

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

RACHEL CYMBALISTA and ARIEL
CYMBALISTA, on behalf of all others similarly
situated,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

Case No. 2:20-cv-00456-RPK-SMG

**DECLARATION OF ROGER N. HELLER IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT**

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

1. I am a member in good standing of the California State Bar. I am a partner at the law firm of Lieff Cabraser Heimann & Bernstein LLP ("LCHB"). I am one of the attorneys representing the Plaintiffs, and one of the proposed Settlement Class Counsel, in this case. I respectfully submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement. I have personal knowledge of the facts set forth in this declaration, and could and would testify competently to them if called upon to do so.

Background and Qualifications

2. LCHB is one of the oldest, largest, most respected, and most successful law firms in the country representing plaintiffs in class actions, and brings to the table a wealth of class action experience. LCHB has been repeatedly recognized over the years as one of the top plaintiffs' law firms in the country, including by The National Law Journal and The American Lawyer. A copy of LCHB's firm resume, which describes the firm's experience in class action

and other complex litigation, can be found at

www.lieffcabraser.com/pdf/Lieff_Cabraser_Firm_Resume.pdf, and is not attached hereto given its length.

3. Among the firm's other areas of practice, LCHB has extensive experience prosecuting consumer class actions against banks, mortgage lenders, and other financial institutions. By way of example only:

(a) LCHB serves as Co-Class Counsel in *Lusnak v. Bank of America, N.A.* (C.D. Cal.), a class action alleging that Bank of America failed to pay California mortgage borrowers interest on the funds in their mortgage escrow accounts as required by state law. In 2020, the court granted final approval of a \$35 million settlement providing direct payments to class members.

(b) LCHB served as Co-Class Counsel in *Gutierrez v. Wells Fargo Bank, N.A.*, (N.D. Cal.), a class action alleging unfair practices and false representations by Wells Fargo in connection with its imposition of overdraft charges. In 2013, the court reinstated a \$203 million class judgment that had been entered in 2010 following a bench trial, and in 2014 the reinstated judgment was affirmed by the Court of Appeals.

(c) LCHB serves on the Plaintiffs' Executive Committee in *In re Checking Account Overdraft Litigation* (MDL 2036, S.D. Fla.), a Multi-District proceeding involving more than two dozen banks and allegations of unfair practices and false representations in connection with the banks' imposition of overdraft charges. Class settlements totaling hundreds of millions of dollars have been approved by the court to date.

(d) LCHB served as Plaintiffs' Liaison Counsel and on the Plaintiffs' Executive Committee in *In re Chase Bank USA, N.A. "Check Loan" Contract Litigation* (MDL

No. 2032, N.D. Cal.), a nationwide Multi-District class action alleging that Chase breached its good faith obligation to credit cardholders by unilaterally modifying the terms of their long-term fixed rate loans. In November 2012, the court granted final approval to a \$100 million nationwide settlement that provided direct payments to approximately one million cardholders and important injunctive relief.

(e) LCHB served as Co-Lead Plaintiffs' Counsel in *Reverse Mortgage Cases* (J.C.C.P. No. 4061, San Mateo County Superior Court), an action brought against Transamerica Corporation and its subsidiary. Plaintiffs alleged that Transamerica targeted senior citizens to market and sell "reverse mortgages" which were misleading as to loan terms, and contained unfair charges and fees. A nationwide settlement provided relief to approximately 1600 members of the class averaging about \$5,000 per class member, with some class members receiving many times that amount.

(f) LCHB served as Plaintiffs' Co-Liaison Counsel in *Citigroup Loan Cases* (J.C.C.P. No. 4197, San Francisco Superior Court), a case against a "sub-prime" lender for cramming unwanted and unnecessary insurance products onto mortgage loans and engaging in improper loan refinancing practices. A court-approved settlement provided \$240 million in relief to the nationwide class.

(g) In *California Title Insurance Industry Litigation*, LCHB, in coordination with parallel litigation brought by the California Attorney General, reached settlements in 2003 and 2004 with the leading title insurance companies in California, resulting in historic industry-wide changes to the practice of providing escrow services in real estate closings. The settlements also brought a total of \$50 million in restitution to California consumers, including cash payments.

(h) LCHB served as Co-Lead Counsel in *In Re Providian Financial Corp. Credit Card Terms Litigation* (MDL No. 1301; and related JCCP proceedings), representing credit card holders who were charged excessive interest and late charges and sold “add on” products and services with promised benefits that were illusory. In November 2001, the court granted final approval to a \$105 million settlement of the case, which also required Providian to implement substantial changes to its business practices.

4. The primary LCHB attorneys who have worked on this case are myself and LCHB attorney Avery S. Halfon.

5. **Roger N. Heller**. I graduated from Columbia University School of Law in 2001, where I was a Senior Editor for the *Columbia Law Review*. From 2001 through 2005, I was a litigation associate at O’Melveny & Myers LLP. From 2005 through 2008, I worked for the non-profit law firm Disability Rights Advocates, where I was a Senior Staff Attorney and worked primarily on prosecuting class actions under federal and state anti-discrimination laws. I joined LCHB in 2008, and became a partner at LCHB in 2011. During my entire time at LCHB, my practice has been focused on litigating consumer protection class actions. I have successfully represented large classes in numerous consumer cases, including cases involving consumer banking, credit cards, false advertising, and insurance practices.

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

The Settlement is Fair, Reasonable and Adequate

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

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Rafael, California, this 9th day of April, 2021



Roger N. Heller