

IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI

TREVOR WHITE; TERRENCE CORRIGAN,
SR.; SARAH M. SERABIAN; and ASTORRIA
SASSANO, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

PBM NUTRITIONALS, LLC, a Delaware
Company,

Defendant.

Case No. 22PH-CV00931

**DECLARATION OF L. DEWAYNE LAYFIELD IN SUPPORT OF MOTION FOR AN
ATTORNEYS' FEES AND COSTS AWARD,
AND CLASS REPRESENTATIVES' SERVICE AWARDS**

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 Plaintiffs in the above-referenced action. I make this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Costs Award, and Class Representative Service Awards.

2. The facts contained in this declaration are true of my own personal knowledge and I could and would so testify if called as a witness at trial.

3. This case arises out of allegations that Defendant PBM Nutritionals, LLC deceptively and unlawfully packaged, marketed, and labeled its powder baby and infant formulas under the following brands: Well Beginnings, Meijer Bay, Little Journey, Wesley Farms, Burt's Bees Baby, Berkley Jensen, Parent's Choice, Earth's Best Organic, Comforts, Up & Up, Babies "R" Us, Member's

Mark, and Bobbie Baby, which are sold in a variety of sizes, and collectively referred to herein as “Products” or a “Product.” To be precise, the specific brands and sizes of the Products that are at issue in this Class Action are those listed on Exhibit C 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 C to the Settlement Agreement. Specifically, Plaintiffs allege that Defendant represented that the Products make a certain number of fluid-ounce bottles of formula; however, contrary to these representations, the Products contain nowhere near enough powder formula to make the represented number of bottles of liquid formula when following the “Instructions for Preparation & Use” on the side labels of the Products.

4. I am the primary litigator at Law Office of L. DeWayne Layfield PLLC, and am responsible for all litigation aspects of the firm’s state and national class actions. My law firm has gained a positive reputation due to the results obtained when I have served as one of the Lead Counsel in class cases, and the contribution that the firm has collectively made in these areas.

5. I am one of the attorneys that is primarily responsible for representing Plaintiffs 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. In addition, Class Counsel under the Settlement Agreement, also includes the Law Office of Howard W. Rubenstein PA.

6. From the inception of this litigation, Class Counsel has aggressively pursued this claim and vigorously represented the best interests of Plaintiffs and the Class, including by: investigating the facts, testing the Products at issue, conducting legal research, assembling and drafting pleadings, coordinating activities amongst Plaintiffs’ Counsel, communicating with

counsel for Defendant, engaging in a formal, half-day, mediation with Hon. Wayne Andersen (Ret.) of JAMS, engaging in multiple additional informal follow up mediation sessions participating in dozens of telephone conferences with counsel for Defendant, and crafting a fair, adequate, and reasonable settlement for the Class. I, along with other Plaintiffs' Counsel attorneys and staff have devoted a considerable amount of time, effort, and resources to investigating and prosecuting Plaintiffs' and the Class's claims.

7. Class Counsel commenced work on this case by conducting a thorough and rigorous pre-litigation investigation including with respect to the label representations on the Products and the number of fluid-ounce bottles of formula that the Products actually yield, beginning in September 2021. The investigation involved many brands covered by the proposed Settlement, including without limitation, Burt's Bees, Earth's Best Organic, Parents Choice and Up and Up. Part of the investigation included laboratory testing of the brands and evaluation of those test results as compared to test results for other manufacturers of baby formula. Since shortly after delivery of a demand letter and an exchange of initial telephone conversations between the Parties, the Parties have been engaged in intensive settlement discussions for over four and a half months.

8. Those settlement efforts included: an initial settlement demand; provision of Plaintiffs' laboratory test results to Defendant; informal discovery from Defendant to Plaintiffs; informal settlement discussions between the parties; detailed evaluation of sales data for each of the Products; a half-day mediation with a neutral mediator, the Hon. Wayne Andersen (Ret.) of JAMS; and an additional 14 days of follow-up negotiations after the mediation, which ultimately resulted in the Settlement Agreement.

9. 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 Duane Morris, LLP. This class action case against Defendant 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.

10. During in-person mediation sessions (held via zoom), 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, were able to continue to negotiate, and ultimately reached a Settlement that provides meaningful cash compensation to Settlement Class Members, as well as substantive injunctive relief, and avoids the risks and delay of further litigation. This process of independent and mediated negotiation sessions took a significant investment of time and effort over the course of several months. 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.

11. After a half-day mediation session followed by weeks of negotiation the Parties negotiated with one another to reach and flesh out the settlement framework and the details of its proposed implementation. The parties continued to negotiate and exchange information regarding settlement details, including by examining potential approaches to injunctive relief. This process

included detailed negotiations of every aspect of the notice program, as there was great tension between the needs of Class Counsel to present a notice program that satisfied all due process requirements and ensured the best practicable notice to the Class, and the desire of Defendant for the notice program to be sensitive to their brand integrity. Throughout this process the parties sought and obtained the continued assistance of the mediator.

12. Plaintiffs' intense pre-suit investigation, the experience of Class Counsel, as well as Plaintiffs' effective litigation strategy has made settlement possible. The settlement result was achieved only after numerous telephone calls, meetings, arms-length negotiation, an extensive mediation session with Hon. Wayne Andersen (Ret.), the exchange of confidential business and technical information, and an open dialogue. The Parties worked diligently to understand the underlying business facts in a completely transparent process. After disclosure of the facts, it was immediately clear that the most appropriate relief included meaningful injunctive relief as well as monetary benefits. The injunctive remedy that is embodied in the Settlement's Programmatic Relief was the first item negotiated.

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

- Defendant will provide injunctive relief through the removal of the Challenged Language from the labels of the Products, which we separately value at approximately \$5,174, 982.00; and
- Defendant has agreed to a two-tiered structure to provide monetary relief to Class Members, under which Defendant will provide cash benefits to Settlement Class Members who timely file Claims by the Claims Deadline and who provide either Proofs of Claim or a valid claim form to the Settlement Administrator. Defendant

will compensate consumers for their purchases pursuant to the two-tier structure set forth in the Settlement Agreement. The two-tier structure provides compensation for both Class Member with Proof of Purchase and those without Proof of Purchase.

14. Law Office of L. DeWayne Layfield, PLLC and Plaintiffs' Counsel prosecuted this case on a wholly contingent fee basis since commencing the litigation, as the Class Representatives did not have the ability to pay our normal hourly rate. The contingent fee has risks to the lawyers including but not limited to: having to fund the underlying litigation; the unreimbursed time for lawyers and support staff; the risk of not recovering any fees or expenses throughout the case; and the opportunity costs of having to forego other work, which would have in all likelihood resulted in attorneys' fees. The efforts required in this matter required my firm, and upon information and belief, each of the other Plaintiffs' firms to forego other opportunities to fulfill their responsibilities in this matter. Lead Class Counsel now seeks an award of attorneys' fees and costs.

15. Law Office of L. DeWayne Layfield, PLLC and all Lead and Class Counsel have diligently investigated and prosecuted this matter, dedicating substantial time effort, resources, and expertise to the investigation of the claims at issue in the action and have successfully negotiated the settlement of this matter to the benefit of the Class.

16. Class Counsel applies for an Attorneys' Fees and Costs Award of \$600,000. This amount represents 30% of the total \$2 million value of the monetary benefits of Settlement Fund, and was the amount set forth in the Notice. The fee request is well within the range of reasonable fees for this type of litigation.

17. The reasonableness of the requested fee is further supported by the value of the

time invested in the matter by Class Counsel.

18. In addition, the value of the meaningful Programmatic Relief would separately and independently support the reasonableness of the fee request. Indeed, the Programmatic Relief is by far the most valuable component of the Settlement to Class Members. Using \$2.00 per unit as the damage or loss avoided by each Class Member on future purchases of the Product, and extrapolating future sales based on past sales, with an estimated 1,150,000 units as the number of units sold in the United States each year (equating to approximately 95,833 units sold per month), and limiting the Programmatic Relief benefit to only the bare minimum 27-month period of Programmatic Relief mandated by the Settlement, demonstrates the Programmatic Relief is valued at approximately: $(\$2.00 * 95,833 \text{ units/month} * 27 \text{ months}) = \$5,174,982.00$. Even if one assumes sales of the Products were to decline, due to market competition, during the 27-month period of Programmatic Relief, under any reasonable interpretation of the facts, the value of the Programmatic Relief is well in excess of the \$2,000,000 cash fund also provided by the Defendant. It is also important to point out that Class Members do not need to file a claim form to receive the benefits of the Programmatic Relief.

19. Class Counsel also applies for a Service Award of \$3,500 for each of the four Class Representatives, not to exceed an aggregate amount of \$17,500. The proposed service compensation that is payable to the Class Representatives is in line with compensation awarded by courts in other class actions and is common in the Circuit Court of Phelps County, Missouri.

20. I believe that the requested Attorneys' Fees and Costs Award and Class Representative Service Awards are reasonable in relation to the substantial results—both monetary benefits and Programmatic Relief—achieved for the Settlement Class Members and the efforts of counsel. Further, such an award is supported by the benchmarks for fee awards, costs and expenses

in this Court and in the State of Missouri.

21. The fee provisions were not negotiated until after all of the substantive terms of the settlement had been agreed upon.

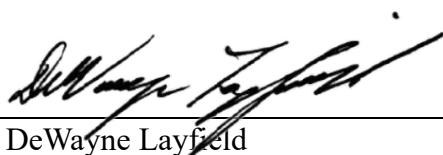
22. Because the fee awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result, and that such a result would be realized only after a lengthy and difficult effort.

23. Plaintiffs' success in this action was by no means assured. Defendant is represented by able counsel, who were sure to mount a substantial challenge. Were this settlement not achieved, and even if Plaintiffs prevailed at trial, Plaintiffs potentially faced years of costly and risky appellate litigation against Defendant, the ultimate success of which is far from certain. It is these risks that support the concept of lodestar multiplier and percentage recoveries.

24. For all of the foregoing reasons, Lead Class Counsel respectfully requests that this Court approve the Application for Attorneys' Fees and Costs, and award Class Counsel \$600,000 in fees, costs, and expenses; and approve the Class Representative Service Awards to Plaintiffs Trevor White, Terrence Corrigan, Sr., Sarah M. Serabian, and Astorria Sassano, in an aggregate amount not to exceed \$17,500.

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

Executed this 11th day of October, 2022
Jefferson County, Texas



L. DeWayne Layfield