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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JACKIE FITZHENRY-RUSSELL and
GEGHAM MARGARYAN, as individuals,
on behalf of themselves, the general public
and those similarly situated,

Plaintiffs,

v.

KEURIG DR. PEPPER, INC and DR
PEPPER/SEVEN UP, INC.,

Defendants.

Case Nos. 5:17-cv-00564-NC (lead); 5:17-cv-04435-NC (consolidated)

**DECLARATION OF MICHAEL J.
DEBENEDICTIS IN SUPPORT OF
PLAINTIFFS' MOTION FOR APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: January 9, 2018
Time: 1:00 PM
Courtroom: 7
Judge: Hon. Nathanael Cousins

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1 I, Michael J. DeBenedictis, declare and state that:

2 1. I am an attorney licensed to practice law in the State of California and in this Court,
3 and a partner in the law firm DeBenedictis & DeBenedictis LLC (the “Firm”). The Firm represented
4 Plaintiffs Jackie Fitzhenry-Russell and Gegham Margaryan in the New Jersey motion to quash
5 proceeding filed by Givaudan Flavors Corp. The Firm is also counsel of record, along with Gutride
6 Safier LLP (“GSLLP”), for Plaintiff Julie Fletcher and purchasers of Canada Dry Ginger Ale in
7 New York in *Fletcher v. Keurig Dr Pepper*, No. 18-cv-00766-EAW (W.D.N.Y.) (“*Fletcher*”). I
8 submit this declaration in support of Plaintiffs’ Motion for Approval of Class Settlement. Unless
9 otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and
10 would testify competently to them if called upon to do so. I discuss, in the following order, (a) the
11 Firm’s involvement in this litigation to date; (b) the risks borne by the Firm; and (c) the lodestar of
12 the Firm.

13 **A. Involvement of the Firm in this Litigation**

14 2. A true and correct copy of the Firm’s resume is attached hereto as **Exhibit 1**. I am a
15 member of the state bars of New Jersey and New York. Attorneys at the Firm are admitted to
16 practice before the Western District of New York.

17 3. I first became involved in this matter in June 2018 when I was retained to assist
18 GSLLP respond to a motion to quash subpoenas filed by Givaudan Flavors Corp. in the District of
19 New Jersey (*Givaudan Flavors Corp v. Fitzhenry-Russell et al.*, Case No. 2:18-cv-10961-SDW-
20 LDW (W.D.N.Y)). The motion to quash was filed in response to subpoenas served by Plaintiffs
21 Fitzhenry-Russell and Gegham Margaryan in the California action. I participated in many rounds of
22 meet and confer efforts with Givaudan’s counsel in an attempt to resolve the dispute and reach
23 agreement on extensions of deadlines in the proceedings. I reviewed and commented upon drafts of
24 Plaintiffs’ opposition to the motion to quash and cross-motion to transfer or compel prepared by
25 GSLLP. I also attended an in person oral argument on the motions as well as a subsequent
26 telephonic oral argument on the same.

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1 4. In July 2018, I was also retained to assist GSSLP in representing Plaintiff Julie
2 Fletcher and a proposed class of purchasers of Canada Dry Ginger Ale in New York against
3 Defendants in the Western District of New York. On July 11, 2018, with the assistance of GSSLP,
4 the Firm filed Ms. Fletcher's complaint.

5 5. On August 31, 2018, Defendants moved to dismiss the *Fletcher* complaint. (*Fletcher*
6 Dkt. #15.) I reviewed and commented upon drafts of Plaintiff's opposition to KDP's motion to
7 dismiss prepared by GSSLP. I attended the hearing on the motion to dismiss in Buffalo, New York.
8 At oral argument on October 24, the New York Court indicated that it intended to deny the motion
9 but it has not yet issued a written ruling.

10 **B. The Risks Borne by The Firm**

11 6. In providing the work for this case described in Section A, the Firm bore
12 considerable risk. The Firm took this case on a fully contingent basis, meaning that we were not
13 paid for any of our time, and that we paid all costs and out of pocket expenses without any
14 reimbursement to date. From the outset, the Firm recognized that it would be contributing time to
15 assist with the prosecution of a class action, with no guarantee of compensation or recovery, in the
16 hopes of prevailing against a well-funded defense. Further, because KDP was represented by a
17 large, highly-skilled and well-resourced litigation firm, there was increased risk that Plaintiffs
18 would receive a verdict for the Defense after a prolonged trial.

19 **C. Lodestar and Expenses for The Firm**

20 7. Throughout the duration of this litigation, the Firm has maintained contemporaneous
21 billing records for this case. Based on the Firm's time records, the Firm has spent approximately
22 136 hours prosecuting this litigation through December 31, 2018. The total number of hours, as well
23 as the lodestar computed at our 2018 rates, is as shown in the following table:

24

| 25 Timekeeper | Hours | Rate | Total |
|---|--------|--------|-------------|
| 26 Michael DeBenedictis (<i>Partner</i>) | 120.85 | 675.00 | \$81,573.75 |
| 27 Missy Robinson (<i>Paralegal</i>) | 15.25 | 95.00 | \$1,448.75 |

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| | | | |
|--------------|---------------|--|--------------------|
| TOTAL | 136.10 | | \$83,022.50 |
|--------------|---------------|--|--------------------|

8. The hourly rates shown for the attorneys at the Firm are the same as the regular rates charged in 2018 for their services in other litigation.

9. I received my Juris Doctorate degree from the University of Pennsylvania Law School in 2000, where I was also a member of the Doctoral Department at the Wharton School of Business.

10. I am admitted to practice before the Federal District Courts of New Jersey, the Eastern District of Pennsylvania, and the Southern District of New York. I am also admitted to practice before the Third Circuit Court of Appeals, and am a member of the bars of the State of New Jersey, State of New York and the Commonwealth of Pennsylvania.

11. I have extensive experience in class actions.

12. In the last three years alone, I have served, or am currently serving, as liaison counsel, lead counsel, or co-lead counsel in federal and/or state actions in New York, New Jersey and Maryland involving antitrust, consumer fraud, whistleblower and civil rights violations.

13. Over that same time period, I have been approved at and/or paid rates ranging from \$540 to \$795 depending upon the action, legal market, and underlying cause of action.

14. My current hourly rate for actions such as this in the Philadelphia area market is \$695.

15. I also believe the rates paid by KDP to its firm in this case meets or exceeds the rates requested for The Firm. I believe that my firm's hourly rates are below market for attorneys with similar backgrounds and experience.

16. The *Laffey* Matrix is an attorney's fee matrix developed in *Laffey v. Nw. Airlines, Inc.*, 572 F. Supp. 354, 371 (D.D.C. 1983), which provides market rates for attorneys working in the Washington, D.C., and Baltimore areas. The LSI *Laffey* Matrix, relies on the Legal Services Index of the Bureau of Labor Statistics, which provides national legal rates adjusted for inflation, rather than local and generalized cost data. See LSI *Laffey* Matrix, available at

1 <http://www.laffeymatrix.com/see.html>. Courts in this Circuit have found that hourly rates
 2 determined using the *Laffey Matrix*, “are reasonable and commensurate with those charged by
 3 attorneys with similar experience in the market.” *Kumar v. Salov N. Am. Corp.*, No. 14-CV-2411-
 4 YGR, 2017 WL 2902898, at *7 (N.D. Cal. July 7, 2017). Additionally, the Ninth Circuit has
 5 accepted the Laffey Matrix as evidence of reasonable hourly rates charged by Washington, D.C.
 6 attorneys. *Mancini v. Dan P. Plute, Inc.*, 358 F. App’x 886 (9th Cir. 2009). And a court in this
 7 District recently awarded Bay Area attorneys Laffey Matrix fees adjusted upwardly by
 8 approximately nine percent, so, if anything, the Laffey Matrix comes in below the market rate for
 9 attorneys in this District. *See Brinker v. Normandin’s*, No. 14CV03007EJDHRL, 2017 WL 713554
 10 (N.D. Cal. Feb. 23, 2017) (citing *Theme Promotions, Inc. v. News America Marketing FSI, Inc.*, 731
 11 F. Supp. 2d 937, (N.D. Cal. 2010); see also *In re HPL Technologies, Inc. Securities Litigation*, 366
 12 F. Supp. 2d 912 (ND Cal 2005). Utilizing the *Laffey Matrix*, the Firm’s lodestar computed using the
 13 matrix’s 2018-2019 rates, is shown in the following table:

| Timekeeper | Hours | 2018-2019 Laffey Rate | Total |
|----------------------|---------------|--------------------------|--------------------|
| Michael DeBenedictis | 120.85 | \$742.00 | 89,670.70 |
| Missy Robinson | 15.25 | \$202.00 | 3,080.50 |
| TOTAL | 136.10 | | \$92,751.20 |

21 17. Expenses are accounted for and billed separately and are not duplicated in my
 22 professional billing rate. The Firm has not received reimbursement for expenses incurred in
 23 connection with this litigation. As of January 4, 2019, my firm incurred a total of \$1,837.56 in
 24 unreimbursed actual third-party expenses in connection with the prosecution of these cases. The
 25 actual expenses incurred in the prosecution of these cases are reflected on the computerized
 26 accounting records of my firm prepared by bookkeeping staff, based on receipts and check records,
 27 and accurately reflect all actual expenses incurred. Some of the expenses included below are known
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1 to us but yet to be invoiced or have been invoiced but not yet paid. A complete breakdown of all
 2 expenses is attached as Exhibit 2. To summarize, the expenses are as follows:

| Expense Category | Amount |
|---------------------------------------|-------------------|
| Court Fees (E112) | \$1,281.00 |
| Delivery Services & Messengers (E107) | \$167.51 |
| Copies & Transcripts (E115) | \$42.48 |
| Meals (E111) | \$44.69 |
| Online Research (E106) | \$8.00 |
| Out-of-Town Travel (E110) | \$250.59 |
| Outside Printing (E102) | \$43.29 |
| TOTAL | \$1,837.56 |

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 14 I declare under penalty of perjury under the laws of the state of California that the foregoing
 15 is true of my own personal knowledge.

16
 17 Executed at Haddonfield, New Jersey, this 4th day of January, 2019.

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 19 
 20 Michael J. DeBenedictis, Esq.

EXHIBIT 1

DeBenedictis & DeBenedictis LLC

Based in suburban Philadelphia, DeBenedictis & DeBenedictis LLC is a legal firm with significant experience across all aspects of the legal and securities markets. As a boutique class and complex litigation firm with unsurpassed qualifications, it has significant experience representing consumers and funds in state and federal courts throughout the United States.

DeBenedictis & DeBenedictis has been representing plaintiffs in such actions for nearly 20 years, and has prosecuted cases successfully against some of the largest corporations in the nation. Over time, the firm has built a successful track record, having helped secure verdicts and recoveries valued at over \$200,000,000.00 and currently representing varied plaintiffs in all stages of litigation.

Mr. DeBenedictis himself brings a uniquely qualified skill set to his practice and his clients. Having worked on Wall Street and with private equity funds, his intimate understanding of the market, investment community and major corporations, as well as the underlying financial statements, provides his clients with a level of representation and insight that is rarely available. An honors graduate of Dartmouth College and the University of Pennsylvania Law School, as well as the Wharton School of Business, Mr. DeBenedictis' representative cases include:

Representative Class Representation (non-exhaustive)

United States ex rel. Denenea v. Allstate Ins. Co. No. 07cv2795 (E.D.La) (Qui Tam action alleging systematic overbilling of the National Flood Insurance Program by private insurance carriers following hurricane Katrina)

Kahana et al. v. Accutherm, Inc. et al. No. L-1823-06 (NJ) (Class Counsel in Medical monitoring class action on behalf of Children attending a daycare facility housed in a non-remediated former mercury thermometer plant.)

Opperman et al. v. Allstate New Jersey et al., No. 1:07cv1887 (D.N.J.) (Class Counsel in action alleging fraudulent insurance estimating databases)

In re Initial Public Offering Securities Litigation, 399 F. Supp. 2d 298, 307 n.55 (S.D.N.Y.2005), aff'd sub nom. Tenney v. Credit Suisse First Boston Corp., Inc., 2006 WL 1423785 (2d Cir. May 19, 2006). (Alleging analyst manipulation of earnings of companies associated CSFB' Frank Quattrone)

Madjeska et al. v PSE&G et. al., No. L-3484-05 (NJ) (Class Counsel in class action on behalf of approx 700 Camden residents seeking compensation for property damage)

United States ex rel Petratos et al v. Genentech, Inc. et al No. 2:11cv3691 (D.NJ)(Putative Class Counsel in Qui Tam action alleging systematic overbilling of Medicare and Medicaid for the Cancer drug Avastin)

In Re Lamictal Indirect Purchaser and Antitrust Consumer Litigation Master File No. 2:12cv5120 (Liaison Counsel for putative indirect purchaser classes alleging collusion between branded and generic manufactures to inflate price)

In Re Lipitor Antitrust Litigation MDL No. 2332 Master Docket No. 3:12cv2389 (Putative class counsel of record for consolidated underlying indirect purchaser class alleging collusion between branded and generic manufactures to inflate price)

Wolf v. Nissan Motor Acceptance Corporation No. 1:10cv3338 (D.NJ) (Putative Class counsel in action on behalf of Servicemembers terminating automotive leases following deployment overseas)

Marc C. Demarest v Ford Motor Acceptance Corp. No. 3:11cv5501 (D.NJ) (Putative Class counsel in action on behalf of Servicemembers terminating automotive leases following deployment overseas)

W. Dana Venneman et al.v. BMW Financial Services NA, LLC No. 1:09cv5672 (D.NJ) (Putative Class counsel in action on behalf of Servicemembers terminating automotive leases following deployment overseas)

EXHIBIT 2

| RE: DR PEPPER SNAPPLE MASTER ACCOUNT | | | | |
|---|--|---------------------------------------|--------------------|--------------|
| REPORTING PERIOD: 1/1/18-12/31/18 | | | | |
| DATE | Description | Paid to: | Check # /CC | Total |
| 7/10/2018 | Admission fee | Clerk, US District Court | 727 | \$200.00 |
| 7/11/2018 | Courier to Clerk WDNY | Clerk, US District Court | AMEX x5005 | \$126.56 |
| 7/10/2018 | Cert of Standing | Clerk, US District Court | 729 | \$19.00 |
| 7/11/2018 | Courier tolls to SDNY and forwarding to WDNY | NYNJPA | AMEX x5005 | \$27.45 |
| 7/12/2018 | Court Fee (filing) | Clerk, US District Court | AMEX x5005 | \$400.00 |
| 7/25/2018 | Pro Hac Fee (MM) | Clerk, US District Court | Mastercard x6448 | \$150.00 |
| 9/14/2018 | Pro Hac Fee (MAM) (WDNY) | Clerk, US District Court | Mastercard x6448 | \$150.00 |
| 9/18/2018 | Pro Hac Fee MAM (NJ) | Clerk, US District Court | 733 | \$150.00 |
| 9/19/2018 | Pro Hac Fee MAM (NJ) | NJ Lawyers Fund for Client Protection | 734 | \$212.00 |
| 10/15/2018 | Binder w/tabs of Opposition to MTD (doc 25) per local rules | Kinkos | AMEX x5005 | \$43.29 |
| 10/15/2018 | Priority Shipping of courtesy copies to WDNY per local rules | FedEx | AMEX x5005 | \$13.50 |
| 10/20/2018 | PACER downloads of CA filings RE: public accessible docs | PACER | AMEX x5005 | \$8.00 |
| 10/21/2018 | Copies of briefs, etc for 10/24 oral argument in Buffalo | Kinkos | AMEX x5005 | \$42.48 |
| 10/23/2018 | Hotel Buffalo NY | Ascend Hotel | AMEX x5005 | \$182.63 |
| 10/23/2018 | Meals Buffalo NY | wales crosby's | Mastercard x6448 | \$44.69 |
| 10/24/2018 | Gas | Hickory Run Exxon | AMEX x5005 | \$45.00 |
| 10/23/2018 | Gas | Jim Thorp Serv. Station Sunoco | Mastercard x6448 | \$22.96 |