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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 Plaintiffs,

19 v.

20 KEURIG GREEN MOUNTAIN, INC.,

21 Defendant.

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

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

Date: December 8, 2022

Time: 2:00 p.m.

Location: Courtroom 2, 4<sup>th</sup> Floor

Judge: Hon. Haywood S. Gilliam, Jr.

1 I, Ian J. McLoughlin, declare as follows:

2 1. I am a partner at Shapiro Haber & Urmy LLP (“Shapiro Haber”). We represent  
3 Plaintiffs Kathleen Smith, Matthew Downing, and the class of consumers (“Plaintiffs”) in this  
4 action against Keurig Green Mountain, Inc. (“Keurig”). I was one of the attorneys principally  
5 involved in the prosecution of litigation that my firm filed on behalf of plaintiff Matthew  
6 Downing in the United States District Court for the District of Massachusetts, *Downing v. Keurig*  
7 *Green Mountain, Inc.*, No. 1:20-cv-11673 (the “*Downing* action”). I participated in the  
8 negotiations that led to the Stipulation of Settlement, which resolves the class claims in both  
9 *Smith* and *Downing* (the “Settlement”). I have personal knowledge of the matters herein and, if  
10 called upon, I could testify competently to them.

11 **SHU’s Investigation, Litigation, and Settlement of this Action and the *Downing* Action**

12 2. My law firm specializes in consumer protection law. We enforce the state  
13 consumer protection laws of various states across the country, but additionally, we seek to hold  
14 Massachusetts companies accountable for unfair and deceptive conduct occurring in  
15 Massachusetts, wherever the injured consumers may be. Massachusetts has one of the strongest  
16 consumer protection laws in the country, Mass. Gen. Laws ch. 93A (“Chapter 93A”). The  
17 Massachusetts legislature designed Chapter 93A not only to protect Massachusetts consumers but  
18 also to regulate the conduct of companies based in Massachusetts, including preventing harm  
19 caused by Massachusetts companies to consumers outside of Massachusetts.

20 3. When my firm filed the *Downing* action on September 9, 2020, we were aware the  
21 *Smith* action was pending and that the *Smith* action challenged Keurig’s marketing, business  
22 practices, and promotional efforts for its single-serve coffee pods (the “Challenged Products”).  
23 We were also aware that plaintiff Kathleen Smith had filed a motion for class certification  
24 seeking the certification of a class of California consumers who had purchased the Challenged  
25 Products, although this Court had not yet decided that motion. Our firm filed the *Downing* action  
26 because Keurig is a Massachusetts company, and there was a potential to use Massachusetts law  
27 to obtain a remedy on behalf of consumers nationwide, given that much of Keurig’s conduct at  
28 issue in these cases occurred in Massachusetts.

1           4.       Before my firm filed the *Downing* action, we conducted a substantial investigation  
2 into the factual and legal bases for potential claims that could be asserted on behalf of a national  
3 class. We, of course, reviewed in detail all evidence available from the *Smith* action, but we also  
4 conducted a substantial further investigation to bolster the allegations we ultimately made in the  
5 *Downing* action. We investigated the identity and location of key Keurig personnel likely  
6 involved in the conduct giving rise to the claims asserted against Keurig, including key personnel  
7 involved in the design and marketing of the Challenged Products. We performed this further  
8 investigation to present a solid factual predicate to the assertion of Chapter 93A claims against  
9 Keurig on behalf of a national class (i.e., including consumers who purchased the Challenged  
10 Products in states other than Massachusetts).

11           5.       My firm’s pre-suit investigation culminated in the *Downing* complaint, filed on  
12 November 9, 2020. [*Downing* ECF No. 1]. The *Downing* action asserts a single Chapter 93A  
13 claim on behalf of a national class of purchasers of the Challenged Products. Plaintiffs’ assertion  
14 of a national Chapter 93A claim derived from the fact that Keurig’s conduct alleged in the  
15 *Downing* action occurred primarily in Massachusetts, together with Massachusetts law indicating  
16 that the statute may be applied for the benefit of consumers in other states [*Downing* ECF No. 28  
17 at 16–20].

18           6.       Shortly after my firm filed the *Downing* action, the Court in this action on  
19 September 21, 2020, granted plaintiff Smith’s motion for class certification, certifying the  
20 proposed California class for California law claims. [ECF No. 96]

21           7.       Keurig moved to dismiss the *Downing* action on several grounds [*Downing* ECF  
22 Nos. 14, 15]. Keurig challenged whether Mr. Downing alleged an injury, whether Mr. Downing  
23 had standing, whether he alleged substantive facts sufficient to state a claim under Chapter 93A,  
24 and whether he could assert a Chapter 93A claim on behalf of individuals who purchased the  
25 Challenged Products outside of Massachusetts. Plaintiffs opposed Keurig’s motion [*Downing*  
26 ECF No. 28]. The court in *Downing*, in a decision dated June 11, 2021, denied Keurig’s motion,  
27 except for the part of Keurig’s motion that sought to strike Plaintiff’s class allegations on behalf  
28 of a proposed national class, which the court granted [*Downing* ECF No. 34].

1           8.       Because the *Downing* court's decision dismissing Mr. Downing's claims on behalf  
2 of a national class was functionally equivalent to a denial of class certification for those claims,  
3 my firm filed on Mr. Downing's behalf a petition to appeal the district court's decision under Fed.  
4 R. Civ. Proc. 23(f). That petition remained pending when the parties agreed to the material terms  
5 of a settlement, which would resolve both *Smith* and *Downing*.

6           9.       While Keurig's motion to dismiss was pending in *Downing*, the *Downing* court  
7 permitted the parties to begin discovery. Plaintiffs served document requests upon Keurig and  
8 procured Keurig's production of a substantial volume of documents. My firm prepared initial  
9 disclosures on behalf of Mr. Downing. My firm had begun a review of documents Keurig  
10 produced when the parties agreed to the material terms of a global settlement of both *Smith* and  
11 *Downing*.

#### 12 **The Value of the Settlement**

13           10.      My firm, together with the plaintiffs in the *Smith* action, negotiated a global  
14 resolution of both the *Smith* and *Downing* actions, reflected in the Settlement submitted in their  
15 motion for preliminary approval [ECF No. 126].

16           11.      The Settlement represents an excellent recovery for the class. The settlement  
17 details are explained in the declaration of Howard Hirsch, also filed in support of the motion for  
18 attorneys' fees and incentive awards. But, in short, the Settlement provides a substantial non-  
19 reversionary cash recovery for class members, including amounts payable to class members that  
20 are sufficient to compensate them for the alleged damages in this action. The Settlement also  
21 includes important injunctive relief to prevent future deception.

#### 22 **Shapiro Haber's Timekeeping Practices**

23           12.      Throughout the *Downing* and *Smith* actions, attorneys and paralegals at Shapiro  
24 Haber & Urmy have maintained contemporaneous records of their time. Shapiro Haber & Urmy  
25 timekeepers record time on a task billing basis in one-tenth (0.1) of an hour increments, together  
26 with a detailed description for each task performed. Shapiro Haber uses Timesolv, a commercial  
27 time entry platform designed specifically for law firms such as Shapiro Haber, to ensure accurate  
28 and reliable recording of attorney time.

1           13. My firm maintains complete documentation of all time recorded and costs incurred  
2 in pursuing this matter. To ensure their completeness and accuracy, I have reviewed the time and  
3 expense records my firm maintains in connection with this matter. I have also confirmed that the  
4 time I summarize below was necessary and appropriate in furtherance of the *Downing and Smith*  
5 actions.

6 **Shapiro Haber's Hourly Rates**

7           14. Shapiro Haber is highly experienced in class action litigation, focusing in  
8 particular on consumer class actions. Shapiro Haber has obtained significant recoveries in  
9 numerous class actions and other lawsuits involving complex issues of law and fact. Plaintiffs  
10 previously submitted my firm's resume [ECF No. 128-1 Ex. 5], which lists prominent cases the  
11 firm has prosecuted, including many consumer class action recoveries obtained both through  
12 settlement and successful class trials.

13           15. The hourly rates upon which Shapiro Haber calculates its lodestar reflect the  
14 hourly rates ordinarily charged by legal professionals of comparable experience in the Boston  
15 area. Those rates are also similar to the hourly rates charged by California attorneys with  
16 comparable experience, as reflected in the other declarations submitted in connection with the  
17 motion for attorneys' fees and incentive awards. There is ample support for the rates my firm  
18 charges, including the following:

19           16. ***First***, clients pay my firm at the hourly rates identified below for legal services  
20 rendered in substantial litigation, in which we are paid on a contemporary, hourly, non-contingent  
21 basis. The fact that my firm charges the below rates in cases in which they are paid on that basis  
22 confirms that the rates fairly reflect the reasonable market value of my firm's work.

23           17. ***Second***, as an attorney in Massachusetts, I am familiar with the rates charged by  
24 law firms doing comparable work on an hourly, non-contingent basis (for example, law firms that  
25 defend the types of class actions that my firm prosecutes). Shapiro Haber's rates are comparable  
26 to (and often lower than) the hourly rates for such firms performing non-contingent work in the  
27 same types of cases that my firm prosecutes.

28

1           18.     **Third**, since 2016, my firm has submitted applications for attorneys' fees in the  
2 following class actions based on the same hourly rates described below. All of those fee  
3 applications have been approved. *See, e.g., In re Fitbit Stockholder Deriv. Litig.*, No. 2017-0444  
4 (Del. Ch.) (order dated Oct. 29, 2020); *Duncan v. Nissan N. Am., Inc.*, No. 1:16-cv-12120 (D.  
5 Mass) (order dated August 25, 2020); *Crane v. Sexy Hair*, No. 1:17-cv-10300, Dkt. Nos. 97, 97-3,  
6 102 (D. Mass.) (order dated May 14, 2019); *Godinez v. Alere, Inc.*, No. 1:16-cv-10766, Dkt. Nos.  
7 274, 275-6, 283 (D. Mass.) (order dated June 6, 2019); *In re AVEO Pharmaceuticals, Inc. Secs.*  
8 *Litig.*, No. 1:13-cv-11157, Dkt. Nos. 184, 185, 186-5, 190 (D. Mass.) (order dated May 30,  
9 2018); *Perlow v. ABC Fin. Servs., Inc.*, No. 1684-CV-03611 (Mass. Super. Ct.) (order dated  
10 December 18, 2018).

11     **Shapiro Haber's Lodestar**

12           19.     Since August 31, 2022, Shapiro Haber has spent approximately 350 hours on the  
13 *Smith and Downing*. Shapiro Haber's time and expense investments were at risk, given the  
14 contingent nature of any recovery. That is, there was no guarantee that plaintiffs would prevail in  
15 either of the cases or that if they did, the recovery would be sufficient to seek reimbursement of  
16 out-of-pocket expenses or compensation for the reasonable value of the time my firm committed  
17 to prosecuting the cases.

18           20.     The time my firm committed to this case was reasonable and served to advance the  
19 interests of the class. My firm incurred most of its time in connection with the *Downing* action.  
20 As part of the *Downing* action, my firm's principal tasks included investigating potential claims,  
21 drafting a complaint, briefing Keurig's motion to dismiss the *Downing* complaint, and briefing a  
22 Rule 23(f) petition before the United States Court of Appeals for the First Circuit. My firm also  
23 began discovery in the *Downing* action, including preparing document requests and reviewing  
24 documents Keurig produced in response to those requests. My firm also helped negotiate the  
25 global Settlement of the *Smith and Downing* actions presently before the Court. This work  
26 included reviewing and revising draft term sheets and settlement agreements, conferring with Mr.  
27 Downing concerning those documents, and assisting in preparing the motion for preliminary  
28 approval of the Settlement.

21. The chart below presents a summary of the work performed by the timekeepers in this case:

<b>Timekeeper</b>	<b>Position</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Edward F. Haber	Senior Partner	46.7	\$925	\$43,197.50
Michelle H. Blauner	Partner	1.2	\$820	\$984.00
Ian McLoughlin	Partner	102.0	\$720	\$73,440.00
Patrick J. Vallely	Senior Associate (2005)	185.2	\$575	\$106,490.00
Adam M. Stewart	Senior Associate (2004)	6	\$575	\$3,450.00
David Bianco	Paralegal	3.5	\$225	\$787.50
Jessica Keegan	Paralegal	4.3	\$225	\$967.50
<b>TOTAL:</b>		<b>348.9</b>		<b>\$229,316.50</b>

22. Shapiro Haber's lodestar does not reflect the time incurred, or that will be incurred, after August 31, 2022. I anticipate my firm will devote additional time to these cases after August 31, 2022, including in preparing a motion for final approval, preparing for the final approval hearing, and assisting with settlement administration matters.

**Shapiro Haber's Out-of-Pocket Litigation Expenses**

23. In addition to devoting substantial time to the two cases, Shapiro Haber incurred out-of-pocket expenses to advance the cases. Through August 22, 2022, Shapiro Haber incurred \$4,496.55 in out-of-pocket expenses. This figure, and the expenses described below, include only expenses that my firm directly incurred and paid.

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

