

1 LEXINGTON LAW GROUP
2 Howard Hirsch, State Bar No. 213209
3 Meredyth Merrow, State Bar No. 327338
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 hhirsch@lexlawgroup.com
9 mmerrow@lexlawgroup.com

10 Attorneys for Plaintiffs
11 KATHLEEN SMITH and MATTHEW DOWNING

12 *Additional Counsel Listed On Signature Page.*

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 KATHLEEN SMITH and MATTHEW
16 DOWNING, on behalf of themselves and all
17 others similarly situated,

18 Plaintiff,

19 v.

20 KEURIG GREEN MOUNTAIN, INC.,

21 Defendant.

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

**DECLARATION OF KATHLEEN
SMITH IN SUPPORT OF
PLAINTIFFS' MOTION FOR
AWARD OF ATTORNEYS' FEES
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, Kathleen Smith, declare as follows:

2 1. I am a Plaintiff and class representative in this action. I have personal knowledge
3 of the matters set forth in this declaration and, if called as a witness, I could and would testify
4 competently thereto.

5 2. As detailed in the operative Second Amended Complaint, I am a resident of
6 Lafayette, California and I am concerned about the impact my actions and purchases have on the
7 environment. In an effort to minimize my environmental impact, I seek out products that are
8 reusable, compostable, or recyclable.

9 3. I am aware that Keurig Green Mountain (referred to herein as “Defendant”)
10 manufactures plastic single serve pods that contain coffee and that are labeled as recyclable (the
11 “Challenged Products”). I purchased the Challenged Products numerous times since 2016
12 directly from Defendant’s website believing that the recycling claims on the Product’s packaging
13 and on Defendant’s website were true. At the time of my purchases, I believed, based on the
14 language on the Challenged Products’ labels, including “Recycle,” “Peel, Empty, Recycle,” and
15 “Have your cup and recycle it, too,” that the Challenged Products would be collected, separated,
16 and recovered from the general waste stream for reuse or use in manufacturing or assembling
17 another item. At the time I purchased the Challenged Products, I did not notice that the
18 packaging on the Challenged Products contained qualifying language that said, “check locally –
19 not recycled in all communities,” because the font size was so small. Regardless, even if I had
20 noticed that language I understand it to mean that the Challenged Products are recycled in most
21 communities.

22 4. I have since learned, contrary to the labeling on the Challenged Products, that the
23 Challenged Products are not recyclable in many communities. Had I known then that the
24 Challenged Products would not be recycled in many communities, even after following
25 Defendant’s cumbersome recycling instructions, I would not have purchased the Challenged
26 Products. If I had known that the Challenged Products were not actually recyclable in many
27 communities, I would have sought other coffee products that are otherwise reusable, compostable,
28 or recyclable.

1 5. When I retained my attorneys in 2018 and authorized the filing of the original
2 complaint, I understood that I would be representing not only myself but also a class of
3 consumers like myself. I have taken this responsibility very seriously throughout the four years of
4 my involvement in the litigation, and I have been fully committed to the vigorous prosecution of
5 this action on behalf of consumers like myself.

6 6. This Court has recognized that I am an adequate class representative in approving
7 my motion for class certification on September 21, 2020 (ECF No. 96).

8 7. I have performed a number of tasks to oversee the work of my attorneys and to
9 protect the rights of absent class members. I have spent over three years helping my attorneys
10 prosecute this action. Among other things, my participation in this lawsuit has included:

- 11 • retaining my attorneys;
- 12 • providing them information necessary to draft the Complaint, the First Amended
13 Complaint, and the Second Amended Complaint, including the Challenged Products I
14 purchased, the location and date of the purchase and the reasons I selected the
15 Challenged Products;
- 16 • reviewing the draft Complaint, the First Amended Complaint, and the Second
17 Amended Complaint before they were filed;
- 18 • assisting my attorneys in responding to over 100 written discovery requests
19 propounded by Defendant, including gathering and producing responsive documents
20 and reviewing and approving responses to interrogatories, document requests, and
21 requests for admission;
- 22 • monitoring the litigation, which included routine communications with my attorneys
23 in person, on the telephone, and via email, as well as reviewing documents and
24 correspondence they sent me;
- 25 • preparing for and appearing at an all-day in-person deposition;
- 26 • drafting and reviewing my declarations in support of the motion for class certification
27 and motion for preliminary approval of the settlement;
- 28

- 1 • attending two full-day mediation sessions and the preliminary approval hearing;
- 2 • reviewing and approving multiple drafts of the term sheet and settlement agreement;
- 3 • providing my attorneys with information necessary to successfully oppose
- 4 Defendant’s motion to dismiss and file Plaintiffs’ motion for class certification, and
- 5 providing declarations in support thereof; and
- 6 • understanding and agreeing to each of the responsibilities of a named plaintiff and
- 7 putative class representative.

8 8. I have not received any compensation whatsoever for my time and efforts on
9 behalf of absent class members. I have also incurred unreimbursed out-of-pocket expenses on
10 items such as transportation (to and from my deposition and meetings with my counsel) and
11 postage and printing costs associated with the litigation.

12 9. This litigation has also drawn unwanted press attention for me. For example, the
13 New York Times published a video that depicted me (dubbed “Grandma Coffee” in the video) as
14 a ghoulish cartoon figure, which I did not appreciate.¹ I was also forced to reveal personal
15 details about my purchasing habits in discovery (beyond just my purchase of the Challenged
16 Products), which I consider to be an unwarranted invasion of my privacy that I experienced in my
17 efforts on behalf of the Class.

18
19 I declare under penalty of perjury that the foregoing is true and correct to the best
20 of my knowledge and understanding.

21
22 Executed on September 13, 2022, in Lafayette, California.

23
24 /s/Kathleen Smith
Kathleen Smith

25
26
27
28 ¹ See <https://www.nytimes.com/2019/12/09/opinion/recycling-myths.html>