

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF TEXAS**

<p>KATHERINE M. CLEARY, <i>et al.</i>, individually and on behalf of all others similarly situated,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>AMERICAN AIRLINES, INC.,</p> <p style="text-align:center">Defendant.</p>	<p>Case No. 4:21-cv-00184-O</p> <p>Hon. Reed O'Connor, USDJ Hon Hal R. Ray, Jr., USMJ</p>
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**DECLARATION OF JOSEPH S. TUSA IN SUPPORT OF PLAINTIFFS'  
AND CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES**

Joseph S. Tusa, an attorney for Plaintiffs and Court-appointed Class Counsel, declares as follows:

1. I am a member in good standing of the bars of the First, Second, Third and Fourth United States Circuit Courts of Appeals, United States District Court for the Southern and Eastern Districts of New York and District of Colorado, the bars of the states of New York and New Jersey and a shareholder in the firm Tusa P.C., co-counsel for Plaintiffs in this lawsuit and Court-appointed Class Counsel for the Settlement Classes.<sup>1</sup> I respectfully submit this declaration in support of Plaintiffs' and Class Counsel's *Motion for Attorneys' Fees and Reimbursement of Litigation Expenses*.

2. My firm and I commenced our involvement in this action in December 2021 following this Court's September 2, 2021 Order (ECF No. 66) certifying the classes. Since then, I have been actively involved along with lead class counsel Giskan Solotaroff and Anderson, LLP ("GSA") and co-Class Counsel in the investigation and prosecution of this case and the Parties' settlement

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<sup>1</sup> All capitalized terms are defined in the Parties' *Settlement Agreement and Release* (ECF No. 251-1; the "Settlement" or "Settlement Agreement").

negotiations. I am familiar with the factual matters discussed herein and could and would testify competently to them if called upon to do so.

3. I am admitted *pro hac vice* in this action. ECF No. 124. On March 4, 2022, this Court granted the Plaintiffs' motion to appoint me and Tusa P.C. as additional Class Counsel in this action. ECF No. 151.

### **Background and Experience**

4. My firm and I possess extensive experience in litigating class action litigation for past twenty-four years in the federal and state courts, since 2010 as the managing attorney of Tusa P.C. The firm resume of Tusa P.C. has previously been provided to the Court detailing the experience of the firm and the undersigned in litigating consumer class action litigations. *See* ECF No. 150-1.

5. Prior to the founding Tusa P.C., beginning in 1996, I was employed as a shareholder and associate, respectively, in two other law firms whose practice was concentrated in consumer, shareholder and antitrust class action litigation in the federal and state courts.

6. I received my LL.M. in Corporate Law from the New York University School of Law in 1996, and my J.D. from the University of South Carolina School of Law in 1995.

7. Aside from this action, Tusa P.C. or I have been appointed class counsel or settlement class counsel in the following consumer class actions:

- (a) *Jenkins v. National Grid USA Serv. Co. Inc.* E.D.N.Y. No. 15-cv-1219-JS-ARL;
- (b) *Cymbalista v. JPMorgan Chase Bank, N.A.*, E.D.N.Y. No. 20-cv-456-RPK-LB
- (c). *Guntber v. Capital One, N.A.*, E.D.N.Y. No. 09-cv-2966-ADS-AKT;
- (d). *Cassese v. Washington Mut. Inc.*, E.D.N.Y. No. 05-cv-2724-ADS-ARL;
- (e). *McAnaney v. Astoria Fin. Corp.*, E.D.N.Y. No. 04-cv-1101-JFB-WDW
- (f). *Limpert v. Cambridge Credit Counseling Corp.*, E.D.N.Y. No. 03-cv-5986-TCP-WDW;

- (g). *Zimmermann v. Cambridge Credit Counseling Corp.*, D. Mass. No. 03-cv-30261-MAP;
- (h). *Valle v. Popular Community Bank f/k/a Banco Popular North America* N.Y. Sup. Ct. Index No. 653936/2012;
- (i). *Jones v. Genus Credit Mgt. Corp. f/k/a National Credit Counseling Servs.*, AAA No. 11-181-00295-05.

8. Prior to the formation of Tusa P.C., my firms were appointed class counsel or settlement class counsel in numerous other federal and state class action litigations.

**Tusa P.C.’s Work in This Litigation**

9. Beginning in December 2021, Tusa P.C. and I joined this action to assist in representing the Plaintiffs and classes to provide notice to the certified classes and thereafter to assist GSA, co-Class Counsel Lieff Cabraser Heinmann & Bernstein, LLP and the other Plaintiffs’ counsel in the investigation and discovery (party and non-party) of Plaintiffs’ and the classes’ claims, to oppose defendant American Airlines, Inc.’s (“American”) summary judgment motion, to litigate Plaintiffs’ motion for spoliation, to prepare for the trial of this action and ultimately to negotiate and perfect the settlement of this action. Tusa P.C. worked closely with our co-counsel throughout the litigation.

10. With respect to the tasks performed by Class Counsel in this litigation, Tusa P.C. and our co-counsel took every reasonable effort to avoid inefficiencies or duplication of work. Appropriate attorneys and staff were assigned to specific tasks based on their respective experience levels and skills, and work was allocated with clear instruction provided regarding who was responsible for each task.

11. I was the only attorney affiliated with Tusa P.C. that provided professional services this case. My qualifications are discussed in the Background and Experience section, above.

12. My primary tasks in this case have included drafting and editing motions and supporting memoranda; drafting discovery demands and responses; analyzing American’s discovery

production of documents; negotiating and analyzing the production of documents by third-party Appriss Insights; attending and participating in depositions of American’s employee’s and consultant FTI Consulting, Inc.; drafting and researching pre-trial submissions; drafting Plaintiffs’ motions *in limine*; researching and drafting Plaintiffs’ opposition to American’s motions *in limine*; participating in trial strategy and planning; attending the mediation with Clay Cogman of Phillips ADR; assisting with settlement negotiations and drafting the Settlement Agreement and exhibits thereto; and coordinating with the Settlement Administrator on class notice, claims administration and implementation matters.

**Tusa P.C. Time and Expenses**

13. During the time that this litigation was pending, Tusa P.C. spent considerable time working on this litigation that could have been spent on other fee-generating matters.

14. The time that Tusa P.C. has spent on this litigation has been completely contingent on the outcome. Tusa P.C. has not been paid for any of its time spent on this litigation, nor has it been reimbursed for any of its expenses incurred in this litigation.

15. As of December 9, 2022, the undersigned has billed **385.6 hours**, for a total lodestar, during that time of **\$289,200.00**. This information is derived directly from Tusa P.C. time records, which are prepared contemporaneously and maintained by Tusa P.C. in the ordinary course of business. My billing rate is \$750 per hour.

16. Below is a listing of the categories describing the professional services performed by the undersigned in this action:

<b>Professional Services Provided</b>	<b>Total Hours (by Category)</b>	<b>Lodestar</b>
Discovery	95.0	\$71,250.00
Investigation	4.1	\$3,075.00
Class Certification	23.7	\$17,775.00

Summary Judgment	55.5	\$41,625.00
Other Motions	11.1	\$8,325.00
Settlement	67.0	\$50,250.00
Trial and Pretrial Preparation	129.2	\$96,900.00
Totals:	385.6	\$289,200.00

17. The undersigned recorded his time contemporaneously with the work I performed. Upon request by the Court, I will submit my firm's contemporaneous billing records *in camera*.

18. Tusa P.C. also has incurred **\$1,238.95** in un-reimbursed expenses that were necessarily incurred in connection with the prosecution and resolution of this litigation. The following is a breakdown of the expenses for which Tusa P.C. seeks reimbursement in this matter:

<b>Expense</b>	<b>Amount</b>
Computer Research	\$210.86
FedEx	\$18.64
Meals	\$539.90
Transportation / Travel	\$469.55
<b>Total Expenses</b>	<b>\$1,238.95</b>

Upon request by the Court, receipts documenting all of the above expenses will be submitted *in camera*.

19. The foregoing expenses were incurred solely in connection with this litigation and are reflected in Tusa P.C.'s books and records as maintained in the ordinary course of business. These books and records are prepared from invoices, receipts, expense vouchers, check records and other records, and are an accurate record of the expenses incurred in this case.

20. The above expense numbers do not include certain internal costs that Tusa P.C. incurred but for which Tusa P.C. does not seek reimbursement, including telephone costs.

21. As co-Class Counsel with more than 26 years of experience representing consumers in class action litigation and settlements, it is my opinion that the Settlement is fair, reasonable and

adequate, complies with FED. R. CIV. P. 23(c) and (e) and achieves an excellent result for the Settlement Classes considering the complete refunds provided in the Settlement to valid claimants and the risks of continuing this action through trial and appeals. I further believe that Class Counsel's motion for an award of attorneys' fees and reimbursement of expenses, which will be paid by American separate and apart from settlement consideration paid to claiming Settlement Class Members, is reasonable and satisfies FED. R. CIV. P. 23(e) and (h).

22. I declare under penalty of perjury the foregoing is true and correct.

Dated: Southold, New York  
December 16, 2022

Respectfully submitted,

By: /s/ Joseph S. Tusa  
Joseph S. Tusa

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