

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TAWANNA ROBERTS, on behalf of herself and  
all others similarly situated,

Plaintiff,

- against -

CAPITAL ONE, N.A.,

Defendant.

CASE No. 1:16-cv-04841-LGS

**DECLARATION OF MATTHEW WESSLER IN SUPPORT OF PLAINTIFF'S  
APPLICATION FOR ATTORNEYS' FEES AND COSTS**

I, Matthew W.H. Wessler, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a principal at Gupta Wessler PLLC, a national litigation boutique with a focus on the representation of plaintiffs and public-interest clients in appeals and complex cases based in Washington, D.C.

2. I have been a member good standing of Bars of Massachusetts and the District of Columbia and Massachusetts since 2006 and 2008, respectively. I am also admitted to the Bars of the U.S. Supreme Court as well as the U.S. Court of Appeals for the First, Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, and Tenth, and D.C. Circuits.

3. Both my and my firm's practice is focused on Supreme Court, appellate, and complex litigation with an emphasis on class-action issues and consumer-protection law. My caseload consists primarily of handling appeals of consumer and worker-protection cases, including class actions, in federal appellate courts and the Supreme Court. I have argued before the U.S. Supreme Court on behalf of plaintiffs in a number of major consumer and worker rights cases, including *Coventry Health Care v. Nevils*, 137 S. Ct. 1190 (2017), *U.S. Airways v. McCutchen*, 133 S. Ct. 1537 (2013), and *Heimeshoff v. Hartford Life Insurance*, 134 S. Ct. 604 (2013). This past term I argued and won another class-action

case on behalf of workers and their families in the U.S. Supreme Court, *Intel Investment Policy Cmte. v. Sulyma*, 140 S. Ct. 768 (2020). Within just the past several years, I have also argued and won significant class-action and consumer-protection appeals in multiple federal courts of appeal. *See, e.g., Gibbs v. Haynes Inv. LLC*, \_\_\_ F.3d \_\_\_, 2020 WL 4118239 (4th Cir. July 21, 2020); *Gibbs v. Sequoia Capital Operations, LLC*, 966 F.3d 286 (4th Cir. 2020); *Williams v. Medley Opportunity Fund II, LP*, 965 F.3d 229 (3d Cir. 2020); *In re MDL Genentech Herceptin Marketing & Sale Practice Litig.*, \_\_\_ F.3d \_\_\_, 2020 WL 2781287 (10th Cir. 2020); *Molock v. Whole Foods Group, Inc.*, 952 F.3d 293 (D.C. Cir. 2020); *In re Lantus Direct Purchaser Antitrust Litig.*, 950 F.3d 1 (1st Cir. 2020); *MacDonald v. CashCall, Inc.*, 883 F.3d 220 (3d Cir. 2018); *Cullinane v. Uber Technologies, Inc.*, 893 F.3d 53 (1st Cir. 2018); *Hayes v. Delbert Services Corp.*, 811 F.3d 666 (4th Cir. 2016).

4. For my appellate work in *Sulyma*, I won the Pound Civil Justice Institute's 2020 Appellate Advocacy Award, which recognizes excellence in appellate advocacy in cases that have a significant impact on public health and safety, consumer rights, civil rights, environmental justice, access to justice. *See* <http://www.poundinstitute.org/appellate-advocacy-award/>.

5. In my work, I have also developed a specific expertise in improper banking overdraft-fee cases and my firm has built an unparalleled track record in handling issues related to the cases at the federal appellate level. In addition to this case, my colleague and I have been appellate counsel in several overdraft-fee cases, including *Lambert v. Navy Federal Credit Union*, No. 19-1993 (4th Cir.) and *Dress v. Capital One Bank, N.A.*, No. 19-1926 (4th Cir.).

6. My firm and I have also been appointed class counsel in a number of cases, including in *Houser v. United States*, No. 13-607C (Fed. Cl.), a certified nationwide class of current and former federal bankruptcy judges (and their surviving spouses, life-insurance beneficiaries, and estates) that was litigated to judgment in the Court of Federal claims, in *Steele v. United States*, No. 14-cv-01523-RCL (D.D.C.), a certified nationwide class of tax-return preparers suing the federal government under the Little Tucker Act for excessive user fees, and most recently, in *Turner v. ZestFinance, Inc.*, which was certified as a class on behalf of consumers who obtained illegal payday loans from a payday lending enterprise and for which a nationwide settlement was just finally approved. *See Turner v. ZestFinance*,

*Inc.*, No. 19-cv-00293, Dkt. # 115 (July 9, 2020).

7. My firm and I are also well known within the broader consumer- and financial-protection advocacy community. After graduating from Cornell University Law School in 2005 and serving as a law clerk to the Honorable Richard L. Nygaard of the U.S. Court of Appeals for the Third Circuit and the Honorable William E. Smith of the U.S. District Court for the District of Rhode Island, I spent two years as an associate at Williams & Connolly LLP. I then spent six years at Public Justice, P.C., a national public interest and impact litigation law firm in Washington, D.C. While there, I spearheaded the firm's focus on Supreme Court litigation and took the lead in several high-profile cases involving class actions, arbitration, preemption, and consumer and worker rights. In 2015, I became a named partner at Gupta Wessler PLLC, in Washington, D.C.

8. My firm has spent a significant amount of time investigating, researching, and litigating the matters that are being resolved by the settlement. In this case, I was lead appellate counsel for the Plaintiff when this case went up on appeal after dismissal on the pleadings. I personally developed, researched, and drafted the briefs in the appeal, recruited *amici*, and argued issues of first impression in the Second Circuit that produced a unanimous opinion in the Plaintiff's favor and reversed the initial dismissal of the claims in the case. *See Roberts v. Capital One, N.A.*, 719 Fed. App'x. 33 (2d Cir. 2017). Based on my experience, I believe my firm's work provided substantial benefit to the Class.

9. In my own federal practice, I charge clients a standard hourly rate of \$900. I agreed to work on this appeal on behalf of the class on a contingent basis. I have substantial expertise in federal consumer-protection law and class actions and have handled multiple appeals arising from consumer class actions.

10. In addition to my work, the following lawyers and paralegals worked on this matter.
- a. Jonathan Taylor, who is a partner in the firm and was admitted to practice in 2011. He is admitted to several federal courts around the country, has handled numerous appeals in the federal circuits, and has been appointed as class counsel in class actions.
  - b. Matthew Spurlock, who was a legal fellow at the firm from 2016-2017 and was

admitted to practice in 2013.

c. Nabila Abdallah, who was a paralegal at the firm from 2017-2019.

11. The hourly rates for the attorneys and paralegal who worked on this case are as follows:

a. Matt Wessler (Partner) - \$900

b. Jon Taylor (Partner) - \$775

c. Matthew Spurlock (Fellow)- \$300

d. Nabila Abdallah (Paralegal) - \$150

12. These rates are customarily charged by class action attorneys and paralegals practicing in the Southern District of New York with similar experience working on complex matters and are regularly approved therein.

13. I have organized the time spent by Gupta Wessler's attorneys and paralegal into categories which describe the services which we rendered in this Action.

	<b>Task</b>	<b>Matt Wessler</b>	<b>Jon Taylor</b>	<b>Matthew Spurlock</b>	<b>Nabila Abdallah</b>
1.	Appeal	328.25	24.25	145.50	19.50
	<b>Totals</b>	328.25	24.25	145.50	19.50

14. Gupta Wessler will submit detailed time records for each attorney should the Court so require.

15. After excluding timekeepers with minimal time in the case and exercising billing judgment, the total number of hours spent by my firm which has been billed to the matter at issue here through today is 517.33 hours, with a corresponding lodestar of \$360,793.75 billed at current hourly rates.

16. Additionally, I have organized the necessary expenses that our firm has incurred for the prosecution of this case. The firm is not seeking reimbursement for internal overhead expenses that are ordinarily reimbursed to Class Counsel in class actions and all travel has been billed at one-half of the actual cost. Cost receipts will be submitted to the Court should it likewise so require.

<b>Category</b>	<b>Expenses</b>
Travel (billed at 50%)	<u>\$255.00</u>
<b>Total</b>	<u>\$255.00</u>

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 1, 2020

s/Matthew W.H. Wessler  
Matthew W.H. Wessler