UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Lauren Biegel, Greg Maroney, Ryan Cosgrove, Clive Rhoden, Stephen Bradshaw, Angela Farve and Christina Henderson, individually and on behalf of all others similarly situated, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Blue Diamond Growers,

Defendant.

Defendant.

Case No. 7:20-cv-03032-CS

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES TO PLAINTIFFS' COUNSEL, REIMBURSEMENT OF LITIGATION EXPENSES, AND INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES

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Plaintiffs[1] Lauren Biegel, Greg Maroney, Ryan Cosgrove, Clive Rhoden, Stephen Bradshaw, Angela Farve and Christina Henderson individually and on behalf of all others similarly situated, respectfully submit this memorandum of law in support of their motion for an award of attorneys' fees, reimbursement of litigation expenses, and Incentive Awards for the class representatives (the "Motion").

I. INTRODUCTION

As Plaintiffs discuss in detail in the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of the Class Action Settlement (filed concurrently herewith) and as they set forth in their papers in support of their motion for preliminary approval, Plaintiffs' Counsel achieved a favorable Settlement on behalf of the Settlement Class Members that included substantial investigation, discovery and extensive arm's-length negotiations.

The Settlement Agreement provides excellent relief to Settlement Class Members, providing a refund for consumers with proof of purchase of 100% of the inflated portion of the price they paid for the Products, for a total value of two million dollars ($2,000,000). This substantial recovery is as much as, if not more than, what consumers would likely have received if the case had proceeded to, and succeeded at, trial.

In addition to substantial monetary compensation for the Settlement Class Members, the Settlement Agreement requires Defendant to pay: (1) costs of notice and claims administration; (2) $550,000 in Attorneys' Fees and Expenses (contingent upon court approval), and, (3) Incentive Awards for the Plaintiffs (also contingent upon court approval). Notably, the amounts to be paid by Defendant for Notice; Claims Administration; Attorney Fees and Expenses; and Plaintiffs'

[1] Unless otherwise indicated, all capitalized terms have the same meaning as in the Settlement Agreement. (*See* Class Settlement Agreement, ECF No. 48-1.) References to "§ __" are to sections in the Settlement Agreement.

Incentive Awards are separate and apart from the amount to be paid to Class Members, and, therefore, do not reduce in any way the compensation to go to Class Members.

The Parties only reached the Settlement after conducting significant investigation, research, and discovery. They engaged in extensive arm's-length negotiations including a full-day mediation session with an esteemed professional mediator – Randall W. Wulff of Wulff Quinby Sochynsky LLP, who has mediated cases over two thousand cases since becoming a neutral mediator in 1994. *See* Declaration of Michael R. Reese in Support of Final Approval ("Reese Final Approval Decl.") at ¶ 11; Declaration of Spencer Sheehan in Support of Motion for Final Approval ("Sheehan Final Approval Decl.") at ¶ 83; Declaration of Kevin Laukaitis in Support of Motion for Final Approval ("Laukaitis Final Approval Decl") at ¶ 19. The Settlement is an excellent result of these efforts because it provides the Settlement Class Members with meaningful monetary relief.

Plaintiffs' Counsel now hereby move for $550,000 as payment of attorneys' fees and reimbursement of litigation expenses. Plaintiffs' Counsel also hereby request payments to Plaintiffs of $3,571.42 each (for a total of $25,000) for their contributions to, and active participation in, the Action as the class representatives.

As the record before the Court demonstrates,[2] the favorable outcome in this case is the result of Plaintiffs' Counsel's hard work and diligent efforts. The amount Plaintiffs request in Attorneys' Fees and Expenses for Plaintiffs' Counsel fairly and reasonably compensates them for their hard work and diligent efforts in negotiating and litigating this matter, as well as their

[2] The Final Approval Declarations of Michael R. Reese, Spencer Sheehan and Kevin Laukaitis are an integral part of this submission. Plaintiffs respectfully refer the Court to these Declarations for a detailed description of the factual and procedural history of the litigation, the claims asserted, the work Plaintiffs' Counsel performed, the settlement negotiations, and the numerous risks and uncertainties the litigation presented.

unreimbursed expenses. The requested amount is in line with prior decisions of courts in the Second Circuit. *See, e.g.*, *Blessing v. Sirius XM Radio Inc.*, 507 F. App'x 1, 4–5 (2d Cir. 2012) (upholding award of $13 million in fees for injunctive relief settlement achieved after three years of litigation).

Based on Plaintiffs' contributions to the Action and incentive awards in other cases, the Incentive Awards for Plaintiffs also are fair and reasonable. For all of the reasons given herein, the Court should grant Plaintiffs' Motion.

II. THE COURT SHOULD GRANT THE REQUEST FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES AND INCENTIVE AWARDS FOR THE CLASS REPRESENTATIVES

Plaintiffs' Counsel have spent almost two years prosecuting this and other matters covered by this settlement. Reese Final Approval Decl. at ¶¶ 6-14; Sheehan Final Approval Decl. at ¶¶ 49-87; Laukaitis Final Approval Decl. at ¶¶ 11-21 . They should now be compensated for their work. As Plaintiffs show below, the $550,000 that Plaintiffs' Counsel seek here is well within the range of fee awards in similar cases in the Second Circuit. For the reasons below, Plaintiffs' Counsel respectfully request that the Court issue an order granting their request for payment of $550,000 million for their labor and efforts.

A. Plaintiffs' Counsel Negotiated Attorneys' Fees with Defendant Only after Agreeing upon the Settlement Terms

As an initial matter, it is important to point out that Plaintiffs' Counsel did not negotiate attorneys' fees with Defendant until after the Parties had reached agreement as to the terms of the Settlement benefiting the Settlement Class Members. Reese Final Approval Decl. at ¶ 12; Sheehan Final Approval Decl. at ¶ 85; Laukaitis Final Approval Decl. at ¶ 24. *Shapiro v. JPMorgan Chase & Co.*, Case No. 11-cv-7961 CM, 2014 WL 1224666 (S.D.N.Y. Mar. 24, 2014) ("That the Attorneys' Fee Payment was later separately negotiated weighs in favor of its reasonableness.").

Furthermore, the U.S. Supreme Court has held that negotiated, agreed-upon attorneys' fee provisions are the ideal toward which the parties should strive. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). "A request for attorney's fees should not result in a second major litigation." *Id.* "Ideally, of course, litigants will settle the amount of a fee." *Id.*

B. The Agreed-upon Attorneys' Fees Are Reasonable and Warrant Approval

The fee request here is reasonable and worthy of the Court's approval.

Courts commonly look at two methodologies to determine the amount to award class counsel for their efforts in achieving relief for settlement class members: the lodestar method and the percentage-of-the-fund method. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47, 50 (2d Cir. 2000). The lodestar approach is based upon "the number of hours reasonably billed to the class . . . [multiplied] by an appropriate hourly rate." *Id.* at 47. Once the court has made the initial computation, it may, in its discretion, increase the lodestar by applying a multiplier. *Id.*; *see, e.g.*, *Viafara v. MCIZ Corp.*, Case No. 12-cv-7452 RLE, 2014 WL 1777438, at *14 (S.D.N.Y. May 1, 2014) ("Courts award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 197–98 (S.D.N.Y. 1997) (awarding a 5.5 multiplier).[3]

Under the percentage-of-the-fund method, the court sets a percentage of the value of the available fund recovery as a fee. *Goldberger*, 209 F.3d at 47. District courts within the Second Circuit have routinely upheld attorneys' fee awards of 33-1/3% in class action cases. *Raniere v. Citigroup Inc.*, 310 F.R.D. 211, 216, 220–22 (S.D.N.Y. 2015) (awarding 33-1/3% of class action settlement, an amount totaling $1,550,000, as attorneys' fees); *DeLeon v. Wells Fargo Bank, N.A.*,

[3] Courts within the Second Circuit use the lodestar method "[a]s a 'cross-check' to a percentage award." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005).

No. 1:12-CV-04494, 2015 WL 2255394, at *5 (S.D.N.Y. May 11, 2015) (awarding 33-1/3% of class action settlement fund as attorneys' fees); *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CIV-8557 CM, 2014 WL 7323417, at *12 (S.D.N.Y. Dec. 19, 2014) (same); *Zeltser v. Merrill Lynch & Co.*, No. 13 CIV. 1531 FM, 2014 WL 4816134, at *8 (S.D.N.Y. Sept. 23, 2014) (same); *Viafara*, 2014 WL 1777438, at *9–15 (same); *Fogarazzo v. Lehman Bros.*, No. 03 CIV. 5194 SAS, 2011 WL 671745, at *4 (S.D.N.Y. Feb. 23, 2011) (same).

Furthermore, under the percentage-of-the-value of the fund method, it is appropriate to base the percentage on the full amount, *i.e.*, the gross compensation available for the Settlement Class Members to claim plus the additional benefits conferred on the Settlement Class by Defendant's payment of attorneys' fees and expenses and the expenses of notice and claims administration. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 479 (1980) ("Although the full value of the benefit to each absentee member cannot be determined until he presents his claim, a fee awarded against the entire judgment fund will shift the costs of litigation to each absentee in the exact proportion that the value of his claim bears to the total recovery.").

Under either method, the courts are "guided by the traditional criteria in determining a reasonable common fund fee, including: '(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.'" *Goldberger*, 209 F.3d at 50 (citation omitted).

Here, the value of the Settlement is no less than $2 million. (§ 3.6). The agreed-upon award of $550,000 in Attorneys' Fees and Expenses is reasonable under the percentage-of-the-fund method, as it constitutes 27.5% of the value of the Settlement. *Raniere*, 310 F.R.D. at 216, 220–22; *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *12; *Zeltser*, 2014 WL

4816134, at *9 ("Class Counsel's request for one-third of the Fund is reasonable and 'consistent with the norms of class litigation in this circuit.'"). Furthermore, as Plaintiffs set out in more detail below and in the accompanying Final Approval Declarations of Michael R. Reese, Spencer Sheehan and Kevin Laukaitis, the requested fee is also reasonable under the lodestar methodology. Reese Final Approval Decl., Exhibit 1 attached thereto; Sheehan Final Approval Decl., Exhibit 1 attached thereto; Laukaitis Final Approval Decl. Exhibit 1 attached thereto. As set forth below, under either method, the requested fee is reasonable in light of the *Goldberger* reasonableness factors.

Plaintiffs' Counsel have devoted considerable time and effort to the investigation, prosecution, and settlement of this highly technical, complex action. Over the course of almost two years, Plaintiffs' Counsel have spent in excess of 742 hours in performance of their services, which has resulted in the Settlement. *See* Reese Final Approval Decl., Exhibit 1 attached thereto; Sheehan Final Approval Decl., Exhibit 1 attached thereto; Laukaitis Final Approval Decl., Exhibit 1 attached thereto. The Settlement is an outstanding result for the Settlement Class Members, and, indeed, it has already received preliminary approval from the Court. Due to the low dollar amounts at issue, the Settlement Class Members may never have received anything were it not for Plaintiffs' Counsel's efforts. *See Sukhnandan v. Royal Health Care of Long Island LLC*, 2014 WL 3778173, at *9 (S.D.N.Y. July 31, 2014) ("Where relatively small claims can only be prosecuted through aggregate litigation, and the law relies on prosecution by 'private attorneys general,' attorneys who fill the private attorney general role must be adequately compensated for their efforts."). Plaintiffs' Counsel, however, have yet to be paid anything for their labor and efforts.

Plaintiffs' Counsel's lodestar to date is $ 517,165.00.

1. The Complexity, Magnitude, and Risks of the Action and the Contingent Nature of the Fee

The risk of litigation that Plaintiffs' Counsel undertook was significant in light of the considerable time and resources they devoted to this case strictly upon a contingency basis. From the commencement of this litigation, Plaintiffs' Counsel have been paid nothing for their substantial efforts. The significant outlay of cash and personnel resources that Plaintiffs' Counsel has made has been completely at risk as there was a significant possibility that Plaintiffs' Counsel would recover nothing for their substantial efforts. *See In re Lloyd's Am. Trust Fund Litig.*, Case No. 96-cv-1262 RWS, 2002 WL 31663577, at *28 (S.D.N.Y. Nov. 26, 2002) ("[C]ontingent fee risk is the single most important factor in awarding a multiplier[.]"); *See also In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 ("As the Second Circuit has observed, 'No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.'" (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974)).

Courts have recognized that the risk of non-payment in complex cases, such as the case at bar, is very real. There are numerous class actions in which plaintiffs' counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. *See, e.g.*, *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (class counsel won a substantial jury verdict, but on appeal the judgment was reversed and case dismissed, after 11 years of litigation).

2. The Result Achieved and the Quality of Representation

The result achieved and the quality of the services provided are also important factors to consider in determining the amount of reasonable attorneys' fees. *Fleisher v. Phoenix Life Ins. Co.*, No. 11-CV-8405 (CM), 2015 WL 10847814, at *21 (S.D.N.Y. Sept. 9, 2015) ("Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award and in assessing the quality of the representation.").

Here, the goals of the litigation were to provide monetary compensation for the Settlement Class Members for their purchases of the Products on account of the allegedly false and misleading marketing. Plaintiffs' Counsel's work in the litigation achieved this significant goal. The substantial experience of Plaintiffs' Counsel in prosecuting consumer protection class action cases was an important factor in achieving these significant objectives.

3. The Requested Multiplier of 1.05 Is Reasonable

To date, Plaintiffs' Counsel have expended no less than 742 hours, for a lodestar of $517,165.00, based on market rates. Reese Final Approval Decl., Exhibit 1 attached thereto; Sheehan Final Approval Decl., Exhibit 1 attached thereto; Laukaitis Final Approval Decl., Exhibit 1 attached thereto. As of the date of the filing of this brief, the multiplier is 1.05, which falls well within the acceptable range awarded by courts within the Second Circuit. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d, 96, 123 (2d Cir. 2005) (approving multiplier of 3.5 on appeal); .*Zeltser*, 2014 WL 4816134, at *9–10 (approving multiplier of 5.1 and citing numerous cases, including referring to cases where the multiplier ranged as high as 19.6); *Shapiro*, 2014 WL 1224666, at *24 (approving multiplier of 3.05).

Here, taking into account the significant complexity of the issues, the risks of this litigation, and the contingent nature of the fee, a multiplier of 1.05 is certainly reasonable.

C. The Court Should Approve the Reimbursement of Plaintiffs' Counsel's Expenses

Plaintiffs' Counsel have also expended $6,869.20 in costs, for which they should now be reimbursed. Laukaitis Decl., Exhibit. 2 attached thereto; Sheehan Final Approval Decl., Exhibit 2 attached thereto. These costs, which included costs for discovery and three mediations sessions were integral to the prosecution of the case, as well as part of the process of reaching a resolution of the Action. *Id.* "It is well-settled that attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients." *Raniere*, 310 F.R.D. at 222.

D. The Court Should Approve the Proposed Incentive Awards to the Class Representatives

Plaintiffs also have moved the Court to approve Incentive Awards to the class representatives. "Service awards are common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risk incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs." *Sukhnandan*, 2014 WL 3778173, at *16 (S.D.N.Y. July 31, 2014) (approving service awards of $10,000 to each of the named plaintiffs, for a total of $40,000); *see also Zeltser*, 2014 WL 4816134, at *11 (awarding service awards of $12,500 to each of the three named plaintiffs); 4 WILLIAM B. RUBENSTEIN ET AL., NEWBERG ON CLASS ACTIONS § 11:38 (4th ed. 2008).

Defendant has agreed to pay Incentive Awards of $3,571.42 to each of the Plaintiffs (for a total of $25,000) as compensation for their time and effort spent in the litigation. (§ 5.2.) Each Plaintiff performed an important and valuable service for the benefit of the Settlement Class. Each met, conferred, and corresponded with Plaintiffs' Counsel as needed for the efficient process of this litigation.

Plaintiffs respectfully request that the Court approve the Incentive Awards.

III. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses to Plaintiffs' Counsel and Incentive Awards to the Class Representatives.

Date: July 26, 2021

Respectfully submitted,

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Court Appointed Class Counsel

CERTIFICATE OF SERVICE

I, Spencer Sheehan, hereby certify that on July 26, 2021, I caused an electronic copy of the foregoing document to be served on all counsel of record via the Court's CM/ECF system.

/s/ Spencer Sheehan
Spencer Sheehan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Lauren Biegel, Greg Maroney, Ryan Cosgrove, Clive Rhoden, Stephen Bradshaw, Angela Farve and Christina Henderson, individually and on behalf of all others similarly situated, on behalf of themselves and all others similarly situated, Plaintiffs, v. Blue Diamond Growers, Defendant.	7:20-cv-03032-CS

DECLARATION OF SPENCER SHEEHAN IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF SHEEHAN & ASSOCIATES, P.C.

I, Spencer Sheehan, declare as follows:

1. My firm is court appointed co-lead counsel in this litigation.

2. I submit this declaration in support of my firm's application for an award of attorneys' fees in connection with services in this case, as well as the reimbursement of expenses incurred by my firm in connection with this litigation.

3. I have personal knowledge of the matters set forth herein based upon my active supervision and participation in all aspects of the litigation.

4. I am the founding attorney of Sheehan & Associates, P.C., a law firm established in 2013, that specializes in class action litigation on behalf of consumers and small businesses in both federal and state courts throughout the United States.

5. I am a member in good standing of the state bar of New York as well as numerous federal courts, including but not limited to the U.S. District Courts for the Southern, Eastern

Northern and Western Districts of New York; the Northern, Central and Southern Districts of Illinois; the Districts of Colorado, Maryland and Nebraska; the Northern District of Ohio; the Northern District of Florida; and the U.S. Court of Appeals for the Second Circuit.

6. After I became an attorney in late 2011, I worked in 2012 for Siler & Ingber LLP, a firm which represented municipalities and local government agencies.

7. This included water districts, ambulance companies and public works departments.

8. This experience was invaluable as everyday I made appearances in State Supreme Courts in Nassau, Suffolk, Westchester, Duchess, Rockland and Orange counties.

9. Following this, I worked in employment law for Neil Frank, PC, a firm specializing in representing individuals subjected to violations of state and federal laws related to minimum wage, workplace safety and discrimination.

10. In late 2013, I started my own practice, Sheehan & Associates, P.C. and for several years I dealt mainly with general litigation issues in state and federal courts.

11. Throughout this period, my passion remained working on issues which impacted consumers, as I have always been the type of person to not give up when calling a company's customer service to get a refund on an erroneous charge or other such issues.

12. It is often challenging to immediately arrive in a field or specialty that aligns with one's personal interests.

13. To this end, on the first day after my admission to the New York Bar, I signed up my first client, and named plaintiff, Casimir Liberski, for a case against a streaming music subscription company.

14. I had investigated this company's practices extensively but until I became a licensed attorney, I could not follow through on my work.

15. As a newly-minted attorney, with no experience, I set out to contact law firms in California, because the terms of service for Mr. Liberski required any action be brought in San Francisco Superior Court.

16. I contacted roughly one hundred law firms which worked on plaintiffs' issues throughout California.

17. I made detailed presentations and documentation showing the extent of the issues and that they were viable as a class action.

18. This was discouraging, as it was difficult to impossible to speak with any actual attorneys at the many law firms I contacted.

19. Most of my calls were never returned, but those that were questioned my experience and even whether or not I was a licensed attorney, since my name had not yet appeared on the New York State Attorney Registration Website.

20. Though this was discouraging, I eventually connected with the California firm of Bramson, Plutzik, Mahler & Birkhaeuser, LLP, who believed in the case I brought them and agreed to work with me.

21. This case, *Liberski, et al v. Rhapsody International Inc.*, San Francisco County, California Superior Court, Case No. No. CGC-12- 517061, resulted in a 2014 class wide settlement ("Rhapsody Subscriber Litigation Settlement").

22. I was appointed co-lead counsel with Bramson, Plutzik, Mahler & Birkhaeuser, LLP.

23. At the end of 2017, I decided to devote my practice completely to consumer litigation issues and specifically, food and beverage labeling, at the end of 2017.

24. My cases have been original and focused on areas which had not seen much

attention, and thus required critical thinking and in-depth research.

25. I was responsible for the first cases addressing "raw" juice products which were alleged to be treated with a non-thermal technology which had substantially the same effects as traditional thermal pasteurization. *See Alamilla v. Hain Celestial Group, Inc.*, 30 F. Supp. 3d 943 (N.D. Cal. 2014) (dismissing case and finding "raw" would not deceive reasonable consumers) *but see Campbell v. Freshbev LLC*, 322 F. Supp. 3d 330, 342 (E.D.N.Y. 2018) ("Therefore, plaintiff has successfully pleaded his GBL §§ 349 and 350 claims with respect to the 'unpasteurized' label on the Cranberry juice.").

26. These and similar cases applied the applicable law to the effects of novel technologies which were not considered at the time the FDA enacted regulations in this area.

27. I also filed an action asserting a company's brand of Italian tomatoes was not true to its purported specifications, based on previously unseen Italian documents. *See Sibrian v. Cento Fine Foods*, 2:19-cv-00974-JS-GRB (E.D.N.Y. 2019).

28. A central theme of my food litigation practice has been the focus on standards of identity and consumer protection.

29. Standards of identity are not just lists of ingredients required to be used in various foods, but a reflection of a large-scale effort to promote consumer protection in the years following World War 2.

30. Technology and nutrition have advanced significantly since the development of most standards of identity.

31. However, the standards were written to accommodate technological and nutritional flexibility while maintaining the same levels of quality.

32. I focus on the edges – the substitution of one ingredient here, the addition of part

of another ingredient there – which may seem benign but are actually discreet attempts at undermining what average consumers expect.

33. The standards of identity I have addressed in my cases include butter (technically not subject to a standard of identity), canned tomatoes, margarine, egg whites, cocoa, chocolate, ice cream, juices and most notably, vanilla.

34. A local newspaper wrote about my cases regarding vanilla labeling in an article entitled, "Great Neck attorney has a taste for vanilla-flavored lawsuits."[1]

35. At that time, I had filed "27 lawsuits on behalf of consumers related to yogurt, cookies, oatmeal, almond milk, soy milk, cream soda and ice cream labeled as 'vanilla.'"

36. In an article summarizing the state of food labeling litigation, Food Navigator USA noted the "new area of vulnerability is vanilla labeling – on everything from ice cream to almondmilk and baked goods…mostly from prolific plaintiff's attorney Spencer Sheehan in New York."[2]

37. The 2019 food litigation report by Perkins Coie stated, "For the first time, however, California was not the favored jurisdiction of the plaintiffs' bar. That distinction went, instead, to New York, with 74 lawsuits filed in 2019," largely due to my efforts.[3]

38. In April 2020, Bloomberg Law published an article entitled, "Most Popular Ice Cream's Legal History Isn't So Plain Vanilla." Julie Steinberg, Bloomberg Law, April 21, 2020.

39. According to this article, I had filed approximately fifty lawsuits based on vanilla

[1] Ken Schachter, Great Neck attorney has a taste for vanilla-flavored lawsuits Newsday, October 22, 2019.

[2] Elaine Watson, Are you at risk of a class action lawsuit? Perkins Coie outlines key areas of vulnerability for food & beverage brands, February 20, 2020, Food Navigator USA

[3] Perkins Coie, Food Litigation 2019 Year in Review.

labeling.

40. As a result of my work in the vanilla area, I was invited to speak at the Vanilla Conference 2019 in Tanzania, though I was unable to attend.

41. For the past two years, I have given an annual lecture to the Food Law course at the University of Wisconsin-Madison Law School, taught by Barry Levenson, the curator and founder of the National Mustard Museum.

42. My pro bono work includes animal advocacy, and I have represented those with exotic or non-traditional animal companions.

43. For instance, with local Florida counsel, I successfully advocated for a Florida woman to keep her pet alligator, Rambo, whose middle age growth spurt caused him to exceed the six feet maximum for personal companion animals, based on Florida's wildlife laws. *See* John Breslin, Lakeland woman keeps alligator, thanks to efforts of lawyer tied to subway shooter's squirrel eviction case, Florida Record, January 4, 2017.

44. I also volunteer with animal rescue groups in my community.

45. I am a graduate of Georgetown University, Bachelor of Science, Foreign Service (2002), School of Advanced International Studies (SAIS), Johns Hopkins University, Master of Arts, International Relations (2006) and Fordham University School of Law, Juris Doctorate (2010).

46. I was a member of the United States Marine Corps as a Reservist.

47. My firm has vigorously represented the interests of the Settlement Class Members throughout the course of the litigation and settlement process.

48. Based on my experience, I believe the Settlement to be a positive outcome for consumers, which is fair, reasonable, and adequate under Federal Civil Procedure Rule 23.

Sheehan & Associates, P.C., Expended Significant Time On The Matter

49. This matter arises out of Defendant's manufacturing, advertising, selling, and distributing of a variety of almond-based beverages labeled as being flavored by vanilla ("Products").

50. In developing the factual and legal allegations in this action, I relied on a close network of professionals involved in all aspects of vanilla – from the growing in Madagascar, the export-import trade, the processing and applications in food and beverages and labeling.

51. These relationships could only be built with significant time and trust, due to the highly secretive nature of those in the flavor industry and its supply chains.

52. Many people I attempted to communicate with rejected my entreaties.

53. The reasons included fear of reprisal from current or past employers and prospective clients.

54. For example, John B. Hallagan and Joanna Drake are the past and present legal counsel for the Flavor Extract Manufacturer's Association ("FEMA").

55. In April 2018, they wrote an article in the industry trade publication Perfumer & Flavorist, "Labeling Vanilla Flavorings and Vanilla-Flavored Foods in the U.S.", Vol. 43, Apr. 25, 2018 ("Hallagan & Drake").

56. Hallagan & Drake note that the applicable regulations must be "side-by-side with relevant regulatory correspondence."

57. The article concludes by noting that a "comprehensive annotated bibliography is available from the authors upon request that contains the relevant regulations and regulatory agency policy statements."

58. I took Hallagan & Drake up on their offer to provide me the "comprehensive

annotated bibliography" and was surprisingly told by Mr. Hallagan that he was prohibited from providing me the documents because they were "work-product" based on his acquisition of them during his work for FEMA.

59. Mr. Hallagan advised me to submit Freedom of Information Act requests to the FDA.

60. I submitted such requests but many of the documents were no longer maintained by the FDA, based on storage constraints.

61. Thankfully, one of my contacts provided me the documents I had been seeking.

62. Another example involves a laboratory I had worked closely with, highly regarded in the field of gas chromatography–mass spectrometry ("GC-MS").

63. Within the past year, without explanation, that laboratory ceased working with me.

64. I believe it was due to potential conflicts with the interests of its largest customers, multinational companies in the food and flavor industry.

65. I was told that the dissemination of reports which analyzed the flavor composition of numerous vanilla products was not appreciated.

66. I have hired independent, Ph.D. historians to obtain entire sections of FDA and Bureau of Agriculture archival material, correspondence and rulemaking dockets at the National Archives in College Park, Maryland and at the Library of Congress in Washington, D.C.

67. I obtained and reviewed Congressional Hearings and Committee Testimony that formed the basis for why Congress authorized the FDA to enact the vanilla standards.

68. I personally signed up all the named plaintiffs in this action and was their primary contact throughout this litigation.

69. I reviewed their qualifications and ensured they knew what was expected of them

and that they would be willing to do what was necessary on behalf of a certified class.

70. This step is very time consuming, as most lay persons are only familiar with the end of a class action, where they can submit claims to an administrator.

71. In fact, many individuals I communicate with initially believe their involvement is based only on submitting potential claims.

72. I must explain to them that while any class member can submit a claim, there is significant work involved to reach that point, and great uncertainty.

73. I inform them that their involvement is distinct from being only a class member, and that they will have responsibilities to the proposed classes on whose behalf this action was filed, beyond their individual interests.

74. Many are often hesitant, with unfortunate expectations that they will be "blacklisted" somehow by employers or others in authority.

75. I assure them that they need not fear such retaliation or be hesitant to be involved.

76. Having been assured, based on diligent research that the Products at issue were labeled in a way inconsistent with what consumers expected, I filed the complaint on April 15, 2020. ECF No. 1.

77. Following a pre-motion letter in advance of a motion to dismiss the complaint, the Court held a conference on October 7, 2020.

78. A First Amended Complaint was filed on November 20, 2020. ECF No. 18.

79. On December 18, 2020, Defendant again moved for dismissal. ECF No. 19.

80. Plaintiff opposed Defendant's motion on January 19, 2021. ECF No. 24.

81. During this time, counsel for the parties engaged in communication regarding potential resolution.

82. The Parties agreed to mediate the issues and engaged in detailed discovery.

83. The mediation was held on February 1, 2021, before mediatory Randall W. Wulff.

84. The Parties agreed to the material terms of the Settlement filed with this Court.

85. My firm, along with co-lead counsel, only negotiated an amount for fees and costs after agreement as to the relief for the class.

86. My firm submitted and mailed the assembled motion papers for preliminary approval to the Court.

87. The schedule attached as Exhibit 1 is a detailed summary indicating the amount of time, by category, spent by the partners, other attorneys, and professional support staff of my firm who were involved in this litigation, and the lodestar calculation based on my firm's current billing rates.[4]

88. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court for review *in camera*.[5]

89. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

90. The hourly rates for the partners, other attorneys, and professional support staff in my firm included in Exhibit 1 are the same as the regular current rates consistent with attorneys who have developed an unequalled expertise in an area, and such rates have been used in the lodestar cross check accepted by courts in other class litigation.

[4] This application does not include time for anyone who spent fewer than 5 hours on this litigation.

[5] These records may include information concerning privileged and/or confidential attorney-client communications or work product.

91. The total number of hours expended on this litigation by my firm is 230.5 hours.

92. The total lodestar for my firm is $178,637.50.

93. My firm's lodestar figures are based upon the firm's billing rates, which do not include charges for expense items.

94. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

95. As detailed in Exhibit 2, my firm has incurred a total of $1305 in un-reimbursed expenses in connection with the prosecution of this litigation.

96. The expenses incurred in this action are reflected on the books and records of my firm, which are available at the request of the Court.

97. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses as charged by the vendors. Third-party expenses are not marked up.

98. My firm is not charging separately for the following costs and expenses: secretarial and clerical overtime, including their meals and local transportation; word processing; secretarial/clerical time for document preparation; time charges for routine copying, faxing or scanning; incoming/outgoing fax charges; office supplies (such as paper, binders, etc.); special publications; continuing legal education seminars; working meals for attorneys (with the exception of meals with clients, expert or other witnesses, meals while traveling for the case, or meal expenses for meetings between Plaintiffs' Counsel); and local overtime meals and transportation for attorneys.

99. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is my firm's résumé and a brief biography of me and my work.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21th day of July 2021, at Great Neck, New York.

/s/Spencer Sheehan
Spencer Sheehan

EXHIBIT 1

***Biegel, et al. v. Blue Diamond Growers*,**

No. 20-cv-03032-CS (S.D.N.Y.)

SHEEHAN & ASSOCIATES, P.C.

TIME REPORT — Inception through July 21, 2021

Name/Position	A	B	C	D	E	F	G	Total Hours	Hourly Rate	Total Lodestar
Spencer Sheehan/P	58.50	47.5	25.75	9.50	7.00	0.00	82.25	230.50	$775.00	$178,637.50
TOTAL LODESTAR	58.50	47.5	25.75	9.50	7.00	0.00	82.25	230.50	---	$178,637.50

CATEGORIES

A. Pre-Filing Investigation and Initial Complaint

B. Legal Research, Pleadings, Briefs, and Motions After Initial Complaint

C. Discovery and Post-Filing Investigation

D. Experts and Consultants

E. Litigation Strategy, Analysis, and Case Management

F. Court Appearances & Preparation

G. Settlement

POSITION

P = Partner

A = Associate/Staff Attorney

C = Senior Counsel/Of Counsel

PL = Paralegal

O = Other

EXHIBIT 2

***Biegel, et al. v. Blue Diamond Growers*,**

No. 20-cv-03032-CS (S.D.N.Y.)
SHEEHAN & ASSOCIATES, P.C.

EXPENSE REPORT — Inception through July 21, 2021

Categories:	**Amount**
Filing/Witness Fees	$1200.00
Court Reporters/Transcript/Video	$0.00
Postage/Mailing Fees	$105.00
Experts/Consultants/Professional Services	$0.00
Mediation	$0.00
Transportation to Court	$0.00
TOTAL EXPENSES:	$1305.00

EXHIBIT 3

Sheehan & Associates, P.C.

Spencer Sheehan

Mr. Sheehan represents parties in a range of false advertising litigation. After Mr. Sheehan became an attorney in late 2011, he worked on behalf of municipalities and local government agencies in legal disputes. Following this experience, Mr. Sheehan worked for a plaintiff's law firm representing individuals subjected to violations of state and federal laws related to minimum wage, workplace safety and discrimination.

Of notable actions by Mr. Sheehan on behalf of consumers includes, *Liberski, et al v. Rhapsody International Inc*., San Francisco County, California Superior Court, Case No. No. CGC-12-517061. In 2014, the parties reached a class wide settlement ("Rhapsody Subscriber Litigation Settlement"). Mr. Sheehan, with the California firm of Bramson, Plutzik, Mahler & Birkhaeuser, LLP, were appointed as lead counsel.

Mr. Sheehan was appointed lead counsel with the law firms of Reese LLP and Aegis Law Firm, P.C., in *Cicciarella v. Califia Farms, LLC*, 7:19-cv-08785-CS, S.D.N.Y. in summer 2020. The Court approved a nationwide settlement which resolved the underlying federal action and a California state case. It was alleged that defendant mislabeled its non-dairy milk alternative products with respect to flavoring (vanilla, hazelnut, etc.) and the presence of carrageenan. The class wide settlement resulted in individual consumers being able to receive up to $15 in monetary compensation.

In December 2016, Mr. Sheehan began focusing his practice exclusively on consumer advertising issues. He has been on the forefront of food labeling cases based on original, significant claims.

For instance, Mr. Sheehan was the first attorney to address "raw" juice products which were alleged to be treated with a non-thermal technology which had substantially the same effects as traditional thermal pasteurization. *See e.g. Campbell v. Freshbev LLC*, Case No. 1:16-cv-07119 (E.D.N.Y.), *Campbell v. Freshbev LLC*, 322 F. Supp. 3d 330, 342 (E.D.N.Y. 2018) ("Therefore, plaintiff has successfully pleaded his GBL §§ 349 and 350 claims with respect to the 'unpasteurized' label on the Cranberry juice."). These cases attempted to apply the applicable law to the effects of novel technologies which were not considered at the time the FDA enacted regulations in this area.

Mr. Sheehan's pro bono work includes representing people with exotic or non-traditional animal companions. This includes his efforts, with local Florida counsel, on behalf of a Floridian who came to possess an alligator over six feet in length, alleged to be in violation of Florida's wildlife laws. Mr. Sheehan's efforts contributed to resolution of that issue and allowed the woman and gator to remain together. *See* John Breslin, Lakeland woman keeps alligator, thanks to efforts of lawyer tied to subway shooter's squirrel eviction case, Florida Record, January 4, 2017.

Mr. Sheehan holds a Bachelor of Science Degree from Georgetown University in Foreign Service (2002) and a Master's Degree in International Relations from the School of Advanced International Studies (SAIS), Johns Hopkins University (2006). Mr. Sheehan obtained a Juris Doctorate from Fordham University School of Law (2010). Mr. Sheehan also was a member of the United States Marine Corps as a Reservist.

Christopher Patalano

Mr. Patalano joined Sheehan & Associates, P.C. in February 2020. Mr. Patalano joined Sheehan & Associates, P.C. in February 2020 where he represents parties in a range of false advertising litigation. Mr. Patalano began his legal career in 2014 with the law firm Katten Muchin Rosenman LLP in New York City. There Mr. Patalano worked in the litigation department until 2016.

While at Katten, Mr. Patalano worked on a wide range of litigation matters including FINRA and SEC administrative proceedings. Mr. Patalano also served as point person for discovery matters related to an SEC investigation and oversaw a team of five document review attorneys.

Mr. Patalano was recognized for his pro bono work at Katten and while in law school. At Katten, Mr. Patalano worked on various pro bono projects including an immigration proceeding where he and another associate attorney argued that an individual should be granted political asylum in the United States after facing persecution in her home country.

While in law school, Mr. Patalano was a member of the Harvard Law School Veterans Legal Clinic. As a member of the clinic, Mr. Patalano wrote a winning brief that persuaded the Board of Veterans Appeals to award a veteran's widow monthly benefits after the Board had originally denied her those benefits.

Mr. Patalano left Katten to work as an organizer for the Nevada Democratic Party and Hillary for America in Las Vegas, Nevada. Mr. Patalano managed a team of organizers and volunteers throughout the campaign's get-out-the vote operation.

At Sheehan & Associates, P.C., Mr. Patalano works on all aspects of complex consumer class action litigation. Mr. Patalano drafts complaints, briefs, memoranda, and motions.

Mr. Patalano holds a Bachelor of Arts Degree from Wesleyan University in the College of Letters (2009). Upon graduation from Wesleyan University, Mr. Patalano worked as a middle school English teacher in Hartford, Connecticut with Teach for America. Mr. Patalano obtained a Juris Doctorate from Harvard Law School (2014).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Lauren Biegel, Greg Maroney, Ryan Cosgrove, Clive Rhoden, Stephen Bradshaw, Angela Farve and Christina Henderson, individually and on behalf of all others similarly situated, on behalf of themselves and all others similarly situated, Plaintiffs, v. Blue Diamond Growers, Defendant.	CASE NO. 7:20-cv-03032-CS

DECLARATION OF MICHAEL R. REESE IN SUPPORT OF MOTION FOR ATTORNEYS' FEES ON BEHALF OF REESE LLP

I, Michael R. Reese, declare as follows:

1. I am the founding partner of Reese LLP, a law firm established in 2008 that specializes in class action litigation on behalf of consumers and small businesses in both federal and state courts throughout the United States. I am a member in good standing of the state bars of New York and California as well as numerous federal courts, including but not limited to the U.S. District Courts for the Southern, Eastern and Northern Districts of New York; the Northern, Central, Eastern and Southern Districts of California; the Northern and Southern Districts of Illinois; the Eastern District of Wisconsin, and the District of Colorado. I am a member of the federal bars of the U.S. Courts of Appeals for the Second, Seventh, Eighth and Ninth Circuits, before which I have argued numerous appeals. I am a frequent lecturer on class actions and food litigation. I am the co-host of an annual food law conference that brings together major stakeholders in food law and policy, including members from academia, non-governmental organizations, the federal government, major food corporations, and both the plaintiffs and defense bars. I currently serve as an adjunct law professor at the Brooklyn Law School, where I

teach a class entitled *The Law of Class Actions and Other Aggregate Litigation* and another class entitled *Food Law*. I am on the advisory board for Wellness in the Schools (WITS), a non-profit dedicated to providing nutritional education to children. I am on the advisory board for the UCLA School of Law, Resnick Center for Food Law and Policy. My firm and I frequently work with non-profits such as Center for Science in the Public Interest to address deception involving food labeling. Prior to litigating class actions, I was a prosecutor at the Manhattan District Attorney's Office in New York, New York, where I served as trial counsel in prosecuting white-collar and violent felony crimes.

2. I submit this declaration in support of my firm's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by my firm in connection with this consumer class action litigation. I have personal knowledge of the matters set forth herein based upon my active supervision and participation in all material aspects of the litigation.

3. My firm is court appointed co-lead counsel in this litigation. My firm has extensive class action experience, especially as it relates to food related class actions. My firm has been appointed as class counsel in numerous cases involving food related causes of action, including, but not limited to *Ackerman v. Coca-Cola Co.*, Case No. 09-cv-00395-DLI-RLM (E.D.N.Y.); *Cicciarella v. Califia Farms, LLC*, 7:19-cv-08785-CS (S.D.N.Y.); *Frohberg v. Cumberland Packaging Corp.*, Case No. 1:14-cv-0748-RLM (E.D.N.Y.); *Ferrera v. Snyder's-Lance, Inc.*, case no. 13-cv-62496 (S.D. Fla.); *In re General Mills, Inc. Kix Cereal Litig.,* Case No. 2:12-cv-00249-KM-MCA (D.N.J.); *Howerton v. Cargill, Inc.*, Case No. 13-cv-0336 (D. Hawaii); *Rosen v. Unilever United States Inc.*, Case No. 09-02563 JW (N.D. Cal.); and *Yoo v. Wendy's Corp.*, Case No. 07-4515 (C.D. Cal.) (stating that Reese LLP "has conducted the

litigation and achieved the Settlement with skill, perseverance and diligent advocacy").

4. As described below in detail, I have been personally involved in all aspects of my firm's work in this litigation, including the following: prosecution of this action from its inception; discovery; an all-day mediation before an esteemed mediator – Randall W. Wulff - that resulted in the Settlement; and, the briefing of the Motion for Preliminary Approval and briefing of the Motion for Final Approval. Reese LLP has vigorously represented the interests of the Settlement Class Members throughout the course of the litigation and settlement process.

5. Based on my extensive experience, I believe the Settlement to be an outstanding outcome for consumers, and I believe it is fair, reasonable, and adequate under Federal Civil Procedure Rule 23.

REESE LLP EXPENDED SIGNIFICANT TIME ON THE MATTER

A. Pre-Litigation Investigation and the Filing of the Complaint

6. This and other related matters covered by the Settlement arise out of Defendant's manufacturing, advertising, selling, and distributing of a variety of Defendant's beverage products ("Products"), which are alleged to have misled consumers due to representation on the Products' label regarding the vanilla ingredients in the Products.

7. Based on my experience at the Manhattan District Attorney's Office and as an attorney in private practice, I believe the best way to litigate a matter is to conduct a thorough investigation and gather all the facts before initiating a complaint. My firm implements that philosophy in the litigation of its cases and did so in this matter.

8. In accordance with the above, my firm, along with my co-counsel, conducted a thorough investigation of the claims and ingredients of the Products.

9. In addition, we thoroughly analyzed the legal landscape to determine if the

Products' labeling was false or misleading and, if so, how to approach remedying the deception. In particular, we researched and examined the role of the Food and Drug Administration ("FDA"); primary jurisdiction arguments; preemption arguments; FDA rules and regulations regarding these type of products; the "reasonable consumer" standard, as well as various other intricacies associated with consumer class action litigation. We undertook all of this to assess the merits of the potential case, to determine the strength of both the claims and defenses in this matter, and to determine the best manner to pursue this case on behalf of consumers.

Discovery

10. The Parties engaged in discovery as part of the mediation process.

C. Mediations and Ultimate Settlement of the Above-Captioned Action

11. The Parties agreed to mediation, and on February 1, 2021 the Parties mediated before Randall W. Wulff, an esteemed mediator, with over 25 years of experience mediating more than 2000 cases. After the full day of mediation, the Parties agreed to the material terms of a class action settlement. The settlement terms subsequently were memorialized in the Settlement Agreement filed with the Court.

12. My firm, along with co-lead counsel, negotiated an amount for fees only after agreement as to the relief for the class.

13. My firm was involved in the preparation of the motion papers for preliminary approval, which were granted by the Court on May 17, 2021.

14. The schedule attached hereto as Exhibit 1 is a detailed summary of the amount of time, by category, spent by the partners, other attorneys, and professional support staff of my firm who were involved in this litigation, and the lodestar calculation based on my firm's current billing rates. The schedule was prepared from contemporaneous, daily time records regularly

prepared and maintained by my firm, which are available at the request of the Court for review *in camera*.[1] Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

15. The hourly rates for the partners, other attorneys, and professional support staff in my firm included in Exhibit 1 are the same as the regular current rates that have been used in the lodestar cross check accepted by courts in other class litigation.

16. The total number of hours expended on this litigation by my firm is 218.50 hours. The total lodestar for my firm is $213,037.50.

17. My firm's lodestar figures are based upon the firm's billing rates approved of by other federal courts.

18. With respect to the professional standing of counsel in this case, attached hereto as Exhibit 2 is my firm's résumé and brief biographies of the attorneys in my firm.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of July 2021, at New York, New York.

/s/ Michael R. Reese
Michael R. Reese

[1] These records may include information concerning privileged and/or confidential attorney-client communications or work product.

EXHIBIT 1

Biegel v. Blue Diamond Growers

No. 20-cv-03032 (S.D.N.Y.)

REESE LLP

TIME REPORT — Inception through May 28, 2020

Name/Position	A	B	C	D	E	F	G	Total Hours	Hourly Rate	Total Lodestar
Michael R. Reese/P	0.00	26.5	50.75	0.00	15.50	0.00	125.75	218.50	$975	$213,037.50
TOTAL LODESTAR	0.50	26.5	50.75	0.00	15.50	0.00	125.75	218.50	---	$213,037.50

CATEGORIES

A. Pre-Filing Investigation and Initial Complaint

B. Legal Research, Pleadings, Briefs, and Motions After Initial Complaint

C. Discovery and Post-Filing Investigation

D. Experts and Consultants

E. Litigation Strategy, Analysis, and Case Management

F. Court Appearances & Preparation

G. Settlement

POSITION

P = Partner

A = Associate/Staff Attorney

C = Senior Counsel/Of Counsel

PL = Paralegal

O = Other

EXHIBIT 2

REESE LLP

Reese LLP represents consumers in a wide array of class action litigation throughout the nation. The attorneys of Reese LLP are skilled litigators with years of experience in federal and state courts. Reese LLP is based in New York, New York with offices also in California.

Recent and current cases litigated by the attorneys of Reese LLP on behalf of consumers include the following:

The Praxis Project, Pastor William Lamar and Pastor Delman Coates v. The Coca-Cola Co., case no. 2017 CA0040801-B (Superior Court of the District of Columbia)(consumer action against Coca-Cola for misrepresentations to minority communities in effort to discredit scientific link between sugar sweetened beverages and diabetes and other adverse health effects); *Hasemann v. Gerber Products Co.*, case no. 15-cv-02995-MKB-RER (E.D.N.Y.)(case involving misrepresentation of health benefits of baby formula in violation of New York consumer protection laws); *Worth v. CVS Pharmacy, Inc.*, case no. 16-cv-00498 (E.D.N.Y.); (E.D.N.Y.)(class action for alleged misrepresentations regarding health benefits of dietary supplement); *Roper v. Big Heart Pet Brands, Inc.*, case no. 19-cv-00406-DAD (E.D. Cal.)(class action regarding pet food); *Ackerman v. The Coca-Cola Co.*, 09-CV-0395 (JG) (RML) (E.D.N.Y.)(class action for violation of California and New York's consumer protection laws pertaining to health beverages); *Rapaport-Hecht v. Seventh Generation, Inc.*, 14-cv-9087-KMK (S.D.N.Y.)(class action for violation of California and New York's consumer protection laws pertaining to personal care products); *Berkson v. GoGo, LLC,* 14-cv-1199-JWB-LW (E.D.N.Y.)(class action regarding improper automatic renewal clauses); *Chin v. RCN Corporation*, 08-cv-7349 RJS (S.D.N.Y.)(class action for violation of Virginia's consumer protection law by I.S.P. throttling consumers' use of internet); *Bodoin v. Impeccable L.L.C.*, Index. No. 601801/08 (N.Y. Sup. Ct.)(individual action for conspiracy and fraud); *Young v. Wells Fargo & Co.*, 08-CV-507 (S.D. Iowa)(class action for violation of the RICO Act pertaining to mortgage related fees); *Murphy v. DirecTV, Inc.*, 07-CV-06545 FMC (C.D. Cal.)(class action for violation of California's consumer protection laws); *Bain v. Silver Point Capital Partnership LLP,* Index No. 114284/06 (N.Y. Sup. Ct.)(individual action for breach of contract and fraud); *Siemers v. Wells Fargo & Co.*, C-05-4518 WHA (N.D. Cal.)(class action for violation of § 10(b) of the Securities Exchange Act of 1934 pertaining to improper mutual fund fees); *Dover Capital Ltd. v. Galvex Estonia OU*, Index No. 113485/06 (N.Y. Sup. Ct.)(individual action for breach of contract involving an Eastern European steel company); *All-Star Carts and Vehicles Inc. v. BFI Canada Income Fund*, 08-CV-1816 LDW (E.D.N.Y.)(class action for violation of the Sherman Antitrust Act pertaining to waste hauling services for small businesses on Long Island); *Petlack v. S.C. Johnson & Son, Inc.*, 08-CV-00820 CNC (E.D. Wisconsin)(class action for violation of Wisconsin consumer protection law pertaining to environmental benefits of household cleaning products); *Wong v. Alacer Corp.*, (San Francisco Superior Court)(class action for violation of California's consumer protection laws pertaining to deceptive representations regarding health benefits of dietary supplement's ability to improve immune system); *Howerton v. Cargill, Inc.* (D. Hawaii)(class action for violation of various consumer protection laws regarding sugar substitute); *Yoo v. Wendy's International, Inc.*, 07-CV-04515 FMC (C.D. Cal.)(class action for violation of California's consumer protection laws pertaining to adverse health effects of partially hydrogenated oils in popular food products).

The Attorneys of Reese LLP

Michael R. Reese

Mr. Reese litigates consumer protection and antitrust cases as class actions and on behalf of individual clients. Prior to entering private practice in 2000, Mr. Reese served as an assistant district attorney at the Manhattan District Attorney's Office where he served as a trial attorney prosecuting both violent and white-collar crime.

Achievements by Mr. Reese on behalf of consumers span a wide array of actions. For example, in *Yoo v. Wendy's International Inc.*, Mr. Reese was appointed class counsel by the court and commended on achieving a settlement that eliminated trans-fat from a popular food source. *See Yoo v. Wendy's Int'l Inc.*, No. 07-CV-04515-FMC (JCx) (C.D. Cal. 2007) (stating that counsel "***has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy***"). In *Chin v. RCN Corporation*, Mr. Reese was appointed class counsel and commended by the court for stopping RCN's practice of throttling its Internet customers through adverse network management practices. *See Chin v. RCN Corp.*, No. 08-CV-7349(RJS)(KNF), 2010 WL 3958794, 2010 U.S. Dist. LEXIS 96302 (S.D.N.Y. Sept. 8, 2010) (stating that "***class counsel is qualified, experienced, and able to conduct the litigation***").

Recent victories by Mr. Reese and his firm include a $6.1 million class action settlement in the District of Hawaii in the matter of *Howerton v. Cargill, Inc.* for consumers of Truvia branded sweetener a $6.4 million class action settlement in San Francisco Superior Court in the matter of *Wong v. Alacer Corp.*, for consumers of Emergen-C branded dietary supplement; and, a $25 million dollar settlement for mortgagees in *Huyer v. Wells Fargo & Co.*

Mr. Reese and his firm are frequently appointed as co-lead counsel in food related multi-district litigations, including, but not limited to: *In re Vitaminwater Sales and Marketing Practices Litigation*, case no. 11-md-2215-DLI-RML (E.D.N.Y.); *In re Frito-Lay N.A. "All-Natural" Sales & Marketing Litigation*, case no. 12-md-02413-RRM-RLM (E.D.N.Y.); and, *In re Hill's Pet Nutrition, Inc. Dog Food Products Liability Litigation*, case no. 19-md-2887-JAR-TT (D. Kansas).

Mr. Reese is a frequent lecturer and author on issues of class actions and food law. Mr. Reese recently co-hosted a two day food law conference with Professor Michael Roberts at UCLA; presented at the Grocery Manufacturers' Association annual conference; presented at Union Internationale des Advocats Annual Congress in Porto, Portugal; and, presented at the Perrin Annual Conference in Chicago. Recent articles on food law and class actions appear in publications by the American Bar Association and the Union Internationale des Advocats.

Mr. Reese is also the chairperson of the Cambridge Forum Conference on Food Fraud and is also an executive committee member of the Plaintiffs' Class Action Roundtable, where he lectured on an annual basis on issues related to class actions.

Mr. Reese is also an adjunct professor at Brooklyn Law School where he teaches on class actions as well as food law.

Mr. Reese also is on the advisory boards for the University of California, Los Angeles Scholl of Law Resnick Center for Food Law and Policy and Wellness in the Schools in New York, New York

Mr. Reese is a member of the state bars of New York and California as well as numerous federal courts. Mr. Reese received his juris doctorate from the University of Virginia in 1996 and his bachelor's degree from New College in 1993.

Sue J. Nam

Ms. Nam is based in New York where she focuses on consumer class actions.

Prior to joining the firm, Ms. Nam was the General Counsel for NexCen Brands, Inc., a publicly traded company that owned a portfolio of consumer brands in food, fashion and homeware.

Previously, Ms. Nam was Intellectual Property Counsel and Assistant Corporate Secretary at Prudential Financial, Inc., and she was an associate specializing in intellectual property and litigation at the law firms of Brobeck Phleger & Harrison LLP in San Francisco, California and Gibson Dunn & Crutcher LLP in New York, New York.

Ms. Nam clerked for the United States Court of Appeals for the Second Circuit prior to joining private practice.

Ms. Nam received her juris doctorate from Yale Law School in 1994. She received a bachelor's degree with distinction from Northwestern University in 1991.

Carlos F. Ramirez

Mr. Ramirez is based in New York, and he focuses his practice on the litigation of consumer class actions. Prior to entering private practice in 2001, Mr. Ramirez served as an Assistant District Attorney at the Manhattan District Attorney's Office where he served as a trial attorney prosecuting both violent and white-collar crimes.

Previous and current consumer fraud class actions litigated by Mr. Ramirez include *Coe v. General Mills, Inc.*, No. 15-cv-5112-TEH (N.D. Cal.) (involving false advertisement claims relating to the Cheerios Protein breakfast cereal); *In re Santa Fe Natural Tobacco Company Marketing & Sales Practices Litigation*, 16-md-2695-JB/LF (D.N.M.)(involving the deceptive marketing of cigarettes as "natural" and "additive free"); *Lamar v. The Coca-Cola Company, et al.*, No. 17-CA-4801 (D.C. Superior Ct.) (involving the deceptive marketing of sugar drinks as safe for health); and *Hasemann v. Gerber Products Co.*, case no. 15-cv-02995-MKB-RER (E.D.N.Y.)(case involving misrepresentation of health benefits of baby formula in violation of New York consumer protection laws).

Mr. Ramirez is a member of the state bars of New York and New Jersey. He is also a member of the bars of the U.S. District Courts for the Eastern District of New York and Southern District of New York. Mr. Ramirez received his juris doctorate from the Fordham University School of Law in 1997 and his bachelor's degree from CUNY-Joh Jay College in 1994.

George V. Granade II

Mr. Granade is a partner at Reese LLP based in Los Angeles, California who focuses on consumer class actions. Cases Mr. Granade has worked on include:

- *Barron v. Snyder's-Lance, Inc.*, No. 0:13-cv-62496-JAL (S.D. Fla.) (involving "Snyder's," "Cape Cod," "EatSmart," and "Padrinos" brand food products labeled as "natural" and allegedly containing genetically-modified organisms and other synthetic ingredients);

- *In re: Frito-Lay North America, Inc. "All Natural" Litigation*, No. 1:12-md-02413-RRM-RLM (E.D.N.Y.) (involving "SunChips," "Tostitos," and "Bean Dip" products labeled as "natural" and allegedly containing genetically-modified organisms); and

- *Martin v. Cargill, Inc.*, No. 0:13-cv-02563-RHK-JJG (D. Minn.) (involving "Truvia" sweetener product labeled as "natural" and allegedly containing highly processed ingredients).

Mr. Granade received his juris doctorate from New York University School of Law in 2011. He received a master's degree from the University of Georgia at Athens in 2005 with distinction and a bachelor's degree from the University of Georgia at Athens in 2003, *magna cum laude* and with High Honors.

Mr. Granade is a member of the state bars of Georgia, New York, and California. He is also a member of the bar of the U.S. Courts of Appeals for the Second Circuit and Ninth Circuit, as well as the bars of the U.S. District Courts for the Eastern District of New York, Southern District of New York, Western District of New York, Southern District of Illinois, Northern District of Illinois, Northern District of California, Southern District of California, and Central District of California.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Lauren Biegel, Greg Maroney, Ryan Cosgrove, Clive Rhoden, Stephen Bradshaw, Angela Farve and Christina Henderson, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Blue Diamond Growers,

Defendant.

Case No. 7:20-cv-03032-CS

DECLARATION OF KEVIN LAUKAITIS IN SUPPORT OF MOTION FOR ATTORNEYS' FEES ON BEHALF OF SHUB LAW FIRM LLC

I, Kevin Laukaitis, declare as follows:

1. My firm is court appointed co-lead counsel in this litigation.

2. I submit this declaration in support of my firm's application for an award of attorneys' fees in connection with services in this case, as well as the reimbursement of expenses incurred by my firm in connection with this litigation.

3. I am thoroughly familiar with and have personal knowledge of the matters and all of the facts set forth herein based upon my active supervision and participation in all material aspects of the litigation.

4. I am an Attorney at Shub Law Firm LLC ("Shub Law"), a law firm founded in 2020 that specializes in class action litigation on behalf of consumers and small businesses in both federal and state courts throughout the United States, including New York.

5. I am a member in good standing of the state bar of the Commonwealth of Pennsylvania as well as numerous federal courts, including but not limited to the U.S. District Courts for the Eastern District of Michigan; the Northern District of Illinois; and the Eastern and Middle Districts of Pennsylvania.

6. I have devoted my entire practice to representing consumers in class action lawsuits against companies who violate(d) the law, promote defective and deceptively labeled Products or services, and cause catastrophic harm to consumers. Nearly 100% of my practice is dedicated to complex consumer class action litigation, including consumer issues such as food and beverage labeling.

7. My firm is court appointed co-lead counsel in this litigation. My firm has extensive class action experience, especially as it relates to consumer class actions. My firm has been appointed as class counsel in numerous consumer class action cases including, but not limited to *Sobiech v. U.S. Gas & Electric, Inc.*, Case No. 2:14-cv-04464 (E.D. Pa.); *Amy Silvis v. Ambit Northeast LLC*, Case No. 2:14-cv-05005-ER (E.D. Pa.); *Basile v. Stream Energy Pennsylvania, LLC, et al.,* Case No. 1:15-cv-01518-YK (M.D. Pa.); *Lori Sanborn, et al. v. Viridian Energy Inc., et al.,* Case No. 3:14-cv-01731-SRU (D. Conn.); *Hamlen v. Gateway Energy Services Corporation*, Case No. 7:16-cv-03526-VB-JCM (S.D.N.Y.); and *Austin v. Kiwi Energy Services LLC*, Case No. 515350/2017 (NY Sup. Ct. Kings Cnty.).

8. I personally have been appointed class counsel in consumer class action cases in New York, including this District. *See Hamlen v. Gateway Energy Services Corporation*, Case No. 7:16-cv-03526-VB-JCM (S.D.N.Y.); *Austin v. Kiwi Energy Services LLC*, Case No. 515350/2017 (NY Sup. Ct. Kings Cnty.).

9. As described below in detail, I have been personally involved in all aspects of my firm's work in this litigation, including the following: prosecution of this action from its inception; discovery; an all-day mediation session conducted before an esteemed mediator – Randall W. Wulff with Wulff Quinby Sochynsky, that resulted in the Settlement; and, the briefing of the Motion for Preliminary Approval and briefing of the Motion for Final Approval. Shub Law has vigorously represented the interests of the Settlement Class Members throughout the course of the litigation and settlement process.

10. Based on my experience, I believe the Settlement to be an outstanding outcome for consumers, and I believe it is fair, reasonable, and adequate under Federal Civil Procedure Rule 23.

SHUB LAW EXPENDED SIGNIFICANT TIME ON THE MATTER

A. Pre-Litigation Investigation and the Filing of the Complaint

11. This and other related matters covered by the Settlement arise out of Defendant's manufacturing, advertising, selling, and distributing of a variety of Defendant's beverage products ("Products"), which are alleged to have misled consumers due to representation on the Products' label regarding the vanilla ingredients in the Products.

12. Based on my experience as an attorney in plaintiff's class action practice, I believe the best way to litigate a matter is to conduct a thorough investigation and gather all of the facts before initiating a complaint. My firm implements that philosophy in the litigation of its cases and did so in this matter. As such, I was closely involved in pre-suit investigation, as well as the complaint drafting process.

13. In accordance with the above and prior to filing this action, my firm, along with my co-counsel, conducted an extremely thorough investigation of the potential claims, ingredients,

and the regulatory framework surrounding the Products at issue, and continued to analyze the claims throughout the pendency of the cases.

14. Before entering into this Settlement Agreement, in addition to our pre-litigation investigation, my firm, along with my co-counsel, thoroughly evaluated relevant law, facts, and allegations to assess the merits of the claims and potential defenses asserted in the Actions.

15. In addition, we thoroughly analyzed the legal landscape to determine if the Products' labeling was false or misleading and, if so, how to approach remedying the deception. In particular, we researched and examined the role of the Food and Drug Administration ("FDA"); primary jurisdiction arguments; preemption arguments; FDA rules and regulations regarding these types of products; the "reasonable consumer" standard, as well as various other intricacies associated with consumer class action litigation. We undertook all of this to assess the merits of the potential cases, to determine the strength of both the claims and defenses in the Actions, and to determine the best manner to pursue this matter on behalf of consumers.

B. Discovery

16. The Parties engaged in extensive informal discovery, including discovery of sales data regarding the sales of Defendant's vanilla almondmilk, vanilla almondmilk coconutmilk blend and vanilla almondmilk yogurt, as well as, obtaining documents and other information from Defendant concerning the Products' sales as part of the mediation process.

C. Mediation and Ultimate Settlement of the Above-Captioned Action

17. My firm, along with my co-counsel, have worked diligently and with utmost commitment to Plaintiffs and the Settlement Class to reach a fair, reasonable, and adequate Settlement. Indeed, we believe that they have obtained full or nearly full relief with this resolution. To the extent that they have not, while Plaintiffs' claims are strong, significant expense and risk

attend the continued prosecution of all claims through trial and any appeals. My firm, along with my co-counsel, have taken these costs and uncertainties into account, as well as the risks and delays inherent in complex class action litigation.

18. Additionally, in the process of investigating and litigating the Actions, we conducted significant research on the consumer protection statutes at issue, as well as the overall legal landscape, to determine the likelihood of success and reasonable parameters under which courts have approved settlements in comparable cases. Guided by our research, Class Counsel's positions were stated fully in our mediation statement that we submitted to esteemed mediator Randall W. Wulff, with Wulff Quinby Sochynsky.

19. On February 1, 2021, the Parties participated in an all-day mediation session conducted before Mr. Wulff, which resulted in the excellent terms of the Settlement.

20. The Parties only reached the Settlement after conducting discovery and engaging in extensive arm's-length, good-faith negotiations with the assistance of Mr. Wulff.

21. My firm, along with my co-counsel, firmly believe that we more than adequately represented the Settlement Class. As detailed above, we performed an extensive investigation into the claims at issue; participated in a full day mediation session; and conducted extensive discovery into the bases of the potential Settlement. We have relied on our significant collective experience in litigating and resolving class actions, including consumer class actions relating to misleading food and beverage products, in order to reach a Settlement that we believe is an excellent result for the Settlement Class.

22. The Settlement in the Action before Your Honor settles the claims and has the full support of all the Plaintiffs in the other Federal Actions (collectively "Actions").

23. In light of the foregoing, we believe the present Settlement provides significant, if not nearly complete, relief to Settlement Class Members, confers substantial benefits upon the Settlement Class Members, and is fair, reasonable, adequate, and in the best interests of the Settlement Class.

24. My firm, along with my co-counsel, negotiated an amount for fees and costs only after there was an executed agreement as to the relief for the class. The overarching terms of the Settlement were resolved prior to the discussion of any attorneys' fees.

25. My firm was involved in the preparation of the motion papers for preliminary approval, which was granted by the Court on May 17, 2021 (ECF No. 53).

26. The schedule attached hereto as Exhibit 1 is a detailed summary of the amount of time, by category, by my staff and I who were involved in this litigation, and the lodestar calculation based on my firm's current billing rates. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court for review *in camera*.[1]

27. The hourly rates for the attorneys and professional support staff in my firm, included in Exhibit 1, are the same as the regular current rates that have been used in the lodestar cross check accepted by courts in other class litigation.

28. The total number of hours expended on this litigation by my firm is 293.1 hours. The total lodestar for my firm is $125,490.00. These numbers reflect extreme billing discretion.

[1] These records may include information concerning privileged and/or confidential attorney-client communications or work product.

29. In my judgment, and based on my years of experience, the number of hours expended and the services performed by Shub Law Firm LLC's attorneys and paraprofessionals were reasonable and expended for the benefit of Plaintiffs in this Action.

30. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in my firm's billing rates.

31. As detailed in Exhibit 2, my firm has incurred a total of $5,564.20 in un-reimbursed expenses in connection with the prosecution of this litigation.

32. The expenses incurred in this action are reflected on the books and records of my firm, which are available at the request of the Court. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses as charged by the vendors. Third-party expenses are not marked up. All of these expenses were necessary and reasonable, and typical of expenses that courts approve for reimbursement. Moreover, having accepted the case on a contingency basis, Class Counsel made a concerted effort to avoid unnecessary expenses and economized where possible.

33. With respect to the professional standing of counsel in this case, attached hereto as Exhibit 3 is my firm's résumé and brief biographies of the attorneys in my firm.

34. Shub Law Firm LLC is a small law firm comprising only two attorneys. As a result, the time spent litigating against Defendant in the hope of eventually obtaining a substantial verdict or settlement for the Settlement Class, and a fee for Class Counsel, was a significant commitment of the Firm's resources. Shub Law Firm LLC spent substantial time and effort litigating these cases that it could not spend on other matters.

35. Moreover, because it is a small firm, Shub Law Firm LLC carefully screens its class action contingency matters to enhance its likelihood of success. Even then, there was absolutely no assurance that the extraordinary commitment of time and effort devoted to these cases would result in the payment of any fee at all.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of July 2021, at Haddonfield, New Jersey.

/s/ Kevin Laukaitis
Kevin Laukaitis

EXHIBIT 1

Biegel, et al. v. Blue Diamond Growers

Case No. 7:20-cv-03032-CS (S.D.N.Y.)

SHUB LAW FIRM LLC

TIME REPORT – Inception through July 21, 2021

Name/Position	A	B	C	D	E	F	G	Total Hours	Hourly Rate	Total Lodestar
Kevin Laukaitis/A	0.0	34.0	0.0	0.0	6.0	0.0	147.5	187.5	$550	$103,125.00
Daniel Tomascik/L	0.0	24.0	0.0	0.0	4.1	0.0	31.0	59.1	$225	$13,297.50
Taylor Reynolds/PL	0.0	42.0	0.0	0.0	0.0	0.0	4.5	46.5	$195	$9,067.50
TOTAL LODESTAR	0.0	100.0	0.0	0.0	10.1	0.0	183.0	293.1	---	$125,490.00

CATEGORIES

A. Pre-Filing Investigation and Initial Complaint

B. Legal Research, Pleadings, Briefs, and Motions After Initial Complaint

C. Discovery and Post-Filing Investigation

D. Experts and Consultants

E. Litigation Strategy, Analysis, and Case Management

F. Court Appearances & Preparation

G. Settlement

POSITION

A = Attorney

PL = Paralegal

L = Law Clerk

EXHIBIT 2

Biegel, et al. v. Blue Diamond Growers

Case No. 7:20-cv-03032-CS (S.D.N.Y.)

SHUB LAW FIRM LLC

EXPENSE REPORT – Inception through July 21, 2021

Categories:	**Amount:**
Filing/Witness Fees	$625.00
Court Reporters/Transcript/Video	
Experts/Consultants/Professional Services	
Mediation	$4,939.20
Transportation to Court	
TOTAL EXPENSES:	**$5,564.20**

EXHIBIT 3

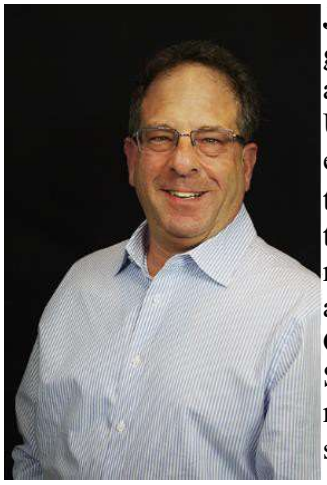
SHUBLAW

SHUB LAW FIRM LLC

134 KINGS HIGHWAY, SECOND
FLOORHADDONFIELD, NJ 08033

(856) 772-7200

SHUBLAWYERS.COM
INFO@SHUBLAWYERS.COM
JSHUB@SHUBLAWYERS.COM
KLAUKAITIS@SHUBLAWYERS.COM



Jonathan Shub is the founder of Shub Law Firm LLC. Mr. Shub graduated from American University (Washington, D.C.), B.A., in 1983 and Delaware Law School of Widener University (now Widener University Delaware School of Law), cum laude, in 1988. While enrolled in Delaware Law School of Widener University, he served as the Law Review Articles Editor. Jon was a Wolcott Fellow Law Clerk to the Hon. Joseph T. Walsh, Delaware Supreme Court in 1988. He is a member of the American Association of Justice (past chairman of class action litigation section), the American Bar Association and the Consumer Attorneys of California. Jon was named a Pennsylvania SuperLawyer from 2005 -2009 and2011-2019. Jon is also an active member of his local synagogue and an avid political fundraiser.

Jon is recognized as one of the nation's leading class action consumer rights lawyers, based on his vast experience and successes representing classes of individuals and businesses in a vast array of matters involving unlawful conduct. Jon has gained notable attention in the area of defective consumer electronics and computer hardware as a result of many leadership positions in federal and state cases against companies such as Hewlett-Packard, Maytag, IBM and Palm.

Infact, Maximum PC Magazine, a leading industry publication, said years back that "Shub is becoming renowned for orchestrating suits that have simultaneously benefited consumers and exposed buggy hardware." He also has vast experience in mass tort class actions such as Vioxx, light tobacco litigation, and in consumer class actions such as energy deregulation. He is currently heavily involved in litigation on behalf of businesses that were denied insurance coverage involving COVID-19

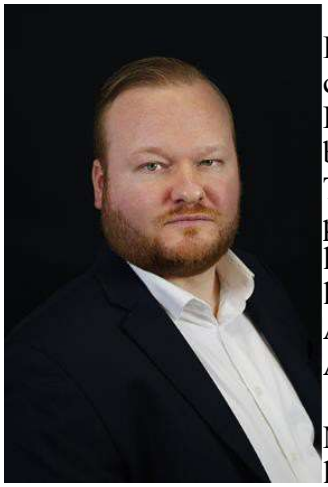
Jon launched his career in the Washington office of Fried, Frank, Harris, Shriver & Jacobson, where he worked on complex commercial matters including corporate investigations and securities litigation. He then moved into a practice of consumer protection and advocacy. Prior tojoining Kohn, Swift & Graf, P.C., Jonathan was the resident partner in the Philadelphia office of Seeger Weiss LLP. He is a frequent lecturer on cutting edge class action issues, and is a past chairman of the Class Action Litigation Group of the American Association for Justice. Jon regularly appears in state and federal courts nationwide, and in many high profile consumer protection cases. Jon's leadership roles require him to develop the theories of liability for the entire class as well as the overall trial strategy for the cases. Most recently, Jon was co-lead and co-trial counsel in a case against municipality for violation of a state privacy law. The trial resulted in a jury award of approximately $68,000,000 to the Class.

JON'S EXPEREIENCE IN CLASS ACTION LITIGATION INCLUDES THE FOLLOWING LEADERSHIP POSITIONS:

Serves as lead counsel in New York against KIWI Energy LLC for deceptive advertising ofresidential energy practices.
Served as co-lead counsel in Illinois against Direct Energy for deceptive advertising of residential energy practices.
Served as co-lead counsel in Pennsylvania against PG&E for deceptive advertising of residentialenergy practices.
Served as co-lead counsel in settled national litigation against CPG International for deceptive advertising in connections with deceptive advertising of AZEK-branded decking products.
Served as executive committee counsel in settled national litigation against Western Union fordeceptive practices in connection with money transfers.
Served as co-lead counsel in litigation against Facebook for deceptive advertising practices.
Served as co-lead counsel in a national class action against Palm involving defective smart phones.
Served as co-lead counsel in a national class action against Nissan for defective tires on its 350Zmodel.
Served as co-lead counsel in a national class action against Hewlett Packard claiming defects in certain printer models.
Served as co-lead counsel in litigation against Vonage for consumer fraud.
Served as co-lead counsel in litigation against Maytag, where he was instrumental in negotiatinga $42.5 million nationwide settlement for a class of more than 200,000 Maytag customers.
Served as co-lead counsel in a nationwide class settlement against IBM that affected more than 3million hard drive purchasers.

PUBLICATIONS AND PRESENTATIONS:

Moderator, Class Actions, Annual Meetings of American Association of Justice, 2015, 2016
Speaker, “Finding the Right Class Action”, New Jersey Association of Justice, June, 2016
Speaker, “Nuts and Bolts of MDL Practice”, Class Action Symposium, Chicago Illinois, June, 2010
Speaker, “Computer Technology and Consumer Products Class Actions”, Consumer Attorneysof California 46th Annual Convention, November, 2007
Frequent speaker, American Association for Justice (formerly ATLA)
Author, “Distinguishing Individual from Derivative Claims in the Context of Battles forCorporate Control”, 13 Del. J. Corp. L. 579 (1998)
Author,”Shareholder Rights Plans? Do They Render Shareholders Defenseless Against Their Own Management”, 12 Del. J. Corp. L. 991 (1997)
Co-author, “Once Again, the Court Fails to Rein in RICO”, Legal Times (April 27, 1992)
Co-author, “Failed One-Share, One Vote Rule Let SEC Intrude in Boardroom”, National Law Journal (October 8, 1990).



Kevin Laukaitis is a Philadelphia native who practices in the areas of consumer rights litigation and other complex class action litigation. Mr. Laukaitis is a graduate of Drexel University, where he received a bachelor’s degree in Business Administration. He attended law schoolat Temple University Beasley School of Law in its part-time evening program. During law school, Kevin worked full-time as a paralegal and law clerk where he gained practical experience in consumer rights litigation, including complex class actions. Kevin is a member of American Association for Justice and Philadelphia Trial Lawyers Association, Member

Mr. Laukaitis’ practice has been focused on class action consumer litigation involving overcharging of deregulated energy companies, defective products, mislabeling and consumer fraud, and other areas of complex litigation.

Mr. Laukaitis has played a prominent role in cases against deregulated energy companies that have engaged in deceptive practices by overcharging consumers on their energy bills. Mr. Laukaitis’ efforts have resulted in over $50 million dollars in recovery to classes of consumers who were overcharged by these energy companies.

PROMINENT JUDGMENTS AND SETTLEMENTS:

Sobiech v. U.S. Gas & Electric, Inc., Case No. 2:14-cv-04464, United States District Court for the Eastern District of Pennsylvania (worked on the team who obtained $1.25 million for a classof Pennsylvania resident customers of Pennsylvania Gas & Electric)

Amy Silvis v. Ambit Northeast LLC, Case No. 2:14-cv-05005-ER, United States District Courtfor the Eastern District of Pennsylvania (worked on the team who obtained $9.3 million

for a class of Pennsylvania resident customers of Ambit Energy)

Basile v. Stream Energy Pennsylvania, LLC, et al., Case No.1:15-cv-01518-YK, United States District Court for the Middle District of Pennsylvania (worked on the team who obtained $13.5million for a class of Pennsylvania resident customers of Stream Energy)

Lori Sanborn, et al. v. Viridian Energy Inc., et al., Case No. 3:14-cv-01731-SRU, United StatesDistrict Court for the District of Connecticut (worked on the team who obtained $18.5 million for a nationwide class of customers of Viridian Energy).

Hamlen v. Gateway Energy Services Corporation, Case No. 7:16-cv-03526-VB-JCM, United States District Court for the Southern District of New York (appointed class counsel and workedon the team who obtained $9.25 million for a class of New York, New Jersey, Pennsylvania, Maryland, Virginia, Kentucky, and Ohio resident customers of Gateway Energy).

Austin v. Kiwi Energy Services LLC, Case No. 515350/2017, New York State Supreme Court, Kings County (appointed lead counsel and worked on the team who obtained over $1 million fora class of customers of Kiwi Energy)

Mr. Laukaitis is also involved in pending class action litigation against several other deregulated energy companies, representing customers throughout the nation, including:

Verde Energy, Sperian Energy, Just Energy, Gateway Energy, Palmco Energy, GreenlightEnergy, and Agway Energy.

Mr. Laukaitis was also part of the team of attorneys who worked on Taha v. County of Bucks,No. 12-06867, United States District Court for the Eastern District of Pennsylvania, a seminalcase which resulted in a jury verdict for a certified class of nearly 68,000 people. The jury awarded each member of the class $1,000 in punitive damages.

ADMISSIONS

Pennsylvania
United States District Court for the Eastern District of Pennsylvania
United States District Court for Middle District of Pennsylvania
United States District Court for the Northern District of Illinois
United States District Court for the Eastern District of Michigan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAUREN BIEGEL, GREG MARONEY, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

BLUE DIAMOND GROWERS,

Defendant.

CASE NO. 7:20-cv-03032-CS

DECLARATION OF STEVEN WEISBROT OF ANGEION GROUP RE: MEDIA PLAN

I, Steven Weisbrot, declare as follows:

1. I am the President and Chief Innovation Officer at the class action notice and claims administration firm Angeion Group, LLC ("Angeion"). I am fully familiar with the facts contained herein based upon my personal knowledge.

2. My credentials were provided to this Court, as outlined in my previously filed Declaration in Support of Preliminary Approval of Settlement (ECF Docket No. 48-2) ("Notice Plan Declaration").

3. The purpose of this declaration is to provide the Parties and the Court with information on the implemented media program and the number of impressions delivered to date.

4. As described in my Notice Plan Declaration, the Notice Program provides for a media campaign comprised of programmatic display advertising, social media advertising and a paid search campaign. The Notice Plan also includes ads in the California regional edition of the USA Today as described in my previously filed Supplemental Declaration (ECF Docket No. 51-1).

CLASS DEFINITION

5. The Class is defined as: all consumers in the United States who purchased the Products (as defined in section 2.33 of the Settlement Agreement) from April 15, 2014 through May 17, 2021.

TARGET AUDIENCE

6. The Target Audience here has the following characteristics:

- 85.34% are ages 25+, with a median age of 44.5
- 55.00% are female
- 60.50% are now married
- 41.58% have children
- 34.47% have received a bachelor's or higher
- 56.64% are currently employed full time
- The average household income is $97,900
- 89.84% have used Facebook in the last 30 days

7. The objective syndicated data shows that members of the Target Audience are "heavy" internet users and nearly 90% of the Target Audience have used Facebook in the last 30 days. As such, our team carefully crafted a robust internet advertising campaign in conjunction with a strategic social media campaign to reach Class Members.

INTERNET BANNER NOTICE

8. The internet banner notice program is being implemented using a desktop and mobile ad campaign to notify and drive Settlement Class Members to the dedicated settlement website, where they can find more information about the Settlement and are able to submit a claim form.

9. As described in my Notice Plan Declaration, the internet banner notice program was designed to serve approximately 20,588,235 impressions. Through July 18, 2021, the program has delivered approximately 17,070,274 impressions and is scheduled to be completed on or about July 26, 2021.

SOCIAL MEDIA CAMPAIGN

10. The Notice Plan is utilizing social media platforms Facebook and Instagram, which approximately 90% of our Target Audience utilized. The social media campaign uses an interest-based approach to engage with the Target Audience through Facebook and Instagram's desktop sites, mobile sites and mobile apps.

11. As described in my Notice Plan Declaration, the social media campaign was designed to deliver approximately 30,000,000 impressions via Facebook & Instagram. Through July 18, 2021, the social media campaign has delivered approximately 20,024,079 impressions and is scheduled to be completed on or about July 26, 2021.

PAID SEARCH CAMPAIGN

12. The Notice Program includes a paid search campaign on Google to help drive Settlement Class Members who are actively searching for information about the Settlement to the dedicated Settlement Website. Through July 18, 2021, the paid search program has delivered approximately 168,626 impressions.

PRINT PUBLICATION

13. The print publication program was implemented to notify and drive Settlement Class Members to the dedicated settlement website where they can find more information about the Settlement and are able to submit a claim form. A total of five ads were inserted into the California regional edition of the USA Today. A true and correct copy of the Publication Notice tearsheets are attached hereto as Exhibit A.

REACH AND FREQUENCY

14. As described in my Notice Plan Declaration, the media portions of the Notice Program are designed to deliver an approximate 75.18% reach with an average frequency of 4.77 times each.

CAMPAIGN STATUS

15. The media campaign will complete on or about July 26, 2021. The program is on schedule to deliver the estimated reach. I will provide the final results of the campaign with the implementation of Notice declaration, which will be filed with the Court prior to the Final Approval Hearing.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 26, 2021

Steven Weisbrot

Exhibit A

RACE IN AMERICA

Judges

Continued from Page 1A

American community is gearing up to really push for an Asian American on the Supreme Court, recognizing that there is also a need for an African American and in particular, an African American female," said John Yang, president of the civil rights group Asian Americans Advancing Justice.

In the near term, any changes to the court's composition will hang on Associate Justice Stephen Breyer, 82, who has for months been the center of speculation – and pressure from the left – over his potential retirement. The president vowed to name a Black woman to the Supreme Court for the first time.

Breyer hasn't signaled his intentions.

'List is thin'

Legal advocates in the Asian American community are focused on ensuring there is a deep pool to draw from when a vacancy occurs. Supreme Court nominees almost always come from appellate courts. Only one current justice didn't hear appeals, Elena Kagan, the former U.S. solicitor general.

"The list is thin on the Democratic side," said Vincent Eng with the National Asian Pacific American Bar Association. "If you look at the Asian American pool today, there are only four on the appellate court, and one will be on senior status this year."

Judge Denny Chin, who sits on the New York-based U.S. Court of Appeals for the 2nd Circuit, announced this year that he is taking senior status, or semi-retirement.

Biden has named a historically diverse Cabinet but has come under fire for not appointing any Asian American or Pacific Islander Cabinet secretaries. Sens. Tammy Duckworth, D-Ill., and Mazie Hirono, D-Hawaii, threatened in March to hold up other administration nominees in the Senate over the lack of Asian American appointments. The senators backed off after receiving assurances from the White House.

Administration officials have pointed to Kamala Harris, the first African American and South Asian American woman elected vice president, and Katherine Tai, the first Asian American and woman of color to serve as U.S. trade representative. The trade representative is a Cabinet-level position, but it does not carry the title of secretary.

Several advocates said they recognize and applaud the need for a Black woman on the nation's highest court – but they point to simmering frustration with a perception that the Asian American community is often told to wait until "next time."

Biden is making an effort to diversify the courts – particularly at the federal district level. In his first round of judicial nominations, the president said in March he would name Florence Y. Pan to a seat on the U.S. District Court for the District of Columbia. Pan would be the first Asian American woman to sit on that bench, if confirmed by the Senate.

This month, in his third round of judicial nominees, Biden named Angel Kelley to the U.S. district court in Massachusetts. A state judge, Kelley would be the second African American woman and the second Asian American to serve on that bench. Kelley, who identifies as half Black and half Japanese, told the story this year of how her immigrant mother married a U.S. soldier and came to the USA dead set on assimilation.

Kelley took a different approach.

"I chose to embrace what I could not deny: my ethnic identity," she said during an address to celebrate Martin Luther King Jr. Day. "Thirsty for knowledge of my ancestry, I studied and traveled to Japan. ... It was in college where I found strength and confidence in my identity."

District vs. circuit

Though Biden is making inroads at the district court level, naming at least six Asian American or Pacific Islanders to the lower courts, he has yet to name an Asian American or Pacific Islander to an appellate court.

Christopher Kang, a former Obama White House aide who is chief counsel for the left-leaning group Demand Justice, said that may be partly because Biden has work to do adding overall diversity to the federal judiciary.

Kang's group has sought not just racial diversity but also judges with different professional backgrounds – such as experience as public defenders.

About 16% of President Donald Trump's judicial nominees were Black, Hispanic, Asian or otherwise not white, according to the Pew Research Center. That compares with 18% for President George W. Bush and 36% for Obama.

"The president has a lot of work to do to rebalance the judiciary and make up for the fact that 85% of President Trump's judges were white," said Kang, who called Biden's early nominees "inspiring" on that front.

Among Biden's early nominees: Four Black women nominated to serve on circuit courts, the first Muslim American to be nominated to a federal court, the first Native American federal judge in Washington state and the second judge from Puerto Rico to sit on the Boston-based U.S. Court of Appeals for the 1st Circuit.

"I do think that there's going to continue to be increased attention on trying to ensure that the Supreme Court reflects the diversity of our country," Kang said. "And so I would expect a number of Asian American lawyers to get very strong consideration the next time there's a vacancy."

Kang noted the progress: When Obama came into office in 2009, there were no Asian American active circuit court judges.

White House spokesman Andrew Bates said Biden is committed to nominating "strongly qualified nominees" who "represent the diversity of our nation and diverse professional backgrounds."

Soldier

Continued from Page 1A

Weaver declined to comment on the decision by the Maryland National Guard.

Weaver's case, first detailed by USA TODAY, dates to November 2015 when he was ordered to carry a heavy chain for three days as punishment for leaving a training site without authorization, a charge he disputed. In 2017, Weaver filed a formal complaint of discrimination after he was removed from the officer candidate program for failing to progress. His complaint triggered a series of investigations by Maryland officials, each of which rejected his claims.

One of the instructors involved in the incident told USA TODAY that the chain was intended to drive home the importance of the chain of command, the military's adherence to following orders. In 2015, all of the instructors in the Maryland officer candidate school were white. Maryland officials discontinued the use of chains for punishment in 2017, conceding their use could be interpreted as racist. Its instructor cadre is now made up of 10 white troops, six Black and one Hispanic member, according to the Maryland National Guard.

About one-third of Maryland's Army National Guard troops are Black, compared with 15% of those serving in the Army National Guard nationwide. About 25% of Maryland's officer corps are people of color, including Black, Asian American and American Indian troops.

The National Guard Bureau, a coordinating body for the country's state and territorial Guard units, investigated Weaver's complaint, substantiated most of his allegations of discrimination and harassment and blasted Maryland for mishandling his case.

The Maryland National Guard appealed that decision. Its top officer, Maj. Gen. Timothy Gowen, fired off an angry letter accusing the bureau's Office of Equity and Inclusion of attacking the state with "erroneous and unsupported allegations." Gowen charged that it acted as an advocate for Weaver and another Black Guardsman who filed a complaint, instead of performing its mandated role as a "neutral third party."

That set the stage for Doyle who heard arguments from both sides. Doyle sided mostly with Weaver.

Rep. Jackie Speier, D-Calif., who chairs a House Armed Services Committee panel on personnel, criticized the Maryland Guard's investigation and called for swift punishment for those involved in disciplining Weaver, including dishonorable discharges.

"The cruelty and degradation of forcing a Black service member to wear chains is beyond vile and inhuman," Speier said in a statement.

Clarke is confirmed as civil rights chief

First Black woman in post gets lone GOP vote

Kristine Phillips
USA TODAY

Kristen Clarke is president of the Lawyers' Committee for Civil Rights Under Law. CHIP SOMODEVILLA/GETTY IMAGES

WASHINGTON – The Senate narrowly confirmed Kristen Clarke on Tuesday to be the Justice Department's civil rights chief, making her the first Black woman to fill the high-profile role.

The Senate voted 51-48 to confirm Clarke. Sen. Susan Collins, R-Maine, was the lone Republican to support President Joe Biden's nominee to lead a powerful division of the Justice Department charge of investigating police abuses and enforcing voting rights laws and federal statutes prohibiting discrimination based on race, sex, religion and other factors.

Clarke fills the post at a pivotal time for the Justice Department as high-profile deaths of Black citizens during encounters with police have led to months of protests and calls for reform. Clarke, a longtime civil rights attorney, is likely to reinvigorate investigations of troubled police agencies, inquiries that languished during the Trump administration.

Clarke, president of the Lawyers' Committee for Civil Rights Under Law, will be at the center of the Justice Department's response to an onslaught of restrictive voting laws passed in several states after last year's presidential election. She was confirmed on the first anniversary of the death of George Floyd in Minneapolis police custody.

Senate Republicans have been fiercely critical of Clarke and said statements she's made on voting rights, religious liberty and policing make them question whether she can be a nonpartisan enforcer of civil rights.

"A vote for Kristen Clarke is a vote to defund the police," Sen. Tom Cotton, R-Ark., said before the vote Tuesday.

Democrats defended Clarke, citing her long career as a civil rights attorney.

"Kristen Clarke is singularly qualified to lead (the Justice Department's Civil Rights Division) particularly in this moment in history," Sen. Dick Durbin, D-Ill., said.

The daughter of Jamaican immigrants, Clarke began her career as a Justice Department lawyer, prosecuting police brutality, hate crimes and human trafficking cases and enforcing voting rights laws. She continued advocacy work on voting rights at the NAACP Legal Defense Fund and was the civil rights enforcement officer for the New York State Attorney General's Office.

"Having known Kristen for more than two decades and most recently serving as her top deputy, I know she is exactly the person we need at this moment when threats to civil rights have peaked," Damon Hewitt, acting president and executive director of the Lawyers' Committee for Civil Rights Under Law, said in a statement.

Contributing: Kevin Johnson

LIFESTYLES

Jenner's tequila is leaving bad aftertaste

Pamela Avila
USA TODAY

Kendall Jenner has swapped her Pepsi for her very own beverage brand: 818 Tequila.

The 25-year-old model's latest business venture, a new brand of "best-tasting tequila," was met with backlash from the Latino and Mexican-American communities. The criticism? Another white celebrity cashing in on an industry and culture to which she has no proximity.

"There are so many other authentic, woman-owned tequila companies to (choose) from," wrote a Twitter user. "Don't support the exploitation of our culture and resources."

But supporters argue Jenner is not the first non-Latina or white celebrity to create a tequila brand, and she's being unfairly criticized. George Clooney (Casamigos), Nick Jonas (Villa One), Dwayne The Rock Johnson (Teremana Tequila), AC/DC (Thunderstruck Tequila), LeBron James (Lobos 1707) and more all have gotten into the tequila game.

What sets Jenner apart from the rest, however, is her – and her family's – murky history of profiting from other cultures and repeatedly being accused of cultural appropriation.

One user tweeted: "... leave it to Kendall to be as tone deaf as possible, this is so offensive. Modeling that chic migrant worker look for her tequila brand, watch her cry and say she didn't know later on for the 100th time." Another user replied to the original tweet, adding that people should keep the "same energy for all the celeb men" who have also ventured into the business.

Reps for Jenner and the 818 Tequila team declined to comment.

The model's foray into the tequila industry isn't the first time critics have discussed the cultural and economic implications of celebrity-backed liquor companies.

Andy Coronado, who co-owns La Gritona Tequila with businesswoman Melly Barajas Cárdenas, says celebrity tequila companies "pull away resources from smaller brands that need access to agave," the plant from which tequila is made. It takes roughly seven years for the plant to reach maturity for harvest.

"It is a commodity, and it boosts the prices," he adds. "It leaves the rest of the tequila world to trying to ... survive."

Barajas Cárdenas says that while she's not familiar with Jenner, she believes that celebrities creating their own tequila is more indicative of the globalization of the drink.

Kendall Jenner traded her glam fashion for jeans and braids to promote her 818 tequila. WIREIMAGE

"If you say tequila, you immediately think about Mexico," she says, in an interview conducted in Spanish. "I would love for it to be known all over the world by whoever because although an American creates their own brand and whether you like it or not, Mexico also sees that money because there's no other country where it can be produced."

But the distiller believes there are two types of people who dabble in the tequila industry: one who "genuinely loves Mexico, tequila and our roots," and another who sees Latino and Mexican-American consumers as only a dollar sign, she says.

The latter is the group to which critics believe celebrities including Jenner belong.

In February, Jenner announced on Instagram the anticipated release of 818 Tequila – available in añejo, reposado and blanco – adding that it was "almost 4 years in the making." Fast-forward to May: Jenner celebrated the official release of 818 with a social media campaign that didn't go down as smoothly to some.

To promote 818, Jenner relocated to "local, family-owned farms" in Jalisco, Mexico, as her backdrop. She swapped her high-fashion gowns for jeans, an oversize button-up resembling a Mexican shawl and a white tank top. She accessorized with a sombrero and a pair of cowboy boots, and she wore her hair in pigtails.

In addition to the outfit, Jenner rode a horse through agave fields in the promotional video and sat in the back of a pickup with a broken window covered in a plastic bag, nonchalantly petting a stray dog with one hand, sipping tequila with the other.

The criticism began to trickle in via Instagram comments, tweets and TikTok videos dissecting what people thought was wrong with her tequila ad. Jenner turned off comments on that post.

Social media users argued that the way Jenner dressed perpetuated harmful stereotypes.

"It's also about the way she's dressing up like a Mexican person," one Twitter user wrote. "It's wrong & super distasteful. There were other ways to market. But this one? It's not it."

Author Julissa Arce wrote on Twitter: "Why can't Kendall Jenner just show up as her white girl self to sell Tequila?! Why does she have to go and put on the braids, and wear the sombrero."

The backlash prompted many on social media to support locally-owned and women-owned tequila brands, including La Gritona, a mark distilled by Vinos y Licores Azteca also created and owned by Barajas; Bertha González' Casa Dragones; Stella Anguiano's Próspero Tequila; Nitzan Marrun's Satryna Tequila and others.

La Gritona co-owner Coronado adds that since the 818 Tequila backlash began, he has noticed an influx of followers and overwhelming support for La Gritona, which is 100% staffed by local women.

He asks: "Why aren't these people attacking Clooney or The Rock. Why are they going after Kendall? Because she's a woman and because she comes from this family that is perceived as superficial and not taken seriously. I don't know what I would think of her tequila, but she can do whatever she wants."

Ali Fazal, VP of marketing at Grin, a platform dedicated to creating authentic influencer marketing campaigns, says the lack of diversity and inclusion in influencer marketing invitebacklash.

"Things like misogyny, racism, cultural appropriation – nobody ever liked them," Fazal says. "It's just that now we can talk about them more freely, without fear of persecution or the fear of retribution."

Now consumers feel more empowered to speak their mind, he says: "They're super discerning and they're very critical of brands."

Fazal attributes the pandemic to consumers' craving authenticity.

"People are starting to evolve and get used to that being the norm," he says. "Customers are really able to see when an endorsement is authentic and feels authentic."

Many don't view Jenner's intentions – or her tequila – as authentic.

Mike Morales, CEO of Tequila Aficionado Media, says that anything that is mass-produced or mainstream is "not using authentic methods" of production, and is mostly taking "short cuts" to lower the cost of production and spend more on marketing.

"For those who want to do something authentic, you should know right off the bat that you're in for the long game," he says, adding that all some celebrities really have going for them are their followings.

Even then, Morales thinks Jenner stepping into the tequila business is a "nonissue."

But four years after her infamous Pepsi ad, i which the reality TV star was depicted leaving a modeling shoot to join a protest, handing the beverage to a police officer as a peace offering, the optics still don't look good.

Tequila is ingrained in Mexican culture and is a marker of the country's identity. When celebrities or non-Latinos venture into the industry, Barajas Cárdenas says, "You're selling a little piece of Mexico. ... We are not numbers."

Pride reading

Continued from Page 5B

4. 'The Queer Bible'

Edited by Jack Guinness (Dey Street, nonfiction, on sale June 15)

An illustrated collection of essays from contemporary queer figures pays homage to queer heroes. Elton John writes about drag icon Divine; comedian Mae Martin writes about actor Tim Curry; author Joseph Cassara writes about filmmaker Pedro Almodóvar, plus many more.

5. 'Films of Endearment: A Mother, a Son and the '80s Films That Defined Us'

By Michael Koresky (Hanover Square Press, nonfiction)

Cinephile Koresky alighted on a clever personal project that formed this unique memoir's foundation: Over the course of months, he and his film-loving mother would revisit an '80s movie together, one for each year of the decade in which Koresky was an impressionable gay child who did not yet know it. The result is a tender ode to a loving mother-son relationship.

6. 'Little and Often'

By Trent Preszler (William Morrow, nonfiction)

Estranged from his father since college, when he revealed he was gay, Preszler had left behind his South Dakota cattle-ranch upbringing for a prominent winery on Long Island's North Fork. Reconciliation was hopeless. Until his father's terminal cancer diagnosis. Preszler inherited dad's toolbox, with which Preszler set out to build a canoe. A ★★★★ review for USA TODAY calls it "a profound father-and-son odyssey."

7. 'The Guncle'

By Steven Rowley (G.P. Putnam's Sons, fiction)

From the bestselling author of "Lily and the Octopus" and "The Editor" comes the story of Gay Uncle Patrick, a once-famous sitcom star who's tasked with caring for his young niece and nephew for the summer when family tragedy strikes. His Palm Springs lifestyle isn't exactly suited for young children, but his heart is open to the task. "A novel with some real depth beneath all its witty froth," says Kirkus Reviews.

8. 'Playing the Palace'

By Paul Rudnick (Berkley, fiction)

This dashing gay royal romance (from the screenwriter of "Sister Act" and "Addams Family Values") follows the unlikely love affair between New York event planner Carter and British royal Prince Edgar. The pair meet – and flirt – ahead of a press conference Carter helps facilitate, and quickly become entangled in each other's lives.

9. 'The Darkness Outside Us'

By Eliot Schrefer (Katherine Tegen Books, fiction)

Ambrose and Kodiak wake up with few memories aboard a spaceship with secrets, on a rescue mission to find Ambrose's long-lost sister. They couldn't be more opposite, but the teenage boys will need to work together to survive – even if it means falling in love. "3, 2, 1...blastoff for mystery, adventure, and queer intergalactic bodice-ripping," says Kirkus Reviews.

10. 'The Chosen and the Beautiful'

By Nghi Vo (Tordotcom, fiction)

What if "The Great Gatsby," but sexy star golfer Jordan Baker is a queer Vietnamese adoptee? And there's magic? That's the irresistible hook of fantasy/sci-fi writer Vo's debut novel, which reinvents the Jazz Age classic. "The Gatsby-related details and hints of magic will keep readers spellbound from start to finish," says a starred review from Publishers Weekly.

NATION

Laura Snell was on staff at Circle C Ranch in the mid-2010s when, she says, Wayne Aarum inappropriately touched her. SEAN DOUGHERTY/USA TODAY

Continued from previous page

times campers, said Nicole Richard, 30, of Norfolk, Virginia, who worked at the ranch in the mid-2000s.

On one of Joe Ferrante's first days as a camp staffer at 15, he came upon female counselors betting on which new campers Aarum might pay special attention to, Ferrante said.

Ferrante, now 36 and living in Rush, New York, eventually became a full-time program director at the ranch and said he repeatedly witnessed physically intimate moments between Aarum and teenage girls, sometimes in deserted or secluded areas. He left his position at the ranch in 2011.

Ferrante would sometimes linger in those secluded locations, awkwardly making conversation, to ensure someone else was present.

"I would play this weird game of being bold and defending these girls, but doing it in a way that doesn't get you removed," he said. "If I got fired, who was going to stand in the gap?"

In 2009, Ferrante spoke to Aarum's father, Wes Aarum Sr., about his concerns.

"He told me, 'My son has a problem, he's an idiot, and he's going to ruin this camp if he doesn't stop,' " Ferrante said. "He said, 'I need you to make sure Wayne isn't touching girls or is alone with them.' In a sick way, I already felt like that was my responsibility."

Ferrante said he would speak to Wes Aarum Sr. about his son's habits eight or nine more times before leaving his position at Circle C. Wes Aarum Sr. died in March 2020.

"Everything I've read so far, every story on Facebook ... I don't doubt it," said Ferrante. "I've seen those same patterns. It went unchecked."

Claims reported over decades

Several women alleging abuse made themselves known to Aarum or his board over the years in hopes that confronting the issue head-on would change Aarum's behavior.

Jennifer Adema, now 42 and living in Salt Lake City, alleges she was inappropriately touched by Aarum on mission trips and at The Chapel in the 1990s.

She reported him at the time to pastors at The Chapel, who eventually met with him at least four separate times between 1997 and 1998 regarding his physical habits with teenage girls, according to excerpts from Aarum's personnel file at The Chapel, provided by email to the USA TODAY Network by Chapel leadership.

In 2012, Elle Campbell, a youth leader at The Chapel at the time, went to current Lead Pastor Jerry Gillis about a concerning incident between a youth group member and Aarum at Snow Camp. Gillis brought the matter to his Chapel colleague Wes Aarum Jr., Wayne Aarum's brother, who said he'd handle it from there, Gillis said.

Wayne Aarum maintains that there were no complaints about his interactions with youth group students during his tenure at The Chapel or in the decade afterward, he said in an April 28 email.

Adema confronted Aarum directly over a video call in 2020. Aarum was neither defensive nor apologetic, she said.

Her determination to bring to light what she calls her "Wayne story" propelled her through speaking with Aarum and to investigators and police and comforting other women who've been through similar experiences.

In the end, she doesn't control what happens to Aarum, she said.

"Vengeance is the Lord's," Adema said. "But I want justice."

Senators approve major tech research legislation

Bill aims to boost US in competition with China

Savannah Behrmann and Sarah Elbeshbishi
USA TODAY

WASHINGTON – An expansive bill aimed at reinvigorating America's technological footprint to counter China has passed the Senate and now heads to the House, where it faces a competing bill and somewhat murky future.

The legislation, called the Innovation and Competition Act, largely drew bipartisan support with the promise of bolstering America's competitive edge by investing billions of dollars in scientific and technological innovations – including artificial intelligence, computer chips and robotics.

It passed 68-32 Tuesday after some drama a few weeks ago of hours of behind-the-scene negotiations, a flurry of amendments and an all-nighter of negotiations. Senate leaders canned it until the lawmakers returned from their Memorial Day recess after a compromise could not be reached.

President Joe Biden praised passage of the bill making generational investments in American workers. "This legislation addresses key elements that were included in my American Jobs Plan, and I am encouraged by this bipartisan effort to advance those elements separately through this bill," Biden said in a statement. "It is long past time that we invest in American workers and American innovation."

Senate Majority Leader Chuck Schumer, D-N.Y., called the bill one of the most significant pieces of legislation passed in a long time and said it would have a huge impact on the American economy and jobs. "It's the largest investment in scientific research and technological innovation in generations," Schumer said. "It sets the United States on a path to lead the world in the industries of the future."

In April, U.S. intelligence officials cast China, the world's second-largest economy, as an "unparalleled" security threat, warning of Beijing's increasing efforts to suppress its regional adversaries and expand its military might while racing to achieve technological superiority across the globe.

The Senate's action highlights a rare bipartisan consensus in Congress that the U.S. needs a more coherent strategy to respond to China's rise as a global power.

The bill would boost funding for research and technology manufacturing to increase America's competitiveness, strengthen national security and grow the economy.

Sen. Todd Young, R-Ind., co-author of the legislation, singled out the bill's passage as a mark of unity.

"I'm proud the Senate voted to advance this bill to outcompete China and invest in the U.S.," Young said in a statement. "Let history record that, at this moment, we stood united."

Schumer said Tuesday that he has already spoken with House Speaker Nancy Pelosi, D-Calif., and expects to reach a compromise between the chambers to send to the president.

What the Senate bill does

The legislation, spearheaded by Schumer and Young, would pump more than $200 billion into U.S. scientific and technological innovation over the next five years. The bill, which began as the Endless Frontier Act, was expanded and renamed the U.S. Innovation and Competition Act by Schumer in May. He joked Tuesday that the "frontier" name made it sound like "covered wagon" legislation.

The broadened bill establishes a new directorate for technology and innovation at the National Science Foundation to ensure $100 billion is funneled to the development of artificial intelligences, semiconductors, robotics and high-performance computing.

The legislation also would provide $52 billion in assistance to semiconductor manufacturing companies to make computer chips, which have been in a global shortage since last summer. The shortage has affected manufacturers and automakers that use the chips in vehicles, cellphones and video game consoles.

Seventy-five percent of the world's chips come from Asia, according to a report in September 2020 from the Semiconductor Industry Association.

"It's the largest investment in scientific research and technological innovation in generations," Sen. Chuck Schumer says of the bill. GETTY IMAGES

The Senate's action highlights a rare bipartisan consensus in Congress that the U.S. needs a more coherent strategy to respond to China's rise as a global power.

"We've seen what happens when our automakers and manufacturers depend on semiconductors made overseas alone. COVID-19 exposed the weaknesses in our supply chains, both our medical supply chains and our manufacturing supply chains," said Sen. Debbie Stabenow, D-Mich., who sits on the Committee on Energy and Natural Resources, in a news conference.

The legislation also would shell out $81 billion in congressional spending to the National Science Foundation budget between fiscal years 2022 and 2026, revamping ongoing programs and starting the new directorate.

Rep. Ro Khanna, D-Calif., lead sponsor of the Endless Frontiers Act in the House, told USA TODAY investing in tech education is one of the most important aspects of the bill. Supporting the geographical spread of innovation will be "transformative," Khanna said.

Though the legislation has passed the Senate, it will have to compete against a similar bill in the House, where the legislation heads next.

The House has introduced another, similar piece of legislation: the NSF for the Future Act.

Both bills focus on expanding the National Science Foundation's budget to boost American innovation. The NSF for the Future Act is a smaller-scale, more narrowly focused bill that would double the NSF's budget over five years. It also includes a new directorate for science and engineering solutions.

Some have expressed concern with the Senate bill's heavy focus on China, and others want a piece of legislation that is more focused on applied science with a new tech directorate.

The chairwoman of the House Committee on Science, Space and Technology, Rep. Eddie Bernice Johnson, D-Texas, has hailed the NSF House legislation as a "solutions-driven approach."

"I believe the competitive and security threat from China is real. I also believe the solutions-driven approach we take in the NSF for the Future Act offers the nation a win-win science and innovation strategy. History teaches us that problem-solving can itself drive the innovation that in turn spawns new industries and achieves competitive advantage," Johnson said in a hearing on the NSF legislation.

Contributing: Deirdre Shesgreen

NATION+WORLD

Kim Jong Un warns of food shortages

Border closures hurting North Korean economy

Kim Tong-Hyung
Associated Press

SEOUL, South Korea – North Korean leader Kim Jong Un warned about possible food shortages and urged the country to brace for extended COVID-19 restrictions as he opened a major political conference to discuss national efforts to salvage a broken economy.

The North's official Korean Central News Agency also said Wednesday that Kim called for discussions on how the North should deal with the "current international situation," though it did not mention any specific comments from Kim about the United States or South Korea.


Kim

North Korea has ignored the allies' calls to resume nuclear negotiations that have stalled for two years after the collapse of Kim's ambitious summitry with former President Donald Trump. It was derailed by disagreements over exchanging relief from crippling U.S.-led sanctions with denuclearization steps by the North.

The North's economy has deteriorated amid pandemic border closures, which choked off trade with China, while devastating typhoons and floods last summer decimated crops.

Monitors assessing the situation in North Korea have yet to see signs of mass starvation or major instability, but some analysts say conditions could be aligning for a crisis that undercuts food and exchange markets and triggers public panic. The Korea Development Institute, a South Korean government think tank, said last month that the North could face food shortages of about 1 million tons this year.

During the plenary meeting of the ruling Workers' Party's Central Committee that opened Tuesday, Kim urged officials to find ways to boost agricultural production, saying the country's food situation "is now getting tense."

KCNA said Kim also "set forth the tasks for the state to maintain perfect anti-epidemic state" – suggesting North Korea would extend its pandemic lockdown despite the stress on its economy.

Though the report was short on specifics, the party meeting does provide more clues about how serious food and consumer goods shortages are becoming in North Korea, said Leif-Eric Easley, a professor of international studies at Ewha University in Seoul.

"Extended pandemic border restrictions are taking a toll on the economy as price and exchange rate indicators appear to be worsening," he said.

Experts widely doubt North Korea's claim that it has not had a single COVID-19 case, given its poor health infrastructure and porous border with China, its major ally and economic lifeline.

Kim had called for the party meeting to review national efforts to rebuild the economy in the first half of the year. While addressing "unfavorable" conditions and challenges on Tuesday, Kim also expressed appreciation over what he described as improvements, claiming that the country's industrial output rose 25% from last year, KCNA said.

The report said the Central Committee meeting will continue but did not specify until when.

North Korea held its first ruling party congress in five years in January, when it laid out development plans for the next five years. Kim urged the country to be resilient in its struggle for economic self-reliance. He also called for reasserting greater state control over the economy, boosting agricultural production and prioritizing the development of the chemical and metal industries.

Experts say those sectors are crucial to revitalizing industrial production that has been undercut by sanctions and the suspension of imports of factory materials amid the pandemic.


Farmers transplant rice at the Namsa Co-op Farm of Rangnang District in Pyongyang, North Korea. JON CHOL JIN/AP

Vaccines

Continued from Page 1A

rates tend to have more COVID-19 patients in intensive care units, according to hospital data collected in the past week by the Department of Health and Human Services and vaccination rates published by the Centers for Disease Control and Prevention.

Wyoming, Missouri, Arkansas and Idaho currently have the highest percentage of COVID-19 patients on average in their ICUs; those states all have vaccinated less than 40% of their population.

Medical centers say there's also an obvious change in the age of their sickest patients, as older people are much more likely to be vaccinated than younger.

"We're all seeing the same thing – when someone does get sick and comes to the hospital, they're much more likely to be young and unvaccinated," said Dr. Robert Wachter, professor and chair of the Department of Medicine at the University of California, San Francisco.

Cathy Bennett, president and CEO of the New Jersey Hospital Association, said the picture is the same in her state.

"As COVID vaccinations rolled out across New Jersey, there's been a major shift in the ages of patients admitted to the hospital," said Bennett. "Unlike last spring, when those 65 and older accounted for the majority of hospitalizations, we're now seeing more young people hospitalized with COVID."

In Ohio, Salata said the shift should be reassuring, showing the vaccines work.

"It sends a very strong message to the hesitancy people out there because the data speaks for itself," he said.

Doctors say there are multiple reasons people aren't yet vaccinated. There are the hesitant, who still have questions and sometimes fall prey to misinformation, and the opposed, who often harbor anti-government or anti-science sentiments.

"We've had a little success when we've spoken to them on a one-to-one basis. We can give them the information that they need to make their decision," said Dr. Gerald Maloney, chief medical officer for hospital services at Geisinger health network, which runs nine hospitals in Pennsylvania.

Some still can't easily access vaccine, either because it's not available nearby or because they can't get time off work.

And while the U.S. government paid for all vaccines and vaccinations so no one should be charged, others remain fearful they will be on the financial hook for a shot, Maloney said.

Last week, Health and Human Services secretary Secretary Xavier Becerra clarified in a letter that providers may not bill patients for COVID-19 vaccines.

There's still a lot of work to be done to create the trust necessary for these groups to embrace vaccination, Maloney said.

"The people who say, 'It's my body, my choice?' Well, it's not all about you," he said. "It's also about the people that you're around."

At this point, every vaccination is a win, one more person who can't pass the virus along. That's especially true in families where children can't be vaccinated and are still at risk.

At Akron Children's Hospital in Ohio, "we have not seen any kiddos who have been admitted to the hospital who have been vaccinated," said Dr. Michael Bigham, a pediatric intensivist in the critical care unit.

Among children 11 and younger, who can't yet get the vaccine, having vaccinated family members is keeping them out of the hospital, and protecting them against MIS-C, the multisystem inflammatory syndrome that can be a rare but dangerous aftereffect of a COVID-19 infection in children.

"Most of the kids we're seeing in the hospital with COVID or MIS-C had COVID in their household, maybe a parent or a grandparent, and most of those individuals had not been vaccinated," he said.

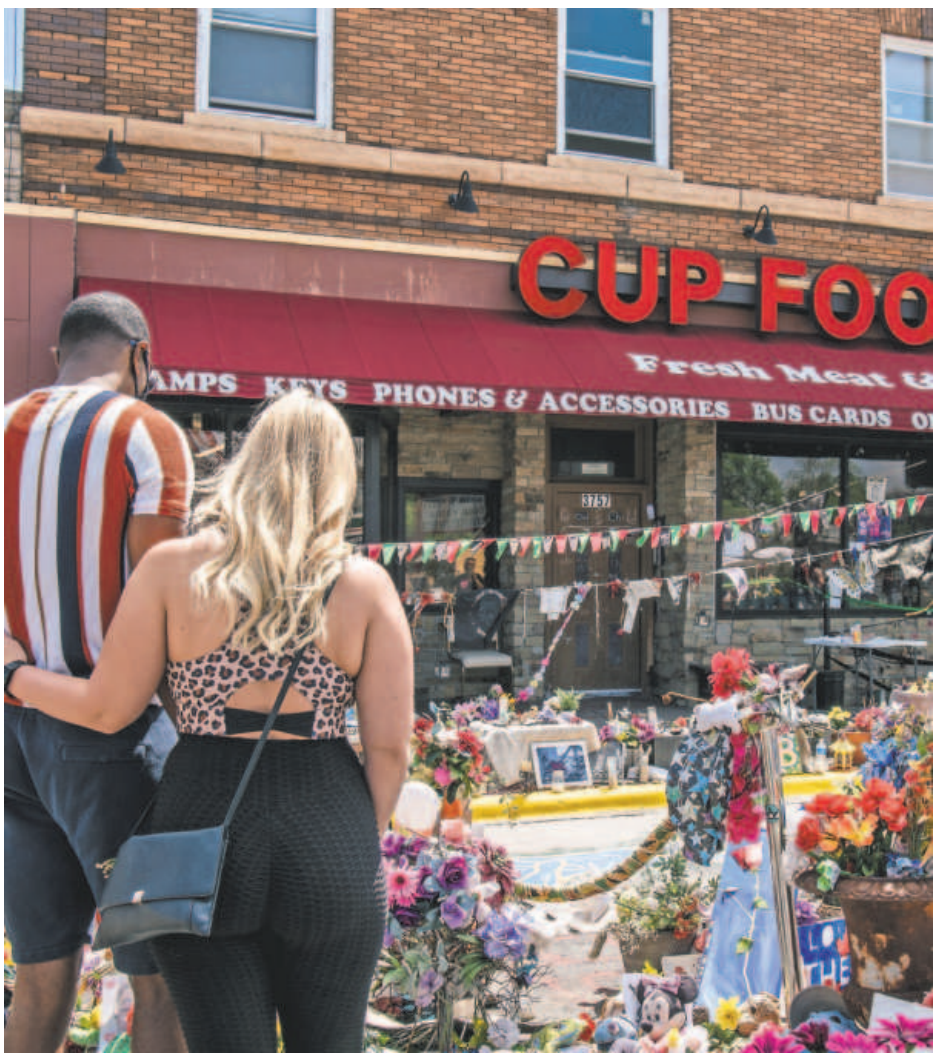
The message from health care workers is unanimous: They just aren't seeing many vaccinated people get sick.

In New Jersey, the percentage of COVID-19 hospitalizations among those ages 18 to 29 has increased 58% since the beginning of the year. By comparison, the percentage of COVID-19 hospitalizations among the 65 and older age group – with a statewide vaccination rate of more than 80% – declined by 31.2%.

The numbers are no coincidence, Bennett said.

"Vaccination," she said, "works in preventing severe COVID illness."

NATION



A couple pay their respects to George Floyd in Minneapolis on May 25, the one-year anniversary of Floyd's murder. BRANDON BELL/GETTY IMAGES

Chauvin

Continued from Page 1A

wide latitude in determining what sentence to impose" and both parties will try to convince the judge to "exercise his discretion in their favor," said Ted Sampsell-Jones, a professor at Mitchell Hamline School of Law.

Whatever the sentence, per Minnesota law, Chauvin will serve two-thirds of it behind bars and the remainder under supervised release similar to parole. Chauvin, 45, will get credit for time served in prison while awaiting sentencing.

Floyd, 46, was killed in May 2020 after officers responded to a report that he had used a counterfeit $20 bill. Floyd was handcuffed face-down on the street and repeatedly yelled, "I can't breathe" as Chauvin pressed a knee to his neck for more than nine minutes.

"One of the things a judge is looking for in considering a sentence is whether the person convicted takes responsibility for their actions and expressed remorse."

Mary Moriarty
Former public defender

Even after Floyd had no pulse, Chauvin remained in position until a paramedic waved him away so he could load Floyd onto a gurney. Floyd was never revived.

His death spurred a year of sometimes violent protests and a national reckoning around systemic racism and police brutality.

Three other officers involved in the incident face charges of aiding and abetting Floyd's murder; crimes that carry the same penalties. They are scheduled to be tried next year in Minnesota.

All four officers have been charged in federal court with violating Floyd's civil rights. Chauvin made his first court appearance in that case this month. The jury trial date is to be determined.

Chauvin faces a separate federal indictment for allegedly violating the rights of a 14-year-old boy by detaining him without justification in 2017 and placing his knee on the boy's neck for 17 minutes, causing the teen to pass out. The Justice Department is investigating the Minneapolis Police Department for alleged systemic violations of people's civil rights.

This month, the Minnesota Department of Human Rights filed a civil rights charge against the police department, launching a first-of-its-kind investigation to determine whether the department "engaged in systemic discriminatory practices" toward people of color over the past 10 years.

In a sentencing memo, Nelson said Chauvin was unaware that he was committing a crime and, in his mind, he was performing his lawful duty in assisting other officers in Floyd's arrest.

Nelson said Chauvin is in solitary confinement because he is likely to be targeted by other prisoners. He argued that Chauvin was the product of a "broken system" and that "behind the politics, Mr. Chauvin is still a human being."

Sampsell-Jones said that asking the judge to give Chauvin probation "is sort of absurd; everyone knows that's not going to happen" and that Chauvin's attorney risks losing credibility in negotiating less time for him.

"This is not his first serious offense against a civilian," said Nekima Levy Armstrong, a civil rights attorney and former president of the Minneapolis chapter of the NAACP. "He clearly abused his authority and was in the process of teaching rookies how to abuse their authority as well."

She said Chauvin deserves the maximum sentence for what she called a "modern-day lynching" caught on bystander video.

Friday, the court is to hear from Floyd's family and loved ones, who will provide victim impact statements to the judge. By law, they are not allowed to speak directly to Chauvin, said Mary Moriarty, the former chief public defender for Hennepin County.

Chauvin will have the opportunity to make a statement to the court. Legal observers do not expect him to speak because he wants to preserve any appeal. Chauvin remained stoic throughout the trial – even when he was found guilty.

"It's a difficult position because when people are convicted, they often want to maintain their innocence and prove their right to appeal," Moriarty said. "But one of the things a judge is looking for in considering a sentence is whether the person convicted takes responsibility for their actions and expressed remorse."

She said the defense missed a chance to show that Chauvin had "some insight and empathy for George Floyd."

Cahill could address Chauvin and his crimes directly – explaining why he believes whatever sentence is appropriate – for the first time in the case.

One Minnesota precedent the judge could compare to Chauvin's situation is the case of Mohamed Noor, a police officer who shot and killed Justine Ruszcyk. She reported an assault, then startled Noor when she approached his squad car in the dark. Noor shot and killed Ruszcyk. He was sentenced in June 2019 to 12½ years in prison after being found guilty of third-degree murder and manslaughter.

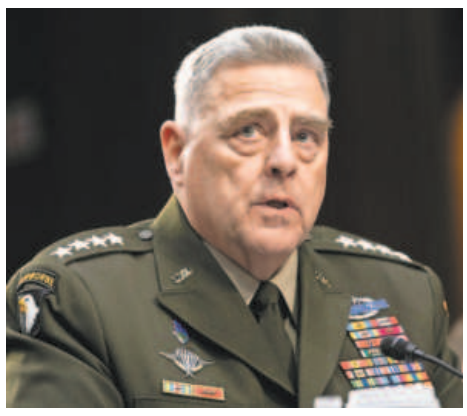
The first police officer convicted of killing someone in Minnesota is a Black man who had a white victim, noted Sarah Davis, executive director of the Legal Rights Center in Minneapolis. Chauvin is the second officer convicted of murder.

Nelson maintained throughout the trial that intense public interest tainted the jury pool and that the judge should have sequestered jurors or changed the venue. In a court filing, Nelson argued that those factors denied Chauvin a fair trial and asked that a new one be held elsewhere.

Rising rate of suicides alarms military officials

General describes 'big concern' to lawmakers

Tom Vanden Brook
USA TODAY



Army Gen. Mark Milley, on Capitol Hill last year, testifed Wednesday before the House Armed Services panel. AP

WASHINGTON – Army Gen. Mark Milley, the chairman of the Joint Chiefs of Staff, testified Wednesday that the pace of training and deployments has affected the rate of suicide among troops.

The demand for troops to train and serve combat tours overseas has remained high even as forces are withdrawing from the Middle East, Milley said. That's because the overall number of troops has remained stable or declined slightly in recent years, while infantry and special operations forces continually are called for hazardous duty.

In 2018, 326 active-duty troops died by suicide. That number increased to 348 in 2019 and 377 in 2020, according to Pentagon figures.

"It's a big concern," Milley said in testimony before the House Armed Services Committee. Operational tempo, Milley said, impacts troops in a variety of ways, including suicide.

Milley made his remarks in response to questions from Rep. Jackie Speier, D-Calif., who chairs the committee's panel on personnel issues. Speier cited the spike in suicides this year among soldiers in Alaska, a "heart-wrenching" problem Army officials acknowledged earlier this month. Out of fewer than 12,000 soldiers stationed in Alaska, at least six have died by suicide this year, according to the Army, a rate greatly outpacing civilian statistics.

One of those soldiers was a young woman who was sexually assaulted after coming out as a lesbian on Facebook, according to her mother. She died by suicide in May, days after an encounter with her alleged attacker who, despite a no-contact order, had been assigned to the same building for a training exercise.

Speier told Milley and Defense Secretary Lloyd Austin that she found the suicides in Alaska "deeply troubling" and called on them to stand up a commission to study the problem.

The wife of a soldier told Speier that the stress of her husband's service caused her to worry daily that she'd come home to find him hanging in the shower, she said.

The Army, alarmed in recent years about a cluster of suicides at Fort Wainwright in Fairbanks, Alaska, spent more than $200 million to improve barracks and other facilities, bolster counseling and improve the quality of life for soldiers stationed there.

Service members and veterans who are in crisis or having thoughts of suicide and those who know a service member or veteran in crisis can call the Military Crisis Line/Veterans Crisis Line for confidential support 24 hours a day, seven days a week, 365 days a year. Call 1-800-273-8255 and Press 1 or text 838255 or chat online at VeteransCrisisLine.net/Chat.