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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN JOSE DIVISION**

9 CARL BARRETT, et al.,

Plaintiffs,

11 v.

12 APPLE, INC., et al.,

13 Defendants.

Case No. 5:20-cv-04812-EJD

**DECLARATION OF ANTHONY F.
FATA IN SUPPORT OF PLAINTIFFS’
MOTION FOR ATTORNEYS’ FEES,
EXPENSES AND NAMED PLAINTIFF
SERVICE AWARDS ON BEHALF OF
KIRBY McINERNEY LLP**

Judge: Hon. Edward J. Davila

16 I, Anthony F. Fata, declare and state as follows:

17 1. I am a partner at the law firm Kirby McInerney LLP. I submit this Declaration in
18 support of Plaintiffs’ Motion for Attorneys’ Fees, Costs and Named Plaintiff Service Awards in
19 connection with time spent and expenses incurred by my firm in connection with this litigation.
20

21 2. On February 17, 2023, the Court appointed Cafferty Clobes Meriwether and
22 Sprengel LLP, Kirby McInerney LLP, and Scott+Scott Attorneys at Law LLP as interim co-lead
23 counsel for the proposed class in the above-captioned action (the “Litigation”). ECF No. 132. On
24 May 16, 2024, the Court appointed the same firms as Class Counsel to represent the Settlement
25 Class. ECF No. 269.
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1 3. My firm’s submission of its time and expenses in this Declaration adheres to the
2 reporting protocols established by Class Counsel in this Litigation.

3 4. My firm’s work on behalf of Plaintiffs includes the following: originating the case,
4 including pre-filing and continuing case investigation; researching and drafting the initial
5 complaint and certain sections of the amended complaint; researching and drafting certain sections
6 of the oppositions to Apple’s motions to dismiss; briefing and appearing in Court on case
7 management issues and discovery disputes; participating in meetings of Class Counsel; obtaining
8 discovery from Apple, including negotiating and reviewing document productions and transaction
9 data and taking several of the ten depositions of Apple employees; defending certain of the
10 depositions of named Plaintiffs, researching and drafting certain sections of the motion for class
11 certification; mediating the case, negotiating the settlement agreement and obtaining preliminary
12 approval thereof; liaising with the claims administrator in connection with the settlement process;
13 and engaging and working with experts and consultants on numerous aspects of the case. The
14 specifics of the work performed by my firm are set forth in the concurrently-filed Joint Declaration
15 of Nyran Rose Rasche, Anthony F. Fata and Joseph P. Guglielmo in Support of Plaintiffs’ Motion
16 for Attorneys’ Fees, Costs and Named Plaintiff Service Awards.
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18

19 5. Exhibit 1 sets forth the time spent by partners, attorneys, and support staff of my
20 firm, from inception of the Litigation through July 31, 2024. The billing rates for the partners,
21 attorneys, and support staff align with the firm’s standard billing rates for contingent cases. The
22 rates reflected are historical rates, *i.e.*, the rates that were in effect at the time when the work was
23 done.
24

25 6. The hours spent by my firm from inception of the Litigation through July 31, 2024
26 totals 4,008.5. The firm’s lodestar totals \$2,523,522.50. Total hours were calculated through an
27 examination of contemporaneous time records regularly prepared and maintained by my firm. I
28

1 have reviewed the accuracy of these time records and their relevance and have concluded they are
2 reasonable and necessary for the prosecution of the Litigation. While conducting this review, I
3 made adjustments to align certain entries with the reporting protocol established in this Litigation,
4 as well as to adhere to the firm's policies and procedures. These adjustments were not only
5 consistent with the firm's best practices but also beneficial to the class.
6

7 7. Exhibit 2 sets forth the unreimbursed expenses my firm incurred in prosecuting the
8 Litigation from inception through July 31, 2024, totaling \$30,619.59. This amount will be updated
9 at or shortly before the final approval hearing to reflect expenses occurred after July 31, 2024.

10 8. These unreimbursed expenses, incurred on behalf of the Plaintiffs, are accurately
11 reflected on the books and records of my firm and were prepared from expense reports with
12 attached receipts, check records, and other source materials.
13

14 9. To facilitate the sharing of expenses, Class Counsel contributed to a litigation fund
15 administered by my firm. Exhibit 3 sets forth common expenses paid or incurred by the litigation
16 fund, which was fully funded by Class Counsel, from inception of the Litigation through the
17 present totaling \$413,684.21.

18 I declare under penalty of perjury, under the laws of the United States of America, that to
19 the best of my knowledge, the foregoing is true and correct.
20

21 Executed on this 10th day of September, 2024 at Chicago, Illinois.
22

23 *s/ Anthony F. Fata*
24 _____
25 Anthony F. Fata
26
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EXHIBIT 1

Firm Name: Kirby McInerney LLP

Reporting Period: (Inception - July 31, 2024)

Lodestar Summary

Barrett, et al. v. Apple, Inc., et al.

Case No. 5:20-cv-04812 (N.D. Cal.)

PROFESSIONAL	STATUS	HOURLY RATE	TOTAL HOURS	TOTAL LODESTAR AT HISTORICAL RATES
Anthony F. Fata	P	\$1,200	70.8	\$84,960.0
Anthony F. Fata	P	\$1,100	387.6	\$426,360.0
Anthony F. Fata	P	\$950	191.7	\$182,115.0
Sarah Flohr	A	\$700	152.2	\$106,540.0
Sarah Flohr	A	\$650	462.7	\$300,755.0
Sarah Flohr	A	\$525	279.9	\$146,947.5
Belden Nago	A	\$700	427.6	\$299,320.0
Belden Nago	A	\$575	28.1	\$16,157.5
Belden Nago*	A	\$400	401	\$160,400.0
Marko Radisavljevic	A	\$700	0.4	\$280.0
Marko Radisavljevic	A	\$600	670.6	\$402,360.0
Marko Radisavljevic	A	\$500	604.7	\$302,350.0
Marko Radisavljevic*	A	\$400	0.4	\$160.0
Elizabeth Ely	PL	\$300	20.2	\$6,060.0
Daniel Sokolin	PL	\$275	70.2	\$19,305.0
Fabiha Khan	PL	\$275	88.8	\$24,420.0
Kristen Bolster	PL	\$300	133.7	\$40,110.0
Kristen Bolster	PL	\$275	0.8	\$220.0
Marya Jureidini	PL	\$275	17.1	\$4,702.5

TOTAL:			4,008.5	\$2,523,522.5
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* - These are document review hours billed at a capped rate

EXHIBIT 2

EXHIBIT 2 – Kirby Expenses

EXPENSE	AMOUNT
Filing/Court Fees	\$575.79
Federal Express/Local Courier, etc.	\$294.95
Lexis/Westlaw/Pacer	\$16,746.26
Photocopying	\$235.21
Travel (Hotel, Meals, Transportation)	\$7,942.13
Deposition Costs - (Veritext)	\$215.25
Miscellaneous (Jury Profile Reports, Third Party Discovery - US Treasury - FOIA)	\$4,610.00
TOTAL	\$30,619.59

EXHIBIT 3

EXHIBIT 3 – Common Expenses Paid through the Litigation Fund

EXPENSE	AMOUNT
Expert Bruce McFarlane	281,673.00
Expert Claudiu Dimofte	57,000.00
Mediator Randall W. Wulff	12,500.00
Miscellaneous (litigation fund check purchase)	147.96
Veritext Deposition Services	62,363.25
TOTAL	413,684.21