

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Village Bank, on behalf of itself and
all others similarly situated,

Plaintiff,

v.

Caribou Coffee Company, Inc.,
Bruegger's Enterprises, Inc., Einstein
& Noah Corp., and Einstein Noah
Restaurant Group, Inc.

Defendants.

Case No. 0:19-cv-01640-JNE-HB

**DECLARATION OF
BRYAN L. BLEICHNER
IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND SERVICE AWARD**

I, Bryan L. Bleichner, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am an attorney licensed to practice before the courts of the State of Minnesota and the State of California.¹ I am also admitted to practice before this Court. I am a partner with the law firm of Chestnut Cambronne PA (Chestnut or the Firm), counsel for Plaintiff Village Bank (Plaintiff).²

2. I make this declaration in support of Plaintiff's Motion for An Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award. I have personal knowledge of the matters stated herein and, if called upon, I could, would would, competently testify thereto.

¹ I will provide a Firm resume in conjunction with Plaintiff's Motion for Final Approval of the Settlement.

² All capitalized terms not defined herein have the same meaning as those set forth in the Settlement Agreement. [Dkt. 48-1.]

3. A true and accurate copy of the Settlement Agreement and its attachments was filed with Plaintiff's Unopposed Motion for Preliminary Approval of the Settlement. [Dkt. No. 45.]

4. My Firm served as Plaintiff's counsel and actively participated in the litigation of this from the outset. Karl L. Cambronne and I are appointed as Settlement Counsel. The work performed by my Firm, in addition to other law firms representing Plaintiff, is described below.

5. The tasks include: (a) a factual investigation and analysis in connection with researching and drafting the initial complaint; (b) participation in telephone conferences with co-counsel to discuss case strategy; (c) drafting and negotiating with Defendants' Counsel a Stipulation for Protective Order, a Stipulation for Federal Rule of Evidence 502(d) Order, and a joint Rule 26(f) Report; (d) drafting Rule 45 subpoenas, meeting and conferring with counsel for the subpoena recipients, and reviewing documents produced in response to the subpoenas; (e) drafting highly tailored informal discovery requests and reviewing documents produced by Defendants; (f) responding to Defendants' informal discovery requests and participating in the review of Plaintiff's documents for privilege, (g) researching and drafting a mediation statement, attending mediation, and negotiating a settlement of this action; (h) discussions with co-counsel regarding this action and settlement negotiations of this action, and (i) obtaining preliminary approval of the Settlement from the Court.

6. The Settlement Agreement was reached between the parties after extensive arm's length negotiations, including a full-day, in-person mediation session under the

guidance of the Honorable United States Magistrate Judge Arthur J. Boylan (Ret.), who facilitated the rigorous negotiations. The mediation was highly contested, with counsel for each side advancing their respective arguments zealously on behalf of the best interests of their clients.

7. In agreeing to the Settlement, Plaintiff's Counsel carefully considered a range of additional risks, including: (1) numerous merits issues remained uncertain, such as establishing negligence causation or injury and causation under the Minnesota Plastic Card Security Act; (2) the challenges associated with proving damages on a class-wide basis; (3) obtaining 100% of the data for and establishing a damages model and expert testimony that would ultimately be persuasive to a jury; (4) further developments in the law or the factual record of the case that could undermine the claims of Plaintiff and the class; (5) the risk that a jury might award lower damages than what is provided by the Settlement Agreement or no damages at all; (6) the risk both sides faced that a jury could react unfavorably to the evidence presented; and (7) the uncertainties, risks, expense, and significant delays associated with any appeal that would inevitably be pursued following trial and entry of final judgment.

8. The provisions of the Settlement relating to attorneys' fees and costs, subject to approval by the Court, were raised only after substantive terms of the Settlement were discussed and agreed upon by the parties.

9. After the Court granted preliminary approval, we worked with the Settlement Administrator, Analytics Consulting LLC ("Analytics"), and counsel for Defendants to finalize the notice forms, review the script for the Settlement Hotline, and

edit the content of the Settlement Website. We confirmed with Analytics that 3,802 notices were mailed and the website, phone line, and claims applications were live and usable by August 23, 2020. Analytics also confirmed the placement of a digital advertisement of the Settlement Notice, which was set to run for 30 days. To date, only one Class Member has requested exclusion, and no Class Member has objected to the Settlement or award of attorneys' fees. We will provide the Court with updated information on any objections and requests for exclusion when we file pleadings regarding the motion for final approval of the Settlement by November 1, 2020.

10. This declaration is supported by the accounting records and related material maintained by the counsel litigating this matter and documented in the ordinary course of business. The information was assembled and prepared by my staff and reviewed by me. During my review, I exercised billing judgment and reduced or excluded certain time entries and certain expenses. Time spent preparing this attorneys' fee and expense application was excluded from this declaration. As a result, I believe Plaintiff's counsel's lodestar, and the expenses for which reimbursement is sought, are reasonable in amount and were necessary for the effective and efficient prosecution of this action. I also believe that the expenses submitted are of a type normally charged to and paid by fee-paying clients.

11. As of the latest time and expense records, counsel for Plaintiff have reported working a combined 672.95 hours on the litigation of this matter. Of those hours, 506.50 hours were recorded by my Firm. A summary of the cumulative hours, lodestar, and expenses incurred by all counsel as of August 31, 2020 is attached to this

declaration as Exhibit A. Exhibit A includes a lodestar calculation, which was determined by multiplying hours recorded by the billers' historic hourly rates. For personnel no longer employed by their respective law firms, the lodestar calculation is based on their hourly rates in the final year of employment. Exhibit A was prepared from daily time records regularly prepared and maintained and are available immediately upon request by the Court.

12. The hourly billing rates established for attorneys and staff are the usual and customary rates that have been accepted by courts in other complex or class action litigation, particularly data breach class actions. *See, e.g. In re Anthem, Inc. Data Breach Litig.*, No. 15-MN-2617-LKH, 2018 WL 3960068, at *17 (N.D. Cal. Aug. 17, 2018) (approving partner rates of \$400-\$970/hour; and non-partners, senior attorneys, and associates of \$185-\$850/hour). The billing rates exclude items of expense, which were recorded separately and are set forth in Exhibit B.

13. The expenses in this declaration are reflected in accounting records maintained and held by the law firms that litigated this action. The expenses were prepared from vouchers, receipts, check records, and other source material and are an accurate record of the expenses. Certain categories of expenses, such as photocopies, internet, and other office-related expenses, have been eliminated entirely. Total expenses of \$9,453.38 were necessary and reasonable.

14. Plaintiff's Counsel in this matter took this case on a contingent-fee basis and advanced all costs of the litigation with the understanding that no fee would be

recovered for our time and services if we were unable to secure a recovery for Plaintiff and the Class.

15. Plaintiff Village Bank, the Settlement Class Representative, has provided valuable services to the Settlement Class by assisting Plaintiffs' Counsel in the factual investigation and formulation of the legal claims, monitoring the litigation, and participating in the mediation process and subsequent settlement discussions. Granting Plaintiff a \$15,000 service award will recognize Plaintiff's contribution to the enforcement of laws through the class action mechanism and is in accord with case law from this district and circuit.

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

Executed this 1st day of October 2020, in Minneapolis, Minnesota.

/s/ Bryan L. Bleichner
Bryan L. Bleichner