

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 12-21678-CIV-LENARD/GOODMAN

LAURA EGGNATZ and KATRINA GARCIA,
individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

KASHI COMPANY, a California
Corporation,

Defendants.

**DECLARATION OF GILLIAN L. WADE IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Gillian L. Wade, do hereby declare and state as follows:

1. I am a Partner at the Law Offices of Milstein Adelman, LLP, Class Counsel in this Litigation¹ and counsel of record for Plaintiffs Laura Eggnatz and Katrina Garcia. I am licensed to practice before all courts in the State of California and have been admitted *pro hac vice* in this Litigation. I have personal knowledge of all of the facts stated herein, and if called to testify as a witness, I could and would competently testify to them.

2. This declaration is made in support of Plaintiffs' Motion for Final Approval of Class Action Settlement.

3. The Settlement provides substantial relief for the Settlement Class and the terms of the Settlement, which have been memorialized by the Stipulation of Settlement (the "Agreement"),² are fair, adequate and reasonable.

4. It is my understanding, based on the information provided by the Settlement Administrator, Digital Settlement Group ("DSG"), that as of December 13, 2015, a total of 96,214 Class Members have made claims totaling approximately \$955,750, and no Class Members have objected or requested exclusion from the Settlement.

5. The Settlement was reached only after extensive arm's-length negotiations that included three mediation sessions conducted by a professional mediator working with experienced counsel who were intimately familiar with the facts. The process required the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. At the time the Settlement was reached, full briefing on Plaintiffs' Motion for Class Certification and Kashi's Motion for Summary Judgment were complete, and Class

¹ All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

² The Agreement is available at ECF 179-1.

Members faced the prospect of having judgment entered in Kashi's favor.

6. Even if Plaintiffs prevailed on one or both of these issues, Defendant would have certainly appealed, further delaying the Litigation. With the benefit of full merits and expert discovery and preliminary trial preparation, Plaintiffs and Class Counsel concluded that the benefits of this Settlement outweigh the risks attendant to continuing to fight over class certification and the merits of Plaintiffs' claims.

7. On December 12, 2012, the Parties engaged in preliminary settlement discussions via private mediation with a professional mediator, the Honorable Judge J. Richard Haden (Ret.) at JAMS. The Parties did not reach an agreement.

8. On January 9, 2014, the Court referred the Parties back to mediation [ECF 97], which occurred on June 4, 2014 before Judge Haden. In advance of the negotiations, Kashi provided Plaintiffs with certain documents regarding the Products, the Challenged Ingredients and the Products' national sales during the class period (May 8, 2008 to present). The Parties did not reach an agreement at the second mediation.

9. After the close of fact and expert discovery, full briefing on the motions for class certification and summary judgment, and following an in-person settlement meeting in Chicago with Defendant's lead counsel, the parties attended another full day of formal mediation before Judge Haden on March 24, 2015. At the final mediation, the Parties had the benefit of fact and expert discovery, including expert reports and depositions, document production, Class Representative and Rule 30(b)(6) depositions. With the assistance of Judge Haden, the Parties reached an agreement to resolve this Litigation on a national class basis (except California, in light of the *Astiana* settlement).

10. At all times throughout the mediation proceedings and settlement discussions, the negotiations were adversarial, non-collusive and at arm's length.

11. On April 6, 2015, the Parties informed the Court that they had reached a settlement of this class action. [ECF 170].

12. The Parties executed a Settlement Agreement on June 5, 2015 memorializing the agreement reached at mediation [ECF179-1].

13. The Court granted Preliminary Approval of the Settlement on September 4, 2015. [ECF 183].

14. For the purpose of implementing the terms of the Agreement, the Court conditionally certified a national Settlement Class of consumers who purchased any of the Products between May 3, 2008 and September 4, 2015. ECF 183; Agreement § II(A)(5).³ Excluded from the Class are: (a) employees, officers and directors of Kellogg and Kashi; (b) persons or entities who purchased the Products for the purpose of re-sale; (c) retailers or re-sellers of the Products; (d) governmental entities; (e) persons who timely and properly exclude themselves from the Settlement; (f) the Court, the Court's immediate family and Court staff; and, (g) California residents. *Id.* The Products are those Kashi products labeled "All Natural," "100% Natural" and/or "Nothing Artificial," including those in Exhibit H to the Agreement. *Id.* at § II(A)(22).

15. Under the Settlement, Kashi has agreed to provide significant monetary compensation to Class Members who submit claims. Class Members who make valid claims

³ Plaintiffs' Second Amended Consolidated Complaint ("SAC") alleged a nearly identical Class definition, excluding California residents and utilizing the same class period. [ECF 58 at ¶ 60]. Plaintiff later sought to certify a Florida class only (ECF 118).

accompanied by written proof of purchase (i.e. receipts) will be fully reimbursed the amount they paid to purchase the Product, with no limit on the number of such units for which they can be reimbursed. Agreement § IV(A)(1)(a). For Class Members who do not submit a proof of purchase with their claims, Kashi will reimburse \$0.55 (fifty-five cents) per package for every Product purchased during the Class Period, with a maximum recovery of fifty (50) boxes, for a total recovery⁴ of \$27.50. *Id.* at § IV(A)(1)(b).

16. The total amount of money available to pay claims will be at least \$2 million. Agreement at § IV(A)(1)(a). The Claims Administrator will submit updated claims statistics following the close of the claims period in January 19, 2016 and in advance of the January 27, 2016 Settlement Hearing.

17. Pursuant to the Settlement, Kashi will provide Plaintiffs' Counsel with compliance information regarding Non-GMO Project Verified and "GMO free" label designations on certain Kashi products. Agreement at § IV(C)(2). This compliance information will be provided on a bi-annual basis for three years. *Id.* Specifically, Kashi will provide Class Counsel with a list of Products that are being manufactured without GMO ingredients, along with the following: (i) documents identifying its third party technical administrator for the Non-GMO Project Verification; (ii) copies of all licensing agreements for the Products between Kashi and the Non-GMO Project Verified; (iii) copies of all documents provided for evaluation purposes to Kashi's third party administrator for the Non-GMO Verified Project; (iv) copies of all press releases regarding the Products' Non-GMO Project Verification; and, (v) copies of all Product label modifications that are introduced into the stream of commerce. Agreement at § IV(C)(2).

⁴ Claimants' reimbursements may be proportionately modified up or down, on a per-unit basis, depending on the amount in claims made. *Id.* at § IV(A)(3).

18. Kashi also agreed to remove the “All Natural,” “100% Natural,” and “Nothing Artificial” labels on Products containing any of the Challenged Ingredients, unless such ingredient is approved or determined as acceptable by a federal agency or controlling regulatory body to be designated as “natural.” *Id.* at IV(C)(1). It is my understanding that Kashi also agreed to remove the ‘All Natural’ claims from the Products’ packaging in Astiana. Although the Settlement reached in Astiana applies only to California residents, nothing in the Settlement mentions removing the ‘natural claims’ from packaging distributed nationally.

19. In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt out will be deemed to have released Kashi and Kellogg Company from claims arising out of or relating to the packaging, marketing, distribution or sale by Kashi of the Products which have been or could have been asserted in the SAC or in any previous complaints. The Released Claims do not include claims for personal injury. The detailed release language can be found in Sections II(A)(23)-(24) and VII of the Agreement.

20. The Notice Program is comprised of three parts: (1) print publication notice; (2) digital publication notice; and, (3) long form notice with expanded detail, which will be available on the Settlement Website and via e-mail and mail upon request. All forms of Notice to the Class will include, among other information: a description of the Settlement; dates by which Class Members may make a claim, exclude themselves from the Settlement Class, or object to the Settlement; the address of the Settlement Website; and, the toll-free telephone line. *See* the Declaration of Mark Schey Regarding Class Notice and Administration for copies of the Notice actually provided to the Class.

21. The Notice and Media Plan constitute sufficient notice to all persons entitled to

notice, and satisfy all applicable requirements of law, including Rule 23 and the constitutional requirements of due process. The cost of Class Notice and Settlement Administration, estimated to be approximately \$300,000, will be paid from the Settlement payment by Kashi. Agreement at § IV(A)(7)(a).

22. Requests for exclusion and Claim Forms must be sent to the Claims Administrator and postmarked or uploaded before their respective deadlines. Agreement at § VI(B)(1). Objections must be filed with the Court with copies of the objection sent to lead Class Counsel and Defendant's Counsel by the objection deadline. *Id.* at § VI(C)(3). The deadline for both objections and requests for exclusion is December 19, 2015.

23. The Published Notice Program is comprised of a (1) one-time print publishing of the summary notice in the December 2015 issues of Food Network Magazine and Prevention; and (2) targeted website and portal banner advertisements with embedded links to the Settlement Website on Google, Yahoo and their partner sites, which ran for 30 days.

24. DSG established a Settlement Website as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. The Settlement Website includes information about the Litigation and the Settlement, relevant documents and electronic and printable forms relating to the Settlement, including the Claim Form which can be submitted online or printed and mailed. The Settlement Website was activated on September 10, 2015.

25. DSG also established and maintains an automated toll-free telephone line (1-877-342-0808) for Class Members to call with Settlement-related inquiries. The long-form notice and "Important Documents" are also available in Spanish.

26. To obtain relief from Defendant, the Agreement requires Class Members to submit

a Claim Form before the deadline set by the Court—January 19, 2016—which is eight days before the Settlement Hearing. [ECF 183 at ¶ 20]. Class Members may download the Claim Form on the Settlement Website or request a copy by calling or writing to the Settlement Administrator and submit claims online or via U.S. Mail. Agreement at § IV(A)(5). The Settlement Administrator will then review the claims and make the final determination of the amount owed each claiming Class Member, and will send a deficiency letter to any applicable Settlement Class Member explaining the rejection of any claim no later than thirty (30) days after the Effective Date. *Id.* at § IV(A)(4)(a). The Settlement Administrator will then have ninety (90) days after the Effective Date to distribute checks to eligible claimants. *Id.* at § IV(A)(4)(b).

27. Pursuant to the Settlement, Kashi will not oppose Class Counsel’s request for attorneys’ fees of up to \$1.5 million, plus reimbursement of litigation costs and expenses of up to \$180,000.

28. Kashi will also not oppose Service Awards of \$5,000 for each of the two Class Representatives. The Service Awards will compensate the Class Representatives for their time and effort in the Litigation, and for the risks they undertook in prosecuting the Litigation.

29. The Service Awards, attorneys’ fees and litigation expenses will be deducted from the total \$3.99 million cash payment.

30. It is my understanding that as of December 13, 2015, DSG has not received any requests for exclusion or objections. The deadline to object or request exclusion is December 28, 2015, and the deadline to submit a claim is January 19, 2016.

31. An analysis of the factors set forth in *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984), supports final approval of this Settlement.

32. The Parties did not reach the Settlement until after years of litigation, negotiation, multiple mediation sessions, full merits and expert discovery, as well as extensive and hard-fought motion practice. Class Counsel conducted a thorough investigation and analysis of Plaintiffs' claims and Kashi's defenses, and reviewed the discovery and expert testimony. This enabled us to gain an understanding of the evidence related to central questions in the case and prepared counsel for well-informed settlement negotiations.

33. The Settlement ultimately required three formal, full-day mediation sessions before Judge Haden over the span of nearly three years. By this time, Class Counsel, who have significant experience in prosecuting complex consumer class actions, had a "clear view of the strengths and weaknesses" of Plaintiffs' case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. The extensive nature of the negotiations, the experience of Class Counsel, and the fair result reached illustrate the arm's-length negotiations that led to the Settlement and the execution of the Agreement.

34. While Class Counsel are confident in the strength of Plaintiffs' case, we are also pragmatic in our awareness of the fact that in order to succeed at trial, Plaintiffs would be required to succeed on their pending Motion for Class Certification and overcome Kashi's defenses on the merits. Kashi vigorously opposed Plaintiffs' Motion for Class Certification, which was filed weeks after an order from the Honorable Beth J. Bloom denying class certification in a similar consumer class action regarding 'All Natural' claims. Specifically, Judge Bloom found the class was not ascertainable⁵ because the variation in the challenged products and labels created a "subjective memory problem," as consumers would have to "remember whether they purchased

the challenged products.” *See Randolph v. J.M. Smucker Co.*, No. 13-CIV-80581, 303 F.R.D. 679, 685-692 (Dec. 23, 2014).⁶

35. At the time the Parties settled, the issue of whether class members can self-identify where retailers have no records identifying class members was on appeal before the Eleventh Circuit, but that issue has since been decided. *See Karhu v. Vital Pharmaceuticals*, No. 14-11648, 2015 WL 3560722 (11th Cir. 2015) (affirming order denying class certification) (unpublished). This decision, albeit unpublished, would have presented serious obstacles to class certification in this Litigation, as most class members do not have receipts.

36. Defendant put forward evidence, including internal consumer surveys and expert testimony, demonstrating consumers have varying definitions of the term ‘natural,’ and that the ‘All Natural’ claims are not material to reasonable consumers. Although Class Counsel are confident we could have overcome Kashi’s challenges with our own expert’s consumer survey and testimony regarding commonality and typicality, we recognize the risks associated with proving materiality, reliance and class-wide damages. If Plaintiffs were to prevail on their Motion for Class Certification, with Kashi’s summary judgment motion under submission, Plaintiffs also faced an imminent risk of judgment being entered against an entire class.

37. Protracted litigation carries inherent risks that would have delayed and endangered Class Members’ recovery. Based on my experience, even if Plaintiffs prevailed at trial, recovery could be delayed for years by an appeal. This Settlement provides relief to Class Members without further delay. Under the circumstances, Class Counsel, along with Plaintiffs, appropriately determined the Settlement outweighs the risks of continued litigation.

⁶ Counsel representing Kashi in this Litigation also represented J.M. Smucker. *Id.* at 682.

38. Class Counsel have extensive experience and expertise prosecuting complex class actions, including consumer actions similar to the instant case. We have a thorough understanding of the practical and legal issues they would continue to face taking this case to verdict, based on our collective experience in other consumer fraud class actions and the procedural posture of this Litigation at the time settlement was reached. Plaintiffs faced a number of serious challenges, class certification and the materiality of the ‘All Natural’ claims chief among them.

39. Milstein Adelman, LLP (“MA”) is a plaintiff law firm comprising twenty-three lawyers, based out of Santa Monica, California. MA has more than twenty years of experience leading and handling consumer class actions and complex litigation. MA has represented thousands of plaintiffs in over 250 complex actions, and has recovered over \$500 million for its clients. The class action attorneys at MA specialize in consumer products litigation and have particular expertise in cases involving false advertising and consumer deception. The firm has been appointed as lead or co-lead class counsel in several matters, including: *Morales, Kraft Foods Group, Inc.*, No. LA CV 14-04387 (PJWx); (C.D. Cal. 2015); *Arreguin v. Telebrands* (SBSC CVRS 13307798) (2015); *Paul v. Wine.com* (SFSC CGC13534734) (2015); *Toney v. Just Fabulous* (LASC BC533943) (2015); *McCrary v. The Elations Company, LLC*, (CDCA 13CV00242) (2014); *Smith v. Intuit, Inc.* (NDCA 1200222) (2013); *Solomon v. Ramona’s Mexican Food Products, Inc.* (LASC BC463914) (2013); *Saenz v. SEIU United Healthcare Workers West* (ACSC RG09478973) (2013); *Griar, et al., v. Glaxosmithkline, Inc. et al.* (LASC BC288536) (2012); *In re Budeprion XL Marketing and Sales Practices Litigation* (MDL No. 2107) (2012); *Keller v. Gaspari Nutrition, Inc.*, (CDCA 11CV06158) (2011); *Weeks et al v. Kellogg, et al.*, (CDCA 09CV08102) (2011); *Williams, et al. v. Biotab Nutraceuticals, Inc.* (LASC BC414808) (2010); *Wally v. CCA Industries, Inc.* (CASC BC422833)

(2010); *Fallon v. E.T. Browne Drug Co., Inc.* (LASC BC 411117) (2009); *Oliver, et al. v. Atmos Corporation* (SJSC CV0119362) (2009); *Salcido v. Iomedix* (LASC BC 387942) (2009); *Deist, et al. v. Viking Industries*, (SJSC CV 025771) Apr. 9, 2009); *Ceballos v. Fuze Beverage, LLC* (LASC BC 394521) (2009); *Heath, et al. v. County of San Bernardino*, (EDCA 06CV00411) (2008); *Klyachman, et al. v. The Vitamin Shoppe, et al.* (NJSC L173907) (2008); *Shaffer v. Continental Casualty Company, et al.*, (CDCA 06CV02235) (2008) (class certification aff'd. at D.C. 06CV02235); *Klotzer, et al. v. International Windows* (SCSC FCS021196) (2007); *LaRosa v. Nutramerica Corp.* (“Trimspa”), (LASC BC309427) (2007); *Abigana, et al. v. Rylock Company Ltd.* (ACSC 2002 076625) (2006); *Hufschmidt v. Allstate Insurance Company* (LASC BC291782) (2004).

40. I am a partner at MA leading the class action department. I have been with MA for over ten years and became a partner in 2010. I graduated from the University of California, San Diego (B.A. Political Science, 1999) and Pepperdine University (J.D. 2003). I graduated *magna cum laude* from Pepperdine law school, received the John Purfield Memorial Scholarship for academic excellence, and served as a staff writer for the Pepperdine Law Review. I have been admitted to practice law in California since 2003.

41. My practice focuses on representing plaintiffs in complex litigation and consumer class actions, with particular emphasis on consumer fraud involving and actions arising under California’s Unfair Competition Law and the Consumer Legal Remedies Act. I have played integral roles as lead and co-lead counsel in class actions recovering millions of dollars for consumers. I have had significant involvement in the resolution of over 50 consumer fraud class actions and have been appointed lead class counsel or co-lead in several state and federal class actions throughout the United States, including: *Toney v. Just Fabulous* (LASC BC533943)

(2015) (representing “VIP” members of JustFab regarding overcharges for restocking fees and monthly auto-billing); *Paul v. Wine.com* (SFSC Case No. CGC-13-534734) (2015) (alleging violations of the auto-purchase renewal statute and misleading “free shipping” representations); *Arreguin v. Telebrands* (CVRS 13307798) (2015) (representing purchasers of defective “Pockethose” product); *McCrary v. The Elations Co., LLC* (EDCV 13-00242 JGB) (C.D. Cal. 2014) (representing California purchasers of Elations “joint health supplement beverage” alleging false claims of “clinical-proof” on product labeling); *Solomon v. Ramona’s Food Products* (LASC No. BC 451080) (2014) (representing purchasers of mislabeled food products); *Smith, et al. v. Intuit, Inc.* (5:12-cv-00222-EJD) (N.D. Cal. 2014) (alleging fraudulent charges associated with Turbo Tax); *Saenz v. SEIU United Healthcare Workers-West* (Alameda Super. Ct. No. RG09478973) (2013) (representing individuals against labor union for data security breach); *In re Budeprion XL and Marketing and Sales Practices Litigation* (MDL No. 2107) (E.D. Pa. 2012) (co-lead class counsel in centralized proceeding alleging fraudulent omissions on the labeling of generic anti-depressant); *Keller v. Gaspari Nutrition, Inc.* No. 2:11-cv-06158-GAF (C.D. Cal. 2012) (representing purchasers of testosterone pills); *Pabst v. Genesco, Inc.*, 3:11-cv-01592-SI (N.D. Cal. 2012) (representing California consumers regarding privacy violation); *Wike v. HCG Platinum, LLC.* (LASC. No. BC451080) (2012) (representing purchasers of the dietary supplement HCG Platinum); *Litwin v. iRenew, et al.*, LASC. No. BC447114 (representing purchasers of iRenew brand bracelet) (2011); *Weeks, et al. v. Kellogg, et al.*, CV-09-08102 (MMM) (C.D. Cal. 2010) (representing purchasers of food products regarding alleged false “immunity” claims); *Thompson, et al., v. Biotab Nutraceuticals, Inc.* (LASC No. BC414808, 2010) (representing national class of purchasers of dietary supplement for male enhancement);

Fallon v. ET Browne Drug Corp. (LASC No. 411117) (2009) (representing class of purchasers of mislabeled cosmetic products); *Shaffer v. Continental Casualty Company* (2:06-cv-2235-PSG) (C.D. Cal. 2008) (representing national class of elderly insureds alleging consumer fraud and financial abuse of the elderly in the sale and marketing of long term care insurance policies); *Heath, et al. v. County of San Bernardino* (5:06-CV-00411-VAP) (C.D. Cal. 2008) (representing limited term firefighters for civil rights and FLSA violations).

42. I am involved in multiple class actions centralized by the MDL Panel throughout the Country and have been appointed to the Plaintiffs' Executive Committees in several federal class actions centralized by the MDL Panel, including: *In re Nutramax Cosamin Marketing and Sales Practices Litigation* (MDL No. 2489)(D. Md.); *In re Pom Wonderful Marketing and Sales Practices Litigation* (MDL No. 2199)(C.D. Cal.); *In re Budeprion XL Marketing and Sales Practices Litigation* (MDL No. 2107)(E.D. Pa.); *In re Liberty Refund Anticipation Loan Litig.* (MDL No. 2334) (N.D. Ill.) and *In re H&R Block Refund Anticipation Litig.* (MDL No. 2373) (N.D. Ill.).

43. Prior to joining Milstein Adelman, I was a litigation associate at Jones Day where I defended corporations in consumer fraud class actions, ERISA cases, and actions arising under the Fair Credit Reporting Act.

44. My associate, Sara D. Avila, is a member of MA's class action and complex litigation practice group. Her practice focuses on representing plaintiffs in complex litigation and consumer class actions, with particular emphasis on consumer fraud actions involving false and misleading advertising, e-commerce and actions arising under California's Unfair Competition Law and the Consumer Legal Remedies Act. Ms. Avila has had significant involvement in over 30

consumer class actions. She also has experience representing plaintiffs in actions stemming from consumer deception, habitability statutes, employment violations, bad faith insurance disputes and antitrust actions. Ms. Avila has been appointed class counsel in several state and federal class actions, including *Arreguin v. Telebrands*, No. CV-RS-13307798 (San Bernardino Superior Court 2015); *Paul v. Wine .com*, No. CG-C-13534734 (San Francisco Superior Court 2015); *McCrary v. The Elations Company, LLC*, No. 13-cv-00242 (C.D. Cal. 2015); *Saenz v. SEIU United Healthcare Workers-West*, No. RG09478973 (Alameda Superior Court 2013); *Weeks v. Kellogg*, CV-09-08102 (MMM) (C.D. Cal. 2011); and, *Pabst v. Genesco, Inc.*, 3:11-cv-01592-SI (N.D. Cal. 2011).

45. Attached hereto as **Exhibit A** is a true and correct copy of the firm resume for L. DeWayne Layfield.

46. The Chaffin Law Firm is a plaintiff's litigation firm based out of Houston, Texas. The Chaffin Law Firm has more than 40 years of experience representing plaintiffs in complex litigation. Robert A. Chaffin is the senior partner at the Chaffin Law Firm and counsel of record for Plaintiffs Laura Eggatz and Katrina Garcia. He is licensed to practice before all courts in the state of Texas and is admitted pro hoc vice in this action. Mr. Chaffin graduated *magna cum laude* at the University of Houston Bates College of Law in 1972 where he finished third in his class. Mr. Chaffin served as Associate Editor of the Houston Law Review in 1972.

47. Since 1972 Mr. Chaffin has practiced exclusively in the field of plaintiffs law and has obtained multiple verdicts in excess of \$10,000,000 while also having made successful arguments before the United States Supreme Court in *Griffin vs. Oceanic Contractors, Inc.*, 458 U.S. 564, 102 S Ct. 3245, 73 L.ED.2d 973 (1982), and the Texas Supreme Court in *Chapa v.*

Garcia, 848 S.W.2d 667 (Tex. 1992). In addition, Mr. Chaffin has been a featured speaker at the American Association of Justice annual convention as well as Texas Trial Lawyers functions. On multiple occasions Mr. Chaffin has been selected as a “Super Lawyer” and “Top Attorney in Texas” as well as receiving AV+ rating from Martindale Hubbell. Mr. Chaffin has been lead counsel in several oil and gas royalty class action cases in Texas resulting in recoveries for thousands of royalty owners: Civil Suit No. 202576; *Odis W. LeVrier et al v. Union Pacific Resources Group, Inc. et al*; In the 9th Judicial District Court, Parish of Rapides, State of Louisiana and, Cause No. 1998-A-169; *J. Lloyd Woods et al v. Union Pacific Resources Company et al*; In the 123rd Judicial District Court of Panola County, Texas.

48. Angela V. Arango-Chaffin, has been Of Counsel to the Chaffin Law Firm since February 2011. Ms. Arango-Chaffin graduated *magna cum laude* and *phi beta kappa* from Rice University, Houston Texas (B.A. Hispanic Studies, 2007) and *magna cum laude* from the University of Miami Law School (J.D. 2010). She received the Florence T. Robbins Scholarship, sponsored by Greenberg Traurig, at the University of Miami Law School, and the Dean’s Honor Award for Legal Research and Writing. Ms. Arango-Chaffin has been admitted to practice law in Florida since 2011. Ms. Arango-Chafin has over four years of experience representing plaintiffs in consumer class action cases involving false advertising and consumer deception, with a particular emphasis on false advertising and consumer fraud involving actions arising under Florida’s Deceptive and Unfair Trade Practices Act.

49. Michael T. Fraser has been of counsel with the Law Offices of Howard W. Rubinstein, P.A. since June, 2014. Mr. Fraser graduated from Stetson University, (B.A. English, 2005) and Nova Southeastern University (J.D. 2009). He graduated *cum laude* from

NSU law school, where he received numerous academic awards, served on the Nova Trial Association, the Moot Court Board, and as the Editor-in-Chief of *Nova Law Review*. Mr. Fraser been admitted to practice law in Florida since 2010 and in California since 2011. Mr. Fraser's practice focuses on representing plaintiffs in complex litigation and consumer class actions, with particular emphasis on consumer fraud involving and actions arising under California's Unfair Competition Law and the Consumer Legal Remedies Act, as well as under Florida's Unfair and Deceptive Practices Act. Mr. Fraser is involved in multiple class actions either centralized or pending centralization by the MDL Panel throughout the Country. Prior to joining, as of counsel, The Law Offices of Howard W. Rubinstein, P.A., Mr. Fraser was a litigation associate defending professionals and governmental organizations at two different firms located in the State of Florida.

50. The cash available to the Class is reasonable given the stage of the Litigation, the complexity of the factual and legal issues and the significant barriers that stood between now and any final judgment in favor of Plaintiffs and the Class: denial of class certification; interlocutory Rule 23(f) appeal of class certification; subsequent decertification; summary judgment; proving liability; obtaining a damages award; and, post-trial appeals. Additionally, the non-monetary relief—Kashi's agreement to remove the 'All Natural' claims from Products containing at least one of the Challenged Ingredients and provide bi-annual compliance reports to Class Counsel regarding Kashi's Non-GMO labels on certain products for three years—also provides meaningful benefits.

51. Damages under FDUTPA are limited to the "price premium," or, the difference between the value of the product as advertised and the value of the product received. *Rollins, Inc.*

v. Butland, 951 So. 2d 860, 869 (Fla. Dist. Ct. App. 2006). Based on the opinion of Plaintiffs' damages expert, Ph.D. economist David Sharp of EconOne, Defendant's use of the 'All Natural' claims increased the Products' prices by an average of 14.5% per ounce, which is approximately four cents (\$0.04) per ounce. [ECF 114-8 at ¶¶ 9, 14-17]. Thus, the full refund available to Class Members who submit receipts with their claims through the Settlement achieves an excellent recovery, which would be achieved at trial only if the trier of fact determined the Products are valueless (which is unlikely given they are food items which arguably provide some benefit to the consumer).

52. The fifty-five cents (\$0.55) per package (up to \$27.50) available *without* a proof of purchase is also a successful achievement based on the estimated recovery given the extraordinary obstacles Plaintiffs faced in the litigation. Indeed, this per-person recovery exceeds the amount made available in the *Astiana* action, which involved the same 'All Natural' claims on the same Products. *See Astiana, et al., v. Kashi Company*, No. 3:11-cv-01967-H-BGS, ECF 242 (Sept. 2, 2014) (entering final judgment and approving settlement of \$0.50 per package with a maximum recovery of \$25 per household, even where claimants had a proof of purchase). *Astiana v. Kashi*, No. 3:11-cv-01967-H (BGS) (S.D. Cal.). The Court in *Astiana* noted that the common fund was not exhausted by claims, the class members there actually received approximately \$4.30 for each product claimed. *Id.* at 11. Specifically, it is my understanding based on the Court's order that in *Astiana*, the notice program generated approximately 18,176 claims and no opt-outs. The Parties had the benefit of this information in determining an appropriate remedy for the Class in this Settlement. The Parties had the benefit of this information in determining an appropriate remedy for the Class in this Settlement.

53. The traditional means for handling claims like those at issue here would unduly tax the court system, require a massive expenditure of public and private resources, and given the relatively small value of the claims of individual Class Members, would be impracticable. The Settlement is the best vehicle for Class Members to receive the relief to which they are entitled in a prompt and efficient manner. The Parties already expended significant resources, including retaining and deposing experts and preparing for trial, and additional pretrial and trial proceedings in this Court and the appellate courts would have involved additional substantial and expensive resources. Absent the Settlement, this case would take at least another two years to exhaust all appeals.

54. This Settlement was reached at a pivotal stage in the Litigation: after full merits and expert discovery with motions for class certification and summary judgment pending, and under two months before trial. Settling the Litigation with the benefit of full fact and expert discovery and trial preparation enabled Class Counsel to evaluate with confidence the strength and weaknesses of Plaintiffs' claims and Kashi's defenses. Plaintiffs also faced the very real prospect of being foreclosed from any recovery at all in this Court, depending on the outcome of either motion.

55. The Notice Program—collectively, print publication in two magazines, *Food Network Magazine* and *Prevention Magazine*, targeted website and online advertisements, a dedicated Settlement Website and a toll free number—easily satisfies these requirements. Because Kashi does not sell the Products directly to consumers, but rather to retailers, there is no way to identify the vast majority of individual Class Members. Individual Settlement Class Members cannot otherwise be identified through reasonable efforts due to the nature of the

consumer products at issue and the wide geographical area over which they are spread. Therefore, Class Notice was provided as set forth in Exhibit G to the Agreement.

56. Based on the information provided to me by DSG, the Notice Program reached over 69% of Class Members.

57. As noted in the various forms of Notice, attached to the Schey Declaration and described above, Notice informed Class Members of their options for opting-out or objecting to the Settlement, information about the Settlement Hearing, the salient terms of the Settlement and how to obtain additional information. The language in the Notice and Claim Form are plain and easy to understand and provide neutral and objective information about the nature of the Settlement. Accordingly, the Notice Plan satisfies all due process requirements.

58. Class Notice was designed to give the best notice practicable, tailored to reach putative Class Members, and reasonably calculated under the circumstances to apprise the Class of the pendency of the Litigation, Class Members' rights to make a claim for money, opt-out of the Settlement Class or object to the Settlement the terms of the Settlement, and Class Counsel's fee application and request for Service Awards.

I declare and state under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 14, 2015 at Santa Monica, California.

/s/ Gillian L. Wade
Gillian L. Wade, Declarant

EXHIBIT A

L. DeWayne Layfield was born in Beaumont, Texas on November 18, 1963. Mr. Layfield graduated *summa cum laude* with a B.S. in Chemical Engineering from Lamar University in 1987. He graduated from The University of Texas School of Law with Honors and was admitted to the Texas Bar in 1990. Thereafter, he clerked for the Honorable Thomas Gibbs Gee, Circuit Judge United States Court of Appeals for the Fifth Circuit. At the conclusion of the clerkship, he joined Vinson & Elkins LLP in their Houston, Texas office. In 1995, Mr. Layfield joined Bridgestone/Firestone, Inc. as senior litigation counsel. In 1997, Mr. Layfield returned to private practice. Mr. Layfield's practice has involved class and non-class mass tort litigation, the nationwide coordination of tort litigation as well as commercial, contract, and environmental litigation. Mr. Layfield has assisted with the prosecution or defense of thousands of individual claims and class litigation involving tens of thousands of individuals. Mr. Layfield has been appointed class counsel in the following matters:

- (1) Cause No. 1:99cv0120; *Ethan Shaw, et al. v. Toshiba America Information Systems, et al.*; In the United States District Court for the Eastern District of Texas;
- (2) Cause No. A-162,152; *Hal LaPray, et al. v. Compaq Computer Corporation*; In the 60th Judicial District Court, Jefferson County, Texas;
- (3) Cause No. A-164,880; *Muzette Alvis, et al. v. Hewlett-Packard Company*; In the 58th Judicial District Court, Jefferson County, Texas;
- (4) Cause No. D-164,939; *Michael Albanese, et al. v. Compaq Computer Corporation*; In the 136th Judicial District Court, Jefferson County, Texas;
- (5) Cause No. E-165,336; *David Packard, et al. v. eMachines, Inc., et al.*; In the 172nd Judicial District Court, Jefferson County, Texas;
- (6) Cause No. E-167,872; *Sandra Geter, et al. v. Farmers Group, Inc., et al.*; In the 172nd Judicial District Court, Jefferson County, Texas; and
- (7) Cause No. 8725; *Anderson Brothers Partnership, et al. v. EnerMart Energy Services Trust, et al.*; In the 287th Judicial District Court, Parmer County, Texas
- (8) Cause No. CJ-2003-967; *Debbie Barrett, Individually and on Behalf of Those Similarly Situated v. Hewlett Packard Company*; In the District Court for Cleveland County, Oklahoma;
- (9) Cause No. CJ-2003-969; *Stephen Grider, Beverly Grider v. Compaq Computer Corporation*; In the District Court for Cleveland County, Oklahoma
- (10) Cause No. 9:14-cv-80005-BB; *Deena Klacko, et al. v. Diamond Foods, Inc., a California Corporation*; In the United States District Court in the Southern District of Florida

Mr. Layfield is also a member of the Plaintiffs' Steering Committee in MDL-1840 *In Re Fuel Temperature Sales Practice*.

These class actions and other individual actions prosecuted by Mr. Layfield have resulted in cash payments to or for the benefit of his clients of over \$750 million. Considering cash equivalent payments and other benefits the recovery for these clients is over \$2 billion. Mr. Layfield has also been counsel for defendants in class actions.

Mr. Layfield is admitted to practice before the courts of Texas as well as the Federal Courts for the Eastern and Southern Districts of Texas and the United States Court of Appeals for the Fifth Circuit. He is a member of the American Bar Association, American Association for Justice, Defense Research Institute; a Life Fellow of the Texas Bar Foundation; has been named a Super

Lawyer and included in the Best Lawyers in America and is a past Member of the State Bar or Texas Committee on Jury Service.

While at The University of Texas School of Law, Mr. Layfield served as Editor in Chief of the *Texas Law Review* and was a member of Chancellors and the Order of the Coif. Mr. Layfield has also been elected to Tau Beta Pi and Omega Chi Epsilon as well as other honorary societies.