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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

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

Defendants.

CASE NO. 18-CV-03369-DMR

**THIRD SUPPLEMENTAL
DECLARATION OF ADAM J.
GUTRIDE IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF CLASS
SETTLEMENT**

Date: June 11, 2020
Time: 1:00 p.m.
Courtroom: 7, 19th Floor
Judge: Hon. Donna M. Ryu

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1 I, Adam Gutride, declare and state that:

2 1. I am an attorney licensed to practice law in the State of California and in this Court,
3 and a partner in Gutride Safier LLP (“GSLLP” or “Firm”). My firm, along with the firm of
4 Migliaccio & Rathod LLP (“M&R”), is counsel of record for Plaintiff Joseph Carlotti in the above
5 captioned matter against Defendant ASUSTeK Computer Inc. (“ASUSTeK”) and ASUS Computer
6 International (“ACI”) (collectively, “ASUS” or “Defendants”). I submit this declaration in support
7 of Plaintiff’s Reply in Support of Motion for Approval of Class Settlement. Unless otherwise noted,
8 I have personal knowledge of the facts set forth in this declaration and could and would testify
9 competently to them if called upon to do so.

10 **A. Additional Efforts to Notify Class and Assist Class Members in Curing Deficient**
11 **Claims**

12 2. GSLLP worked diligently to improve the notice program, ensure that notice was
13 delivered to class members, and to ensure that the maximum possible number of substantiated
14 claims were filed. My partner Marie McCrary and my associate Stephen Raab reviewed and revised
15 drafts of the advertisements and notices to be distributed and worked closely with the Claim
16 Administrator to ensure that deadlines were met. I, along with Ms. McCrary and Mr. Raab,
17 reviewed, tested, and requested changes to several initial versions of the Settlement Website before
18 it went live, including improving the clarity and operation of the claim forms creating a separate
19 page for repair information and requests, correcting certain passages and adding links on the home
20 page, in the FAQs, and in the notices, and adding documents to the Important Documents page.
21 During the notice period, attorneys from my firm responded to numerous inquiries from class
22 members about the settlement and filings claims. Mr. Raab also carefully monitored weekly reports
23 about notice and claims from the Claim Administrator. GSLLP posted about the Settlement on its
24 webpage and the website TopClassActions.com provided information about the settlement to its 1.5
25 million monthly viewers.¹

26 ¹ [https://topclassactions.com/lawsuit-settlements/consumer-products/electronics/asus-laptop-class-](https://topclassactions.com/lawsuit-settlements/consumer-products/electronics/asus-laptop-class-action-settlement/)
27 [action-settlement/](https://topclassactions.com/lawsuit-settlements/consumer-products/electronics/asus-laptop-class-action-settlement/)

1 3. GSLLP also worked to ensure that Claimants who submitted deficient Claims had
2 the opportunity to cure those deficiencies. The deficient Claims did not include proof of purchase—
3 such as a valid serial number—and/or did not correspond to a prior complaint to ASUS about the
4 defects. The large number of deficient Claims suggested that people were trying to make claims
5 who had not purchased the specific computers at issue. Nevertheless, Class Counsel was concerned
6 that there could be Class Members who misidentified serial numbers or mistakenly failed to include
7 serial numbers or proofs of purchase with their Claims. When Class Counsel proposed, and began
8 developing, a cure process, Defendants first took the position that no supplemental notice or cure
9 opportunity should be provided for most of the deficient Claims and then would not agree to pay for
10 the proposed cure process because it was not required by the Settlement Agreement. To ensure that
11 Class Members who might have mistakenly failed to substantiate their claims had another
12 opportunity to do so, Class Counsel—at their own expense, if necessary—directed the Claims
13 Administrator to establish a cure process to send deficiency notices to the Claimants whose Claims
14 lacked substantiation. The deficiency notices gave those Claimants another week to submit a valid
15 serial number or proof of purchase, and included a direct link to a new page on the Settlement
16 Website where the Claimants could sign in and provide the requested information.

17 **B. Updated Lodestar and Expenses**

18 4. My supplemental declaration filed on September 12, 2019 included GSLLP’s lodestar
19 as of that time based on 418.4 hours worked, although as I explained at that time, some timekeepers
20 had not yet entered their time for August and most had not entered time for September 2019.
21 Subsequent to the time entries that were reported in my September 12, 2019 declaration, GSLLP has
22 spent an additional 98.1 hours working on the following tasks, all of which involved obtaining
23 approval of and implementing this settlement: (1) finalizing the Settlement papers (2) drafting the
24 motion to approve the Settlement and supporting declarations and appearing at the preliminary
25 approval hearing; (3) negotiating the amended Settlement papers; (4) drafting the supplementary
26 papers in support of the Settlement, including the supplementary Gutride Declaration and the
27 supplementary brief in support of preliminary approval; (5) working with the Claim Administrator,

1 developing a supplemental process to cure deficiencies, and responding to Class Members' inquiries
2 as described above; (6) reviewing and requesting changes to the Claim Administrator's declaration
3 in support of final approval; and (7) reviewing and revising the reply in support of final approval, this
4 declaration, and the amended final approval order. The table below reflects GSSLP's updated total
5 lodestar for the case, based on time entries currently in our system. However, because GSSLP
6 timekeepers are not required to finalize their time entries until end of the month, there are likely
7 additional hours not yet in the system for the current month. The hourly rates shown in the table below
8 for the attorneys and paralegals at GSSLP are the same as the regular rates charged in 2020 for their
9 services in other litigation.

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GSLLP's Lodestar On This Case			
Timekeeper	Hours	Rate	Total
Adam Gutride	27.2	\$1,050.00	\$28,560.00
Seth Safier	54	\$1,050.00	\$56,700.00
Marie McCrary	144.8	\$950.00	\$137,560.00
Todd Kennedy	5.3	\$900.00	\$4,770.00
Matthew McCrary	0.5	\$925.00	\$462.50
Anthony Patek	20.2	\$850.00	\$17,170.00
Stephen Raab	231.1	\$850.00	\$196,435.00
Kristen Simplicio	0.2	\$850.00	\$170.00
Tekesha Geel	0.4	\$750.00	\$300.00
Jessica Kagansky ²	9.4	\$500.00	\$4,700.00
Kyle Wilson	2.0	\$450.00	\$900.00
Ashley Garcia	18.2	\$275.00	\$5,005.00
Jennifer Gardner	3.2	\$225.00	\$720.00
TOTAL	516.5		\$453,452.50

5. For the convenience of the Court, I have totalled the lodestar incurred by my firm with that reported by M&R, as reflected in the Second Joint Supplemental Declaration of Nicholas Migliaccio and Esfand Nafisi filed herewith:

² We previously reported Ms. Kagansky's rate as \$550 but have corrected it downward to \$500.

Firm	Hours	Lodestar
GSLLP	516.5	\$453,452.50
M&R	538.6	\$394,484.22
TOTAL	1,055.1	\$847,936.72

6. My supplemental declaration filed on September 12, 2019 provided evidence in support of the reasonableness of Gutride Safier’s billing rates, including other courts’ approval of those rates. The billing rates set forth above are the current (2020) rates of my firm, which for some but not all timekeepers represent a nominal increase over the 2019 rates, of between three and five percent. As explained in the brief filed in support of preliminary approval, courts have held that “current rates, rather than historical rates, should be applied in order to compensate for the delay in payment...” *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2nd Cir. 1998) (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)); accord *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994) (“The district court has discretion to compensate delay in payment in one of two ways: (1) by applying the attorneys’ current rates to all hours billed during the course of litigation; or (2) by using the attorneys’ historical rates and adding a prime rate enhancement.”). One new timekeeper is included here was not described in my prior declaration: Tekesha Geel, a 2009 graduate of Emory Law School, all of whose work on this case was performed in 2020.

7. As I stated in my September 12, 2019 supplemental declaration filed in support of Plaintiff’s Motion for Approval, expenses are accounted for and billed separately and are not duplicated in my professional billing rate. GSLLP has not received reimbursement for expenses incurred in connection with this litigation. In my September 12, 2019 supplemental declaration, I stated that as of the date of the supplemental declaration, GSLLP had incurred a total of \$8,122.42 in unreimbursed actual third-party expenses in connection with the prosecution of this case. Since then, my bookkeeping staff has reviewed our accounting records, and determined that GSLLP has incurred additional unreimbursed actual third-party expenses in the amount of \$381.04 in connection with the

1 prosecution of this case. The actual expenses incurred in the prosecution of this case are reflected on
 2 the computerized accounting records of my firm prepared by bookkeeping staff, based on receipts
 3 and check records, and accurately reflect all actual expenses incurred. A complete breakdown of all
 4 the supplemental expenses is attached as **Exhibit A**.

5 8. For the convenience of the Court, I have totalled the expenses incurred by my firm
 6 with those reported by M&R, as reflected in the Second Joint Supplemental Declaration of Nicholas
 7 Migliaccio and Esfand Nafisi filed herewith:

Firm	Expenses
GSLLP	\$8,503.46
M&R	\$5,882.59
TOTAL	\$14,386.05

12
 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.

15 Executed at Berkeley, California, this 29th day of May, 2020.

16 /s/ Adam J. Gutride
 17 Adam J. Gutride, Esq.

Exhibit A

Supplemental Costs as of May 28, 2020

	ASUS Power				
Delivery Svcs & Msgs (E107)	334.25				
		6/25/19	Lone Star Lega LLC	USDC Oak and	51.14
		7/10/19	Lone Star Lega LLC	USDC Oak and	111.95
		10/7/19	XR Lega Document	Document F ng Oak and USDC	50.49
		10/8/19	XR Lega Document	Document F ng Oak and USDC	70.02
		9/4/19	XR Lega Document	F ng n Oak and, USDC	50.65
					334.25
Litigation Sup Vendors (E118)	12.94				
		10/2/19	CS D sco		5.39
		11/2/19	CS D sco		3.74
		12/2/19	CS D sco		3.81
					12.94
Local Travel (E109)	33.85				
		8/22/19	S. Saf er	Oak and Park ng Meter	0.85
		8/22/19	S. Saf er	C ty of San Jose Park ng Meter	4.00
		12/31/19	A. Gutr de	Trave to attend meet ngs and hear ngs dur ng 2019; 50 m es at \$0.58/m e	29.00
					33.85
Total Supplemental Expenses	381.04				