

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

MOLLY BECKER, SONJA BOLERJACK,  
FRANK GONZALEZ, VINCENT LEBRECHT,  
MARIA MCBAIN, VICTORIA RODGERS,  
PAMELA SMYTHE, and ROBIN WHITE,  
individually and on behalf of all  
others similarly situated,

Case No. 20PH-CV00569

Plaintiffs,

v.

MASSIMO ZANETTI BEVERAGE, USA, Inc.,  
a Delaware corporation, MOTHER PARKERS  
TEA & COFFEE USA, Ltd., a Texas limited  
partnership, and REILY FOODS COMPANY, a  
Delaware corporation,

Defendants.

**DECLARATION OF SCOTT A. KAMBER IN SUPPORT OF  
MOTION FOR APPROVAL OF ATTORNEYS' FEES, COSTS, AND  
CLASS REPRESENTATIVE INCENTIVE AWARDS**

I, Scott A. Kamber, hereby declare as follows:

1. I am an attorney licensed to practice before all state courts in Missouri, including this Court, and am the managing member of the law firm of KamberLaw. KamberLaw LLC is one of the firms that is Lead Class Counsel for Plaintiffs in the above-referenced action. I make this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Class Representative Incentive Awards.

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

3. This case arises out of Plaintiffs' allegations that Massimo Zanetti Beverage, USA, Inc., Mother Parkers Tea & Coffee USA, Ltd., and Reily Foods Company ("Defendants") deceptively and unlawfully packaged, marketed and labeled their ground coffee, sold under the following brand names: Bonus Blend, Flavor Peak, Food Lion, Great Value, Hannaford, Market Pantry and Signature Select ("Products"). Specifically, Plaintiffs allege that, contrary to Defendants' representation on the front label of the Products that they "make[] up to [a certain number of] cups", the Products contain nowhere enough ground coffee to make the represented number of cups when following the Brewing Instructions on the Products' label.

4. I am one of the primary litigators at KamberLaw, and am responsible for all litigation aspects of the firm's state and national class actions. My law firm has gained a reputation for being among the leading consumer class action firms in the nation. I believe it has gained this reputation due to the results obtained when myself and/or other lawyers of the Firm have served as Lead Counsel in class cases, and the contribution that we have collectively made in these areas.

5. I am one of the attorneys that is primarily responsible for representing Plaintiffs in this action. In addition to the support of highly experienced counsel at KamberLaw, this matter was also ably prosecuted by a team of esteemed litigators who are experienced in complex litigation. In addition to KamberLaw LLC, Lead Class Counsel in this matter includes the Law Office of L. DeWayne Layfield, PLLC and Steelman & Gaunt. In addition, Class Counsel also includes the Southern Atlantic Law Group, PLLC and the Law Office of Howard W. Rubenstein PA. Plaintiffs' Counsel further includes Milstein, Jackson, Fairchild & Wade LLP.

6. From the inception of this litigation, Class Counsel has aggressively prosecuted this case and vigorously represented the best interests of Plaintiffs and the Class, including by: investigating the facts, testing the Products at issue, conducting legal research, assembling and

drafting pleadings, coordinating activities amongst Plaintiffs' Counsel, communicating with counsel for Defendants, engaging in multiple mediation sessions, participating in dozens of telephone conferences with counsel for Defendants, and crafting a fair, adequate, and reasonable settlement for the Class. I and KamberLaw attorneys and staff have devoted a considerable amount of time, effort and resources to investigating and prosecuting Plaintiffs' and the Class's claims.

7. Class Counsel commenced work on this case by conducting a thorough and rigorous pre-litigation investigation, including with respect to the label representations on the Products and the amount of ground coffee contained in the Products. Once litigation was filed, Counsel vigorously prosecuted this case, including by drafting pleadings, engaging in informal discovery, reviewing documents, negotiating with defense counsel, mediating the case in multiple sessions, and ultimately, crafting and papering the resolution of this case.

8. This litigation required considerable skill and experience to result in such a successful conclusion. The case required investigation and a mastery of complex factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. In addition, Defendants are represented by the prominent and well-respected law firm of Baker Botts L.L.P. This class action case against Defendants required advance planning, strategic skills, imagination, resourcefulness, and management abilities of the highest order to match a highly qualified, experienced and formidable opposition. The prosecution and settlement of this litigation required a very high degree of competence, experience and ability by Class Counsel.

9. During in-person mediation sessions (held via zoom), the parties candidly expressed the strengths and weaknesses of their positions in a full and professional process spearheaded by the Hon. Wayne Andersen (Ret.). Although an agreement was not reached on the

first day of mediation, the parties, with the continued assistance of the Hon. Judge Andersen, were able to negotiate a Settlement that provides meaningful cash compensation to Settlement Class Members, as well as programmatic relief, and avoids the risks and delay of further litigation. This process of independent and curated negotiation sessions took a significant investment of time and effort over the course of several weeks. I believe that the substantive work accomplished by Class Counsel and their collective trial experience created a credible threat of success in ongoing litigation, which was critical to obtaining a Settlement of such a high caliber.

10. After multiple mediation sessions, the parties negotiated with one another to flesh out the settlement framework and the details of its proposed implementation. The parties continued to negotiate and exchange information regarding settlement details, including by examining potential approaches to injunctive relief. This process included detailed negotiations of every aspect of the notice program, as there was great tension between the needs of Class Counsel to present a notice program that satisfied all due process requirements and ensured the best practicable notice to the Class, and the desire of Defendants for the notice program to be sensitive to their brand integrity. Throughout this process the parties sought and obtained the continued assistance of the mediator.

11. Plaintiffs' intense pre-suit investigation, the experience of Class Counsel, as well as Plaintiffs' effective litigation strategy, has made settlement possible. The Settlement result was achieved after numerous telephone calls, meetings, arms' length negotiations, multiple mediation sessions with Hon. Wayne Andersen (Ret.), exchange of confidential business and technical information, and an open dialogue. The parties worked diligently to understand the underlying business facts in a completely transparent process. After disclosure of the facts, it was clear that the most appropriate relief included both monetary and programmatic relief.

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

- Defendants will provide Programmatic Relief through the removal of the Challenged Language from the labels of the Products; and
- Defendants have agreed to a two-tiered structure to provide monetary relief to Class Members, under which Defendants will provide cash benefits to Settlement Class Members who timely file Claims by the Claims Deadline and who provide either Proofs of Claim or a valid claim form to the Settlement Administrator. Defendants will compensate consumers for their purchases pursuant to the two-tier structure set forth in the Settlement Agreement.

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

14. Throughout the mediation and negotiation efforts, and in advising our clients of the proposed settlement, Class Counsel and I have at all times considered the fairness, reasonableness and adequacy of the settlement for the Class, taking into account: the strength of Plaintiffs' case; the risk, expense complexity and likely duration of any further litigation; the risk of certifying a

class and maintaining class action status through trial; the amount offered in settlement; and the experience and views of Plaintiffs' Counsel. Against the backdrop of counsel's collective experience in prosecuting complex class actions, we have considered the claims set forth in the Complaint and our continued confidence in the merit of those claims, the scope of relief offered in the settlement compared to the potential relief at the conclusion of litigation, and the risks and costs of continued litigation. Taking these factors into account, it is my opinion that the proposed settlement is fair, reasonable and adequate, well within the range of possible approval, and therefore deserving of the Court's Final Approval.

15. KamberLaw and Class Counsel have diligently investigated and prosecuted this matter, dedicating substantial time, effort, resources, and expertise to the investigation of the claims at issue in the action, and have successfully negotiated the settlement of this matter to the benefit of the Class.

16. The Settlement was not arrived at until after Class Counsel had (1) conducted an extensive and comprehensive pre-suit investigation relating to the events and transactions underlying Plaintiffs' claims prior to filing the Original Complaint; (2) thoroughly researched the law and facts pertinent to Plaintiffs' claims and the defenses raised by Defendants, and assessed the risks of prevailing on each of the respective claims on pre-trial motions and at trial; (3) engaged in informal discovery; and (4) exchanged, reviewed, and analyzed confidential business information.

17. Class Counsel applies for a fee and expense award of \$4,700,000. This amount represents 23.5% of the total \$20 million value of the Settlement Fund, exclusive of interest accumulated, and was the amount set forth in the Notice.

18. Class Counsel also applies for an incentive award of \$3,000 for each of nine Plaintiffs and Class Representatives, not to exceed an aggregate amount of \$27,000. The proposed incentive compensation that is payable to the Plaintiffs is in line with compensation awarded by courts in other class actions and is common in the Circuit Court of Phelps County, Missouri.

19. I believe that the requested fee award and class representative incentive awards are reasonable in relation to the substantial results achieved for the Settlement Class Members and the efforts of counsel. Further, such an award is supported by the benchmarks for fee awards, costs and expenses in this Court and in the State of Missouri.

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

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

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

23. For all of the foregoing reasons, Class Counsel respectfully requests that this Court approve the Settlement, approve the Fee Application, award class counsel \$4,700,000 in fees and expenses, and award the Plaintiffs and Class Representatives incentive awards in an aggregate amount of \$27,000.

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

Executed this 19th day of October, 2020  
Avon, Colorado.



Scott A. Kamber