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Counsel for Plaintiffs and the Class

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 DARALYN DURIE IN
SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 9, 2019

Time: 1:00 p.m.

Courtroom: 7

Judge: Honorable Nathanael Cousins

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1 I, Daralyn Durie, 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 Durie Tangri LLP (the “DTLLP”), counsel of record for Plaintiffs and the certified
4 class in the above captioned matter. I submit this declaration in support of Plaintiffs’ Motion for
5 Approval of Class Settlement. Unless otherwise noted, I have personal knowledge of the facts set
6 forth in this declaration and could and would testify competently to them if called upon to do so. I
7 discuss, in the following order, (a) a description of the legal services provided by DTLLP in this
8 litigation to date; (b) the risks borne by DTLLP; and (c) the lodestar of DTLLP.

9 **A. DTLLP’s Role**

10 2. My partner Adam Brausa and I attended the pretrial conference on December 5,
11 2018. At the pretrial conference, the Court appointed DTLLP as additional counsel for trial. (Dkt.
12 #308.)

13 3. DTLLP undertook significant preparations for trial, including preparing for and
14 participating in mock jury research, preparing trial strategy, preparing opening statements,
15 reviewing documents, deposition testimony, and expert reports, and drafting witness examination
16 outlines.

17 4. A true and correct copy of the firm resumé of DTLLP was submitted as part of the
18 motion to appoint DTLLP as additional class counsel for trial. (*See* Dkt. No. 284-2.)

19 **C. The Risks Borne by DTLLP**

20 5. In agreeing to step into this case, DTLLP bore considerable risk. DTLLP does not
21 typically accept contingency fee cases, and nevertheless took this case on a fully contingent basis,
22 meaning that we were not paid for any of our time. From the outset, DTLLP recognized that it
23 would be contributing a substantial amount of time with no guarantee of compensation or recovery,
24 in the hopes of prevailing against a well-funded defense.

25 **D. Lodestar and Expenses for DTLLP**

26 6. DTLLP has maintained separate billing records for this case under the case name
27 “Ginger.” Based on the time records of DTLLP, DTLLP has spent approximately 316 hours
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1 prosecuting this litigation through December 31, 2018. The total number of hours, as well as the
 2 lodestar computed at our 2018 rates, is as shown in the following table:

3	4	5	6	7	8	9	10	11	12
	Timekeeper	Hours	2018 DTLLP Rate	Total					
	Daralyn J. Durie	75.5	\$875	\$66,062.50					
	Adam R. Brausa	86.6	\$570	\$49,362.00					
	David F. McGowan	8.4	\$755	\$6,342.00					
	Timothy O'Dwyer	88.6	\$290	\$25,694.00					
	Vincent Harrington	42.2	\$290	\$12,238.00					
	Vincent McGautha	14.8	\$290	\$4,292.00					
	TOTAL	316.1		\$163,990.50					

13 7. As noted above, I am a partner at DTLLP and my time invested in this case was
 14 spent coordinating all aspects of trial strategy, which involved detailed analysis of the record,
 15 analyzing and advising on pre-trial submissions, preparing opening and closing arguments,
 16 preparing for and presenting at a mock jury exercise, and discussing trial strategy with co-counsel.

17 8. Mr. Brausa is a partner at DTLLP and his time invested in this case was spent
 18 analyzing the record, editing and advising pre-trial submissions, editing and discussing
 19 demonstratives with members of the team, and drafting witness outlines, among other tasks relating
 20 to trial preparation.

21 9. Mr. McGowan is a partner at DTLLP and his time invested in this case was spent
 22 discussing trial strategy with me and assisting me in developing themes and demonstratives for use
 23 at trial.

24 10. Mr. O'Dwyer is a trial graphics specialist at DTLLP and his time invested in this
 25 case was spent preparing slide decks and other demonstratives for use at trial and discussing these
 26 demonstratives with members of DTLLP and co-counsel.

27 11. Mr. Harrington is a paralegal at DTLLP and his time invested in this case was spent
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1 preparing and organize documents and demonstratives for use at trial and during pre-trial
2 proceedings.

3 12. Mr. McGautha is also a paralegal at DTLLP and his time invested in this case was
4 spent providing backup assistance to Mr. Harrington to help preparing and organize documents and
5 demonstratives for use at trial and during pre-trial proceedings.

6 13. The hourly rates shown for the attorneys at DTLLP are the same as the regular rates
7 charged in 2018 for their services in other litigation.

8 14. DTLLP attorneys' regular hourly rates previously have been approved and deemed
9 reasonable in *Segan LLC v. Zynga, Inc.*, Case No. 14-cv-01315-VC, 2015 WL 5315945 (N.D. Cal.
10 Sept. 10, 2015) and in *Adjustcam LLC v. Amazon.com, Inc. et al.*, Civil Action No. 6:10-CV-00329-
11 JRG, 2018 WL 1335308 (E.D. Tex. March 15, 2018).

12 15. I am a 1992 graduate from UC Berkeley Boalt School of Law. Mr. McGowan is a
13 1990 graduate from UC Berkeley Boalt School of Law. Mr. Brausa is a 2007 graduate from
14 Northwestern Law School.

15 16. I was previously an associate and then a partner at the firm currently known as
16 Kecker, Van Nest & Peters LLP. Mr. McGowan was previously an attorney at Skadden, Arps, Slate,
17 Meagher & Flom LLP and a shareholder at Howard Rice, LLP, and currently is a tenured professor
18 at University of San Diego School of Law. Mr. Brausa was previously an associate at Kirkland &
19 Ellis LLP. I believe that our individual hourly rates and my firm's hourly rates in general are
20 substantially below market for attorneys and personnel with similar backgrounds and experience.

21 17. The *Laffey* Matrix is an attorney's fee matrix developed in *Laffey v. Nw. Airlines,*
22 *Inc.*, 572 F. Supp. 354, 371 (D.D.C. 1983), which provides market rates for attorneys working in the
23 Washington, D.C., and Baltimore areas. The LSI *Laffey* Matrix, relies on the Legal Services Index
24 of the Bureau of Labor Statistics, which provides national legal rates adjusted for inflation, rather
25 than local and generalized cost data. *See* LSI *Laffey* Matrix, *available at*
26 <http://www.laffeymatrix.com/see.html>. Courts in this Circuit have found that hourly rates
27 determined using the *Laffey* Matrix, "are reasonable and commensurate with those charged by
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1 attorneys with similar experience in the market.” *Kumar v. Salov N. Am. Corp.*, No. 14-CV-2411-
 2 YGR, 2017 WL 2902898, at *7 (N.D. Cal. July 7, 2017). Additionally, the Ninth Circuit has
 3 accepted the Laffey Matrix as evidence of reasonable hourly rates charged by Washington, D.C.
 4 attorneys. *Mancini v. Dan P. Plute, Inc.*, 358 F. App’x 886 (9th Cir. 2009). And a court in this
 5 District recently awarded Bay Area attorneys Laffey Matrix fees adjusted upwardly by
 6 approximately nine percent, so, if anything, the Laffey Matrix comes in below the market rate for
 7 attorneys in this District. *See Brinker v. Normandin’s*, No. 14CV03007EJDHRL, 2017 WL 713554
 8 (N.D. Cal. Feb. 23, 2017) (citing *Theme Promotions, Inc. v. News America Marketing FSI, Inc.*, 731
 9 F. Supp. 2d 937, (N.D. Cal. 2010); see also *In re HPL Technologies, Inc. Securities Litigation*, 366
 10 F. Supp. 2d 912 (ND Cal 2005). Utilizing the *Laffey* Matrix, DTLLP’s lodestar computed using the
 11 matrix’s 2018-2019 rates, is shown in the following table:

Timekeeper	Hours	2018-2019 Laffey Rate	Laffey Rate with 8.6% Bay Area Multiplier	Total
Daralyn J. Durie	75.5	\$894	\$970.88	\$73,301.44
Adam R. Brausa	86.6	\$742	\$805.81	\$69,783.15
David F. McGowan	8.4	\$894	\$970.88	\$8,155.39
Timothy O’Dwyer	88.6	\$202	\$219.37	\$19,436.18
Vincent Harrington	42.2	\$202	\$219.37	\$9,257.41
Vincent McGautha	14.8	\$202	\$219.37	\$3,246.68
TOTAL	316.1			\$183,180.25

18. Expenses are accounted for and billed separately and are not duplicated in my
 professional billing rate. DTLLP has not received reimbursement for expenses incurred in
 connection with this litigation. As of December 31, 2018, my firm incurred a total of \$2,523.54 in

1 unreimbursed actual third-party expenses in connection with the prosecution of these cases. The
2 actual expenses incurred in the prosecution of these cases are reflected on the computerized
3 accounting records of my firm prepared by bookkeeping staff, based on receipts and check records,
4 and accurately reflect all actual expenses incurred. To summarize, the expenses are as follows:

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Expense Category	Amount
Outside Printing (E102)	\$2,523.54
TOTAL	\$2,523.54

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

12 Executed at San Francisco, California, this 4th day of January, 2019.

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16 DARALYN J. DURIE
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