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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 IN RE TRACFONE UNLIMITED SERVICE
16 PLAN LITIGATION

17 Lead Case No. 13-cv-03440-EMC

18 Consolidated Cases:
19 13-cv-05295-EMC
20 13-cv-05296-EMC
21 14-cv-01347-EMC

22 **DECLARATION OF MICHAEL W.
23 SOBOL IN SUPPORT OF MOTION FOR
24 FINAL APPROVAL OF CLASS
25 SETTLEMENT AND MOTION FOR
26 AWARD OF ATTORNEYS' FEES AND
27 EXPENSES**

28 Date: June 23, 2015
Time: 2:30 p.m.
Judge: Hon. Edward M. Chen

1 I, Michael W. Sobol, hereby declare:

2 1. I am a member in good standing of the California State Bar and a partner in the
3 law firm Lief, Cabraser, Heimann & Bernstein, LLP (“LCHB”), counsel for the plaintiffs in the
4 *Hansell, Gandhi, and Blaqmoor* actions and Class Counsel in these consolidated matters. I have
5 personal knowledge of the facts set forth herein, and if called to testify thereto, I could and would
6 do so competently. I submit this declaration in support of Plaintiffs’ motion for final approval of
7 the Class Settlement Agreement reached in this matter and in support of Class Counsel’s motion
8 for an award of attorneys’ fees and expenses.

9 **BACKGROUND AND EXPERIENCE**

10 2. I am a 1989 graduate of Boston University School of Law. I practiced law in
11 Massachusetts from 1989 to 1997. From 1995 through 1997, I was a Lecturer in Law at Boston
12 University School of Law. In 1997, I left my position as partner in the Boston firm of Shafner,
13 Gilleran & Mortensen, P.C. to move to San Francisco, where I joined LCHB. Since joining
14 LCHB in 1997, I have almost exclusively represented plaintiffs in consumer protection class
15 actions. I have been a partner with LCHB since 1999. I have served as plaintiffs’ class counsel
16 in numerous nationwide consumer class action cases, and have received several awards and
17 recognitions for my work.

18 3. LCHB is one of the oldest, largest, most respected, and most successful law firms
19 in the country representing plaintiffs in class actions, and brings to the table a wealth of class
20 action experience. LCHB has been repeatedly recognized over the years as one of the top
21 plaintiffs’ law firms in the country, including by both The National Law Journal and The
22 American Lawyer. *See, e.g.*, The Plaintiffs’ Hot List, National Law Journal (Oct. 21, 2013)
23 (LCHB received this same award each year from 2003 through 2013); J. Triedman, A New Lief,
24 The American Lawyer (Dec. 2006), at 13 (“one of the nation’s premier plaintiffs’ firms”); A.
25 Frankel, Sweet Sixteen, Litigation 2004, Supplement to The American Lawyer & Corporate
26 Counsel (Dec. 2004), at 8-10. A copy of LCHB’s firm resume, which describes the firm’s
27 experience in class action and other complex litigation, can be found at
28 <http://www.lchbdocs.com/pdf/firm-resume.pdf>, and is not attached hereto given its length.

1 4. I am in my fourteenth year as chair of LCHB's consumer practice group, and as
2 such am involved in and have overseen a wide range of consumer protection litigation, including
3 cases involving false advertising and telecommunications companies. During this time, LCHB
4 has vindicated the rights of, and recovered hundreds of millions of dollars for, consumers in class
5 litigation. By way of example:

6 a. LCHB serves as Class Counsel in *Gutierrez v. Wells Fargo Bank, N.A.*,
7 (No. 07-5923 WHA, N.D. Cal.), a class action alleging unfair practices and false representations
8 by Wells Fargo in connection with its imposition of overdraft charges. In 2013, the court
9 reinstated a \$203 million class judgment that had been entered in 2010 following a bench trial,
10 and in 2014 the reinstated judgment was affirmed by the Ninth Circuit.

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

16 c. LCHB serves as Plaintiffs' Liaison Counsel and on the Plaintiffs'
17 Executive Committee in *In re Chase Bank USA, N.A. "Check Loan" Contract Litigation* (MDL
18 No. 2032, N.D. Cal.), a nationwide Multi-District class action alleging that Chase breached its
19 good faith obligation to credit cardholders by modifying the terms of their long-term fixed rate
20 loans. In November 2012, the court granted final approval to a \$100 million nationwide
21 settlement that provides direct payments to approximately one million cardholders and injunctive
22 relief.

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

1 e. LCHB served as Settlement Class Counsel in *Kline v. The Progressive*
2 *Corporation* (No. 02-L-6, Illinois Circuit Court, Johnson County), a nationwide class action
3 challenging Progressive Corporation's private passenger automobile insurance sales practices. In
4 2002, the court approved a settlement valued at approximately \$450 million, which included both
5 cash and equitable relief.

6 f. LCHB served as Lead Counsel in *Catholic Healthcare West Cases*
7 (J.C.C.P. No. 4453, San Francisco Superior Court), a coordinated action alleging that CHW
8 charged uninsured patients excessive fees for treatment and services, at rates far higher than the
9 rates charged to patients with private insurance or on Medicare. In 2007, the court approved a
10 settlement that provides discounts, refunds and other benefits for CHW patients valued at \$423
11 million, and injunctive relief.

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

19 h. I was co-lead plaintiffs' counsel in *Morris v. AT&T Wireless Services, Inc.*,
20 No. C-04-1997-MJP (W.D. Wash.), a case alleging that a nationwide class of cell phone
21 customers was improperly subjected to an end-of-billing cycle cancellation policy implemented
22 by AT&T Wireless. In 2006, the New Jersey Superior Court granted final approval to a class
23 settlement that guaranteed delivery to the class of \$40 million in benefits.

24 i. LCHB served as co-lead counsel in *Strugano v. Nextell Communications,*
25 *Inc.*, (L.A. Superior Court Case No. BC 288359), a case alleging unfair practices by defendant
26 resulted in overcharges. In 2006, the Los Angeles Superior Court granted final approval to a
27 class settlement which resulted in benefits to class members valued between \$13.5 million and
28 \$55.5 million.

1 Browning Settlement for preliminary court approval, LCHB took the lead in intervening in that
2 action and obtaining transfer of *Browning* from the Southern District of Florida to this Court.¹ I
3 appeared at a hearing in Miami to argue in favor of such relief. After *Browning* was transferred
4 to this Court, LCHB took the lead in seeking deferral of the Court's consideration of the
5 Browning Settlement to allow for additional discovery to be taken, which discovery LCHB
6 believed would improve the relief that could be achieved for the Class.

7 7. After the Court permitted additional discovery, LCHB was actively involved in the
8 discovery efforts, including taking multiple depositions (including the depositions of three
9 TracFone executives), propounding written discovery, reviewing and analyzing thousands of
10 pages of documents and customer data produced by Defendants, and engaging in several meet
11 and confer sessions with Defendants' counsel regarding the scope of discovery and Defendants'
12 search and production of materials.

13 8. LCHB also devoted considerable time and resources to preparing for and
14 participating in the mediation sessions that resulted in the Settlement now presented for the
15 Court's approval. Utilizing information obtained in discovery and through other investigative
16 efforts, LCHB, along with co-counsel, conducted a thorough analysis of the factual and legal
17 issues raised, and analyzed potential class damages in preparation for the mediation sessions. The
18 parties engaged in two full-day mediation sessions with Prof. Eric Green of Resolutions, LLC, the
19 first on September 15, 2014 and the second on October 30, 2014. With Prof. Green's assistance,
20 counsel for the *Hansell* plaintiffs and Defendants reached an agreement in principle on improved
21 settlement terms. The parties agreed that a class settlement would be entered into in conjunction
22 with the resolution of a then-pending investigation of TracFone's practices by the FTC, which
23 resolution TracFone was also in the process of negotiating. After the parties reached agreement
24 in principle on the merits they were able to reach an agreement, with Prof. Green's assistance,
25 regarding Class Counsel's request for attorneys' fees and expenses.

26
27 ¹ LCHB associated in, and worked with, local Florida counsel, Robert C. Gilbert, P.A., in
28 connection with the pre-transfer *Browning* proceedings in the Southern District of Florida. Mr.
Gilbert reports that his total lodestar for this matter is \$13,668.75 (20.25 hours, at \$675/hour).

1 assistance from LCHB associates Jerome Mayer-Cantu and Martin Quiones and from LCHB
2 paralegals and staff.

3 13. My background and qualifications are set forth above. My primary tasks in this
4 litigation have included: arguing motions, representing plaintiffs at hearings and case
5 management conferences, developing case strategy and discovery strategy, reviewing and editing
6 pleadings, preparing for mediations, negotiating the settlement and settlement papers,
7 coordinating with the FTC, and overseeing Class Counsel's settlement approval and
8 implementation efforts.

9 14. Roger N. Heller graduated from Columbia University School of Law in 2001,
10 where he was a Senior Editor for the *Columbia Law Review*. From 2001 through 2005, Mr.
11 Heller was a litigation associate at O'Melveny & Myers LLP. From 2005 through 2008, he
12 worked for the non-profit law firm Disability Rights Advocates, where he was a Senior Staff
13 Attorney and worked primarily on prosecuting class actions under federal and state anti-
14 discrimination laws. Mr. Heller joined LCHB in 2008, and became a partner at LCHB in 2011.
15 During his time at LCHB, Mr. Heller's practice has been focused on consumer class actions. He
16 has successfully represented large classes in numerous consumer cases, including cases involving
17 consumer banking, credit cards, telecommunications, false advertising, and insurance practices.
18 Mr. Heller's primary tasks in this litigation have included: taking depositions, drafting briefs and
19 other pleadings, conducting legal research, preparing for and participating in mediation,
20 negotiating the settlement, drafting settlement papers, working with the Settlement Administrator,
21 media consultant, Defendants and the FTC on notice design and implementation issues, and
22 drafting settlement approval papers.

23 15. Nicole D. Sugnet became a partner at LCHB in 2015, and prior to that was an
24 LCHB associate. She graduated from the University of California, Hastings College of the Law
25 in 2006. Since graduating from law school, Ms. Sugnet has focused her practice exclusively on
26 consumer class action litigation. She is the co-author of "Consumer Protection and Employment
27 Cases after Concepcion," published in the ABA Section of Litigation, Class Action & Derivative
28 Suits Committee Newsletter (Summer 2011). Ms. Sugnet's primary tasks in this litigation have

1 included: drafting complaints and other pleadings, conducting factual investigation and legal
2 research, taking depositions, drafting written discovery requests, reviewing documents and data
3 produced by Defendants, leading plaintiffs' discovery meet and confer efforts, and preparing for
4 and participating in mediation.

5 16. RoseMarie Maliekel is an associate at LCHB. She graduated from Northwestern
6 University School of Law in 2010. Prior to joining LCHB, Ms. Maliekel worked as a trial
7 attorney with the Federal Defenders of San Diego. Since joining LCHB in 2014, Ms. Maliekel's
8 practice has been focused on prosecuting consumer class actions. Ms. Maliekel's primary tasks
9 in this litigation have included conducting legal research and drafting settlement approval papers.

10 17. Jerome Mayer-Cantu is an associate at LCHB. He graduated from Stanford Law
11 School in 2010, and served as a law clerk to the Hon. Rudolph Contreras (D.D.C) and the Hon.
12 Ricardo M. Urbina (D.D.C). Mr. Mayer-Cantu's primary tasks in this litigation have included
13 conducting legal research.

14 18. Martin Quinones is an associate at LCHB. He graduated from the Berkeley
15 School of Law, University of California, Berkeley, in 2013. Mr. Quinones's primary tasks in this
16 litigation have included conducting legal research regarding damages issues.

17 *LCHB Paralegals and Litigation Support Specialists*

18 19. LCHB paralegals worked on this litigation as well. LCHB has a team of
19 paralegals that assist in the litigation of its cases, with the level of staffing depending on the size
20 and needs of the particular case. In this case, Jennifer Rudnick was the primary LCHB paralegal
21 assigned to this matter. Ms. Rudnick's tasks in this litigation have included communicating with
22 class members, conducting factual investigation, assisting with filings, maintaining LCHB's case
23 file, preparing materials for hearings, depositions, and mediation, and assisting with document
24 productions and review. LCHB paralegal Christian Chan also worked on this matter. His
25 primary tasks included assisting counsel in preparing for depositions and assisting with filings
26 and the service of documents.

27 20. LCHB litigation support specialists worked on this matter as well. LCHB's
28 Litigation Support group consists of an experienced team of litigation support specialists

1 responsible primarily for: (a) preparing and conducting trial presentations and similar in-court
2 technical productions; (b) creating, managing, and searching case-specific document and
3 information databases (e.g., Summation); and (c) performing certain case-specific data analyses
4 (e.g., for use in evaluating damages). Because the personnel who make up LCHB's Litigation
5 Support group have extensive training and experience performing these specific, technical tasks,
6 it is more efficient and cost-effective, and in my judgment ultimately results in better work
7 product, for this sort of work to be assigned to these personnel as opposed to paralegals with other
8 areas of specialization and/or who normally perform less technical work. Other firms might
9 contract this work out to third parties, or assign a more general paralegal to perform these sorts of
10 tasks, and that would be perfectly reasonable. However, in my judgment, the fact that LCHB has
11 in-house personnel who specifically focus on these tasks represents a significant benefit and value
12 to the clients and class members that LCHB represents.

13 21. The primary LCHB litigation support specialists who worked on this case were
14 Anthony Grant, Margie Calangian, and Erwin Ocampo. Their tasks included managing the
15 document database dedicated to this case, searching and helping co-counsel access and search the
16 database for materials for use in depositions and for other purposes, providing guidance and
17 assistance regarding technical aspects of document production and resolving issues concerning
18 the format of materials produced by Defendants.

19 **LCHB TIME AND EXPENSES**

20 22. During the time that this litigation has been pending, LCHB has spent considerable
21 time working on this litigation that could have been spent on other matters. Throughout the
22 litigation, the active prosecution of this matter has consumed a significant percentage of my
23 billable time that could otherwise have been spent on other fee-generating work. In addition to a
24 substantial percentage of my time, this litigation has also required considerable work by other
25 lawyers, paralegals, and staff at LCHB that could have otherwise been spent on other fee-
26 generating work.

1 23. The time that LCHB has spent on this litigation has been completely contingent on
2 the outcome. LCHB has not been paid for any of its time spent on this litigation, nor has it been
3 reimbursed for any of its expenses incurred in this litigation.

4 24. In connection with this litigation, the attorney and staff timekeepers at LCHB have
5 billed 1,951.50 hours (through April 16, 2015), for a total lodestar of \$1,170,736.00 during that
6 period. This information is derived directly from LCHB's time records, which are prepared
7 contemporaneously and maintained by LCHB in the ordinary course of business. In reviewing its
8 time records, LCHB removed duplicative entries and exercised billing discretion to remove all
9 timekeepers who worked fewer than 10 hours on this matter and several other entries. None of
10 this excluded time is included in the above numbers.

11 25. Attached hereto as **Exhibit A** is a summary listing each lawyer, paralegal, and
12 staff member for which LCHB is seeking compensation for legal services in connection with this
13 litigation, the hours each individual has expended as of April 16, 2015, and the hourly rate at
14 which compensation is sought for each individual. For any individuals who have left the employ
15 of LCHB, the hourly rate at the time when their employment concluded is used. For individuals
16 who are still employed by LCHB, their current hourly rate is used.²

17 26. Based upon my experience with other class actions and complex matters, I believe
18 that the time expended by LCHB in connection with this litigation was reasonable in amount and
19 contributed to the ultimate result achieved for the class.

20 27. LCHB's customary rates, which were used for purposes of calculating the lodestar
21 here, are consistent with prevailing rates in this District and have repeatedly been approved by
22 federal courts in this Circuit and other Circuits. *See, e.g., Brazil v. Dell Inc.*, 2012 U.S. Dist.
23 LEXIS 47986 (N.D. Cal. Apr. 4, 2012); *In re Bank of America Credit Protection Marketing &*
24 *Sales Practices Litig.*, No. 11-md-2269 THE (Dkt. 96) (N.D. Cal. Jan. 16, 2013); *Nwabueze v.*
25 *AT&T Inc.*, 2014 U.S. Dist. LEXIS 11766 (N.D. Cal. Jan. 29, 2014); *Fleming v. Kemper Nat.*
26 *Services, Inc.*, 373 F. Supp. 2d 1000, 1012 (N.D. Cal. 2005); *Grays Harbor Adventist Church*

27 ² As stated above, Nicole D. Sugnet became a partner at LCHB in 2015. For her time working on
28 this litigation which was spent before she became a partner (*i.e.*, while she was an associate),
LCHB seeks compensation at her hourly rate in place immediately before her promotion.

1 *Sch. v. Carrier Corp.*, 2008 WL 1901988, at *3 (W.D. Wash. Apr. 24, 2008); *Pelletz v.*
2 *Weyerhaeuser Co.*, 2009 U.S. Dist. LEXIS 1803, at *7 (W.D. Wash. Jan. 9, 2009); *Berger v.*
3 *Property ID Corporation*, CV 05-5373-GHK (Cwx) (C.D. Cal.); *Lonardo v. Travelers Indem.*
4 *Co.*, 2010 WL 1416698, at *22-23 (N.D. Ohio Mar. 31, 2010); *In re Diet Drugs (Phentermine,*
5 *Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, No. Civ.A. 99-20593, MDL No. 1203, 2003
6 WL 21641958, at *9 (E.D. Pa. May 15, 2003).

7 28. LCHB sets its hourly rates according to prevailing market rates, bills its hourly
8 paying clients according to those rates, and is routinely awarded fees according to those rates.
9 LCHB primarily represents clients on a contingent fee basis, both in class and individual cases.
10 However, LCHB also represents plaintiffs on an hourly basis and is paid according to its then
11 current hourly rates. LCHB is currently is retained by such clients who pay LCHB's current
12 hourly rates, the same rates used to calculate its lodestar in this matter.

13 29. LCHB also has incurred more than \$33,334.10 in un-reimbursed expenses that
14 were necessarily incurred in connection with the prosecution and resolution of this litigation,
15 including expenses for: transcripts, mediation fees, legal research, filing fees, service of process,
16 and postage. A summary breakdown of the expenses for which LCHB seeks reimbursement in
17 this matter is attached hereto as **Exhibit B**.

18 30. The foregoing expenses were incurred solely in connection with this litigation and
19 are reflected in LCHB's books and records as maintained in the ordinary course of business.
20 These books and records are prepared from invoices, receipts, expense vouchers, check records
21 and other records, and are an accurate record of the expenses incurred in this case.

22 31. The above expense numbers do not include significant internal and other costs that
23 LCHB incurred but for which LCHB does not seek reimbursement, including costs for printing,
24 telephone, and travel.

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26 32. Based on my experience and my knowledge regarding the factual and legal issues
27 in this matter, it is my opinion that the proposed Settlement in this matter is fair, reasonable and
28 adequate, and is in the best interests of the Class.

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I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was signed in San Francisco, California, on April 20, 2015.

/s/ Michael W. Sobol
Michael W. Sobol

1236174.2

Exhibit A

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
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Report created on 04/16/2015 03:30:53 PM

From	inception
To	04/16/15

Matter Number: 3617-0001 STRAIGHT TALK**PARTNER**

NAME	HOURS	RATE	TOTAL
MICHAEL SOBOL	594.40	850.00	505,240.00
ROGER HELLER	531.60	625.00	332,250.00
	1,126.00		837,490.00

ASSOCIATE

NAME	HOURS	RATE	TOTAL
ROSEMARIE MALIEKEL	46.00	395.00	18,170.00
JEROME MAYER-CANTU	10.80	395.00	4,266.00
MARTIN QUINONES	11.20	350.00	3,920.00
NICOLE DIANE SUGNET	540.50	435.00	235,117.50
	608.50		261,473.50

PARALEGAL

NAME	HOURS	RATE	TOTAL
CHRISTIAN CHAN	19.10	315.00	6,016.50
JENNIFER RUDNICK	102.00	325.00	33,150.00
	121.10		39,166.50

LITIGATION SUPPORT

NAME	HOURS	RATE	TOTAL
MARGIE CALANGIAN	38.00	340.00	12,920.00
ERWIN OCAMPO	18.40	340.00	6,256.00
ANTHONY GRANT	39.50	340.00	13,430.00
	95.90		32,606.00

MATTER TOTALS	1,951.50		1,170,736.00
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Exhibit B

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 04/13/2015 01:48:40 PM

From = inception To 04/13/15

STRAIGHT TALK**Matter Number: 3617-0001**

	<u>Amount</u>
In-House Copies	\$706.20
Postage	\$87.76
Computer Research	\$2,915.92
Deposition/Transcripts	\$17,587.27
Electronic Database	\$1,069.00
Federal Express/Messenger	\$515.47
Filing Fees	\$1,431.75
Mediation Expenses	\$8,202.12
Outside Copy Service	\$97.31
Process Service	\$721.30
Total Matter Costs:	\$33,334.10