

Kindall Declaration In Support of Plaintiffs' Motion
for Preliminary Approval

EXHIBIT 2

Declaration of Daniel Burke

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ALBA MORALES, LAINIE COHEN, LINDA
CLAYMAN and KENNETH DREW on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

CONOPCO INC. d/b/a UNILEVER,

Defendant.

No. 2:13-cv-02213-WBS-EFB

DECLARATION OF DANIEL BURKE
RE SETTLEMENT NOTICE PLAN

I, Daniel Burke, declare as follows:

1. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

INTRODUCTION

2. I am the Executive Vice President at Kurtzman Carson Consultants LLC (“KCC”). KCC is one of the largest full-service class action notice and claims administrators in the country. Before my arrival at KCC, I was the Executive Vice President at Gilardi, a class action

1 administration company that was acquired by KCC in 2015.¹ I also served as a Deputy District
2 Attorney in Alameda County for 14 years. I received my B.S. in Marketing from Santa Clara
3 University and J.D. from Golden Gate University. I am also a member of the California State Bar.

4 3. The purpose of this Declaration is to provide the Court with my and KCC's
5 qualifications and experience regarding the development of class action notice plans and to
6 provide information regarding the Notice Plan in this case. This Declaration was prepared based
7 on information provided by counsel or otherwise obtained by KCC staff based on industry-
8 accepted resources and methodologies.

9 **EXPERIENCE RELEVANT TO THE CASE**

10 4. KCC is a leading class action administrator that provides comprehensive class
11 action services, including legal notification, email and postal mailing campaign implementation,
12 website design, call center support, class member data management, claims processing, check and
13 voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related
14 services critical to the effective administration of class action settlements. With more than thirty
15 years of industry experience, KCC has developed efficient, secure and cost-effective methods to
16 properly handle the voluminous data and mailings associated with the noticing, claims processing
17 and disbursement requirements of these matters to ensure the orderly and fair treatment of class
18 members and all parties in interest. Since 1984, KCC has administered more than 6,000 matters
19 and distributed settlement payments totaling well over \$20 billion in assets.

20 5. Some consumer case examples in which KCC has been involved with include: *In re*
21 *Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability*
22 *Litigation*, No. 8:10-ml-02151 (C.D. Cal.); *Edwards v. National Milk Producers Federation*, No.
23 11-cv-04766 (N.D. Cal.); *In re Mattel, Inc., Toy Lead Paint Products Liability Litigation*, No.
24 2:07-ml-01897 (C.D. Cal.); *Pappas v. Naked Juice Co.*, No. 2:11-cv-08276 (C.D. Cal.); *Lavender*
25 *v. Skilled Healthcare Group, Inc.*, No. DR060264 (Cal. Super. Ct.); *Utility Consumers' Action*
26 *Network and Eric Taylor v. Sprint Solutions, Inc.*, No. 3:2007cv02231 (S.D. Cal.); *In re Bank of*

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¹ This declaration combines the class action notice and administration experience of both firms.

1 *America Credit Protection Marketing and Sales Practices Litigation*, No. 11-md-02269 (N.D.
2 Cal.); *In re Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation*, No. 08-
3 md-01907 (E.D. Mo.); “*American Idol*”/“*Deal or No Deal*” *Litigation—Couch v. Telescope*
4 *Inc./Herbert v. Endemol USA, Inc.*, No. 2:07-cv-03916 (C.D. Cal.); *In re Bayer Corp.*
5 *Combination Aspirin Products Marketing and Sales Practices Litigation*, No. 1:09-md-02023
6 E.D.N.Y.); *Benware v. Hugo Boss, U.S.A.*, No. 12-cv-01527 (S.D. Cal.); *Lerma v. Schiff Nutrition*
7 *International, Inc.*, No. 1:13-CV-07747 (N.D. Ill.); *Cobb v. BSH Home Appliances Corp.*, No.
8 8:10-CV-0711 (C.D. Cal.); *Roberts v. Electrolux Home Products, Inc.*, No. 8:12-CV-01644 (C.D.
9 Cal.); *Cappalli v. BJ’s Wholesale Club, Inc.*, No. 1:10-CV-00407 (D. R.I.); *Stroud v. eMachines,*
10 *Inc.*, No. CJ-2003-968 L (D. Ct. Cleveland Cnty, Okla.); *In re Nissan Radiator/Transmission*
11 *Cooler Litig.*, No. 10-CV-07493 (S.D.N.Y.); and *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-
12 CV-04846 (N.D. Cal.).

13 6. KCC’s Legal Notification Services department specializes in designing, developing,
14 analyzing and implementing legal notification plans that comply with due process. These notice
15 campaigns have involved a wide range of industries and substantive issues, including apparel,
16 automotive, computers, consumer packaged goods, communications, entertainment, environment,
17 financial services, food, healthcare, insurance, internet shopping, labor, product liability, railroad,
18 real estate, restaurants, securities, technology, tobacco, and utilities. We have experience designing
19 and implementing notice programs that incorporate media such as newspapers, magazines, trade
20 journals, radio, television, social media and the internet to meet due process requirements. We also
21 develop press releases, social media enhancements, and broadcast public service announcements
22 (PSAs).

23 7. In my role, I oversee all department activity as it relates to these services and am
24 familiar with, or have been directly responsible for, large class action notice programs involving
25 all aspects of notice dissemination. Since 2007, I have personally overseen thousands of matters
26 requiring notice, hundreds of which have involved the design and implementation of court-
27 approved publication notice programs.

1 8. Notice Plans similar to the one proposed here have been approved in other
2 California court cases. For example, *Edwards v. National Milk Producers Federation*, N.D. Cal.,
3 Case No. 11-cv-04766; *In re Google Referrer Header Privacy Litig.*, N.D. Cal., Case No. 10-cv-
4 04809; and *Pappas v. Naked Juice Co. of Glendora, Inc.*, C.D. Cal., Case No. 11-cv-08276.

5 OVERVIEW

6 9. It is our understanding that the parties have represented that contact information is
7 not available for individual Class members. Therefore, KCC's proposed Notice Plan relies on
8 notice placements in leading consumer magazines and internet banners on a variety of websites to
9 effectively reach the Class. The Notice Plan will reach approximately 71.6% of likely Class
10 members.²³

11 10. We understand the Corrected Second Amended Class Action Complaint alleges
12 violations of California's Consumer Legal Remedies Act ("CLRA"). Accordingly, CLRA notice
13 requirements must be fulfilled.

14 PROPOSED NOTICE PLAN

15 *Class Target*

16 11. The "Class" (or "Class Members") includes all individuals in the United States who
17 purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b)
18 Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner;
19 (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner (collectively, the
20 "Challenged Products"). Specifically excluded from the Class are (1) Defendant, (2) the officers,
21 directors, or employees of Defendant and their immediate family members, (3) any entity in which
22 Defendant has a controlling interest, (4) any affiliate, legal representative, heir, or assign of
23 Defendant, (5) all federal court judges who have presided over this Action and their immediate
24 family members, (6) all persons who submit a valid request for exclusion from the Class and (7)
25 those who purchased the Challenged Products for the purpose of resale.

26 ² The reach or net reach of a notice program is defined as the percentage of a class that was exposed to a
27 notice net of any duplication among people who may have been exposed more than once.

28 ³ The reach stated here does not factor in the potential impact of cookie deletion.

1 12. The parties have represented that the exact class size is unknown. We are informed
2 that approximately 23 million units of the Products were sold between 2010 and 2015.⁴

3 13. To develop the proposed Notice Plan, GfK MediaMark Research & Intelligence,
4 LLC (“MRI”)⁵ data was studied among adults who use TRESemmé shampoo or hair conditioner at
5 home and who buy natural products because they are concerned about their health and their
6 family’s health (“TRESemmé Naturals Shampoo and Conditioner Consumers”). This broad and
7 over-inclusive target group best represents the Class.⁶

8 14. Knowing the characteristics, interests, and habits of a target group aids in the media
9 selection process. Demographic highlights of TRESemmé Naturals Shampoo and Conditioner
10 Consumers likely include the following: 97.3% speak English most often; 89.3% live in a
11 household consisting of two or more people, 67.6% live in a household consisting of two to four
12 people, and 62.4% live in a household consisting of three or more people; 85.9% have graduated
13 from high school and 56.2% have attended college or beyond; 84.3% live in a Metropolitan
14 CBSA;⁷ 81.2% are 25 years of age or older, 74.3% are 18-54 years of age and 56.0% are 18-44

15 ⁴ The 2010 through 2015 units sold data is based on data reported by Nielsen through its RMS (Scanning)
16 Service for the Daily Hair Care Category for the 2010 through 2015 period, for the Total US xAOC (All
17 Outlets Combined) market. Copyright © 2010-2015 The Nielsen Company.

18 ⁵ GfK MRI is a nationally accredited research firm that provides consumer demographics, product and
19 brand usage, and audience/exposure in all forms of advertising media. Established in 1979, MRI measures
20 the usage of nearly 6,000 product and service brands across 550 categories, along with readership of
21 hundreds of magazines and newspapers, internet usage, television viewership, national and local radio
22 listening, yellow page usage, and out-of-home exposure. Based on a yearly face-to-face interview of 26,000
23 consumers in their homes, MRI’s Survey of the American Consumer™ is the primary source of audience
24 data for the U.S. consumer magazine industry and the most comprehensive and reliable source of multi-
25 media audience data available.

26 ⁶ MRI’s data do not separately analyze the TRESemmé Naturals product line.

27 ⁷ Core Based Statistical Areas (CBSAs) consist of the county or counties or equivalent entities associated
28 with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties
having a high degree of social and economic integration with the core as measured through commuting ties
with the counties associated with the core. The general concept of a CBSA is that of a core area containing
a substantial population nucleus, together with adjacent communities having a high degree of economic and
social integration with that core. CBSAs are defined by the U.S. Office of Management and Budget to
provide a nationally consistent set of geographic entities for the United States and Puerto Rico for use in
tabulating and presenting statistical data. Metropolitan Statistical Areas are CBSAs associated with at least
one urbanized area that has a population of at least 50,000. The metropolitan statistical area comprises the
central county or counties or equivalent entities containing the core, plus adjacent outlying counties having
a high degree of social and economic integration with the central county or counties as measured through
commuting. Micropolitan Statistical Areas are CBSAs associated with at least one urban cluster that has a

1 years of age; 75.2% have a household income of \$30,000 or more, 64.7% have a household
2 income of \$40,000 or more, and 55.0% have a household income of \$50,000 or more; 73.6% are
3 white; 71.4% are women; 70.2% live in County Size A or B, with 43.2% living in County Size A;⁸
4 62.8% own a home; 56.4% own a home valued at less than \$500,000; and 50.2% are married.

5 15. On average, TRESemmé Naturals Shampoo and Conditioner Consumers are 43
6 years of age; have a household income of \$73,475; and own a home valued at \$245,480.⁹

7 16. Compared to the general adult population, TRESemmé Naturals Shampoo and
8 Conditioner Consumers are 70.7% more likely to be American Indian or Alaska Native, 45.7%
9 more likely to be of Spanish, Hispanic or Latino origin or descent, and 18.8% more likely to be
10 Asian; 47.9% more likely to be 18-24 years of age and 22.1% more likely to be 25-34 years of age;
11 37.9% more likely to be women; 37.0% more likely to speak Spanish most often; 36.0% more
12 likely to be working women; 27.8% more likely to live in a household consisting of five or more
13 people and 9.2% more likely to live in a household consisting of three or four people; 25.9% more
14 likely to be working part time and 8.3% more likely to be unemployed; 23.8% more likely to have
15 a household income between \$10,000-\$19,999, 12.4% more likely to have a household income
16 under \$10,000, and 11.9% more likely to have a household income between \$30,000-\$39,999;
17 19.3% more likely to have lived at their current address for less than one year and 12.3% more
18 likely to have lived at their current address for one to four years; 16.3% more likely to be parents;

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20 population of at least 10,000 but less than 50,000. The micropolitan statistical area comprises the central
21 county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high
22 degree of social and economic integration with the central county or counties as measured through
23 commuting.

24 ⁸ Nielsen County Size classifications are based on Census household counts and metropolitan proximity.
25 "A" counties are highly urbanized areas and belong to the 21 largest Metropolitan Statistical Areas. The
26 combined counties contain 40% of United States households. "B" counties are counties not defined as A
27 counties that have more than 85,000 households. The combined counties contain 30% of United States
28 households. "C" counties are counties not defined as A or B counties that have more than 20,000
households or are in Consolidated Metropolitan Areas or Metropolitan Statistical Areas with more than
20,000 households. The combined counties contain 15% of United States households. "D" counties are all
counties not classified as A, B, or C counties. They are considered very rural. The combined counties
contain 15% of United States households.

⁹ The average age for U.S. adults is 47, the average household income is \$77,026, and the average home
value is \$253,020.

1 14.9% more likely to have never married; 11.4% more likely to have attended college and 10.4%
2 more likely to have not graduated high school; 11.1% more likely to rent their home; 7.6% more
3 likely to live in the South Census Region and 5.9% more likely to live in the North East Census
4 Region; and 5.3% more likely to own a home valued less than \$100,000.

5 ***Consumer Publications***

6 17. A third-page Summary Notice will be placed in *People* magazine. *People* reaches
7 23.3% of TRESemmé Naturals Shampoo and Conditioner Consumers and, compared to the
8 general adult population, readers of *People* are 31.7% more likely to be TRESemmé Naturals
9 Shampoo and Conditioner Consumers.

10 18. The *People* placement will be tracked to ensure it appears exactly as planned and
11 meets our high quality and positioning standards.

12 ***Internet Notice***

13 19. According to MRI data, 86.5% of TRESemmé Naturals Shampoo and Conditioner
14 Consumers have access to the internet at home using a computer and 85.9% have looked at or used
15 the internet in the last 30 days. Compared to the general adult population, TRESemmé Naturals
16 Shampoo and Conditioner Consumers are 1.1% more likely to have access to the internet from
17 home using a computer and 3.3% more likely to have looked at or used the internet in the last 30
18 days.

19 20. Given this information, internet advertising is an appropriate component of the
20 Notice Plan. One-hundred fifty million banner impressions will be purchased and will appear on
21 websites over a period of about one month. The impressions will be targeted to adults 18 years of
22 age or older (Adults 18+), and of those impressions, 105 million will be targeted to women 18
23 years of age or older (Women 18+).

24 21. The banners will include an embedded link to the case website and where the full
25 notice, as well as additional information about the litigation, may be viewed.

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CLRA Notice

22. To fulfill CLRA notice requirements, an approximate eighth-page Summary Notice will appear four times in the *Sacramento Bee*. The Summary Notice will be published once a week for four consecutive weeks. The ad will appear concurrently in the newspaper’s e-Edition, which is available on its website.

Response Mechanisms

23. An informational website will be established to allow Class members the ability to obtain additional information and documents about the settlement. The website address will be prominently displayed in all printed notice materials and accessible through a hyperlink embedded in the internet banners.

24. A toll-free number will be established to allow Class members the opportunity to learn more about the settlement in the form of frequently asked questions. It will also allow Class members to request to have more information mailed directly to them. The toll-free number will also be prominently displayed in all printed notice materials and direct callers to the settlement website where they can access the full notice and other relevant materials.

Reach Delivered by the Notice Plan

25. The combined print and internet media effort will reach approximately 71.6% of likely Class members.¹⁰ Coverage will be further enhanced by the CLRA notice placements.

CONCLUSION

26. In my opinion, the proposed Notice Plan is reasonable and consistent with other effective settlement notice programs. It is designed to meet due process requirements and meets the “desire to actually inform” standard of *Mullane*. The proposed Plan provides the same reach evidence that Courts have approved and that has withstood appellate scrutiny. The Federal Judicial Center’s (FJC) *Judges’ Class Action Notice and Claims Process Checklist and Plain Language*

¹⁰ See Footnote 3.

1 *Guide* (the FJC Checklist) considers reach among class members that exceeds 70% to be
2 reasonable.

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

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7 Executed on May 27, 2016 at San Rafael, California.

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Daniel Burke

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