

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

LASHAWN SHARPE, JIM CASTORO  
and STEVE DAILEY, individually and on  
behalf of all others similarly situated,

Plaintiffs,

-against-

A & W CONCENTRATE COMPANY and  
KEURIG DR PEPPER,

Defendants.

Case No.: 1:19-cv-00768-BMC

**DECLARATION OF SPENCER SHEEHAN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT  
AND MOTION FOR PAYMENT OF ATTORNEY FEES AND REIMBURSEMENT OF  
CLASS COUNSEL'S EXPENSES TO CLASS COUNSEL AND PAYMENT OF  
SERVICES AWARDS TO THE CLASS REPRESENTATIVES**

I, Spencer Sheehan, pursuant to 28 U.S.C. §1746 and under penalty of perjury, hereby declare as follows:

1. I am the founder and managing partner at Sheehan & Associates, P.C., which is one of the court-appointed Class Counsel in this matter. I am a member in good standing of the bar of the United States District Court for the Eastern District of New York and numerous other federal district and appellate courts, as well as the state bars of New York and Illinois.<sup>1</sup>

2. I respectfully submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement; Plaintiffs' Motion for Payment of Attorney Fees and Reimbursement of Expenses to Class Counsel and Payment of Service Awards to the Class Representatives. 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. Along with Reese LLP, my firm and I are court appointed Class Counsel in this litigation. My firm and I have extensive class action experience, particularly with respect to food labeling and food flavoring. For example, my firm and I have been appointed as class counsel in *Vizcarra v. Unilever United States, Inc.*, 4:20-cv-02777-YGR (N.D. Cal.) and *Cicciarella v. Califia Farms, LLC*, 7:19-cv-08785-CS (S.D.N.Y.) – cases that involve consumer deception regarding the source of vanilla flavoring in food products. A copy of my firm's resume is attached hereto as Exhibit 1.

4. I have been personally involved in all aspects of my firm's work in this litigation. My firm and I led the extensive investigation and research that resulted in this action being filed. We found and consulted with experts in the field of vanilla flavoring and the testing of vanilla

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Settlement Agreement, which is attached hereto.

flavoring in food products, both as part of the initial investigation that resulted in the initial complaint being filed, as well as throughout this litigation that the Defendants hotly contested throughout the pendency of this case. We also were involved in the considerable discovery in this action, both with respect to non-expert and expert discovery.

5. My firm and I have vigorously represented the interests of the Settlement Class Members throughout the course of the litigation and settlement process.

6. 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. We have achieved significant monetary results on behalf of the Class. Additionally, during the pendency of this litigation, Defendants removed the “Made With Aged Vanilla” claim that was contested as being deceptive.

7. The schedule below is a summary of the amount of time spent by the attorneys and staff of Sheehan & Associates, P.C. who were involved in this litigation, and the lodestar calculation based on my firm’s current billing rates. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request:

**SHEEHAN & ASSOCIATES, P.C. LODESTAR**

**TIME REPORT — Inception through August 17, 2023**

Name/Position	Position	Total Hours	Hourly Rate	Total Lodestar
Spencer Sheehan	Partner	203.3	\$950	\$193,144.50
<b>TOTAL LODESTAR</b>		203.3	\$950	\$193,144.50

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

Executed on August 17, 2023 in Great Neck, New York.

/s/ Spencer Sheehan  
Spencer Sheehan

# EXHIBIT 1

Sheehan & Associates, P.C. Firm Resume

Spencer Sheehan

Spencer's practice focuses on representation of consumers 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.

Notable actions include *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 and Mr. Sheehan was appointed co-lead counsel ("Rhapsody Subscriber Litigation Settlement").

In December 2016, he began focusing exclusively on consumer advertising issues. For instance, he was one of 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 *Alamilla v. Hain Celestial* (N.D. Cal., 2013) and *Campbell v. Freshbev LLC*, 322 F. Supp. 3d 330, 342 (E.D.N.Y. 2018) 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.

He 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, 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 and the presence of carrageenan.

He was appointed co-lead counsel with Reese LLP in *Vizcarra v. Unilever United States, Inc.* 4:20-cv-02777, N.D. Cal., in February 2023. The Court certified a class of purchasers of Breyer's Natural Vanilla Ice Cream where it was alleged the ice cream's vanilla flavor was from non-vanilla plant sources.

He was appointed co-lead counsel with Reese LLP in *Sharpe et al. v. A & W Concentrate Co. et al.*, 1:19-cv-00768, E.D.N.Y., in summer 2021. The Court certified a class of purchasers of A & W Root Beer and Cream Soda marketed as "Made With Aged Vanilla," where it was alleged the amount of vanilla was de minimis or non-existent and that any vanilla flavoring was provided by the synthetic ingredient of ethyl vanillin. In June 2023, that court granted preliminary approval of a settlement of \$15 million.

He played a significant role in *Marek et al. v. Molson Coors Beverage Company et al*, 3:21-cv-07174, N.D. Cal., in February 2023, where Gutride Safier LLP was appointed as lead counsel. That court certified a class of purchasers of Vizzy hard seltzer promoted as containing antioxidants including vitamin C, where it was alleged this labeling and marketing was misleading to consumers and unlawful. The court granted preliminary approval of a settlement of \$9.5 million. Mr. Sheehan filed *Williams v. Molson Coors Beverage Company*, 3:21-cv-50207, N.D. Ill., prior to *Marek*, and *Eyzaguirre v. Molson Coors Beverage Company USA*, 0:22-cv-

60889, S.D. Fl., with the Law Office of Will Wright. The *Williams* and *Eyzaguirre* actions were essentially consolidated with *Marek* following stipulations of dismissals and their subsequent joinder in *Marek*.

He was appointed to the executive committee along with the law firm Held & Hines LLP, in *Chung v. Illuminate Education, Inc.*, 8:22-cv-01547, C.D. Cal. in September 2022. That defendant is alleged to have negligently failed to safeguard the confidential information of millions of students. The litigation is ongoing.

Spencer's pro bono work includes representing people with exotic or non-traditional animal companions. This includes representing 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. He volunteers locally in the rescue of animals, including but not limited to cats, even though he does not have any pets.

He 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). He obtained a Juris Doctorate from Fordham University School of Law (2010). He also was a member of the United States Marine Corps as a Reservist.

#### Angele Aaron

Angele is one of the first associate attorneys of Sheehan and Associates, P.C. with a long history in real estate, civil litigation, and employment law. She has spent the last two decades handling residential and commercial real estate closings in Great Neck, New York. While admitted in New York since 1995, Angele's education stems from her time in England. Angele graduated from the University of Westminster with a Bachelor of Law Degree and received a Master of Law Degree from the University College of London in International Law.

#### Mitchell Domovsky

Mitchell started as a paralegal of Sheehan and Associates, P.C., but since then he has become a member of the New York Bar. He has a background in matters of criminal justice, evidence, and discovery. Mitchell graduated from Hunter College with a Bachelor of Arts and received his Juris Doctorate from Brooklyn Law School.

#### Kinga Fenikowska

Kinga is an associate attorney of Sheehan and Associates, P.C. She has a background in trademark, copyright, media, and space law, as well as experience in assisting homeowners facing mortgage foreclosure issues. Kinga is a member of the New York State Bar, New York City Bar, and Nassau County Bar. She graduated from the University of California, Berkeley with a Bachelor of Arts and received her Juris Doctorate from Penn State Law, University Park.

Theodore Hillebrand

Theodore is an associate attorney of Sheehan and Associates, P.C. with a background in financial litigation and personal injury. Under the guidance of Mr. Sheehan, Theodore has worked on numerous actions and has developed an expertise on arbitration matters. Theodore is a member of the New York Bar and is admitted to practice before the United States District Courts for the Eastern, Southern, and Northern Districts of New York. Theodore graduated from Queens College with a Bachelor of Arts and received his Juris Doctorate from Hofstra University.

Katherine Lalor

Katherine is an associate attorney of Sheehan and Associates, P.C. who has had years of experience in foreclosure, trust and estates, and no-fault insurance law. Katherine has had a few publications in law journals during her time assisting homeowners facing foreclosure and has since then been focusing on assisting consumers facing misleading advertising. Katherine is a member of the New York Bar and Nassau County Bar. Katherine graduated from St. John's University with a Bachelor of Science and received her Juris Doctorate from Touro Law Center.