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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HAYLEY HICKCOX-HUFFMAN, on behalf of herself and all others similarly situated; Plaintiffs, vs. US AIRWAYS, INC.; US AIRWAYS GROUP, INC.; and DOES 1 through 10, inclusive. Defendants.	Case No.: CV 10-05193 HRL Hon. Howard R. Lloyd **DECLARATION OF JUSTIN P. KARCZAG IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES TO CLASS COUNSEL, AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES** Complaint Filed: November 16, 2010 First Amended Complaint Filed: January 31, 2011

DECLARATION OF JUSTIN P. KARCZAG IN SUPPORT OF FEES MOTION

I, Justin P. Karczag, declare as follows:

1. I submit this Declaration in support of Plaintiff's Motion for Award of Attorney Fees and Reimbursement of Expenses to Class Counsel, and Incentive Awards for Class Representatives. I make this Declaration upon personal knowledge, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true. If called as a witness, I could and would competently testify as follows.

2. I was a Partner at Foley Bezek Behle & Curtis, LLP ("FBBC") from February 2009 until February 2017, when I opened the firm Karczag & Associates PC ("KAPC"), where I am the principal. While at FBBC, I was primarily responsible for working on this instant "Action" (*Hickcox-Huffman v. US Airways et al*) through its appeal to the Ninth Circuit. In May 2017, after the favorable decision by the Ninth Circuit, KAPC joined the matter as co-counsel, and KAPC worked cooperatively with FBBC to bring the matter to a successful conclusion, with me spending the vast majority of time on the matter within KAPC firm.

3. I submit this declaration in support of KAPC's request for attorneys' fees, and to provide further support for FBBC's request for attorneys' fees (that is otherwise supported by Robert Curtis's Declaration).

4. KAPC is seeking recovery for 355 hours in legal professional time, plus $3,006 in costs.

5. My declaration is in two parts. The ***first part*** provides an overview of the Action to show how the case came to be, what it brought to the table, what sort of work was required to be performed both before and after appeal. The ***second part*** provides support for the rates requested and the overall fee award.

I. PART 1 – THE ACTION AND THE WORK PERFORMED

6. When the matter was first brought to us, it cannot be emphasized

enough how improbable success on the action seemed, given the landscape—and that landscape was even less friendly after the appeal. The case was filed on November 16, 2010 (Doc 1), it was appealed on May 25, 2011 (Doc 33), and precisely 6 years later, on May 25, 2017, the appeal was successful, and Mandate was spread back to the District Court (Doc 41). Approximately one year and ten days later, after two days of mediation, the matter settled in principal in June 2018.

7. When it comes to understanding the legal landscape and the obstacles that this Action faced, there are two key dates and time periods. The first, the date is the date the Action was filed, November 16, 2010, and the first time period is that date through the case being argued on appeal, at the end of 2012. The second date is the date of the Mandate May 25, 2017, and the time period through settlement, June 2018.

8. At the time the matter came to us, there were already multiple attempts to sue airlines in class actions, including, specifically for baggage fees. As of November 16, 2010, they were all suffering major setbacks or outright defeats. Analyzing what caused cases against the other airlines to fail, and navigating a successful path to a viable case was the largest challenge that the Action faced. That is because there are three principal issues. First, the issue of pre-emption. It required an understanding of how the Airline Deregulation Act's ("ADA") preemptive sweep was being construed. Failing pre-emption, meant losing the case. However, the Supreme Court's latest ruling on ADA pre-emption was 25 years old at that point. And, to the extent the issue was being addressed in the federal courts, the federal courts' analysis was all over the map, although their conclusions were overwhelmingly more common to find that pre-emption applied.

9. The second issue was how the Contract of Carriage (sometimes named or renamed Terms of Transportation) ("COC/TOT") factored into the matter. Each airline had its own version of the COC/TOT. And the source of

COC/TOT's dates back to the railroad days. What the COC/TOT theoretically could control and limit and address, and what its boundaries were, was also a murky field. Moreover, the presentation of the COC/TOTs on airlines websites was not uniform, and often consisted, apparently, of multiple documents, on different pages, some of which conflicted with other pages, all of which purported to be the COC/TOT.

10. The third issue was the determination of what substantive claims could be harmonious with the COC/TOT and pre-emption. Because of the nature of the first two items, whenever research was conducted on an issue, and a court opinion was found that applied, a review of that particular airlines COC/TOT was required. Moreover, to the extent that there were active cases that were suffering setbacks, the current versions of the COC/TOT that were present in those had to be analyzed in comparison to the ones applicable for US Airways, so an analysis could be done to determine whether (and where) there was support for a different (and better) outcome in this Action than in the other actions.

11. To give this Court a flavor of what was going on at the time this case was filed and what a unique accomplishment Plaintiffs received in this case, some historical frame-working is necessary. Specifically, it was in May 2008, that the first major U.S. carrier, American Airlines, announced that it would charging a fee for all checked backs, the know commonly known "first-checked bag fee". Consumers were in an uproar about it. But, the other airlines quickly followed American Airlines' lead. The response was both political and legal. Congress began discussing amendments to the Airline Passenger's Bill of Rights, and having various committees research and propose different rules and standards, along with discussions of whether the standards should be voluntary or mandatory. Likewise, litigation was commenced by consumer groups and class action attorneys across the land, bringing all of the five major carriers at the time into various states of litigation.

12. By way of example, at the time of the filing of the Action, there were 11 putative class action baggage fee cases against Delta and AirTran, filed across the country (including in Florida, Georgia, and Nevada) that were ultimately consolidated before an MDL panel in the Northern District of Georgia on October 6, 2009 (*In re Airline Baggage Fee Antitrust Litig.* (J.P.M.L. 2009) 655 F.Supp.2d 1362 (Oct. 6, 2009)). Those cases chose to proceed on antitrust grounds. By analyzing those cases, we determined that was not the best way to proceed, because the antitrust tactic was doomed to fail. As of August 2, 2010, the first of two types of antitrust claims were dismissed. *In re Delta/AirTran Baggage Fee Antitrust Litig.* (N.D.Ga. 2010) 733 F.Supp.2d 1348, 1351 (dismissal of first claim). As it turns out, by the time Mandate was spread in this Action in May 2017, the case was certified, but, then two weeks later decertified, and then the case was gutted on summary judgement. In re Delta/AirTran Baggage Fee Antitrust Litig. (N.D.Ga. Aug. 5, 2015, No. 1:09-md-2089-TCB) 2015 U.S.Dist.LEXIS 115101 (certification granted); *In re Delta/AirTran Baggage Fee Antitrust Litig.* (N.D.Ga. Aug. 17, 2015, No. 1:09-md-2089-TCB) 2015 U.S.Dist.LEXIS 115657, at *5 (certification vacated); *In re Delta* (N.D.Ga. Mar. 28, 2017) 245 F. Supp. 3d 1343, 1348 (summary judgment granted). While the instant case was back from remand and prior to settlement, that summary judgment was affirmed, and rehearing on it was denied. *Siegel v. Delta Air Lines, Inc.* (11th Cir. 2018) 714 F.App'x 986, 987 (affirmed March 9, 2018) rehearing denied 2018 U.S. App. LEXIS 15595 (11th Cir. 2018) (June 8, 2018). Since his case settled a writ of certiorari to the United States Supreme court was denied 2019 U.S. LEXIS 326 (Jan. 7, 2019).

13. Another putative class case against three major carriers regarding baggage fees, United Airlines, Northwest Airlines and Delta Airlines, was filed in the Western District of Washington on August 6, 2010, *Schults v. United Airlines, Inc., et al.* WAWD #2:10-cv-01263-RSM, and as of the filing of the Action,

Schults had three motions to dismiss filed against it and had an amended complaint. We had grave concerns about the strategy implemented in *Schults*. Ultimately, our concerns were validated because in August 29, 2011, *Schults* was dismissed with sanctions issued against Plaintiffs in favor of Defendants.

14. Another putative class case against two major carriers for baggage fees, American Airlines and American Eagle Airlines was filed in the Western District of Washington on July 16, 2010. *Covarrubias v. American Airlines et al*. WAWD #2:10-CV-01158. As of the filing of this Action, Covarrubias had faced, and not prevailed on, a motion to dismiss, filed an amended complaint, and was facing another motion to dismiss. We were also very concerned about this case, as we had to ensure that we did not fall into the traps that now existed because of those pleading losses, and we were also concerned about the ultimate outcome in Covarrubias. As it turns out, the second motion to dismiss was granted, a second amended complaint was filed, but, as of January 2014 after an extended stay due to bankruptcy, the case was dismissed.

15. Another case that had already suffered a loss when this Action was filed, and simply did worse over time, was a putative class action case filed in Illinois state court against American Airlines regarding its $40 baggage fee. As of February 11, 2010, the plaintiff's class action complaint was dismissed and the Illinois court of appeal had overturned the trial court's dismissal, but we were concerned about the validity of that decision, which was on appeal to the Illinois Supreme Court. *Barber v. Am. Airlines, Inc.* (2009) 398 Ill.App. 3d 868, 870. And, our concerns were valid, as on March 24, 2011, the Illinois Supreme Court overturned the appellate court and reinstated the trial court's dismissal. *Barber v. Am. Airlines, Inc.* (2011) 241 Ill.2d 450, 452. Although not on preemption grounds, this case is just an example, of how a baggage fee case against an airline can easily be lost if not properly vetted and pleaded and argued.

16. Another putative class against American Airlines by skycaps regarding baggage fees was filed in the Northern District of California, *Anderson v. American Airlines* CAND#3:08-cv-04195. The issue of pre-emption had not been addressed at the time of the filing of the instant action. However, we were concerned about how it would be handled, given how the Anderson had framed his claims and arguments up to that point. Subsequently, there was briefing on a summary judgment motion by the defendant on substantive as well as preemption grounds. But the district court dismissed on substantive grounds, not addressing pre-emption. *Anderson v. Am. Airlines, Inc.* (N.D.Cal. Mar. 9, 2011, No. C 08-04195 WHA) 2011 U.S.Dist.LEXIS 24862, at *1.) Ultimately, *Anderson* was dismissed against the plaintiffs, without resolution of the preemption issue.

17. Another case that was comparable had been dismissed in the District of Massachusetts court. That case concerned skycap's claims against American Airlines for different baggage fees, which allegedly reduced their tips. On February 4, 2010, the District Court partially certified the class. *Overka v. Am. Airlines, Inc.*, DMA #08-10686-WGY, Doc 50. However, we were concerned that the issues of pre-emption had not been properly addressed. Sure enough, after some delays in the trial court, on August 15, 2014, the matter was appealed, and a year later the First Circuit Court of Appeal overturned the prior ruling on the grounds of ADA preemption. *Overka v. Am. Airlines, Inc.* (1st Cir. 2015) 790 F.3d 36, 39, cert denied.

18. In the Ninth Circuit, there was also a recent putative class action case directly involving ADA preemption brought by a Rabbi not involving baggage fees, but involving the airline's frequent club. The case was filed in the Southern District of California styled *Ginsberg v. Northwest, Inc.*, and was dismissed by the District Court in 2009 on preemption grounds. By the time of the filing of the Action, *Ginsberg* was being briefed on appeal. We had grave concerns about this case as well given how the issues were being pleaded and argued by the plaintiff.

But, on August 5, 2011, the Ninth Circuit issued its ruling, overturning the District Court on its preemption finding. *Ginsberg v. Northwest, Inc.* (9th Cir. 2011) 653 F.3d 1033, 1034. We remained concerned. Northwest petitioned for cert and received cert from the Supreme Court. I was contacted by Ginsberg's counsel and invited to file an Amicus Brief. After discussion and deliberation and even the partial drafting of the brief, we made the difficult decision that *Ginsberg* had it framed, pleaded and argued, wrong (at this time the Action was also on appeal), to not participate. And, when the Supreme Court heard *Ginsberg*, it overturned the Ninth Circuit's finding regarding no preemption. *Northwest, Inc. v. Ginsberg* (2014) 572 U.S. 273, 273 [134 S.Ct. 1422, 1424, 188 L.Ed.2d 538, 538].) In our Action, still on appeal in 2014, the Ninth Circuit requested supplemental briefing on what effect, if any, *Ginsberg* had on this Action. We briefed that by arguing adamantly that it had nothing to do with this Action. Defendant argued that it had everything to do with this action and so supported affirmance of Magistrate Judge Lloyd's dismissal. Because we had chosen not to participate in the briefing on *Ginsberg,* our position that *Ginsberg* was irrelevant, was substantiated by the fact that we had no involvement in it. Our case, having been filed when Ginsberg was still at issue, had successfully avoided the pitfalls that *Ginsberg* fell into, and created. The Ninth Circuit agreed with us, finding it not relevant. And, Defendant in this Action did not even petition for cert—a tacit acknowledgement that we had properly insulated ourselves from *Ginsberg*. But, this was another example of a case that was on weak grounds when the Action was commenced, and was a total failure when Mandate was issued.

19. Similarly, the political environment remained important. I had to research and determine if there was anything that Congress had done that would assist with the preemption or substantive or class issues. For example, Defendant had indicated that it was going to raise the issue of "what does 'on time'" really mean? That is, it has no standard and is too vague to be actionable. As part of my

research, I reviewed drafts of committee repots and findings, and proposed regulations to determine what was out there. I found that there was a draft of proposed amendments to the passengers' bill of rights that defined "on time" as less than 15 minutes late. While this could be a gem, it was difficult to ascertain whether it had become law or not, and even if it did, what the force of the law was, as Congress and interest groups debated how much teeth the law would have. Moreover, when even considering this "support", the potential negative effect had to be analyzed because in terms of preemption, if Congress or the federal government did take some action regulating baggage fees, would that not undermine our argument that there was no federal preemption? Regardless of how or if we used the information, we had to know what was out there. So, in addition to analyzing every major carrier's TOT/COC's, there was also in depth legislative analysis conducted.

20. The strategy that we came up with was to embrace the TOT/COC, and not run from it as others had done. We had to craft our overall case so that it was grounded on the central claim of breach of written contract. We had to point to provisions of the uniform contract that were breached, argue the breach, and address damages. We should not, and could not, expand our claims outward very much to tort claims to try to fill in perceived holes in our theories, as others had done. So, we could plead them in their most basic form, but they always were designed to fall away, if needed to protect the core quality breach of TOT/COC claim. We had to stay away from state law principles and policies that would impose liability irrespective of the contract, as well as grandiose indictments of the entire industry under antitrust violations to avoid preemption and proof issues.

21. Moreover, we had to avoid the trap of claiming any sort of wrong with the fact of charging for a first bag and instead focus on the charging of baggage generally. This would allow us to avoid the ultimate result of a court finding that there was nothing wrong with Airlines, who had historically charged

passengers for bags (2nd bags and up, oversize bags, etc.), for simply applying that to all bags. Moreover, because all bag fees were being addressed, the common circumstance where a defendant is sued in a class action for a contract based event, and that defendant fairly quickly ceases using that form of contract to cut-off the class period, could be avoided. First bag baggage fees were just a year to a year and a half old when this Action was filed, but airlines had been charging fees on baggage for a long time.

22. And, finally, we had to preserve the implied contract claim as long as possible, as that provided the most flexibility, all the while knowing that we could not defend it, if it meant jeopardizing our breach of express contract claim.

23. It was with those ideas in mind that we crafted and pursued the Action.

24. Thus, when the Court of Appeals decision was issued on May 3, 2017, and KAPC was brought into assist with the representation, I, and my Associates, worked hard to update the prior legal research and theories, plus carefully analyze it, given the new events that had transpired over the 7 years since the Action was filed. Moreover, there was a general impact on a case that occurs when it is being re-imitated after a determination by the Court of Appeals.

25. From the political aspect, more work had been done on regulations, but, determining where Congress and the FAA, the US Department of Transportation, the Consumer Financial Protection Bureau were at was required. In addition, updating and analyzing all of the results of all of the cases identified above were critical to understanding how to best continue to drive this Action towards success where every other action had failed. Notably, KAPC did not just engage in weeks of rote updating, but, rather, I was armed with the knowledge of what had been done before and so could be aware of when issues might arise that would require us to revisit these areas in more detail. So, some updating was required, but the rest was done as part and parcel of what we were forced to

address and what route we charted for ourselves.

26. We had to determine such basic items as the proper procedural process following the Ninth Circuit's opinion, decided such key questions as whether to address the class definition or claims period, and also analyze and determine the impact of US Airlines' acquisition by a new entity on the claims that we pleaded substantively, and as a class. Moreover, although one would consider it an excellent win at the Ninth Circuit Court of Appeal, Defendant was bound and determined to make it as difficult as possible to realize the fruits of that victory, and throw roadblock after roadblock after us. All the while, we had to proceed with our original strategy, and modify it as needed to address the current circumstances.

27. This meant that we had to first analyze and identify which claims, if any, should be dismissed from the case upon remand, always being hyperaware of our duties as fiduciaries of the class. Once we determined that, we engaged in some case management matters, dismissed some claims, began to strategize and draft and edit discovery to be propounded, and to oppose the motion to dismiss on the claims that we did not voluntarily dismiss.

28. The legal question was rather nuanced for some claims because although the focus on the appeal was pre-emption, under appellate doctrine, if there is any reason for affirming the decision to dismiss a claim below, then the claim should remain dismissed. And, the Ninth Circuit did not spend much attention on the merits of the various claims, ultimately lumping together a group of claims referring to them as the contract claims, which we believed caused them to survive. However, Defendant contended that the Ninth Circuit's decision and word choice meant that only *the* breach of contract claim remained. Moreover, Defendant was adamant that we could not bring both an implied and an express breach of contract claim. Consequently, Defendant filed its motion to dismiss and we conducted the legal research and writing to prepare the opposition.

29. Maintaining the implied contract claim was important because it allowed us the flexibility of not necessarily being bound by the TOT/COC, and broadened the liability of defendant. Moreover, we believed that the other contract-type claims were maintained because there was support in the case law for such claims. And, we were certain the Ninth Circuit did not rule that they were invalid.

30. Although Magistrate Judge Lloyd dismissed two of the three contract-type claims, he validated our position by affirming that we could proceed with both express and implied contract, and by acknowledging that the Ninth Circuit had not determined that the other two claims were invalid, although, under his analysis, he found them to be so.

31. Thus, we continued to execute our originally strategy of maintaining the core breach of express contract TOT/COC, while keeping the other claims viable as long as they did not jeopardize the core. Moreover, Defendant had maintained since the outset of the litigation, the position that because the contract did not cover refunds of baggage fees, plaintiffs were not entitled to a refund. The counterpoint is that, OK, if that is not covered in the express terms of the contract, then it must be in the form of an implied contract. After all, it is implied that whenever I pay for something and don't receive it, I should get my money back. Defendant's counter to that was that such a claim would be difficult to prove. Plaintiff's response was that it might be more difficult to prove, but the transaction is so simple, as well as the concept, that it shouldn't be that much more difficult to prove, and if proven, the size of the class would be enormous and so would the damages.

32. Critically important is that in pushing the non-express contract claims, there is a very difficult dance to walk because the further that a party strays from predictable easily ascertainable basic contract claims, into areas of policy, or where a difference could arise, there is the danger of invoking pre-

emption as well as potential issues with the class. But, we wanted to maintain both types of claims for as long as possible, forcing Defendant to concede one or the other. We hoped Defendant would concede the written contract, as that would set up this Action separate and apart from all other actions.

33. We also provided an assisting role with the preparation of discovery, which had been held in abeyance back in 2010 to allow for the briefing to be completed. Consequently, from the period of May (Mandate) through October 2017 (Motion to dismiss), KAPC personnel spent 171.5 hours on the matter as described above.

34. In November and December 2017, there not much activity for KAP personnel, and we spent 15.5 hours assisting with addressing a discovery dispute, and reviewing discovery produced by defendant (the various historical iterations of the TOT/COCs).

35. Then, in January 2018, Defendant filed its Motion for Judgment on the Pleadings, this time addressing the implied contract under a different theory, having made the strategic decision to specifically admit in its answer that an express contract covered baggage fees (previously, defendant had maintained that baggage fees were not covered by the TOT/COC and so were not even actionable.) We commenced by dusting of our recent prior research on proceeding with both express and implied claims. However, we came to realize that it was all useless on this second round because none of it addressed the peculiar circumstance where the defendant *admitted* that there was an express contract that covered the matter, and at best, the parties disputed the meaning or composition of that contract. Consequently, we conducted exhaustive national research, including policy research on implied contract claims. Ultimately, we came to the conclusion that any challenges launched to support the implied contract claim where defendant admitted the express contract would jeopardize the viability of our express contract claim. In other words, the arguments that we

could summon to defeat the challenge to the implied contract, would lead to dismissal of the express contract claim. And, by Defendant admitting to the express contract governing the claims, we had the strongest case for certification and success on the merits.

36. Although the implied contract claim was more flexible and provided potentially broader coverage, it was also far more vulnerable to denial at certification, than the express contract claim. Consequently, we determined that, in light of the deplorable results all other efforts had met when it came to recovering for consumers, our original strategy should be maintained and the case that was left standing at the end of Defendant's assaults should be the one that is the strongest on the merits as well as the easiest to certify, and we should take our success from Defendant's admission regarding the TOT/COC, and do what no case had done before—get money to the victims. So, we prepared a nonopposition to the motion for judgment on the pleadings, and then proceeded with delving further discovery, and ultimately, settling this case in mediation.

37. It is worth repeating, that at this point, unlike *all* of the other cases filed before us, we were the first class action to have existed when we filed our case and have a claim survive pre-emption challenges, substantive challenges, and to succeed in the higher courts. The litigation landscape around us on identical claims and issues, was littered with fallen comrades. Consequently, we made the strategic decision to try to get as much recovery as we could for the class, if it was possible during mediation. So, we devoted our efforts to mediation, assisting with the analysis and strategy and mediation process. Consequently, from January through June 2018, KAPC personnel primarily me, with some assistance from my Associate, Raffi Babaian, spent 105.9 hours on the opposition to motion for judgment on the pleadings, and on preparing for and attending the mediation.

38. From July 2018 to the present, the work required in the case has focused on formalizing, consummating, and monitoring the settlement, and as far

as KAPC goes, I have spent an additional 23.1 hours on reviewing and analyzing the settlement agreement and motion for approval, and related documents, reviewing the record and drafting this declaration. I anticipate spending an additional approximately 30 hours analyzing the opposition to the motion, and contributing research and writing to the reply, and travelling to and attending the hearing in this matter. And, I anticipate Mr. Babaian spending an additional 10 hours assisting with a work-up of the reply to the motion.

II. PART 2 – THE WORK PERFORMED WAS REASONABLE, NECESSARY AND JUDICIOUS AND THE RATES APPLIED ARE CUSTOMARY AND APPROPRIATE

39. The amount of KAPC's time spent and the rates applied during this period for each professional whose fees are sought in this application are as follows:

Biller	**Rate**	**Hours**	**Amount**
Justin P. Karczag – Partner	$525	223.8	$ 117,495
Karli R. Jungwirth – Sr. Associate	$450	72.6	$ 32,670
Raffi A. Babaian – Associate	$400	52.1	$ 20,840
Eugene Huffman – Paralegal	$195	7.2	$ 1,404
Total:		**355.7**	**$ 172,409**

40. I am the principal of KAPC and am in charge of KAPC's billing on this matter, and am familiar with KAPC's billing processes and procedures. I also spent the lion's share of time on the matter directly, and all other work was performed in conjunction with my work or at my direction and under may authority. Consequently, I am personally familiar with all of the time spent by KAPC on this matter. I have personally reviewed all of the entries, and eliminated entries for redundancy, extraneous time, or simply extensive time, including eliminating 30 hours of research regarding the motion for judgment on the

pleadings. KAPC employed just four professionals on this matter: the named Partner (me), and two Associates, Karli Jungwirth and Raffi Babaian, plus the work of a Certified Paralegal, Eugene Huffman. The hours incurred and sought for the work performed from September 2017 through July 2018, and the rates applied, are set forth below:

(a) Professionals' Qualifications and Experience.

41. I earned my Bachelor of Arts in Political Science from UCLA, graduating *Summa Cum Laude* with College Honors. I then went on to graduate from UC Berkeley School of Law, where I received High Honors. In addition, I was an extern for United States Court of Appeals for the Third Circuit Judge Ruggero J. Aldisert. I am admitted to practice in the states of California, Nevada and Hawaii. I was first admitted to the California Bar in December 2002, and worked at Foley Bezek Behle & Curtis ("FBBC") for 15 years, eventually becoming a Partner for 8 years there. In 2011, I was admitted by examination to the Nevada State Bar. In 2012, I was admitted by examination to the Hawaii State Bar. As a consequence of my class action practice, I have also been admitted to two dozen Federal District Courts, and a handful of Federal Courts of Appeal, and the United States Supreme Court. In February 2017, I left FBBC and founded KAPC. My practice has focused primarily on plaintiffs-side lender liability, Ponzi schemes and financial fraud, most of which were in the class action or group plaintiff contexts. I practice other types of civil litigation as well. I have been a trial attorney in multiple federal and state courts, and in arbitrations, including multiple trials. I have argued matters at the California Court of Appeals and at the Ninth Circuit Court of Appeals. The majority of my time has been spent in matters venued in Los Angeles, San Francisco, Santa Barbara and Nevada.

42. I have had primary responsibility and shared primary responsibility for complex civil litigation matters that have gone to trial and have settled, including a Ponzi scheme regarding pollution trading credits against a major

institutional lender in California State Court that settled for $5,000,000 in 2006, multiple class actions in Nevada involving real estate developments that settled in the 7-figure range thereafter, a putative class action matter in the Northern District of California against a Fortune 500 Company that settled for $25,000,000 in 2011, a limited partnership class action against a Fortune 100 Company that settled in the mid-8-figure range, a lender liability case against a national lender that I co-tried and earned a $39,000,000 verdict, which included $23,000,000 in punitive damages in 2014, several Ponzi schemes against national insurance companies that settled in the mid-8-figure range thereafter, a financial fraud case that resulted in a favorable change in ownership and control of the company valued at $30,000,000 that settled on the eve of trial in 2017, a financial fraud case that resulted in a post-trial award valued at $5,000,000 on behalf of a single plaintiff in 2018, and a class action against a major national bank for its participation in a Ponzi scheme that resulted in a global combined settlement of $36,000,000. I also have successfully defended to dismissal multiple class action lawsuits in the apparel industry, alleging fraud, where the same lawsuits resulted in the bankruptcy of the company's competitors in the space.

43. Because the majority of my time has been spent in matters venued in Los Angeles, San Francisco, Santa Barbara and Nevada, I am familiar with the rates attorney charge in those for comparable work with comparable experience as KAPC's professionals. My rate of $5525for this matter is in line with what I charge my clients for complex civil matters, it is in line for current class action cases, and it is a reasonable rate for my experience and qualifications in San Francisco. In fact, this rate is low in the San Francisco area for class action counsel, who are partners at firms that do class action work, who regularly charge between $650 and $1,200 per hour. In addition, my fees have been approved at a rate of $550/hour (without a lodestar multiplier) just this year in another class action matter, along with Ms. Jungwirth's at $475 and Mr. Babaian's at $400.

44. Of the 355.7 hours sought on the matter, I did the lion's share at 223.8 hours. By having only one partner on the case from KAPC, the "highest biller" hours are reduced. By doing over half of the work myself, it meant that the most qualified person did the most important work, and, it allowed for lower rate billers to perform lower-level work, reducing the overall amount of fees incurred. And, I had prior knowledge of the facts and nature of the case, making my work more efficient.

45. Ms. Jungwirth graduated the University of California San Diego with a Bachelor of Science in Cellular Biology, and earned her law degree in 2003 from the University of San Diego School of Law. At KAPC, she was a Senior Associate with substantial prior experience researching and writing in complex civil litigation matters, including multiple Ponzi schemes cases, class actions, and lender liability matters. She also spent several of her 15 years practicing as in-house counsel, providing her insight and experience in corporate function, governance, and systems.

46. Ms. Jungwirth spent 72.6 hours on this matter. At $450 per hour for a 16-year associate with relevant experience and qualifications, Mr. Jungwirth's rates are more than reasonable. Associates at class action firms with 6-12 years of experience regularly bill $400-800 per hour. Associates with more than 12 years of experience generally bill $500 or more per hour.

47. Mr. Babaian earned his undergraduate degree from UCLA in Political Science, *Summa Cum Laude* with College Honors, and went on to Loyola School of Law, where he graduated in 2014. In addition to Mr. Babaian's 4 years of experience as a lawyer, he has significant prior history in business before becoming a lawyer later in life. Mr. Babaian's prior business experience includes insurance and risk analysis, as well as finance, business acquisitions, compliance and consulting, across multiple industries. Since becoming a lawyer, he has had experience in both complex civil litigation and in corporate transactional matters.

His civil litigation experience includes multiple class action cases, as well as bet-the-company litigation, lender liability cases, and partnership disputes.

48. His rate of $400 per hour for the 52.1 hours sought, is a reasonable rate for associates who work on complex civil matters and class action cases. In the San Francisco area, first year attorneys and law clerks at class action firms often bill at $350-395 per hour, and 4th and 5th year associates regularly bill out at $400-500 per hour.

49. Mr. Huffman received his Paralegal Certificate from a State-Accredited institution in 2014. Prior to that, Mr. Huffman worked for Nordstrom corporate department for over ten years, and was in charge of reconciling complex sales, rebates, returns, commissions and bonus numbers for the entire Nordstrom cosmetics and fragrance division. Mr. Huffman has prior experience as a legal assistant and Paralegal at a class action law firm. The total sought for Mr. Huffman for his 7.2 hours at $195/hr is just $1,404, and most of his work otherwise would have been performed by an attorney billing at least double the rate, given the complexity of this case. I am familiar with the paralegal rates charged in the San Francisco area for large complex litigation and those rates run from $150 to $350 per hour. Mr. Huffman's rate of $195/hr is reasonable. I removed over 20 hours of Mr. Huffman's time.

(b) Comparable Awards and Public Studies.

50. Case law and recent decisions support the rates requested On January 8, 2016, the Honorable J. Stephen Czuleger approved an attorney fee request in connection with a class action settlement in *Gutierrez, et al. v. California Commerce Club, Inc.* (Los Angeles Superior Court - Case No. BC360704) for partner rates, with the exact same years of comparable experience as I have, of $650/hr for work done in 2015.

51. Similarly, according to the Laffey Matrix, the average attorney billing rate for Ms. Jungwirth and I are in the $717-742/hr range. For Mr. Babaian

it is in the $440-455/hr range. Since the hourly rates in the Laffey Matrix were established for D.C. lawyers, these rates should be adjusted upward 4.6% to reflect the current rates typical of attorneys litigating within California. *See In re Chiron Corp. Securities Litigation*, 2007 WL 4249902, at *6 (N.D. Cal., Nov. 30, 2007) ("Adjusting the Laffey matrix figures accordingly will yield appropriate rates for the respective geographical regions: ... +4.6% for Los Angeles"). (The Laffey Matrix was utilized by the Department of Justice in conjunction with work done by the Department of Labor ("DOL") to determine the reasonable rates for the Washington D.C. area, and it is used in fee requests made by the United States government. It can be paired with other DOL information to determine the appropriate rates for other metropolitan areas and states. It has been approved by multiple courts across the country.)

52. And, non-profit surveys support the reasonableness of the rates requested. According to the national survey conducted by the national Consumer Law Bar for the 2015-2016 period[1], for small consumer/class action firms in California, the average rates for attorneys with my years of experience are $554. My rate is 5% below that. For those with Ms. Jungwirth's years of experience, the average is $450, the exact rate that she seeks here, and for those with Mr. Babaian's experience, the average rate is $283/hr, lower than what is sought here, but Mr. Babaian's 15 years in the corporate world prior to becoming a lawyer set him apart from most fourth year lawyers. When narrowed down to San Francisco, the average rate for attorneys with my years of experience is $520, for Ms. Jungwirth its $495 and for Mr. Babaian its 293. In any event, these rates are applicable from 3-4 years ago, consequently, for today, the rates should be higher.

[1] https://www.nclc.org/images/pdf/litigation/tools/atty-fee-survey-2015-2016.pdfutilizing

(c) The Amount Requested Should Be Awarded as it Falls Well Within the Standard

53. Plaintiffs' counsel's lodestar may be subject to an upward or downward adjustment. KAPC submits that its lodestar qualifies for an upward adjustment under the applicable standard because, at a minimum, the following four factors support such an adjustment: (1) the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3) the extent to which the nature of the litigation precluded other employment by the attorneys; and (4) the contingent nature of the fee award.

54. As to the first factor, the novelty and difficulty was high, weighing in favor of an upward multiplier. When this case was remanded, every other case that had attempted something similar had failed. Moreover, the questions presented involved nuanced issues of appellate procedure, preemption was a constant concern, and addressing item after item raised by Defendants until each attempt was addressed before settlement discussions took place shows how much was at stake in the case in terms of the uncertainty of the outcome.

55. As to the second factor, the skill displayed, the results speak for themselves, as again, counsel continued with its strategy taking the case across the finish line as the only consumer airline baggage fee case to have produced a recovery. This factor weighs strongly in favor of an upwards multiplier

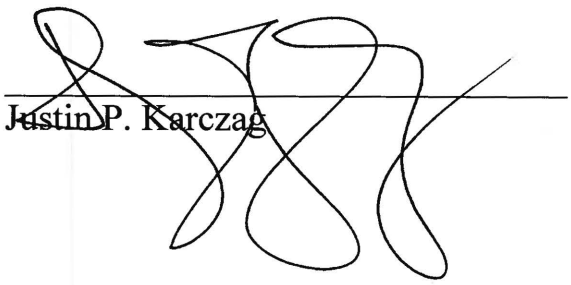
56. As to the third factor, the extent to which the litigation precluded other employment, this factor also weighs in favor, as KAPC was precluded from participating in one other class action matter, and one complex business matter, because its resources had to be available and directed and used in the Action.

57. As to the final factor, the contingent nature of the representation, that factor also weighs in favor of an upward adjustment because, the entire matter was contingency, meaning that KAPC shouldered the entire burden and risk of its representation in this matter.

58. In addition, KAPC has incurred $3,006 in costs and expenses in this matter as follows: $341 – PACER; $1053 legal research including legislative history; $680 – copies; $32 for parking and mileage to date; and an estimated $900 for airfare (including baggage fees), ground transportation, and hotel. All of these costs and expenses were reasonably and necessarily incurred in connection with the prosecution and resolution of this action.

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

Executed on February 7, 2018, at Los Angeles, California.



Justin P. Karczag