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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JAMIE PETTIT, on behalf of herself, the general  
public and those similarly situated,

Plaintiff,

v.

THE PROCTER & GAMBLE COMPANY,  
Defendant.

CASE NO. 3:15-cv-2150 RS

**DECLARATION OF ADAM GUTRIDE IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: December 6, 2018  
Time: 1:30 p.m.  
Courtroom 3, 17<sup>th</sup> Floor  
Judge: Hon. Richard Seeborg

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I, Adam Gutride, declare that:

1. I am an attorney licensed to practice law in the State of California and in this Court, and am counsel of record for Plaintiff and the proposed Settlement Class in the above-captioned matter. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. Unless otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

2. After more than three years of hard-fought litigation, an all-day mediation, and further settlement negotiations, the parties entered into a Settlement Agreement<sup>1</sup> in this matter, a true and correct copy of which is attached hereto as Exhibit 1 including all exhibits. Plaintiff Pettit is now joined by fifteen additional proposed Plaintiffs, including Plaintiffs Karla Ramcharitar, Gloria Wiltrakis, and Cheryl Senko, who had filed a class action complaint against Defendant The Procter & Gamble Company (“P&G”) in the United States District Court, Southern District of Ohio, Case No. 1:15-cv-00457-MRB (“Ramcharitar Plaintiffs”).

3. The firm resumés of Pettit’s counsel—Gutride Safier LLP, Spangenberg Shibley Liber LLP, and Tycko & Zavareei LLP—were submitted as part of the class certification briefing this Court reviewed in certifying a California class. (*See* Dkt. Nos. 56-21, 56-22, 56-23.) As can be seen from these resumés, Class Counsel have substantial experience in the litigation, certification, and settlement of class action cases. Based on my experience, P&G’s counsel are also highly experienced in this type of litigation. It is thus my considered opinion that counsel for each side have fully evaluated the strengths, weaknesses, and equities of the parties’ respective positions and believe that the proposed settlement fairly resolves their respective differences.

4. This Litigation involved sharply opposed positions on several fundamental legal

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<sup>1</sup> The capitalized terms used herein are defined in and have the same meaning as used in the Settlement Agreement unless otherwise stated.

1 and factual issues. The parties engaged in extensive, highly adversarial discovery, including  
2 numerous fact and expert depositions, production of over 112,000 pages of documents, exchange  
3 of interrogatories, and third-party discovery. Moreover, because there have been several flushable  
4 wipes cases filed against manufacturers, including against P&G and others, the parties had the  
5 benefit of deposition transcripts, briefings, and other materials generated by those cases. The  
6 record was thus sufficiently developed that the parties were fully informed as to the viability of  
7 the claims and able to adequately evaluate the strengths and weaknesses of their respective  
8 positions and risks to both sides if the case did not settle.

9           5.       Class Counsel has already spent in excess of 2,800 hours working on this  
10 litigation, resulting in a lodestar that is greater than the amount Plaintiffs will seek in attorneys'  
11 fees. Class Counsel has additionally incurred over \$250,000 in expenses for which it has not yet  
12 sought reimbursement.

13           6.       The settlement in this case is the product of arms-length negotiations between  
14 experienced attorneys who are familiar with class action litigation and with the legal and factual  
15 issues in this litigation. The parties had been discussing settlement since 2016, when they  
16 discussed settlement with the parties involved in a matter before Judge Weinstein in the Eastern  
17 District of New York, *Belfiore v. Procter & Gamble*. Those talks culminated in an in- person  
18 mediation in December 2016 before Magistrate Judge Robert M. Levy, which not successful.  
19 Eventually Class Counsel, P&G, and P&G's counsel participated in an all-day mediation on April  
20 17, 2018 in Chicago conducted by Robert A. Meyer of JAMS, a well- respected and experienced  
21 mediator. The parties did not negotiate about attorneys' fees or expenses until they had reached  
22 agreement on all other material terms of the settlement, including the class benefit and notice.

23           7.       Plaintiff Pettit and the Ramcharitar Plaintiffs maintain that their claims are  
24 meritorious and that they would establish liability and recover substantial damages if the case  
25 proceeded to trial. The Ramcharitar Plaintiffs maintain that they will be able to certify classes,  
26 and all Plaintiffs believe that the certified classes would be affirmed on appeal. But their ultimate  
27 success would require them to prevail, in whole or in part, at all of these junctures and even then,  
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1 would not provide the nationwide (excluding New York) relief afforded under the Settlement  
2 Agreement. Conversely, P&G’s success at any one of these junctures could or would have spelled  
3 defeat for Pettit and the California class, or the Ramcharitar Plaintiffs and the classes they seek to  
4 represent. Indeed, P&G has consistently and vigorously denied Plaintiffs’ allegations and  
5 maintains that the Product performs as advertised.<sup>2</sup> Thus, continued litigation posed significant  
6 risks and countless uncertainties, as well as the time, expense and delays associated with trial and  
7 appellate proceedings.

8           8.       On the basis of my investigation into this case and experience with and knowledge  
9 of the law and procedure governing the claims of Plaintiffs and the Settlement Class, it is my  
10 belief that it is in the best interests of the Settlement Class to enter into this settlement. Indeed, in  
11 light of the risks, uncertainties, and delays associated with continued litigation, the Settlement  
12 represents a significant achievement by providing guaranteed benefits to Settlement Class  
13 Members in the form of changed practices and direct cash compensation.

14           9.       With this settlement, Plaintiffs achieved their desired goal in this litigation—i.e.,  
15 obtaining cash refunds for class members and changed practices. The recovery provided by the  
16 Settlement—changed practices and a refund to Settlement Class Members of sixty cents (\$0.60)  
17 per Product purchase, with payment of up to \$4.20 without Proof of Purchase and up to \$30.00  
18 with Proof of Purchase —is considerably better than the anticipated per-purchase recovery in the  
19 event of trial.

20           10.      At trial, Pettit might, in the best-case scenario, obtain a 100% refund of the price  
21 “premium” charged by P&G for each Product, calculated as the difference between the retail  
22 price of the Product with and without the “flushable” representation. Pettit’s expert economist  
23 Colin Weir submitted a declaration in support of class certification opining that the price  
24 premium was 9.19 percent. *See* Dkt. No. 109-1 (calculating price premium and total alleged  
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26 <sup>2</sup>       “Product” is defined to mean Charmin Freshmates Flushable Wipes and any other pre-  
27 moistened wipes sold under the Charmin brand name bearing the word “flushable” on the  
28 package label.

1 damages for the California class). Based on data provided by Mr. Weir, I understand that the  
2 average per-package price of the Product is \$4.01. Multiplying the calculated price premium by  
3 that average price nets a retail price premium of approximately \$0.34 per package sold. The \$0.60  
4 per-package recovery under the settlement accordingly exceeds the “premium” that Mr. Weir  
5 calculated. P&G’s agreement to pay 60 cents for every package sold nationwide, except in New  
6 York, as well as the costs for notice and claims administration-- regardless of the number of class  
7 members who make claims -- is an excellent result, given that the best case scenario at trial would  
8 result in class members receiving far less – 34 cents per package – while likely being subjected to  
9 a more onerous claims process than what has been proposed here.<sup>3</sup>

10 11. The monetary relief moreover does not include the value of P&G’s changed  
11 practices. In particular, partly as a result of this litigation, P&G has ceased including bicomponent  
12 fibers in the wipes. And P&G has agreed to adhere to more rigorous testing protocols for two  
13 years. In addition to the monetary relief provided by the settlement, P&G’s changed practices will  
14 benefit class members and other consumers.

15 12. I am confident in the strength of all the Plaintiffs’ cases, but I am also pragmatic  
16 regarding the risks in continuing with this litigation, including the possibility of losing on  
17 summary judgment or at trial. For example, Plaintiffs would have been required to prove that the  
18 “flushable” labeling was likely to deceive or confuse a reasonable consumer. Defendants hotly  
19 disputed that a reasonable consumer would understand “flushable” to mean what Plaintiffs allege,  
20 i.e., that the Product would not cause issues with municipal wastewater treatment systems.

21 13. With respect to damages, P&G disputed the existence of any price premium  
22 associated with the Product. Moreover, it would be difficult to obtain monetary relief for more  
23 than one product purchase because P&G would have argued that repeat purchases meant that the  
24 (repeat) purchasers were satisfied with the Product’s flushability. And in a contested proceeding,

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26 <sup>3</sup> While it is not possible to determine the precise size of the class, I understand that, based on  
27 third-party data available to the company, P&G estimates approximately 74.5 million units of the  
28 Product were sold nationwide (excluding purchases in New York) during the settlement class  
period.

1 class members who lacked proof of purchase—which is likely the majority of class members—  
2 might get nothing at all.

3 14. Finally, P&G also raised arguments attacking Pettit’s individual claims, asserting  
4 that the problems she experienced in flushing the Product were due to her older plumbing. P&G  
5 would likely do the same in the *Ramcharitar* action.

6 15. Each of these risks, by itself, could have impeded Plaintiffs’ and the Settlement  
7 Class’ successful prosecution of their claims at trial and in an eventual appeal. While Plaintiffs  
8 dispute and have adduced evidence to undermine P&G’s arguments, it is unclear how the  
9 arguments would be resolved at summary judgment or trial. Thus, there was a substantial risk that  
10 class members would recover only nominal damages, or nothing at all.

11 16. Moreover, even if Plaintiffs prevailed at trial, any recovery would likely be  
12 delayed by an appeal. Thus, even in the best case, it could take years to get relief for class  
13 members. The settlement provides substantial relief to the Settlement Class without further delay.

14 17. Under the circumstances, Plaintiffs and Class Counsel appropriately determined  
15 that the settlement outweighs the gamble of continued litigation. While I firmly believe in the  
16 merits of this litigation and that Plaintiffs would ultimately win at trial, I also believe that  
17 recovery is far from guaranteed and that the benefits of settlement in this case outweigh the risks  
18 and uncertainties of continued litigation, as well as the attendant time and expenses associated  
19 with possible interlocutory appellate review, pretrial motion practice, trial, and final appellate  
20 review.

21 18. On balance, given the risks associated with this litigation, I believe that the  
22 recovery offered in this settlement is excellent.

23 I declare under penalty of perjury under the laws of the United States that the foregoing is  
24 true of my own personal knowledge.

25 Executed at Berkeley, California, this 31st day of October, 2018.

26 /s/ Adam J. Gutride

27 Adam J. Gutride, Esq.  
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