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Peter MacKinnon, Jr.

SUPERIOR COURT OF CALIFORNIA
SANTA CLARA COUNTY

PETER MACKINNON, JR., an individual, on behalf of himself, the general public and those similarly situated

Plaintiff,

v.

IMVU, INC.,

Defendant.

Case No. 111 CV 193767

CLASS ACTION

DECLARATION OF SETH A. SAFIER IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS

Date: February 19, 2016
Time: 9:00 a.m.
Department: 1

Honorable Judge Peter H. Kirwan

1 I, Seth A. Safier, declare and state that:

2 1. I am a member of this Court and attorney of record for Plaintiff Peter MacKinnon, Jr.
3 in this action.

4 2. I am a partner in Gutride Safier LLP (“GSLLP” or “Firm”), which has been
5 preliminarily appointed Class Counsel in the above-captioned matter. The information below is
6 stated based on personal knowledge. I am competent to testify to the facts set forth below, and if
7 called as a witness and placed under oath, I would testify to those facts.

8 3. I make this Declaration in support of Plaintiff’s motion for final approval and
9 application for attorneys’ fees and costs and incentive award (collectively, the “Motion”). In that
10 regard, I discuss, in the following order: (a) the history of this litigation which includes a summary
11 description of the legal services provided by GSLLP in this litigation to date, including a detailed
12 discussion of the settlement negotiations and Settlement; (b) the risks borne by GSLLP; (c) the
13 time, rate, expenses and other data underlying the Motion; and (d) GSLLP’s continuing obligations
14 in this litigation and under the Settlement Agreement.

15 **A. History of the Litigation.**

16 **Initial Pleadings, Case Management and Removal**

17 4. On February 7, 2011, Plaintiff Colby J. Stratton filed a Complaint against Defendant
18 in the Superior Court of California, County of Santa Clara, Case No. 111-CV-193767.

19 5. In that Complaint, Stratton alleged, on behalf of himself and those similarly situated,
20 that that IMVU had sold customer-generated products, provided to IMVU with the representation
21 that customer had full rights to distribute products, some of which contained full-length audio files
22 (e.g., songs), to its customers for use in IMVU’s 3D messaging service and then substantially
23 reduced the value of those audio files by cutting their playback length to 20 seconds. Stratton
24 alleged claims for violations of the California Consumer Legal Remedies Act (“CLRA”), false
25 advertising under California Business and Professions Code sections 17500, *et seq.*; and unfair
26 business practices under California Business and Professions Code sections 17200, *et seq.*; breach

1 of contract; conversion; and misrepresentation.

2 6. Prior to drafting, filing and serving the complaint, GSSLP spent time communicating
3 with Plaintiff Stratton concerning his claims, gathering his documentation and negotiating with him
4 a retainer agreement. GSSLP also undertook extensive pre-filing investigation, including without
5 limitation researching, tracking and analyzing Defendant's marketing, advertising and website
6 materials, and reviewing Defendant's press releases, public statements and online documents. This
7 Firm also conducted research regarding IMVU's online user agreements and the IMVU
8 Application. Throughout this litigation, GSSLP has continued to monitor, research and review such
9 materials.

10 7. GSSLP also drafted and served on Defendant a comprehensive CLRA demand letter.
11 GSSLP additionally drafted and served a letter regarding the preservation of electronic documents
12 and information.

13 8. On March 9, 2011, IMVU answered the complaint and denied the allegations. IMVU
14 additionally sought designation of this case as complex.

15 9. On April 11, 2011, the Court deemed the case complex and assigned it for all
16 purposes to the complex litigation department.

17 10. This Firm worked out a stipulation for leave to file an amended complaint.

18 11. On May 23, 2011, the Court granted leave, pursuant to the parties' stipulation, for
19 filing of an amended complaint.

20 12. The first amended complaint, filed on June 6, 2011, added a new plaintiff, Peter
21 MacKinnon, Jr., who joined in Stratton's existing claims, and who also pled a new claim for breach
22 of warranty. The next day, Stratton voluntarily dismissed his claims, leaving MacKinnon as the sole
23 plaintiff.

24 13. This Firm then met and conferred with Defendant, and negotiated, drafted and
25 submitted a case management statement. Attorneys from this Firm subsequently attend the July 8,
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1 2011 case management conference.

2 14. On July 28, 2011, IMVU answered the first amended complaint, denying its
3 allegations. This firm reviewed IMVU's answer and affirmative defenses. It additionally researched
4 filing a motion to strike, but elected not to do so.

5 15. This Firm then negotiated and drafted a joint case management statement, and its
6 attorneys attended the second case management on September 9, 2011.

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8 16. On September 30, 2011, IMVU removed the Litigation, pursuant to the Class Action
9 Fairness Act of 2005, 28 U.S.C. 1332(d), et seq., to the United States District Court for the Northern
10 District of California.

11 **Federal Court and Remand**

12 17. Plaintiff moved in the U.S. District Court to remand to state court, which IMVU
13 opposed. Plaintiff also moved for sanctions under Rule 11. This firm spent time researching,
14 drafting and filing those two motions, as well as reviewing and researching Defendant's
15 oppositions. This firm additionally researched, drafted and filed reply briefs in support of Plaintiff's
16 motions.

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18 18. On December 21, 2011, while those motions were pending, IMVU filed a motion in
19 the U.S. District Court for judgment on the pleadings. Plaintiff reviewed and researched that
20 motion.

21 19. On January 11, 2012, the U.S. District Court (Hamilton, J.) granted Plaintiff's
22 motion to remand the case to state court, denied the motion for sanctions and denied as moot the
23 motion for judgment on the pleadings.

24 20. Upon return to state court, IMVU re-filed its motion for judgment on the pleadings,
25 on February 3, 2012. It additionally filed a request for judicial notice.

26 21. This Firm researched, drafted, filed and served oppositions to that motion and
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1 request for judicial notice.

2 22. I attended and argued at the hearing of Defendant's motion for motion for judgment
3 on the pleadings.

4 23. On May 2, 2012, the Court (Kleinberg, J.) granted the motion, dismissing all claims
5 but granting leave to amend as to the claims under the CLRA and the UCL.

6 24. This Firm then spent a significant amount of time researching and drafting a second
7 amended complaint to address the Court's order granting the motion for judgment on the pleadings.
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9 25. On June 1, 2012, this Firm filed and served a second amended complaint with
10 respect to those two claims.

11 26. On June 27, 2012, IMVU demurred to the second amended complaint.

12 27. This Firm reviewed and researched Defendant's demurrer and corresponding request
13 for judicial notice. It then researched, drafted, filed and served oppositions to IMVU's demurrer
14 and request. IMVU replied. This Firm reviewed and researched the replies, and prepared for and
15 attended oral argument.

16 28. On December 31, 2012, the Court (Kleinberg, J.) sustained the demurrer without
17 leave to amend and entered judgment for IMVU.

18 **Post-Judgment Motions And The Appeal**

19 29. On January 3, 2013, this Firm filed a notice of appeal from the order granting
20 judgment on the pleadings and from the demurrer. (While the appeal was pending, IMVU sought to
21 recover costs from Plaintiff in the amount of \$24,730.73. Plaintiff moved to tax costs. The motion
22 was not heard prior to the appellate remand.)

23 30. This Firm researched, drafted and filed Plaintiff's opening brief on appeal on May
24 10, 2013. In conjunction with that filing, this Firm completed the necessary appellate forms,
25 obtained the necessary transcripts and put together and submitted the record on appeal.

26 31. IMVU filed its opposition on August 14, 2013. IMVU additionally filed a
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1 supplemental record. GSLLP reviewed and researched IMVU's opposition and reviewed the
2 documents in IMVU's supplemental record.

3 32. This Firm then researched, drafted, filed and served Plaintiff's reply brief on
4 October 17, 2013.

5 33. Oral argument was held October 23, 2014. Attorneys from this Firm prepared for
6 and attended the appellate argument.

7 34. On October 30, 2014, the Court of Appeal, Sixth Appellate District, reversed the
8 judgment of the Superior Court and remanded with directions to deny the motion for judgment on
9 the pleadings and overrule the demurrer as to the conversion claim, breach of contract claim, breach
10 of the covenant of good fair and fair dealing claim, CLRA claim (in part) and UCL claim (in part).
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12 **Litigation and Settlement Following Appeal**

13 35. On January 23, 2015, the Superior Court (Kirwan, J.) entered a new order consistent
14 with the Court of Appeal's directions.

15 36. Once this case was remanded, GSLLP drafted and filed a third amended complaint.
16 On February 4, 2015, GSLLP filed a third amended complaint re-pleading the claims for
17 conversion, breach of contract, breach of the covenant of good fair and fair dealing claim, violations
18 of the CLRA, and violations of the UCL.

19 **Discovery and Discovery-Related Proceedings**

20 37. Following the parties' initial meet and confer conference, GSLLP researched, drafted
21 and served Plaintiff's first set of discovery requests. GSLLP additionally drafted and served a PMK
22 deposition notice. GSLLP later drafted and served several additional deposition notices and several
23 additional sets of discovery requests.

24 38. Discovery in this case was extremely hard fought. Though the parties were able to
25 reach agreement on some of their discovery disputes, there needed to be many discovery related
26 meet and confers with Defense counsel, and not all of the discovery disputes could be settled
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1 between the parties.

2 39. As a result, throughout the case, GSSLP spent many hours researching, drafting,
3 filing and serving discovery dispute letters in accordance with this Court's rules. GSSLP also
4 prepared for and attended (in person) several hearings on the discovery dispute letters. The letters
5 and hearings resulted in a number of agreements and some discovery related orders by this Court,
6 which GSSLP reviewed and followed up on with Defendant.

7 40. As a result of these efforts, Plaintiff obtained from Defendant, and GSSLP ultimately
8 reviewed, approximately 30,000 pages of documents and several gigabytes of data. GSSLP
9 additionally reviewed all of Defendant's responses and objections to dozens of interrogatories and
10 requests for production.

11 41. GSSLP also prepared for and took depositions of four of Defendant's PMK
12 witnesses for several days.

13 42. GSSLP also prepared and served third party discovery.

14 43. Following service of the third party subpoenas, GSSLP spent time negotiating with
15 the third parties (and IMVU) about document production, declarations and deposition attendance.

16 44. Defendant also served on Plaintiff a number of discovery requests. GSSLP drafted
17 and served responses to Defendant's discovery requests. GSSLP then worked extensively with the
18 Plaintiff to respond to all of Defendant's written discovery requests.

19 45. GSSLP also prepared for and defended Plaintiff's depositions. GSSLP defended
20 Plaintiff's deposition in San Francisco. In advance of his deposition, GSSLP met with Mr.
21 McKinnon in San Francisco to prepare him.

22 46. IMVU also attempted to subpoena Mr. Stratton. GSSLP worked with Mr. Stratton on
23 that subpoena.

24 47. Finally, throughout this case, GSSLP has engaged in dozens of meet and confers
25 regarding case management. Those discussions have typically resulted in stipulations or oral
26 agreements.

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Class Certification

48. GSLLP researched and drafted, but never filed, a comprehensive motion for class certification, including a number of supporting declarations.

Settlement Negotiations and Settlement

49. The Settlement at issue in this Motion was reached following many rounds of arms-length talks stretching over many months. Though settlement discussions began soon after the case was filed, the initial discussions did not go very far.

50. Following the appeal, IMVU hired new counsel. In conjunction with bringing new counsel up to speed, GSLLP spent time discussing with Defendant regarding various settlement structures. These discussions led to a mediation, on April 20, 2015, before Randall W. Wulff of Wulff Quinby & Sochynsky in Oakland, California.

51. In preparation for the mediation with Mr. Wulff, GSLLP researched and drafted a comprehensive mediation statement. GSLLP also prepared a presentation.

52. In addition to preparing the mediation brief and presentation, GSLLP spent a significant amount of time strategizing for the mediation session, including researching and reviewing certain class benefit proposals, as well as other recent class action settlements.

53. Over the months that followed, the parties continued to communicate with each other and with Mr. Wulff about settlement in an effort to resolve the case, which they eventually did.

54. Only after the Parties had reached agreement on all of the material terms of settlement, including notice and the class benefit, did they discuss attorneys' fees. The final settlement was the result of serious, informed and non-collusive negotiations.

55. Based on this Firm's familiarity with the factual issues in this litigation, its attorneys were able to negotiate an excellent settlement taking into account the costs and risks of continued litigation. It is accordingly my opinion that counsel for both Parties had full knowledge of the strengths and weaknesses of all Parties' claims due to the extensive discovery and motion work that had preceded the settlement talks.

1 56. Following the reaching agreement in principle, GSSLP spent many hours preparing,
2 negotiating and editing the settlement agreement and corresponding exhibits, including notices and
3 proposed orders. GSSLP also negotiated, prepared and filed a number of stipulations extending the
4 stay on litigation.

5 57. GSSLP then researched, prepared and filed a motion for preliminary approval of
6 class action settlement. The Court entered an order preliminarily approving this Settlement on
7 November 3, 2015.

8 58. Following the entry of the order of preliminary approval, GSSLP has spent time
9 working toward final approval of the Settlement. GSSLP's efforts have included, without limitation,
10 reviewing, testing and troubleshooting the Settlement Website and online claim form process, and
11 recommending and supervising changes to it; reviewing changes to the Settlement Notice and
12 proofreading for final publication; and corresponding with and responding to telephone and email
13 inquiries from Class Members, including persons who had questions regarding the settlement and
14 class benefits.

15 59. In my declaration in support of preliminary approval, I stated that based on my
16 analysis, and investigation, Defendant's database snapshot from February 16, 2012 would show that
17 at least 432,166 unique purchasers bought audio items through IMVU in the period between
18 September 22, 2008 and December 1, 2010 that were longer than 20 seconds. I also stated that these
19 432,166 persons expended 3,306,292,915 IMVU credits on those purchases. Based on this analysis,
20 the parties stated in the Long Form Notice to class members that "Plaintiff contends that
21 approximately 3.3 billion IMVU Credits (equivalent to \$3.3 million) was spent on the Affected
22 Audio Products by approximately 432,000 persons."

23 60. After preliminary approval was granted, Defendant analyzed its databases and
24 informed my firm that the actual number of unique purchasers was slightly higher than estimated, or
25 448,914. However, it further informed my firm that only approximately 119,417 of those persons
26 were Settlement Class Members, with the others excluded because they (1) made their purchases
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1 with IMVU Predits rather than IMVU Credits, (2) previously had been terminated by IMVU for
2 violations of IMVU terms of service, or (3) failed to set their country of residence in the IMVU
3 Application as the United States. Defendant provided the underlying data tables from which it
4 performed its calculations, including purchase records, which my firm reviewed.

5 61. My firm then engaged in a lengthy negotiation with Defendant about providing
6 benefits to persons that had been excluded from the settlement class. Eventually, Defendant agreed
7 to provide the same settlement benefit available to class members to those persons who were
8 excluded from the class because they failed to set their country of residence in the IMVU
9 Application as the United States. This was an additional 90,521 persons. GSLLP also obtained
10 Defendants' agreement that such persons would not be bound by any settlement release.

11 62. Thus, a total of total 209,938 persons will automatically obtain the refund of IMVU
12 Predits in a quantity equal to 60% of the quantity of IMVU Credits he or she used to pay for the
13 Affected Audio Products, without being required to submit a claim form. Those persons also have
14 the option to submit a one-page benefit election form to obtain a refund of IMVU Credits, in a
15 quantity equal to 30% of the quantity of IMVU Credits used to pay for the Affected Audio
16 Products, or the cash value of those refunded Credits, computed at the rate of \$0.00040 per IMVU
17 Credit.

18 63. Based on my firm's analysis of the Defendants' database, the 209,938 persons
19 eligible for settlement benefits made approximately 2.7 million purchases of Affected Audio
20 Products using IMVU Credits, expending a total of approximately 1.97 billion Credits. (Because of
21 slight differences in the dates of the data tables, my firm's analysis shows that there are 212,889
22 unique purchasers who are members of the Settlement Class or who would be members if their
23 country of residence were set as United States, and that they made 2,712,156 purchase transactions
24 of Affected Audio Products for which they spent 1,968,276,685 IMVU Credits.) Because the
25 purchase price for IMVU Credits during the class period was typically \$1 per 1000 Credits, it is
26 estimated that these 209,938 individuals paid approximately \$1.97 million for the Affected Audio

1 Products.

2 64. My firm's analysis also shows that there were a total of 533,298 unique IMVU users
3 who, during the class period, purchased audio products whose playback duration was longer than 20
4 seconds, and whose duration was later truncated. There were 4,125,582 purchase transactions in
5 which these users expended either IMVU Predits or IMVU Credits for those audio products, with
6 the total number of IMVU Credits expended being 4,665,107,843. Based on this analysis, I
7 estimate that the total amount of money spent on Affected Audio Products was approximately \$4.67
8 million. These audio files will now be restored, with the exception of products posted in violation
9 of copyright laws or owned by users who have been disabled for violations of IMVU's terms of
10 service.

11 65. GSLLP has also researched and drafted Plaintiff's motion for final approval and
12 application for an award of attorneys' fees and costs and incentive awards.

13 66. GSLLP will spend additional time drafting the final approval reply papers, a joint
14 status report on opt-outs, and responding to any objections that are filed. GSLLP will also prepare
15 for and attend the final approval hearing, and continue working with class members and the claim
16 administrator to facilitate the Settlement.

17 67. After engaging in all of the aforementioned tasks, as a partner with GSLLP, I am in a
18 unique position to evaluate this Settlement. Indeed, in advising the Plaintiff whether or not to enter
19 into the Settlement Agreement, I was very cognizant of the risks involved in protracted litigation. I
20 was also cognizant of Defendant's size and financial resources.

21 68. When considering the risks and costs associated with proceeding to trial against the
22 nature of the benefit that was being offered by Defendant, it was clear that the Settlement is in the
23 best interests of the class. Indeed, with this Settlement, Plaintiff has achieved his desired goal in this
24 litigation—i.e., obtaining for class members refunds, restoration of the affected audio files, and
25 changes to IMVU's terms of service. In addition, Defendant has agreed to specific changed
26 practices, including improved disclosures, and the elimination of other representations, on its
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1 website. Based on my evaluation of the facts and legal issues presented, I believe that the settlement
2 is fair, adequate and reasonable. Indeed, I believe this is an excellent settlement.

3 69. Plaintiff is requesting an incentive award of \$10,000.00 To begin with, Plaintiff took
4 on the risk of the possibility of bearing Defendant’s costs in a losing effort. Unlike in most cases,
5 this was not a theoretical risk in this case because Defendant’s did file a memorandum for
6 **\$24,730,73** in costs. Though it was never acted upon, the risk was real.

7 70. Plaintiff has also worked (and continues to work) with counsel to provide a number
8 of declarations and other information throughout the litigation. He conducted lengthy searches of
9 his personal records. He also spent a good deal of time preparing for and being deposed. He also
10 both responded to interrogatories and requests for production of documents. Plaintiff also attended
11 the mediation session and thereafter remained available for consultation, and was frequently
12 consulted.

13 71. Plaintiff is releasing additional claims that class members are not. *Compare*
14 settlement agreement section 8.2 to section 8.3. As Plaintiff was a “dj” on IMVU, he purchased
15 thousands of dollars worth of music. Additionally, when IMVU discontinued the full playback of
16 his music triggers he lost revenue—i.e., IMVU credits.

17 72. In my opinion, Plaintiff’s participation in this litigation has been excellent.

18 **B. The Risks Borne By GSSLP.**

19 73. In accepting this case, GSSLP also bore considerable risk. GSSLP took this case on
20 a fully contingent basis, meaning that we were not paid for any of our time, and that we paid all
21 costs and out of pocket expenses without any reimbursement to date—i.e., almost 5 years. From the
22 outset, GSSLP recognized, among other things, that it would be contributing a substantial amount
23 of time and advancing significant costs in prosecuting a nationwide class action, with no guarantee
24 of compensation or recovery, in the hopes of prevailing against a well-funded defense. During the
25 course of the litigation, GSSLP turned away other cases due to its involvement with this matter.
26 Among these were cases that were subsequently filed by other firms.

1 74. Because Defendant has been represented by several sizeable litigation firms, there
2 was increased risk that Plaintiff would receive a verdict for the Defense after a prolonged trial.

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4 **C. Lodestar and Expenses for GSSLP**

5 75. Attached to my Declaration In Support of Preliminary Approval is a true and correct
6 copy of the firm resume of GSSLP.

7 76. Based on the time records of GSSLP, GSSLP has approximately 1940 hours
8 prosecuting this litigation through January 7, 2016.¹ The total number of hours, as well as the
9 lodestar computed at our 2015 rates, is as shown in the following table:

Attorney (Position)	Hours	Rate	Total
Adam J. Gutride	385.2	\$825.00	\$317,790
Seth A. Safier	819.5	\$800.00	\$655,600
Jay Kuo	114.5	\$700.00	\$101,150
Todd Kennedy	589.5	\$700.00	\$442,125
Kristen Simplicio	1.5	\$675.00	\$1,010
TOTAL	1940.2		\$1,517,675

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17 77. The hourly rates shown for the attorneys at GSSLP are the same as the regular rates
18 charged in 2015 for their services in other litigation. GSSLP has increased its rates for 2016, but
19 employs its 2015 rates for purposes of this Motion.

20 78. On February 20, 2015, Magistrate Judge Beeler, approved rates of \$725 per hour for
21 me and \$750 for Adam Gutride, and \$700 for Jay Kuo.² On February 20, 2014, Judge Ernest
22 Goldsmith of the San Francisco Superior Court approved rates of \$700 per hour for Adam Gutride
23 and \$675 for me in *Haven v. Betz & Sons, Inc., et al*, Case No. 438719.³ On December 11, 2013,

24 ¹ GSSLP will update its lodestar and costs in a reply declaration, as necessary.

25 ² GSSLP requested approval of its 2014 rates in that case.

26 ³ GSSLP requested approval of its 2013 rates in that case.

1 Judge Claudia Wilken approved rates of \$700 per hour for Adam Gutride, \$675 for me, \$625 for
2 Jay Kuo and \$450 for Kristen Simplicio, in *Rainbow Business Solutions, et al v. Merchant Services,*
3 *et al*, Case No. CV 10-01993 CW (N.D. Cal). On August 1, 2013, Judge Dale S. Fischer approved
4 rates of \$700 per hour for Adam Gutride, \$675 for Seth me, \$625 for Jay Kuo and \$450 for Kristen
5 Simplicio, in *Mancini, et al v Ticketmaster, et al*, Case No. 07-cv-01459-DSF-JTL (C.D. Cal). On
6 June 1, 2012, Judge Jeffrey White approved rates of \$650 per hour for Adam Gutride, \$625 for me
7 and Jay Kuo and \$400 for Kristen Simplicio, in *Chavez v. Blue Sky Beverage, et al*, Case No. 06-cv-
8 6609 (N.D. Cal.). On February 14, 2012, Chief Judge James Ware approved rates of \$625 per hour
9 for Adam Gutride, \$600 for me, Jay Kuo and Helen Marsh, \$500 for Todd Kennedy, and \$375 for
10 Kristen Simplicio, in *Embry v. Acer America Corporation*, Case No. 5:09-cv-1808 (ND. Cal.).⁴ On
11 November 30, 2011, Judge James F. Holderman approved rates of \$600 per hour for Adam Gutride,
12 and \$575 per hour for me in *In Re: Kentucky Grilled Chicken Coupon Marketing & Sales Practices*
13 *Litigation*, Case No. 1:09-cv-07670 (ND. Ill.).⁵ On November 22, 2011, Judge John Munter
14 approved rates of \$625 per hour for Adam Gutride, \$600 per hour for me and Jay Kuo, \$375 per
15 hour for Kristen Simplicio, and \$500 per hour for Todd Kennedy in *Gauss v. Millennium Products,*
16 *Inc.*, Case No. CGC-10-503347. On December 24, 2009, rates of \$550 for Adam Gutride and \$525
17 for myself were approved by Judge Richard A. Kramer in *Deaton et al v. Hotwire*, Case Number
18 CGC-05- 437631. On August 20, 2008, rates of \$525 for Mr. Gutride and \$500 for myself were
19 approved by Judge Charlotte Walter Woolard in *Nelsen v. PeoplePC*, Case Number 07-460240. On
20 April 30, 2008, rates of \$475 for Mr. Gutride and \$450 for myself were approved by Judge
21 Charlotte Walter Woolard in *Howard et al. v. Betz & Sons*, Case Number CGC-03-422529. On
22 April 14, 2008, rates of \$450 for Mr. Gutride and \$425 for myself were approved by Judge Mary E.
23 Wiss in *Cho v. Seagate*, Case Number CGC-06-453195. On February 5, 2008, rates of \$475 for Mr.
24 Gutride and \$450 for myself were approved in by Judge William Alsup in *Siemers v. Wells Fargo*,

25 ⁴ GSSLP requested approval of its 2011 rates in that case.

26 ⁵ GSSLP requested approval of its 2010 rates in that case.

1 Case No. 3:05-cv-04518-WHA (N.D. Cal.). On November 20, 2006, rates of \$450 for Mr. Gutride
2 and \$425 for myself were approved by Judge Richard A Kramer in *Vroegh v. Dane Electric et al.*,
3 Case No. CGC-04-428953.

4 79. Adam Gutride is a 1994 graduate from Yale Law School. Jay Kuo is a 1994 graduate
5 from Boalt Hall Law School. I am a 1998 graduate from Harvard Law School. Mr. Kennedy is a
6 2003 graduate from the Yale Law School. Ms. Simplicio is 2007 graduate of the American
7 University, Washington College of Law.

8 80. Mr. Gutride and I were previously attorneys at the law firm of Orrick Herrington &
9 Sutcliffe. Jay Kuo was previously with Howard Rice Nemerovski Canady Falk & Rabkin, and
10 Kecker & Van Nest. Mr. Kennedy was an attorney at Quinn Emanuel Urquhart & Sullivan, LLP. It is
11 my understanding that attorneys at those firms in the litigation departments, with the same number
12 of years of experience as Mr. Gutride, Mr. Kuo, myself, and Ms. Simplicio are currently billing at
13 hourly rates in excess of \$1000 for law school graduates from 1994 and 1998 and in excess of \$600
14 per hour for 2008 graduates. I also believe the rates paid by Defendant to its (current) firm in this
15 case meets or exceeds the rates requested for GSSLP. I believe that my firm's hourly rates are
16 below market for attorneys with similar backgrounds and experience.

17 81. Expenses are accounted for and billed separately and are not duplicated in my
18 professional billing rate. GSSLP has not received reimbursement for expenses incurred in
19 connection with this litigation. As of January 6, 2014, my firm had incurred a total of \$51,798.19 in
20 unreimbursed actual third-party expenses in connection with the prosecution of these cases. The
21 actual expenses incurred in the prosecution of these cases are reflected on the accounting records of
22 my firm prepared by bookkeeping staff, based on receipts and check records and accurately reflect
23 all actual expenses incurred. Some of the expenses included below are known to us but yet to be
24 invoiced or have been invoiced but not yet paid. The expenses are as follows:

Expense Category	Amount
Copying, Duplication, Printing (E101)	\$2,038.00

1	Arbitrators/Mediators (E121)	\$8,500.00
2	Court Fees, Filing Fees, Witness Fees (E112)	\$2,318.00
3	Delivery Svcs & Msgrs (E107)	\$3,305.61
4	Deposition Transcripts (E115)	\$9,181.42
5	Experts (E119)	\$0.00
6	Litigation Sup Vendors (E118)	\$4130.38
7	Travel (E109) ⁶	\$2,394.92
8	Meals (E111) ⁷	\$1,394.67
9	Online Research (E106)	\$3,653.41
10	Other (E124) ⁸	\$9,200.63
11	Other Professionals (E123)	\$0.00
12	Out-of-Town Travel (E110)	\$4,987.25
13	Outside Printing (E102)	\$537.81
14	Postage (E108)	\$156.09
15	TOTAL	\$51,798.19

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17 **D. Plaintiff's Counsel Continuing Obligations to Class Members**

18 82. Following this Court granting preliminary approval to the Settlement, Class Counsel
19 established standardized procedures to ensure that all inquiries from Class Members were timely
20 and accurately handled. I am not aware of any feedback from class members that would suggest
21 that the process is onerous or complicated. Class Counsel also worked the Claim Administrator to
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23 ⁶ Includes taxis, and parking, tolls, and mileage for automobiles owned by GSLLP timekeepers and
24 Plaintiff.

25 ⁷ Includes meals in connection with depositions and for Plaintiff's trips to San Francisco. Plaintiff
lives in Salt Lake City, Utah. Additionally includes out of town travel for GSLLP timekeepers.

26 ⁸ Includes firm administrative support, bookkeeping, telephone, fax, web and data hosting.

1 assure that settlement website functioned properly, was easy to use and properly designed. Class
2 Counsel also worked with the Claims Administrator to assure that notice was disseminated in
3 accordance with the terms of the Settlement Agreement. I received weekly updates from the
4 Claims Administrator regarding the administration of the settlement.

5 83. As of January 8, 2016, no objection has been filed with the Court. I am further
6 informed that, as of January 8, 2016, there had been 24 requests for exclusion.

7 84. GSSLP will continue in its capacity as class counsel should the settlement be finally
8 approved. GSSLP will prepare for and appear at the fairness hearing. If the settlement is approved
9 and fees awarded, GSSLP also will oppose any appeals that may be filed. Based on my experience
10 with class actions, I additionally anticipate that there will be another 50 – 75 hours of work before
11 this Litigation is entirely complete and an estimated 175-250 hours if this Court’s judgment is
12 appealed.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true of my own personal knowledge. Executed at San Francisco, California, this 14th of January,
15 2016.

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Seth A. Safier, Esq.