

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

-----	x	MDL No. 1409
	:	M 21-95
IN RE	:	
	:	
CURRENCY CONVERSION FEE	:	
ANTITRUST LITIGATION	:	
	:	
	x	Index No. 05 CV 7116 (WHP)
THIS DOCUMENT RELATES TO:	:	
	:	
ROBERT ROSS, et al.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	Jury Trial Demanded
	:	
BANK OF AMERICA, N.A, et al.,	:	
	:	
Defendants.	:	
	:	
-----	x	

**DECLARATION OF DENNIS STEWART IN SUPPORT OF HULETT HARPER
STEWART LLP's APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT
OF EXPENSES**

I, Dennis Stewart, declare as follows:

1. I am a partner of the law firm of Hulett Harper Stewart, LLP (the "Hulett Harper Stewart Firm"). My firm has acted as counsel to Class Plaintiffs in this action.
2. I am submitting this Declaration in support of Class Plaintiffs' application for an award of attorneys' fees for services rendered in the above-captioned litigation and for reimbursement of costs and expenses incurred in connection with this litigation.
3. The Hulett Harper Stewart Firm's compensation for the services rendered on behalf of Plaintiffs and the Settlement Class is wholly contingent, and the firm has been

completely at risk that it would not receive any compensation for prosecuting these claims against the Defendants.

4. All attorneys, paralegals and clerks at my firm are instructed to keep contemporaneous time records reflecting the time spent on this and other matters.

5. Attached as Exhibit A hereto is a précis of the Hulett Harper Stewart Firm's qualifications and accomplishments.

6. During the period from the inception of the case through May 1, 2010, the Hulett Harper Stewart Firm performed 363.55 hours of work in connection with this litigation. Specifically, the Hulett Harper Stewart Firm conducted investigative and legal research, drafted pleadings, participated in motion practice, conducted discovery, participated in case strategy discussions, and settlement negotiations. More specifically, our office worked on the Rule 26(f) reports, motions to dismiss, review of discovery in prior cases, preparation of factual and strategic analyses, discovery meet and confers, and preparation of motions to compel. We also participated in the settlement process including the formulation of settlement positions and engaging in settlement negotiations.

7. The total lodestar amount for attorney/professional support staff time based on the firm's rates, at the time of accrual, is \$159,155.25. Attached hereto as Exhibit B is a schedule containing a detailed summary indicating amount of time – by category – spent by the partners, associates and other professional support staff of my firm who were involved in this litigation, the number of hours worked, their rates and their respective lodestar values. The rates at which the firm seeks compensation are its usual and customary hourly rates charged for its attorneys' and professionals' services in similar complex class action litigation and do not include charges for expense items, which are billed separately. The schedule was prepared from

contemporaneous, daily time records regularly prepared and maintained by my firm. None of the time included in this fee application represents any work done in connection with preparing this Declaration or otherwise related to petitioning for award of attorneys' fees or seeking reimbursement of costs.

8. All of the services performed by the Hulett Harper Stewart Firm in connection with this litigation were reasonably necessary in the prosecution of this case. There has been no unnecessary duplication of services for which the firm now seeks compensation.

9. During the period from inception of this litigation through May 1, 2010, the Hulett Harper Stewart Firm incurred unreimbursed expenses in connection with the prosecution of this litigation in the sum of \$3,844.42. These expenses were reasonably and necessarily incurred in connection with this litigation and are detailed in the chart attached as Exhibit C.

10. The expenses incurred are reflected on the books and records of the Hulett Harper Stewart Firm. These books and records are prepared from checks, expense vouchers and other source materials which are regularly kept and maintained by the firm and accurately represent the expenses incurred.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of May, 2010.


DENNIS STEWART

Exhibit A

HULETT HARPER STEWART

LLP

525 B Street, Suite 760
San Diego, California 92101
office 619.338.1133
fax 619.338.1139
www.hulett.harper.stewart.com

FIRM RESUME

Hulett Harper Stewart LLP was established in July 2000 to provide quality representation to individual and corporate clients in the areas of complex business, securities, antitrust, consumer, and class litigation and arbitration. Our three partners bring to the firm more than 80 years of experience as counsel in numerous large, high-visibility cases.

The partners at Hulett Harper Stewart LLP have considerable experience acting as lead trial and principal counsel in numerous antitrust, securities and consumer class and individual actions. Hulett Harper Stewart has obtained a number of multi-million dollar verdicts and settlements for its individual and class clients, including a \$127.5 million settlement with Edward Jones & Co. involving an alleged unlawful "revenue sharing" program; a \$60 million settlement of a class action against A.G. Edwards for breach of fiduciary duty claims; a \$336 million settlement with Visa, Mastercard and major credit card issuing banks relating to foreign currency conversion practices; a \$30 million settlement in *Stenovich v. Eccles*, a breach of fiduciary duty class action challenging the fairness of a bank acquisition; an \$11 million settlement after trial commenced in an action by a bankruptcy trustee against a debtor's former outside auditors; a full recovery for an elderly individual who lost over \$40 million as part of Wall Street's largest single-broker fraud case in history; and a \$22.5 million settlement for individual clients from Worldcom and the officers and directors of a WorldCom controlled company. The firm also played substantial roles in the successful prosecution of class securities fraud actions against Broadcom, Inc., which settled for \$150 million on the eve of trial, and against Quest Software for \$29.4 million.

The key strengths of our firm include:

Attorney Experience – Our partners have decades of collective practice in significant complex litigation, arbitration and class action representation, and have been recognized for diligence, energy, skill and imagination.

Case Success – As lead or co-lead counsel, we have both litigated cases to verdict and secured or participated in securing hundred of millions of dollars in class action and other settlements in both the courts and in arbitration.

Client Focus – Actions we have brought have benefited businesses, classes of consumers, investors and employees – and addressed financial fraud and anticompetitive market practices.

Practice Depth – Our litigation practice combines a solid understanding of antitrust law, consumer and investor protection and corporate governance.

Our mission is to provide high quality legal services and personal attention to our clients in a select number of cases. We place our clients' interests first and employ legal strategies designed to achieve for them the most favorable outcome possible.

Here is a sample of some of the results we have achieved and significant cases in which we are currently involved:

Currency Conversion Cases:

In *Schwartz v. Visa*, Dennis Stewart was principal trial counsel in a California consumer action seeking to recover inadequately disclosed currency conversion fees charged by Visa and MasterCard. After a six-month trial, judgments worth hundreds of millions of dollars were entered. Hulett Harper Stewart was also one of the principal counsel for certified classes prosecuting a separate federal court case in New York.

A \$336 million dollar settlement was reached. A similar nationwide consumer class action against American Express also litigated by Hulett Harper Stewart was successfully resolved, resulting in a settlement of \$75 million.

Enriquez v. Edward D. Jones & Co.
(St. Louis City Circuit Court, Missouri):

Hulett Harper Stewart was co-lead class counsel against Edward Jones & Co., one of the largest brokerage firms in the United States in a case which sought the recovery of funds Edward Jones received from mutual funds in exchange for Edward Jones agreeing to recommend those funds as its "preferred funds." A settlement of \$127 million was achieved.

In re Broadcom Corp. Securities Litigation
(C.D. Cal.):

Hulett Harper Stewart played a significant role in the prosecution of this large federal securities class action, which settled within weeks of trial for \$150 million.

Bachman v. A.G. Edwards, Inc.
(St. Louis Circuit Court, Missouri)

Hulett Harper Stewart was co-lead counsel on behalf of a class of persons who maintained brokerage accounts at A.G. Edwards in a case which claimed that the Defendant breached their fiduciary duties by receiving payments from mutual fund companies whose fund shares were held by the Class. A proposed settlement of \$60 million was reached and is awaiting Court approval.

In re Conseco Life Insurance Company Cost of Insurance Litigation
(C.D. Cal.):

Hulett Harper Stewart represented lead-plaintiff and former U.S. Senator Jake Garn and other life insurance policy holders and was on the executive committee prosecuting this nationwide consumer class action. A settlement valued at more than \$300 million was obtained.

Stenovich v. Eccles
(3d Dist. Utah):

The firm represented a class of shareholders in asserting breach of fiduciary duty claims in connection with a proposed merger, which were settled within days of trial for nearly \$30 million.

Guy F. Atkinson, Inc. v. PricewaterhouseCoopers LLP
(N.D. Cal.):

The firm was co-lead trial counsel on behalf of one of the then largest construction companies in America. The case was successfully settled for \$11 million after trial commenced.

Abbott, et al. v. John D. ("Jack") Phillips, et al.
(San Francisco Superior Court):

The firm represented several individuals in a securities fraud action against World Access and Worldcom. A settlement of \$22.5 million was achieved.

Middlesex Retirement System v. Quest Software, Inc.
(C.D. Cal.):

Hulett Harper Stewart was liaison counsel in this securities class action alleging improper backdating of stock option grants. The case settled for \$29.4 million.

These are some of our current cases:

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation
(E.D.N.Y.)

Hulett Harper Stewart is one of the counsel working closely with co-lead counsel prosecuting litigation on behalf of a nationwide class of merchants alleging antitrust violations against Visa, MasterCard and affiliated banks involving interchange fee and related practices.

In re DirecTV Early Cancellation Fee Litigation
(C.D. Cal.):

Hulett Harper Stewart is interim lead counsel in this proposed multi-district consumer protection litigation alleging violation of various state consumer protection laws.

Shames v. Hertz Corp., et al.
(S.D. Cal.):

Hulett Harper Stewart is principal counsel in this antitrust class action concerning rental car fees.

FDIC

Hulett Harper Stewart is currently counsel for the Federal Deposit Insurance Corporation with respect to potential claims arising from the failure of two separate banking entities.

BLAKE MUIR HARPER graduated from the University of Utah College of Law in 1981, where he served as Executive Editor of the Utah Law Review and received an award in a national legal writing competition. He then served as law clerk to the Honorable David K. Winder, U.S. District Judge for the District of Utah. Mr. Harper has directed as lead class counsel prosecution of numerous securities and consumer actions throughout the United States, including *Stenovich v. Eccles* (3d Dist. Ct. Utah) (settled for \$30 million); *In re L.A. Gear Sec. Litig.* (C.D. Cal.) (settled for more than \$50 million); *In re Genentech Sec. Litig.* (N.D. Cal.) (settled for \$29 million); *In re Bonneville Pacific Securities Litigation* (D. Utah) (settled for \$25 million); *In re Network Equipment Technologies Sec. Litig.* (N.D. Cal.) (settled for cash and securities valued in excess of \$23 million); *Cytryn v. Cook*, (N.D. Cal.) (settled for \$19.5 million). He has also obtained a \$2 million settlement in an individual investor arbitration. Mr. Harper was one of the trial counsel in *In re Apple Computer Sec. Litig.*, No. C-84-20198(A)-JW (N.D. Cal.), where in 1991 a jury verdict was obtained against two corporate officers in a case where damages exceeded \$100 million. He played a significant role in prosecuting *In re Broadcom Securities Litigation*, No. SACV 01-275 (GLT) (MLGx) (C.D. Cal.) settled for \$150 million and *Middlesex Retirement System v. Quest Software* (C.D. Cal.), settled for \$29.4 million. He has taught at PLI and Lorman seminars on topics of accountant liability and civil procedure.

KIRK B. HULETT graduated from the University of California San Diego in 1978. Mr. Hulett graduated *cum laude* from the University of San Diego School of Law in 1983, where he was Managing Editor of the University of San Diego Law Reporter. Since 1984, Mr. Hulett has specialized in the representation of plaintiffs in securities and consumer class actions, participating as lead or co-lead counsel in dozens of class actions throughout the country, including *Lincoln Savings* (D. Az.); *Media Vision* (N.D. Cal.); *Home Fed* (S.D. Cal.); and *Gensia Pharmaceuticals* (S.D. Cal.). After a nearly six-month trial in *Lincoln Savings* case, the jury returned a verdict exceeding \$250 million. Mr. Hulett was co-lead trial counsel in a multimillion dollar auditor liability action against *PriceWaterhouseCoopers, LLP* and was lead counsel on behalf of a class against Edward Jones & Company, which recently settled for \$127.5 million. He testified before the California Assembly Business and Professions Committee on the topic of potential regulatory and auditor liability reforms following the Enron financial collapse.

DENNIS STEWART received his Bachelor of Arts from the College of the Holy Cross in 1976 and his Juris Doctor with distinction from Hofstra University in 1981, where he was a member of the Law Review. Between 1981 and 1985 he worked for a major San Diego law firm and engaged in general commercial litigation practice. Between 1985 and 1988, Mr. Stewart served as a trial attorney with the Antitrust Division of the United States Department of Justice. While at the Antitrust Division, Mr. Stewart participated in investigations and trials involving alleged criminal violations of the antitrust and related laws and was lead counsel in the successful prosecution through trial of *United States v. Saft America, Inc.*, No. CD88-99(DRD) (D.N.J.). Mr. Stewart has served as lead counsel, principal counsel and/or trial counsel in numerous antitrust, consumer and securities cases. He was lead trial counsel in *Knapp v. Ernst & Whinney*, 90 F.3d 1431 (9th Cir. 1996), in which a plaintiffs' verdict was returned in a Rule 10b-5 securities fraud class action, and *Hall v. NCAA*, No. 94-2392-KHV (D. Kan.), in which a plaintiffs' verdict of \$30 million

was returned in an antitrust class action. He also served as co-lead trial counsel in *In re Airline Ticket Commission Antitrust Litigation*, MDL 1058, an antitrust class action which settled for \$85 million, *In re Contact Lens Antitrust Litigation*, which settled for \$90 million, and in *In re Lifescan Consumer Litigation*, a consumer class action which settled for \$45 million. Most recently, he was trial counsel in *Pauma Band of Luiseño Mission Indians v. Caesars Entertainment Inc., et al.* in which the jury returned a plaintiff's verdict for \$30 million. He has served as co-lead counsel in the *Carbon Fiber Antitrust Litigation* which resulted in a pre-trial settlement of \$67.5 million and in the *In re Currency Conversion Litigation*, and trial counsel in *Schwartz v. Visa*. He also played a significant role in prosecuting *In re Broadcom Securities Litigation*, No. SACV 01-275 (GLT) (MLGx) (C.D. Cal.), settled for \$150 million. He is a member of the California and New York bars and continues to specialize in antitrust, consumer and other complex litigation. He has served on the Executive Committee of the State Bar of California Antitrust and Unfair Competition Section and of the Association of Business Trial Lawyers and has lectured on antitrust and class action topics for the Practising Law Institute, The American Bar Association Antitrust Section and the California State Bar Antitrust and Trade Regulation Section.

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BRIDGET FOGARTY GRAMME graduated from the University of San Diego School of Law where she received an award for Outstanding Contribution to the California Regulatory Law Reporter for her report on the Medical Board of California. Ms. Gramme graduated cum laude from the University of San Diego and received her Bachelor of Arts in International Relations and Latino Studies. Prior to attaining her Law Degree, she worked at the U.S. Department of State in Washington, DC where she coordinated the Northern Ireland Vital Voices: Women in Democracy initiative for the International Women's Issues office. She is a member of the California Bar, the San Diego County Bar Association, and the Louis M. Welch American Inns of Court. She is also a volunteer attorney for Casa Cornelia Law Center.

SARAH P. WEBER graduated *cum laude* from the University of San Diego School of Law. There, she was honored as the Outstanding Contributor to the California Regulatory Law Reporter for her reporting on the activities of the California Board of Accountancy and the California Department of Corporations. Ms. Weber also served as an extern to Presiding Justice Judith McConnell at the California Court of Appeal, 4th Appellate District Division One. She received her Bachelors of Science with an emphasis in Finance from Northern Arizona University in Flagstaff. Prior to obtaining her law degree, Ms. Weber was a Registered Securities Representative and Investment Advisor. She is a member of the California Bar, the Lawyer's Club of San Diego, the San Diego County Bar Association and the Leadership Development Committee of the San Diego Chapter of the Association of Business Trial Lawyers.

LINDSAY J. FOSTER graduated from the University of San Diego School of Law where she was Vice-Chair of the Appellate Moot Court Board and a semi-finalist in the McLennon Honors Moot Court Competition. Ms. Foster was a recipient of the Kroha

Family Scholarship and completed studies at the University's Institute on International and Comparative Law in Oxford and Florence. She also interned with the Center for Public Interest Law, reporting on the California State Bar and the State Board of Optometry. Ms. Foster graduated cum laude from Pepperdine University and received her Bachelor of Arts in International Studies with an emphasis in European history. She is a member of the California Bar and a volunteer with the Lawyer's Club of San Diego.

Exhibit B

Ross, et al. v. Bank of America, N.A. (USA), et al., No. 05 CV 07116 (WHP)

A related case in *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409, Master File No. M21-95 (S.D.N.Y.)

Firm Name: Hulett Harper Stewart LLP

Reporting Period: Inception through May 1, 2010

*Historical

Categories:

- (1) Factual Investigation
- (2) Discovery
- (3) Pleadings, Briefs & Pretrial Motions
- (4) Court Appearances
- (5) Draft Initial or Amended Complaint
- (6) Client / Shareholder Communications
- (7) Litigation Strategy & Analysis
- (8) Settlement Negotiations, Stipulation, Plan of Allocation
- (9) Trial Preparation & Trial
- (10) Appeal
- (11) Expert Witnesses

Name	1	2	3	4	5	6	7	8	9	Cumulative Hours	Rates	Cumulative Lodestar
Dennis Stewart (P)		43.65	67.40	48.60	4.50	2.00	10.25	6.35	0.40	183.15	\$550-625	\$ 104,203.75
Bridget Gramme (A)		46.50	84.75	5.00			8.75			145.00	\$245-425	\$ 43,477.50
Sarah Weber (A)			16.00							16.00	\$350-395	\$ 5,622.50
Lindsay Foster (A)		13.80					2.10			15.90	\$ 335.00	\$ 5,326.50
Ellen DeWan (PL)			3.50							3.50	\$ 150.00	\$ 525.00
TOTAL:	-	103.95	171.65	53.60	4.50	2.00	21.10	6.35	0.40	363.55		\$ 159,155.25

(P) Partner
 (A) Associate
 (PL) Paralegal

Exhibit C

Ross, et al. v. Bank of America, N.A. (USA), et al., No. 05 CV 07116 (WHP)

A related case in *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409, Master File No. M21-95 (S.D.N.Y.)

Firm Name: Hulett Harper Stewart LLP

Reporting Period: Inception through May 1, 2010

DESCRIPTION	CUMULATIVE EXPENSES
Assessments	\$0.00
Legal Research -- Computer/Lexis/Westlaw	\$208.29
Court Fees	\$0.00
Court Reporters/Transcripts	\$0.00
Experts	\$0.00
In-House Photocopying	\$0.00
Outside Photocopying	\$0.00
Postage/Express Mail/Messenger	\$14.61
Long Distance Telephone/Facsimile	\$1.59
Travel	\$3,619.93
Witness/Service Fees	\$0.00
Other (describe)	\$0.00
TOTALS	\$3,844.42