

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

REYNALDO REYES,
on behalf of himself and all
others similarly situated,

Plaintiff,

v.

ZIONS FIRST NATIONAL BANK,
NETDEPOSIT, LLC,
MP TECHNOLOGIES d/b/a MODERN
PAYMENTS, TELEDRAFT, INC.,
NATIONAL PENN BANK, WELLS FARGO
BANK, N.A., and WACHOVIA BANK, N.A.,
Defendants.

CIVIL ACTION NO. 10-00345

**DECLARATION OF HOWARD LANGER IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL APPROVAL OF THE PROPOSED
SETTLEMENT AND FOR AN AWARD OF ATTORNEY'S FEES AND COSTS**

1. I am the senior attorney at Langer Grogan & Diver, P.C. ("LGD"). LGD has served as counsel in the above referenced matter since its inception and I have been personally involved in the matter at all key points throughout the litigation.

2. The matter was initiated after our office was approached by Reynaldo Reyes, a class member in *Faloney v. Wachovia Bank, NA*. Mr. Reyes had received a check as his distribution in that matter and asked why he had not received compensation for other funds that appeared to have been wrongfully debited from his account. As described in the accompanying memoranda seeking approval of the settlement and an award of attorney's fees, costs, and an incentive award, Mr. Reyes' inquiry led to a year-long investigation by LGD which resulted in the filing of the present lawsuit.

3. I have reviewed the history of the litigation set forth in both the Memorandum In Support of Plaintiff's Motion for Final Class Certification and for Final Approval of the Proposed Settlement and the Memorandum in Support of Class Counsel's Petition for an Award of Attorneys' Fees Costs and Incentive Award and affirm that the history of the litigation set forth in those memoranda is true. I note below factors that highlight the risks presented at the outset of the case and how those risks manifested themselves over the course of the case.

4. At the time Mr. Reyes approached our office through the time of filing of the complaint to the present, there has been no action either by any government entity or private regulatory body, such as NACHA, disclosing the violations by Zions First National Bank, Netdeposit, Modern Payments (collectively "Zions") or any of the other bank defendants alleged in the complaint.

5. At the time the complaint was filed there was extraordinary risk:

- a. Recovery could only be obtained if the case was certified as a class action, and no reported decision had certified a class where multiple fraudulent schemes had been alleged.
- b. Two decisions of the Third Circuit had held certification of classes inappropriate where oral misrepresentations were alleged. These cases spoke in broad terms and could be read to have created a *per se* rule against class certification where oral misrepresentations were alleged.
- c. The primary case that I believed supported class certification, *Cullen V. Whitman Medical Corp.*, 188 FRD 226 (E.D. Pa 1999), had been decided before these Third Circuit cases had come down.

- d. We were uncertain of which, and how many, of Zions's customers would be determined to be totally fraudulent.
- e. Substantively, no reported decision had found a bank liable civilly for violating RICO by assisting fraudulent customers in the manner alleged in the complaint.
- f. In contrast to *Faloney v. Wachovia*, where the conduct of Wachovia had to a certain extent been disclosed in open proceedings and the Court had questioned the propriety of Wachovia's behavior in a published opinion, *United States v. Payment Processing Ctr., LLC*, 461 F. Supp. 2d 319,330 (E.D. Pa. 2006) ("The testimony of Mill, Wachovia's vice president, raised issues about Wachovia's handling of PPC's account after Wachovia's in-house legal counsel and an official of another bank questioned activity in PPC's account."), here there was no prior proceeding involving Zions, let alone indicating impropriety.
- g. Before filing the complaint, I sought to discuss joint proceedings with counsel for the Office of the Comptroller of the Currency ("OCC") responsible for consumer protection and was advised that, while our office was free to hand over whatever we had discovered, the OCC would not work cooperatively with our office.
- h. Class counsel represented a single class representative and there was great risk that his claim could be mooted through an offer of judgment or that he could be discouraged from proceeding during the course of the litigation. It was only this year in *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016)

that the Supreme Court precluded mooted plaintiff's claim through an offer of judgment.

6. All of the above risks were compounded by the fact that under *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305 (3d Cir. 2008), class certification would not likely be decided until significant discovery had been undertaken, therefore class counsel would likely have to invest significant time and money in the case before there was an indication regarding whether this significant risk, which was independent of the risk of actually prevailing in the case, could be overcome.

7. The actual risk proved not to be abstract. The Court dismissed claims against three of the four banks plaintiff sued. While this suit was pending *Johnson v. U.S. National Bank Association*, 508 Fed. App'x. 451 (6th Cir. 2012) dismissed similar claims against a national bank and found the opinion sustaining the claims against Zions "unpersuasive." The Court here also denied Plaintiff's motion for class certification.

8. For several years during this period, class counsel drew no compensation and borrowed significant sums to sustain the case.

9. Class counsel's lodestar for the work performed on the case is \$5,186,065. The actual time by each of the attorneys is set out in Exhibit "A."

10. Class counsel incurred \$251,553.19 in out-of-pocket costs. These expenses are set out in Exhibit "B."

11. Both the lodestar and the costs significantly understate class counsel's investment. Time is only charged through July 1, 2016. Since that time significant work has been done on approval of settlement and administration, which is not included. The costs do not include any charges for internal copying or legal research services such as Lexis or Westlaw though it is

common practice of other law firms to charge for such items. The charges for such copying and services over the seven years of the case would be substantial.

12. Our firm's hourly rates are consistent with those charged by firms of similar quality.¹ The firm is recognized as a premier litigation boutique. Just this month, it received The American Antitrust Institute award for *Outstanding Antitrust Litigation Achievement in Private Law Practice*. It is highly rated in Chambers Guide.² The hourly rates used in the lodestar are the hourly rates actually paid to the firm by clients in non-contingent matters.

I declare the above to be true under penalty of perjury.

Dated: October 14, 2016



Howard Langer

¹ According to the National Law Journal's 2015 Attorney Fee Survey, the rates for the highest paid partners at many major law firms in Philadelphia in 2014 substantially exceeded those of petitioners, e.g. Blank Rome \$940; Cozen O'Connor \$1,050; Dechert \$1,095; Reed Smith, \$945; Saul Ewing \$850; Pepper Hamilton \$850. See,

<http://www.nationallawjournal.com/id=1202636785489/Billing-Rates-Across-the-Country>

² It is ranked in Antitrust where the firm is ranked among the top ten firms in Pennsylvania.

<http://www.chambersandpartners.com/12931/363/editorial/5/1>

Exhibit A

Reyes v Zions Bank
Summary of Attorney/Paralegal Fees
As of 10-11-16

2016 Hours
Rate 1/1/09 - 7/1/2016 Fees

Attorney Fees

Howard Langer	\$ 850.00	1188.32	\$ 1,010,072.00
John Grogan	\$ 750.00	1699.82	\$ 1,274,865.00
Edward Diver	\$ 750.00	881.4	\$ 661,050.00
Judah Labovitz	\$ 750.00	178.3	\$ 133,725.00
Irv Ackelsberg	\$ 750.00	107.4	\$ 80,550.00
Peter Leckman	\$ 625.00	2057.58	\$ 1,285,987.50
Michael Mancusi-Ungaro	\$ 225.00	2582.44	\$ 581,049.00
Total Attorney Hours/ Fees		8695.26	\$ 5,027,298.50

Paralegal Fees

Total Paralegal Hours/Fees	\$ 175.00	907.24	\$ 158,767.00
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Total Hours/ Fees 9602.5 \$ 5,186,065.50

Exhibit B

