

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ASHLEY TOTH, Personally, and on behalf of all Pennsylvanians similarly situated,

CIVIL DIVISION

NO. GD-12-008014

Plaintiff,

v.

**DECLARATION OF ROGER N. HELLER
IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND COSTS**

NORTHWEST SAVINGS BANK,

Defendant.

I, Roger N. Heller, hereby declare and state as follows:

1. I am a member in good standing of the California State Bar and a partner at Lieff Cabraser Heimann & Bernstein LLP ("LCHB"), Class Counsel in this case. I have personal knowledge of the matters set forth herein, and could and would testify competently thereto if called upon to do so. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees and Costs.

Background and Experience

2. I graduated from Columbia University School of Law in 2001, where I was a Senior Editor for the *Columbia Law Review*. From 2001 through 2005, I was a litigation associate at O'Melveny & Myers LLP. From 2005 through 2008, I worked for the non-profit law firm Disability Rights Advocates, where I was a Senior Staff Attorney and worked primarily on prosecuting class actions under federal and state anti-discrimination laws. I joined LCHB in 2008, and became a partner at LCHB in 2011. During my entire time at LCHB, my practice has been focused on consumer protection class actions. I have successfully represented large classes

in numerous consumer cases, including cases involving consumer banking, credit cards, false advertising, and insurance practices. I was named a Northern California Super Lawyer (2013 and 2014), and have been a finalist for the CAOC Consumer Attorney of the Year Award (2012 and 2013) and a finalist for the Public Justice Trial Lawyer of the Year Award (2012).

3. Among other relevant experience, I was on the trial team at LCHB that served as lead counsel for the plaintiffs in *Gutierrez v. Wells Fargo Bank, N.A.*, an overdraft fee posting order case substantially similar to this one, in which LCHB obtained a \$203 million verdict in the class of California consumers' favor. I also have worked extensively on numerous similar cases in *In re Checking Account Overdraft Litigation*, MDL No. 2036, a Multidistrict Litigation in the Southern District of Florida coordinating actions against at least 35 banks.

4. LCHB is one of the oldest, largest, most respected, and most successful law firms in the country representing plaintiffs in class actions, and brings to the table a wealth of class action experience. LCHB has been repeatedly recognized over the years as one of the top plaintiffs' law firms in the country by both The National Law Journal and The American Lawyer. *See, e.g.*, The Plaintiffs' Hot List, National Law Journal (Oct. 2013) (LCHB has received this same award each year from 2003 through 2013); J. Triedman, A New Lieff, The American Lawyer (Dec. 2006), at 13 ("one of the nation's premier plaintiffs' firms"); A. Frankel, Sweet Sixteen, Litigation 2004, Supplement to The American Lawyer & Corporate Counsel (Dec. 2004), at 8-10. A copy of LCHB's firm resume, which describes the firm's experience in class action and other complex litigation, can be found at <http://www.lchbdocs.com/pdf/firm-resume.pdf>, and is not attached hereto given its length.

5. Michael W. Sobol is a 1989 graduate of Boston University School of Law. He practiced law in Massachusetts from 1989 to 1997. From 1995 through 1997, he was a Lecturer

in Law at Boston University School of Law. In 1997, he left his position as partner in the Boston firm of Shafner, Gilleran & Mortensen, P.C. to move to San Francisco, where he joined LCHB. Since joining LCHB in 1997, he has almost exclusively represented plaintiffs in consumer protection class actions. He has been a partner with LCHB since 1999, and is currently the chair of LCHB's consumer practice group, a position that he has held for over twelve years. He has served as plaintiffs' class counsel in numerous nationwide consumer class action cases. Super Lawyers has recognized him as a "Top 100 Northern California Super Lawyer," and the Daily Journal has similarly recognized him as among the "Top 100 Attorneys in California."

6. Nicole D. Sugnet (formerly Nicole D. Reynolds) became a partner at LCHB in 2015, and prior to that was an LCHB associate. She graduated from the University of California, Hastings College of the Law in 2006. Since graduating from law school, Ms. Sugnet has focused her practice exclusively on consumer class action litigation, and has litigated several cases involving the banking and financial industries. She is the co-author of "Consumer Protection and Employment Cases after Concepcion," published in the ABA Section of Litigation, Class Action & Derivative Suits Committee Newsletter (Summer 2011). In 2013, she was recognized as a Northern California Super Lawyers Rising Star.

7. RoseMarie Maliekel is an associate at LCHB. She graduated from Northwestern University School of Law in 2010. Prior to joining LCHB, Ms. Maliekel worked as a trial attorney with the Federal Defenders of San Diego. Since joining LCHB in 2014, Ms. Maliekel's practice has been focused on prosecuting consumer class actions.

LCHB's Work in this Case

8. LCHB has been involved in virtually all aspects of the litigation and resolution of this case. Among other tasks that LCHB personnel have performed in this case are: factual

investigation and legal research, drafting sections of the First Amended Complaint, Plaintiff's opposition to Northwest's preliminary objections and Plaintiff's supplemental briefing, and Plaintiff's response to Northwest's motion for interlocutory review, preparing for the mediation, working with Plaintiff's expert on Plaintiff's damages analysis, attending the mediation, negotiating the settlement, drafting settlement papers, overseeing settlement implementation efforts, and drafting settlement approval papers.

9. LCHB took every reasonable effort to avoid inefficiencies or duplication of work. Appropriate attorneys and staff were assigned to specific tasks and activities, with clear instruction regarding who was responsible for each task.

10 The LCHB attorneys who worked on this case are myself, Nicole Sugnet, Michael Sobol, and RoseMarie Maliekel.

11. Nicole Sugnet's primary tasks in this case have included drafting briefs and pleadings, conducting legal research, preparing for and attending the mediation, negotiating the settlement, and drafting settlement papers and settlement approval papers.

12. My primary tasks in this case have included working on and overseeing Plaintiff's damages analysis, preparing for mediation, drafting settlement papers, drafting briefs, and overseeing settlement implementation efforts.

13. RoseMarie Maliekel's primary tasks in this case have included conducting legal research and drafting briefs.

14. LCHB senior paralegal Jennifer Rudnick assisted on this case as well. Ms. Rudnick's tasks in this case included managing the case file and preparing distributions of documents.

LCHB Time and Expenses

15. LCHB has spent considerable time working on this case that could have been spent on other matters. The time that LCHB has spent on this case has been completely contingent on the outcome. LCHB has not been paid for any of its time spent on this case, nor has it been reimbursed for any of its expenses incurred in this case.

16. In connection with this case, attorney and staff timekeepers at LCHB have billed a total of 254.10 hours in this case to date, for a total lodestar of approximately \$120,174.50. This information is derived directly from LCHB's time records, which are prepared contemporaneously and maintained by LCHB in the ordinary course of business.

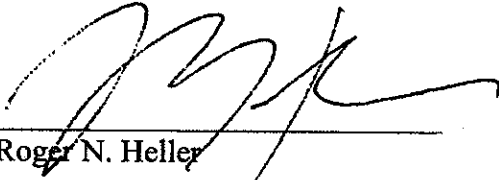
17. Attached hereto as **Exhibit A** is a summary listing each lawyer and paralegal for which LCHB is seeking compensation for legal services in connection with this case, the hours each individual has expended to date, and the hourly rate at which compensation is sought for each individual.

18. LCHB's customary rates, which were used for purposes of calculating the lodestar here, have repeatedly been approved by courts. *See, e.g., In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, No. Civ.A. 99-20593, MDL No. 1203, 2003 WL 21641958, at *9 (E.D. Pa. May 15, 2003); *Lonardo v. Travelers Indem. Co.*, -- F. Supp. 2d --, 2010 WL 1416698, at *22-23 (N.D. Ohio Mar. 31, 2010); *Brazil v. Dell Inc.*, 2012 U.S. Dist. LEXIS 47986 (N.D. Cal. Apr. 4, 2012); *In re Bank of America Credit Protection Marketing & Sales Practices Litig.*, No. 11-md-2269 THE (Dkt. 96) (N.D. Cal. Jan. 16, 2013); *Fleming v. Kemper Nat. Services, Inc.*, 373 F. Supp. 2d 1000, 1012 (N.D. Cal. 2005); *Grays Harbor Adventist Church Sch. v. Carrier Corp.*, 2008 WL 1901988, at *3 (W.D. Wash. Apr. 24, 2008); *Pelletz v. Weyerhaeuser Co.*, 2009 U.S. Dist. LEXIS 1803, at *7 (W.D. Wash. Jan. 9, 2009); *Berger v. Property ID Corporation*, CV 05-5373-GHK (Cwx) (C.D. Cal.).

19. LCHB sets its hourly rates according to prevailing market rates, bills its hourly paying clients according to those rates, and is routinely awarded fees according to those rates. LCHB primarily represents clients on a contingent fee basis, both in class and individual cases. However, LCHB also represents plaintiffs on an hourly basis and is paid according to its then current hourly rates. LCHB is currently retained by such clients who pay LCHB's current hourly rates, the same rates used to calculate its lodestar in this matter.

20. LCHB also has incurred more than \$4,436.94 in un-reimbursed expenses that were necessarily incurred in connection with the prosecution of this case, including expenses for: legal research, mediation fees, and postage. This amount excludes travel costs and internal copying, printing, and telephone costs. A summary breakdown of LCHB's expenses for which reimbursement is sought in this matter is attached hereto as **Exhibit B**.

I declare under penalty of perjury of the laws of the state of California and the United States of America that the foregoing is true and correct. This declaration was executed in San Francisco, CA on February 13, 2015.


Roger N. Heller

1217841.1

Exhibit A

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
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Report created on 02/13/2015 09:31:41 AM

From
ToInception
Present**Matter Number: 3394-0031****NORTHWEST SAVINGS BANK****PARTNER**

NAME	HOURS	RATE	TOTAL
MICHAEL SOBOL	7.80	850.00	6,630.00
ROGER HELLER	45.00	625.00	28,125.00
	52.80		34,755.00

ASSOCIATE

NAME	HOURS	RATE	TOTAL
ROSEMARIE MALIEKEL	30.00	395.00	11,850.00
NICOLE DIANE SUGNET	162.70	435.00	70,774.50
	192.70		82,624.50

PARALEGAL

NAME	HOURS	RATE	TOTAL
JENNIFER RUDNICK	8.60	325.00	2,795.00
	8.60		2,795.00

MATTER TOTALS	254.10		120,174.50
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Exhibit B

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on

02/11/2015 10:08:46 AM

NORTHWEST SAVINGS BANK

Matter Number: 3394-0031

	<u>Amount</u>
Computer Research	\$2,121.63
Federal Express/Messenger	\$65.31
Mediation Expenses	\$2,250.00
Total Costs:	\$4,436.94