

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MAX BAZERMAN, individually and on
behalf of others similarly situated,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., a
Delaware Corporation,

Defendant.

Case No.: 1:17-CV-11297-WGY

**DECLARATION OF LINDA M. DARDARIAN IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES, COSTS, AND EXPENSES**

I, LINDA M. DARDARIAN, hereby declare as follows:

1. I am a member in good standing of the Bar of the State of California and a shareholder at the law firm of Goldstein, Borgen, Dardarian & Ho (“GBDH”), in Oakland, California, and I represent Plaintiff and the Settlement Class in this matter, along with my partner Byron Goldstein, associate Raymond Wendell, and our Co-Counsel Benjamin Edelman (collectively, “Class Counsel”). I am providing this declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Costs, and Expenses. I have personal knowledge of the facts set forth in this Declaration and could and would testify competently to them.

2. Class Counsel filed this class action on behalf of Plaintiff and other customers of Defendant American Airlines (“Defendant” or “AA”) who were charged baggage fees in violation of Defendant’s contractual promises following an extensive investigation into Defendant’s systemic failures to honor promises in its Baggage Policy and confirmation email/e-ticket regarding passengers’ right to check bags without charge. The parties subsequently

reached a very favorable settlement providing full (with five percent (5%) interest) or seventy-five percent reimbursement of overcharged baggage fees to class members on a claims-made basis, robust notice, an accessible and straightforward claims process, and additional sums to pay for the costs of settlement administration and attorneys' fees, costs and expenses.

3. Based on records that Defendant and the claims administrator Angeion have provided to Class Counsel, I understand that 242,241 Class Members have submitted claims (representing a claims rate of 38.3%) and that at least \$6,535,270 in claims have been verified by Defendant and will be returned to class members. Based on the data provided to us, we project that the final value of claims paid to Class Members under the Settlement will be at least \$7,450,207.

4. In my professional judgment, and as argued in Plaintiff's Motion for Award of Attorneys' Fees, Costs and Expenses filed herewith, these excellent results warrant an award of attorneys' fees, costs and expenses of the full amount authorized by the Settlement Agreement: \$2.75 million. As discussed below, this amount represents 29.4 percent of the total common fund created by the settlement agreement, and a multiplier of 1.39 on Class Counsel's adjusted lodestar in addition to \$48,333.71 in expenses.

I. LITIGATION AND SETTLEMENT

5. This is a nationwide breach of contract class action alleging that Defendant failed to honor contractual promises to check passengers' bags for no charge. Plaintiff and his Counsel began investigating this case in September 2016. (*See* Edelman Decl. in Supp. of Pl.'s Mot. for Prelim. Approval ¶¶ 10-15, ECF No. 59. Plaintiff filed his Complaint on July 13, 2017. (ECF No. 1.)

6. At Plaintiff's invitation, the Parties began engaging in efforts to settle this case shortly after Plaintiff served AA with the Complaint. Fourteen days before the Scheduling

Conference, pursuant to Local Rule 16.1(c), Plaintiff presented AA with a written settlement proposal in October 2017. The Parties began discussions regarding the possibility of settlement almost immediately thereafter.

7. Since then, the Parties have engaged in a great deal of discovery, both formal and settlement-related, related primarily to Defendant's bag check promises, policies, and practices; and most in the form of electronic data related to the numbers of bags checked by various categories of AA passengers for various flights over the four year liability period covered by this case. Plaintiff has served AA with three sets of interrogatories, one set of requests for production of documents, and two sets of requests for admission. Within two weeks of the Scheduling Conference, Plaintiff served Defendant with his First Set of Interrogatories and First Set of Requests for Production, followed three weeks later with a Notice of Corporate Deposition of Defendant under Federal Rule of Civil Procedure 30(b)(6) ("Rule 30(b)(6)"), and a week later with deposition notices for the four employees of Defendant that Defendant identified in its Initial Disclosures. Plaintiff served his First Set of Requests for Admission and Second Set of Interrogatories on December 14, 2017. Thereafter, Plaintiff served AA with additional written discovery, including further sets of requests for admission, requests for production, and interrogatories.

8. AA has served Plaintiff with one set of interrogatories and one set of requests for production of documents. Defendant served written responses to Plaintiff's First Set of Interrogatories and First Set of Requests for Production, and began document production on November 7, 2017. Defendant made eleven supplemental document productions, ultimately producing over 4,400 pages of documents. In addition, Plaintiff deposed AA's Rule 30(b)(6) witness, Shilpa Jain, on January 25, 2018.

9. The Parties agreed to mediate before Magistrate Judge Page M. Kelley in February, 2018. As the date of the mediation approached, however, AA had not yet produced information sufficient to determine how many passengers had been charged to check bags that should have been free, in what ways, and when. When Class Counsel informed AA's Counsel that this information would be necessary for a productive mediation, AA's Counsel represented that AA did not know how to retrieve this information. In response, Class Counsel organized a chart of the most significant ways in which AA passengers had been overcharged for checked bag fees, based on their investigations and knowledge of AA's bag check entitlements and data systems. For example, some passengers were entitled to some number of free checked bags based on their frequent flyer status, but the promise was not honored. Other passengers received an e-ticket confirmation email that stated they would be permitted to check one bag for free, but they were then charged to check the bag.

10. Based on the categories of alleged contract breaches that Class Counsel provided, AA hired a consultant (FTI Consulting, Inc.) to help it identify and quantify passengers who had been overcharged for checked bag fees in these ways, with input from Class Counsel. Prior to the mediation, AA produced (for settlement purposes only) data tables showing estimated monthly totals of the categories of checked bag overcharges that Class Counsel had identified — information that proved crucial to reaching a settlement. (*See also* Green Decl. ¶ 9, ECF No. 60.) AA's counsel has commented that AA would have had trouble organizing its data concerning checked bag fee overcharges into a useful form without Class Counsel's assistance and expertise. Moreover, Class Counsel independently evaluated the software code that FTI developed to query AA's databases and identify passengers who were likely overcharged for

checked bags — a rigorous task given the length and complexity of the code. (*See id.* ¶¶ 7-9.) In all, Class Counsel analyzed more than 5,500 lines of software code.

11. Throughout the discovery and mediation process, the Parties also regularly held detailed, substantive meet-and-confer communications, through correspondence and telephonic meetings, regarding the Parties' claims and defenses, written discovery, depositions, data gathering and production, settlement, and preparation for mediation, class certification, and trial.

12. On February 16, 2018, the Parties participated in a full-day mediation before Magistrate Judge Kelley. Although the Parties did not resolve the case then, with Magistrate Judge Kelley's assistance, the Parties identified the critical issues for litigation and mediation purposes, and agreed to continue negotiations. Over the course of the months that followed, the Parties exchanged detailed information about AA's baggage charge records and had numerous phone calls and emails about the data from these records, as well as other issues. They participated in several status conferences with Magistrate Judge Kelley in order to resolve all facets of the agreement before the May 2018 deadline for Plaintiff's motion for class certification. The entire mediation process and accompanying negotiations were time- and resource-intensive for both parties and ultimately succeeded in resolving this action, with the Settlement Agreement finalized and executed on June 7, 2018.

13. Under the Settlement, most Class Members who have submitted a timely, valid claim form will receive a full refund of their incorrectly charged checked bag fees, plus interest at the rate of 5% under Texas law. (*See* Settlement Agreement § IV.B.1, ECF No. 56-2 at 15.) Those Class Members whose claims are based on promises contained in their e-ticket confirmation email and who have submitted a timely, valid claim form will receive a refund equal to 75% of their incorrectly charged checked bag fees. (*Id.* § IV.B.2, ECF No. 56-2 at 16.)

14. Over the course of the negotiations, the Parties acknowledged that determining class membership and potential refund payments owed to Class Members would require collecting, analyzing, and verifying complex passenger bag check data. AA represented that the information necessary to process claims exists in multiple databases that are difficult to search. For this reason, the Parties' Settlement Agreement provided that an over-inclusive list of AA's passengers would be sent the class notice and have the opportunity to file a claim, and that Defendant would then verify those claims by reference to its business records. (*See* Pl.'s Mot. for Prelim. Approval at 3-4, 10-11, ECF No. 56.) The Parties agreed to several rounds of notice, both by mail and email, to help ensure that as many Class Members as possible would actually receive notice. (*Id.* at 14.) On June 22, 2018, the Court granted preliminary approval of the Settlement and directed notice to the Class in accordance with the Settlement Agreement. (ECF No. 65.)

15. The notice and claims processes proved to be more complex and time-intensive than the Parties anticipated. Throughout, Class Counsel has been diligent in reviewing data scripts used to pull and verify passenger and baggage data, and the results of data searches. Consequently, Class Counsel have identified errors in AA's passenger record-keeping and claim determinations, and have suggested ways to correct or modify scripts to more accurately determine which passengers are in the settlement class, which class members are entitled to refunds, and in what amounts. Defendant has acknowledged that it has "carefully considered and implemented many of Class Counsel's suggestions." (Def.'s Opp'n to Pls.' Mot. for Continuance of Fairness Hrg. and Related Deadlines at 7, ECF No. 69.)

16. Class Counsel also raised issues with passenger records that lacked an accurate mailing address: either the mailing address field was blank, or it contained a mailing address that

would obviously not reach the passenger, such as the address of a travel agent or, in many cases, that of AA's own corporate headquarters. (*See also* Dardarian Decl. in Supp. of Pl.'s Mot. for Continuance of Fairness Hrg. and Related Deadlines ¶¶ 4-7, ECF No. 67-1.) Class Counsel persuaded AA and the settlement administrator to search for correct addresses for these Class Members using email addresses, dates of birth, and telephone numbers. Then, Class Counsel twice successfully moved the Court for extensions to the claim deadline for Class Members who received late notice because their mailing addresses were missing or incorrect in AA's records. (*See* ECF Nos. 74 (contested), 76 (uncontested).)

17. In addition, the Settlement tasks AA with initially determining whether each Class Member who submits a claim is actually entitled to a refund. (Settlement § IX.F, K, ECF No. 56-2 at 24, 26.) On August 15, 2018, when AA circulated to Class Counsel its first round of claim determinations, Class Counsel identified numerous errors and areas of disagreement in the determinations. Through a series of meet and confer phone calls, Class Counsel have advocated on Class Members' behalf to correct errors and reverse claim denials. Class Counsel's continued advocacy on the Class's behalf throughout the notice and claims process has required significant time and effort, and has resulted in AA agreeing to refund many claims that it initially determined were invalid, to the benefit of the Settlement Class.

II. OUTCOMES OF THE CLAIMS PROCESS

18. The claims process is still in progress. As a result, Plaintiff does not yet know the final claim rate, the final number of Class Members who will receive refunds, or the final total value of refunds that will be distributed to Class Members. Plaintiff will supplement this motion at such time as these final figures are known.

19. The Settlement provides that Class Notice be sent to all individuals on the Class Notice List for whom an address is listed or identified. These individuals then have the

opportunity to file a claim. (Settlement §§ II.L, VIII.G.1.) The settlement administrator, Angeion Group, has represented to the Parties that it delivered the email version of Class Notice to 632,774 individuals. As of December 31, 2018, it had received 242,241 claim forms. Thus, the overall claim rate as of December 31, 2018 was 38.3%, and this rate will likely still increase, because some Class Members are permitted to file claims until February 20, 2019. Based on my professional experience, I believe that this is an extraordinarily high claim rate for a consumer class action settlement. *See also In re TJX Cos. Retail Security Breach Litig.*, 584 F. Supp. 2d 395, 404 (D. Mass. 2008) (collecting sources observing that claim rates in claims-made settlements are often around 10% to 15%, or even less).

20. On January 17, 2019, AA's counsel represented that it has already verified and approved 171,237 claims filed by Class Members. The total value of refunds for these approved claims is \$6,535,270, including interest. Based on further discussions with AA's counsel, Class Counsel conservatively estimates that this figure will increase by 14% by the close of this process, yielding an expected total value of Class Member refunds of **\$7,450,207**. For an explanation of Class Counsel's reasoning in reaching this estimate, see paragraphs 28-30 of the Declaration of Benjamin Edelman, filed herewith.

21. I have been informed by Angeion Group that it has billed \$1,347,822.87 for its work on this case from inception of the claims process through November 2018, which will be paid by AA. Angeion Group estimates that it will bill another \$545,000 for the remainder of its work on this case, yielding a final estimated settlement administration cost of **\$1,892,822**.

III. FACTORS SUPPORTING ATTORNEYS' FEES, EXPENSES AND COSTS EQUAL TO 22% OF THE SETTLEMENT FUND

22. Plaintiffs calculate the Settlement Fund to equal \$12,093,029, which includes the expected value of refunds that will be distributed to Class Members, plus the expected costs of

settlement administration, attorneys' fees, costs, and expenses. Plaintiffs request payment of \$2,701,666.29 in attorneys' fees. This figure represents approximately 22% of the \$12,093,029 settlement fund.

23. The excellent benefits for Settlement Class members strongly support Plaintiff's attorneys' fee, expense, and cost request. Most Class Members who have submitted a timely, valid claim form will receive a full refund of their incorrectly charged checked bag fees, plus interest at the rate of 5% under Texas law. (*See* Settlement Agreement § IV.B.1, ECF No. 56-2 at 15.) Those Class Members whose claims are based on promises contained in their e-ticket confirmation email and who have submitted a timely, valid claim form will receive a refund equal to 75% of their incorrectly charged checked bag fees. These results are extraordinary: Class members would not obtain a significantly greater award at trial, as additional measures of damages such as punitive damages are not recoverable under breach of contract. *See Weber v. Domel*, 48 S.W.3d 435, 437 (Tex. App. Ct. 2001).

24. Moreover, the size of the common fund — \$12,093,029 — constitutes a substantial settlement. The substantial recovery and excellent result for individual Class Members are particularly meaningful here in light of the unprecedented nature of this case: Class Counsel are unaware of a fifty-state class action for breach of contract addressing checked bag fee overcharges that was successfully litigated or settled. Class Counsel also believe this to be the first case ever to challenge a systemic failure to honor an airline's policies and contractual promises regarding baggage fees.

25. The innovative, nationwide case required Counsel to navigate both the highly technical Airline Deregulation Act and the common law of contracts of the fifty states — all in the context of still-developing case law regarding online or “clickwrap” contracts, as well as the

multidimensional complexity of AA's system for charging checked bag fees. Additionally, this case was rife with technical challenges linked to the data systems maintained by AA, requiring not only extensive investigation and nuanced data discovery but also continued sophisticated oversight by Class Counsel to ensure that overcharges were accurately detected, that all Class Members were provided with notice, and finally (in work that is still ongoing) that claims are not being incorrectly denied.

26. Moreover, even though the Parties settled the case relatively quickly, a great deal of effort was required to investigate the claims at issue in this case and compile the data necessary to reach a settlement that would effectuate Class Members' rights. AA itself commented that analyzing the data necessary to settle would have been very difficult if not for Class Counsel's expertise regarding AA's own bag check entitlements and information systems. Further, Plaintiff filed the motion for preliminary approval of the settlement on the deadline for class certification, after receiving two extensions of that deadline, and Plaintiff would have had only five more months to prepare for trial had negotiations failed. (ECF Nos. 33, 54, 55.) As a result, Class Counsel spent significant time and resources preparing for class certification and trial to account for this possibility. This preparation involved grappling with the procedural complexities of a fifty-state breach-of-contract class litigation and analyzing the many defenses that Class Counsel anticipated AA would raise both at class certification and on the merits. Finally, complications with passenger and bag check data collection and analysis that have arisen during the notice and claims processes have demanded significant attention from Class Counsel.

27. In contrast with the 242,241 Class Members who have filed claims to date, only 8 individuals have filed requests for exclusion, or just 0.001% of the Class. No objections have yet been filed. Moreover, Class Members who have contacted Class Counsel have expressed

excitement about their receiving a full refund for checked bag fees. The positive reactions of Class Members to this Settlement further support Plaintiff's attorneys' fee request.

28. Finally, the risks that Class Counsel took on in bringing this case more than justify an attorneys' fee award equal to 22% of the fund. Because this case was the first of its kind, Plaintiff faced risks both at class certification and on the merits that could easily have resulted in no recovery. At class certification, AA likely would have argued that: (1) when Plaintiff purchased his ticket on aa.com, he waived his class action rights by way of a page of the website that purported to extinguish such rights; (2) that this Court does not have personal jurisdiction over AA with respect to the claims of class members who live outside Massachusetts; and (3) that that this litigation would not be manageable as a class action due to the data gathering analysis involved in determining class membership and damages. On the merits, AA likely would have argued that: (1) the claims at issue in this case are limited in scope by the Airline Deregulation Act, 49 U.S.C. § 41713; and (2) the e-ticket confirmation email is not part of the contract between AA and passengers. In sum, Class Counsel brought this case on a contingent basis in spite of significant risks, and the fee award should reflect those risks.

IV. FACTORS SUPPORTING LODESTAR/MULTIPLIER CROSS-CHECK TO ATTORNEYS' FEE AWARD BASED ON PERCENTAGE OF THE COMMON FUND

29. While Class Counsel seek an award of their attorneys' fees as a percentage of the common fund of benefits to the class, we also provide the following information in order to allow the Court to perform a lodestar/multiplier cross-check on Class Counsel's requested percentage fee award.

A. Class Counsel's Time Reasonably Expended on the Litigation

30. Class Counsel kept contemporaneous, detailed records of the time spent on this case. In all instances, the time keeper indicates the date and amount of time spent on a task to one-tenth of an hour, describes the work that was performed during the indicated time period; and identifies the case to which the time should be charged. I reviewed my firm's billing records for this matter and applied billing judgment to eliminate inefficiencies and any excessive or unreasonably duplicative time. In reviewing GBDH's records, I also deducted productive time spent by other attorneys from GBDH who billed less than ten hours to the case. A true and correct copy of the resulting billing records, after exercise of billing judgment, are attached as Exhibit 1. A true and correct copy of the billing records that my co-counsel Ben Edelman transmitted to me on January 17, 2019 are attached as Exhibit 2.

31. In total, Class Counsel has to date devoted 3,449.6 hours (following billing judgment) to investigating, litigating, resolving and resolving this litigation, including time spent monitoring the notice and claims administration process and preparing the instant motion.

32. We will continue to devote time to this case over the next three months during the remainder of the claims process and up through the final approval hearing, and communicating with class members about final approval. We project that we will devote approximately 360 hours of additional time during that period, comparable to the time we have spent on similar work over the past three months, bringing our total projected hours through final approval and related activities to 3,809.6.

33. We made every effort to litigate this case efficiently. As the lead attorney, I allocated responsibility for different aspects of the case among attorneys within GBDH and our co-counsel Ben Edelman in order to avoid duplication, and I sought to assign tasks in a time and

cost-efficient manner, based on the time keepers' experience levels and talents. A chart showing the hours spent on the case by each timekeeper is attached as Exhibit 3. (More detail about the principal responsibilities and contributions of each timekeeper is provided below in ¶¶ 52-63 and in the Declaration of Benjamin Edelman, filed herewith, at ¶¶ 9-27.)

34. In my professional judgment, the 3,809.6 hours of total requested time is commensurate with the scale and complexity of the fact and legal issues presented by the case:

a. Our extensive investigation and sophisticated data discovery, both of which required a significant investment of time, were necessary to develop evidence of systemic failures and provided a foundation for the settlement negotiations and the full identification of the affected class. This case is based on systemic errors in Defendant's administration of its baggage fee policies, including programming errors that resulted from the failure of Defendant's own employees to adequately implement the company's notably complex baggage fee policies. Uncovering these errors, identifying their patterns, and ensuring that Defendant properly identified all affected passengers was both time-consuming and absolutely necessary to our effective resolution of the Class's claims.

b. The significant time we spent researching the numerous complex legal issues presented by this case and Defendant's affirmative defenses also contributed to the successful resolution of the case. The mediation briefing prepared by the parties thoroughly tested the strengths of Plaintiff's legal theories supporting the merits of the Class claims as well as their resilience to Defendant's affirmative defenses. Based on my in-depth participation in the settlement negotiations I am confident that we would not have been able to achieve the successful resolution we did without the careful legal work to address the complex merits issues presented by this first-of-its kind case.

c. As described above, we engaged in lengthy settlement negotiations with Defendant that involved extensive and iterative disclosures of data. Because this was a claims-made settlement, Class Counsel insisted on a class notice process that involved multiple rounds of notice individually-directed by regular and electronic mail to each class member that could be identified in AA's records. Class Counsel also negotiated a narrowly tailored release of claims that preserves the rights of passengers to whom AA did not individually direct notice of settlement. Throughout the process, we zealously advocated on behalf of the class. The excellent settlement terms and high claims rate resulting from the settlement confirm that Class Counsel's time in this regard was well spent.

d. Although settlement negotiations were promising, due to the quickly approaching litigation deadlines we proceeded on a parallel track, to prepare and file a motion for class certification and gather discovery to prove the class claims at trial, which was set to take place in November 2018. We reasonably devoted significant time to completing a fifty-state survey of state contract law to demonstrate the predominance of common issues, to continuing our fact investigation, including data analysis and interviewing potential witnesses, and to drafting the motion for class certification, which would have been critical to litigation on the merits, but was also necessary for establishing the justification for the Court's certification of the Settlement Class.

e. The substantial amount of time we devoted to monitoring the notice and claims process proved to be important to ensuring that all class members received notice and had an adequate opportunity to file claims. Our oversight led to the correction of several errors, and in two cases we successfully moved the Court for additional time to enable the required notices to be sent, thereby protecting class members' due process rights and opportunity to seek

compensation under the settlement. We have also disputed Defendant's rejection of several categories of claims affecting thousands of passengers and will continue to advocate for class members to ensure that no valid claims are denied.

V. CLASS COUNSEL'S RATES AND QUALIFICATIONS

A. GBDH Background and Experience in Class Action and Consumer Rights Litigation

35. GBDH is one of the oldest and most successful plaintiffs' public interest class action law firms in the country. Founded in Oakland, California in 1972, GBDH represents individuals against large companies and public entities in complex, class, and collective actions in the areas of employment law, disability access, consumer rights, voting rights and environmental justice cases. GBDH has long been recognized as one of the top plaintiffs' firms in the country. In 1992, the *National Law Journal* ("A National Who's Who of the Top Lawyers in Employment Litigation") called the firm "[i]n a league of their own on the plaintiffs' side, handling the largest class actions nationwide." Every year since 2004, GBDH partners have been named "Northern California Super Lawyers" by their peers, in recognition of their outstanding legal achievements and high ethical standards. I and the other GBDH partners are rated "AV Preeminent" by Martindale Hubbell, indicating that our peers rank us at the highest level of professional excellence.

36. My law firm litigates class and complex public interest cases in state and federal courts in various states across the country. In the twenty-seven years that I have been with the firm, GBDH has obtained billions of dollars of relief for plaintiffs and class members and has obtained systemic changes in unlawful practices by many governmental entities and large businesses.

37. GBDH maintains a varied consumer rights practice. Several representative recent and pending class action consumer cases include:

a. *Siciliano v. Apple, Inc.*, 2013-I-CV-257675 (Santa Clara County Superior Court, California): certified class action challenging Apple's failure to ensure that products sold in its online store comply with the disclosure and consent provisions of California's Automatic Renewal Law. Following class certification, this case was resolved by a settlement providing \$16 million to class members.

b. *Munguia-Brown v. Equity Residential*, 4:16-cv-01225-JSW (N.D. Cal.): certified class action, in which I am lead counsel, pending in the Northern District of California challenging the late fees imposed by Equity Residential without complying with the requirements of California's liquidated damages statute. We represent a certified class of over 140,000 current and former tenants throughout California.

c. *Balero, et al, v. Lumber Liquidators*, No. 3:15-CV-01005-JST (N.D. Cal.): class action, in which I served as lead counsel, on behalf of California consumers who purchased laminate wood flooring product manufactured in China and sold by Lumber Liquidators, which Lumber Liquidators falsely advertised as compliant with California formaldehyde emission limits. *Balero*, which was the first case to bring to light the excess formaldehyde emissions in Lumber Liquidator's products, sparked an investigation by 60 Minutes that was followed by the filing of similar lawsuits around the country, which were later consolidated along with *Balero* into multi-district litigation in the U.S. District Court for the Eastern District of Virginia. A \$36 million settlement of the multi-district litigation was approved by the District Court on October 8, 2018.

38. In addition to these consumer rights cases, my firm has litigated other significant non-consumer class and complex actions. A sampling of some recent representative cases follows:

a. *Hines, et al. v. City of Portland*, No. 3:18-cv-00869-HZ (D. Or.), a \$113 million class action settlement, in which I am co-lead class counsel, requiring the City of Portland to improve the accessibility of its pedestrian right of way for residents and visitors with mobility disabilities by installing and upgrading thousands of curb ramps throughout the City's sidewalk system. Final approval of the settlement was granted in September 2018.

b. *Nevarez v. Forty Niners Football Co., et al.*, No. 5:16-cv-07013-LHK (N.D. Cal.), certified class action for injunctive relief and damages on behalf of all persons with mobility disabilities who have been denied full and equal access to Levi's Stadium's facilities, services, accessible seating, parking, and other amenities due to defendants' failure to construct the Stadium in compliance with disability access standards. I was appointed co-lead Class Counsel in this case in July 2018.

c. *In Re Uber FCRA Litigation*, No. 3:14-cv-05200-EMC (N.D. Cal.), a nationwide class action on behalf of Uber drivers and applicants for driver positions alleging that Uber violated the Fair Credit Report Act and California law regarding the authorization and procurement of background checks. This action resulted in a \$7.5 million class settlement that received final approval in February 2018.

d. *McBain v. Behr Paint Corporation, et al.*, No. RG17855986 (Alameda County Superior Court), a nationwide and California collective and class action alleging that Defendants misclassified their territory representatives as exempt from overtime. Preliminary approval was granted on April 20, 2018 for a \$5 million class and collective action settlement.

e. *Reynoldson, et al. v. City of Seattle*, No. 15-cv-01608-BJR (W.D. Wash.), a \$300 million settlement on behalf of a class of Seattle residents and visitors with mobility disabilities, in which I and my firm are co-lead class counsel, requiring the City of Seattle to install and remediate tens of thousands of curb ramps throughout the City's pedestrian right of way. The settlement received final approval in November 2017.

f. *Ochoa v. Long Beach, California*, 2:14-cv-04307-DSF-FFM (C.D. Cal.): certified class action on behalf of persons with mobility disabilities who have been denied access to pedestrian rights of way in the City of Long Beach as a result of defendant's failure to provide and maintain accessible sidewalks and curb ramps throughout the City's pedestrian right of way. This action in which I was lead counsel resulted in a settlement requiring the City of Long Beach to complete barrier removal work valued at approximately \$200 million and to adopt significantly improved policies and procedures. The settlement received final approval from the court in October 2017.

g. *Willey v. Techtronic Industries North America, Inc.*, No. RG 16806307 (Alameda County Superior Court, California): wage and hour class action on behalf of store representatives and field representatives to recover unpaid overtime wages and payments for missed meal periods, inaccurate wage statements, and out-of-pocket expenses. This action resulted in a \$3.5 million class settlement that received final approval in August 2017.

h. *Willits v. City of Los Angeles*, No. 2:10-cv-05782 CBM (RZx) (C.D. Cal): complex disability rights case, in which I served as co-lead counsel, on behalf of persons with mobility disabilities who confronted unlawful access barriers in the City of Los Angeles' pedestrian right of way. The case resulted in a Settlement Agreement that the Court approved in

August 2016, requiring the City of Los Angeles to spend in excess of \$1.37 billion over thirty years to remove access barriers.

i. *Talamantes v. PPG Industries, Inc.*, 3:13-cv-04062-WHO (N.D. Cal.): an unpaid overtime class action on behalf of individuals who worked as territory managers for PPG Industries and related subsidiaries, assisting with merchandising and selling PPG's paint products at Home Depot stores. The case resulted in a \$5 million class settlement that was approved in January 2016.

j. *Willner v. Manpower Inc.*, 3:11-cv-02846-JST (N.D. Cal.): wage and hour class action on behalf of temporary employees who received wage statements that excluded information required by the California Labor Code. The case resulted in a \$8.75 million class settlement that was approved in June 2015.

k. *Garcia v. Oracle*, JCCP No. 004597 (Alameda County Superior Court, California): wage and hour class action on behalf of quality assurance engineers, customer support engineers, and project managers who have worked for Oracle (and PeopleSoft) in California who were denied required overtime pay and proper off-duty meal periods. The case resulted in a \$35 million settlement that was approved in 2012.

l. *McClain v. Lufkin Industries, Inc.*, No. 97-cv-0063 (E.D. Tex.), a race discrimination class action on behalf of approximately 1,000 African American workers, alleging that Lufkin's subjective employment practices had an unlawful disparate impact on African Americans in initial job assignments and promotions. I was one of the GBDH lawyers representing the Plaintiff in this action. Litigated over a 13-year period including trial and multiple appeals, final judgment issued in 2010, and included a permanent injunction prohibiting Lufkin from continuing to discriminate against African American workers and requiring Lufkin

to implement objective and non-discretionary promotion procedures, and provided more than \$10.5 million in monetary relief.

m. *Lin v. Siebel Software Systems, Inc.*, No. CIV 435601 (San Mateo Sup. Ct.): a class action lawsuit under the California Labor Code for unpaid overtime compensation on behalf of software engineers and senior software engineers. This case, in which I was co-lead counsel for the class, resulted in a \$27.5 million settlement in April 2007.

n. *Butler, et al. v. Countrywide Home Loans, Inc.*, No. BC268250 (Los Angeles Sup.Ct.), a class action lawsuit under the California Labor Code and Unfair Competition Act for overtime and other compensation on behalf of Account Executives in Countrywide's call centers in California. This case, in which I was Lead Class Counsel, resulted in a \$30 million settlement that was approved by the court in June 2005.

o. *Butler v. Home Depot*, No. C94-4335-SI (N.D. Cal.), a gender discrimination class action, for which I was among class counsel and which resulted in a consent decree covering employees in Home Depot's western division. The Home Depot settlement provided \$87.5 million in monetary relief and extensive injunctive relief expanding employment opportunities for the class of female employees and applicants.

p. *Shores v. Publix, Inc.*, No. 95-1162-CIV-T-25E (M.D. Fla.), a gender discrimination class action, in which I was class counsel, obtained a settlement that included a companywide consent decree providing extensive injunctive relief to improve assignment, training, compensation and promotion opportunities for female employees, and payment of \$81.5 million in monetary relief.

q. *Kraszewski v. State Farm General Ins. Co.*, No. C-79-1261-TEH (N.D. Cal.), a gender discrimination case brought on behalf of women who were denied positions as

insurance agents, which resulted in over \$200 million in monetary relief to the class and extensive injunctive relief. I was among class counsel on this action as well.

r. *Stender v. Lucky Stores*, No. C-88-1467 MHP (N.D. Cal.), a gender discrimination class action on behalf of female employees of Lucky Stores in Northern California, in which I was among class counsel. The Consent Decree entered in this case provided for extensive changes to Lucky's personnel and promotion practices and resulted in monetary relief of approximately \$80 million.

39. I have been responsible for all facets of class action and other complex litigation, from pre-filing investigation through trial and appeal, and settlement. As set forth above, I have been lead or co-lead counsel in many significant class and complex actions. The class and collective actions I have litigated throughout the past twenty-seven years have led to favorable class action settlements that have recouped substantial damages on behalf of plaintiffs and class members and resulted in significant injunctive relief

B. GBDH's Requested Reasonable Rates

40. GBDAH periodically (typically on an annual basis) establishes hourly rates for the firm's billing personnel. My partners and I base these rates on prevailing market rates for attorneys and law firms in the San Francisco Bay Area that have attorneys and staff of comparable skill, experience, and qualifications, drawing from information gathered from other attorneys doing similar work, from local press and national bar publications, and orders awarding attorneys' fees in similar cases. Our current standard billing rates for 2018 applicable to the attorneys, paralegals, and law clerks who worked on this litigation are set out in Exhibit 4. We are paid these rates by fee paying clients of the firm, and by defendants with whom we have settlement agreements that require ongoing monitoring and implementation work. These rates reflect my firm's extensive experience in complex and class action litigation in the public interest

and in settlement negotiations. We are paid these rates by the hour on a regular basis. They are also the rates we claim, and are awarded, in fee petitions in contingent, fee shifting cases, and in negotiated class-action and individual settlements regardless of the venue where the action is filed or where the client or entity with which we are negotiating (the party responsible paying for our fees) resides.

41. Nevertheless, in this case, we are using more modest, local Boston rates to perform the lodestar cross-check.

42. In preparing this motion, I sought input from attorneys in the Boston area, reviewed orders awarding attorneys' fees in complex litigation in state and federal court, and reviewed the data contained in the *2017 Real Rate Report Snapshot* published by Wolters Kluwer ("*2017 Real Rate Report*"), which is the most recent version of the report available. Based on this investigation, I understand that prevailing market rates in the Boston area are lower than rates in the San Francisco Bay Area. I therefore have reduced our requested rates to reflect what I understand to be the prevailing market rate for attorneys of comparable skill and experience in Boston.

43. GBDH's adjusted rates are benchmarked off the data contained in the *2017 Real Rate Report*, which is attached to this Declaration at Exhibit 5. I selected this report because it is based on a large dataset reflecting actual hourly rates paid to billing attorneys and paralegals, including over 500 litigation attorneys in the Boston area. My firm refers to this report (among others) in setting our standard rates.

44. The *2017 Real Rate Report* provides data on 2016 billing rates for the first quartile, median, and third quartile, broken down by City, litigation or non-litigation practice, partner and associate status, and practice area.

45. One limitation of the *2017 Real Rate Report* is that none of the highlighted practice areas correspond to the complex class action practice that my firm maintains. As a leading plaintiffs' class action attorney, I am familiar with the legal community that has comparable experience and qualifications in the field of litigating complex, class action litigation. Our peers in the defense bar are most often found in large (and expensive) corporate defense firms, like our opposing counsel in this case from Latham & Watkins.

46. Because none of the practice areas highlighted by the report reflects our practice, I relied on the data reflecting the median and third quartile rates for litigation attorneys across practice areas in Boston in setting our adjusted rates. I determined that this was likely to be a useful benchmark because GBDH's standard rates correspond approximately to the third quartile for litigation attorneys across practice areas in the San Francisco Bay Area. A significant advantage of relying on this data is that the sample size (*n*) of over 500 litigation attorneys in Boston is much larger than any of the sample sizes for particular practice areas in Boston, which in my professional judgment makes it a more reliable benchmark. The data that I relied on can be found on page 23 of the *2017 Real Rate Report*, and is reprinted below for the Court's convenience.

Hourly Rates for Litigation Attorneys in Boston in 2016					
Position	Sample (<i>n</i>)	1st Quartile	Median	3rd Quartile	Trend Analysis - Mean
Partner	266	\$262.90	\$469.00	\$696.38	2016: \$504.85 2015: \$521.79 2014: \$503.44
Associate	286	\$185.00	\$350.00	494.32	2016: \$364.84 2015: \$351.61 2014: \$315.02

47. A second limitation of the *2017 Real Rate Report* is that the most recent data available is from 2016, and therefore does not reflect increases due to inflation. The increase in

the consumer price index for Boston between June 2016 and November 2018 (the most recent date available) is 6.454 percent.¹ The table below applies this standard measure of inflation to the hourly rates for litigation attorneys in Boston from the *2017 Real Rate Report* to reflect estimated hourly rates for 2019. The table also includes estimated paralegal rates for Boston, which were calculated by taking the ratio of paralegal to partner billing rates from the national-level data reported on page 10 of the report, and applying that ratio to the inflation-adjusted 2019 rates for litigation partners in Boston.

Estimated Hourly Rates for Litigation Attorneys & Paralegals in Boston in 2019 Adjusted by CPI			
Position	1st Quartile	Median	3rd Quartile
Partner	\$280	\$499	\$741
Associate	\$199	\$373	\$526
Paralegals	\$99	\$165	\$230

48. GBDH's standard rates in our home market correspond roughly to the third quartile of litigation attorneys in the San Francisco Bay Area according to the *2017 Real Rate Report*, which shows that the 3rd quartile rate for litigation partners in San Francisco in 2016 was \$759.00 per hour, and for litigation associates was \$475.00. (See Ex. 5 at 29.) Our standard billing rates for myself and the most experienced partners and of-counsel attorneys at GBDH for 2018 are \$865 to \$875, and more junior partners have a billing rate of \$660. Our standard billing rates for associates during this period range from \$375 to \$ 575.

49. GBDH's standard rates have been approved as reasonable by state and federal courts in *Siciliano v. Apple, Inc.*, No. 2013-I-CV-257675 (Santa Clara Cty. Super. Ct. Nov. 2, 2018) (approving GBDH's 2018 rates as reasonable in contested lodestar fee award); *Willey v.*

¹ Bureau of Labor Statistics, U.S. Department of Labor, https://data.bls.gov/timeseries/CUURS11ASA0?amp%253bdata_tool=XGtable&output_view=d ata&include_graphs=true (as of January 16, 2019).

Techtronic Industries North America Inc., No RG 16806307 (Alameda Cty Super. Ct. Aug. 4, 2017) (finding that GBDH’s “2017 hourly rates are reasonable and commensurate with the prevailing rates for class actions”); *Reynoldson v. City of Seattle*, No. 2:15-cv-01608-BJR (W.D. Wash. Nov. 1, 2017) (approving the requested attorneys’ fees calculated using GBDH’s 2016 hourly rates); *Carillo-Hueso v. Ply Gem Indus. Inc.*, No. 34-2016-00195734-CU-OE-GDS (Sacramento Cty. Super. Ct. June 29, 2017) (in final approval order, finding that GBDH’s “2017 hourly rates are reasonable and commensurate with the prevailing rates for wage and hour class actions”); *Barnes v. Sprig, Inc.*, No. CGC-15-548154 (San Francisco Cty. Super. Ct. Dec. 20, 2016) (approving 2016 rates); and *Willits v. City of Los Angeles*, No. 2:10-cv-05782 CBM (RZx) (C.D. Cal.) (approving 2015 rates).

50. Because the third quartile of litigation attorneys most closely matches the market for GBDH’s legal services, as is appropriate in light of our qualifications and expertise, I adjusted GBDH’s hourly rates for purposes of the lodestar cross-check to reflect rates consistent with the third quartile of litigation attorneys in Boston. These rates are also commensurate with the hourly rate of our co-counsel, Mr. Edelman. *See* Edelman Declaration ¶ 33. The rates requested by Class Counsel are set out in the following table:

Professional	Firm, Position	Law School Graduation	Requested Rate
Linda Dardarian	GBDH, Partner	1987	\$740
David Borgen	GBDH, Of Counsel	1981	\$740
Byron Goldstein	GBDH, Partner	2007	\$575
Raymond Wendell	GBDH, Associate	2013	\$450
Anne Bellows	GBDH, Associate	2013	\$450
Susan Tenney	GBDH, Law Clerk	--	\$230
Scott Grimes	GBDH, Senior Paralegal and Statistician	--	\$235
Jacqueline Thompson	GBDH, Senior Paralegal	--	\$230
Damon Valdez	GBDH, Junior Paralegal	--	\$210

Stuart Kirkpatrick	GBDH, Junior Paralegal	--	\$195
Benjamin Edelman	Law Offices of Benjamin Edelman, Principal	2005	\$600

51. Applying these adjusted rates, our lodestar totals \$1,944,603, as reflected in the following table. If we are awarded our full attorneys' fees request of \$2,750,000, the effective multiplier would be 1.39.

Lodestar Calculation Using Requested Adjusted Rates (Based on 3rd Quartile Rates for Boston Litigation Attorneys)			
Professional	Requested Hours	Requested Rate	Requested Fees
Linda Dardarian	571.2	\$ 740	\$ 422,688.00
David Borgen	81.2	\$ 740	\$ 60,088.00
Byron Goldstein	733.8	\$ 575	\$ 421,935.00
Raymond Wendell	874.5	\$ 450	\$ 393,525.00
Anne Bellows	280.6	\$ 450	\$ 126,270.00
Susan Tenney	41.5	\$ 230	\$ 9,545.00
Scott Grimes	34.7	\$ 235	\$ 8,154.50
Jacqueline Thompson	387.5	\$ 230	\$ 89,125.00
Damon Valdez	157.3	\$ 210	\$ 33,033.00
Stuart Kirkpatrick	20.1	\$ 195	\$ 3,919.50
Benjamin Edelman	627.2	\$ 600	\$ 376,320.00
Total Hours and Loadstar Blended Rate	3,809.6	\$ 510	\$ 1,944,603.00
Total Fees and Costs Requested			\$ 2,750,000.00
Attorneys Costs Requested			\$ 48,333.71
Total Requested Attorneys' Fees			\$ 2,701,666.29
Effective Multiplier			1.39

52. Although I believe the median rates for litigation attorneys in Boston would significantly understate the market value of GBDH's legal services based on our significant expertise in class action litigation and the fee awards we have received in the past reflecting rates well above the median in our own home market, I have also calculated our lodestar based on rates corresponding to estimated 2019 median Boston rates for litigation attorneys. Using these

further reduced rates (and applying a similar reduction to Mr. Edelman's rate as well), Class Counsel's lodestar would total \$1,454,627.50, as reflected in the following table, and the effective multiplier resulting from a full award of our requested fees would be 1.89.

Lodestar Calculation Using Further Reduced Rates (Based on Median Rates for Boston Litigation Attorneys)			
Professional	Requested Hours	Further Reduced Rate	Fees
Linda Dardarian	571.2	\$ 500	\$ 285,600.00
David Borgen	81.2	\$ 500	\$ 40,600.00
Byron Goldstein	733.8	\$ 430	\$ 315,534.00
Raymond Wendell	874.5	\$ 370	\$ 323,565.00
Anne Bellows	280.6	\$ 370	\$ 103,822.00
Susan Tenney	41.5	\$ 165	\$ 6,847.50
Scott Grimes	34.7	\$ 175	\$ 6,072.50
Jacqueline Thompson	387.5	\$ 165	\$ 63,937.50
Damon Valdez	157.3	\$ 150	\$ 23,595.00
Stuart Kirkpatrick	20.1	\$ 140	\$ 2,814.00
Benjamin Edelman	627.2	\$ 450	\$ 282,240.00
Total Hours and Loadstar Blended Rate	3,809.6	\$ 382	\$ 1,454,627.50
Total Fees and Costs Requested			\$ 2,750,000.00
Attorneys Costs Requested			\$ 48,333.71
Total Requested Attorneys' Fees			\$ 2,701,666.29
Effective Multiplier			1.86

C. The Qualifications and Experience of GBDH Attorneys and Paralegals and Their Contributions to the Present Case

53. GBDH is seeking compensation for time spent by myself, of counsel David Borgen, partner Byron Goldstein, associates Raymond Wendell and Anne Bellows, law clerk Susan Tenney, senior paralegal and statistician Scott Grimes, senior paralegal Jacqueline Thompson, and paralegals Damon Valdez and Stuart Kirkpatrick. The following paragraphs summarize each professional's qualifications and some of their principal contributions to the case.

1. Linda M. Dardarian

54. *Qualifications and Experience.* I am a 1987 graduate of Berkeley Law (formerly Boalt Hall School of Law at University of California, Berkeley). I have been practicing law for the past 31 years, and litigating class actions with GBDH since 1991. I became a partner in 1998. During my time at GBDH, I have been responsible for all facets of class action and other complex litigation, from pre-filing investigation through appeal and settlement. I frequently write and lecture on complex and class litigation, disability rights, civil rights, and wage and hour litigation subjects, including recovery of statutory attorneys' fees. I have authored amicus briefs on attorney's fees issues, including briefing the California Supreme Court in *Ketchum v. Moses*, 24 Cal. 4th 1122 (2001). I have earned numerous awards for my achievements in complex litigation, including the California Lawyer of the Year Award in 2014 and recognition as one of the 500 Leading Plaintiff Employment Lawyers from Law Dragon. Every year since 2005, I have been named a norther California "Super Lawyer" practicing employment law, and I was named one of the Top 50 Women Super Lawyers in 2009. I am also regularly listed as one of the "The Best Lawyers in America" and I am rated AV Preeminent by Martindale Hubbell. My curriculum vitae is attached as Exhibit 6.

55. *Role and Major Contributions to the Case.* I have been involved in all aspects of this case since its inception. I served as lead counsel, taking on primary responsibility for setting litigation strategy and leading settlement negotiations on behalf of the class. I also supervised the attorneys and paralegals from GBDH in (1) doing the work necessary to develop the factual record in this case (through investigation, formal discovery, and informal discovery through the settlement process); (2) researching and preparing to litigate the various complex legal questions presented by this nationwide breach of contract class action against an airline company; (3)

drafting pleadings; and (4) monitoring and overseeing the implementation of the settlement agreement, including communications with class members.

2. David Borgen

56. *Qualifications and Experience.* My former partner David Borgen, now Of Counsel to GBDH, has been practicing law for 37 years, since graduating (Order of the Coif) from Hastings College of Law in 1981. Mr. Borgen joined GBDH in 1990, and became a partner in 1998, serving in that role until January 2016. Mr. Borgen's practice at GBDH has focused on complex class and collective actions, with a particular emphasis on the enforcement of workers' minimum wage and overtime rights. He regularly lectures and writes on employment law issues. In 2018 Law Dragon named him as one of 500 Leading Plaintiff Employment Lawyers; in 2013 he was named a Martindale-Hubbell Top Rated Lawyer in Labor & Employment, he has been listed among The Best Lawyers in America by Wood/Whyte, and he has been regularly recognized as a Northern California Super Lawyer.

57. *Role and Major Contributions to the Case.* Mr. Borgen provided consultation and strategic advice on multiple issues while this case was actively litigated, including discovery and development of Plaintiff's legal theories. He also took the deposition of Defendant's Rule 30(b)(6) witness.

3. Byron Goldstein

58. *Qualifications and Experience.* Byron Goldstein is a 2007 graduate of Columbia School of Law. He joined GBDH as an associate in 2014 and became a partner on January 1, 2019. Super Lawyers has selected him as a "Rising Star" every year since 2016. Among other positions, Mr. Goldstein clerked for the Honorable UW Clemon of the United States District Court, Northern District of Alabama (retired) and worked as a public defender for juveniles, where he handled numerous trials and other hearings. At GBDH, Mr. Goldstein's practice

focuses on class and complex litigation, including discrimination, wage and hour, and consumer litigation.

59. *Role and Major Contributions to the Case.* Mr. Goldstein has been involved in all aspects of this case since its inception. Prior to filing, he worked closely with our co-counsel to investigate Defendant's pattern of overcharges for baggage fees and develop the factual bases and legal theory of the case. He was the lead drafter of the complaint, provided leadership in developing the legal team's discovery plan, interviewed witnesses, reviewed documents, drafted discovery requests, analyzed data and documents, and assisted Mr. Borgen in preparing to depose Defendant's Rule 30(b)(6) witness. Mr. Goldstein also supported the settlement negotiations and led numerous meet and confer meetings on discovery disputes and settlement administration issues.

4. Raymond Wendell

60. *Qualifications and Experience.* Mr. Wendell joined GBDH as an associate in 2014. He graduated *cum laude* from Harvard Law School in 2013, where he served as an editor on the Harvard Law Review. Super Lawyers has selected him as a "Rising Star" since 2017. Prior to joining GBDH, Mr. Wendell worked as a judicial law clerk for the Honorable Marilyn L. Huff of the United States District Court, Southern District of California. Since joining our firm, Mr. Wendell has litigated several class actions involving consumer claims, disability rights, and wage and hour violations.

61. *Role and Major Contributions to the Case.* Mr. Wendell assisted with all aspects of the case. He was the original drafter of most of GBDH's written work product, including all discovery requests, Plaintiff's mediation brief, the motion for class certification, the motion for preliminary approval, both motions to extend time to allow the administrator to provide notice to additional class members, and the motion for attorneys' fees filed herewith. He also conducted

extensive legal research on merits issues, procedural issues, and legal questions arising during the settlement process, and assisted in settlement negotiations. Mr. Wendell also reviewed documents produced in formal and informal discovery and conducted additional factual investigation through outreach to potential witnesses. Additionally, Mr. Wendell completed numerous tasks calculated to lay the groundwork for trial preparation, including identifying and tracking evidence and legal elements needed to prove all claims at trial and identifying issues that could be resolved as a matter of law.

5. Anne Bellows

62. *Qualifications and Experience.* Ms. Bellows joined GBDH as an associate in 2017. Following graduation from Berkeley Law in 2013, Ms. Bellows served as the 2013-2014 Civil Rights Fellow at a nationally prominent fair housing firm, Relman, Dane & Colfax, LLC and clerked for the Honorable Eric L. Clay on the U.S. Court of Appeals for the Sixth Circuit. She also practiced fair housing law at Public Advocates, Inc. in San Francisco, focusing on issues related to tenant displacement.

63. *Role and Major Contributions to the Case.* Ms. Bellows assisted with legal research and drafting on a range of merits issues, focusing in particular on contract law issues. Ms. Bellows also conducted extensive research for the fifty-state survey compiled by Class Counsel, which was submitted in support of the motion for preliminary approval. Additionally, Ms. Bellows conducted research on the legal standards governing attorneys' fees under both federal law in the First Circuit and Texas law and contributed substantially to the drafting and preparation of this motion for attorneys' fees.

6. Susan Tenney

64. Susan Tenney was a summer law clerk at our firm during the summer of 2017. She was assigned several legal research tasks, including work on Plaintiff's fifty-state survey of contract law principles.

7. Paralegals

65. I also assigned paralegals of varying years of experience to the case, and gave them assignments commensurate with their skills and expertise. They are as follows:

a. Senior paralegal and statistician Scott Grimes, who has thirty years of case management and complex litigation experience, in addition to a masters degree in statistics. His primary duties in the matter were to analyze data disclosed by Defendant to support settlement negotiations, assist with drafting class notice and claims forms, assist with document management and production, and cite check and file pleadings in the case.

b. Senior paralegal Jacqueline Thompson, who has 31 years of case management and complex litigation experience. Ms. Thompson was the lead paralegal on the case. Some of her significant duties included extensive work related to the fact investigation and communications with potential witnesses, researching and applying local rules, tracking litigation deadlines, leading document management and production, supporting deposition preparation, and cite checking and filing pleadings in the case.

c. Paralegal Damon Valdez, who has approximately 27 years of litigation experience. His primary duties in this matter included researching and applying local rules, tracking litigation deadlines, assisting with fact investigation and communications with potential witnesses, supporting document management and production, and cite checking and filing pleadings in the case.

d. Paralegal Stuart Kirkpatrick, who has four years of complex litigation experience. His primary duties in this matter included assisting with document management and production tasks and assisting with fact investigation and communications with potential witnesses.

D. Factors Supporting Plaintiffs' Requested Lodestar Multiplier

66. *Results Obtained.* In my professional judgment and based on my decades of experience litigating and resolving class claims, the highly favorable terms of the settlement represent truly outstanding results for the Class. Full value reimbursement, or even seventy-five percent reimbursement, of lost or wrongfully charged funds is a rare achievement in a settlement. Additionally, we pushed hard for favorable terms regarding notice and the claims process (and monitored every step of the process to ensure that the notice and claims were properly administered), and the high claims rate of 38.3 percent ratifies the success of our efforts. As outlined above, these remarkable outcomes were founded not just on our settlement negotiations but on the innovative and extensive fact investigation, sophisticated legal work on complex issues, and our effective advocacy and early discovery efforts.

67. *Complex Issues and Difficulties Presented by the Case.* This case presented numerous complex legal issues, including whether and to what extent the class claims were affected by the application of the Airline Deregulation Act, 49 U.S.C. § 41713; which representations on Defendant's website and in the documents it provided to its passengers constituted contractually binding promises under developing case law regarding online or "clickwrap" contracts; and legal issues unique to a nation-wide class action brought under state contract law.

68. Additionally, this case presented numerous technical challenges affecting our investigation, formal and informal discovery, and monitoring. Defendant's baggage policies and

data systems are both exceedingly complex—in fact these very complexities appear to have contributed to the systemic errors resulting in the overcharging of checked baggage. The need for finely crafted data requests and for sophisticated analysis of voluminous data for its bearing on key substantive and procedural issues was as great in this case as in any other complex case I have litigated—notwithstanding the fact that the parties agreed on a settlement prior to class certification.

69. *Extraordinary Skill.* In my professional judgment, Class Counsel rose to the many challenges posed by this case with extraordinary skill. My firm's expertise in class actions prepared us to navigate the challenges of putting together so large a case, address the nuanced class action settlement issues that arose during negotiations and in the implementation of the settlement agreement, and position the case to succeed at class certification and, if need be, trial. Mr. Edelman's substantive expertise in online consumer agreements and the airline industry enabled Class Counsel to conduct the innovative investigation that resulted in this first-of-its-kind case, and his knowledge of these subjects proved equally indispensable throughout the litigation. Additionally, Mr. Edelman's significant technical expertise related to database and internet software was essential to the investigation and discovery that enabled the parties in this case to reach the present, comprehensive settlement, as well as to Class Counsel's continued oversight of the notice and claims process.

70. *Contingency Risk.* GBDH's representation of Plaintiff and the plaintiff class was on a wholly contingent basis. The firm devoted substantial resources to this matter, and we have received no payment for any of the more than 3,449 hours of services performed or the \$48,333.71 in out-of-pocket costs and expenses that we committed to the case. My firm has

worked on this case for approximately two years without any payment, while continually bearing the risk of non-payment if we were not successful.

VI. REASONABLE COSTS AND EXPENSES

71. GBDH is seeking reimbursement of its reasonable out-of-pocket costs and expenses incurred in this matter, as permitted under the Settlement Agreement. Settlement § VI.A & B.

72. The items we have included in our costs and expenses are billed separately and are not included in my firm's lodestar. For accounting purposes and to ensure that all costs and expenses are accurately assigned to the appropriate case, it is my firm's practice to assign a unique billing code for each case that we investigate, litigate or negotiate. This case had a unique billing code, and all expense records, receipts and billing statements reflecting costs associated with this case were assigned to that billing code.

73. My firm's total costs and expenses in this matter through January 15, 2019 come to \$48,333.71. Those costs include court filing fees, in-house copying and printing, telephone charges, electronic research, travel expenses, and the costs to engage tax counsel to challenge and prevail over Defendant's position that class members' bag fee refunds should be treated as taxable income. GBDH paid these costs and expenses on a regular and timely basis as they were incurred over the past two years. These costs and expenses have been necessarily and reasonably incurred in this case. I will provide updated cost figures to the Court before the hearing on this motion.

74. A true and correct summary of my firm's costs and expenses through January 15, 2019 prepared from the billing code for this case, and separated by category, is attached hereto as Exhibit 7.

I declare under penalty of perjury under the laws of the United States of America and the state of California that the foregoing is true and correct.

Executed this 18th day of January, 2019, in Oakland, California.

/s/ Linda M. Dardarian

Linda M. Dardarian

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”) and paper copies will be sent to those indicated on the NEF as non-registered participants on January 18, 2019

/s/ Linda M. Dardarian

Linda M. Dardarian