

**IN THE UNITED STATES DISTRICT COURT
FOR THE WEST DISTRICT OF WISCONSIN**

JEFF SPOERLE, NICK LEE, KATHI
SMITH, JASON KNUDTSON, on behalf of
themselves and all others who consent to
become Plaintiffs and similarly situated
employees,

Plaintiffs,

Case No. 07-C-0300-C

vs.

KRAFT FOODS GLOBAL, INC.,
OSCAR MAYER FOODS DIVISION,

Defendant.

REPLY AFFIDAVIT OF JAMES A. OLSON

STATE OF WISCONSIN)
) SS

COUNTY OF DANE)

James A. Olson, being first duly sworn on oath deposes and says:

1. This affidavit is submitted in support of class counsels' reply to Joseph R. Jerzewski's objection to the lodestar enhancement counsel have requested in connection with their petition for fees in this matter.

2. Lawton & Cates, S.C. has maintained a Kraft class action posting on its web site (Lawtoncates.com) since September, 2010 to keep class members advised of proceedings in the case. The fee petition and its briefing scheduling were posted on the site a month ago. The site

shows 12,238 page views since the initial posting, and 961 page views since the posting of the fee petition. Out of 1742 class members, only one, Mr. Jerzewski, has submitted an objection.

3. Mr. Jerzewski's premise that counsel are requesting 25%-of-backpay-plus-25%-on top-of-that is mistaken. The fees are due under the class action settlement approved by the Court. As the fee petition set forth, the settlement required Kraft to pay counsel's lodestar. In addition, *if* that lodestar was less than 25% of the settlement fund, it allows for a common fund enhancement sufficient to bring the fee to 25%.

4. Counsel explained this provision in the Class Notice. In that notice, moreover, counsel assured the Class that the fee enhancement they would request from the Class recovery would be less than 10% of the Class Members' total back pay. Counsel also explained in the fee petition, the enhancement actually requested would cost the Class only 7.2% of their backpay awards.

5. No class member objected to this fee arrangement during the objections period prior to the Fairness Hearing conducted by the Court. In fact, even Mr. Jerzewski – who did object to certain other provisions of the settlement – did *not* object to the fee enhancement.

6. It is totally mystifying what Mr. Jerzewski means when he says that the attorneys seek to get an enhancement “so that their fee is increased to 25% of our back pay and also request an additional 25% for attorneys' fees on top of that.” This is not what is requested. First, Counsel seek approval of their lodestar, which Kraft will pay. On top of this amount, they seek a common fund fee enhancement of that lodestar equal to 7.2% of the Class backpay.

7. Since the average backpay award is \$2391.00, the 7.2% would reduce each award by an average of \$172.00 and no enhancement is sought from the retroactive pay Kraft has paid

for the period from December 26, 2010 to present nor from the prospective relief (an additional 12 minutes pay per day) to be paid into the future.

8. In fact, even when added together, the total of lodestar (which the Class is *not* paying) plus the enhancement comes to *less* than a single 25% of the settlement fund. There is no “25% and another 25% on top of that.”

9. In comparison with other fees approved in similar cases, this the fee requested in this case modest. For example, it is considerably more modest than the fee class counsel sought (and this Court awarded them) in a similar wage and hour class action approved by this Court in Sjoblom v. Charter Communications, LLC, Case No. 07-C-0451-C. In that case, the fee award equaled 30% of the class recovery of \$24,500,000. The award to class counsel was therefore approximately \$7,350,000 which included approximately \$476,000 in expenses. Therefore, the actual fee was approximately 6,874,000. Counsel estimated hours at 7,000. Therefore the hourly rate was \$982/hour or approximately twice the hourly rate that counsel is seeking in this case when the lodestar rate and the enhancement are combined. To arrive at this result I consulted the docket in the Sjoblom case. Attached as exhibit A.

10. In the present case, the requested multiplier is only 1.3.

11. One of Mr. Jerzewski’s objections is that some of the Lawton & Cates attorneys (Kurt Kobelt and Heather Curnutt) who worked on the case in its early stages are no longer with the firm.

12. Attorneys Kobelt and Curnutt provided excellent legal services to the class. They did so as salaried members of Lawton & Cates, S.C.

13. The litigation risks undertaken during the prosecution of this case (including both the firm’s overhead necessary to keep the firm operating and the more than \$100,000 in expert

and deposition fees, and the other expenses necessary to support the litigation) were contributed by the firm.

14. With respect to my role in the case, I took charge of this case after the Seventh Circuit Court of Appeals upheld the state-law claim, and I took pains to manage the process with a maximum of efficiency and a minimum of duplicative effort and to maintain communications with class members. The major legal areas involved were to successfully defend against the petition for certiorari and to work with our retained expert, co-counsel and opposing counsel to determine total class damages. I am an experienced class action litigator, whose experience in complex litigation including class action litigation has been recognized by the Circuit Court for Dane County.

15. Continuity was not an issue, as Sarah Siskind of Miner, Barnhill & Galland (whom Mr. Jerzewski refers to as "outside counsel") had already been brought into the case by Mr. Kobelt before trial. She had worked with Mr. Kobelt getting the case ready for trial, making the damages determinations that have proved crucial to the settlement administration process, negotiating the settlement and settlement documents and getting it through the approval process. She and my firm divided the appellate work that followed (in the Seventh Circuit and Supreme Court, successively). Our two firms' success in avoiding duplication of effort is reflected in Kraft's willingness to agree to the reasonableness of the hours that went into the stipulated lodestar, and pay for them.

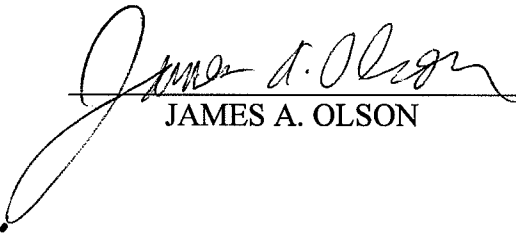
16. Throughout the case, Class Members have been advised that they were entitled to retain separate counsel, and Mr. Jerzewski did so.

17. I kept that attorney (Douglas Phebus) advised of all proceedings in the case: the process of calculating damages for the Class Members (including Mr. Jerzewski); the decision-

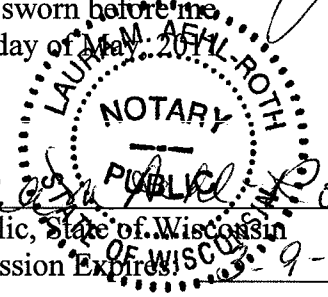

making process that led to counsel's response to Kraft's petition for certiorari to the Supreme Court; and dealings with Kraft's counsel over prospective pay for "donning and doffing."

18. Mr. Phebus declined to seek any modification of the damages calculations or prospective relief and ultimately complimented class counsel on their Supreme Court work. Moreover, while personally served with the fee petition, he has not appeared to voice any objection to it; nor has any other member of the Class.

19. I personally forwarded the Notice of Hearing regarding the objection to Mr. Jerzewski as directed by the court. (exhibit B)



JAMES A. OLSON

Signed and sworn before me
this 20th day of May, 2011.



Notary Public, State of Wisconsin
My Commission Expires 9-14