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14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**

17 JOSEPH CARLOTTI, individually and on  
behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 ASUS COMPUTER INTERNATIONAL;  
21 ASUSTEK COMPUTER INC., and DOES 1-  
22 50,

23 Defendants.

CASE NO. 18-CV-03369-DMR

**JOINT SUPPLEMENTAL  
DECLARATION OF NICHOLAS  
MIGLIACCIO AND ESFAND NAFISI IN  
SUPPORT OF PLAINTIFF’S MOTION  
FOR APPROVAL OF CLASS  
SETTLEMENT, PROVISIONAL  
CERTIFICATION OF NATIONWIDE  
SETTLEMENT CLASS, AND  
APPROVAL OF PROCEDURE FOR  
AND FORM OF NOTICE TO  
SETTLEMENT CLASS**

25 We, Nicholas A. Migliaccio and Esfand Nafisi, declare as follows pursuant to 28 U.S.C. §  
26 1746:

27 1. Nicholas Migliaccio is the founding partner of Migliaccio & Rathod LLP (“M&R”)  
28 and one of attorneys of record for Plaintiff Joseph Carlotti (“Plaintiff”). Mr. Migliaccio submits this

1 declaration in further support of Plaintiff’s motion for preliminary approval of a class action  
2 settlement with Defendants ASUS Computer International (“ACI”) and ASUSTeK Computer Inc.  
3 (collectively, “Defendants” or “ASUS”). Mr. Migliaccio makes this declaration based on his own  
4 personal knowledge, and if called to do so, could testify to the matters contained herein.

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6 2. Esfand Nafisi is Of Counsel at M&R and an attorney of record for Plaintiff. Mr.  
7 Nafisi submits this declaration in support of Plaintiff’s motion for preliminary approval of a class  
8 action settlement with ASUS based on his own personal knowledge. If called to do so, Mr. Nafisi  
9 could testify to the matters contained herein.

10 3. Mr. Nafisi’s July 8, 2018 Declaration in Support of Plaintiff’s Motion for Preliminary  
11 Approval (Dkt.62) provided a conservative estimate of the value of the Extended Warranty as \$700  
12 per VS Laptop. Mr. Nafisi’s estimate was based on the estimated retail cost of a replacement  
13 motherboard and power supply upgrade, which are the Qualifying Repairs offered under the  
14 Extended Warranty Program. (Dkt. 62 ¶ 18). Mr. Nafisi’s estimate did not include any cost  
15 associated with the labor for installing the replacement motherboard. As detailed below, these  
16 estimates are significantly lower than the actual costs a Class Member would be charged by ACI’s  
17 Service Department for a replacement motherboard and upgraded power supply outside the  
18 warranty.  
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21 4. Following the August 22, 2019 hearing and the Court’s request for additional  
22 information about the value of the Settlement, Mr. Nafisi asked Defendants’ counsel to provide the  
23 actual costs consumers would otherwise be required to pay to obtain the Extended Warranty benefits  
24 from ACI’s Service Department. Absent the Extended Warranty program, a consumer seeking to  
25 replace a VS Laptop’s motherboard through ACI’s Service Department would be charged \$1,153.63,  
26 and the 250-watt power adapter the upgraded motherboard requires would cost an additional \$39.72.  
27 *See Declaration of Jaime Morcheco ¶¶ 2-3.* It is unlikely that consumers would pursue these costly

1 repairs—which cost a total of \$1193.35—absent this Settlement.

2           5.       Using the actual prices ACI’s Service Department charges for the Extended Warranty  
3 benefits, the aggregate value of the Extended Warranty to Class Members with VS Laptops equals  
4 the number of Class Members who purchased VS Laptops (13,500) multiplied by the cost of a  
5 replacement motherboard and power adapter through ACI’s Service Center (\$1,153.63+ \$39.72).  
6 The revised value of the Extended Warranty program is thus \$16,110,225. This far exceeds the  
7 \$6,700,000 estimate provided in Mr. Nafisi’s July 8, 2019 Declaration. (Dkt. 62 ¶ 18.).

8           6.       As detailed in the accompanying billing records, which have been submitted to the  
9 court for *in camera* review, the total number of billable hours spent on this litigation by M&R’s  
10 attorneys and professional staff from its inception in August 2017 through September 10, 2019 has  
11 been 435.4 hours of lawyer and legal assistant time, for a total lodestar of \$279,456.20. If a locality-  
12 based modifier is applied to the time of M&R’s Bay Area attorney, Mr. Nafisi, M&R’s lodestar is  
13 \$294,576.21.

14           7.       M&R undertook to represent the Plaintiff in this action on a pure contingency basis  
15 and would not have received any fees absent the firm’s success in obtaining a recovery in this action.  
16 Additionally, Plaintiff’s Counsel agreed to advance all costs incurred in connection with this action.

17           8.       M&R’s lodestar is calculated using the firm’s current rates, which are based on  
18 experience and are: \$742 an hour for Mr. Migliaccio, who has been in practice since 2002, \$658 an  
19 hour for Jason S. Rathod and Mr. Nafisi who have been in practice since 2010 and 2009,  
20 respectively,<sup>1</sup> \$371 an hour for Erick Quezada, an associate who has been in practice since 2018,<sup>2</sup>

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25 <sup>1</sup> Mr. Nafisi, who is the sole M&R attorney residing in the San Francisco Bay Area, respectfully  
26 requests an 8.6% locality-based adjustment of the firm’s rate due to the higher living costs of the San  
27 Francisco Bay Area compared to Washington D.C., where M&R is headquartered. (Dkt. 62 ¶¶ 26 -  
28 27).

1 \$202 an hour for former law clerk Dominique Reid, and \$202 an hour for paralegal Bruno Ortega.  
2 M&R's rates are based upon a rate scale that uses the number of years of experience to determine the  
3 timekeeper's hourly rate. M&R has requested fee awards using these rates and has had fee awards  
4 approved using these rates in numerous comparable class action litigations over the past six years as  
5 set forth below.

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7 9. For example, in *Singer, et al. v. Postmates*, No. 4:15-cv-01284-JSW (N.D. Cal. April  
8 25, 2018) (Dkt. 98), M&R served as co-counsel in a multistate wage theft class and collective action  
9 in which couriers alleged they were misclassified as exempt from minimum wage and overtime  
10 laws. That suit settled on a common fund basis for \$8.75 million. M&R proffered a declaration  
11 detailing our lodestar and rates, which were consistent with those sought here: between \$636 and  
12 \$718 for the firm's senior attorneys. (*see* Dkt. 89-3). The full attorneys' fee request was ultimately  
13 approved (*see* Dkt. 98).

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15 10. Attorneys at M&R recently served as co-lead counsel in *Matthews, et al. v. TCL*,  
16 3:17-cv-95 (W.D.N.C.), a consumer class action suit in which purchasers of Alcatel OneTouch Idol  
17 3 smartphones alleged that the manufacturer removed a material feature of the phone that reduced  
18 the phone's functionality. The suit settled for injunctive relief that permitted class members who  
19 filed a valid claim to have the feature reinstated or receive a comparable replacement Alcatel phone.  
20 M&R proffered a declaration detailing our lodestar and the same rates as those sought here – i.e.,  
21 between \$658 and \$742 an hour for the firm's senior attorneys. (*See* Dkt. 32-4). The full attorneys'  
22 fee request was ultimately approved (*see* Dkts. 37 and 38).

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24 11. Attorneys at M&R recently served as lead counsel in *Nelson et al. v. Sabre*

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26 <sup>2</sup> Due to an administrative error, five hours of Mr. Quezada's time were previously improperly  
27 categorized as law clerk time using M&R's law clerk rate. In light of this error, M&R will not seek  
28 the higher associate rate for these hours.

1 *Companies LLC*, No. 1:15-cv-00314 (N.D.N.Y.), where M&R represented approximately 59  
2 equipment operators in a collective action against an oilfield services provider, culminating in a \$2.1  
3 million settlement. The Court in *Nelson* awarded M&R our requested fee award after we provided  
4 our lodestar using rates consistent with the foregoing rate scale. (*See* Dkts. 183-2 and 189).

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6 12. Attorneys at M&R also recently served as co-lead counsel in *Corbin v. CFRA, LLC*,  
7 Case No. 1:15-cv-00405 (M.D.N.C.), where we represented approximately 1,520 servers in a  
8 collective action against a major IHOP franchise for wage theft violations, culminating in a \$1.725  
9 million settlement. The Court in *Corbin* awarded M&R our requested fee award after we provided  
10 our lodestar using rates consistent with the foregoing rate scale (*see* Dkts. 92-3 and 93).

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12 13. In 2016, attorneys at M&R also served co-counsel in *Snodgrass v. Bob Evans*, Civil  
13 No. 12-cv-768 (S.D. Ohio), which involved class and collective action claims brought on behalf of  
14 assistant managers against Bob Evans. After extensive litigation, the *Snodgrass* action settled on a  
15 collective and class-wide basis for \$16.5 million. In issuing the order granting final approval, the  
16 court took special note of the “competence of Plaintiffs’ Counsel in prosecuting this complex  
17 litigation, and the risks associated with the prosecution of the claims of the settlement class.” The  
18 Court in *Snodgrass* also awarded M&R our requested fee award after we provided our lodestar using  
19 rates consistent with the foregoing rate scale (*see* Dkts. 216-3 and 219).

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21 14. Attorneys at M&R additionally recently served as co-counsel in *Bland v. Calfrac*,  
22 Civil No. 2:12-cv-1407 (W.D. Pa.), which involved class and collective action claims brought on  
23 behalf of field operators who worked in the oil and gas industry. After extensive litigation, the  
24 *Bland* action settled on a collective and class-wide basis for \$6 million. The Court in *Bland* also  
25 awarded M&R our requested fee award after we provided our lodestar using rates consistent with the  
26 foregoing rate scale. (*see* Dkts. 93-1, 93-2 and 95).

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28 15. Should the foregoing evidence not persuade the Court that the rates for M&R’s D.C.-

1 based attorneys are reasonable, the caselaw allows the Court to exercise its discretion to determine  
2 reasonable hourly rates based on the court's experience and knowledge of prevailing rates in the  
3 community. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).

4           16.       Accordingly, we respectfully submit in the alternative that the rates for M&R's  
5 attorneys are reasonable based on the prevailing rates in the community. *See, e.g., Prison Legal*  
6 *News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (finding district court did not abuse its  
7 discretion in awarding hourly rates for Bay Area attorneys of up to \$875 for a partner); *G. F. v.*  
8 *Contra Costa Cnty.*, No. 13-cv-03667-MEJ, 2015 U.S. Dist. LEXIS 159597, 2015 WL 7571789, at  
9 \*13-14 (N.D. Cal. Nov. 25, 2015) (civil rights class action settlement approving rates as high as  
10 \$975 per hour for senior litigators); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA,  
11 2015 U.S. Dist. LEXIS 67298, at \*14 (N.D. Cal. May 21, 2015) (finding reasonable rates for Bay  
12 Area attorneys of between \$475-\$975 for partners, \$300-\$490 for associates, and \$150-\$430 for  
13 litigation support and paralegals). The Northern District of California has even awarded comparable  
14 rates sought by M&R's attorneys to other Washington D.C. based plaintiff-side law firms in  
15 consumer class action settlements. *See, e.g., Kumar v. Salov N. Am. Corp.*, No. 14-CV-2411-YGR,  
16 2017 U.S. Dist. LEXIS 105463, at \*24 (N.D. Cal. July 7, 2017) (awarding similar rates to  
17 Washington D.C. based law firm of Tycko & Zavareei LLP).  
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1 Pursuant to 28 U.S.C. Section 1746, we declare under penalty of perjury that the foregoing is  
2 true and correct.

3 Executed on this 12<sup>th</sup> day of September 2019, in Washington, D.C. and San Francisco,  
4 California.

7 /s/ Nicholas A. Migliaccio \_  
8 Nicholas A. Migliaccio

Esfand Y. Nafisi  
Esfand Y. Nafisi

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**CERTIFICATE OF SERVICE**

I, Esfand Nafisi, certify that on September 12, 2019, I caused the foregoing to be filed using the Court's CM/ECF system, thereby causing it to be served on all registered ECF users in this case.