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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 KATHLEEN SMITH and MATTHEW
13 DOWNING, on behalf of themselves and all
14 others similarly situated,

14 Plaintiffs,

15 v.

16 KEURIG GREEN MOUNTAIN, INC.,

17 Defendant.

Case No. 4:18-cv-06690-HSG

**DECLARATION OF HOWARD
HIRSCH IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS**

Date: December 8, 2022

Time: 2:00 p.m.

Location: Courtroom 2, 4th Floor

Judge: Hon. Haywood S. Gilliam, Jr.

1 I, Howard Hirsch, declare as follows:

2 1. I am a partner at the Lexington Law Group (“LLG”) and we represent Plaintiffs
3 Kathleen Smith, Matthew Downing and the class of consumers (“Plaintiffs”) in this action against
4 Keurig Green Mountain, Inc. (“Keurig”). I am one of the attorneys who has been principally
5 involved in the prosecution of this litigation and the negotiations which culminated in the
6 Stipulation of Settlement resolving Plaintiffs’ and the class’s claims (the “Settlement”). I have
7 personal knowledge of the matters set forth herein and, if called upon, I would and could testify
8 competently thereto.

9 **LLG’s Investigation, Litigation and Settlement of the Case**

10 2. Plaintiff Kathleen Smith filed this action on September 28, 2018. Before
11 commencing this action, my firm conducted a comprehensive examination and evaluation of the
12 relevant law and facts to assess the merits of the claims and to determine how best to serve the
13 interests of the class members. At that time, there were no reported cases alleging violations of
14 consumer protection laws involving recyclability representations. We anticipated that Keurig
15 would raise legal and factual defenses based on the uncertainty regarding the meaning of
16 “recyclable,” and we had to plead the case in a way that minimized Keurig’s chance of prevailing
17 on these issues. Indeed, when Keurig filed its motion to dismiss in January 2019, no court had
18 addressed the viability of consumer protection claims challenging recyclability representations.
19 Because of the novelty of the issues raised by this case, my firm was required to conduct
20 significant legal research prior to filing the action.

21 3. In addition to their legal research, Plaintiffs conducted a pre-suit factual
22 investigation that included interviewing and communicating with putative class members and
23 consulting with expert witnesses. It also included investigating Keurig’s marketing and business
24 practices with respect to its single serve coffee pods (the “Challenged Products”), preparing the
25 requisite pre-suit notice pursuant to the Consumer Legal Remedies Act (“CLRA”) and drafting
26 the complaint.

27 4. Prior to filing the lawsuits, Plaintiffs took good faith efforts to resolve the case
28 without the need for litigation.

1 5. Keurig zealously attacked the pleadings in this action, bringing a motion to dismiss
2 that raised at least six distinct legal theories. [ECF No. 26]. Keurig also filed a motion to stay
3 discovery pending resolution of its motion to dismiss [ECF No. 25], which Plaintiff opposed and
4 the Court denied [ECF No. 36]. After holding a hearing on the motion to dismiss, the Court
5 denied it in its entirety [ECF No. 50]. Had it been granted, Keurig’s motion could have been
6 completely dispositive of Plaintiffs’ claims

7 6. Plaintiffs took and responded to a substantial amount of discovery in this case.
8 Following is an overview of the major discovery we conducted:

- 9 • Plaintiffs served five sets of requests for production of documents, three sets of
10 interrogatories and two sets of requests for admissions on Keurig. Plaintiffs met
11 and conferred with Keurig extensively regarding its responses to these requests.
Hundreds of thousands of pages were eventually produced by Keurig and carefully
12 reviewed by Plaintiffs.
- 13 • Plaintiffs responded to one set of requests for admissions, and two sets of
document requests and interrogatories propounded by Keurig.
- 14 • Plaintiffs took a FRCP 30(b)(6) deposition and deposed three key Keurig
15 employees in Burlington, Massachusetts (where Keurig is headquartered). Class
Counsel also defended the deposition of Plaintiff Smith.
- 16 • Plaintiffs were required to conduct substantial third-party discovery. Plaintiffs
17 subpoenaed approximately 25 non-parties, including materials recovery facilities,
plastics recycling consultants and trade associations, and Keurig’s marketing
18 firms, and met and conferred extensively with those non-parties regarding their
responses. Plaintiffs also deposed three non-parties.
- 19 • Plaintiffs and Keurig also had numerous disputes over discovery, scheduling, case
20 management, and other related issues, several of which necessitated Court
intervention [ECF Nos. 54, 59, 66, 69, 76, 89, 116, 121 and 122].

21 7. Plaintiff Smith filed her motion for class certification on December 17, 2019 [ECF
22 No. 65]. This motion was heavily litigated. In support of the motion, Plaintiffs consulted with
23 experts regarding methods for determining the recyclability of the Challenged Products on a
24 classwide basis, the method of calculating classwide damages and restitution, the alleged price
25 premium Keurig charged for the Challenged Products, the uniformity and materiality of the
26 recycling representations at issue, and the likelihood of consumer deception resulting from those
27 label claims. Plaintiffs prepared and submitted three detailed expert declarations with their
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1 motion [ECF No. 65-1, Exhs. 1, 2 and 3]. Keurig vigorously opposed the motion. Keurig's
2 opposition brief was accompanied by approximately 300 pages of testimony from experts, third
3 parties and key Keurig employees [ECF No. 74-3]. The Court granted the class certification
4 motion on September 21, 2020 [ECF No. 96]. As requested by Plaintiffs, the Court certified a
5 class of consumers who purchased the Challenged Products for personal, family or household
6 purposes in California from June 8, 2016 through the present.

7 8. Keurig thereafter retained new outside counsel to file a petition with the Ninth
8 Circuit for permission to appeal the Court's class certification under Federal Rule of Civil
9 Procedure 23(f), which Plaintiffs opposed. On November 25, 2020, the Ninth Circuit denied
10 Keurig's petition to appeal.

11 9. Plaintiffs thereafter conferred with Keurig's counsel and with various Claims
12 Administrators regarding the class notice program and prepared the class notice and supporting
13 documents. Since Keurig took the position that class notice was premature, Plaintiffs also sought
14 and obtained the Court's order that class notice be issued [ECF Nos. 111 and 113].

15 10. Pursuant to the Court's scheduling Order (as modified due to extenuating
16 circumstances), the parties' opening expert reports were due on October 27, 2021, with rebuttal
17 reports due February 28, 2022, discovery closing on March 15, 2022, and a trial date of August
18 15, 2022 [ECF No. 103]. Therefore, Plaintiffs spent substantial time and resources from the fall
19 of 2020 (when the class was certified) until the fall of 2021 (when the case settled) on discovery
20 and experts. In fact, because a term sheet was not signed by the parties until October 27, 2021
21 (the same date expert reports were due), Plaintiffs had already finalized three merits expert
22 reports they intended to serve on Keurig's counsel the date the settlement was reached. Plaintiffs
23 consulted with and retained several merits experts regarding, among other things: (1) the
24 recyclability of the Challenged Products; (2) the amount of the premium allegedly charged based
25 on the recyclability representations on the Challenged Products; (3) the proper calculation of
26 damages and restitution in the case; and (4) consumer perception of the recyclability
27 representations at issue.

28 11. From the outset of this case, Plaintiffs attempted to resolve their claims without the

1 need for the time consuming and expensive litigation described herein. However, as with the
2 other aspects of this litigation, the negotiations ultimately leading to the settlement of Plaintiffs’
3 claims were contentious and required significant attorney time and skill. Plaintiffs engaged in
4 intensive, adversarial settlement efforts with Keurig over the course of the litigation, including
5 participating in two full days of mediation with the Hon. Morton Denlow (Ret.) on May 11 and
6 September 21, 2021. When the case did not settle after those two mediation sessions, the parties
7 continued their negotiations until a term sheet was ultimately signed on October 27, 2021.

8 12. Following agreement as to the general terms of the settlement in principle, much
9 work remained for Class Counsel. Class Counsel still had to draft and reach agreement with
10 Keurig regarding the language of the Settlement, the class notices, the claim form, the notice
11 program and multiple other exhibits to the Settlement. These negotiations did not conclude until
12 February 24, 2022, the date Plaintiffs’ motion for preliminary approval of the settlement was due
13 pursuant to Court order [ECF No. 126]. Class Counsel also prepared and filed the motion for
14 preliminary approval, which included numerous supporting documents and declarations [ECF No.
15 128]. Class Counsel appeared at the hearing and argued in support of preliminary approval on
16 April 14, 2022, which the Court granted on July 8, 2022 [ECF No. 140]. Since the Court
17 preliminarily approved the Settlement, Class Counsel have worked closely with Keurig’s counsel
18 and the Claims Administrator to supervise dissemination of notice to class members and to
19 oversee the claims process. This work continues at the time of this filing.

20 **Plaintiff Kathleen Smith’s Work as Class Representative**

21 13. Plaintiff Smith has been an exceptional class representative and has worked
22 tirelessly on behalf of the class since the case began in 2018. For example, based on a cursory
23 search of my firm’s email sever, Plaintiff Smith and I have exchanged over 500 emails
24 throughout the four years of this litigation. We have also had dozens of phone calls and met in
25 person multiple times to discuss case strategy and prepare for her deposition. Plaintiff Smith has
26 gone above and beyond what is generally required of a class representative to ensure that
27 Plaintiffs receive the best settlement possible. Without her diligent work, Plaintiffs would have
28 been unable to achieve such an excellent result for the benefit of the Class. Ms. Smith has not

1 been compensated for any of her out-of-pocket costs incurred on this case.

2 **The Value of the Settlement**

3 14. The proposed Settlement provides for the non-reversionary payment of ten million
4 dollars (\$10,000,000) in cash for the benefit of the Class (the “Settlement Fund”). This fund,
5 which constitutes more than 10% of the maximum alleged actual damages to the class as a whole,
6 represents a significant recovery for the Settlement Class in light of the substantial risks of
7 decertification and trial. Furthermore, the monetary amounts offered to individual class members
8 under the Settlement may actually be higher than any class member would obtain if Plaintiffs
9 prevailed at trial. Keurig charged approximately \$6.40 for ten (10) single-serve coffee pods
10 during the class period. While hotly disputed by Keurig, Plaintiffs’ expert has determined that the
11 average actual damages a class member suffered was approximately \$0.10 per 10 pods. Under
12 the Settlement, each Settlement Class member can recover more than their actual damages by
13 obtaining \$0.35 per 10 pods with proof of payment, with a minimum of \$6.00 and a maximum of
14 \$36.00 per household. Settlement § III.B.4. To be clear, customers did not purchase pods
15 individually but instead purchased pods in packages that typically contained dozens of pods per
16 package; therefore, the benefit provided by the settlement with proof of purchase may be
17 substantial for any class members who kept records of their purchases (as reflected by the \$36.00
18 maximum benefit per household). Moreover, even as to class members who do did not keep such
19 records, such Settlement Class member may recover \$5.00 without proof of purchase.

20 15. The injunctive terms of the Settlement also afford substantial benefits to the Class.
21 While Plaintiffs are not required to estimate the value of the injunctive relief, one possible
22 measure is to take the total settlement amount of \$10 million and divide it over the 68-month
23 class period, which results in a monthly benefit of \$147,059 going forward. This would increase
24 the settlement value by approximately \$1,764,708 each year. Assuming Keurig complies with the
25 Settlement for five years, it would increase the settlement value by approximately \$8,823,540,
26 and if Keurig complies with the Settlement for ten years it would increase the settlement value by
27 approximately \$17,647,080. Plaintiffs are not claiming that this added benefit changes the
28 calculation for the amount of the settlement fund; however, Plaintiffs do believe that this

1 additional relief to consumers should be considered in evaluating the reasonableness of Class
2 Counsel’s fee request in particular and of the settlement overall.

3 16. While not included as a Settlement term, Keurig began modifying the Challenged
4 Products in 2021 after this litigation was pending to include a more easily peelable lid to make the
5 Challenged Products more likely to be successfully recycled, which Plaintiffs had also urged
6 Keurig to do throughout the litigation. *See* First Amended Complaint ¶ 23 (“[W]hile Defendant
7 instructs consumers to ‘peel [the] lid and dispose,’ the foil lid on the Challenged Products is
8 extraordinarily difficult to remove as the foil sticks to the edge of the plastic cup and there is no
9 extra tab (as one would find on a yogurt container, for instance) to use to peel off the lid.”); see
10 also Settlement § II.K (“Since the Action was filed, Keurig has made changes to some of the
11 business practices at issue in the Action, including changing the design of the Challenged
12 Products to make it easier for consumers to remove the foil lid prior to placing the remaining
13 beverage pods in their recycling bin.”). This is an additional benefit that Plaintiffs believe was a
14 result of their efforts and success in this case.

15 **LLG’s Timekeeping Practices**

16 17. My firm keeps detailed time records and maintains complete documentation of all
17 the attorneys’ fees and costs that Plaintiffs have incurred in pursuing this matter. The time
18 records are kept contemporaneously with time delineated by timekeeper to the tenth of an hour.
19 These detailed time records are kept by my firm according to its usual timekeeping practices,
20 which are designed to ensure that our time records are detailed, accurate and complete. I
21 personally helped develop, implement and monitor compliance with this timekeeping policy. All
22 new billing employees are trained on LLG’s timekeeping procedures.

23 18. LLG’s timekeeping practices require every professional employee to keep his or
24 her time contemporaneously. An individual time entry is required for every case-related task
25 completed by an attorney, para-professional or investigator. My office uses a custom-designed
26 Excel spreadsheet to initially record time entries. An entry is made by first selecting the case to
27 which the work was performed from a drop-down menu. The spreadsheet allows for the selection
28 of only one case, and it is not possible to assign a given billable entry to more than one case.

1 After the case selection is made, a detailed description of the task performed is composed by the
2 timekeeper by typing it into the spreadsheet entry. This allows the timekeeper to fully explain the
3 task performed. We encourage the use of uniform task descriptions to create bills that are more
4 consistent and readable. After the task is completed, the timekeeper must record the time spent
5 on the task. All time records are recorded in tenth of an hour (six minute) increments.

6 19. To ensure the accuracy and reasonableness of the attorneys' fees, LLG maintains a
7 task-based coding system as part of its standard timekeeping procedures. Although this
8 categorization is not an exact science, it reflects each timekeeper's best professional judgment to
9 allocate each time entry to a specific task category. Pursuant to this procedure, LLG's custom-
10 designed Excel spreadsheet also includes a column with a drop-down menu for each timekeeper
11 to assign each time entry to one of the following eight task categories:

- 12 a. Case development;
- 13 b. Experts;
- 14 c. Pleadings and law and motion;
- 15 d. Settlement;
- 16 e. Case management and litigation strategy;
- 17 f. Factual discovery;
- 18 g. Trial, trial preparation, and post-trial proceedings; and
- 19 h. Appellate work.

20 20. The task category denoted "Case development" includes time spent on the
21 following tasks:

- 22 • researching and reviewing documents and other information regarding underlying
23 factual issues in this case, including but not limited to industry research and
24 research into factual assertions by defendant;
- 25 • conducting field and internet research to identify potential products and targets;
- 26 • conducting field and internet research regarding channels of distribution for
27 products and locations where products are sold;
- 28 • traveling to retail stores to purchase products;
- internet purchasing of products;

- 1 • conducting due diligence regarding potential defendants, including research
2 regarding company size, sales figures, number of stores, geographic reach, number
of employees, and proper corporate entities and officers;
- 3 • preparing the pre-suit demand;
- 4 • ongoing factual research and investigation to support the case as needed;
- 5 • internal strategy meetings regarding the investigation; and
- 6 • overall supervision and management of the case investigation.

7 21. The task category denoted “Experts” includes time spent on the following tasks:

- 8 • researching and consulting with experts regarding the recyclability of the
9 Challenged Products and regarding methods for assessing same;
- 10 • reviewing and analyzing data regarding the recyclability of the Challenged
11 Products;
- 12 • researching and consulting with experts regarding damages and restitution issues;
- 13 • researching and consulting with experts regarding Keurig’s marketing and labeling
14 of the Challenged Products, the materiality and uniformity of Keurig’s
15 recyclability representations, and consumer perceptions and preferences with
16 respect to recyclability labels;
- organizing, reviewing, and transmitting expert-generated data and reports; and
- internal strategy meetings regarding expert-related issues.

17 22. The task category denoted “Pleadings and law and motion” generally includes time
18 spent on the following tasks:

- 19 • drafting and responding to pleadings and law and motion matters;
- 20 • preparing for and attending related hearings;
- 21 • conducting related legal research;
- 22 • providing related litigation support;
- 23 • internal strategy meetings regarding pleadings and law and motion matters; and
- 24 • conferring with the client regarding same.

25 23. The task category denoted “Case management and litigation strategy” includes
26 time spent on the following tasks:

- 27 • meeting and conferring with defense counsel regarding case management and
28 scheduling issues;

- 1 • drafting, reviewing, and editing case management statements and negotiating with
2 defense counsel regarding same;
- 3 • preparing for and attending case management conferences;
- 4 • reviewing and negotiating terms of case management and scheduling orders with
5 defense counsel;
- 6 • participating in internal meetings and related communications regarding case
7 management, calendaring issues, and strategy;
- 8 • providing overall client case updates; and
- 9 • overall supervision and management of this case.

10 24. The task category denoted “Factual discovery” generally includes time spent on
11 the following tasks:

- 12 • drafting and responding to formal and informal discovery requests to Keurig and
13 third parties;
- 14 • meeting and conferring with defense counsel regarding discovery issues;
- 15 • drafting and opposing discovery dispute letters;
- 16 • conducting legal research regarding discovery issues;
- 17 • preparing for and attending discovery related hearings;
- 18 • taking and defending depositions and related preparation;
- 19 • participating in internal meetings regarding discovery issues; and
- 20 • conferring with the client regarding discovery responses and overall discovery
21 plan.

22 25. The task category “Trial, trial preparation, and post-trial proceedings” generally
23 includes time spent on the following tasks:

- 24 • developing trial strategy, including identifying and developing the record for key
25 factual and legal issues;
- 26 • identifying, organizing, and cataloguing trial exhibits;
- 27 • preparing witness lists and any necessary subpoenas;
- 28 • preparing for direct or cross-examination of witnesses;
- drafting and responding to motions in limine, pre- and post-trial briefs, proposed
findings of fact and law, jury instructions, post-judgment motions, and other pre-
and post-trial filings;
- conducting related legal research;

- 1 • preparing for and attending trial;
- 2 • participating in internal meetings regarding trial preparation and trial issues; and
- 3 • communications with the client regarding trial issues.

4 No time was billed to this category in this case.

5 26. The task category “Appellate work” generally includes time spent on the following
6 tasks:

- 7 • drafting and responding to appellate briefs;
- 8 • conducting related legal research;
- 9 • preparing for and attending oral arguments;
- 10 • meeting and conferring with defense counsel regarding appellate issues;
- 11 • participating in internal meetings and related communications regarding appellate
12 issues; and
- 13 • communicating with the client regarding appellate issues.

14 27. Pursuant to LLG’s standard timekeeping procedures, the timekeeping information
15 from the Excel spreadsheets is then uploaded to the Timeslips time and expense software program
16 by LLG’s bookkeeper. The Timeslips program then generates reports and bills that are sent to
17 clients and used internally for practice management. Every month, I review several reports
18 generated by the Timeslips program. One such report summarizes all of the time each timekeeper
19 has spent on every case they have worked on for that given month, sorted by timekeeper.
20 Another report summarizes all of the time billed in every active case, sorted by case. I review
21 these reports for completeness, accuracy, and reasonableness. My partners and I also periodically
22 review the underlying time entries to ensure that LLG’s timekeeping policies are being followed
23 and to exercise billing judgment by writing off any time that appears inefficient or unreasonable.

24 28. Because of LLG’s rigorous timekeeping practices, LLG’s billing records reflect
25 the hours that are reasonably necessary to achieve Plaintiffs’ goals in this litigation. I have
26 carefully reviewed the time records in this case and can attest that, in my professional judgment,
27 all of the time spent to date was: (a) spent in furtherance of necessary investigation, litigation and
28 settlement activities; (b) of measured duration appropriate to each task; and (c) billed cost-

1 effectively by a person of appropriate skill and experience for the task.

2 **LLG's Hourly Rates**

3 29. LLG is a public interest law firm specializing in complex consumer class actions
4 and environmental litigation. LLG has significant experience representing aggrieved consumers
5 in class action cases alleging that that the environmental attributes of consumer products are
6 falsely advertised. LLG presently has six attorneys on staff with a combined total of over 90
7 years of litigation experience. A true and correct copy of LLG's firm resume was previously
8 submitted to the Court with Plaintiffs' motion for preliminary approval of the Settlement [ECF
9 No. 56-2, Exh. 3].

10 30. Through my practice in consumer protection actions, my review of attorneys' fee
11 awards by other California courts in my own cases and in other consumer protection cases, and
12 my review of the declaratory evidence submitted in support of those awards, I am aware of the
13 market rates charged by other firms for attorneys with similar levels of experience. The billing
14 rates of my firm's attorneys are commensurate with (and often lower than) prevailing market
15 rates for attorneys of similar skill and experience in the San Francisco Bay Area, as detailed
16 below. My firm's billing rates have been consistently approved by state and federal courts in the
17 scores of settlement approval and other motions regarding attorneys' fees we have filed in state
18 and federal courts, and have never been disapproved by a court. This includes court approval of
19 LLG's rates in the following representative cases:

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- 21 • *Golloher v. Todd Christopher International, Inc. dba Vogue International*, Case
22 No. 12-cv-06002 RS (N.D. Cal. 2014), Order and Final Judgment Approving Class
23 Action Settlement, Awarding Attorneys' Fees and Expenses, and Awarding Class
24 Representative Service Awards (entered April 25, 2014) (awarding attorneys' fees
25 based on LLG's 2014 rates);
 - 26 • *Center for Environmental Health v. Nutraceutical Corp.*, 2018 Cal.App.Unpub.
27 LEXIS 4230 (affirming Alameda Superior Court's award of fees based on LLG's
28 2015 rates).
 - *Brown v. Hain Celestial Group, Inc.*, 2016 U.S. Dist. LEXIS 20118 (N.D. Cal.)
(LLG's 2015 billing rates "are within normal and customary ranges for
timekeepers with similar qualifications and experience in the San Francisco
market.").

- *Ambrose v. Kroger Co.*, Case No. 20-cv-04009-EMC (N.D. Cal. 2021) (awarding fees based on LLG’s 2021 rates, which are identical to those in this case).

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31. I sometimes compare LLG’s rates to those of other San Francisco and California firms that do similar work. LLG’s rates are in line with such other firms’ rates. Indeed, my comparison is supported by recent decisions by courts in this District. *See In re Aqua Metals, Inc. Secs. Litig.* 2022 U.S. Dist. LEXIS 36944 at *24 (finding that Class Counsel’s hourly rates of “\$765-\$1,050 for partners and \$425-\$650 for associates are in line with prevailing rates in this district for personnel of comparable experience, skill and reputation”; *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479, 2018 U.S. Dist. LEXIS 213045, at *14 (N.D. Cal. Dec. 18, 2018) (approving rates from \$650 to \$1,250 for partners or senior counsel, \$400 to \$650 for associates); *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 U.S. Dist. LEXIS 39115, at *5 (N.D. Cal. Mar. 17, 2017) (finding billing rates ranging from \$275 to \$1600 for partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals reasonable). LLG’s hourly billing rates are on the lower end of these ranges and are reasonable given the experience and skill of its attorneys.

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32. The principal LLG attorneys working who have worked on this matter are myself, former LLG associate Ryan Berghoff, and current LLG associate Meredyth Merrow. I graduated from Berkeley Law in 1996 in the top ten percent of my class, and I was admitted to the Massachusetts Bar in 1996 and the California Bar in 2001. I have practiced law for over twenty-five years, almost the entirety of which has been spent exclusively representing plaintiffs in environmental and consumer protection litigation. Before joining LLG in 2003, I worked for five years at a national, non-profit environmental law firm prosecuting citizen suits under federal environmental statutes, and for two years prior to that as a litigation associate at a nationally recognized law firm based in Boston. I have presented and taught at numerous law conferences and seminars, and I have guest-lectured at Golden Gate University Law School. My current hourly rate is \$750 an hour.

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33. Former LLG associate Mr. Berghoff graduated from University of California-Los Angeles School of Law in 2015 in the top ten percent of his class, where he was Executive Editor

1 of the UCLA Journal of Environmental Law and Policy. Mr. Berghoff started his legal career at
2 the Center for Food Safety (“CFS”), a national nonprofit public interest and environmental
3 advocacy organization specializing in the use of legal actions to curb harmful food production
4 technologies. While at CFS, Mr. Berghoff worked on both state and federal litigation involving
5 enforcement of the Organic Foods Production Act, the Federal Insecticide, Fungicide, and
6 Rodenticide Act, the Endangered Species Act; the National Environmental Policy Act, and the
7 California Environmental Quality Act. Because of the relatively small size of the litigation team
8 and the large docket of active cases, Mr. Berghoff was provided with substantial responsibilities,
9 including drafting a wide array of motions, including oppositions to motions to dismiss and
10 motions for summary judgment. From 2017 through the spring of 2022, Mr. Berghoff worked as
11 an associate at the Lexington Law Group on a variety of tasks, including drafting motions, taking
12 depositions, resolving discovery disputes, and negotiating settlements with opposing counsel. Mr.
13 Berghoff’s billing rate was \$400 an hour.

14 34. LLG associate Meredyth Merrow graduated from Hastings College of the Law in
15 2019 with an Environmental Law concentration, and was admitted to the California bar that same
16 year. Ms. Merrow has practiced law since 2019, exclusively representing plaintiffs in
17 environmental and consumer protection litigation at LLG. Ms. Merrow’s current billing rate is
18 \$325 an hour.

19 35. Some of the billable work on this matter was performed by members of LLG’s law
20 clerk staff, primarily Alexis Pearson. Ms. Pearson has worked as a law clerk at LLG since 2018
21 while also attending Golden Gate University Law School, where she will graduate with her JD in
22 December 2022. Ms. Pearson’s hourly rate is \$195.

23 **LLG’s Lodestar**

24 36. As described herein, Plaintiffs’ counsel were required to spend a considerable
25 amount of time and resources investigating, developing, filing, litigating and settling this action.
26 This work was performed on a pure contingency basis with no guarantee of success or ever being
27 paid. Throughout the litigation I coordinated with members of my firm and with my co-counsel
28 to divide up work in an efficient and cost-effective manner, thereby ensuring that all work was

1 performed without unnecessary duplication.

2 37. Based on my firm's contemporaneous time records, LLG has spent over 5,250
3 hours litigating this case resulting in a lodestar fee amount of over \$2.5 million through August
4 31, 2022. This lodestar includes time spent by the following timekeepers:

<i>NAME</i>	<i>TITLE</i>	<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Howard Hirsch	(P)	1605.8	\$750	\$1,204,350
Mark N. Todzo	(P)	57.5	\$800	\$46,000
Eric S. Somers	(P)	96.0	\$850	\$81,600
Ryan Berghoff	(A)	1530.9	\$400	\$612,360
Meredyth Merrow	(A)	1338.4	\$325	\$434,980
Joseph Mann	(SC)	22.5	\$650	\$14,625
Micaela Harms	(A)	88.4	\$325	\$28,730
Salam Awwad	(A)	23.9	\$300	\$7,170
Jake Wellins	(PL)	31.4	\$150	\$4,710
Nick Redfield	(PL)	17.6	\$195	\$3,432
Alexis Pearson	(PL)	380.4	\$195	\$74,178
Owen Sutter	(PL)	12.9	\$195	\$2,515
Leslie Valpey	(PL)	46.3	\$235	\$10,880
TOTAL:		5,252		\$2,525,531

21 (P) Partner, (SC) Senior Counsel, (A) Associate, (PL) Paralegal

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23 38. In order to facilitate the review and determination as to the reasonableness of the
24 attorneys' fees incurred in this matter, the following chart summarizes the time spent by LLG
25 (through August 31, 2022) by general category of tasks performed (using the timekeeping system
26 and categories described above):

LLG's LODESTAR BY GENERAL CATEGORY			
Category	Description	Hours	Lodestar
1	Case Development (<i>e.g.</i> , researching Keurig's advertising and marketing of the Challenged Products, legal research to support potential claims, communicating with potential class members, preparing pre-suit notice, drafting complaint)	138.1	\$83,529
2	Experts (<i>e.g.</i> , communicating with consulting experts to prepare case and address Keurig's defenses)	605.5	\$349,292
3	Pleadings and law and motion (<i>e.g.</i> , drafting and responding to pleadings and law and motion matters, preparing for and appearing at hearings, legal research)	1048.6	\$491,691.50
4	Settlement (<i>e.g.</i> , reviewing and exchanging relevant information with defense counsel to facilitate case evaluation and settlement, preparing mediation briefs and attending mediations, preparing and reviewing proposed settlement agreements, negotiating settlement terms, preparing supporting documents for settlement, communicating with Claim Administrator and defense counsel regarding notice to the Class and claims process, preparing preliminary approval and fee motion)	731	\$434,228
5	Case management and litigation strategy (<i>e.g.</i> , meetings with defense counsel regarding case management and scheduling issues, drafting case management statements, internal strategy meetings, administrative motion practice)	565.8	\$243,249
6	Factual discovery (<i>e.g.</i> , propounding and responding to discovery, reviewing discovery responses and document production, meeting and conferring with defense counsel regarding discovery issues, preparing joint discovery dispute letters and appearing at hearings regarding such letters)	2084.1	\$878,646
7	Trial (<i>e.g.</i> , drafting trial outlines)	0	0
8	Appellate (<i>e.g.</i> , reviewing and responding to appellate briefing)	78.9	\$44,895
TOTAL:		5,252	\$2,525,531

39. LLG's lodestar does not reflect any time incurred after August 31, 2022. Thus, the lodestar does not include significant attorney time spent preparing this motion. Nor does this

1 lodestar include any time spent preparing the motion for final approval of the Settlement,
 2 preparing for and attending the final approval hearing, overseeing the ongoing claims
 3 administration process, responding to any further inquiries from class members, or any of the
 4 other significant amount of work I anticipate will be necessary to finalize and effectuate the
 5 Settlement. I anticipate that between my firm, co-counsel, and Shapiro Haber & Urmy LLP,
 6 Class Counsel will incur additional fees of over \$150,000 through final approval, resulting in a
 7 total lodestar at or above \$3 million. I will provide an updated summary of fees incurred during
 8 the fall of 2022 prior to the final approval hearing scheduled for December 8, 2022.

9 40. Class Counsel have exercised reasonable billing judgment: any time that might be
 10 considered excessive, redundant, purely administrative or otherwise unnecessary has not been
 11 claimed. For example, Class Counsel are not seeking to recover any time spent by any attorneys
 12 or paralegals who spent fewer than 10 hours on the litigation. I have reviewed the billing records
 13 to confirm that they are accurate and reasonably incurred. Documentary substantiation for the
 14 attorneys' fees (detailed time entry records) is maintained and is available upon request.

15 41. In undertaking the representation of Plaintiffs on a contingency basis in this case,
 16 LLG has been forced to forego other fee-generating work. For example, due to the demands of
 17 this litigation, Class Counsel have had to decline other potential greenwashing cases involving
 18 mislabeling of single use plastic products as recyclable.

19 **LLG's Out-of-Pocket Litigation Expenses**

20 42. Based on my firm's contemporaneously maintained expense records, LLG has
 21 incurred \$563,684.87 in costs in this matter as of August 31, 2022. LLG's costs include Lexis
 22 research, mediation fees, expert fees, copying expenses, postage, express deliveries, travel costs
 23 and court fees.

<u>Category</u>	<u>Total Expense</u>
Photocopies	\$4,779.16
Couriers, Service, Court Calls	\$4,362.47
Court Reporters, Transcripts	\$9,448.40
Discovery Database Fees	\$44,909.56
Expert Fees	\$458,831.80

1	Mediation Fees	\$20,008.76
2	Evidence Purchasing	\$69.56
3	Research Expenses (Lexis)	\$4,363.78
4	PACER, Filing Fee	\$2,161.3
5	Postage	\$2,064.15
6	Travel Expenses	\$3,022.05
7	Telephone/Telecom	\$9,663.88
8	Total	\$563,684.87

9 43. In addition, my firm has continued to incur costs associated with housing the
10 hundreds of thousands of pages of documents produced by Keurig and third-parties in this
11 litigation. Once the case settled, my firm had our e-discovery vendor put the database into
12 “passive” mode to lower the monthly costs of housing the documents. My firm will continue to
13 incur monthly costs of \$350 for maintaining the database in passive mode up through final
14 approval, totaling at least \$2,450, depending on the timing of Court approval.

15 44. I have reviewed the records concerning these expenses to confirm they were
16 reasonably incurred. Documentary substantiation for the expenses (such as receipts) is maintained
17 and available upon request.

18 **Co-Counsel’s Lodestar**

19 45. LLG’s co-counsel in this case is Gideon Kracov of the Law Office of Gideon
20 Kracov. Mr. Kracov is the owner of the Law Office of Gideon Kracov located at 801 South Grand
21 Avenue, 11th Floor, Los Angeles, CA 90017. Mr. Kracov’s practice involves environmental and
22 land use law, emphasizing compliance and litigation under the California Integrated Waste
23 Management Act of 1989, California Environmental Quality Act (CEQA), the Planning and
24 Zoning Law, the Safe Drinking Water and Toxic Enforcement Act of 1986, the Federal Water
25 Pollution Control Act, the Federal Clean Air Act and similar laws. He served for more than fifteen
26 years as General Counsel of the California Waste and Recycling Association, a trade organization
27 including the state’s leading recycling and waste management companies. Mr. Kracov also served
28 as a member of the Los Angeles County Integrated Solid Waste Management Task Force that
reviews plans for facility development and coordinates recycling and waste policy for the ten

1 million residents of Los Angeles County. His substantial experience in waste and recycling
2 regulation, and relationships with industry leaders and experts in this area was a substantial benefit
3 to the Class.

4 46. Mr. Kracov is a 1995 graduate of Berkeley Law School, where he received an
5 Environmental Law Certificate. He is a former Deputy Los Angeles City Attorney where he
6 counseled the Departments of Planning and Sanitation. As a Deputy City Attorney, he was on the
7 team that negotiated a \$168 million settlement to remove trash from the Los Angeles River, and he
8 advised on the City's contaminated property redevelopment program. He is a Los Angeles
9 Magazine Southern California Super Lawyer, a designation limited to the top 5 percent of lawyers
10 in the region. In 2009, the Daily Journal named him as one of the top 20 lawyers under age 40 in
11 all of California.

12 47. Mr. Kracov served as 2014-2015 Chair of the State Bar Environmental Law
13 Section. Elected by his peers, Mr. Kracov led education and program activities on behalf of the
14 Section's 2,500+ environmental lawyer members. He teaches Land Use Law as a lecturer at
15 Loyola Law School ("LLS"), where he coached the LLS team to first place in the 20th Annual
16 California Lawyers Association Environmental Law Student Negotiation Competition. He is also
17 a Governor's appointee to both the California Air Resources Board ("CARB") and the South
18 Coast Air Quality Management District Governing Board ("AQMD"). CARB is the state's lead
19 agency combating air pollution and climate change. The South Coast AQMD has responsibility
20 for improving air quality for the 17 million people living in Los Angeles, Orange, Riverside and
21 San Bernardino counties. From 2015 to 2018, he served as a Governor's appointee and Chair of
22 the California Mining and Geology Board that oversees the State's interests in seismic hazards,
23 mineral resources and mine reclamation. In 2017, he chaired the California Department of Toxic
24 Substances Control Independent Review Panel tasked with recommending improvements to the
25 agency's permitting, enforcement, outreach and fiscal management. From 2007 to 2011, he
26 served as Vice-Chair of the Los Angeles Proposition O Bond Committee administering \$500
27 million to protect the City's rivers and beaches. Mr. Kracov's hourly rate is \$750.

28 48. Mr. Kracov categorized his time in this case using the same timekeeping codes as

1 LLG. The following chart summarizes the time spent by Mr. Kracov (through August 31, 2022)
2 by general category of tasks performed:

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LAW OFFICE OF GIDEON KRACOV'S LODESTAR BY GENERAL CATEGORY			
Category	Description	Hours	Lodestar
4 1	Case Development (<i>e.g.</i> , researching Keurig's advertising and marketing of the Challenged Products, legal research to support potential claims,)	7.7	\$5,775
5 2	Experts (<i>e.g.</i> , identifying and communicating with consulting experts to prepare case and address Keurig's defenses)	62.1	\$46,575
6 3	Pleadings and law and motion (<i>e.g.</i> , drafting and editing pleadings and law and motion matters, preparing for and appearing at hearings, legal research)	30.1	\$22,575
7 4	Settlement (<i>e.g.</i> , reviewing and exchanging relevant information with defense counsel to facilitate case evaluation and settlement, preparing mediation briefs and attending mediations, preparing and reviewing proposed settlement agreements, negotiating settlement terms, preparing supporting documents for settlement, , preparing and editing preliminary approval and fee motion)	47.3	\$35,475
8 5	Case management and litigation strategy (<i>e.g.</i> , meetings with defense counsel regarding case management and scheduling issues, drafting and editing case management statements, internal strategy meetings, administrative motion practice)	11.1	\$8,325
9 6	Factual discovery (<i>e.g.</i> , propounding and responding to discovery, reviewing discovery responses and document production, meeting and conferring with defense counsel regarding discovery issues, preparing joint discovery dispute letters)	22.8	\$17,100
10 TOTAL:		181.1	\$135,825

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24 49. As set forth above, Mr. Kracov's firm has incurred \$135,825 in fees litigating this
25 case through August 31, 2022. Mr. Kracov has spent additional time on this case in September
26 2022, and anticipates spending additional time on this matter through final approval.

27 50. The related *Downing v. Keurig Green Mountain* case was filed by Shapiro Haber
28 & Urmey LLP, who have also been appointed as Class Counsel in this case and who played a key

1 role in securing the Settlement on behalf of the Class. The lawyers from Shapiro Haber & Urmy
 2 LLP are submitting a separate declaration detailing their experience and their fees and costs in
 3 this matter. As set forth in that declaration, Shapiro Haber & Urmy LLP has incurred
 4 \$229,316.50 in fees and \$4,496.55 in costs litigating this case through August 31, 2022.

5 51. Shapiro Haber & Urmy LLP's lodestar does not reflect time that will be incurred
 6 after August 31, 2022. As set forth in the Declaration of Ian McLoughlin, Mr. McLoughlin
 7 anticipates that his firm will incur additional fees on this matter through final approval, including
 8 fees on time already spent in September.

9 **Summary of Class Counsel's Lodestar Fees and Expenses**

10 52. Following is a chart summarizing the total fees and expenses incurred by
 11 Plaintiffs' counsel in this matter through August 31, 2022:

Firm	Fees	Costs
LLG	\$2,525,531	\$563,684.87
Law Office of Gideon Kracov	\$135,825	\$0
Shapiro Haber & Urmy LLP	\$229,316	\$4,496
Total:	\$2,890,672	\$568,180.87

18 **Summary of Class Counsel's Anticipated Fees and Expenses**

19 53. As set forth above and in the accompanying declarations of co-counsel, Plaintiffs'
 20 counsel also anticipates incurring additional fees in excess of \$150,000 from September 1, 2022
 21 through the date the Settlement is approved and final (which will be no sooner than early 2023).
 22 These fees will include time spent drafting this motion, drafting a reply to this motion, responding
 23 to class member inquiries, preparing the motion for final approval, attending the final approval
 24 hearing, and distribution of settlement. Plaintiffs expect a final lodestar fee number of at least \$3
 25 million. Class Counsel will provide an updated declaration that summarizes the time spent on this
 26 matter prior to the date of the final approval hearing, set for December 8, 2022.

