

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

<p>KATHERINE M. CLEARY, <i>et al.</i>, on behalf of themselves and 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</p> <p>Hon. Reed O’Conner, USDJ Hon. Hal R. Ray, Jr., USMJ</p>
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**DECLARATION OF ROGER N. HELLER IN SUPPORT OF PLAINTIFFS’  
AND CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES**

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

1. I am a member in good standing of the California State Bar. I am a partner at the law firm of Lieff Cabraser Heimann & Bernstein LLP (“LCHB”) and one of the attorneys serving as Class Counsel in this case. I respectfully submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class Settlement, and Plaintiffs’ and Class Counsel’s Motion for Award of Attorneys’ Fees and Expenses. I have personal knowledge of the facts set forth in this declaration, and could and would testify competently to them if called upon to do so.

**Background and Experience**

2. 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, including by The National Law Journal and The American Lawyer. A copy of LCHB’s firm resume, which describes the firm’s experience in class action and other complex

litigation, can be found at [www.lieffcabraser.com/pdf/Lieff\\_Cabraser\\_Firm\\_Resume.pdf](http://www.lieffcabraser.com/pdf/Lieff_Cabraser_Firm_Resume.pdf), and is not attached hereto given its length.

3. Among the firm's other areas of practice, LCHB has served in leadership positions in a wide range of consumer protection class actions. By way of example only:

- LCHB served as Co-Class Counsel and lead trial counsel in *Gutierrez v. Wells Fargo Bank, N.A.*, (N.D. Cal.), a class action alleging unfair practices and false representations by Wells Fargo in connection with its imposition of overdraft charges. In 2016, a \$203 million class judgment, which was entered in 2010 following a bench trial, became final.
- LCHB serves on the Plaintiffs' Executive Committee in *In re Checking Account Overdraft Litigation* (MDL 2036, S.D. Fla.), a Multi-District proceeding involving more than two dozen banks and allegations of unfair practices and false representations in connection with the banks' imposition of overdraft charges. Class settlements totaling hundreds of millions of dollars have been approved by the MDL court to date.
- LCHB served as Plaintiffs' Liaison Counsel and on the Plaintiffs' Executive Committee in *In re Chase Bank USA, N.A. "Check Loan" Contract Litigation* (MDL No. 2032, N.D. Cal.), a nationwide Multi-District class action alleging that Chase breached its good faith obligation to credit cardholders by modifying the terms of their long-term fixed rate loans. In November 2012, the court granted final approval to a \$100 million nationwide settlement that provided direct payments to approximately one million cardholders and injunctive relief.
- LCHB served as Class Counsel in *In re TracFone Unlimited Service Plan Litigation* (N.D. Cal.), a nationwide class action alleging misleading advertisements about "unlimited" mobile data plans. In 2015, the court granted final approval of a class settlement that included a \$40 million fund and important practice changes.

- LCHB serves as Co-Class Counsel in *Roberts v. AT&T Mobility, LLC* (N.D. Cal.), a class action alleging misleading advertisements about “unlimited” mobile data plans. In 2021, the Court granted final approval of a \$12 million California class settlement.
- LCHB serves as Co-Class Counsel in *Lusnak v. Bank of America, N.A.*, (C.D. Cal.), a California class action alleging that defendant failed to pay interest on mortgage customers’ mortgage escrow balances, as required by state law. In 2020, the court granted final approval of a \$35 million settlement providing direct payments to class members.
- LCHB serves as Co-Class Counsel in *Cymbalista v. JPMorgan Chase Bank* (E.D.N.Y), a class action alleging that defendant failed to pay interest on mortgage customers’ mortgage escrow balances, as required by state law. In 2022, the court granted final approval of a settlement that included an \$11.5 million fund and practice changes.
- LCHB served as Co-Lead Counsel in *In Re Providian Financial Corp. Credit Card Terms Litigation* (MDL No. 1301; and related JCCP proceedings), representing credit card holders who were charged excessive interest and late charges and sold “add on” products and services with promised benefits that were illusory. In November 2001, the court granted final approval to a \$105 million settlement of the case, which also required Providian to implement substantial changes to its business practices.
- LCHB served as Co-Class Counsel in *Brazil v. Dell Inc.* (N.D. Cal.), a class action alleging that defendant engaged in false reference price advertising in connection with its online sale of computers. This was the first class action of its kind to receive class certification.
- LCHB served as Class Counsel and Lead Plaintiffs’ Counsel in *In re Apple and AT&T iPad Unlimited Data Plan Litigation* (N.D. Cal.), a class action alleging that defendants falsely advertised access to an unlimited data plan for the iPad device. In 2014, the court granted

final approval of a settlement whereby class members were able to submit claims for cash payments and for access to an expanded 3G data plan for their iPads.

- LCHB served as Class Counsel in *Williamson v. McAfee* (N.D. Cal), a class action alleging that McAfee unfairly charged customers for the automatic-renewal of their anti-virus software and engaged in false reference price advertising. In 2017, the court approved a settlement that provided monetary benefits and injunctive relief.
- LCHB serves as Interim Co-Class Counsel in *In re Arizona Theranos, Inc. Litigation*, (D. Ariz.), a class action alleging that Walgreens and startup company Theranos, Inc. and its top executives committed fraud and battery by prematurely marketing to consumers blood testing services that were still in-development, not ready-for-market, and dangerously unreliable.
- LCHB served as Settlement Class Counsel in *Kline v. The Progressive Corporation* (No. 02-L-6, Illinois Circuit Court, Johnson County), a nationwide class action challenging Progressive Corporation's private passenger automobile insurance sales practices. In 2002, the court approved a settlement valued at approximately \$450 million, which included both cash and equitable relief.

4. Over the course of this litigation, multiple attorneys at LCHB have worked on this the prosecution of this case. The following are the LCHB attorneys who have worked on this case and their respective backgrounds:

5. Roger N. Heller: 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. In 2022, I became the head of LCHB's Consumer Protection practice group. During my time at LCHB, my practice has been focused on consumer protection class actions. I have successfully represented large classes in numerous cases, including cases involving false advertising, telecommunications services, consumer banking, insurance, and credit cards.

6. Christopher E. Coleman graduated *cum laude* from Northwestern University School of Law in 2003, where he was an Associate Editor of the Northwestern University Law Review. After graduating, he clerked for the Honorable Joan Humphrey Lefkowitz of the United States District Court for the Northern District of Illinois. From 2005 to 2010, he was an associate at LCHB. From 2010 to 2019, he worked as a staff attorney for the Tennessee Justice Center, a nonprofit public interest law firm. In 2019 he rejoined LCHB as an associate, where he has worked on cases involving consumer fraud, sexual abuse, and personal injury. From 2014 to the present, he has also been an Adjunct Professor at Vanderbilt University Law School.

7. Avery S. Halfon graduated *cum laude* from Harvard Law School in 2015, where he was the Editor-in-Chief of the *Harvard Law & Policy Review*. From 2015 to 2016 he represented plaintiffs in class actions and other cases at Cohen Milstein Sellers & Toll. From 2016 to 2017 he served as a Law Clerk to the Honorable Judge Jane Stranch on the U.S. Court of Appeals for the Sixth Circuit. In 2017 he joined LCHB, and since then he has worked as an associate at LCHB on numerous consumer class actions and other plaintiff-side litigation.

8. Scott M. Miloro graduated from Benjamin N. Cardozo School of Law in 2006. From 2007 through 2010 he worked as an associate at Ohlandt, Greeley, Ruggiero & Perle, primarily on patent litigation in technical fields. Since 2011, he has worked as a staff attorney at LCHB, specializing in technical data analysis.

**LCHB's Work in This Litigation**

9. LCHB joined this case in early 2022, and this Court granted Plaintiffs' motion to appoint LCHB as additional Class Counsel on March 28, 2022. (ECF No. 150.) Since that time, LCHB has been involved in most aspects of this litigation, working closely with our co-counsel. Among other things, LCHB worked on: briefing for various motions, including regarding American's summary judgment motion, Plaintiffs' motion for spoliation sanctions, and Defendant's motion for reconsideration on summary judgment; preparation for trial, including working on pre-trial disclosures, jury instructions and other trial documents and on motion *in limine* papers; worked with and analyzed large data files produced by American's third-party email vendor, Appriss Insights, including in preparation for trial; class notice; meet and confers and correspondence with American on discovery and pre-trial issues; assisted in key depositions; developing trial strategy; preparing for mediation; mediation and subsequent settlement negotiations; drafting settlement papers, including forms of notice and other settlement exhibits; working on settlement approval papers; and communicating with class members.

10. The following chart breaks down, by task category, the number of hours that LCHB has spent on this litigation for which LCHB seeks compensation (as of December 13, 2022):

<b>Task Category</b>	<b>Hours</b>
Motions	127.1
Discovery	372.8
Trial Preparation	199
Settlement	112
<b>Total Hours</b>	<b>810.9</b>

11. With respect to the tasks performed by Class Counsel in this litigation, LCHB and our co-counsel firms 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.

12. The primary LCHB attorneys who have worked on this case are myself, Christopher E. Coleman, Avery S. Halfon, and Scott M. Miloro.

13. My primary tasks in this case have included drafting and editing briefs, working on litigation and trial strategy, working on pre-trial documents, trial preparation, overseeing and coordinating LCHB's work, participating in mediation, working on settlement negotiations and drafting settlement papers, and assisting with settlement implementation efforts.

14. Mr. Coleman's primary tasks in this case have included drafting and editing briefs and preparing pre-trial documents.

15. Mr. Halfon's primary tasks in this case have included drafting and editing briefs, preparing pretrial documents, participating in depositions, participating in mediation, and working on settlement implementation efforts.

16. Mr. Miloro's primary tasks in this case have included querying and analyzing large database files produced by American's third-party email vendor Appriss Insights, including in preparation for trial.

17. In addition, LCHB paralegal Miriam Gordon has worked on this case. Ms. Gordon's tasks in this case have included assisting with filings, assisting with distribution of case documents, and managing LCHB's case file.

18. LCHB litigation support specialists Margie Calangian, Anthony Grant, and Fawad Rahimi also worked on this case. Their primary tasks included maintaining Plaintiff's electronic document database for this case and assisting with searches of the database including for trial preparation.

**LCHB’s Time and Expenses**

19. During the time that this litigation has been pending, LCHB lawyers, paralegals, and staff have spent considerable time working on this litigation that could have been spent on other fee-generating matters.

20. The time that LCHB has spent on this litigation has been completely contingent on the outcome. LCHB 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.

21. In connection with this litigation, the attorney and staff timekeepers at LCHB have billed more than **810.9** hours (through December 13, 2022), for a total lodestar of more than **\$513,484.50**. This information is derived directly from LCHB’s time records, which are prepared contemporaneously and maintained by LCHB in the ordinary course of business. In reviewing its time records, LCHB exercised billing discretion to remove all timekeepers who worked fewer than 5 hours on this matter. None of this excluded time is included in the above numbers, nor is the additional time that LCHB will have to spend working on this matter, including in connection with seeking final approval of the Settlement or on implementation efforts should the Settlement be approved.

22. Below is a summary listing each timekeeper for which LCHB is seeking compensation for legal services in connection with this litigation, the hours each individual has expended as of December 13, 2022, and the hourly rate at which compensation is sought for each individual.

NAME	TITLE	HOURLY RATE	TOTAL HOURS	TOTAL LODESTAR
Roger N. Heller	Partner	\$920	217.1	\$199,732.00
Christopher Coleman	Associate	\$645	115.9	\$74,755.50
Avery S. Halfon	Associate	\$580	112.9	\$65,482.00
Scott Miloro	Staff Attorney	\$475	292	\$138,700.00



Miriam Gordon	Paralegal	\$465	29.5	\$13,717.50
Litigation Support Specialists: Margie Calangian, Anthony Grant, and Fawad Rahimi	Litigation Support Specialists	\$485	43.5	\$21,097.50
<b>TOTALS</b>			<b>810.9</b>	<b>\$513,484.50</b>

23. LCHB’s contemporaneous customary rates have been approved by District Courts in Texas and throughout the country. *See, e.g., Grigson v. Farmers Grp., Inc.*, No. 1:17-cv-00088-LY, Dkt. 206, at ¶ 15 (W.D. Tex. May 22, 2020) (“the lodestar calculation is supported by a range of reasonable billing rates charged in this market by attorneys of similar experience and skill”); *Roberts v. AT&T Mobility LLC*, No. 3:15-cv-03418-EMC, Dkt. No. 215 (N.D. Cal. Aug. 20, 2021) (finding LCHB rates “reasonable and within the range of rates for attorneys of comparable experience and qualifications in this District”); *In Re: The Bank of New York Mellon ADR FX Litigation*, No. 16- 00212, Dkt. No. 161 (S.D.N.Y. June 17, 2019) (awarding requested attorneys’ fees as “fair and reasonable and consistent with awards in similar cases”); *Patti’s Pitas v. Wells Fargo Merchant Servs., LLC*, No. 1:17-cv-04583 (AKT) (E.D.N.Y. July 22, 2021) (awarding requested attorneys’ fees); *Dover v. British Airways, PLC*, No. 12-cv-05567-RJD-CLP, Dkt. 321, 323 (E.D.N.Y. 2018) (same); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-660, 2018 WL 6606079, at \*13-14 (S.D. Ill. Dec. 16, 2018); *Campbell et al. v. Facebook, Inc.*, No. 13-05996, Dkt. No. 253 (N.D. Cal. Aug. 18, 2017) (approving LCHB rates); *Allagas v. BP Solar Int’l, Inc.*, 2016 WL 9114162, at \*2 (N.D. Cal. Dec. 22, 2016) (awarding requested fees after lodestar crosscheck, and concluding that the firm’s “hourly rates, used to calculate the lodestar here, are in line with prevailing rates in this District and have recently been approved by federal and state courts”); *In re: Whirlpool Corp. Front-loading Washer Prods. Liab. Litig.*, No. 08-65000, 2016 WL 5338012, at \*25 (N.D. Ohio Sept. 23, 2016); *Composite Co, Inc. v. Am. Int’l Grp., Inc.*, No.

1:13-cv-10491, Dkt. 157, at 7 (D. Mass Apr. 21, 2016); *Perkins v. LinkedIn Corp.*, 2016 WL 613255, at \*15 (N.D. Cal. Feb. 16, 2016) (approving LCHB rates); *In re High-Tech Employee Antitrust Litig.*, No. 11-02509, Dkt. No. 1112 (N.D. Cal. Sept. 2, 2015) (approving LCHB rates); *Nwabueze v. AT&T Inc.*, 2014 WL 324262, at \*2 (N.D. Cal. Jan. 29, 2014) (“[T]he Court also finds that the rates requested are within the range of reasonable hourly rates for contingency litigation approved in this District.”); *Walsh v. Kindred Healthcare*, 2013 U.S. Dist. LEXIS 176319, at \*9 (N.D. Cal. Dec. 16, 2013) (“The Court concludes Plaintiffs have shown that the requested rates are reasonable”); *Holloway v. Best Buy Co., Inc.*, No. C-05-5056 PJH (MEJ), Dkt. 382 (N.D. Cal. Nov. 9, 2011) (“The rates used by Class Counsel are reasonable.”); *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litig.*, No. 10-ml-02151, Dkt. No. 3933 (C.D. Cal. June 24, 2013) (awarding requested fees and finding that “[c]lass counsel’s experience, reputation, and skill, as well as the complexity of the case” justified billing rates); *Yarger v. Capital One, N.A.*, No. 11-154, Dkt. No. 259 (D. Del. Oct. 7, 2014); *In re Ocwen Federal Bank FSB Mortgage Serv. Litig.*, No. 04-C-2714, Dkt. No. 476 (N.D. Ill. July 1, 2011); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 794 (N.D. Ohio Mar. 31, 2010).

24. LCHB also has incurred **\$5,443.30** 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 LCHB seeks reimbursement in this matter:

<b>Expense</b>	<b>Amount</b>
Computer Research	\$2,347.50
Electronic Database Costs	\$2,700.00
Court Fees	\$300.00
Federal Express	\$95.80
<b>Total Expenses</b>	<b>\$5,443.30</b>

25. The foregoing expenses were incurred solely in connection with this litigation and are reflected in LCHB'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.

26. The above expense numbers do not include certain internal costs that LCHB incurred but for which LCHB does not seek reimbursement, including costs for telephone, in-house printing, and copies.

**The Settlement is Fair, Reasonable and Adequate**

27. Based on my experience and knowledge about the facts and issues in this case, I believe that the Settlement reached in this litigation represents a fair, reasonable, and adequate result for, and is in the best interests of, the Settlement Class Members.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Rafael, California, this 14th day of December, 2022.



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Roger N. Heller