospective merits and weaknesses of the case through class certification and trial;
- 5 (12) Preparing a class action complaint, written discovery, and an opposition to a dispositive motion to dismiss;
- 6 (13) Researching and analyzing potential class-wide damages based on a review of price premiums attributed to similar false and deceptive advertising claims regarding household consumer goods;
- 7 (14) Reviewing the history of various advertising claims and “language models” to identify and procure reasonable and practical changes to Defendant’s advertising of the Covered Products to eliminate consumer deception;
- 8 (15) Conducting extensive legal research of law applicable to the claims asserted in the complaint and the potential defenses thereto;
- 9 (16) Reporting to Plaintiffs pertinent case developments, including an analysis of any impact on certification, liability, damages, and prospects of success, and the pros and cons of Class Counsel’s recommendations regarding case strategy and further activities; and
- 10 (17) Preparing for mediation, vigorously negotiating all aspects of this settlement, and preparing for and filing paperwork necessary to complete settlement and recover the \$4.35 million settlement proceeds and a complete cessation of the challenged “Non-Toxic” labeling claims.

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16 **CLARKSON’S LODESTAR:**

17 4. **Materials Reviewed.** Members of Clarkson, as a matter of firm policy, maintain time
18 records that identify the timekeeper, time spent, and activities performed, which are regularly and
19 contemporaneously recorded by the listed timekeepers in the ordinary course of business. I have
20 reviewed Clarkson’s time entries, cross-referenced file materials and communications, and
21 consulted with various timekeepers to ensure the accuracy and reliability of time records; eliminate
22 any duplicate, unnecessary, excessive, or erroneous time entries; and confirm all billable hours set
23 forth in this declaration regard this action and are reasonable, accurate, and complete as of the
24 signing of this declaration.

25 5. **Lodestar by Member of Clarkson.** The following chart sets forth each member of
26 Clarkson according name, position, and/or year of graduation from law school (where applicable).
27 It also provides the number of hours, in six-minute increments (0.1), that each member worked on
28 this case and their corresponding hourly billing rate. It calculates the total fees incurred by

1 multiplying the number of hours and billing rate, including a grand total for the firm and for each
 2 member. Lastly, it calculates the weighted average billing rate for this case by dividing the total fees
 3 by the total hours.

CLARKSON LODESTAR			
Member, Position (Year of Graduation)	Hours	Rate (\$/Hour)	Total Fees (\$)
Ryan J. Clarkson, Managing Partner (2005)	264.7	875	\$231,612.50
Katherine A. Bruce, Partner (2012)	298.9	775	\$231,647.50
Lauren A. Anderson, Associate (2019)	52.5	450	\$23,625.00
Kelsey J. Elling, Associate (2019)	24.9	450	\$11,205.00
Paralegal	57	225	\$12,825.00
TOTAL HOURS/FEEES	698	-	\$510,915.00
WEIGHTED AVERAGE BILLING RATE	-	731.97	-

13 6. **Future Hours.** In addition to the above, I estimate that Settlement Class Counsel will
 14 incur dozens of additional hours for future work in connection with this case through final approval
 15 and to ensure the Court-appointed settlement administrator satisfies all duties with respect to the
 16 settlement at issue in the instant motions.

17 7. **Market Rates.** Based on my knowledge and experience, the hourly rates reflected
 18 above are within the range of market rates charged by attorneys of equivalent experience, skill, and
 19 expertise. Clarkson charges the same hourly rates to clients who retain Clarkson on a non-contingent
 20 basis—i.e., clients who regularly pay for billed services on a periodic basis. I have personal
 21 knowledge of the range of hourly rates typically charged by counsel in California and the United
 22 States, both on current and past matters, for class actions involving consumer protection matters,
 23 similar to the subject matter of this case. My understanding of said rates comes from: (1) litigating
 24 and reviewing attorneys’ fee applications, declarations, supporting materials, and orders awarding
 25 or denying requested fees; (2) discussing fees with other attorneys; (3) reviewing declarations
 26 regarding prevailing market rates filed by other attorneys seeking fees; (4) reviewing surveys,
 27 articles, and empirical research regarding attorneys’ fees; (5) spending five years in my practice as
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1 a lawyer solely working on a non-contingent hourly basis, negotiating and reviewing agreements
2 concerning fees for attorneys of varying expertise, specialties, years in practice, and firms; and (6)
3 auditing time records. In determining Clarkson’s hourly rates from year to year, Clarkson has
4 consciously taken market rates into account and has aligned its rates with the market. Clarkson’s
5 rates are consistent with, and in fact less than, the non-contingent market rates charged by attorneys
6 of reasonably comparable experience, skill, and reputation for reasonably comparable class action
7 work.

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

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

21 **10. Forego Employment.** From the beginning, this action has demanded a great deal of
22 Settlement Class Counsel’s attention. This action required considerable work due to its novel theory
23 and application to a significant number of products sold over the course of decades, including, for
24 example, significant: pre- and post-filing investigation; research and analysis of legal and factual
25 issues concerning certification as applied to the factual matter and case theory; research and analysis
26 regarding the laws of different states on liability, remedies, and defenses; research and analysis of
27 complex scientific matters concerning the toxicity of the products at issue; research and analysis of
28 decades of marketing efforts, advertisements and labels on a multitude of products; consultation

1 with experts from a variety of disciplines; and mediation and settlement. Due to the considerable
2 expenditure of time, effort, and resources to prosecute this action, Clarkson was required, on some
3 occasions, to forego employment in other matters, and to reallocate resources away from other
4 competing matters, in order to allow Clarkson to commit the necessary resources to prosecute this
5 case.

6 11. **Future Work.** Settlement Class Counsel will continue to devote additional time and
7 resources to this litigation. This includes, among other things: preparing and appearing for the
8 hearing on the instant motions, including responding to any oppositions or objections; assisting
9 Settlement Class Members in the settlement claims process and responding to Settlement Class
10 Member inquiries; ensuring all valid claims are paid and no invalid or fraudulent claims are paid
11 from this settlement; and monitoring the distribution of settlement monies to Settlement Class
12 Members who submit valid claims.

13 I declare under penalty of perjury of the State of California that the foregoing is true and
14 correct. Executed on August 26, 2021, in the State of California.

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16 DATED: August 26, 2021

CLARKSON LAW FIRM, P.C.

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Katherine A. Bruce, Esq.