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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 HOVANES
MARGARIAN 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, Hovanes Margarian, 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 Margarian Law Firm (the “Firm”), counsel of record for Plaintiffs and the
4 certified class in the above captioned matter. I submit this declaration in support of Plaintiffs’
5 Motion for Approval of Class Settlement. Unless otherwise noted, I have personal knowledge of the
6 facts set forth in this declaration and could and would testify competently to them if called upon to
7 do so. I discuss, in the following order, (a) the history of this litigation, which includes a summary
8 description of the legal services provided by the Firm in this litigation to date; (b) evaluation of the
9 proposed settlement; (c) the risks borne by the Firm; and (d) the lodestar of the Firm.

10 **A. History of Litigation**

11 2. The Firm drafted and filed Gegham Margaryan’s Complaint in the Central District of
12 California on July 14, 2017 and caused it to be served. The Firm also drafted and sent a demand
13 letter to KDP pursuant to the California Legal Remedies Act. Prior to doing so, the Firm spent time
14 communicating with Plaintiff concerning his claims, gathering his documentation, and negotiating
15 his engagement agreement. The Firm also undertook extensive pre-filing investigation, including
16 without limitation, researching, tracking, and analyzing KDP’s marketing, advertising, and product
17 packaging, and reviewing KDP’s websites and online documents. The Firm also contracted with an
18 independent laboratory to analyze Canada Dry ginger ale for the presence of ginger compounds.

19 3. After KDP indicated its intent to move to transfer the case to this Court, the Firm
20 signed a co-counsel arrangement with Gutride Safier LLP (“GSLLP”) in which it agreed that
21 GSLLP would serve as lead counsel and that the Firm would perform tasks only as directed by
22 GSLLP. Throughout the litigation, work was divided between the firms to avoid duplication. The
23 *Margaryan* action was transferred to this Court on August 3, 2017 and consolidated with the
24 *Fitzhenry-Russell* case on August 21, 2017. (Dkt. #75.)

25 4. The Firm reviewed the amended class action complaint, which was drafted by
26 GSLLP and included the claims of Mr. Margaryan, before it was filed on October 31, 2017. (Dkt.
27 #97.)

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1 5. Beginning in early 2017, the parties engaged in extensive discovery. The Firm
2 participated in preparing Margaryan's responses to the KDP's discovery requests, including
3 numerous document requests and interrogatories. The Firm also coordinated Margaryan's gathering
4 of documents and helped address concerns raised by KDP regarding Margaryan's discovery
5 responses in its meet and confer efforts.

6 6. The Firm also attended the depositions of two of KDP's 30(b)(6) witnesses. The
7 Firm assisted in the preparation of Margaryan for his depositions and defended the two depositions.
8 The Firm assisted in the briefing of a discovery dispute relating to attorney conduct at Margaryan's
9 first deposition. The Firm assisted Margaryan in preparing corrections to his deposition transcripts.

10 7. On August 15, 2018, the parties participated in mediation with Robert Meyer at
11 JAMS in Los Angeles, California. (Dkt. #220.) An attorney from the Firm attended the mediation.

12 8. The Firm reviewed a draft of the Settlement Agreement.

13 9. Throughout the litigation, The Firm stayed abreast of all proceedings, reviewed all
14 filings, all court rulings, constantly communicated with Margaryan, responded to various inquiries
15 from multiple class members, conducted extensive legal and market research, and ensured that the
16 class interests were well represented. Although Firm personnel spent many hours performing this
17 work, I have eliminated such billings to avoid duplicative billing for work performed by GSLLP as
18 lead counsel.

19 **B. Evaluation of the Proposed Settlement Agreement**

20 10. It is also my opinion that it is in the best interests of the class to enter into this
21 Settlement. Indeed, in light of the risks, uncertainties and delays associated with continued
22 litigation, the Settlement represents a significant achievement by providing guaranteed benefits to
23 class members in the form of changed practices and direct cash compensation.

24 **C. The Risks Borne by The Firm**

25 11. In accepting this case, Class Counsel bore considerable risk. Class Counsel took this
26 case on a fully contingent basis, meaning that we were not paid for any of our time, and that we
27 paid all costs and out of pocket expenses without any reimbursement to date. From the outset, the
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1 Firm recognized that it would be contributing a substantial amount of time, with no guarantee of
 2 compensation or recovery, in the hopes of prevailing against a well-funded defense. Further,
 3 because KDP was represented by a large, highly-skilled and well-resourced litigation firm, there
 4 was increased risk that Plaintiffs would receive a verdict for the Defense after a prolonged trial.

5 **D. Lodestar and Expenses for The Firm**

6 12. Throughout the duration of this litigation, the Firm has maintained contemporaneous
 7 billing records for this case. As noted above, we have eliminated many hours to avoid billing for
 8 duplicative work. The total number of hours worked through December 31, 2018, for which we are
 9 seeking reimbursement, as well as the lodestar computed at our 2018 rates, is as shown in the
 10 following table:

Timekeeper	Hours	The Firm Rate	Total
Hovanes Margarian	54.2	\$650	\$35,230.00
Iveta Ovsepyan	114.9	\$575	\$66,067.50
Armen Margarian	12.4	\$475	\$5,890.00
Shushanik Margarian	16.9	\$425	\$7,182.50
TOTAL	198.0		\$114,370.00

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

22 14. I am a 2006 Graduate from USC Gould School of Law. Iveta Ovsepyan is a 2011
 23 graduate from Loyola School of Law. Armen Margarian is a 2016 graduate from University of West
 24 Los Angeles. Shushanik Margarian is a 2017 graduate from USC Gould School of Law.

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

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

Timekeeper	Hours	2018-2019 Laffey Rate	Laffey Rate with 1.8% Los Angeles Multiplier	Total
Hovanes Margarian	54.2	\$742	\$755	\$40,921.00
Iveta Ovsepyan	114.9	\$658	\$670	\$76,983.00
Armen Margarian	12.4	\$371	\$377	\$4,674.80
Shushanik Margarian	16.9	\$371	\$377	\$6,371.30
TOTAL	198.0			\$128,950.10

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2 17. Expenses are accounted for and billed separately and are not duplicated in my
3 professional billing rate. The Firm has not received reimbursement for expenses incurred in
4 connection with this litigation. As of January 4, 2019, my firm incurred a total of \$4,780.07 in
5 unreimbursed actual third-party expenses in connection with the prosecution of these cases. The
6 actual expenses incurred in the prosecution of these cases are reflected on the computerized
7 accounting records of my firm prepared by bookkeeping staff, based on receipts and check records,
8 and accurately reflect all actual expenses incurred. The expenses are as follows:

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Expense Category	Amount
Court Fees (E112)	\$435.00
Experts (E119)	\$350.00
Litigation Support Vendors (E118)	\$3,270.23
Out-of-Town Travel (E110)	\$699.84
Postage (E108)	\$25.00
TOTAL	\$4,780.07

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

19 Executed at Glendale, California, this 4th day of January, 2018.

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21 /s/ Hovanes Margarian
22 Hovanes Margarian, Esq.