

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

ARNOLD GOLDEN

Plaintiff,

vs.

BANCO POPULAR DE PUERTO RICO,

Defendant.

Civil Action No. 3:20-cv-00095

**DECLARATION OF MICHAEL R. REESE IN SUPPORT OF MOTION FOR: (1)
CERTIFICATION OF SETTLEMENT CLASS; (2) FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; (3) PAYMENT OF CLASS COUNSEL’S AND LIAISON
COUNSEL’S FEES AND EXPENSES; AND (4) PAYMENT OF A SERVICE AWARD TO
THE CLASS REPRESENTATIVE**

I, Michael R. Reese, declare:

1. Along with my co-counsel Jeffrey Kaliel of KalielGold PLLC, I am the court-appointed Class Counsel of record in the above-captioned matter. I submit this declaration in support of Plaintiff’s Motion for Final Approval of the Class Action Settlement. Unless otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

2. Counsel for both sides have significant experience in consumer class-action litigation involving bank-fee practices. Class Counsel is highly experienced in consumer class action litigation, as demonstrated by their firm resumes, and have brought that significant experience to bear in litigating and settling this case. *See* Exhibit A (Reese LLP firm resume).

3. Class Counsel collectively have decades of experience litigating consumer class actions against financial institutions and have litigated and settled dozens of class actions involving wrongful overdraft fees, non-sufficient fund fees, and other types of wrongful fees.

4. Banco Popular de Puerto Rico (“BPPR” or the “Bank”) has agreed to cease—for a period of at least five years—the fee assessment practice at the heart of this case. This prospective relief will, Class Counsel estimates, save the Settlement Class and BPPR accountholders approximately \$3 million over the next five years.

5. Class Counsel spent many hours investigating the claims of the plaintiff against BPPR.

6. Class Counsel gathered information about BPPR’s disclosures and practices and their potential impact upon consumers, which was essential to counsel’s ability to understand the nature of the potential claims and issues, the language of the account agreement and other documents at issue, and potential remedies.

7. Class Counsel expended significant resources in both developing the legal claims at issue and then litigating this matter. Indeed, the issues were heavily contested throughout the litigation. Defendant filed a motion to dismiss, which Class Counsel opposed. The parties also engaged in extensive discovery. Through the discovery process, Class Counsel obtained information regarding the fees at issue that allowed them to assess the merits and value of the case. All of this work by Class Counsel was done on a contingency basis.

8. Class Counsel has experience in understanding the damages at issue, the information critical to determine class membership, and the necessary data to calculate each Settlement Class Member’s damages.

9. Through the discovery process, Class Counsel received a significant amount of data regarding the contested bank fees. Class Counsel spent a significant amount of time analyzing data related to the assessment of the bank fees at issue.

10. The Parties conferred regarding the calculations’ accuracy.

11. Prior to the mediation, Class Counsel used this data to analyze the alleged damages at issue.

12. Consequently, Class Counsel mediated with the Honorable José A. Fusté (Ret.) fully informed of the merits of Settlement Class Members’ claims and negotiated the proposed Settlement while zealously advancing the position of Plaintiff and the other Settlement Class Members and being fully prepared to continue to litigate rather than accept a settlement that was not in the best interest of Plaintiff and the other members of the Settlement Class.

13. In sum, Class Counsel spent a significant amount of time on this matter, which included conferring with Plaintiff; investigating facts; researching the law; preparing a well-pleaded complaint; motion practice – including opposing both a motion to dismiss and a motion to stay; engaging in discovery; reviewing important documents and data; participating in a mediation in San Juan, Puerto Rico; drafting the Settlement Agreement; drafting the motion for preliminary approval and supporting documents; and, drafting the motion for final approval and supporting documents.

14. To date, Reese LLP, acting as co-lead Class Counsel, has spent 212.5 hours on this matter, for a lodestar of \$318,750. *See* Exhibit 1 below:

EXHIBIT 1

REESE LLP LODESTAR

NAME	POSITION	HOURS	HOURLY RATE	LODESTAR
Michael Reese	Managing Partner	212.5	\$1,500	\$318,750
George Granade	Partner	18.8	\$1,100	\$20,680
TOTAL		231.3		\$339,430

Reese LLP also has \$7,593.67 in expenses. See Exhibit 2 below:

EXHIBIT 2

REESE LLP EXPENSES

Expenses	Amount
Filing Fee (in S.D.N.Y., before refiled in D.V.I.)	\$402.00
Pro Hac Vice Application	\$250.00
Travel to San Juan Puerto Rico for Oct. 14, 2022 mediation: Roundtrip coach airfare: \$782.30 Transportation from office to JFK airport: \$90.00 Transportation from SJU to hotel: \$8.93 One night stay in hotel: \$598.53 Transportation from hotel to mediation: \$7.44 Two meals: \$70.86 + \$61.37 = \$132.23 Transportation to SJU airport: \$10.00 Transportation from JFK to home: \$90.00	\$1,689.43
Mediation Fee	\$1,225.00
Travel to Virgin Islands for September 8, 2023 final approval hearing: Roundtrip coach airfare: \$1,557.36 Three nights stay in hotel: \$2,284.88 Anticipated transportation from office to EWR airport: \$95.00 Anticipated transportation costs from JFK to office: \$90.00	\$4,027.24
TOTAL	\$7,593.67

To date, Reese LLP has not been paid any amount for its fees or expenses.

15. Kroll Settlement Administration LLC, acting as the court-appointed Settlement Administrator, oversaw the Notice Plan, which was designed to provide the best notice practicable and was tailored to take advantage of the information BPPR has available about the Settlement Class.

16. The Notice and Notice Plan constitute sufficient notice to all persons entitled to notice, satisfying all applicable requirements of law, including Rule 23 and constitutional due process.

17. Class Counsel has not been paid for their extensive efforts nor reimbursed for litigation costs.

18. The Parties negotiated and reached agreement regarding fees, costs and expenses only after agreeing on all material terms of the Settlement.

19. Class Counsel is highly experienced in this area of the law, having acted as Class Counsel in numerous successful class actions, including against other financial institutions.

20. Although Plaintiff believes he has a strong chance on the merits, Plaintiff might not certify the class or would lose at summary judgment or trial, or on appeal.

21. The Settlement Fund represents approximately 45% of the damages. A Settlement Fund that represents approximately 45% of the bank fees allegedly wrongly charged to Settlement Class Members, as this Settlement does—and without the inherent litigation risks—is a very fair and reasonable recovery.

22. Each of these risks, by itself, could easily have impeded Plaintiff's and the Settlement Class' success at trial. Under the circumstances, Plaintiff and Class Counsel appropriately determined that the Settlement benefits outweighs the gamble of continued litigation.

23. This prospective relief will, Class Counsel estimates, save the Settlement Class and BPPR accountholders approximately \$3 million over the next five years.

24. Class Counsel has extensive experience in litigating consumer and employment class actions. Here, Class Counsel devoted substantial time and resources investigating, litigating, and resolving the Action. Plaintiff settled the action with the benefit of Class Counsel's years of experience litigating cases like this one, discovery, and data and damage analysis.

25. Numerosity is satisfied because the Settlement Class consists of tens of thousands of BPPR customers, and joinder of all such persons is impracticable.

26. There are multiple questions of law and fact – centering on the alleged systematic practice of assessing fees – that are common to the Settlement Class Members, alleged to have injured all Settlement Class members in the same way, and would generate common answers central to the claims’ viability were the Action to be tried.

27. Plaintiff’s claims are typical of absent Settlement Class Members because they were assessed the same type of contested fee.

28. Plaintiff’s interests are coextensive with, not antagonistic to, the Settlement Class’ interests because Plaintiff and the absent Settlement Class Members have the same interests in the relief afforded by the Settlement, and absent Settlement Class Members have no diverging interests.

29. Further, Plaintiff is represented by qualified and competent counsel with extensive experience and expertise prosecuting complex class actions, including similar consumer actions.

30. Class Counsel has devoted substantial time and resources to this litigation and has vigorously protected the interests of the Settlement Class.

31. Certification of the Settlement Class for settlement purposes is further appropriate because the questions of law or fact common to all members of the Settlement Class substantially outweigh any possible issues that are individual to each member of the Settlement Class.

32. For example, each Settlement Class Members’ relationship with BPPR arises from Account agreements that are the same or substantially similar in all relevant respects to the other Settlement Class members’ agreements, and the fees at issue were charged in the same manner.

33. The proposed Notice Program satisfies due process. It was designed to reach a high percentage of the Settlement Class by sending Email Notice or Postcard Notice to Settlement Class Members and exceeds the requirements of constitutional due process.

34. Plaintiff provided significant assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding documents and other information to Class Counsel; (3) participating in conferences with Class Counsel; (4) responding to discovery requests; (5) participating in the mediation with Class Counsel; and, (6) reviewing and approving the settlement documentation.

35. Other than the Settlement Agreement, there is no other agreement between Plaintiff, Class Counsel and the Defendant. Class Counsel and Liaison Counsel do have a joint prosecution agreement regarding the division of fees, whereby Burns Charest LLP will receive 15% of the fees for its role as liaison counsel, with Class Counsel Reese LLP and KalieGold PLLC splitting the remaining amount 50/50, such that Reese LLP will receive 42.5% of the total fees and KalieGold PLLC will receive 42.5% of the total fees.

36. The collective lodestar of Class Counsel and Liaison Counsel is \$526,169 based on 495.9 hours of work. The collective expenses of Class Counsel and Liaison Counsel is \$10,951.77.

37. The hourly rates for the partners, other attorneys, and professional support staff in my firm included in Exhibit 1 above are the same as the regular current rates that have been used in the lodestar cross check accepted by courts in other class litigation.

38. My current rate as the founding and managing partner is \$1500 per hour. My prior rate in 2022 which was approved by a court for class action litigation was \$1300 per hour. *Salerno v. Kirk's Natural LLC*, case no. 1:21-cv-04987-BMC (E.D.N.Y.) (granting fee petition with rate of \$1300 per hour). The increase in hourly rates has been consistent over the years, and consistently approved of by the courts. *See e.g. Holve v. McCormick & Co., Inc.*, case no. 6:16-cv-06702-FPG (W.D.N.Y. Jan. 11, 2022) (approving fee submission filed in second half of 2021 based on rate of \$1050 per hour).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25th day of July 2023, at New York, New York

/s/ Michael R. Reese

MICHAEL R. REESE

EXHIBIT A

REESE LLP

Reese LLP represents consumers in a wide array of class action litigation throughout the nation. The attorneys of Reese LLP are skilled litigators with years of experience in federal and state courts. Reese LLP is based in New York, New York with offices also in California and Minnesota.

Recent and current cases litigated by the attorneys of Reese LLP on behalf of consumers include the following:

In re Fairlife Milk Products Marketing and Sales Practices Litig., case no. 1:19-cv-03924 (N.D. Illinois)(case involving milk products allegedly mislabeled); *In re Hill's Pet Nutrition, Inc. Dog Food Products Liability Litig.*, case no. 19-md-2887-JAR-TT (D. Kansas)(case involving contaminated pet food); *Hasemann v. Gerber Products Co.*, case no. 15-cv-02995-MKB-RER (E.D.N.Y.)(case involving misrepresentation of health benefits of baby formula in violation of New York consumer protection laws); *Worth v. CVS Pharmacy, Inc.*, case no. 16-cv-00498 (E.D.N.Y.)(class action for alleged misrepresentations regarding health benefits of dietary supplement); *Roper v. Big Heart Pet Brands, Inc.*, case no. 19-cv-00406-DAD (E.D. Cal.)(class action regarding pet food); *Ackerman v. The Coca-Cola Co.*, 09-CV-0395 (JG) (RML) (E.D.N.Y.)(class action for violation of California and New York's consumer protection laws pertaining to health beverages); *Rapaport-Hecht v. Seventh Generation, Inc.*, 14-cv-9087-KMK (S.D.N.Y.)(class action for violation of California and New York's consumer protection laws pertaining to personal care products); *Berkson v. GoGo, LLC*, 14-cv-1199-JWB-LW (E.D.N.Y.)(class action regarding improper automatic renewal clauses); *Chin v. RCN Corporation*, 08-cv-7349 RJS (S.D.N.Y.)(class action for violation of Virginia's consumer protection law by I.S.P. throttling consumers' use of internet); *Bodoin v. Impeccable L.L.C.*, Index No. 601801/08 (N.Y. Sup. Ct.)(individual action for conspiracy and fraud); *Huyer v. Wells Fargo & Co.*, 08-CV-507 (S.D. Iowa)(class action for violation of the RICO Act pertaining to mortgage related fees); *Murphy v. DirecTV, Inc.*, 07-CV-06545 FMC (C.D. Cal.)(class action for violation of California's consumer protection laws); *Bain v. Silver Point Capital Partnership LLP*, Index No. 114284/06 (N.Y. Sup. Ct.)(individual action for breach of contract and fraud); *Siemers v. Wells Fargo & Co.*, C-05-4518 WHA (N.D. Cal.)(class action for violation of § 10(b) of the Securities Exchange Act of 1934 pertaining to improper mutual fund fees); *Dover Capital Ltd. v. Galvex Estonia OU*, Index No. 113485/06 (N.Y. Sup. Ct.)(individual action for breach of contract involving an Eastern European steel company); *All-Star Carts and Vehicles Inc. v. BFI Canada Income Fund*, 08-CV-1816 LDW (E.D.N.Y.)(class action for violation of the Sherman Antitrust Act pertaining to waste hauling services for small businesses on Long Island); *Petlack v. S.C. Johnson & Son, Inc.*, 08-CV-00820 CNC (E.D. Wisconsin)(class action for violation of Wisconsin consumer protection law pertaining to environmental benefits of household cleaning products); *Wong v. Alacer Corp.*, (San Francisco Superior Court)(class action for violation of California's consumer protection laws pertaining to deceptive representations regarding health benefits of dietary supplement's ability to improve immune system); *Howerton v. Cargill, Inc.* (D. Hawaii)(class action for violation of various consumer protection laws regarding sugar substitute); *Yoo v. Wendy's International, Inc.*, 07-CV-04515 FMC (C.D. Cal.)(class action for violation of California's consumer protection laws pertaining to adverse health effects of partially hydrogenated oils in popular food products).

The Attorneys of Reese LLP

Michael R. Reese

Mr. Reese is the founding partner of Reese LLP where he litigates consumer protection class actions. Prior to entering private practice, Mr. Reese served as an assistant district attorney at the Manhattan District Attorney's Office where he served as a trial attorney prosecuting violent and white-collar crime.

Victories by Mr. Reese and his firm include a \$21 million class settlement in *In re Fairlife Milk Products Marketing and Sales Practices Litig.*, case no. 1:19-cv-03924-RMD (N.D. Illinois); a \$12.5 million dollar class settlement in *In re Hill's Pet Nutrition, Inc. Dog Food Products Liability Litig.*, case no. 19-md-2887-JAR-TT (D. Kansas) for pet owners who bought contaminated pet food; a \$6.1 million class action settlement in *Howerton v. Cargill, Inc.* (D. Hawaii) for consumers of Truvia branded sweetener; a \$6.4 million class action settlement in the matter of *Wong v. Alacer Corp.* (S.F. Superior Court) for consumers of Emergen-C branded dietary supplement; and, a \$25 million dollar settlement for mortgagees in *Huyer v. Wells Fargo & Co.* (S.D. Iowa).

Mr. Reese and his firm are frequently appointed as co-lead counsel in multi-district litigations, including, but not limited to *In re Fairlife Milk Products Marketing and Sales Practices Litig.*; case no. 1:19-cv-03924-RMD (N.D. Illinois); *In re Hill's Pet Nutrition, Inc. Dog Food Products Liability Litig.*, case no. 19-md-2887-JAR-TT (D. Kansas); *In re Vitaminwater Sales and Marketing Practices Litig.*, case no. 11-md-2215-DLI-RML (E.D.N.Y.); and, *In re Frito-Lay N.A. "All-Natural" Sales & Marketing Litig.*, case no. 12-md-02413-RRM-RLM (E.D.N.Y.).

Mr. Reese is a frequent lecturer and author on issues of class actions. Mr. Reese co-hosts an annual two day conference with Professor Michael Roberts of UCLA that includes panels on class action litigation; presents on class action litigation at the annual conference of the Consumer Brands Association; and, presents regularly at the Union Internationale des Advocats Annual Congress.

Recent articles on class actions appear in publications by the American Bar Association; the Union Internationale des Advocats; and the Illinois State Bar Association.

Mr. Reese is also an executive committee member of the Plaintiffs' Class Action Roundtable, where he lectures on an annual basis on issues related to class actions.

Mr. Reese is a member of the state bars of New York and California as well as numerous federal district and appellate courts. Mr. Reese received his juris doctorate from the University of Virginia in 1996 and his bachelor's degree from New College in 1993.

Sue J. Nam

Ms. Nam is based in New York where she focuses on consumer class actions. Ms. Nam also runs the appellate practice at the firm and has represented clients before the Second and Ninth Circuits, as well as The Court of Appeals in New York. Ms. Nam also specialized in copyright law and represents photographers and other visual artists who have had their copyright protected works infringed.

Prior to joining the firm, Ms. Nam was the General Counsel for NexCen Brands, Inc., a publicly traded company that owned a portfolio of consumer brands in food, fashion and homeware.

Previously, Ms. Nam was Intellectual Property Counsel and Assistant Corporate Secretary at Prudential Financial, Inc., and she was an associate specializing in intellectual property and litigation at the law firms of Brobeck Phleger & Harrison LLP in San Francisco, California and Gibson Dunn & Crutcher LLP in New York, New York.

Ms. Nam clerked for the Second Circuit prior to joining private practice.

Ms. Nam received her juris doctorate from Yale Law School in 1994. She received a bachelor's degree with distinction from Northwestern University in 1991.

Carlos F. Ramirez

Mr. Ramirez is an accomplished trial attorney based in New York, where he focuses his practice on the litigation of consumer class actions. Prior to entering private practice in 2001, Mr. Ramirez served as an Assistant District Attorney at the Manhattan District Attorney's Office where he served as a trial attorney prosecuting both violent and white-collar crimes.

Previous and current consumer fraud class actions litigated by Mr. Ramirez include *Hasemann v. Gerber Products Co.*, case no. 15-cv-02995-MKB-RER (E.D.N.Y.)(case involving misrepresentation of health benefits of baby formula in violation of New York consumer protection laws); *Coe v. General Mills, Inc.*, No. 15-cv-5112-TEH (N.D. Cal.) (involving false advertisement claims relating to the Cheerios Protein breakfast cereal); *In re Santa Fe Natural Tobacco Company Marketing & Sales Practices Litigation*, 16-md-2695-JB/LF (D.N.M.)(involving the deceptive marketing of cigarettes as "natural" and "additive free"); and, *Lamar v. The Coca-Cola Company, et al.*, No. 17-CA-4801 (D.C. Superior Ct.) (involving the deceptive marketing of sugar drinks as safe for health).

Mr. Ramirez is a member of the state bars of New York and New Jersey. He is also a member of the bars of the U.S. District Courts for the Eastern District of New York and Southern District of New York. Mr. Ramirez received his juris doctorate from the Fordham University School of Law in 1997 and his bachelor's degree from CUNY-Joh Jay College in 1994.

George V. Granade II

Mr. Granade is a partner at Reese LLP based in Los Angeles, California, where he focuses on consumer class actions. Cases Mr. Granade has worked on include: *Barron v. Snyder's-Lance, Inc.*, No. 0:13-cv-62496-JAL (S.D. Fla.); *In re: Frito-Lay North America, Inc. "All Natural" Litigation*, No. 1:12-md-02413-RRM-RLM (E.D.N.Y.) (involving "SunChips," "Tostitos," and "Bean Dip" products labeled as "natural" and allegedly containing genetically-modified organisms); and *Martin v. Cargill, Inc.*, No. 0:13-cv-02563-RHK-JJG (D. Minn.) (involving "Truvia" sweetener product labeled as "natural" and allegedly containing highly processed ingredients).

Mr. Granade received his juris doctorate from New York University School of Law in 2011. He received a master's degree from the University of Georgia at Athens in 2005 with distinction and a bachelor's degree from the University of Georgia at Athens in 2003, *magna cum laude* and with High Honors.

Mr. Granade is a member of the state bars of Georgia, New York, and California. He is also a member of the bar of the U.S. Courts of Appeals for the Second Circuit and Ninth Circuit, as well as the bars of the U.S. District Courts for the Eastern District of New York, Southern District of New York, Western District of New York, Northern District of New York, Southern District of Illinois, Northern District of Illinois, Northern District of California, Southern District of California, Central District of California, and Eastern District of California.

Charles D. Moore

Mr. Moore is based in Minneapolis, Minnesota where he focuses on both consumer as well as employment class actions.

Mr. Moore has worked on a number of high profile class actions at Reese LLP as well as his prior firm where he worked as co-counsel with Reese LLP on numerous matters. His notable cases include *Marino v. Coach, Inc.*, Case No. 1:16-cv-01122-VEC (OTW) (Lead) (S.D.N.Y.) (involving deceptive reference pricing in the sale of outlet merchandise); *Raporport-Hecht v. Seventh Generation, Inc.*, Case No. 7:14-cv-09087-KMK (S.D.N.Y.) (involving the deceptive advertising of household products as "natural"); *Gay v. Tom's of Maine, Inc.*, Case No. 0:14-cv-60604-KMM (S.D. Fla.) (involving deceptive advertising of personal care products as "natural"); *Frohberg v. Cumberland Packing Corp.*, Case No. 1:14-cv-00748-KAM-RLM (E.D.N.Y.) (involving deceptive advertising of food products as "natural"); *Baharenstan v. Venus Laboratories, Inc. d/b/a Earth Friendly Products, Inc.*, Case No. 3:15-cv-03578-EDL (N.D. Cal.) (involving deceptive advertising of household products as "natural"); *Sienkaniec v. Uber Technologies, Inc.*, Case No. 17-cv-04489-PJS-FLN (D. Minn.) (involving the misclassification of Uber drivers as independent contractors); *Dang v. Samsung Electronics Co.*, 673 F. App'x 779 (9th Cir. 2017) (*cert denied* 138 S. Ct. 203) (rejecting shrink-wrap terms in California for purposes of arbitration).

Mr. Moore is a member of the state bar of Minnesota. He is also a member of the bar of the U.S. District Court for the District of Minnesota. Mr. Moore received his juris doctorate from Hamline University School of Law in 2013, and his bachelor's degree from the University of North Dakota in 2007.