

EXHIBIT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

MARC BROWNE, et al.,

Plaintiffs,

v.

CIOX HEALTH LLC,

Defendant.

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Civil Action No. 4:19-cv-667-ALM-KPJ

**DECLARATION OF ROGER L. MANDEL IN SUPPORT OF CLASS COUNSEL’S
UNOPPOSED MOTION AND BRIEF IN SUPPORT FOR AWARD OF ATTORNEYS’
FEES AND COSTS AND CLASS REPRESENTATIVE SERVICE AWARDS**

I, Roger L. Mandel, declare as follows:

1. I am an attorney licensed to practice in the State of Texas and a member in good standing of the bar of the State of Texas. I am a partner in the firm of Jeeves Mandel Law Group, P.C.¹ I respectfully submit this declaration in support of Class Counsel’s Unopposed Motion and Brief in Support for Award of Attorneys’ Fees and Costs and Class Representative Service Awards.

2. I have personal knowledge of the facts set forth in this declaration and can testify to these facts if called upon to do so.

EXPERIENCE AND QUALIFICATIONS

3. I have been practicing complex commercial litigation for 35 years, including 30 years bringing class actions on behalf of injured individuals and companies. During that time, I have worked on approximately 35 class actions cases which have settled, the highlights of which

¹ Jeeves Mandel Law Group, P.C., is the name under which The Jeeves Law Group P.A. does business in Texas. They are one and the same law firm.

are listed in my C.V. attached hereto as Exhibit 1. In those cases, and many more, I have briefed and argued motions to dismiss, class certification motions and summary judgment motions, interlocutory appeals of class certification and appeals of decisions on the merits. I successfully tried one class action to the jury. I also authored, worked on and/or reviewed fee applications in not only the approximately 35 settled class action cases referenced in my C.V., but also many fee applications in very large MDL's where I was co-lead counsel involving scores of plaintiffs' firms including almost all the top plaintiffs' class action firms in the country. Those applications also included expenses, which I reviewed for their necessity and reasonableness.

4. In the last 31 years, I have read literally hundreds of decisions in class action cases addressing settlement and the award of attorneys' fees. I have done so as part of a conscious attempt to stay abreast of the law in this area. I have also read significant amounts of empirical research on class action settlements and attorneys' fees awards, including multiple surveys and articles covering the 2018 to 2022 time period.

5. Based upon the foregoing, I have very significant experience in evaluating the amounts of time that the tasks necessary to successfully prosecute a class action should take. I likewise have very significant experience with and knowledge of reasonable hourly rates for prosecuting complex class actions during the time period this case has been litigated. I also have extensive experience with the types and amounts of expenses, including expert fees, necessary to successfully prosecute complex class actions. I also have extensive experience with and knowledge of the percentages of common funds courts award in connection with class action settlements. I believe based upon the foregoing that I would qualify as an expert on the reasonableness of attorneys' fees and expenses incurred in connection with the successful prosecution of class actions to settlement.

OPINIONS

6. Through the end of October 31, 2022, Class Counsel and the attorneys and staff at their law firms have spent a combined 770 hours prosecuting this case. As lead counsel, I am very familiar with all the work performed in this case, and based upon that knowledge and my experience, it is my opinion that all these hours were reasonably required to achieve the significant cash relief the Settlement will confer on the Settlement Class Members. Based on my experience and knowledge of the rates charged by skilled class action attorneys nationally and in North Texas and my research regarding same, including a fee award I received in New York based on \$850 an hour for me in 2021, I believe the rates charged by Class Counsel and their attorneys are usual, reasonable and customary rates for attorneys with their experience and skill, both nationally and in North Texas.² The total lodestar for Class Counsel and their attorneys amounts to \$502,806.00, as set forth in the following chart:

<u>NAME</u>	<u>FIRM</u>	<u>POSITION</u>	<u>HOURLY RATE</u>	<u>HOURS</u>	<u>LODESTAR</u>
Roger L. Mandel	Jeeves Mandel Law Group P.C.	Partner	\$950.00	198.5	\$188,575.00
Scott R. Jeeves	Jeeves Law Group, P.A.	Partner	\$850.00	158.2	\$134,470.00
Kyle W. Woodford	Jeeves Law Group, P.A.	Associate	\$395.00	366.8	\$144,886.00
Craig Rothburd	Craig E. Rothburd, P.A.	Partner	\$750.00	46.50	\$34,875.00
				770.00	\$502,806.00

7. Based on the foregoing, Class Counsel currently seek a multiplier of only 1.06, barely a multiplier at all. That is at the very lowest end of multipliers awarded in successful class settlements, whether as part of a lodestar-only award or as part of a lodestar crosscheck.

² See *Blondell v. Bouton*, 2021 WL 4173066, at *1 (E.D.N.Y. Sept. 14, 2021) for order awarding fees based on \$850 per hour for me. My current rate of \$950 per hour is the result of adjustment since 2021 to reflect the increasing rates nationally and in North Texas over that time.

8. Further, Class Counsel expect to spend significantly more time to bring this case to its conclusion, including dealing with settlement administration issues, drafting the pleadings necessary to obtain final approval of the settlement and litigation and conducting the final approval hearing. Accordingly, I expect that by the end of the case, Class Counsel may recover less than their full lodestar.

9. Craig Rothburd and I often litigate complex consumer class actions on a contingency basis. This fact is relevant to determining the appropriateness of the award here because the Court's ultimate task is to approximate the reasonable fee that a competitive market would bear. For comparison, a typical contingent fee arrangement in the non-class action cases provides that the attorney representing the plaintiff receives 33 to 40 percent of the plaintiffs' recovery, exclusive of costs, and that has certainly been true in our cases.

10. To date, only a single class member has filed a request for exclusion, and there have been no objections to the Settlement or the requested fees.

11. Class Counsel's costs are set forth in the following chart:

<u>Description</u>	<u>Amount</u>
File Set-Up Fee	\$1,000.00
Filing Fee – Texas	\$600.00
Service of Process – Texas (2)	\$260.00
CS Disco – Records/Storage/Organization	\$7,702.89
Expert Fee	\$540.00
Pacer – Court Fees	\$172.60
TOTAL	\$10,275.49

12. As lead counsel, I am familiar with all these expenditures, and in my opinion, they were all reasonably and necessarily incurred. In my opinion, these expenses are not only reasonable but in fact very low given the results achieved, the length of this litigation, and the fact that Class Counsel hired and worked with one expert.

13. Lead Plaintiffs Marc Browne and Teri Adley have been exemplary class representatives providing Class Counsel with all the assistance Class counsel have requested. Pre-filing they provided us with all the information and document necessary to draft the Complaint, and they both carefully reviewed the Complaint before filing. Post-filing, they provided the necessary information and documents necessary for the initial disclosures. During the settlement negotiations, they consulted with Class Counsel regarding settlement terms and they both reviewed and approved the Settlement Agreement. In my opinion, services awards of \$2,500 each are reasonable, well-warranted and well within the range of awards commonly granted in class action cases.

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

Executed November 15th, 2022.

/s/Roger L. Mandel
Roger L. Mandel

EXHIBIT

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Education:

University of Texas School of Law,
J.D. with honors, 1986
- Order of the Coif
- Board of Advocates
- Benton Moot Court Team, 1986
- ABA Moot Court Team, 1986
- Dean's Award of Distinction
(highest grade in class) in
Bankruptcy, Constitutional Law,
Advanced Constitutional Law and
Evidence

University of Texas at Austin,
B.B.A. with high honors, 1984
- Phi Eta Sigma, Beta Gamma
Sigma and Golden Key Honor
Societies

Admissions:

State of Texas, 1987

Board Certified--Civil Appellate
Law, Texas Board of Legal
Specialization, 1998

United States District Courts

Northern District of Texas

Southern District of Texas

Eastern District of Texas

Western District of Texas

Eastern District of Wisconsin

United States Court of Appeals for
the Second Circuit

United States Court of Appeals for
the Fourth Circuit

United States Court of Appeals for
the Fifth Circuit

United States Court of Appeals for
the Sixth Circuit

United States Court of Appeals for
the Seventh Circuit

Roger L. Mandel
Jeeves Mandel Law Group, P.C.
2833 Crockett Street
Suite 135
Forth Worth, Texas 76107
p: 214-253-8300
e: rmandel@jeevesmandellawgroup.com

Roger L. Mandel is a prominent Dallas business litigation and class-action lawyer. Mr. Mandel holds the distinction of successfully trying one of only two class-action cases in Texas state court history known to have been tried to a jury.

Mr. Mandel has been named as a *Texas Super Lawyer* in the Class Action/Mass Torts category by *Texas Monthly Magazine* since the inception of the ratings in 2003, as a Top 100 Trial Lawyer and Top 25 Class Action Trial Lawyer by The National Trial Lawyers since the inception of the honor in 2013, and as one of the Best Lawyers in Dallas in the Class Action category by *D Magazine* since the inception of the category in 2014. He also has earned Martindale-Hubbe's coveted top AV® Preeminent rating.

Mr. Mandel currently sits on the Board of Directors of the Dallas Trial Lawyers Association and the Public Justice Foundation and is a past board member of the Texas Trial Lawyers Association. He is a past president of the Dallas Trial Lawyers Association and a fellow of both the Texas Bar Foundation (Top 1/3 of 1% of Texas lawyers) and the Dallas Bar Foundation. Additionally, Mr. Mandel was the co-chair of the AAJ Class Action Litigation Group.

A member of the Texas State Bar, Mr. Mandel is also admitted to practice in the Eastern, Northern, Southern and Western Federal Districts of Texas, the Eastern District of Wisconsin, the

United States Court of Appeals for the Eighth Circuit

United States Court of Appeals for the Ninth Circuit

United States Court of Appeals for the Eleventh Circuit

United States Supreme Court

Memberships and Affiliations:

Dallas Trial Lawyers Association

- Past president 2011-2012

- President 2010-2011

-- President elect 2009-2010

- Vice president 2008-2009

- Board of directors, 1997-2020

Texas Trial Lawyers Association

- Board of directors, 2002-2016

American Association of Justice

- Class Action Litigation Group

- Co-chair 2010-2011

- Vice-chair 2009-2010

Public Justice Foundation

- Board of Directors, 2001-2021

- Executive Committee, 2016-2017 and 2020-2021

National Association of Consumer Attorneys

State Bar of Texas

Fellow of the Texas Bar

Foundation (Top 1/3 of 1% of Texas lawyers)

Dallas Bar Association

Fellow of the Dallas Bar Foundation

American Bar Association

- Tort and Insurance Practice Section

- Commercial Torts Committee, Vice-chairman, 1994-2002

Section of Litigation

Class Action & Derivative Suits Committee

United States Courts of Appeals for the Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Eleventh Circuits, and the United States Supreme Court.

Philanthropic, caring and immersed in Dallas community social action, Mr. Mandel values the importance of improving the world. Mr. Mandel previously served on the board of directors of the Dallas-based Vogel Alcove, an organization whose mission is to provide free quality childcare development and social services to young homeless children. Mr. Mandel is also a strong supporter of the Jewish Federation of Dallas and Jewish Family Services, United Way agencies.

Verdicts and Settlements - Class-Action Accomplishments

Settlement of a nationwide class-action suit against American Airlines under ERISA related to pension benefits of its former AirCal pilots.

Settlement of a nationwide class-action suit against Wells Fargo Bank for violations of RESPA.

Settlement of statewide class-action suit against State Farm Insurance Cos., Allstate Insurance Cos., Farmers Insurance Cos. and GEICO Insurance Cos. for violations of the Texas Insurance Code relating to claims procedures for automobile policyholders.

Settlement (along with multiple cocounsel) of major nationwide class-action suit litigation involving General Motors pickup trucks.

Settlement following summary judgment of a statewide class action for breach of contract and deceptive trade practices against Southwestern Bell Mobile Systems.

Settlement of a statewide class-action suit on behalf of customers of Southwestern Bell Telephone Company for violations of the Texas Finance Code.

Settlement of a statewide class-action suit on behalf of persons who entered into lease agreements with UDR Western

Residential, Inc., and other of its affiliates, arising out of claims under the Texas Water Code, regulations of the Texas Natural Resources Conservation Commission, the Texas Utility Code, regulations of the Public Utility Commission and the Texas Debt Collection Practices Act.

Settlement of a nationwide class-action suit on behalf of customers of Ticketmaster Group, Inc., and certain of its affiliates, who purchased tickets with a credit card and were charged illegal surcharges.

Settlement of a nationwide class-action suit against First USA Bank for violations of the Truth in Lending Act.

Obtained judgment (following summary judgment and jury trial) against the Dallas County Community College District on behalf of a class of current and former students as a result of the District's charging of a technology fee that the trial court found was not authorized by state law. This is one of only two class-action cases known by Mr. Mandel to have been tried in the Texas state courts.

Settlement of a nationwide class-action suit against Sears Roebuck & Co. representing a landmark and virtually unprecedented settlement of a consumer class-action case. Under the settlement, Sears installed, free of charge, for a class of almost four million customers, anti-tip brackets to prevent tipping of its freestanding electric and gas ranges that frequently caused severe burns, crushing and death. Those customers who had already paid to have anti-tip brackets installed received reimbursement. Furthermore, Sears agreed to install anti-tip brackets on all sales of new ranges for at least three years, now believed by Mr. Mandel to be a permanent practice of Sears. By, in effect, obtaining a recall, this settlement actually obtained better relief than likely could have been obtained through trial and accomplished what the Consumer Product Safety Commission refused to do for more than twenty years.

Settlement against Nationwide Insurance Company on behalf of a national class related to overcharges on life insurance

premiums. Notably, the settlement was achieved after obtaining a contested certification of a nationwide class under the laws of all 50 states.

A settlement in a class-action suit over the purchase of TXU, one of the largest purchases of a publicly traded company in United States history.

A settlement in a derivative case against officers and directors of Affiliated Computer Systems related to options backdating.

A settlement in a securities class-action suit against officers and directors of the investment manager of the Cushing MLP Total Return Fund.

A settlement of a nationwide class action on behalf of a class of 401(k) plans against their investment provider, Nationwide Insurance, for paying the mutual funds it offered as investments, thought to be one of the three largest ERISA settlements in history.

A settlement of a nationwide class action against the insurers, brokers and promoters responsible for offering illegal group and blanket insurance policies.

Complex Business Litigation Accomplishments

Settlement with a medical malpractice insurer in an insurance coverage/bad faith case following a medical malpractice jury verdict and a coverage verdict.

Settlement of business tort litigation on behalf of the former owner of a major league sports franchise against a national bank relating to the sale of the franchise.

Settlement of tortious interference with business contract litigation on behalf of a large independent electrical supplier/contractor following a jury verdict.

Jury verdict and judgment against Henry S. Miller Commercial Company based upon fraud and negligent misrepresentation.

Professional Background

Jeeves Mandel Law Group, P.C., Dallas Texas
Partner, August 1, 2018 to present.

Lackey Hershman L.L.P., Dallas, Texas
Partner, July 1, 2011 - January 3, 2018.

Beckham & Mandel, Dallas, Texas
Founding Shareholder, January 1, 2010-June 30, 2011

Stanley, Mandel & Iola, L.L.P., Dallas, Texas
Founding Partner, 1997-2009

Stanley, Mandel & Kleinman, P.C., Dallas, Texas
Founding Shareholder, August 1992-1997

Hale, Spencer, Stanley, Pronske & Trust, P.C., Dallas, Texas
Associate, 1987-1992

Honors

Best Lawyers in America 2016 and 2017-Mass Tort
Litigation/Class Actions-Plaintiffs

Best Lawyers in Dallas, Class Action, 2014-2020 (*DMagazine*)

Top 100 Trial Lawyers, 2013-2020 (The National Trial Lawyers)

Top 25 Class Action Trial Lawyers, 2013-2020 (The National
Trial Lawyers)

Texas Super Lawyer, Class Action/Mass Torts, 2003-2020
(*Texas Monthly Magazine*)

AV Preeminent Rated, Martindale-Hubbell

Publications and Speeches

Speaker: "The Nexium Conundrum: Class Action Standing
Under Article III," National Consumer Law Center, 23rd Annual
National Consumer Rights Conference, Class Action
Symposium (November 2014)

Speaker and Author: "Post-Concepcion Enforcement of
Arbitration Clauses Containing Class Bans," *American
Association of Justice Tele-Seminar* (March 6, 2012)

Speaker and Author: "Certification of Multi-State Classes and Related Choice of Law Issues," *American Association of Justice* (Vancouver, July 2010)

Speaker: "Shady Grove and Naked Class Action Bans: The Emerging Conflicts Between Federal and State Laws on Class Certification, Multistate Classes and Choice of Law Issues," NCLC Class Action Symposium (Philadelphia, 2009)

Co-moderator: "New Developments in Class Actions," American Association of Justice (San Francisco, July 2009)

Coauthor: "Navigating the Rough Terrain: Class Actions in Texas after HB4 and CAFA," *The Advocate* (The State Bar Litigation Section Report) (Fall 2008)

Author: "Arbitration: Should It Be Sought Rather Than Fought," Consumer Law & Policy Blog (December 3, 2006)

Speaker: "Arbitration of Consumer Class-Action Cases," NCLC Consumer Class Action Symposium (Miami, 2006)

Speaker: "Credit Card Developments," 10th Annual Consumer Financial Services Litigation Institute (PLI, Dallas, TX, 2005)

Author: "The Class Action Unfairness Act of 2005," Dallas Bar Headnotes, April 1, 2005

Speaker: "Where Will the Big Cases Come From After H.B. 4," Conference on State and Federal Appeals, University of Texas Continuing Legal Education Department, June 2004

Speaker: "Class Action Update," Advanced Personal Injury Seminar, State Bar of Texas, Austin, 2003

Coauthor and Speaker: "Summaries of Significant Class Action Opinions in Texas State and Federal Courts: 2001-2002," Texas Trial Lawyers Association, July 2002

Author: High Court: "Class Action Standards Too Strict," *Texas Lawyer*, June 2002

Coauthor and Speaker: "Resolving Class Actions in the Plaintiffs Favor: Settlements and Contested Final Judgments," Federal Bar Association, April 2001

Coauthor: "Dealing With Attorney's Fees and Objections in Class Action Settlements," National Institute on Class Actions, American Bar Association, 1997

Author: "Abstracts of Recent State and Lower Federal Court Decisions on Consumer Class Actions," Consumer and Personal Rights Litigation Newsletter, American Bar Association, May 1995.

Author and Speaker: "Mining for Gold: Recognizing Class Actions Arising Out of Your Personal Injury Practice," Texas Trial Lawyers Association, "What You Absolutely Positively Gotta Know About..." November 12-13, 2020.