

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION**

Thrift Development Corporation,

Plaintiff,

v.

American International Group, Inc.;
Chartis, Inc., and American Home Assurance
Co.,

Defendants.

Civil Action No. 8:12-cv-00861-BHH

**DECLARATION OF ROGER N. HELLER IN SUPPORT OF PLAINTIFF'S PETITION
FOR AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD**

I, Roger N. Heller, declare:

1. I am a partner in the firm of Lief Cabraser Heimann & Bernstein, LLP ("LCHB"), and co-Class Counsel in this case. I am a member in good standing of the State Bar of California, and have been admitted to this Court *pro hac vice* for purposes of this case. I submit this declaration in support of Plaintiff's Petition for Award of Attorneys' Fees and Expenses and Service Award. I have personal knowledge of the matters set forth herein and could competently testify thereto.

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. LCHB has been repeatedly recognized over the years as one of the top plaintiffs' law firms in the country, including by both The National Law Journal and The American Lawyer. *See, e.g.*, The Plaintiffs' Hot List, National Law Journal (Oct. 21, 2013) (LCHB 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.

3. Among the firm’s other areas of practice, LCHB has served in leadership positions in a wide range of consumer protection class actions, recovering hundreds of millions of dollars for insureds, bank customers, and other consumers. By way of example only:

- a. LCHB serves as Class Counsel in *Gutierrez v. Wells Fargo Bank, N.A.*, (No. 07-5923 WHA, N.D. Cal.), a class action alleging unfair practices and false representations by Wells Fargo in connection with its imposition of overdraft charges. In 2013, the court reinstated a \$203 million class judgment that had been entered in 2010 following a bench trial, and in 2014 the reinstated judgment was affirmed by the Ninth Circuit.
- b. 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.
- c. LCHB serves 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 provides direct payments to approximately one million cardholders and injunctive relief.

- d. LCHB served as Co-Class Counsel in *Garner v. State Farm Mutual Automobile Insurance Co.*, (No. 08-1365, N.D. Cal.), a class action challenging State Farm's use of certain improper deductions in valuing its insureds' total loss vehicles. In 2010, the court approved a \$15 million settlement, which provided significant refunds for the class members and important injunctive relief.
- e. 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.
- f. 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 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.

- g. LCHB served as Lead Counsel in *Catholic Healthcare West Cases* (J.C.C.P. No. 4453, San Francisco Superior Court), a coordinated action alleging that CHW charged uninsured patients excessive fees for treatment and services, at rates far higher than the rates charged to patients with private insurance or on Medicare. In 2007, the court approved a settlement that provides discounts, refunds and other benefits for CHW patients valued at \$423 million, and injunctive relief.
- h. LCHB served as Co-Lead Plaintiffs' Counsel in *Reverse Mortgage Cases* (J.C.C.P. No. 4061, San Mateo County Superior Court), an action brought against Transamerica Corporation and its subsidiary. Plaintiffs alleged that Transamerica targeted senior citizens to market and sell "reverse mortgages" which were misleading as to loan terms, and contained unfair charges and fees. A nationwide settlement provided relief to approximately 1600 members of the class averaging about \$5,000 per class member, with some class members receiving many times that amount.

4. The primary LCHB attorneys who have worked on this case are myself, LCHB partners Elizabeth J. Cabraser and Michael W. Sobol, LCHB Of Counsel Robert L. Lieff, and LCHB associate Melissa Gardner.

5. 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 for the Public Justice Trial Lawyer of the Year Award (2012).

6. Elizabeth J. Cabraser received her A.B. in 1975, and her J.D. in 1978, from the University of California at Berkeley. She has 35 years of experience representing plaintiffs in class actions and other complex matters. She has been appointed to leadership positions in over 80 federal multidistrict and state court coordinated proceedings, and has participated in the design, structure and conduct of numerous class action trials in state and federal courts. She has been recognized repeatedly for her work, including being named by the National Law Journal as one of its "100 Most Influential Lawyers in America" and one of its "Top Ten Women Litigators."

7. Robert L. Lieff is a founding partner of LCHB and its principal architect over the firm's thirty years of growth. Mr. Lieff received a J.D. from Columbia Law School and an M.B.A. from Columbia University in 1962. Currently Of Counsel to the firm, Mr. Lieff was a key player in multiple landmark civil cases, including litigation arising out of the Exxon Valdez oil disaster, litigation by Holocaust survivors and victims and their heirs against banks and private manufacturers and other corporations who enslaved and/or looted the assets of Jews and

other minority groups persecuted by the Nazi Regime during the Second World War era, and the first settlement with a tobacco company in 1996, signaling the end of forty years of success by tobacco companies in defeating health-related lawsuits. Two years later, an unprecedented \$206 billion settlement was announced between the tobacco industry and the states' attorneys general. Mr. Lieff managed LCHB's personal injury practice and mass torts group, including litigation involving Sulzer hip and knee implants, silicon breast implants, Fen Phen, Vioxx, Celebrex/Bextra, and Guidant medical devices litigation.

8. Michael W. Sobol is a 1989 graduate of Boston University School of Law. Mr. Sobol 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, Mr. Sobol 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, Mr. Sobol has represented plaintiffs in consumer protection class actions and other class actions and complex matters. He has been a partner with LCHB since 1999, and is currently in his thirteenth year as head of LCHB's consumer practice group. Mr. Sobol has served as plaintiffs' class counsel in numerous nationwide class action cases.

9. Melissa Gardner received her J.D. from Harvard Law School in 2011, and is an associate at LCHB. During her time at LCHB, Ms. Gardner's practice has been focused on representing plaintiffs in consumer, false claims act, and other complex actions.

LCHB'S WORK IN THIS ACTION

10. LCHB has been involved in most aspects of this litigation since first joining on as counsel in 2013. LCHB has had primary responsibility on the Plaintiffs' side for the legal aspects of the class certification briefing and strategy, drafting settlement papers, and working

with the administrator on notice implementation. Among other tasks that LCHB personnel have performed in this action (working closely with their co-counsel) are: legal research, drafting briefs and sections thereof (including in connection with Plaintiffs' class certification motion and Defendants' summary judgment motion and motion to exclude expert testimony), preparing for oral argument, developing class certification and case strategy, preparing for settlement negotiations, participating in mediation, negotiating and drafting settlement papers, preparing settlement approval papers, and working with the administrator on implementation of the notice program and other implementation issues.

LCHB STAFFING

11. With respect to the responsibilities and tasks assigned to LCHB in this litigation, 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.

12. The primary LCHB attorneys who have worked on this case are myself, LCHB partners Elizabeth J. Cabraser and Michael W. Sobol, LCHB Of Counsel Robert L. Loeff, and LCHB associate Melissa Gardner.

13. My primary tasks in this case have included drafting briefs, coordinating LCHB's work assignments, helping to develop class certification and case strategy, preparing for oral argument, preparing for and participating in mediation, negotiating and drafting settlement papers, and overseeing notice and settlement implementation efforts. Ms. Cabraser's primary tasks in this case have included developing class certification and case strategy and overseeing class certification briefing. Mr. Sobol's primary tasks in this case have included factual investigation, developing class certification and case strategy, and working on class certification

papers. Mr. Lief's primary tasks in this case have included developing settlement strategy and preparing for mediation, participating in mediation, settlement negotiation, and developing case strategy. Ms. Gardner's primary tasks in this case have included legal research, factual investigation, drafting briefs and settlement approval papers, and assisting with discovery efforts.

LCHB TIME AND EXPENSES

14. LCHB has spent considerable time working on this case that could have been spent on other matters. Throughout LCHB's involvement in this case, the active prosecution of this case has consumed a significant percentage of my billable time, and the billable time of other LCHB attorneys and staff, that could otherwise have been spent on other fee-generating work.

15. 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, the attorney and staff timekeepers at LCHB have billed more than 731.2 hours through September 10, 2015, for a total lodestar of \$421,327.00 during that period. 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 removed duplicate entries and exercised billing discretion to reduce its lodestar by approximately 25-30 hours, which hours are not included in the numbers above.

17. In addition to this case, LCHB is also counsel of record in a related case against the same defendants and involving the same alleged course of conduct, pending in the District of Massachusetts and captioned *Composite Co. v. American Int'l. Group, Inc.*, No. 1:13-10491-FDS

(D. Mass.). LCHB has spent significant time working on that case as well. While much of the work that LCHB performed in the two cases can be readily attributed to one or the other case, much of the work benefited both cases and does not lend itself to a rigid apportionment between the two cases. For such work, I personally reviewed the time entries and apportioned the time between the two cases using my best judgment. The hours and lodestar numbers included herein (and included in Exhibit A hereto) do not include any of LCHB's time attributed to the Massachusetts case.

18. 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 action, the hours each individual has expended to date, and the hourly rate at which compensation is sought for each individual.¹

19. Based upon my experience with other class actions and complex matters, I believe that the time expended by LCHB in connection with this case was necessary to ensure the success of this action and reasonable in amount, particularly given the strong result achieved for the Class and the complexity and challenges of this litigation.

20. LCHB's customary rates, which were used for purposes of calculating the lodestar here, have repeatedly been approved and relied upon by federal courts in this Circuit and elsewhere. *See, e.g., Healy v. Chesapeake Appalachia, LLC*, No. 10-cv-00023 JPJ-PMS (Dkt. 155) (W.D. Va. Oct. 4, 2011) (relying on LCHB rates in conducting lodestar cross-check); *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.*, 2010 WL 1416698, at *22-23 (N.D. Ohio Mar. 31, 2010); *Brazil v. Dell*

¹ Should the Court deem it appropriate and so request, LCHB is prepared to submit its detailed time records for *in camera* review.

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).

21. 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.

22. LCHB also has incurred \$25,912.77 in un-reimbursed expenses that were necessarily incurred in connection with the prosecution of this case, including expenses for: legal research, mediation fees, copying and postage. A summary breakdown of LCHB's expenses for which it seeks reimbursement in this matter is attached hereto as **Exhibit B**.

23. The foregoing expenses were incurred solely in connection with this litigation and are reflected on 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. The rates charged for all internal expenses incurred by my firm (*e.g.*, photocopying) are the same irrespective of whether the case is billable or contingent. As a result, the rates charged are

necessarily market-sensitive and market-competitive since they are subject to and controlled by an overriding “check” imposed by the firm’s cost paying clients.

24. Based on my experience and my knowledge regarding the factual and legal issues in this matter, it is my opinion that the Settlement presented for the Court’s approval is fair, reasonable and adequate, and is in the best interests of the Class.

I declare under penalty of perjury under the law of the state of South Carolina that the foregoing is true and correct.



Roger N. Heller

September 25, 2015
San Francisco, California
1274482.1

Exhibit A

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
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Report created on 09/24/2015 03:54:01 PM

From	Inception
To	Present

Matter Number: 3644-0001

SOUTH CAROLINA EX MOD - General Matter

PARTNER

NAME	HOURS	RATE	TOTAL
ELIZABETH CABRASER	40.20	975.00	39,195.00
MICHAEL SOBOL	36.30	850.00	30,855.00
ROGER HELLER	293.30	625.00	183,312.50
	369.80		253,362.50

ASSOCIATE

NAME	HOURS	RATE	TOTAL
MELISSA GARDNER	308.80	395.00	121,976.00
	308.80		121,976.00

PARALEGAL

NAME	HOURS	RATE	TOTAL
MIRIAM GORDON	5.30	270.00	1,431.00
JENNIFER RUDNICK	2.40	325.00	780.00
	7.70		2,211.00

OF COUNSEL

NAME	HOURS	RATE	TOTAL
ROBERT LIEFF	44.90	975.00	43,777.50
	44.90		43,777.50

MATTER TOTALS	731.20		421,327.00
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Exhibit B

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
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Report created on

09/24/2015 05:29:34 PM

Matter-to-Date = Inception To

Present

SOUTH CAROLINA EX MOD - General Matter

Matter Number: 3644-0001

	<u>Matter-to-Date</u>
Computer Research	\$6,937.79
Filing Fees	\$253.00
In-House Copies	\$18.40
Mediation Expenses	\$11,883.34
Postage	\$2.56
Travel	\$6,817.68
Total Matter Costs:	\$25,912.77
Total Cost Receipts:	\$0.00
Net Costs:	\$25,912.77