

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

TONY LUIB, on behalf of himself and all
others similarly situated,

Plaintiffs,

v.

HENKEL CONSUMER GOODS, INC.,

Defendant.

No. 1:17-cv-03021-BMC

**DECLARATION OF
MICHAEL R. REESE IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
MOTION FOR PAYMENT OF CLASS
COUNSEL'S FEES, EXPENSES AND
PAYMENT OF INCENTIVE AWARD TO
THE CLASS REPRESENTATIVE**

I, Michael R. Reese, pursuant to 28 U.S.C. § 1746, hereby 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 in both federal and state courts throughout the United States. I am an experienced class action attorney, having litigated class actions since 2000. I also teach as an adjunct professor at Brooklyn Law School where I have taught since 2014. At Brooklyn Law School I teach courses entitled “The Law of Class Actions and Other Aggregate Litigation” and “Food Law”. I am a frequent lecturer and author on class actions, with recent publications appearing in the *Union International des Advocats’ Juriste International* and The American Bar Association’s *General Practitioner*. I am an executive committee member of the Class Action Roundtable, where I have presented annually on matters related to class actions. I am also the head chairperson of the Cambridge Forum Food Law conference, which focuses on food fraud. I also co-host an annual food law conference that involves all-stake holders in food law and policy, with the fourth annual conference having been held on June 6-7, 2019 at the University of California, Los Angeles (“UCLA”) School of Law and co-hosted by UCLA Food Law and Policy Professor Michael Roberts. During my career, I have been appointed as class counsel in numerous cases throughout the United States, including several in the Eastern District of New York. Prior to entering private practice, I was a prosecutor at the New York County District Attorney’s Office, where I prosecuted violent felony and white collar crime. I am a member in good standing of the state bar of New York, the state bar of California, the as well as numerous federal district and appellate courts. I am one of the court-appointed Class Counsel¹ in the above-captioned action.

2. I respectfully submit this declaration in support of the motion by class representative Tony Luib for Final Approval of the Class Action Settlement and the

accompanying motion for payment of Class Counsel's fees; expenses and payment of an incentive award to the Class Representative. Except as otherwise noted, the facts set forth in this declaration are based in part upon my personal knowledge, and I would competently testify to them if called upon to do so.

3. Class Counsel have been responsible for the prosecution of this Action and for the negotiation of the Settlement Agreement. We have vigorously represented the interests of the Settlement Class Members throughout the course of the litigation and settlement negotiations.

4. This Action arises out of Plaintiff's allegations that the "Natural Elements" statements on the labeling, marketing, and advertising of Defendant Henkel Consumer Goods Inc.'s ("Defendant") Purex Natural Elements laundry detergent Products are misleading because the Products include synthetic ingredients.

I. Background of Litigation and Settlement Negotiations

5. On May 19, 2017, Plaintiff filed a complaint on behalf of himself and a proposed class against Defendant (the "Complaint") challenging the "Natural Elements" representation on the labeling, marketing, and advertising of Defendant's Products because the Products include synthetic ingredients. *See* ECF No. 1 at ¶¶ 1-2. Plaintiff alleged the following causes of action: (1) violation of New York General Business Law ("GBL") Section 349; (2) violation of GBL Section 350; (3) violation of the consumer protection laws of 41 other states; (4) breach of express warranty in violation of the laws of all 50 states; (5) breach of implied warranty of merchantability; and (6) breach of implied warranty of fitness for a particular purpose.

6. Prior to filing its Complaint, Class Counsel conducted a thorough investigation of potential claims, ingredients, manufacturing processes, and the regulatory framework surrounding the Products at issue. This included examining the different ingredients and

chemicals in Defendant's Products from publicly-available sources.

7. On August 18, 2017, Defendant filed a letter requesting a pre-motion conference with the Court regarding its planned motion to dismiss the Complaint. *See* ECF No. 22. By minute order entered August 18, 2017, the Court deemed Defendant's letter to be its motion to dismiss. On August 29, 2017, Plaintiff filed his letter opposing the motion. *See* ECF No. 23.

8. At a hearing held on September 13, 2017, the Court *sua sponte* converted Defendant's motion to one for summary judgment and offered Defendant the opportunity to submit factual evidence regarding the composition of the Products to demonstrate the basis for the "Natural Elements" claim. The Court also permitted Plaintiff to request summary judgment in his favor in his opposition to Defendant's motion. *See* Minute Entry and Order entered September 14, 2017.

9. On October 11, 2017, Defendant filed its Converted Motion for Summary Judgment. *See* ECF No. 27. On November 30, 2017, Plaintiff filed his opposition to the Motion for Summary Judgment and requested summary judgment in his favor. *See* ECF No. 37. On February 5, 2018, the Court denied summary judgment for both Parties, finding that the question of whether a reasonable person would be misled by the Products' "Natural Elements" claim depended on genuine issues of material fact that would have to be resolved by a jury. *See* ECF No. 40 (the "Summary Judgment Order"). On March 16, 2018, Defendant answered the Complaint. *See* ECF No. 43.

10. On June 13, 2018, the Parties participated in a full day mediation before the Honorable Stephen M. Orlofsky (Ret.). The mediation did not lead to a settlement.

11. Following the mediation, the Parties continued to engage in substantial discovery, including serving and responding to requests for documents, interrogatories, and requests for

admission. Defendant produced more than 43,000 pages of documents in response to Plaintiff's discovery requests.

12. As discovery progressed, the Parties continued to negotiate a potential settlement, informed by facts exchanged in discovery. On December 18, 2018, Class Counsel and Defendant's Counsel negotiated a term sheet setting out the basic outline of a settlement agreement providing for both monetary and injunctive relief for Plaintiff and the putative class, and a broad release for Defendant. Thereafter, the Parties began drafting and negotiating the precise terms of the Settlement Agreement. These negotiations spanned numerous phone calls and correspondence, and were lengthy, detailed, arm's-length, and covered all aspects of the settlement. After more than six months of hard-fought negotiations, the Parties finally resolved all outstanding issues and executed the Settlement Agreement on February 28, 2019. *See* ECF No. 54-3.

13. Before entering into this Settlement Agreement, Class Counsel conducted an extensive and thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the claims, potential claims, and potential defenses asserted in this Action. As part of that investigation, Class Counsel obtained documents and other information from Defendant through confidential, informal, and formal discovery, including information concerning marketing, label design, product formulation, sales, pricing, profit-and-loss information for the Products, information regarding Defendant's sales to grocery stores and other retailers, and regulatory submissions.

14. The overarching terms of the Settlement Agreement were resolved prior to the discussion of any attorneys' fees. The negotiations over the Settlement Agreement were conducted by Class Counsel who are well versed in complex class action litigation as well as

cases involving misrepresentations concerning the term “natural” as applied to consumer products. True and correct copies of the firm resumes of Class Counsel, Reese LLP, The Sultzer Law Group, P.C. and Halunen Law were previously submitted to this Court as exhibits to the March 1, 2019 Declaration of Michael R. Reese in Support of Motion for Preliminary Approval (ECF No. 54-2), and are incorporated here by references.

15. The Settlement is an excellent result for the Settlement Class, as it provides the comprehensive relief Plaintiffs sought in their Complaint. Specifically, the Settlement provides that Defendant shall reimburse consumers for their purchases of the Products.

16. The Settlement also provides injunctive relief. This injunctive relief provides a significant benefit both for the Settlement Class members and future consumers.

17. Defendant has denied, and continues to deny, that the marketing, advertising, and/or labeling of the Products at issue are in any way false, deceptive, or misleading to consumers or otherwise violate any legal requirement.

18. The Class Representative and Class Counsel believe the claims are strong and are optimistic about obtaining class certification and succeeding on the merits. However, significant expense and risk attend the continued prosecution of the claims through trial and any appeals. In negotiating and evaluating the Settlement, Plaintiff and Class Counsel have taken these costs and uncertainties into account, as well as the risks and delays inherent in complex class action litigation. Additionally, in the process of investigating and litigating the action, Class Counsel 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. In light of the foregoing, Class Counsel believe the Settlement preliminary approved by the Court provides significant relief to

Settlement Class Members and is fair, reasonable, adequate, and in the best interests of the Settlement Class.

19. All complex class actions are uncertain in terms of ultimate outcome, difficulties of proof, and duration, and this Action is no different, where litigating the case to a successful judgment providing classwide relief will require that Plaintiff, *inter alia*, prevail in his motion to certify a class; potentially defend against another summary judgment motion; and, ultimately obtain a class judgment following trial. This process, as with any class action litigation, will be fraught with risks at every stage, and at the end of the day, while Plaintiff believes a reasonable consumer would find the challenged claims on the Product's labeling to be misleading, a jury might not agree. Litigation would also incur immense costs and expenses that ultimately would likely be assessed against any recovery by the Class, and may not result in any tangible recovery for years, especially if any appeal(s) were taken.

20. Even if Plaintiff ultimately succeeds in proving liability, there are additional risks in calculating damages on a classwide basis. Plaintiff asserts that they and the other members of the Settlement Class paid a price premium over and above what they otherwise would have paid for the Products based on Defendant's representations. Defendant vigorously contests this. Plaintiff believe that he could demonstrate the existence of such a price premium and could calculate classwide damages accordingly. However, further litigation presents no guarantee for recovery, let alone a recovery greater than that provided by the Settlement. The Parties would likely spend significant time and resources on damage calculations, including through expert discovery producing competing damage analyses. These and other risks, when weighed against the significant benefits of the Settlement to the Settlement Class, the Plaintiff and Class Counsel to conclude that resolving the litigation under the terms of the Settlement Agreement is clearly in

the best interests of Plaintiff and the Settlement Class.

21. As stated above, Class Counsel have expended significant time and effort in pursuing this litigation. Class Counsel has litigated this matter entirely on contingency, and has not been paid anything for its efforts to date. As of the date of this filing, July 8, 2019, Class Counsel have the following lodestar and costs in the matter:

FIRM	LODESTAR	COSTS
REESE LLP	\$284,331.25	\$3,000.79
THE SULTZER LAW GROUP	\$198,613.50	\$4,480.00
HALUNEN LAW	\$57,605.40	\$3,380.42
TOTAL	\$540,550.15	\$10,861.21

22. A copy of Reese LLP time and expense is attached hereto as Exhibit 1. Time and expense records for The Sultzer Law Group and Halunen Law are attached to the Declaration of Jason P. Sultzer and Amy E. Boyle Declaration, respectively.

23. The hourly rates in the time records are reflectively of the hourly rates charged by my firm in similar class actions that were granted final approval and are reflectively of the hourly rates charged in the New York.

24. The Court appointed Class Representative Tony Luib, was extensively involved in litigating this action, including by reviewing the Complaint and other case documents, communicating extensively with Class Counsel regarding the status of the case, providing responses to discovery, and submitting evidence during the summary judgment phase of the action.

25. Plaintiff hereby informs the Court that no other agreements have been made in connection with the proposed Settlement apart from those identified in this motion and the Settlement Agreement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 9, 2019

REESE LLP

/s/Michael R. Reese

Michael R. Reese (State Bar No. 206773)

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Co-Lead Class Counsel

EXHIBIT 1

LUIB v. HENKEL CONSUMER GOODS, INC. ("PUREX")

REESE LLP LODESTAR

<u>Attorney</u>	<u>Position</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Lodestar</u>
Michael R. Reese	partner	301.25	\$875	\$263,593.75
George V. Granade	partner	27.65	\$750	\$20,737.50
TOTAL				\$284,331.25

REESE LLP COSTS

Filing Fee:	\$400.00
Mediator's invoice:	\$2,600.79
TOTAL:	\$3,000.79