

**IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI**

NICHOLAS CAHILL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NESTLE USA, INC., a Delaware corporation,

Defendant.

Case No. 22PH-CV01205

**DECLARATION OF L. DEWAYNE LAYFIELD IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, L. DeWayne Layfield, hereby declare as follows:

1. I am an attorney licensed to practice before all state courts in Texas, have been admitted pro hac vice in this Court, and am the managing member of the Law Office of L. DeWayne Layfield, PLLC. The Law Office of L. DeWayne Layfield, PLLC is one of the firms that is Lead Class Counsel for Plaintiff in the above-referenced action. I make this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement.

2. I am one of the attorneys that is primarily responsible for representing the Plaintiff in this action. In addition to the support of highly experienced staff at Law Office of L. DeWayne Layfield, PLLC this matter was also ably prosecuted by a team of esteemed litigators who are experienced in complex litigation. Pursuant to the Preliminary Approval Order, Lead Class Counsel in this matter includes KamberLaw LLC, the Law Office of L. DeWayne Layfield, PLLC, Steelman Gaunt Crowley, and Southern Atlantic Law Group, PLLC.

3. I have actively participated in all aspects of this litigation, including the negotiation of the settlement, and am fully familiar with the proceedings in the matter in which the parties seek resolution. If called upon, I am competent to testify that the following facts are true and correct based upon my personal knowledge.

4. I specifically incorporate by reference my declaration in support of Plaintiffs' Motion for an Attorneys' Fees and Costs Award, and Class Representative Service Awards, filed February 20, 2023.

5. This case arises out of Plaintiff's allegations that Defendant Nestle USA, Inc. ("Defendant") deceptively and unlawfully packaged, marketed, and labeled certain powder coffee creamer Products as defined in the Settlement Agreement, which are sold in a variety of sizes, and collectively referred to herein as "Products" or a "Product." To be precise, the specific Products and sizes that are at issue in this Class Action are those listed on Exhibit A to the Settlement Agreement, which has been preliminarily approved by the Court. The definition of "Product" and "Products" herein is limited to those products listed on Exhibit A to the Settlement Agreement. Specifically, Plaintiff alleges that Defendant represented that the Products can make up to a specified number of servings; however, contrary to these representations, the Products do not always yield the represented number of servings when consumers follow the "Serving Size" instructions on the labels of the Products.

6. This litigation required considerable skill and experience to result in such a successful conclusion. The case required investigation and a mastery of complex factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. In addition, Defendant is represented by the prominent and well-respected law firm of King & Spalding LLP. This class action case required advanced planning and scientific investigation involving experts and certified laboratory facilities, strategic skills, imagination,

resourcefulness, and management abilities of the highest order to match a highly qualified, experienced, and formidable opposition. The prosecution and settlement of this litigation required a very high degree of competence, experience, and ability by Class Counsel.

7. Mediation occurred only after parallel litigation proceeded in the Southern District of Florida and Nestle's motion to dismiss was fully briefed and denied by the trial court with respect to all damages claims. During mediation, the parties candidly expressed the strengths and weaknesses of their positions in a full and professional process, spearheaded by the Hon. Wayne Andersen (Ret.). Although an agreement was not reached on the first day of mediation, the parties, with the continued assistance of the Hon. Judge Andersen, continued to negotiate, and ultimately reached a Settlement that provides meaningful cash compensation to Settlement Class Members, as well as substantial injunctive relief, and avoids the risks and delay of further litigation. The process of the independent and mediated negotiation sessions took a significant investment of time and effort over the course of many weeks.

8. The results achieved in this case are fair, reasonable, adequate, and in the best interests of the Class. They provide substantial relief to all class members, including that:

- Defendant will provide injunctive relief through the modification of the Challenged Language from the labels of the Products enabling consumers to make informed purchasing decisions and comparisons based on accurate information, which injunctive relief we separately value at more than \$11,000,000; and
- Defendant has agreed to a two-tiered structure to provide monetary relief to Class Members, for both Class Members with Proof of Purchase and those without Proof of Purchase, under which Defendant will provide cash benefits to Settlement Class Members who timely file Claims by the Claims Deadline.

9. I believe that the substantive work accomplished by Class Counsel and their collective trial experience created a credible threat of success in ongoing litigation, which was critical to obtaining a Settlement of such a high caliber.

10. Throughout the mediation and negotiation efforts, and in advising our clients of the proposed settlement, Class Counsel has at all times considered the fairness, reasonableness and adequacy of the settlement for the Class, taking into account: the strength of Plaintiff's case; the risk, expense, complexity, and likely duration of any further litigation; the risk of certifying a class and then maintaining class action status through trial; the amount offered in settlement and the experience; and views of Plaintiff's counsel.

11. The Parties have agreed under the proposed Settlement that Nestle USA, Inc. will pay a Maximum Settlement Amount of US \$10,000,000 (ten million dollars) in the aggregate. *See* Settlement Agreement, attached as Exhibit 1 to the Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

12. Class counsel further represents that, consistent with controlling law and ethical standards promulgated by the Missouri Bar, no Plaintiff attorneys have requested or been offered any compensation, appointment, or benefit by Defendant during negotiations related to the settlement of this case other than the proposed attorneys' fees and costs outlined above, which are subject to court approval.

13. Against the backdrop of Class Counsel's collective experience in prosecuting complex class actions, we have considered the claims set forth in the Complaint and our continued confidence in the merit of those claims, the scope of relief offered in the settlement compared to the potential relief at the conclusion of litigation, and the risks and costs of continued litigation. Taking these factors into account, it is my opinion that the proposed Settlement is fair, reasonable, and adequate, well within the range of possible approval, in the best interests of Class Members,

and therefore deserving of the Court's final approval.

14. On December 8, 2022, this Court entered an Order granting Preliminary Approval of the Settlement now before this Court for Final Approval. Since that time, Class Counsel has worked closely with Defense Counsel and the Settlement Administrator, Kroll Settlement Administration ("Kroll"), to ensure that all aspects of the Preliminary Approval Order were carried out.

15. Specifically, Class Counsel has expended significant time working with Kroll involving claims administration: issuing Notice to Class Members, processing claims, responding to inquiries, and conducting other activities relating to class notice and administration under the Parties' supervision.

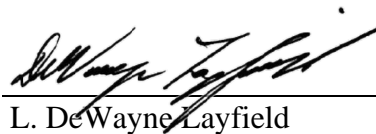
16. The fairness, reasonableness, and adequacy of the Settlement is further supported by the overwhelmingly positive Class Member response to the Settlement. Specifically, and as detailed more fully in the previously filed Declaration of Scott M. Fenwick, as of March 2, 2023, Kroll has received over 607,000 claims.

17. In contrast, as of the Opt-Out and Objection deadline of February 27, 2023, not a single exclusion request or Objection to the Settlement were lodged. *See* Fenwick Declaration, at ¶ 5.

18. Having reached full agreement on terms and conditions of the Settlement, received the Court's Preliminary Approval, and garnered the overwhelming support of Class Members, and the Class Representatives, Plaintiffs now respectfully request that this Court grant Final Approval to the Settlement; enter Final Judgment; and Dismiss the Action with prejudice.¹

19. I declare under penalty of perjury under the laws of the State of Texas and Missouri that the foregoing is true and correct.

Executed this 3rd day of March, 2023
Chambers County, Texas



L. DeWayne Layfield

¹ Lead Class Counsel has separately moved for an award of Attorneys' Fees and Costs and Class Representative Service Awards, filed February 20, 2023.