

LOCKE LORD LLP
Carl Scherz (Appearing *pro hac vice*)
cscherz@lockelord.com
Thomas Yoxall (Appearing *pro hac vice*)
tyoxall@lockelord.com
James Bilton (Appearing *pro hac vice*)
jbilton@lockelord.com
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-6776
Telephone: 214-740-8000
Facsimile: 214-740-8800

LOCKE LORD LLP
Mitchell J. Popham, 126194
mpopham@lockelord.com
300 South Grand Avenue, Suite 2600
Los Angeles, CA 90071
Telephone: 213-485-1500
Facsimile: 213-485-1200

Attorneys for Defendant, Counter-Claimant and
Third Party Plaintiff, CREST FOODS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NESTLÉ USA, INC.,
Plaintiff and Counter-
Defendant,
vs.
CREST FOODS, INC.,
Defendant, Counter-
Claimant, and Third Party
Plaintiff.
NESTLÉ CANADA, INC., and NESTEC
S.A.
Third-Party Defendants.

Case No. 2:16-cv-07519-JAK-AFM

**DECLARATION OF CARL C.
SCHERZ IN SUPPORT OF
CREST FOODS INC.'S
UNOPPOSED APPLICATION TO
FILE CONDITIONALLY UNDER
SEAL CREST FOODS INC.'S
MOTION FOR SUMMARY
JUDGMENT AND SUPPORTING
DOCUMENTS**

Judge John A. Kronstadt

1 I, Carl C. Scherz, declare:

2
3 1. I am an attorney with Locke Lord LLP, counsel for Defendant, Counter-
4 Claimant, and Third Party Plaintiff Crest Foods, Inc. ("Crest") in this action. I have
5 been admitted pro hac vice to this court. I have personal knowledge of the matters
6 stated below and could and would competently testify thereto if called upon to do so.
7 The matters stated herein are true and correct. This declaration is made in support of
8 Crest's Application to File Conditionally Under Seal Crest's Notice of Motion and
9 Motion for Summary Judgment, and Index in Support of Crest's Motion for
10 Summary Judgment.

11 2. On April 1, 2019, I conferred telephonically with counsel for Nestlé
12 USA, Keri Borders, regarding the filing of confidentially designated documents in
13 conjunction with Crest's forthcoming filings, including its Motion for Summary
14 Judgment. I indicated Crest's understanding that, unless Nestlé were to advise
15 otherwise, Nestlé's position was that it agreed that Crest may file under seal
16 documents previously designated as confidential.

17 3. Ms. Borders confirmed that Nestlé agreed that Crest should file
18 confidentially designated documents under seal.

19 4. Crest's Notice of Motion and Motion for Summary Judgment on Nestlé
20 USA's Complaint, and Crest's Index of Evidence and Statement of Uncontroverted
21 Facts and Conclusions of Law in Support of its Motion for Summary Judgment,
22 include references to and attachments of documents produced by Nestlé USA and
23 Crest during the course of discovery in this litigation. Each such document was
24 designated to receive confidential treatment.

25 5. The redactions made to the publicly filed Motion for Summary
26 Judgment were intended to be the actual exhibits produced that were designated for
27 confidential treatment.
28

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

3 Executed on April 8, 2019.

4 /s/ Carl C. Scherz
5 Carl C. Scherz
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2019, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to all counsel of record:

By: /s/ Carl C. Scherz
Carl C. Scherz