

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

<p>Katherine M. Cleary, <i>et al.</i>, on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>American Airlines, Inc.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 4:21-cv-00184-O</p> <p>Hon. Reed O’Conner, USDJ Hon. Hal R. Ray, Jr., USMJ</p>
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**DECLARATION OF OREN GISKAN IN SUPPORT OF PLAINTIFFS’ MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND  
PLAINTIFFS’ AND CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES**

Oren Giskan, an attorney for Plaintiffs and Court-appointed Lead Class Counsel, declares as follows:

1. I am a member in good standing of the bars of the United States District Courts for the Southern and Eastern District Courts of New York, the bar of the United States Court of Appeals for the Seventh Circuit, the bars of the states of New York and Illinois and am admitted to practice *pro hac vice* in this action. I am a partner in the firm Giskan Solotaroff & Anderson LLP (“GSA”), and Lead Class Counsel for the Settlement Classes.<sup>1</sup> I respectfully submit this declaration in support of Plaintiffs’ Motion for Final Approval and Plaintiffs’ and Class Counsel’s Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses.

2. The primary GSA attorneys who have worked on this case are myself, Amy Robinson, and David O’Brien. Together these attorneys have been actively involved in all aspects

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<sup>1</sup> All capitalized terms are defined in the Parties’ *Settlement Agreement and Release*. ECF No. 251-1; the “Settlement” or “Settlement Agreement.”

of the investigation and prosecution of this case. Additionally, I have been actively involved in all aspects of the Parties' settlement negotiations. I am familiar with the factual matters discussed herein and could and would testify competently to them if called upon to do so.

### **Background and Experience**

3. GSA has extensive experience in litigating consumer class action litigations.

4. For the past 28 years, I have been primarily engaged in class action litigation. I founded GSA in 2002. I have served as lead class counsel in *Cymbalista v. JPMorgan Chase, N.A.*, E.D.N.Y., 20-cv-00456 (settlement of class action claims related to interest paid to mortgagors on money held by banks in escrow accounts); *Grottano v. City of New York, et al.*, S.D.N.Y., 15-cv-09242 (class action settlement of civil rights claims for visitors at New York City jails); *In re Check Loan Litigation*, N.D. Cal. 09-md-02032 (\$100 million class action settlement of claims related to increase of minimum monthly credit card payments); *Cohen v. JP Morgan Chase & Co. and JP Morgan Chase Bank*, E.D.N.Y. 04-cv-4098 (class action settlement of deceptive claims related to charging of mortgage fee resulting in a recovery of 100% of damages for class members); *In re: LG Front Load Washing Machine Class Action Litig.*, 2:08-cv-00051 (MCA) (LDW) (D.N.J.) (nationwide class action settlement for washing machine defect claims); *Bond v. Cricket Communications, LLC*, Civil Action No. 1:15-cv-923-GLR (D. Md.) (class action settlement for more than one million consumers alleging that cellular phones were defective); *Sebrow v. Allstate Insurance Company*, E.D.N.Y., 07-cv-3929 (class action settlement of deceptive practice claims regarding non-renewal of homeowners insurance policies), *Education Station v. Yellow Book USA*, Superior Court of New Jersey (\$70 million class action settlement of false advertising claims); *Krobath v. South Nassau Communities Hospital*, Supreme Court of New

York, Nassau County (class action settlement of claims related to emergency room billing of self-pay patients).

5. Amy Robinson is a member in good standing of the bars for the United States District Courts for the Southern, Eastern, and Northern Districts of New York, the bar of the United States Court of Appeals for the Second Circuit and the bar of the state of New York. Since joining GSA in 2018, Ms. Robinson has represented consumers in class actions, including in *Cymbalista v. JPMorgan Chase, N.A.*, E.D.N.Y., 20-cv-00456 (settlement of class action claims related to interest paid to mortgagors on money held by banks in escrow accounts); *Grottano v. City of New York, et al.*, S.D.N.Y., 15-cv-09242 (class action settlement of civil rights claims for visitors at New York City jails) and *Krobath v. South Nassau Communities Hospital*, Supreme Court of New York, Nassau County (class action settlement of claims related to emergency room billing of self-pay patients). She has worked with me on the investigation and prosecution of this case since its inception. Ms. Robinson is a graduate of Swarthmore College (2004) and CUNY School of Law (2013). Ms. Robinson clerked for the Honorable Ronald L. Ellis (Ret.), U.S.M.J., S.D.N.Y. (2013-2014).

6. David O'Brien is a member in good standing of the bars for the United States District Courts for the Southern, Eastern, and Northern Districts of New York, and the bar of the state of New York. Since joining GSA in 2021, Mr. O'Brien has represented consumers in multiple class actions. He has worked with the undersigned on the prosecution and settlement of this case. Mr. O'Brien is a graduate of Columbia University (2010) and Fordham Law School (2016), where he was also an adjunct professor of trial skills from 2017 to 2020.

**GSA's Work in This Litigation**

7. Prior to filing suit, and continuing through the course of the litigation, GSA and its co-Class Counsel and co-counsel conducted an extensive investigation into the factual and legal issues raised in this litigation. These investigative efforts have included, *inter alia*, thoroughly investigating and analyzing defendant American Airlines' ("AA" or "American") customer disclosures and checked baggage policies; speaking with American customers about their experiences; and investigating customer complaints and other pertinent public information. GSA and its co-counsel also extensively researched and analyzed the legal issues regarding the claims pled and American's defenses and potential defenses.

8. GSA co-Class Counsel and co-counsel conducted extensive formal discovery in this case. The parties exchanged and reviewed over fifty thousand pages of documents and extensive electronic data discovery produced by American and third parties, including American's credit card partners (Citi and Barclay's) and email distribution vendor (Appriss Insights), and took or defended ten (10) depositions.

9. Specifically, discovery conducted by Class Counsel included: reviewing more than 50,000 pages of internal documents and extensive electronic data discovery produced by American and third-party vendor Appriss Insights; deposing American employees and Rule 30(b)(6) corporate designees; defending the depositions of Plaintiffs and class representatives Cleary and Ferrigni, propounding and analyzing responses to substantial written discovery; and preparing responses to written discovery served by plaintiffs. Plaintiffs served on American five sets of document requests and three sets of interrogatories.

10. Throughout the discovery process, the Parties held frequent, often lengthy, meet and confer sessions, including regarding the specifics and scope of American's E-Ticket Email

system. Through those efforts, the Parties were able to resolve many of their potential disputes without Court assistance.

11. The Parties engaged in extensive motion practice in this case prior to Settlement. GSA and its co-counsel prepared and filed the following: Plaintiffs' motion for class certification; Plaintiffs' and the Classes' opposition to AA's motion for summary judgment; Plaintiffs' and the Classes' motion for spoliation sanctions; three motions to compel the production of documents and/or information; Plaintiffs' and the Classes' response to American's objection to Magistrate Judge Ray's Report and Recommendation compelling discovery; a motion to intervene additional plaintiffs; numerous case management motions; Plaintiffs' and the Classes' pre-trial *in limine* motions; and Plaintiffs' opposition to American's pre-trial *in limine* motions.

12. Plaintiffs and class representatives William Cleary and Dr. Filippo Ferrigni have been personally and actively engaged in this litigation. They each assisted Class Counsel's investigation of the Settlement Classes' claims, provided information to Class Counsel about their experiences, searched for and provided documents and information in response to American's written discovery requests, prepared and appeared for depositions, and regularly communicated with GSA and its co-counsel and evaluated and approved the Settlement. Dr. Ferrigni also participated personally (by video conference) in the August 2022 mediation.

13. Class Counsel represented Mr. Cleary and Dr. Ferrigni for the entirety of this action. From the very beginning, Class Counsel maintained strong, positive, and professional working relationships with both Plaintiffs. But for the efforts of Mr. Cleary and Dr. Ferrigni, the case, Settlement, and the extensive Settlement consideration (including at least \$7,500,000 in refunds payable to Settlement Class Members) would not have been possible.

14. American has agreed to pay Mr. Cleary and Dr. Ferrigni “service awards” in the amount of \$10,000 each, which will not reduce the amount of Settlement refunds paid to any Settlement Class Member. Plaintiffs’ motion for Attorneys’ Fees seeks the Court’s approval to enforce that provision of the Settlement requiring American to make those service award payments upon the Effective Date. Class Counsel joins in Plaintiffs’ request to approval the service awards.

15. Plaintiffs and Class Counsel prepared extensively for trial in this case, which settled in principle only 12 days before the scheduled beginning of the trial. These preparations included drafting and filing motions *in limine* and other pre-trial motions, exhibit and witness lists, other disclosures, a joint proposed pretrial order, and other documents.

16. Addressing and overcoming American’s legal numerous arguments, particularly on class certification and summary judgment, required significant commitments of time, effort, and resources from Class Counsel.

17. GSA and its co-counsel were informed by their investigation and discovery efforts, the Parties’ motion practice and this Court’s rulings on class certification and American’s motion for summary judgment and Plaintiffs’ motion for spoliation sanctions in deciding to settle this matter. GSA and its co-counsel were also informed by trial preparations and each Party’s pending motions *in limine* and other pre-trial motions, exhibit and witness lists, and other documents.

18. The Settlement is the product of hard-fought, arms-length negotiations. Early in the litigation, on September 30, 2021, the Parties participated in settlement mediation with Clay Cogman of Phillips ADR (the dispute resolution firm of Hon. Layn R. Phillips, ret.), an experienced and well-respected mediator. That mediation did not result in an agreement and substantial litigation followed.

19. The Parties and their counsel again participated in a full-day, primarily in-person mediation with Clay Cogman on August 8, 2022, following the Court's decision on summary judgment. The Parties were not able to reach a settlement during that mediation but agreed to continue negotiations.

20. The Parties continued their settlement discussions and reached an agreement in principle on August 17, 2022. After the Parties reached an agreement in principle on the class relief, the Parties then negotiated regarding attorneys' fees and expenses.

21. Throughout these months-long negotiations, Plaintiffs and the certified Classes were represented by Class Counsel and local counsel who are each experienced in the prosecution, defense, trial, and settlement of complex class actions.

22. Since reaching an agreement in principle, the Parties and their counsel have worked diligently to draft the Settlement Agreement and exhibits, worked closely with the Settlement Administrator and counsel for American to implement the Class Notice Plan and other Settlement administration tasks, communicated with Settlement Class Members (and previously Class Members following dissemination of the class notices that included Class Counsel's contact information), and have prepared (and will continue to prepare) the motions for final approval of the Settlement and Class Counsel's motion for an award of attorneys' fees and reimbursement of expenses.

23. Plaintiffs submitted a motion for preliminary approval of the Parties' Settlement, annexing the Settlement Agreement and proposed notices to the Settlement Classes, on October 14, 2022. ECF Nos. 250, 251. This Court granted that motion on October 20, 2022, which among other things, directed implementation of the Class Notice Program, set deadlines and the criteria for Settlement Class Members to submit claims, requests for exclusions and objections, set

deadline for Plaintiffs' and Class Counsel to submit motions in support of final approval of the Settlement and set the Final Approval Hearing for May 5, 2022. *See* ECF No. 252.

24. Based on our experience and knowledge about this case, Class Counsel have weighed the benefits of the Settlement against the inherent risks, complexities, and expense of continued litigation. We believe that the proposed Settlement is fair, reasonable, and adequate and supported by Rule 23(e) and the *Reed* elements. Class Counsel further submits that their request for an award of attorneys' fees and reimbursement of expenses is reasonable and compliant with Rules 23(e) and (h) and the *Johnson* factors.

### **GSA's Time and Expenses**

25. As of December 9, 2022, the attorneys and staff timekeepers at GSA have billed **2,081.1 hours**, for a total lodestar, during that time, of **\$1,173,882**. This information is derived directly from GSA's time records, which are prepared contemporaneously and maintained by GSA in the ordinary course of business. GSA will also have to spend professional time working on this matter going forward, including seeking final approval of the Settlement, communicating with the Settlement Administrator to complete the Settlement Notice Program, communicating with American's counsel and the Settlement Administrator to resolve and disputes concerning Settlement Class Member claims, working with American and the Settlement Administrator to distribute the Settlement refunds, communicating with Settlement Class Members, and implementing the Settlement if it is approved. In advance of the Final Approval Hearing scheduled for May 5, 2023, Class Counsel will supplement their submissions in support of the motions for final approval and an award of attorneys' fees to provide the Court with current information.

26. Class Counsel prosecuted this case on a purely contingent basis, agreeing to advance all necessary expenses and that they would only receive a fee if there was a recovery.



27. Below is a summary listing each timekeeper for which GSA is seeking compensation for legal services in connection with this litigation, the hours each individual has expended as of December 9, 2022, both by task category and in total, and the hourly rate at which compensation is sought for each individual.

<b>NAME</b>	<b>INVESTIGATION AND PLEADING</b>	<b>MOTIONS</b>	<b>DISCOVERY</b>	<b>TRIAL PREPARATION</b>	<b>MEDIATION AND SETTLEMENT</b>
Oren Giskan	26.8	237.8	396.3	129.9	137.3
Amy Robinson	9.4	263	153.6	10.9	22.2
David O'Brien	2.1	185.2	159.6	90.8	14
Meghan Brophy / Julia Surgenor	5.2	85	146.8	3.5	1.7

<b>NAME</b>	<b>TITLE</b>	<b>HOURLY RATE</b>	<b>TOTAL HOURS</b>	<b>TOTAL</b>
Oren Giskan	Partner	\$750	928.1	\$696,075
Amy Robinson	Counsel	\$525	459.1	\$241,027.50
David O'Brien	Associate	\$425	451.7	\$191,972.50
Meghan Brophy / Julia Surgenor	Paralegal	\$185	242.2	\$44,807
		<b>TOTALS</b>	2081.1	\$1,173,882

28. All professionals who worked on this matter recorded their time contemporaneously with the work they performed. Upon request by the Court, I will submit my firm's contemporaneous billing records *in camera*.

29. Class Counsel's rates, used in calculating the lodestar here, are in line with prevailing market rates for lawyers with comparable experience and expertise, have been approved by federal courts throughout the country.

30. GSA has also incurred \$58,968.25 in un-reimbursed expenses that were necessarily incurred in connection with the prosecution and resolution of this litigation. This amount includes: travel and meals; e-discovery fees; legal research; deposition fees; mediation fees; fees associated with notice of class certification; and postage. The following is a breakdown of the expenses for which GSA seeks reimbursement in this matter:

<b>Expense</b>	<b>Amount</b>
Travel and Meals	\$851.65
E-Discovery Vendor	\$3,128.85
Legal Research/Database	\$1,464.00
Deposition/Court Reporter Fees	\$15,844.28
Mediation Fees	\$9,500.00
Notice of Class Certification	\$27,883.11
Postage	\$296.36
<b>Total Expenses</b>	<b>\$58,968.25</b>

31. Upon request by the Court, receipts documenting all of the above expenses will be submitted *in camera*.

32. The foregoing expenses were incurred solely in connection with this litigation and are reflected in GSA's books and records as maintained in the ordinary course of business. These books and records are prepared from invoices, receipts, expense vouchers, check records and other records, and are an accurate record of the expenses incurred in this case. The above expense numbers do not include certain internal costs that GSA incurred but for which GSA does not seek reimbursement, including telephone costs.

33. Tusa P.C.'s lodestar as of December 9, 2022 was \$289,200.00, comprising 385.6 hours at \$750 per hour.

34. Tusa P.C.'s expenses as of December 9, 2022 were \$1,238.95.

35. Lief Cabraser Heimann & Bernstein LLP's lodestar as of December 13, 2022 was \$513,484.50, comprising 810.9 hours.

36. Lief Cabraser Heimann & Bernstein LLP's expenses as of December 13, 2022 were \$5,443.30.

37. Sbaiti & Company, PLLC's lodestar as of December 14, 2022 was \$116,115, comprising 204.9 hours.

38. Sbaiti & Company, PLLC's expenses as of December 14, 2022 were \$738.61.

39. Mark A. Alexander, P.C.'s lodestar as of December 15, 2022 was \$43,731, comprising 77.66 hours.

40. DeBlase Brown Eyerly LLP's lodestar as of December 14, 2022 was \$29,995, comprising 54.8 hours.

41. DeBlase Brown Eyerly LLP's expenses as of December 14, 2022 were \$1,006.88.

42. The total lodestar for all Class Counsel is \$2,166,407.50.

43. The total fees and expenses for all Class Counsel is \$67,395.99.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at New York, New York, this 16th day of December, 2022.

Respectfully submitted,

By: /s/ Oren S. Giskan

Oren S. Giskan