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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

16 EVLYN ANDRADE-HEYMSFIELD, on
 17 behalf of herself, all others similarly
 18 situated, and the general public,

19 Plaintiff,

20 v.

21 NEXTFOODS, INC.,

22 Defendant.

Case No. 21-cv-1446-BTM-MSB

**DECLARATION OF JACK
 FITZGERALD IN SUPPORT OF
 PLAINTIFF’S MOTION FOR
 ATTORNEYS’ FEES, COSTS, AND
 SERVICE AWARDS**

Judge: Hon. Barry Ted Moskowitz

Date: March 11, 2024

Time: 3:30 p.m.

Location: Courtroom 15B

1 I, Jack Fitzgerald, declare:

2 1. I am a member in good standing of the State Bars of California and New
3 York; of the United States District Courts for the Northern, Central and Southern Districts
4 of California, the Southern and Eastern Districts of New York, and the Western District of
5 Wisconsin; and of the United States Courts of Appeal for the Second, Eighth, and Ninth
6 Circuits. I make this declaration based on my own personal knowledge, in support of
7 Plaintiff's Motion for Attorneys' Fees, Costs, and Service Awards.

8 **Class Counsel's Lodestar**

9 ***Class Counsel's Hours***

10 2. In my declaration submitted in support of preliminary approval on September
11 22, 2023, I detailed the case's timekeepers and time-keeping practices and noted that,
12 based on raw time records, we then had 760.7 hours into the case, "though we ha[d] not yet
13 evaluated them in detail to make cuts if appropriate." Dkt. No. 53-1, Declaration of Jack
14 Fitzgerald in Support of Preliminary Approval ("PA Fitzgerald Decl.") ¶¶ 31-33. Since that
15 time, we have put some additional hours into the case relating to the amended preliminary
16 approval order (Dkt. No. 56) and working with the Claims Administrator.

17 3. Moreover, we have now examined our time records in detail and have made a
18 number of cuts prior to seeking fees. First, we cut 26.5 hours that were inadvertently but
19 incorrectly attributed to this case (*i.e.*, represented work on a different case). Second, we
20 exercised discretion to cut 56.3 hours of time we determined was duplicative or excessive,
21 particularly as it related to Rule 12 briefing. Third, we cut 8.6 hours of time attorneys had
22 billed on more clerical tasks. Fourth, we have elected not to seek reimbursement for 25.2
23 hours of time we spent working on the New York *Gates* matter.

24 4. In addition to making these cuts, we are not seeking reimbursement for time
25 spent on the instant fee motion. Moreover, we will shortly spend time preparing the final
26 approval motion, appearing at the final approval hearing, and, if necessary, responding to
27 objectors, but will not seek reimbursement for those hours. For three recent settlements of
28 ours, this time totaled 53.5 hours, 87.1 hours, and 227.9 hours, respectively. Thus, we are

1 likely to spend at least 50 hours in this case on final approval and other work necessary for
2 the Settlement's administration.

3 5. As a result, we now respectfully request a fee award of \$501,016 under a
4 lodestar method based on 694.5 hours reasonably expended, as follows.

5 **By Timekeeper**

Timekeeper	Rate	Hours	Proportion	Lodestar
Jack Fitzgerald	\$885	149.1	21.5%	\$131,953.50
Paul Joseph	\$730	186.1	26.8%	\$135,853.00
Melanie Persinger	\$695	60.9	8.7%	\$42,325.50
Trevor Flynn	\$680	206.7	29.8%	\$140,556.00
Caroline Emhardt	\$560	88.5	12.7%	\$49,560.00
Christina Mendez	\$240	3.2	0.5%	\$768.00
Totals =		694.5	100%	\$501,016.00

6 **By Category**

Category	Hours	Proportion
Investigation & Complaint	79.6	11.5%
Rule 12 Briefing	256.9	37.0%
Case Management	18.2	2.6%
Discovery	200.4	28.9%
Work with Experts	11.2	1.6%
Class Certification	27.9	4.0%
Settlement Negotiations	61.7	8.9%
Preliminary Approval	38.6	5.7%
Final Approval	0.6	0.0%
Totals =		694.5
		~100%

7 6. Detailed time records for these hours, organized by timekeeper, category, and
8 chronology, are attached hereto as Exhibit 1.

1 ***Class Counsel's Billing Rates***

2 7. The current billing rates for timekeepers on this matter are as follows.¹

3 Timekeeper (LS Graduation Year / Years Experience)	Position	Rate
4 Jack Fitzgerald (2004 / 19.5)	Principal	\$885
5 Paul Joseph (2012 / 11.5)	Principal	\$730
6 Melanie Persinger (2010 / 13.5)	Partner	\$695
7 Trevor Flynn (2007 / 16.5)	Senior Associate	\$680
8 Caroline Emhardt (2017 / 6.5)	Associate	\$560
9 Christina Mendez (NA)	Paralegal	\$240

10 8. These rates are consistent both with previous fee awards, and with prevailing
11 rates in this district for attorneys of similar experience, skill, and reputation.

12 **Previous Fee Awards**

13 9. First, approximately one year ago, in March 2023, the Honorable Ruth
14 Bermudez Montenegro approved counsel's lodestar calculation in *Testone v. Barlean's*
15 *Organic Oils, LLC*, 2023 WL 2375246, at *7 (S.D. Cal. Mar. 6, 2023) (“[T]he Court finds
16 Plaintiffs’ lodestar cross-check supports the requested 33.3% fee award. Plaintiffs
17 calculated a lodestar of \$972,456.50 based on 1,449.8 hours . . .”). That was based on the
18 following rates.²

19
20
21
22 ¹ Paragraph 33 of my September 22, 2023 Declaration contained two errors in this regard,
23 which appear to be either typographical or the result of incorrect copying and pasting.
24 First, it listed Mr. Joseph's rate as \$710 per hour, even though—as discussed further
25 below—in March 2023, a court in this district approved a rate of \$715 per hour for Mr.
26 Joseph. A year later, his actual rate has increased to \$730 per hour. Second and similarly,
27 my Declaration listed Ms. Emhardt's rate as \$430 per hour, even though in March 2023,
28 the same court approved a rate of \$550 per hour for Ms. Emhardt. A year later, her actual
rate has increased to \$560 per hour.

² See *Testone v. Barlean's Organic Oils, LLC*, No. 19-cv-00169-RBM-BGS (S.D. Cal.),
Dkt. No. 130-1, Decl. of Paul K. Joseph ¶ 21.

21. In light of the rates and hours expended, Class Counsel’s lodestar in this case thus far totals \$972,456.50, as set forth below.

Timekeeper	Rate	Hours	Lodestar
Jack Fitzgerald (Principal)	\$865	110.1	\$95,236.50
Paul Joseph (Principal)	\$715	507	\$362,505.00
Melanie Persinger (Partner)	\$685	157.5	\$107,887.50
Trevor Flynn (Senior Associate)	\$665	224.5	\$149,292.50
Richelle Kemler (Senior Associate)	\$575	386	\$221,950.00
Caroline Emhardt (Associate)	\$550	64.7	\$35,585.00
Totals:		1,449.8	\$972,456.50

10. Second, approximately two years ago, in April 2022, the Honorable Cynthia Bashant approved counsel’s lodestar calculation in *McMorrow v. Mondelez Int’l, Inc.*, 2022 WL 1056098, at *8 (S.D. Cal., Apr. 8, 2022) (“[T]he Court is satisfied that Plaintiffs’ lodestar cross check supports the requested 33.3% fee award. Plaintiffs calculated a lodestar of \$1,732,355 based on 2,869 hours . . .”). That was based on the below rates.³

33. In light of the rates and hours expended, Class Counsel’s lodestar in this case thus far totals \$1,732,355, as set forth below.

Timekeeper	Rate	Hours	Lodestar
Jack Fitzgerald (Principal)	\$825	345.1	\$284,707.50
Paul Joseph (Principal)	\$660	1,027	\$677,820.00
Melanie Persinger (Partner)	\$645	337.3	\$217,558.50
Trevor Flynn (Senior Associate)	\$635	297.9	\$189,166.50
Richelle Kemler (Senior Associate)	\$550	520.4	\$286,220.00
Val Erze (Paralegal)	\$225	173.2	\$38,970.00
Julie Hinton (Paralegal)	\$225	168.5	\$37,912.50
Totals:		2,869.4	\$1,732,355

11. Third, approximately four years ago, in January 2020, the Honorable William Q. Hayes approved hourly rates of \$750 for me, \$600 for Mr. Joseph, \$575 for Mr. Flynn, and \$510 for Ms. Persinger. *See Hunter v. Nature’s Way Prod., LCC*, 2020 WL 71160, at *7 (S.D. Cal. Jan. 6, 2020).

³ See *McMorrow v. Mondelez Int’l Inc.*, No. 17-cv-02327-BAS-JLB (S.D. Cal.), Dkt. No. 200-1, Decl. of Jack Fitzgerald ¶ 33.

12. As shown below, Class Counsel’s present rates represent a modest increase of approximately 22.7% on average over their 2020 rates (or 5.7% per year), 7.3% on average over their 2022 rates (or 3.7% per year), and 2.0% on average over their 2023 rates, to account for the fact that “hourly attorney fee rates generally increase over time with inflation,” *Tehachapi Unified Sch. Dist. v. K.M. by & Through Markham*, 2019 WL 331153, at *6 (E.D. Cal. Jan. 25, 2019).⁴

Timekeeper	2020 Rate	2022 Rate	2023 Rate	2024 Rate	% Increase vs. 2020	% Increase vs. 2022	% Increase vs. 2023
Jack Fitzgerald	\$750	\$825	\$865	\$885	18%	7.3%	2.3%
Paul Joseph	\$600	\$660	\$715	\$730	18.3%	7.6%	2.1%
Melanie Persinger	\$510	\$645	\$685	\$695	36.3% ⁵	7.8%	1.5%
Trevor Flynn	\$575	\$635	\$665	\$680	18.3%	7.1%	2.2%
Caroline Emhardt			\$550	\$560	-	-	1.8%
Paralegal(s)	-	\$225	-	\$240	-	6.7%	-

Prevailing Rates

13. Class Counsel’s requested rates are also consistent with prevailing rates in the community for attorneys of similar experience, skill, and reputation.⁶ For example, “courts in this District have awarded hourly rates for work performed in civil cases by attorneys with significant experience anywhere in range of \$550 per hour to more than \$1000 per hour.” *Sengvong v. Probuild Co. LLC*, 2021 WL 4504620, at *8-9 (S.D. Cal. Oct. 1, 2021).

14. A Southern District of California court recently awarded rates as high as \$1,135 for an equity partner, \$770 for an associate (and a lower rate of \$540 for a less

⁴ These rate increases are reasonable given recent inflation rates, which topped 7% in 2021 and 6.5% in 2022, and 3.1% in 2023, even without accounting for each timekeepers increased experience. See “Current US Inflation Rates: 2000-2023,” available at <https://www.usinflationcalculator.com/inflation/current-inflation-rates>.

⁵ This increase occurred as a result of Ms. Persinger being named Partner in 2021.

⁶ My previous Declaration included a Firm Resume setting forth the relevant attorneys’ credentials and experience. Dkt. No. 53-5, PA Fitzgerald Decl. Ex. 4.

1 experienced associate admitted to the California Bar in only 2019), and \$360 for paralegals
2 for work done in 2021. *San Diego Cty. Credit Union v. Citizens Equity First Credit Union*,
3 2021 WL 6210596, at *2 (S.D. Cal. Dec. 2, 2021).

4 15. In *Herring Networks, Inc. v. Maddow*, the Southern District approved hourly
5 rates of \$1,150 and \$1,050, respectively, for two partners, a rate of \$720 for a senior
6 associate with more than 10 years of legal experience, and a rate of \$470 for two mid-level
7 associates with three years of experience each, for work done in 2019 and 2020 on an anti-
8 SLAPP motion. 2021 WL 409724 at *5, *7 (S.D. Cal. Feb. 5, 2021).

9 16. Our rates, requested several years later, compare favorably, at between \$695
10 and \$885 for partners and \$560 and \$680 for associates.

11 **Case Expenses**

12 17. We prosecuted this action entirely on a contingency basis, advancing all out-
13 of-pocket costs. Although actual out-of-pocket expenses were higher, we are seeking
14 reimbursement for \$47,189, as described further below. We have not yet been reimbursed
15 by anyone for these expenses and the firm had no financing or other assistance in funding
16 the litigation.

17 18. My September 22, 2023 declaration detailed case expenses incurred to that
18 date for which we intended to seek reimbursement, totaling \$36,684.01. PA Fitzgerald
19 Decl. ¶ 34. Attached as Exhibit 5 to that declaration was a detailed expense report, with
20 expenses listed chronologically.

21 19. At the time, we had not yet received an invoice from Circana, the predecessor
22 of IRI, an entity that collects and markets “scan” data, from which sales of consumer
23 goods, like the Class Products at issue here, can be calculated. We subpoenaed Circana for
24 sales information about the products in this case, but Circana only first provided us an
25 invoice for its response, in the amount of \$10,505, on January 5, 2024. I do not know the
26 reason for Circana’s delay, but it meant that this expense was inadvertently not included in
27 my previous Declaration. With this addition, we are now seeking reimbursement for
28 \$47,189 in case expenses, as reflected in the table below.

Category	Amount	Proportion
Case Initiation and Management	\$1,164.00	2.5%
Expert Costs	\$35,242.50	74.7%
Ground Transportation	\$209.89	4.4%
Lodging & Accommodations	\$67.62	0.1%
Circana Invoice (Sales Figures)	\$10,505.00	22.3%
Total =	\$47,189.01	100%

The Class Representatives' Contributions

20. In my opinion, Evlyn Andrade-Heymsfield and Valerie Gates were committed and zealous Class Representatives. Each volunteered their time on behalf of other class members, and each remained active throughout the litigation. Each consulted with counsel regarding the facts surrounding their claims, assisted counsel in its investigation, and reviewed pertinent complaints before filing.

21. Each Class Representative also participated in and facilitated the settlement process. For example, we discussed what a settlement in this case might and should look like, and each approved the principal terms of the agreement when reached. Each also discussed with us, reviewed, and approved the final Settlement Agreement.

22. Achieving the Settlement was not an easy task. There were multiple rounds of negotiations that involved the executive team of a sophisticated business and an insurer. Ms. Andrade-Heymsfield flew to San Diego from Seattle for one such conference, and both Class Representatives were available for the second formal settlement conference with Judge Berg, which ultimately resulted in the settlement presently before the Court.

23. Given the lengthy litigation, their attentiveness and participation, and the excellent result they helped achieve, as well as the potential invasion of privacy they faced given Defendant's discovery request seeking Plaintiff's medical records, my colleagues and I believe a \$5,000 service award for each Class Representative is well-deserved and justified. Without their effort and dedication, the Class would have recovered nothing.

Additional Information

24. Plaintiff’s scientific expert, Dr. Michael Greger, had drafted an expert report that Plaintiff intended to use to support class certification, which would have been due shortly after the parties resolved the case. Because the potential countervailing benefit of the probiotics in the JuiceDrinks was a novel issue in this case, which we had not ever litigated before, that report specifically addressed the effect of free sugar consumption on gut health specifically, and contained another separate section analyzing “The Health Implications of Specific GoodBelly Probiotic JuiceDrinks Ingredients.”

25. Attached hereto as Exhibit 2 is a true and correct copy of an article by Creighton Magid, a partner with Dorsey & Whitney LLP, published on November 15, 2019 for the Washington Legal Foundation titled “DEVELOPMENTS IN ADDED-SUGAR FOOD-AND BEVERAGE LITIGATION: CAUSE FOR HOPE, CAUSE FOR CONCERN.” The article concludes that settlements like the one here “lend[] credence to the legal theory that a product’s added sugars render health-and-wellness claims printed on the product label misleading under consumer-protection laws,” and that “the process of changing product labeling and associated marketing campaigns requires an enormous amount of time and financial resources.”

26. Below is a table comparing the amount of time we have into this case with that we had into other, similar false advertng class actions we settled that involved health claims on sugary foods.

Case	Months Worked⁷	Hours	Hours Per Year	Hours Per Month	Hours Per Week
<i>Andrade-Heymsfield</i>	32	700.4	262.3	21.9	5.5
<i>McMorrow</i>	52.5	2,869.4	655.9	54.7	12.6
<i>Krommenhock</i>	56.5	4,633.4	983.7	82.0	19.2

⁷ This is calculated based on the date the case was filed, and the date counsel moved for attorneys’ fees in connection with final approval of a class action settlement, rounded to the nearest half-month.

Case	Months Worked ⁷	Hours	Hours Per Year	Hours Per Month	Hours Per Week
<i>Hadley</i> ⁸	55	5,457.7	1,191.6	99.2	23.2

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 12th day of January 2024 in San Diego, California.

By: /s/ Jack Fitzgerald
 Jack Fitzgerald

Table of Exhibits

Exhibit	Description	Beginning Page
1	Class Counsel’s Detailed Billing Records	1
2	Article by Creighton Magid, a partner with Dorsey & Whitney LLP, published online by Washington Legal Foundation on November 15, 2019.	29

⁸ See *Hadley v. Kellogg Sales Co.*, No. 16-v-4955-LHK (N.D. Cal.), Dkt. No. 378, Decl. of Jack Fitzgerald in Support of Mot. for Prelim. Approval ¶ 51.

Exhibit 1

DETAILED BILLING RECORDS BY CATEGORY

Table of Contents

Summary of Time 1

Investigation & Complaint..... 2

 Caroline Emhardt (CE)..... 2

 Jack Fitzgerald (JF) 2

 Trevor Flynn (TF) 2

 Paul Joseph (PJ) 3

 Christina Mendez (CM) 4

Rule 12 Briefing..... 5

 Caroline Emhardt (CE)..... 5

 Jack Fitzgerald (JF) 5

 Trevor Flynn (TF) 5

 Paul Joseph (PJ) 7

 Melanie Persinger (MP) 8

Case Management..... 10

 Caroline Emhardt (CE)..... 10

 Jack Fitzgerald (JF) 10

 Trevor Flynn (TF) 11

 Paul Joseph (PJ) 11

 Christina Mendez (CM) 12

Discovery..... 13

 Caroline Ehhardt (CE)..... 13

 Jack Fitzgerald (JF) 14

 Trevor Flynn (TF) 15

 Paul Joseph (PJ) 16

 Melanie Persinger (MP) 17

Work With Experts..... 18

 Caroline Emhardt (CE)..... 18

 Jack Fitzgerald (JF) 18

 Paul Joseph (PJ) 18

Class Certification..... 19

 Caroline Emhardt (CE)..... 19

 Jack Fitzgerald (JF) 19

 Trevor Flynn (TF) 19

 Paul Joseph (PJ) 19

Settlement Negotiations 20

 Jack Fitzgerald (JF) 20

 Paul Joseph (PJ) 21

 Melanie Persinger (MP) 22

DETAILED BILLING RECORDS BY CATEGORY

Preliminary Approval..... 23

 Carline Emhardt (CE)..... 23

 Jack Fitzgerald (JF) 23

 Trevor Flynn (TF) 23

 Paul Joseph (PJ) 24

Final Approval 25

 Jack Fitzgerald(JF) 25

 Paul Joseph (PJ) 25

*DETAILED BILLING RECORDS BY CATEGORY – Summary of Time***Summary of Time**

	Investigation & Complaint	Rule 12	Case Management	Discovery	Work with Experts	Class Certification	Settlement Negotiations	Preliminary Approval	Final Approval	Totals
CE	16	2.3	2.4	41.1	1.4	19.3	-	6	-	88.5
JF	4.1	11	3.7	69.8	1.1	3	35.1	21	0.3	149.1
TF	7.2	129.9	2.5	62.6	-	0.6	-	3.9	-	206.7
PJ	50.9	58.9	5	24.7	8.4	4.8	25.4	7.7	0.3	186.1
CM	1.4	-	1.8	-	-	-	-	-	-	3.2
MP	0	54.7	-	2.2	-	-	4.0	-	-	60.9
Total	79.6	256.6	18.2	200.4	11.2	27.9	61.7	38.6	0.6	694.5

*DETAILED BILLING RECORDS BY CATEGORY – Investigation & Complaint***Investigation & Complaint*****Caroline Emhardt (CE)***

Date	Hours	Description
5/24/2022	2.0	Search Federal Register for information on the reasonable consumer and consumer confusion to add to Amended Complaint.
5/25/2022	6.5	Research academic literature (Science Direct, medicine journals, and nutrition studies) RE reasonable consumer and consumer confusion to add to Amended Complaint.
5/26/2022	5.0	Research academic literature RE nutrition literacy and health halo to add to Amended Complaint.
5/27/2022	2.5	Research academic literature RE nutrition literacy and health halo to add to Amended Complaint.
Total =	16	

Jack Fitzgerald (JF)

Date	Hours	Description
5/11/2021	0.2	Review and revise draft engagement letter for potential named plaintiff.
8/13/2021	3.5	Review and edit draft Complaint before filing.
5/27/2022	0.4	Review science section of draft First Amended Complaint.
Total =	4.1	

Trevor Flynn (TF)

Date	Hours	Description
7/9/2021	3.1	Work on finalizing the Complaint, including reaching out to Plaintiff to clarify purchase and reliance issues; phone call with client to discuss purchase and reliance.
7/12/2021	0.5	Draft all required supplemental materials for Complaint, including cover sheet and CLRA venue affidavit; review local rules for any additional filing requirements.
7/12/2021	0.5	Continue work on finalizing Complaint draft.
8/13/2021	0.4	Confer with Mr. Joseph and Mr. Fitzgerald RE: case status and the Complaint; file Complaint.
5/27/2022	1.8	Review First Amended Complaint, performing proofread and substantive review of digestive health sections; confer with Mr. Joseph regarding same.

DETAILED BILLING RECORDS BY CATEGORY – Investigation & Complaint

Date	Hours	Description
6/6/2022	0.9	Work with Mr. Joseph to correct First Amended Complaint to include redline drafts of the Word versions and file notice of corrected filing.
Total =	7.2	

Paul Joseph (PJ)

Date	Hours	Description
4/19/2021	0.7	Call with Dr. Robert Lustig RE scientific evidence relevant to claims and allegations.
4/21/2021	1.3	Review scientific studies to incorporate into the Complaint.
4/22/2021	2.3	Continue reading studies related to sugar and gut health to incorporate into Complaint.
6/2/2021	1	Continue to work on draft of Complaint.
6/23/2021	0.7	Continue to draft Complaint.
6/24/2021	1.3	Continue to draft Complaint.
6/29/2021	0.4	Continue to draft Complaint.
7/8/2021	1.6	Continue to draft Complaint.
7/9/2021	1.6	Continue to draft Complaint.
8/12/2021	4.5	Review and edit Complaint and supplemental documents.
8/13/2021	0.9	Finalize Complaint for filing.
8/13/2021	0.3	Read and respond to email from Ms. Heymsfield's; edit Appendix to Complaint; confer with Mr. Fitzgerald and Mr. Flynn.
5/16/2022	2	Begin drafting First Amended Complaint.
5/23/2022	2.1	Continue working on draft of First Amended Complaint.
5/24/2022	5	Continue researching additional studies for First Amended Complaint.
5/25/2022	7.7	Continuing to research articles to support First Amended Complaint.
5/26/2022	8.6	Continue drafting First Amended Complaint.
5/27/2022	8.7	Continue working on First Amended Complaint.
6/6/2022	0.2	Review stipulation sent by defense counsel; work with Mr. Flynn RE redline; discuss chambers copies with Ms. Mendez.
Total =	50.9	

DETAILED BILLING RECORDS BY CATEGORY – Investigation & Complaint

Christina Mendez (CM)

Date	Hours	Description
5/26/2022	0.7	Organize for further review all relevant articles pertaining to consumer confusion.
6/7/2022	0.7	Prepare chambers copies of First Amended Complaint and redlined copy.
Total =	1.4	

DETAILED BILLING RECORDS BY CATEGORY – Rule 12 Briefing

Rule 12 Briefing***Caroline Emhardt (CE)***

Date	Hours	Description
9/16/2022	2.3	Cite check fact and record citations in draft opposition to Motion to Dismiss First Amended Complaint.
Total =	2.3	

Jack Fitzgerald (JF)

Date	Hours	Description
10/18/2021	1.1	Review NextFoods' Motion to Dismiss the Complaint.
11/8/2021	1.6	Review draft of opposition to Motion to Dismiss the Complaint.
11/23/2021	6.1	Review and further edit revised draft opposition to Motion to Dismiss the Complaint.
12/6/2021	0.4	Review NextFoods' Reply in Support of Motion to Dismiss the Complaint.
7/27/2022	0.3	Review NextFood's Motion to Dismiss the First Amended Complaint.
9/23/2022	0.3	Review NextFood's Reply in Support of Motion to Dismiss the First Amended Complaint.
5/5/2023	1.2	Review NextFoods' Motion for Reconsideration and proofread draft opposition to motion.
Total =	11	

Trevor Flynn (TF)

Date	Hours	Description
11/24/2021	4.2	Research RE: restitution not being permitted when damages are an adequate remedy; email Mr. Joseph regarding same; review opposition to Motion to Dismiss Complaint and proof read and cite check portions of the brief.
4/27/2022	0.2	Review Order on Motion to Dismiss.
7/26/2022	0.9	Review original Complaint, original Motion to Dismiss, and Court Order granting Motion to Dismiss to prepare for briefing on Motion to Dismiss First Amended Complaint.
7/27/2022	7.8	Being drafting Opposition to Motion to Dismiss First Amended Complaint, including outlining and conducting legal research.

DETAILED BILLING RECORDS BY CATEGORY – Rule 12 Briefing

Date	Hours	Description
7/28/2022	7.3	Continue working on opposition to Motion to Dismiss First Amended Complaint, including further outlining and legal research; meet with Mr. Joseph regarding same.
8/22/2022	5.9	Conduct legal research on various issues related to reasonable consumers and plausibility, specifically as to Judge Moskowitz.
8/23/2022	7.9	Continue drafting Opposition to Motion to Dismiss First Amended Complaint.
8/24/2022	6.9	Continue drafting Opposition to Motion to Dismiss First Amended Complaint.
8/25/2022	7.1	Continue drafting Opposition to Motion to Dismiss First Amended Complaint.
8/26/2022	7.6	Continue drafting Opposition to Motion to Dismiss First Amended Complaint.
8/29/2022	5.7	Continue work on Opposition to Motion to Dismiss First Amended Complaint.
8/30/2022	5.2	Continue work on Opposition to Motion to Dismiss First Amended Complaint.
8/31/2022	8.1	Continue work on Opposition to Motion to Dismiss First Amended Complaint.
9/1/2022	8.2	Finish draft of Opposition to Motion to Dismiss First Amended Complaint.
9/7/2022	6.3	Confer with Mr. Joseph to discuss status of Opposition to Motion to Dismiss First Amended Complaint; continue to work on same, including revisions as instructed by Mr. Joseph.
9/8/2022	5.3	Continue revising Opposition to Motion to Dismiss First Amended Complaint per instructions from Mr. Joseph.
9/9/2022	6.4	Continue revisions and legal research related to various issues discussed with Mr. Joseph regarding Opposition to Motion to Dismiss First Amended Complaint.
9/12/2022	0.4	Continue revisions and legal research related to various issues discussed with Mr. Joseph on Opposition to Motion to Dismiss First Amended Complaint.
9/13/2022	5	Continue working with Mr. Joseph to finalize Opposition to Motion to Dismiss First Amended Complaint.
9/14/2022	6.9	Continue work on finalizing Opposition to Motion to Dismiss First Amended Complaint including research tasks from Mr. Joseph.

DETAILED BILLING RECORDS BY CATEGORY – Rule 12 Briefing

Date	Hours	Description
9/15/2022	7.6	Continue working on projects from Mr. Joseph relating to the Opposition to Motion to Dismiss First Amended Complaint; revise section of brief on equitable relief.
9/16/2022	8.7	Finalize Opposition to Motion to Dismiss First Amended Complaint for filing.
9/23/2022	0.2	Review NextFood's Reply in Support of Motion to Dismiss First Amended Complaint.
4/17/2023	0.1	Review NextFood's Motion for Reconsideration.
Total =	129.9	

Paul Joseph (PJ)

Date	Hours	Description
10/18/2021	0.8	Read Motion to Dismiss Complaint.
10/20/2021	0.3	Confer with Ms. Persinger RE drafting Motion to Dismiss Complaint.
11/1/2021	4.3	Edit draft of opposition to Motion to Dismiss Complaint.
11/2/2021	2	Continue to edit draft of opposition to Motion to Dismiss Complaint.
11/24/2021	2.3	Review and edit opposition to Motion to Dismiss Complaint.
11/26/2021	1.9	Proofread, finalize, and file opposition to Motion to Dismiss Complaint.
11/29/2021	0.2	Prepare and send chambers' copies of opposition to Motion to Dismiss Complaint.
4/27/2022	0.3	Read Order dismissing Complaint.
7/27/2022	0.7	Read defendant's Motion to Dismiss First Amended Complaint and supporting documents.
7/28/2022	6.7	Begin working on draft of opposition to Motion to Dismiss First Amended Complaint.
7/28/2022	0.2	Confer with Mr. Flynn regarding opposition to Motion to Dismiss First Amended Complaint.
7/29/2022	3.5	Continue to draft opposition to Motion to Dismiss First Amended Complaint.
9/7/2022	1.9	Review and edit Opposition to Motion to Dismiss First Amended Complaint; meet with Mr. Flynn RE: edits and next steps.

DETAILED BILLING RECORDS BY CATEGORY – Rule 12 Briefing

Date	Hours	Description
9/12/2022	0.2	Edit draft Opposition to Motion to Dismiss First Amended Complaint.
9/13/2022	4.8	Continue to draft and edit Opposition to Motion to Dismiss First Amended Complaint.
9/14/2022	1.3	Continue to draft and edit Opposition to Motion to Dismiss First Amended Complaint.
9/15/2022	8.6	Continue to work on draft of Opposition to Motion to Dismiss First Amended Complaint.
9/16/2022	10.5	Continue to work on draft of Opposition to Motion to Dismiss First Amended Complaint.
9/26/2022	0.2	Read defendant's Reply in support of Motion to Dismiss First Amended Complaint.
2/8/2023	0.2	Draft and file Notice of Recent Decision.
3/20/2023	0.5	Reading order denying Motion to Dismiss First Amended Complaint; debrief with Mr. Fitzgerald and Ms. Persinger.
4/17/2023	0.3	Read NextFood's Motion for Reconsideration of Order denying Motion to Dismiss First Amended Complaint and supporting documents.
4/19/2023	5.1	Begin drafting Opposition to Motion for Reconsideration of Order denying Motion to Dismiss the First Amended Complaint.
5/4/2023	1.1	Review draft of Opposition to Motion for Reconsideration Order denying Motion to Dismiss First Amended Complaint.
5/5/2023	0.6	Draft introduction and finalize opposition to Motion for Reconsideration and file same.
5/15/2023	0.2	Read Defendant's Reply in support of Motion for Reconsideration of Order denying Motion to Dismiss First Amended Complaint.
6/5/2023	0.2	Read order denying Motion for Reconsideration.
Total =	58.9	

Melanie Persinger (MP)

Date	Hours	Description
10/18/2021	6.5	Review Defendant's Motion to Dismiss Complaint and begin draft of Opposition.
10/19/2021	6	Continue to draft Opposition to Motion to Dismiss Complaint.
10/19/2021	0.2	Discuss Defendant's motion with Mr. Fitzgerald and Mr. Joseph.

DETAILED BILLING RECORDS BY CATEGORY – Rule 12 Briefing

Date	Hours	Description
10/20/2021	7.4	Continue drafting Opposition to Motion to Dismiss Complaint.
10/21/2021	4.6	Continue to draft Opposition to Motion to Dismiss Complaint.
10/22/2021	6.6	Continue to draft Opposition to Motion to Dismiss Complaint.
10/25/2021	6.1	Continue to draft Opposition to Motion to Dismiss Complaint.
10/26/2021	3.4	Continue to draft Opposition to Motion to Dismiss Complaint.
10/27/2021	1.7	Finish draft of Opposition to Motion to Dismiss Complaint.
11/16/2021	0.1	Discuss status of Opposition to Motion to Dismiss Complaint with Mr. Joseph and Mr. Fitzgerald.
11/17/2021	2.5	Edit Opposition to Motion to Dismiss Complaint based on comments from Mr. Fitzgerald, including additional legal research.
11/24/2021	3.1	Discuss draft of Opposition to Motion to Dismiss with Mr. Joseph; cite check and proofread portions of brief; and finalize brief for filing on Friday.
7/27/2022	0.1	Download and save Motion to Dismiss First Amended Complaint.
9/16/2022	2	Cite check and proofread portion of Opposition to Motion to Dismiss First Amended Complaint.
3/20/2023	0.2	Read Court's Order on NextFoods' Motion to Dismiss the First Amended Complaint.
5/4/2023	4.2	Review and edit Opposition to NextFoods' Motion for Reconsideration of Order denying Motion to Dismiss First Amended Complaint.
Total =	54.7	

DETAILED BILLING RECORDS BY CATEGORY – Case Management

Case Management

Caroline Emhardt (CE)

Date	Hours	Description
2/14/2022	0.1	Prepare and file Notice of Appearance.
2/8/2023	0.7	Draft Notice of Statement of Recent Decision.
4/28/2023	0.7	Revise calendar and deadlines pursuant to new Order.
7/11/2023	0.2	Revise firm calendar with new dates and deadlines per Order.
9/25/2023	0.7	Prepare and deliver chambers copy of Motion for Preliminary Approval.
Total =	2.4	

Jack Fitzgerald (JF)

Date	Hours	Description
3/20/2023	0.2	Review Order denying Motion to Dismiss First Amended Complaint.
4/3/2023	0.6	Review NextFoods' discovery status in preparation for meeting with Ms. Persinger and Ms. Emhardt; meet with Ms. Persinger and Ms. Emhardt to discuss assignments; email experts regarding potential engagement.
4/13/2023	0.4	Draft Joint Motion for Protective Order.
4/27/2023	0.4	Meet with Mr. Joseph to discuss case strategy and assignments.
5/3/2023	0.7	Meet with Mr. Joseph to strategize for discovery meet-and-confer conference on May 4.
5/18/2023	0.1	Review additional insurance policies provided by NextFoods.
6/6/2023	0.5	Together with Mr. Joseph, participate in call with Ryan Hansen regarding status of discovery and settlement discussions.
6/13/2023	0.3	Together with Mr. Joseph, confer with NextFood's counsel on current discovery status and potential for mediation, then call court together to request discovery conference.
7/10/2023	0.5	Draft Joint Motion to continue case deadlines following scheduling of Settlement Conference.
Total =	3.7	

*DETAILED BILLING RECORDS BY CATEGORY – Case Management***Trevor Flynn (TF)**

Date	Hours	Description
3/31/2023	1.2	Meet with Mr. Joseph to discuss ENE; review Magistrate Judge's chambers rules and local rules; draft motion and supporting declaration to reschedule ENE.
6/9/2023	0.7	Finalize and send coverage liability demand to insurer.
6/15/2023	0.6	Review and revise joint motion to continue deadline to file class certification motion; draft proposed order regarding same; file joint motion and submit proposed order.
Total =	2.5	

Paul Joseph (PJ)

Date	Hours	Description
8/16/2021	0.2	Email defense counsel RE waiver of service for the Complaint; review waiver form and other materials for service; send waiver to defense counsel.
8/17/2021	0.3	Email defense counsel RE waiver of service, review and file waiver of service, review relevant case deadlines.
6/3/2022	0.3	Call with defense counsel RE request for briefing schedule; confer with Mr. Fitzgerald RE same.
3/24/2023	1.0	Prepare for Rule 26(f) conference; conduct 26(f) conference.
3/21/2023	0.7	Draft Rule 26(f) report.
3/21/2023	0.2	Review scheduling order; email defense counsel RE scheduling.
3/21/2023	0.1	Email client regarding ENE.
3/31/2023	0.2	Respond to email from Mr. Hansen; review Rule 26(f) report, finalize, and file.
4/27/2023	0.4	Meet with Mr. Fitzgerald RE case strategy and next steps.
5/24/2023	0.4	Call with Mr. Hansen RE insurance coverage and settlement.
6/13/2023	0.5	Draft Joint Motion to extend Class Certification Deadline.
6/13/2023	0.3	Call with defense counsel and the Court RE discovery timing issues.
7/3/2023	0.4	Along with Mr. Fitzgerald, meet and confer with defense counsel RE case issues and possible mediation.
Total =	5.0	

*DETAILED BILLING RECORDS BY CATEGORY – Case Management***Christina Mendez (CM)**

Date	Hours	Description
4/27/2022	0.4	Review Order on Motion to Dismiss Complaint; and update calendar.
6/6/2022	0.1	Review Judge Moskowitz chambers rules RE filing amended complaints.
6/8/2022	0.8	Deliver chambers copies to Clerk's Office.
6/8/2022	0.2	Download and review order for extended time; update calendar.
7/28/2022	0.3	Review Motion to Dismiss and update calendar.
Total =	1.8	

DETAILED BILLING RECORDS BY CATEGORY –Discovery

Discovery

Caroline Ehhardt (CE)

Date	Hours	Description
4/3/2023	0.8	Research entity information and individuals at company to prepare subpoenas and deposition notices.
4/3/2023	0.6	Draft four deposition notices.
4/10/2023	1.6	Draft subpoena and associated documents to Circana for sales data.
4/27/2023	3.0	Organize discovery to date in case including by updating Discovery Tracker and inputting Defendant's responses to Document Requests and Interrogatories.
5/4/2023	1.4	Match document search term list to Meet and Confer agreement and memorialize meeting agreements.
5/4/2023	0.7	Attend teleconference with Mr. Fitzgerald, Mr. Joseph, and defense counsel.
5/4/2023	0.3	Prepare for Meet & Confer teleconference with defense counsel.
5/5/2023	0.6	Draft email to defense counsel summarizing Meet and Confer teleconference yesterday.
5/8/2023	1.6	Research Juan Gluth to prepare for deposition.
5/15/2023	1.2	Continue research of Juan Gluth to prepare for deposition.
5/15/2023	0.9	Update Discovery Tracker with Defendant's Responses to Second Set of Document Requests.
5/16/2023	3.6	Research media appearances and statements of Juan Gluth.
5/16/2023	0.8	Draft new search terms pursuant to Defendant's responses to Document Requests Set Two.
5/17/2023	0.6	Research media appearances and statements of Juan Gluth.
5/18/2023	3.4	Research Juan Gluth's role at GoodBelly and social media.
5/19/2023	3.0	Research social media posts RE challenged claims.
6/5/2023	0.3	Revise Discovery Tracker with Defendant's Responses to Document Requests Set Three.
6/27/2023	0.9	Research document production for content for expert, Dr. J. Michael Dennis.
6/28/2023	4.7	Draft Production Index for documents from Defendant.
6/29/2023	5.0	Update Document Review Index RE JuiceDrink labels.
6/30/2023	2.6	Update Document Review Index RE JuiceDrink labels.

DETAILED BILLING RECORDS BY CATEGORY –Discovery

Date	Hours	Description
7/3/2023	2.9	Update Document Review Index RE JuiceDrink labels.
7/24/2023	0.6	Draft 30(b)(6) Deposition Notice.
Total =	41.1	

Jack Fitzgerald (JF)

Date	Hours	Description
4/14/2023	0.9	Review Ms. Emhardt's memorandum regarding audit of current discovery requests against information sought by experts; draft and serve additional discovery requests based on analysis.
4/26/2023	1.0	Review insurance policy produced by NextFoods.
4/28/2023	4.4	Review discovery tracker prepared by Ms. Emhardt and take notes on key issues to pursue with NextFoods; begin performing legal research regarding some key issues.
5/1/2023	0.4	Draft third Request for Production with requests relating to insurance coverage; finalize and serve same.
5/3/2023	3.2	Review and further process sales data provided by Circana.
5/4/2023	0.8	Together with Mr. Joseph and Ms. Emhardt, participate in meet-and-confer call with NextFoods' counsel.
5/15/2023	0.1	Review NextFoods' responses to Plaintiffs' second set of discovery requests; draft email to counsel following up on meet-and-confer items.
5/17/2023	1.6	Together with Ms. Persinger, participate in further meet and confer discussion with defense counsel.
5/22/2023	0.2	Draft email to NextFoods' counsel regarding additional search terms relating to second set of RFPs.
6/22/2023	0.6	Review and revise draft Requests for Admission.
6/29/2023	5.6	Review first substantive documents from NextFoods' production.
7/2/2023	2.2	Meet with Mr. Joseph to strategize about and prepare for document review.
7/3/2023	7.9	Work on document review.
7/4/2023	3.0	Continue working on NextFoods document review.
7/5/2023	8.6	Continue working on NextFoods document review.
7/6/2023	7.7	Continue NextFoods Document Review.
7/10/2023	6.4	Continue reviewing NextFoods' document production.

DETAILED BILLING RECORDS BY CATEGORY –Discovery

Date	Hours	Description
7/11/2023	2.3	Continue NextFoods' document review.
7/12/2023	7	Continue reviewing NextFoods' document production.
7/13/2023	5.9	Continue working on NextFoods' document review.
Total =	69.8	

Trevor Flynn (TF)

Date	Hours	Description
10/11/2021	2.3	Begin working on drafts of initial discovery requests, including interrogatories and requests for production of documents.
10/12/2021	6.2	Continue work on initial discovery requests, including interrogatories and requests for production of documents.
10/13/2021	0.8	Finalize drafts of initial discovery requests and send to Mr. Fitzgerald and Mr. Joseph for review.
10/20/2021	2.3	Revise first set of discovery requests.
3/24/2023	1.3	Review and revise draft interrogatories and documents requests from 2021.
6/19/2023	1.9	Draft first set of Requests for Admission.
7/3/2023	8.0	Work on document review.
7/5/2023	8.2	Continue reviewing for documents relevant to marketing, creative, and target consumer.
7/6/2023	6.6	Continue working document review including any documents relevant to damages, conjoint analysis, and other forms of consumer surveys; meaning and materiality of challenged claims; download reproduced color images and extract them to new folder for conversion to .pdf files.
7/7/2023	2.0	Continue reviewing documents for consumer understanding and materiality relevant documents.
7/18/2023	5.6	Continue working on document review.
7/19/2023	4.0	Continue working on document review.
7/25/2023	6.9	Continue working on document review.
7/26/2023	5.5	Continue working on document review.
7/31/2023	1.0	Continue working on document review.
Total =	62.6	

DETAILED BILLING RECORDS BY CATEGORY –Discovery

Paul Joseph (PJ)

Date	Hours	Description
3/21/2023	2.3	Review and revise discovery requests and draft initial disclosures.
3/24/2023	0.6	Finalize and serve discovery requests on defendant.
3/27/2023	0.4	Finalize and serve plaintiff's initial disclosures.
4/5/2023	0.1	Review and edit search terms list for production of documents.
4/6/2023	1.4	Prepare ESI agreement and review and revise proposed search terms.
4/12/2023	2.2	Review draft of new discovery requests; continue to draft ESI motion and proposed search terms.
4/19/2023	0.4	Review defendant's edits to proposed protective order and joint motion for ESI order; file proposed protective order and email defense counsel RE joint ESI agreement.
4/19/2023	0.3	Finalize and file joint motion RE ESI agreement.
4/27/2023	0.5	Review defendant's responses to plaintiff's first set of discovery requests.
5/1/2023	0.1	Review and edit second requests for production to NextFoods.
5/3/2023	0.7	Together with Mr. Fitzgerald, prepare for meet and confer.
5/4/2023	1.6	Prepare for and, along with Mr. Fitzgerald and Ms. Emhardt, meet and confer with defense counsel RE defendant's responses to plaintiff's first set of document requests and interrogatories; debrief with Mr. Fitzgerald and Ms. Emhardt.
6/2/2023	0.5	Review status of NextFoods' production and other discovery tasks; send email to NextFoods' counsel.
6/6/2023	0.5	Along with Mr. Fitzgerald, confer with Mr. Hansen RE discovery issues and settlement issues.
6/6/2023	0.2	Confer with Mr. Fitzgerald RE discovery issues; call Mr. Hansen RE the same.
6/9/2023	0.8	Review documents produced by NextFoods, draft email to defense counsel RE outstanding discovery issues.
6/15/2023	1.5	Email defense counsel RE proposed joint motion and upcoming status conference/discovery call with Judge Berg; prepare for conference with Judge Berg; update draft of joint motion and send to defendant.
6/27/2023	0.7	Review and edit draft of RFAs; review defendant's responses to Plaintiff's interrogatories; draft additional interrogatories.

DETAILED BILLING RECORDS BY CATEGORY –Discovery

Date	Hours	Description
6/30/2023	0.5	Confer with Katherine Page and call court to schedule call RE discovery dispute.
7/5/2023	0.6	Prepare for call with the Court RE privilege log dispute.
7/5/2023	0.4	Call Court RE discovery dispute regarding privilege log.
7/10/2023	5.4	Work on document review related to all relevant scientific terms.
8/9/2023	3	Continue to review documents for potential inclusion in class certification motion and/or in settlement statement.
Total =	24.7	

Melanie Persinger (MP)

Date	Hours	Description
4/12/2023	0.6	Review and edit list of search terms for production of ESI.
7/7/2023	1.6	Review documents relating to product differentiation.
Total =	2.2	

DETAILED BILLING RECORDS BY CATEGORY – Work With Experts

Work With Experts*Caroline Emhardt (CE)*

Date	Hours	Description
4/7/2023	0.3	Participate in video conference with potential economics and surveys experts, Mr. Colin Weir and Dr. J. Michael Dennis.
4/11/2023	1.1	Research Mr. Weir's information requests.
Total =	1.4	

Jack Fitzgerald (JF)

Date	Hours	Description
4/7/2023	0.3	Together with Mr. Joseph, Ms. Persinger, and Ms. Emhardt, participate in call with Dr. Dennis and Colin Weir to discuss expert reports for class certification.
5/4/2023	0.2	Cull and send data to Mr. Weir; contact Mr. Dennis regarding check-in conference.
6/2/2023	0.6	Together with Mr. Joseph, participate in call with experts on conjoint analysis design.
Total =	1.1	

Paul Joseph (PJ)

Date	Hours	Description
4/7/2023	0.3	Together with Mr. Fitzgerald, Ms. Persinger, and Ms. Emhardt, conduct call with Dr. Dennis and Colin Weir RE expert reports.
4/7/2023	0.3	Draft and send retainer letter to Dr. Dennis.
4/10/2023	0.8	Review and comment on draft of Dr. Greger's expert report.
4/12/2023	0.8	Send email to Dr. Greger RE draft report.
4/14/2023	1.1	Review Dr. Greger's expert report edits.
5/5/2023	0.3	Together with Mr. Fitzgerald, participate in call with Mr. Weir and Dr. Dennis RE damages model for class certification motion.
6/2/2023	0.6	Together with Mr. Fitzgerald, participate in call with experts on conjoint analysis design.
6/28/2023	2.3	Review draft declaration and expert report of Dr. Dennis.
6/29/2023	1.9	Continue to review expert declaration of Dr. Dennis.
Total =	8.4	

DETAILED BILLING RECORDS BY CATEGORY – Class Certification

Class Certification

Caroline Emhardt (CE)

Date	Hours	Description
7/3/2023	2.6	Begin drafting Exhibit RE label timeline for Class Certification Motion (Tropical Green).
7/5/2023	4.4	Continue drafting Exhibit RE label timeline for Class Certification Motion (Peach Mango Orange and Pomegranate Blackberry).
7/6/2023	5.6	Continue drafting Exhibit RE label timeline for Class Certification Motion (Mango and Blueberry Acai), and reviewing second round of court-ordered production for additional labels.
7/7/2023	2.0	Continue drafting Exhibit RE label timeline adding content from second round of court-ordered production.
7/10/2023	3.8	Continue drafting Exhibit RE label timeline, adding content from second round of court-ordered production.
7/11/2023	0.9	Revise product label timeline.
Total =	19.3	

Jack Fitzgerald (JF)

Date	Hours	Description
4/11/2023	3.0	Begin drafting Motion for Class Certification.
Total =	3.0	

Trevor Flynn (TF)

Date	Hours	Description
6/20/2023	0.6	Review and note areas for work on class certification motion.
Total =	0.6	

Paul Joseph (PJ)

Date	Hours	Description
6/2/2023	3.5	Continue working on draft of motion for class certification.
6/5/2023	1.3	Continue drafting class certification motion.
Total =	4.8	

DETAILED BILLING RECORDS BY CATEGORY – SETTLEMENT NEGOTIATIONS

Settlement Negotiations

Jack Fitzgerald (JF)

Date	Hours	Description
3/29/2023	3.4	Continue to draft ENE Statement.
4/14/2023	1.5	Work on supplemental confidential settlement brief.
4/25/2023	0.4	Continue work on supplemental ENE Statement.
4/26/2023	0.4	Together with Mr. Joseph, participate in video conference with Plaintiff to prepare for ENE.
4/27/2023	3.3	Together with Mr. Joseph, participate in ENE.
4/27/2023	2.8	Begin drafting policy limit demand letter to NextFoods' insurer.
5/1/2023	0.1	Continue working on Policy Limit Demand Letter to Philadelphia Insurance Companies.
5/5/2023	0.7	Review draft settlement demand letter and discuss same with Mr. Joseph; send email to NextFoods' counsel confirming agreements reached during meet-and-confer call.
5/19/2023	3.4	Continue working on settlement demand letter to insurer.
5/22/2023	3.2	Continue working on policy limit demand letter.
6/8/2023	3.3	Research stacking under Colorado law for purposes of policy limit demand letter; revise and finalize letter.
6/9/2023	0.8	Prepare policy demand letter for sending and send to insurer and NextFoods' counsel.
7/20/2023	3.0	Begin drafting Settlement Conference Brief.
7/24/2023	0.1	Continue working on Settlement Conference Brief.
8/14/2023	0.2	Review Settlement Conference Brief sent to Judge Berg.
8/17/2023	1.1	Prepare for Settlement Conference.
8/18/2023	3.6	Together with Mr. Joseph and Ms. Persinger, participate in Settlement Conference with Judge Berg.
8/21/2023	2.2	Begin drafting Settlement Agreement.
9/20/2023	0.3	Together with Mr. Joseph, participate in call with opposing counsel regarding issues with Settlement Agreement.
9/22/2023	1.3	Review defendant's proposed revisions to Settlement Agreement and discuss same with Mr. Joseph; make further revisions and send to NextFoods for review.
Total =	35.1	

DETAILED BILLING RECORDS BY CATEGORY – SETTLEMENT NEGOTIATIONS

Paul Joseph (PJ)

Date	Hours	Description
3/21/2023	1.2	Begin drafting ENE statement.
3/22/2023	1.8	Continue to draft ENE statement.
3/23/2023	0.9	Continue to draft ENE statement.
3/29/2023	0.1	Call with Ms. Heymsfield to discuss ENE conference.
3/29/2023	0.1	Email defense counsel regarding ENE conference.
3/31/2023	0.3	Review and edit draft of confidential ENE Statement.
4/5/2023	0.2	Call with client to further discuss ENE and scheduling.
4/24/2023	0.4	Review and edit draft of supplemental statement for ENE.
4/25/2023	0.5	Review and edit supplemental ENE statement; finalize and send to the Court.
4/26/2023	1.7	Prepare for ENE conference.
4/27/2023	3.3	Together with Mr. Fitzgerald, participate in ENE.
4/28/2023	0.6	Review NextFoods' discovery responses and identify any deficiencies.
5/4/2023	1.0	Begin drafting settlement demand letter to NextFoods.
5/5/2023	1.6	Continue drafting settlement demand letter to NextFoods; confer with Mr. Fitzgerald RE same.
5/8/2023	0.2	Continue to draft settlement demand letter to NextFoods.
5/11/2023	0.8	Continue to draft settlement demand letter to NextFoods.
5/31/2023	0.2	Draft and send settlement communication to defense counsel.
7/24/2023	0.2	Review draft of settlement conference brief.
8/4/2023	1.6	Review documents pulled for incorporation into settlement conference brief.
8/8/2023	1.2	Continue to review documents for inclusion in settlement conference statement.
8/11/2023	1.9	Edit settlement conference statement.
8/17/2023	2.1	Prepare for settlement conference.
8/18/2023	3.5	Participate in settlement conference.
Total =	25.4	

*DETAILED BILLING RECORDS BY CATEGORY – SETTLEMENT NEGOTIATIONS**Melanie Persinger (MP)*

Date	Hours	Description
5/3/2023	0.7	Download and save Circana production and email Circana RE same; calculate nationwide sales and discuss same with Mr. Fitzgerald and Mr. Joseph.
8/18/2023	3.3	Together with Mr. Fitzgerald and Mr. Joseph, participate in Settlement Conference with Magistrate Judge Berg.
Total =	4.0	

DETAILED BILLING RECORDS BY CATEGORY – Preliminary Approval

Preliminary Approval***Carline Emhardt (CE)***

Date	Hours	Description
9/21/2023	3.9	Together with Mr. Joseph, participate in call with opposing counsel regarding issues with Settlement Agreement.
9/22/2023	2.1	Cite check portions of Motion for Preliminary Approval.
Total =	6	

Jack Fitzgerald (JF)

Date	Hours	Description
8/23/2023	5.7	Begin drafting Motion for Preliminary Approval.
8/24/2023	6.7	Continue working on Motion for Preliminary Approval.
8/24/2023	0.4	Participate in call with P&N to discuss class notice and administration.
8/28/2023	2.8	Continue working on Motion for Preliminary Approval.
9/8/2023	0.6	Integrate notice and administration information into draft Motion for Preliminary Approval.
9/18/2023	0.5	Review draft plaintiff declarations.
9/22/2023	4.3	Review and propose revisions to class administrator declaration; revise Fitzgerald Declaration supporting Preliminary Approval; work on finalizing Preliminary Approval motion.
Total =	21	

Trevor Flynn (TF)

Date	Hours	Description
8/24/2023	2.9	Review documents to help ascertain approximate class size for class administrator and meet with Mr. Fitzgerald regarding same.
8/24/2023	0.4	Review current draft of Preliminary Approval Motion and Fitzgerald Declaration.
8/24/2023	0.3	Begin drafts of plaintiff declarations in support of preliminary approval.
8/28/2023	0.3	Make revisions to plaintiff declarations.
Total =	3.9	

*DETAILED BILLING RECORDS BY CATEGORY – Preliminary Approval****Paul Joseph (PJ)***

Date	Hours	Description
9/18/2023	0.3	Review and edit declarations of proposed class representatives.
9/22/2023	2.6	Review and edit motion and supporting declarations.
10/24/2023	2.1	Begin preparing for preliminary approval hearing.
10/25/2023	1.3	Continue to prepare to argue at preliminary approval hearing.
11/8/2023	0.3	Review preliminary approval order, email court RE preliminary approval order dates.
11/15/2023	1.1	Review Class Notice documents and provide comments to defense counsel and class administrator.
Total =	7.7	

DETAILED BILLING RECORDS BY CATEGORY – Final Approval

Final Approval

Jack Fitzgerald(JF)

Date	Hours	Description
12/20/2023	0.3	Together with Mr. Joseph, participate in call with P&N to discuss claims process and fraud countermeasures.
Total =	0.3	

Paul Joseph (PJ)

Date	Hours	Description
12/20/2023	0.3	Along with Mr. Fitzgerald, call with class administrator to discuss claims received and potential fraud detection.
Total =	0.3	

Exhibit 2

November 15, 2019

DEVELOPMENTS IN ADDED-SUGAR FOOD-AND-BEVERAGE LITIGATION: CAUSE FOR HOPE, CAUSE FOR CONCERN

Legal Backgrounders

Issues: Civil Justice | Countering the Plaintiffs' Bar

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The plaintiffs' bar continues to view foods and beverages containing added sugar as prime targets for litigation. The majority of the lawsuits brought to date have been labeling claims, in which plaintiffs assert that they were duped into buying products portrayed on the label as "healthy" but that, in reality, were laden with "unhealthy" amounts of added sugar. Some lawsuits have gone further, stealing a page from the tobacco litigation playbook and alleging a conspiracy to suppress evidence of the medical risks posed by excessive amounts of sugar and to elevate fat as the larger health risk. Recent judicial decisions have been a mixed bag for defendants, offering reasons for both optimism and concern. The recently proposed \$20.25 million settlement of excessive-sugar claims targeting various Kellogg cereals and snack bars suggests that sugar litigation will continue to be attractive to the plaintiffs' bar.

One of the most notable sugar-labeling cases is *Krommenhock v. Post Foods, LLC*, a putative class action venued in the U.S. District Court for the Northern District of

California. The *Krommenhock* plaintiffs allege that Post labels a variety of breakfast cereals with health-and-wellness statements that “suggest its cereals are healthy food choices”—statements such as “nutritious,” “good for you,” “rich in nutrients”—but that, in fact, the cereals contain (according to the complaint), large amounts of added sugar. This sugar, plaintiffs contend, contributes to overall excess sugar consumption and a resulting increase in the risk of chronic disease. Judge William Orrick largely denied Post’s motions to dismiss on two occasions. He held that, with the exception of claims expressly permitted by federal law, whether “overconsumption of cereals with excessive added sugar is unhealthy” or “whether [Post’s] health and wellness statements are false or misleading” are “questions that cannot be resolved at motion to dismiss stage, but may be resolved under a more stringent and evidentiary-based review at summary judgment.” *Krommenhock v. Post Foods, LLC*, 2018 U.S. Dist. LEXIS 42938, *11 (N.D. Cal. Mar. 15, 2018). Post has since taken Judge Orrick up on the suggestion and has moved for summary judgment. The court held a hearing in early October, but it has yet to issue an opinion.

Two recent Northern District of California decisions offer hope to defendants. In *Clark v. Perfect Bar, LLC*, 2018 U.S. Dist. LEXIS 219487 (N.D. Cal. Dec. 21, 2018), Judge William Alsup did not mince words in rejecting plaintiff’s claims that Perfect Bar’s labeling deceived him into thinking the protein bars were “healthy”:

Defendant Perfect Bar, LLC, at all material times in question, remained in compliance with all sugar-disclosure regulations. It is true that the bars contained honey and thus sugar, but that was disclosed on the packaging as well as the amount of sugar. Plaintiffs’ grievance is that the packaging led them to believe that the bars would be ‘healthy’ when, in supposed point of fact, the added sugar rendered them unhealthy or, in the alternative, less healthy from what they otherwise had believed. This is untenable. The actual ingredients were fully disclosed. Reasonable purchasers could decide for themselves how healthy or not the sugar content would be. No consumer,

on notice of the actual ingredients described on the packing including honey and sugar, could reasonably overestimate the health benefits of the bar merely because the packaging elsewhere refers to it as a health bar and describes its recipe as having been handed down from a health-nut parent. The honey/sugar content was properly disclosed — that is the end of it — period.

Clark, 2018 U.S. Dist. LEXIS 219487, *1 – *2.

Judge Jeffrey White embraced Judge Alsup’s reasoning in *Truxel v. General Mills Sales, Inc.*, 2019 U.S. Dist. LEXIS 144871 (N.D. Cal. Aug. 13, 2019), a putative class action alleging that General Mills marketed various sweetened breakfast cereals and snacks with health-and-wellness claims despite the “compelling evidence” of sugar’s role in heart disease, diabetes, and liver disease. Judge White concluded that the plaintiffs had failed to show that the health-and-wellness claims were likely to deceive a reasonable consumer:

[T]he Court finds that Plaintiffs cannot plausibly claim to be misled about the sugar content of their cereal purchases because Defendant provided them with all truthful and required objective facts about its products, on both the side panel of ingredients and the front of the products’ labeling. . . . [T]he actual ingredients were fully disclosed and it was up to the Plaintiffs, as reasonable consumers, to come to their own conclusions about whether or not the sugar content was healthy for them.

Truxel, 2019 U.S. Dist. LEXIS 144871, *11 – *12.

Although the majority of added-sugar cases focus on product label health-and-wellness claims, some plaintiffs have attempted to replicate the litigation tactics used against the tobacco industry by arguing that consumer product companies conspired to obscure sugar’s health effects. One such case is *The Praxis Project v. The Coca-Cola Co.*, Case No. 2017 CA 004801 B, venued in the Superior Court for the District of Columbia. There, two pastors and a non-profit organization brought

suit against Coca-Cola and the American Beverage Association, alleging that the defendants “have engaged in a pattern of deception to mislead and confuse the public (and governmental entities that bear responsibility for the public health) about the scientific consensus that consumption of sugar-sweetened beverages is linked to obesity, type 2 diabetes, and cardiovascular disease” and have employed “ongoing campaigns of disinformation and misrepresentation . . . to maintain and increase the sales of sugar-sweetened beverages, and to thwart and delay efforts of government entities to regulate sugar-sweetened beverages through warning labels, taxes, and other measures designed to make consumers aware of the potential for harm.”

In an [order](#) issued October 1, 2019, Superior Court Judge Elizabeth Wingo—who had previously dismissed the claims against the American Beverage Association—first addressed standing. She held that the non-profit organization had failed to establish that its claimed financial expenditures were “beyond those normally expended to carry out their advocacy mission.” (Oct. 1, 2019, Order at 17 (quoting *Nat’l Ass’n of Home Builders v. EPA*, 667 F.3d 6, 12 (D.C. Cir. 2011).) Judge Wingo then found that one of the two pastors lacked standing because he had failed to allege that he had purchased one of the products at issue or that he had done so in reliance on Coca-Cola’s advertising. The other pastor, however, did allege a product purchase made in reliance on Coca-Cola’s alleged disinformation campaign. Because one plaintiff had standing, the standing of the others became immaterial. *See Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981).

Judge Wingo, however, then held that the statute of limitations precluded plaintiffs from basing their claim on any statements made prior to July 2014. This was significant: the ruling prevents plaintiffs from presenting a tobacco-style narrative alleging a decades-long campaign to obscure the health effects of sugar.

In arguing that the discovery rule should prevent the running of the statute of limitations, plaintiffs found themselves hoist on their own petard. As Judge

Wingo noted, the plaintiffs had asserted that the alleged disinformation campaign “ramped up” in 2012 as a result of “growing public perception that sugar-sweetened beverages are linked to obesity, type 2 diabetes, and cardiovascular disease.” The plaintiffs had also filled their Complaint “with citations to studies and newspaper articles that make clear that the health risks of sugar sweetened beverages was a topic that any educated individual, but in particular individuals who [like plaintiffs], as part of their profession, counsel people about health risks, were on inquiry notice well before 2014.” (Oct. 1, 2019, Order at 27-29.) Though Judge Wingo upheld the plaintiffs’ standing to sue, her statute-of-limitations ruling significantly circumscribed their claims.

Praxis Project sets forth a clear line of attack for defendants in such “sugar conspiracy” cases. At the same time, defendants should view Judge Wingo’s opinion with caution, as it provides an equally clear roadmap for sugar-conspiracy plaintiffs. For example, a relatively unsophisticated plaintiff with medical conditions arguably related to excessive sugar intake could potentially dodge the statute of limitations by asserting that a corporate disinformation campaign convinced him to discount the publicly-available information on sugar’s health effects.

The [proposed settlement](#) of *Hadley v. Kellogg Sales Co.*, No. 5:16-cv-04955, filed on October 21, 2019 with Northern District of California Judge Lucy H. Koh, is another indication that a defense-bar declaration of victory in the sugar litigation wars is premature. In *Hadley*, the plaintiffs alleged that the sugar content of various Kellogg cereals and snack bars rendered health-and-wellness labeling claims misleading under California law. Judge Koh had previously certified the suit as a class action and the U.S. Court of Appeals for the Ninth Circuit had denied Kellogg’s motion for interlocutory appeal.

The proposed settlement requires Kellogg to create a \$20.25 million fund from which class members may seek payment and from which attorneys’ fees will be

paid. Kellogg would also agree to remove or revise health-and-wellness claims on the packaging of the allegedly offending products.

The proposed settlement is significant for several reasons. First, the process of changing product labeling and associated marketing campaigns requires an enormous amount of time and financial resources. See Martin J. Hahn and Samantha L. Dietle, *State and Federal Food-Labeling Reforms Impose Unappreciated Complexities and Compliance Challenges*, WLF Legal Backgrounder, May 18, 2018. Second, the settlement lends credence to the legal theory that a product's added sugars render health-and-wellness claims printed on the product label misleading under consumer-protection laws. At a minimum, the settlement demonstrates both the high cost of fighting such claims and the difficulty defendants face in contesting sugar-related class actions. At a time when judicial decisions appeared to be tightening the screws on sugar litigation, the proposed Kellogg settlement portends continued litigation in this arena and also sets a benchmark for other plaintiffs' settlement demands.

The law concerning health-and-wellness claims on labels of products containing added sugar continues to evolve. Will courts follow Judges Alsup and White and find such claims untenable in light of disclosures on the Nutrition Facts label? Will courts exhibit a greater willingness to determine the reasonableness of claims on motions to dismiss? Will the plaintiffs' bar attempt to expand on *Praxis Project* and assert industry-wide conspiracy claims? This rapidly-developing area of law merits close attention. At the same time, as the proposed Kellogg settlement indicates, sugar litigation is not going away anytime soon.

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