

1 LARRY C. RUSS (SBN 82760)
lruss@raklaw.com
2 NATHAN D. MEYER (SBN 239850)
nmeyer@raklaw.com
3 RUSS AUGUST & KABAT
12424 Wilshire Boulevard, 12th Floor
4 Los Angeles, California 90025
Telephone: (310) 826-7424
5 Facsimile: (310) 826-6991

DORIAN S. BERGER (SBN 264424)
dberger@olavidunne.com
DANIEL P. HIPSKIND (SBN 266763)
dhipskind@olavidunne.com
OLAVI DUNNE LLP
1880 Century Park East, Ste. 815
Los Angeles, California 90067
Telephone: (213) 516-7900
Facsimile: (213) 516-7910

6 MICHAEL W. SOBOL (SBN 194857)
msobol@lchb.com
7 NICHOLAS R. DIAMAND (*Pro Hac Vice*)
ndiamand@lchb.com
8 MELISSA GARDNER (SBN 289096)
mgardner@lchb.com
9 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
10 San Francisco, CA 94111
Telephone: (415) 956-1000
11 Facsimile: (415) 956-1008

12 *Class Counsel*

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 PAUL PERKINS, PENNIE SEMPELL, ANN
BRANDWEIN, ERIN EGGERS, CLARE
18 CONNAUGHTON, JAKE KUSHNER,
NATALIE RICHSTONE, NICOLE CROSBY,
19 and LESLIE WALL, individually and on
behalf of all other similarly situated,

20 Plaintiffs,

21 v.

22 LINKEDIN CORPORATION,

23 Defendant.

Case No. 13-CV-04303-LHK

**DECLARATION OF NICHOLAS
DIAMAND IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, LITIGATION
COSTS, AND INCENTIVE AWARDS**

HEARING

Judge: Hon. Lucy H. Koh
Date: February 11, 2016
Time: 1:30 p.m.
Location: Courtroom 8 – 4th Floor

1 I, Nicholas Diamand, hereby declare:

2 1. I am a partner in the law firm of Lief, Cabraser, Heimann & Bernstein, LLP
3 (“LCHB”), which, together with Russ August & Kabat PC, and Olavi Dunne LLP, serves as
4 Class Counsel in this action. I am admitted *pro hac vice* to practice before this Court, and I am a
5 member in good standing of the New York State Bar. I submit this Declaration in support of the
6 Plaintiffs’ Motion for Attorneys’ Fees, Litigation Costs, and Incentive Awards. I have personal
7 knowledge of the matters set forth herein, and could and would testify competently thereto if
8 called upon to do so.

9 **I. Qualifications and Assignments of LCHB Attorneys and Staff**

10 2. Founded in 1972, LCHB is one of the oldest, largest and most successful law firms
11 in the country representing plaintiffs in class actions. A copy of LCHB’s firm resume, which
12 describes the firm’s experience in class action and other complex litigation, can be found at
13 <http://www.lchbdocs.com/pdf/firm-resume.pdf>, and is not attached hereto given its length. This
14 resume is not a complete listing of all cases in which LCHB has been class counsel or otherwise
15 counsel of record.

16 3. The primary LCHB attorneys who have worked on this matter are LCHB partner
17 Michael W. Sobol, LCHB associate Melissa Gardner and me, with assistance from other LCHB
18 attorneys, paralegals, and staff.

19 4. I am based in LCHB’s New York City office. I am admitted to practice in the
20 following courts: U.S. District Court: Southern, Eastern, Northern, and Western Districts of New
21 York; US. Court of Appeals, Second and Seventh Circuit; and the U.S. Supreme Court. I am also
22 a practicing solicitor and am admitted to the courts of England and Wales. I received my legal
23 education at the College of Law in London, England and from Columbia University School of
24 Law where I obtained my LL.M. I received my B.A. from Columbia University.

25 5. My primary duties in this litigation included representing plaintiffs at case
26 management conferences, developing case and discovery strategy, drafting, reviewing and editing
27 pleadings, researching issues relating to class certification, analyzing potential damages,
28

1 preparing for mediations, including associated briefing, negotiating the settlement and settlement
2 papers, and overseeing Class Counsel's settlement approval and implementation efforts.

3 6. Michael W. Sobol is a 1989 graduate of Boston University School of Law, and
4 practiced law in Massachusetts from 1989 to 1997. From 1995 through 1997, he was a Lecturer
5 in Law at Boston University School of Law. In 1997, he left his position as partner in the Boston
6 firm of Shafner, Gilleran & Mortensen, P.C. to join LCHB where he has almost exclusively
7 represented plaintiffs in consumer protection class actions. He has been a partner with LCHB
8 since 1999 and, since 2002, has been the chair of LCHB's consumer protection practice group.
9 He has served as plaintiffs' class counsel in numerous nationwide consumer class action cases.
10 Mr. Sobol's responsibilities in this case primarily, but not exclusively, have focused on Plaintiffs'
11 litigation and settlement strategy.

12 7. Melissa Gardner received her J.D. from Harvard Law School in 2011, and is an
13 associate at LCHB. During her time at LCHB, Ms. Gardner's practice has centered on
14 representing plaintiffs in consumer and other complex actions. Ms. Gardner's primary duties in
15 this litigation included conducting legal research relating to Plaintiffs' claims and editing
16 amended complaints, drafting portions of Plaintiffs' Opposition to LinkedIn's Second Motion to
17 dismiss, conducting legal research relating to damages and class certification, and assisting with
18 the settlement approval and implementation efforts.

19 8. LCHB has a team of paralegals that assist in the litigation of its cases, with the
20 level of staffing depending on the size and needs of the particular case. In this case, Miriam
21 Gordon has been the primary LCHB paralegal assigned to this matter. Ms. Gordon is a 1998
22 graduate of William Smith College. Ms. Gordon's tasks in this litigation have included the
23 following: conducting factual investigation, assisting with filings, maintaining LCHB's case file,
24 preparing materials for hearings and mediations, and corresponding with Class Members, most
25 recently during the settlement implementation process.

1 **II. Overview of LCHB's Efforts in this Litigation**

2 **A. Contingent Nature of Action**

3 9. This matter has required LCHB to spend time on this litigation that could have
4 been spent on other matters. In addition to a substantial percentage of my time, this litigation has
5 also required considerable work by other lawyers, paralegals, and staff at LCHB that could have
6 otherwise been spent on other fee-generating work.

7 10. The time that LCHB has spent on this litigation has been completely contingent on
8 the outcome. LCHB has not been paid for any of its time spent on this litigation, nor has it been
9 reimbursed for any of its expenses incurred in this litigation. Because LCHB undertook
10 representation of this matter on a contingency-fee basis, LCHB has accepted the risk of
11 expending substantial costs and time in litigating the action without any monetary gain in the
12 event of an adverse judgment.

13 **B. LCHB's Lodestar**

14 11. LCHB has maintained contemporaneous time records since the commencement of
15 this action. Through the date of this declaration, LCHB has worked a total of 1,186.4 hours, as of
16 November 29, 2015, with a total lodestar of \$639,593.00.

17 12. Attached hereto as **Exhibit A** is a summary listing each lawyer, paralegal, and
18 staff member for which LCHB is seeking compensation for legal services in connection with this
19 action, the hours by task each individual has expended as of November 29, 2015, and the hourly
20 rate at which compensation is sought for each individual. LCHB is not seeking compensation for
21 legal services provided by lawyers, paralegals or staff who billed five hours or less to this matter.

22 13. For any individuals who have left the employ of LCHB, the hourly rate at the time
23 when their employment concluded is used. For all others who are still employed by LCHB, their
24 current hourly rate is used.

25 14. All attorneys and staff at LCHB are instructed to maintain contemporaneous time
26 records reflecting the time spent on this and other matters. The regular practice at LCHB is for all
27 attorneys and staff to keep contemporaneous time records, maintained on a daily basis, and
28

1 describing tasks performed in 0.1 hour increments. Firm policy requires all staff to enter their
2 time into an electronic timekeeping system on a daily basis. Mr. Sobol and I have reviewed and
3 audited the time on a regular basis.

4 15. LCHB's lodestar will grow as we continue to finalize the settlement process and
5 close the litigation. The claims period will last for several months, and LCHB's commitment of
6 time and labor to this case will continue past that date. LCHB will oversee aspects of the claims
7 resolution process, including assisting Class Members with individual inquiries. Based on our
8 firm's experience, these responsibilities generally require considerable further expenditure of time
9 from Class Counsel.

10 16. In addition, based upon my prior complex litigation and class action experience, I
11 believe that the amount of time expended by LCHB in connection with this litigation was
12 reasonable and that the lawyers here contributed to the ultimate result achieved for the Class.

13 **C. Overview of Work Performed**

14 17. LCHB first entered an appearance in this litigation on August 8, 2014 (Dkt. No.
15 51). LCHB, along with Russ August & Kabat, researched and drafted the Plaintiffs' Second and
16 Third Amended Complaints (Dkt. Nos. 55, 70), as well as Plaintiffs' Opposition to LinkedIn's
17 motion to dismiss the Second Amended Complaint (Dkt. No. 65). At the time this Settlement
18 was achieved, Plaintiffs' Counsel was preparing to notice the depositions of eight senior LinkedIn
19 employees and to propound discovery in support of Plaintiffs' class certification motion.

20 18. *Supplemental Case Investigation and Drafting the Amended Complaints.* LCHB
21 spent 100.7 hours on initial case investigation. Such investigation included the following:
22 Conducting extensive factual and legal research into the merits of the claims; conducting research
23 on the Defendant; discussing joint prosecution of the action with co-counsel; and drafting,
24 revising, and filing the amended complaints.

25 19. *Motions Practice.* LCHB spent 310.9 hours on motions practice. LCHB played a
26 significant role in drafting Plaintiffs' Opposition to LinkedIn's Second Motion to Dismiss.
27 LCHB also spent time conducting legal research relating to class certification; developing a class
28

1 certification strategy, and drafting affirmative discovery and deposition notices (which were not
2 served due to the settlement).

3 20. *General Case Management/Statements/Conferences.* LCHB spent 163.4 hours on
4 case management. Such work included meeting and conferring with defense counsel on case
5 management statements, drafting case management statements, attending case management
6 hearings, coordinating with co-counsel on case management, and organizing and maintaining the
7 case file.

8 21. *Attorney Meetings on Case Strategy.* LCHB spent 135.7 hours meeting with co-
9 counsel and internally among LCHB attorneys to discuss general case strategy.

10 22. *Settlement.* LCHB spent 475.7 hours negotiating and implementing the settlement.
11 Such time included reviewing and editing the mediation briefs; discussing the Plaintiffs'
12 mediation strategy with co-counsel; attending the in-person mediations before the Honorable A.
13 Howard Matz (ret.) in Los Angeles, California on August 26, 2014, and before the Honorable
14 Antonio Piazza (ret.) in San Francisco, California, on January 13, 2015; analyzing LinkedIn's
15 settlement proposals; crafting, along with co-counsel, Plaintiffs' settlement proposals, and
16 reviewing and revising the settlement documents; and working on the settlement implementation
17 process pursuant to the Court's Order Granting Preliminary Approval of the Proposed Settlement
18 (Dkt 106).

19 **D. Careful Assignment of Work**

20 23. During the course of this litigation, tasks were consistently delegated among
21 partners, associate attorneys, paralegals, and other staff according to their complexity. The work
22 performed by associate attorneys, particularly Ms. Gardner, was work that required sufficient
23 knowledge of legal concepts which, but for her efforts, I or another partner would have had to
24 perform. Ms. Gordon, the paralegal assigned to this case, is qualified and has the requisite
25 experience to manage case files, assist with case filings and correspond with Class members. I
26 and other Class Counsel therefore made every effort to litigate this efficiently by reducing
27 duplication of effort and assigning work to the lowest billing timekeepers where feasible.
28

1 24. I worked closely with co-counsel to divide tasks, ensure efficient case
2 management, and prevent duplication of efforts. By assigning specific tasks among firms, we
3 were able to avoid replicating work.

4 **E. LCHB’s Costs**

5 25. LCHB maintains all books and records regarding costs expended on each case in
6 the ordinary course of business, which books and records are prepared from expense vouchers
7 and check records. I have reviewed the records of costs expended in this matter.

8 26. LCHB has incurred \$30,271.31 in expenses. Such costs include LCHB’s
9 proportional contributions to mediation fees and consultant fees, (\$8,630.00); filing fees
10 (\$341.00); travel costs including airfare, hotels, parking, taxis, and meals associated with
11 hearings, mediations, and meetings among counsel (\$19,464.19); other hard costs such as
12 research on LEXIS, Westlaw, and PACER (\$831.13); and Federal Express, messenger, or process
13 server charges (\$1,004.99). A summary listing and chart itemizing LCHB’s expenses incurred in
14 connection with this litigation is attached hereto as **Exhibit B**.

15 **III. The Class Representatives**

16 27. The Class Representatives have expended substantial time and effort in assisting
17 Class Counsel with the prosecution of the Class’s claims, including relating the details of their
18 embarrassment as a result of LinkedIn’s alleged conduct, preserving relevant documentation and
19 evidence for discovery, staying abreast of events in the litigation and providing their opinions on
20 the proposed settlement, and, in some cases, attending and participating in the parties’ mediations.

21
22 I declare under penalty of perjury that the foregoing is true and correct and that this
23 Declaration was signed in New York, New York on November 30, 2015.

24
25 
26 Nicholas Diamand

EXHIBIT A

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
--

Report created on 11/30/2015 01:22:33 PM

From
Toinception
11/30/15**Matter Number: 3675-0001 LINKEDIN CORPORATION - General Matter****PARTNER**

NAME	HOURS	RATE	TOTAL
MICHAEL SOBOL	149.60	850.00	127,160.00
NICHOLAS DIAMAND	514.30	600.00	308,580.00

ASSOCIATE

NAME	HOURS	RATE	TOTAL
MELISSA GARDNER	460.30	395.00	181818.50

PARALEGAL/CLERK

NAME	HOURS	RATE	TOTAL
NIKKI BELUSHKO	6.80	325.00	2,210.00
BARROWS			
TODD CARNAM	5.50	325.00	1,787.50
MIRIAM GORDON	33.60	270.00	9,072.00

OF COUNSEL

NAME	HOURS	RATE	TOTAL
NICHOLAS DIAMAND	16.30	550.00	8,965.00
	MATTER TOTALS	1186.4	639,593.00

Case investigation/drafting Complaints

Name	HOURS	RATE	TOTAL
M. Sobol	20.1	850.00	17,085.00
N. Diamand	27.8	600.00	16,680
N. Diamand	7.7	550.00	4,235
M. Gardner	42.9	395.00	16,945.50
T. Carnam	0.6	325.00	195.00
N. Belushko Barrows	0.3	325.00	97.5
M. Gordon	1.3	270.00	351.00
Total	100.7		55,589.00

Motion Practice

Name	HOURS	RATE	TOTAL
M. Sobol	12.1	850.00	10,285.00
N. Diamand	106.5	600.00	63,900.00
M. Gardner	173.6	395.00	68,572.00
T. Carnam	3.7	325.00	1,202.50
N. Belushko Barrows	6.0	325.00	1,950.00
M. Gordon	9.0	270.00	2,430.00
Total	310.9		148,339.50

Case Management

Name	HOURS	RATE	TOTAL
M. Sobol	21.5	850.00	18,275.00
N. Diamand	94.4	600.00	56,640.00
M. Gardner	41.8	395.00	16,511.00
N. Belushko Barrows	0.5	325.00	162.50
M. Gordon	5.2	270.00	1,404.00
Total	163.4		92,992.50

Attorney Meetings

Name	HOURS	RATE	TOTAL
M. Sobol	14.6	850.00	12,410.00
N. Diamand	89.6	600.00	53,760.00
N. Diamand	8.6	550.00	4,730.00
M. Gardner	22.9	395.00	9,045.50
Total	135.7		79,945.50

Settlement

Name	HOURS	RATE	TOTAL
M. Sobol	81.3	850.00	69,105.00
N. Diamand	196	600.00	117,600.00
M. Gardner	179.1	395.00	70,744.50
T. Carnam	1.2	325.00	390.00
M. Gordon	18.1	270.00	4,887.00
Total	475.7		262,726.50

Grand Total	1186.4		639,593.00
--------------------	---------------	--	-------------------

EXHIBIT B

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 11/30/2015 12:04:05 PM

From = inception

To 11/30/15

LINKEDIN CORPORATION

Matter Number: 3675-0001

Computer Research	\$831.13
Experts/Consultants	\$3,630.00
Federal Express/Messenger	\$1,004.99
Mediation Expenses	\$5,000.00
Filing Fees	\$341.00
Travel	\$19,464.19
Total Matter Costs:	\$30,271.31