

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JAMES CONTANT, <i>et al.</i> , Plaintiffs, v. BANK OF AMERICA CORPORATION, <i>et al.</i> , Defendants.	No. 17-cv-03139-LGS (related to 13-cc-7789-LGS) ECF CASE
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**DECLARATION OF KYLE G. BATES ON BEHALF OF SCHNEIDER WALLACE
COTTRELL KONECKY LLP IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND
INCENTIVE AWARDS FOR CLASS REPRESENTATIVES**

I, Kyle G. Bates, declare as follows:

1. I am an Associate Attorney in the law firm of Schneider Wallace Cottrell Konecky ("SWCK"). My firm is counsel of record for Plaintiffs in this matter.
2. I have been actively involved in prosecuting this action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein. If called upon and sworn as a witness, I could competently testify thereto.
3. I submit this Declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees and Costs in connection with the Parties' settlement, which was preliminarily approved on July 17, 2020. ECF No. 441.
4. My firm, along with Berger & Montague PC, Peiffer Wolf Carr & Kane APLC, and McCulley McCluer PLLC (collectively "Plaintiffs' Counsel"), have diligently prosecuted this case since it was filed in April 2017.
5. Litigating this case required the efforts of multiple attorneys and other professionals

at SWCK, as described below. The core attorneys working on this case were myself, Garrett Wotkyns, and Matthew Weiler. We efficiently divided tasks in this case as the needs of the case and other staffing demands required, including the supervision a team of junior attorneys working under our supervision.

6. The schedule below is a summary of the time incurred by legal professionals at SWCK in this matter. This schedule was generated from SWCK's computerized time-keeping system. Attorneys and paralegals at SWCK input their time into this system at or near the time they perform the tasks associated with that time. As shown in the schedule SWCK has incurred \$607,748.50 in attorneys' fees in this matter based on SWCK's 2020 standard hourly rates. A detailed listing of each time entry incorporated into the schedule is available and will be produced at the request of the Court.

NAME	POSITION	HOURS	RATE	LODESTAR
Garrett W. Wotkyns	Partner	280.1	\$925.00	\$259,092.50
Kyle G. Bates	Associate	73	\$680.00	\$49,640.00
Matthew S. Weiler	Associate	36.6	\$800.00	\$29,280.00
Ryan M. Hecht	Junior Attorney	68.3	\$680.00	\$46,444.00
William T. Stewart	Junior Attorney	99.3	\$680.00	\$67,524.00
Ryan A. Bonner	Junior Attorney	81	\$680.00	\$55,080.00
James M. Dion	Junior Attorney	42.4	\$680.00	\$28,832.00
Edgar P. Olivares	Junior Attorney	16.2	\$680.00	\$11,016.00
John M. Gaudette	Junior Attorney	19.5	\$600	\$11,700

Kelle J. Winter	Paralegal	163.8	\$300.00	\$49,140.00
TOTAL		880.20		\$607,748.50

7. SWCK performed the following work in this litigation: taking discovery of Defendants and third-parties; motion practice concerning disputes with FXCM; document review and preparation for and participation in depositions of key witnesses as appropriate.

8. I graduated from law school in 2014 and have been engaged in the practice of complex civil litigation since then, including as counsel in several antitrust class actions similar to the above-captioned matter. Thus, I have six years of experience practicing complex civil litigation.

9. Garrett W. Wotkyns is no longer associated with SWCK. During the time that this case was ongoing Mr. Wotkyns was a partner at SWCK. He has been practicing complex civil litigation for twenty-one years.

10. William Stewart, Ryan Hecht, Ryan Bonner, James Dion, Edgar Olivares, and John Gaudette are six attorneys at SWCK who assisted with reviewing, analyzing, and organizing the voluminous documents produced by Defendants. They are all junior attorneys.

11. Matthew Weiler is an associate at SWCK who joined the firm during the pendency of this litigation. He has been practicing complex civil litigation for fifteen years.

12. Kelle J. Winter is an experienced paralegal who assisted SWCK's attorneys in this matter.

13. I have exercised billing judgment with respect to the time reflected in the above schedule. For example, I eliminated time entries for individuals who had a *de minimis* role in this case and time entries incurred on this motion for attorneys' fees. All time reflected in the above schedule was reasonably incurred for the benefit of the class.

14. The hourly rates reflected in the above schedule are the standard 2020 hourly rates charged by SWCK for those attorneys who are still associated with SWCK. For those attorneys who have left SWCK, I have imputed an hourly rate based on the 2020 rates assigned to attorneys at SWCK with a similar level of experience. For paralegals, I have used a uniform hourly rate of \$300 per hour.

15. The hourly rates at SWCK are set through a process of continual monitoring of prevailing market rates charged by both defense and plaintiffs' law firms, for individuals with similar levels of skill and experience who are doing comparable work as SWCK's attorneys and staff. SWCK gathers this information from surveys, the review of other fee applications, and conversations with attorneys in the Northern California billing market. SWCK's standard rates for 2019 were approved by Judge Broderick of this District in *Whitley v. JPMorgan, et al.* Case No. 12-cv-2548, an ERISA class action. SWCK's standard rates have routinely been approved in its home court, the United States District Court for the Northern District of California. SWCKW's have been continually approved year after year. Most recently, they were approved in *Nevarez et al. v. Forty Niners Football Company LLC et al.*, Case No. 5:15-cv-07013-LHK (2020), ECF No. 416 at 11 (July 23, 2020). Historically SWCK's rates have been approved over the past several years in *Knapp v. Art.com*, No. 3:16-cv-00768-WHO (2017) and in *Villalpando v. Excel Direct, Inc.*, 12-cv-04137, 2016 WL 7740854, *1 (2016).

16. In addition to the foregoing class actions in which SWCK was appointed lead or co-lead counsel, SWCK has substantial experience as lead or co-lead counsel in antitrust class actions. Specifically, SWCK recently served as co-lead counsel in *In Re Anadarko Basin Oil and Gas Lease Antitrust Litigation*, Case No. 16-cv-00206 (W.D. Okla.) and *In Re Cox Enterprises Inc. Set-Top Cable Television Box Antitrust Litigation*, Case No. 09-ml-02048 (W.D. Okla.), both of which have since been resolved. SWCK is currently co-lead counsel in *In Re Tether and Bitfinex Crypto Asset Litigation*, Case No. 1:19-cv-09236, which is currently pending in this District.

17. The schedule below is a summary by category of the expenses incurred by SWCK in

this matter for which SWCK seeks reimbursement. All expenses incurred by SWCK are recorded in a computerized system as invoices and requests for expense reimbursement supported by receipts are received and paid. SWCK incurred a total of \$11,349.03 in litigation costs in this matter (excluding its contributions to the litigation fund). A description of each cost item incorporated into the schedule as well as supporting documentation, is available and will be produced at the request of the Court.

CATEGORY	AMOUNT
Commercial Copies	\$1,484.50
Computer Research	\$602.25
Court Fees and Transcripts	\$1,992.00
Postage/Express Delivery/Messenger	\$121.19
Travel: Air Transportation, Ground Travel, Meals, Lodging, etc.	\$6,502.85
Database Services	\$646.24
TOTAL	\$11,349.03

18. I have reviewed every expense entry associated with this matter and have excluded certain expenses from the above schedule in the exercise of billing judgment. All expenses reflected in the above schedule were reasonably incurred for the benefit of the class.

19. These expenses are the type of attorney disbursements that are typically reimbursed separately from attorneys' fees by clients.

20. SWCK, along with the rest of Plaintiffs' Counsel, took on this matter on a purely

contingent basis. SWCK has incurred attorneys' fees and advanced expenses for this matter for several years, with no guarantee of payment of these attorneys' fees or reimbursement of these expenses.

21. I declare under penalty of perjury that the foregoing is true and correct. Executed on September 21, 2020.

Dated: September 21, 2020

Respectfully submitted,

/s/ Kyle G. Bates

Kyle G. Bates

SCHNEIDER WALLACE COTTRELL

KONECKY LLP

2000 Powell Street, Suite 1400

Emeryville, CA 94608

Tel: (415) 421-7100

Fax: (415) 421-7105

kbates@schneiderwallace.com

Counsel for Plaintiffs and the Proposed Classes