

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 BRUCE CORKER d/b/a RANCHO ALOHA;
5 COLEHOUR BONDERA and MELANIE
6 BONDERA, husband and wife d/b/a
7 KANALANI OHANA FARM; ROBERT
8 SMITH and CECELIA SMITH, husband and
9 wife d/b/a SMITHFARMS, and
10 SMIT\$HFARMS, LLC on behalf of themselves
11 and others similarly situated,

12 Plaintiffs,

13 v.

14 MNS, LTD.,

15 Defendant.

Case No. 2:19-CV-00290-RSL

**DECLARATION OF JASON L.
LICHTMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND SERVICE AWARDS**

The Honorable Robert S. Lasnik

16 I, Jason L. Lichtman, declare as follows:

17 1. I am a partner in the law firm of Lief Cabraser Heimann & Bernstein, LLP
18 ("LCHB"). I am Plaintiffs' counsel of record in this litigation, along with Karr Tuttle Campbell. I
19 am a member in good standing of the bars of Illinois, New York, New Jersey, Utah, and the
20 District of Columbia. I respectfully submit this declaration in support of Plaintiffs' Motion for
21 Attorneys' Fees, Reimbursement of Expenses, and Service Awards. Except as otherwise noted, I
22 have personal knowledge of the facts set forth in this declaration and could testify competently to
23 them if called upon to do so.

24 2. I have been involved in all aspects of this litigation since March 2019.

25 3. I have submitted declaration in support of each of Class Counsel's requests for
26 attorneys' fees, reimbursement of expenses, and service awards in connection with settlements
reached earlier in this case. *See* Dkt. 416, 655, 743, 879. Those declarations set forth LCHB's
work in this matter, the experience and expertise we brought to this case, the core team at LCHB

1 assigned to this litigation, our assessment of the case-specific risks present in this litigation, and
2 LCHB's lodestar and expenses up to that point. I stand by and incorporate all of the statements I
3 made in those prior declarations, and provide updated information about this case that is relevant
4 to the accompanying Motion.

5 **II. LCHB's Work in this Matter**

6 4. My previous declarations explained that LCHB, along with co-Class Counsel
7 Karr Tuttle Campbell, have actively litigated this case since its inception in February 2019. At
8 the time, this Court had adjudicated motions to dismiss filed by all defendants (Dkt. 100, 106,
9 107), a motion for summary judgment (Dkt. 121), a motion to strike (Dkt. 179), several motions
10 to compel or for a protective order (Dkt. 180, 188, 206, 211, 222, 227, 252, 257, 294, 300, 304,
11 317, 330, 355, 372, 433, 621), a motion for sanctions (Dkt. 319), and several motions to amend
12 the pleadings to add new defendants (Dkt. 71, 268, 344). The pace of activity did not relent. By
13 the end of discovery, Plaintiffs had filed additional motions to compel, successfully defended a
14 motion to dismiss for lack of personal jurisdiction (Dkt. 606), filed for class certification against
15 non-settling defendants, and moved for case terminating sanctions against one defendant
16 (Mulvadi).

17 5. Fact discovery ended on March 11, 2022. During discovery, Plaintiffs served 781
18 requests for production and 177 interrogatories and Plaintiffs ultimately received and reviewed
19 more than 113,000 documents including 427,000 pages (including large spreadsheets of data).
20 There have been 31 depositions taken in this case, including experts and third parties.

21 6. The parties also engaged in extensive third-party discovery, collectively serving
22 52 subpoenas, which have yielded 7,248 documents and more than 123,000 pages.

23 7. Expert discovery closed on November 18, 2022. Plaintiffs served seven expert
24 reports, six of whom were deposed, and deposed all five of the experts disclosed by the now
25 single remaining non-bankrupt non-settling defendant. Plaintiffs filed a summary judgment
26

1 motion and *Daubert* motions on December 15, 2022. Plaintiffs also opposed MNS's motions for
2 summary judgment and to exclude certain of Plaintiffs' experts.

3 8. Attorneys from LCHB (principally myself, Daniel Seltz, and Andrew Kaufman)
4 have continued to play a significant and active role in virtually every aspect of this case,
5 including:

6 a. Authored or edited the briefs and motions that have been presented in the
7 litigation to date, including oppositions to motions to dismiss and discovery motions;

8 b. drafted and propounding dozens of requests for production,
9 interrogatories, and requests for admissions;

10 c. oversaw the production of tens of thousands of documents;

11 d. assisted with the preparation of the depositions of five named plaintiffs;

12 e. identified and worked with numerous consulting experts in preparation for
13 mediation and litigation, on issues such as damages, marketing, consumer behavior, and
14 accounting;

15 f. developed numerous settlement proposals and negotiated extensively with
16 previous settling defendants and now MNS, including traveling to Los Angeles for an in-person
17 with the mediator who ultimately brought the parties to this settlement;

18 g. drafted class certification papers;

19 h. worked with numerous experts in connection with class certification and
20 expert discovery;

21 i. deposed three of the non-settling defendants' experts;

22 j. drafted summary judgment and *Daubert* motions and opposition briefs and
23 one of the motions to disqualify two of MNS's experts;

24 k. worked extensively with the notice administrator to implement and
25 monitor the notice and claims processes for each of the settlements the Court has previously
26 approved; and

1 I. Worked with Dr. Michael Schreck on the declaration that he provided
2 concerning the value of the injunctive relief negotiated in settlements in this litigation. *See* Dkt.
3 879-3.

4 **III. LCHB's Lodestar Cross-Check Submission**

5 9. Attached as **Exhibit A** is a true and correct summary by individual of the hours,
6 billing rate, and lodestar for each biller's work on this matter from its inception to July 11, 2003.
7 The time for any billers who submitted fewer than 40 hours has been removed. During this
8 period of time, the firm expended 9,772.60 hours on this matter, with work still continuing.
9 Calculated at current rates and taking into consideration excluded time, for purposes of the cross-
10 check, the lodestar invested in this case by LCHB during this period comes to **\$6,392,551.50**.

11 10. The rates set forth in **Exhibit A** are my firm's current billing rates for 2023. The
12 hourly rates charged by timekeepers are the firm's regular rates for contingent cases and those
13 generally charged to clients for their services in non-contingent/hourly matters. While LCHB
14 principally works on contingency, our rate structure is occasionally paid to our firm by hourly-
15 paying clients.

16 11. Over its more than five decades as a firm, LCHB's rate structure has been
17 approved by countless courts, sometimes as the basis for a lodestar fee, other times on cross-
18 check. The following are a small sample of more recent matters:

- 19 • *Vianu v. AT&T Mobility LLC*, No. 19-cv-3602, Dkt. 164 (N.D. Cal. Nov. 8,
20 2022);
- 21 • *Nashville Gen. Hosp. v. Momenta Pharms., Inc.*, No. 15-1100, Dkt. 520 (M.D.
22 Tenn. May 29, 2020);
- 23 • *In re Samsung Top-Load Washing Machine Marketing, Sales Practices &*
24 *Products Liability Litig.*, No. 17-2792, Dkt. 256 (W.D. Okla. June 11, 2020);
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- 1 • *Seaman v. Duke Univ.*, No. 15-462, 2019 WL 4674758, at *1 (M.D.N.C. Sept. 25,
2 2019);
- 3 • *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-660, 2018 WL 6606079, at *13-14
4 (S.D. Ill. Dec. 16, 2018)
- 5 • *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*,
6 No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017);
- 7 • *Allaga v. BP Solar Int’l, Inc.*, No. 14-560, Dkt. 201 (N.D. Cal. Dec. 22, 2016);
- 8 • *In re: Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, No. 06-
9 7023, Dkt. 598 (N.D. Ill. Sept. 13, 2016)
- 10 • *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL
11 5158730, at *9 (N.D. Cal. Sept. 2, 2015);
- 12 • *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 149692
13 (N.D. Cal. Jan. 14, 2013);
- 14 • *In re Bank of Am. Credit Prot. Mktg. & Sales Practices Litig.*, No. 11-MD-2269
15 TEH, 2013 WL 174056 (N.D. Cal. Jan. 16, 2013);
- 16 • *Brazil v. Dell Inc.*, No. C-07-01700 RMW, 2012 WL 1144303, at *1 (N.D. Cal.
17 Apr. 4, 2012);
- 18 • *White v. Experian Info. Sols., Inc.*, No. SACV 05-1070 DOC, 2011 WL 2971957,
19 at *3 (C.D. Cal. July 15, 2011);
- 20 • *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 793–94 (N.D. Ohio 2010);
- 21 • *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1326–27 (W.D. Wash. 2009);
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- 1 • *Grays Harbor Adventist Christian Sch. v. Carrier Corp.*, No. 05-05437 RBL,
2 2008 WL 1901988, at *3 (W.D. Wash. Apr. 24, 2008);
- 3 • *Fleming v. Kemper Nat'l Servs., Inc.*, 373 F. Supp. 2d 1000, 1012 (N.D. Cal.
4 2005).

5
6 12. LCHB attorneys and staff enter their time contemporaneously. The *Firm Policy*
7 *Manual*, “Time-Keeping Policy,” requires timekeepers to keep time sheets on a daily basis, and
8 to submit them by the close of each business week. LCHB’s accounting department runs a
9 regular time report that lists timekeepers without time in the system for any given week. Kelly
10 M. Dermody, managing partner of the San Francisco office of the firm, receives that report and
11 personally follows up with tardy attorney timekeepers, and instructs staff managers to follow up
12 with any tardy staff. The firm does not abide late timekeeping, and we advise employees,
13 “Failure to comply with the Firm’s timekeeping policy may be taken into account in connection
14 with promotions, raises, and bonuses, and may subject the delinquent timekeeper to discipline,
15 up to and including termination.”

16 13. LCHB has devoted, and will continue to devote, its time and resources to
17 prosecute the class action claims in this matter on a contingent-fee basis.

18 14. I understand from co-Class Counsel that Karr Tuttle’s total lodestar in this case is
19 \$8,160,662.00, comprised of 15,866.70 hours billed by 23 timekeepers (like LCHB’s total above,
20 this number excludes those who billed fewer than 40 hours to this litigation). The two firms’
21 combined lodestar is thus \$14,553,213.50. In connection with the previous settlements, which
22 Class Counsel began presenting to the Court in 2021, this Court has awarded fees totaling \$8.16
23 million. *See* Dkt. 477, 664, and 843. If the Court were to award the requested fee of \$5.837
24 million from Class Counsel’s pending application relating to the settlement with MNS (*see* Dkt.
25 878) and the requested fees of \$3.7 million from this application, the total fees awarded would
26 amount to \$17,697,000, which equates to a lodestar multiplier of 1.2. Based on my experience,

1 that multiplier will go down, because Class Counsel will continue to devote time to this litigation
2 to ensure that the notice and claims processes are effectuated smoothly, to answer inquiries from
3 Class Members, to monitor the terms of the injunctive relief in each settlement, and to otherwise
4 close the file.

5 **IV. LCHB's Expenses Submission**

6 15. LCHB has to date incurred \$1,709,648.25 in expenses in connection with the
7 investigation, prosecution, and settlement of this case, as set forth in the table attached as
8 **Exhibit B**. Assuming that the Court grants the pending application for reimbursement of
9 expenses from the MNS settlement (for \$425,775.76 to LCHB), \$12,740.75 remains
10 unreimbursed. The expenses listed in **Exhibit B** are reflected in the books and records LCHB
11 maintains in the ordinary course of business, which books and records are prepared from expense
12 vouchers and check records. It also reflects reimbursement of costs received in connection with
13 the Court's prior orders concerning fees and costs, again assuming that the Court approves the
14 pending application for reimbursement.
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16 16. These costs were reasonable and necessary to prosecute this matter, and include
17 typical litigation costs such as expert work, filing fees, electronic database research, and travel.
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19 17. Based on my experience with this case and in other class settlements, I estimate
20 that Class Counsel will continue to incur expenses in connection with the implementation and
21 administration of this settlement and prior settlements (such as following up on uncashed checks
22 or inquiries from class members who have made claims). Based on my prior experience with
23 class settlements and with this case, I estimate future costs of approximately \$60,000, primarily
24 to be paid to the notice administrator.
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26 I declare under penalty of perjury that the forgoing is true and correct. Executed this 18th

1 day of September, in Salt Lake City, Utah.



3 Jason L. Lichtman

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EXHIBIT A

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
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PARTNER

NAME	HOURS	RATE	TOTAL
MICHAEL SOBOL	122.00	1,300.00	158,600.00
ANDREW KAUFMAN	550.70	745.00	410,271.50
JASON LICHTMAN	1,821.30	875.00	1,593,637.50
DANIEL SELTZ	1,624.40	955.00	1,551,302.00
	4,118.40		3,713,811.00

ASSOCIATE

NAME	HOURS	RATE	TOTAL
IAN BENSBERG	52.60	640.00	33,664.00
ANDREW KAUFMAN	163.30	510.00	83,283.00
FRANK WHITE	156.00	640.00	99,840.00
	371.90		216,787.00

STAFF ATTORNEY

NAME	HOURS	RATE	TOTAL
MICHELLE BAKER	128.80	525.00	67,620.00
BRITT CIBULKA	93.20	525.00	48,930.00
KELLY GRALEWSKI	1,545.90	525.00	811,597.50
KAREN JONES	202.80	525.00	106,470.00
ELLA KRAINSKY	693.60	415.00	287,844.00
PHIANH NGUYEN	149.00	525.00	78,225.00
ALIX PUSTILNIK	1,354.30	415.00	562,034.50
PETER ROOS	136.90	525.00	71,872.50
RYAN STURTEVANT	137.40	525.00	72,135.00
	4,441.90		2,106,728.50

LAW CLERK

NAME	HOURS	RATE	TOTAL
NICHOLAS LEE	67.70	370.00	25,049.00
	67.70		25,049.00

PARALEGAL/CLERK

NAME	HOURS	RATE	TOTAL
JANE BALKOSKI	187.10	360.00	67,356.00
JILLIAN KRAVATZ	49.50	415.00	20,542.50
EMILY LOVELL	44.90	455.00	20,429.50
MAYA NEE	61.00	455.00	27,755.00
HANNAH SELHORST	257.60	395.00	101,752.00
	600.10		237,835.00

LITIGATION SUPPORT / RESEARCH

NAME	HOURS	RATE	TOTAL
RICHARD ANTHONY	71.50	535.00	38,252.50
MARGIE CALANGIAN	61.00	535.00	32,635.00
ANTHONY GRANT	40.10	535.00	21,453.50
	172.60		92,341.00

CASE TOTALS	9,772.60		6,392,551.5
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EXHIBIT B

Lieff Cabraser Heimann & Bernstein, LLP
Costs Summary

Costs	Total to Date
In-House Copies	\$96.20
Print	\$1,557.40
Telephone	\$1,299.53
Computer Research	\$13,544.40
Deposition/Transcripts	\$19,969.15
Electronic Database	\$190,277.30
Experts/Consultants	\$1,276,699.08
Federal Express/Messenger	\$4,235.52
Mediation Expenses	\$61,219.02
Research sources	\$1,468.24
Postage	\$204.28
Process Service	\$782.00
Supplies	\$771.49
Travel	\$136,627.93
Previous reimbursements (including pending request)	(\$1,696,010.76)
Net Total	\$12,740.75