

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DORIS JEFFRIES, on behalf of herself and all
other similarly situated,

Plaintiff,

v.

VOLUME SERVICES AMERICA, INC. (d/b/a
Centerplate and Centerplate/NBSE); and DOES 1
THROUGH 10,

Defendants.

Case No. 1:17-cv-01788 (CKK)

Hon. Colleen Kollar-Kotelly

DECLARATION OF BRIAN K. HERRINGTON

I, Brian K. Herrington, declare as follows:

1. Over the course of this litigation, I incurred time as a partner in two different law firms. Originally, I worked on this case as a partner in the law firm of Schlanger Law Group LLP (“SLG”) and, in April 2020, I left SLG and started my current firm of Chhabra Gibbs & Herrington PLLC (collectively the “Firm”). I am authorized by the Firm to submit this declaration in support of Plaintiff’s (1) Unopposed Motion For Final Approval Of Class Action Settlement and (2) Unopposed Motion For An Award Of Attorneys’ Fees, Costs, And Class Representative Award. I make this declaration based on personal knowledge. If called as a witness, I would testify competently as to the matters stated herein.

2. I received my Juris Doctor from the University of Mississippi Law Center in May 1995. I am licensed to practice in the states of Mississippi and Tennessee as well as the United States Courts of Appeal for the D.C., Fifth, Ninth, and Tenth Circuits. I am also admitted in the

District Court for the Eastern District of Michigan.

3. I mainly represent consumers, small business plaintiffs, and attorneys general in complex litigation including class actions. These litigations have ranged in subject matter from antitrust to market manipulation to deceptive acts and practices.

Below is a representative sample of my case experience:

- ***In Re Auto Parts Litig., No. 12-md-2311 (E.D. Mich.):*** I was a member of the Lead Class Counsel team representing automobile dealers against manufacturers of automobile component parts. This set of litigation involved one of the largest antitrust conspiracies in U.S. history.
- ***Lanovaz v. Twinings North America, No. 5:12-cv-02646 (N.D. Cal.):*** I was appointed to serve as class counsel for a certified class involving mislabeled tea products.
- ***In Re: United Parcel Service, Inc., Shipper Excess Value Insurance Coverage Litigation:*** District Judge Berman of the Southern District of New York appointed me to serve as one of five Settlement Class Counsel. This case, involving unlawfully charged premiums for excess value insurance coverage, was settled favorably on a classwide basis.
- ***State of Oklahoma, ex rel., W.A. Drew Edmondson, Attorney General of Oklahoma v. BP America, Inc., et al., No. CJ-09-1564 (Cleveland Cty., Dist. Ct., Okla.) and State of Oklahoma, ex rel., W.A. Drew Edmondson, Attorney General of Oklahoma v. BP, America, Inc., et al., No. CJ-09-1385 (Cleveland Cty. Dist. Ct., Okla.):*** In these companion cases, the Attorney General for the state of Oklahoma hired my co-counsel and me to pursue civil penalties against the defendants for market manipulation of gas and propane. The cases were successfully resolved.
- ***State Attorney General Lawsuits Against The Tobacco Industry:*** I was one of the attorneys who represented the state of Mississippi, through Attorney General Mike Moore, in the state's successful efforts to recover monies spent on cigarette-related health care. I also represented the Attorneys General of New York, Louisiana, Arizona, Washington, Indiana, Alaska, Idaho, Oregon, Rhode Island, Ohio, Vermont, Illinois, and the Commonwealth of Puerto Rico in their successful litigation against the tobacco industry.
- ***In re PPA Litigation:*** This litigation involved a defective over-the-counter medicine. I litigated, and was prepared to try, the first post-FDA recall case in the country. The case settled favorably two weeks before trial.
- ***TCI Cable Late Fee Litigation:*** I served on a national steering committee and

was responsible for litigating state court class actions in Alabama, Tennessee, Kentucky, Indiana, and California. The classes consisted of consumers who had been charged unlawful late fees. All the cases were settled favorably on a classwide basis.

- ***Hill, on behalf of himself and all others similarly situated, v. Galaxy Telecom, L.P. and Galaxy Telecom, L.P. d/b/a/ Galaxy Cablevision*, No. CIV. 1:98CV51–D–D. (N.D. Miss.):** In *Hill*, I served as lead counsel and successfully obtained certification of a 15-state class of consumers who had been charged unlawful late fees. After a bench trial, in what amounted to a “battle of the experts,” the court found that the fees were reasonable and entered judgment for the defendant.

4. I have occupied significant litigation roles in numerous other class actions and MDL litigations. Since early 2016, I have been involved extensively in investigating and litigating claims arising under the Fair and Accurate Credit Transactions Act.

5. On May 4, 2022, the Court appointed Chant Yedalian and me to serve as Class Counsel. Dkt. 46. Charles LaDuca of the firm Cuneo Gilbert & LaDuca serves as local counsel (collectively “Class Counsel”). Class Counsel undertook this matter solely on a contingency fee basis. Class Counsel’s contingency fee model means that we do not get paid in every case. Sometimes, we get nothing or are awarded fees equal to only a small percentage of the amount worked. In short, Class Counsel shouldered all the risk of the litigation without any guarantee of payment. Further, time spent on this litigation is time spent not spent on other matters.

6. A significant amount of work went into this case’s successful resolution. Class Counsel expended more than 699 hours working on the litigation. Using LSI *Laffey* Matrix rates, Class Counsel’s lodestar amount totals \$559,964.20. Class Counsel incurred reasonable and necessary costs and expenses totaling \$9,847.80.

7. Paragraphs 11-13, *infra*, contain an itemization of my firm’s attorney time and expenses. The attorney declarations of Chant Yedalian [Dkt. 48-1] and Charles J. LaDuca [Dkt. 48-4] include itemizations for their respective firms’ attorney time and expenses. For the Court’s ease of reference, a collective summary of fees and costs for all firms is set forth below:

Firms	Hours	Lodestar	Costs
Chant & Company	244.33	\$224,539.27	\$6,174.41
Chhabra Gibbs & Herrington PLLC and Schlanger Law Group, LLP	341.17	\$284,698.93	\$3,559.59
Cuneo Gilbert & LaDuca, LLP	113.5	\$50,726.00	\$113.80
Total	699	\$559,964.20	\$9,847.80

8. Plaintiff requests an award of attorneys' fee in the amount of \$397,071.20¹ and reimbursement of \$9,847.80 for costs. The fee request is significantly lower than Class Counsel's lodestar – \$162,893.00 less. In other words, the fee request actually serves as a *negative* multiplier of about .71. Defendant does not oppose Class Counsel's requested award. In accordance with best practices, the Parties did not negotiate attorneys' fees, expenses, or a class representative service award until after they reached agreement on all other substantive terms of the Settlement.

9. The appropriateness of the requested award is further supported by the time and resources required to successfully prosecute this matter, the risks counsel accepted in taking on this matter on a contingent basis, the quality of counsel's performance, and the novelty and difficulty of the legal issues involved. The requested award represents compensation for the significant work undertaken and risks accepted by Plaintiffs' Counsel in this matter. As set forth in Plaintiff's Unopposed Motion For An Award Of Attorneys' Fees, Costs, And Class

¹ Subtracting from the \$450,000.00 Gross Settlement Funds (1) \$26,000.00 in payments for valid class member claims, (2) \$12,081.00 for the Claims Administrator, (3) \$5,000.00 to the Class Representative as the requested service award, and (4) \$9,847.80 for requested for reimbursement of attorneys' costs yields \$397,071.20 left for attorneys' fees. Of course, Class Counsel's fee request will be lowered by the amount of any valid class member claims made subsequent to this request.

Representative Award [Dkt. 49], the requested award is reasonable, justified, and appropriate.

10. I am the person in the Firm who oversaw and conducted the day-to-day activities of the Firm in the litigation. I reviewed printouts (and supporting documentation where necessary and appropriate) prepared and maintained by the Firm in the ordinary course of business. I conducted this review to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time committed to the litigation. I believe that the time reflected in the Firm's lodestar calculation are reasonable and were necessary for the effective and efficient prosecution and resolution of the case. I also believe the time is of the type that would normally be charged to a fee-paying client in the private legal marketplace.

11. The Firm's time and costs are itemized below. Through September 1, 2022, the Firm has devoted 341.17 hours of time on this matter. I expect the Firm to devote approximately 30 hours of additional time after September 1, 2022, including for matters such as work on the final approval motion and related papers, work on fees, costs, and incentive award motion and related papers, and work relating to the continuing administration of this Settlement.

Name	Years of Experience	Hours	Rate	Lodestar
Brian K. Herrington (Partner)	27	288.67	\$919/hr	\$265,287.73
Daniel A. Schlanger (Partner)	18	7.3	\$764/hr	\$5,577.20
Evan Rothfarb (Partner)	17	8.5	\$764/hr	\$6,494.00
Paralegals		36.7	\$200/hr	\$7,340.00
Total		341.17		\$284,698.93

12. The Firm's rates are consistent with the LSI *Laffey* Matrix, which has been used in numerous class action cases in this Circuit to establish a reasonable hourly rate for class counsel who, like Class Counsel, routinely litigate complex federal cases. If the Court requires Class Counsel to submit their detailed time records, I request submission *in camera* because the

time records are unredacted and contain sensitive and privileged information as well as information protected by the work product doctrine.

13. The Firm has incurred \$3,559.59 in costs or expenses. These costs are reasonable in amount and were necessary for the effective and efficient litigation of the case. The expenses are all of a type that, in my view, would normally be charged to a fee-paying client in the private legal marketplace. The Firm has received reimbursement for similar costs and expenses in numerous cases. I have itemized the Firm's costs in the present case below:

Expense Category	Total
Postage/Overnight Delivery	\$314.19
Legal Research/Pacer	\$424.88
Appeal-Related Printing Services/Copies	\$260.20
Travel	\$2,075.32
Subpoena Service Fees	\$485.00
Total	\$3,559.59

14. The following is additional information regarding these expenses:

- a. Postage/Overnight Delivery: The Firm paid these costs for filing paper copies of Plaintiff's opening and reply briefs filed in the appeal.
- b. Legal Research/Pacer: The Firm paid these costs mainly for research used in preparing Plaintiff's appellate briefs and preliminary approval papers.
- c. Appeal-Related Printing Services/Copies: The Firm paid these costs for paper copies of the briefs and appendix filed in Plaintiff's appeal.
- d. Travel: The Firm paid these costs for air travel and hotels for my two trips to Washington, D.C. from Jackson, Mississippi for (1) presenting oral argument in Plaintiff's appeal and (2) the settlement meeting with Defendant's counsel and representatives.
- e. Subpoena Service Fees: The Firm paid these costs to process service companies that served third-party discovery subpoenas on Heartland Payment Systems, Inc., American Express Company Inc., American Express Travel Related Services Company Inc., Discover Financial Services, and the Library of Congress. Due to COVID-related shutdowns, service on the Library of Congress required numerous service attempts.

I declare under penalty of perjury that the foregoing is true and correct to the best of my

knowledge.

Executed this 15th day of September 2022, in Jackson, Mississippi.

s/ Brian K. Herrington

Brian K. Herrington

EXHIBIT 1
SUMMARY OF ATTORNEYS' FEES AND COSTS