

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RUBEN A. LUNA, Individually and on Behalf)	No. 1:19-cv-11662-LTS
of All Others Similarly Situated,)	(Consolidated)
Plaintiff,)	<u>CLASS ACTION</u>
vs.)	DECLARATION OF
CARBONITE, INC., et al.,)	THEODORE M. HESS-MAHAN FILED ON
Defendants.)	BEHALF OF HUTCHINGS BARSAMIAN
_____)	MANDELCORN, LLP IN SUPPORT OF
	APPLICATION FOR AWARD OF
	ATTORNEYS' FEES AND EXPENSES

I, Theodore M. Hess-Mahan, declare as follows:

1. I am Of Counsel to the law firm of Hutchings Barsamian Mandelcorn, LLP (the “Firm”). I am submitting this declaration in support of the application for an award of attorneys’ fees and expenses/charges (“expenses”) in connection with services rendered in the above-entitled action.

2. This Firm is Liaison counsel of record for Plaintiff Ruben A. Luna and Lead Plaintiff Construction Industry and Laborers’ Joint Pension Trust.

3. The information in this declaration regarding the Firm’s time and expenses is taken from time and expense reports and supporting documentation prepared and/or maintained by the Firm in the ordinary course of business. I am the attorney who oversaw and/or conducted the day-to-day activities in the litigation and I reviewed these reports (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the Firm’s lodestar calculation and the expenses for which payment is sought herein are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation.

4. After the reductions referred to above, the number of hours spent on the litigation by my Firm is 78.7. A breakdown of the lodestar is provided in Exhibit A. The lodestar amount for attorney time based on the Firm’s current rates is \$35,415.00. The hourly rates shown in Exhibit A are consistent with hourly rates submitted by the Firm in other securities class action litigation.

The Firm's rates are set based on periodic analysis of rates charged by firms performing comparable work both on the plaintiff and defense side.

5. My Firm seeks an award of \$1,332.78 in expenses and charges in connection with the prosecution of the litigation. Those expenses and charges are summarized by category in Exhibit B.

6. The following is additional information regarding certain of these expenses:

(a) Filing, Witness and Other Fees: \$1,206.24. These expenses have been paid to the Court for filing fees and to attorney service firms or individuals who served process of the complaint. The vendors who were paid for these services are set forth in Exhibit C.

(b) Transportation, Hotels & Meals: \$43.40. In connection with the prosecution of this case, the Firm has paid for travel expenses to attend court hearings. The date, destination, and purpose of each trip is set forth in Exhibit D.

(c) Delivery charges: \$83.14. The date, delivery service, and purpose for each delivery is set forth in Exhibit E.

7. The expenses pertaining to this case are reflected in the books and records of this Firm. These books and records are prepared from receipts, expense vouchers, check records, and other documents and are an accurate record of the expenses.

8. The identification and background of my Firm and its attorneys is attached hereto as Exhibit F.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of March, 2024, at Wellesley, Massachusetts.

/s/Theodore M. Hess-Mahan

THEODORE M. HESS-MAHAN

CERTIFICATE OF SERVICE

I, David A. Rosenfeld, hereby certify that on April 10, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all counsel of record.

/s/ David A. Rosenfeld

DAVID A. ROSENFELD

EXHIBIT A

EXHIBIT A

Ruben A. Luna v. Carbonite, Inc., et al., No. 1:19-cv-11662-LTS
HUTCHINGS BARSAMIAN MANDEL CORN, LLP
Inception through March 13, 2024

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Theodore M. Hess-Mahan	OC	78.7	\$450	\$35,415.00
<i>TOTAL</i>				\$35,415.00

(OC) Of Counsel

EXHIBIT B

EXHIBIT B

Ruben A. Luna v. Carbonite, Inc., et al., No. 1:19-cv-11662-LTS
HUTCHINGS BARSAMIAN MANDEL CORN, LLP
Inception through March 13, 2024

<i>CATEGORY</i>	<i>AMOUNT</i>
Filing, Witness and Other Fees	\$1,206.24
Transportation, Hotels & Meals	\$43.40
Messenger, Overnight Delivery	\$83.14
<i>TOTAL</i>	<i>\$1,332.78</i>

EXHIBIT C

EXHIBIT C

Ruben A. Luna v. Carbonite, Inc., et al., No. 1:19-cv-11662-LTS
 HUTCHINGS BARSAMIAN MANDEL CORN, LLP

Filing, Witness and Other Fees: \$1,206.24

<i>DATE</i>	<i>VENDOR</i>	<i>PURPOSE</i>
August 1, 2019	USDC D. Mass.	Complaint filing fee
September 20, 2019	Middlesex County Sheriff	Service of process
September 27, 2019	Essex County Sheriff	Service of process
October 1, 2019	Suffolk County Sheriff	Service of process
August 17, 2022	USDC D. Mass.	Pro hac vice motion filing fee
July 17, 2023	USDC D. Mass.	Pro hac vice motion filing fee
November 2, 2023	USDC D. Mass.	Pro hac vice motion filing fee
February 1, 2024	USDC D. Mass.	Pro hac vice motion filing fee
March 1, 2024	USDC D. Mass.	Pro hac vice motion filing fee

EXHIBIT D

EXHIBIT D

Ruben A. Luna v. Carbonite, Inc., et al., No. 1:19-cv-11662-LTS
HUTCHINGS BARSAMIAN MANDEL CORN, LLP

Transportation, Hotels & Meals: \$43.40

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
PPL – Fan Pier	September 12, 2022	USDC D. Mass.	Parking
MassPike	September 12, 2022	USDC D. Mass.	Tolls

EXHIBIT E

EXHIBIT E

Ruben A. Luna v. Carbonite, Inc., et al., No. 1:19-cv-11662-LTS
HUTCHINGS BARSAMIAN MANDEL CORN, LLP

Delivery charges: \$83.14

<i>DATE</i>	<i>VENDOR</i>	<i>PURPOSE</i>
September 20, 2019	Federal Express	Deliver courtesy copies to clerk's office
September 23, 2019	Federal Express	Deliver courtesy copies to clerk's office

EXHIBIT F

HUTCHINGS BARSAMIAN

HUTCHINGS BARSAMIAN MANDELKORN, LLP

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FIRM RESUME

Hutchings Barsamian Mandelcorn, LLP, is a law firm based in Wellesley, Massachusetts, which represents individuals and businesses in litigation, corporate, trusts & estates, probate, family law, immigration, employment, health care and other matters.

Theodore M. Hess-Mahan

Theodore M. Hess-Mahan joined the firm as Of Counsel in 2007, where he has focused in the practice areas of complex civil litigation, shareholder and consumer fraud, unfair business practice claims, and class and derivative actions in state and federal courts.

Mr. Hess-Mahan received his B.A. from Tufts University and a J.D. from Suffolk University Law School, where he was lead articles editor of the law review and director of the Honorable Frank J. Donahue Lecture Series. He has been admitted to practice in Massachusetts, the U.S. District Court for the District of Massachusetts, the U.S. Court of Appeals for the First Circuit, and the U.S. Supreme Court.

He has over thirty years of experience as an attorney in private practice. Prior to joining the firm, Mr. Hess-Mahan was a law clerk for an associate justice of the Massachusetts Supreme Judicial Court, a civil litigator at Ropes & Gray LLP, representing individuals, businesses, insurers, governmental agencies, and non-profit institutions in state and federal trial and appellate courts and administrative proceedings, and a plaintiff's attorney at Shapiro Haber & Urmy LLP, representing consumers, shareholders, businesses and institutional investors in class, derivative and individual actions involving claims under state and federal antitrust, civil rights, consumer protection, environmental, securities and unfair business practice laws.

Mr. Hess-Mahan has litigated and negotiated settlements in a variety of cases including the following:

- \$12 million settlement on behalf of shareholders in securities fraud class action alleging improper revenue recognition based on undisclosed side agreements
- \$11 million total settlements on behalf of shareholders in securities fraud class actions alleging that research analysts issued false and misleading reports regarding publicly traded companies
- \$9.9 million settlement on behalf of shareholders in securities fraud class action alleging material overstatement of financial results based on fraudulent lending practices
- \$6 million settlement on behalf of shareholders in securities fraud class action alleging improper revenue recognition in registration statement relating to initial public offering
- Represented liability insurer in one-week bench trial of \$100 million insurance coverage dispute in federal court
- Represented Rhode Island State Treasurer in lawsuit involving constitutional challenge to state pension reform legislation
- Represented teaching hospital in three-week jury trial involving antitrust claims in federal court
- Represented hospitals in guardianship and civil commitment hearings and medical records privacy cases; obtained injunctive relief in case involving patient's "right-to-die"
- Successfully defended world-class academic medical center in bid protest filed with United States General Accounting Office involving award of \$5 million government contract for medical research

- Won a verdict on counts of defalcation of a fiduciary and embezzlement against a trustee who misappropriated \$7 million from the trust's assets after a 5-day bench trial in an adversary proceeding seeking a determination of non-dischargeability of debt in U.S. Bankruptcy Court for the District of Massachusetts

Mr. Hess-Mahan has also been appointed to serve as lead counsel or liaison counsel in a number of securities class actions filed in the United States District Court for the District of Massachusetts, including:

In re Polymedica Corp. Securities Litigation, No. 1:00-cv-12426-WGY

In re PerkinElmer, Inc., No. 1:02-cv-11314-GAO

In re Sepracor, Inc. Securities Litigation, No. 1:02-cv-12338-MEL

Sands Point Partners v Transkaryotic Therapies Corp., No. 1:03-cv-10165-RWZ

Abearn v. Credit Suisse First Boston LLC, No. 1:03-cv-10956-JLT

Wilson v Microfinancial Inc., No. 1:03-cv-11883-RGS

In re Biopure Corporation Securities Litigation, No. 1:03-cv-12628-NG

In re Ibis Technology Securities Litigation, No. 1:04-cv-10383-DPW

Aspen Technology, Inc. Securities Litigation, No. 1:04-cv-12375-JLT

Casula v. Athenabhealth, Inc., No. 1:10-cv-10477-GAO

Jerry L. & Mena M. Morelos Revocable Trust v. Termeer, No. 1:10-cv-11356-JLT

Washtenaw County Employees' Retirement System v. The Princeton Review, No. 1:11-cv-11359-RGS

In re Avid Technologies, Inc. Securities Litigation, No. 1:13-cv-10686-WGY

Gerneth v. Chiasma, Inc., No. 1:16-cv-11082-DJC

Mohanty v. Avid Technology, Inc., No. 1:16-cv-12336-IT

Maboney v. Foundation Medicine, Inc., No. 1:17-cv-11394-LTS

Construction Industry and Laborers Joint Pension Trust et al v. Carbonite, Inc., No. 1:19-cv-11662-LTS

City of Fort Lauderdale Police & Firefighters Retirement System v. Pegasystems, et al. 1:22-cv-11220-WGY

North Collier Fire Control and Rescue District Firefighters' Pension Plan v. Mercury Systems, Inc.,
No. 1:23-cv-13065-WGY

He is a former co-chair of the Boston Bar Association Class Action Committee and a former member of the BBA Litigation Section Steering Committee, has lectured at legal seminars and published articles on class actions, securities laws, special education, and medical records privacy laws, and has been a guest lecturer on voting rights at the New England School of Law. He authored a chapter on "Depositions in Class Actions," published in the Massachusetts Deposition Practice Manual (MCLE 5th ed. 2024).

Biographies of the firm's other attorneys are as follows:

Anthony Barsamian

Anthony Barsamian is the firm's managing partner. His practice areas include business and commercial transactions, business succession planning, estate and trusts, estate administration, real estate, and immigration.

Mr. Barsamian received his B.A. from the University of Massachusetts (Amherst), and his J.D. from Suffolk University School of Law. He is admitted to the Massachusetts and the U.S. District Court, District of Massachusetts and a member of the Massachusetts and American Bar Associations and the Armenian Bar Association. He has served on the boards of national non-profit organizations and has spoken extensively throughout the country on the topic of on-line dispute resolution. Mr. Barsamian currently serves as a Board Member of the National Council of Churches and the Armenian Assembly of America.

Howard M. Mandelcorn

Howard M. Mandelcorn is a partner whose practice areas include wealth transfer and wealth preservation, general estate planning, sophisticated estate tax planning, estate settlement, trust administration, charitable estate planning, private foundations, family limited partnerships, asset protection planning, and business continuation planning.

Mr. Mandelcorn received his B.A. degree, cum laude, with honors, from Brandeis University, his M.P.A. degree from the University of Pennsylvania, his B.C.L. and L.L.B. degrees from McGill University Ecole du Bateau (Quebec Bar School, 1992) and his L.L.M. degree from Boston University.

He is a contributing author to *Generations, Planning Your Legacy* (Quantum Press, 1999) and has spoken and written extensively on international estate planning issues. He is a lecturer at the Sloan School of Management at Massachusetts Institute of Technology (MIT) and has lectured extensively before estate planning attorneys, Certified Public Accountants, and financial and insurance professionals. He is admitted to practice in Massachusetts and New York and is a member of the Massachusetts and New York Bar Associations and the Boston Estate Planning Council.

Lisa A. Sedrakian

Lisa A. Sedrakian is Of Counsel to the firm. Her practice areas include international tax, estate planning, and corporate tax.

Before coming to the firm, Ms. Sedrakian worked in the International Tax Group at Arthur Andersen, LLP. She received her Bachelor of Arts degree in Political Science from the University of California, Berkeley, her J. D. from the University of San Francisco, and her Master of Laws in Taxation from New York University. She is admitted to practice in state and federal courts in the Commonwealth of Massachusetts and the State of California and is a member of the Massachusetts and Boston Bar Associations. Ms. Sedrakian is a lecturer in Accounting for Income Tax at Northeastern University.

Robert Feigin

Robert Feigin is Of Counsel to the firm. His practice areas include business law, real estate, employment, construction and home contractor disputes, defamation, and appeals.

Mr. Feigin graduated from Wesleyan University in Middletown, Connecticut with a B.A. in 1989, and he received his JD from the Boston University School of Law in 1994. He is admitted to practice in Massachusetts state and federal courts and is a member of the Massachusetts Bar Association and the Boston Bar Association. In 2004 and 2005, Mr. Feigin served as a member of the MBTA Beyond Lechmere Northwest Corridor Advisory Committee. Mr. Feigin is a member of the Board of Directors of the Massachusetts Collaborative Law Council since 2004, recently as its Secretary.

Karen Argetsinger

Karen Argetsinger is Of Counsel to the Firm. She is a mediator and collaborative attorney concentrating her practice in family, probate, health, employment, and elder Law.

Ms. Argetsinger has had over sixteen years of legal background which included law firm experience at Hale and Dorr, LLP (currently Wilmer Hale) and Warner & Stackpole, LLP (currently Kirpatrick & Lockhart, LLP) along with experience as a law clerk and independent consultant. She was a judicial intern for over a year with the United States District Court Magistrate Honorable Judith Dein. Karen received her Bachelor of Science at Tulane University in 1988 and her JD from Massachusetts School of Law in 2007. She is admitted to practice in Massachusetts and the U.S. District Court for the District of Massachusetts. She is a member of the Massachusetts Collaborative Law Council. She has a special interest in child advocacy and health policy and has worked to establish the John E. Lewy Foundation for Children's Health (subsidiary of American Society of Pediatric Nephrology) and assists the Department of Pediatrics at the University of Virginia Children's Hospital with health/legal issues and creating guidelines.