

1 THE WAGNER FIRM  
2 Avi N. Wagner (SBN 226688)  
3 1925 Century Park East, Suite 2100  
4 Los Angeles, CA 90067  
5 Telephone: (310) 491-7949  
6 Facsimile: (310) 694-3967  
7 Email: avi@thewagnerfirm.com

8 *Counsel for Plaintiff*

9  
10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 MELVYN KLEIN, Derivatively on  
14 Behalf of Nominal Defendant OPUS  
15 BANK,  
16 Plaintiff,

17 v.

18 STEPHEN H. GORDON, MARK  
19 CICIRELLI, MARK E. SCHAFFER,  
20 MICHAEL MEYER, ROBERT  
21 SHACKLETON, THOMAS M.  
22 BOWERS, CURTIS A. GLOVIER, and  
23 DAVID KING,

24 Defendants,

25 And

26 OPUS BANK, a California Corporation,  
27 Nominal Defendant.  
28

Case No. 8:17-CV-00123(AB)(JPR)

**PLAINTIFF'S MOTION FOR A FEE  
AND EXPENSE AWARD**

Hearing: July 20, 2018

Judge: Hon. André Birotte, Jr.  
Courtroom: 7B – First Street  
Action Filed: January 24, 2017

1 Pursuant to Federal Rule of Civil Procedure 23.1(c), and upon the Stipulation of  
2 Settlement<sup>1</sup>, dated January 29, 2018 (the “Stipulation”), attached as Exhibit 1 to the  
3 accompanying Declaration of Thomas J. McKenna in Support of Plaintiff’s Motion  
4 for Final Approval of Settlement and in Support of Plaintiff’s Motion for a Fee and  
5 Expense Award (“McKenna Fact Decl.”), plaintiff Melvyn Klein (“Plaintiff Klein”),  
6 derivatively on behalf of Opus Bank (“Opus”), respectfully submits this Motion,  
7 which seeks an award of \$875,000 as a Fee and Expense Award to collectively  
8 compensate Plaintiffs’ Counsel for the substantial benefit their services produced for  
9 Opus, to reimburse all Plaintiffs’ Counsel for their case-related out-of-pocket  
10 expenses incurred in the prosecution of the Derivative Actions and to provide a  
11 Service Award of \$2,500 each to Plaintiff Klein and to Plaintiff Dillard (the plaintiff  
12 in the related California State Court Derivative Action styled *Dillard v. Gordon, et al.*,  
13 Case No. BC651522, hereinafter the “*Dillard Action*”) whose action is also being  
14 settled pursuant to the Stipulation.

15 Defendants have agreed they will not oppose the branch of this Motion which  
16 seeks the Service Awards because they do not exceed \$2,500 each and will be paid  
17 from the Fee and Expense Award granted by this Court. *See Stip.*, at 11.

18 For the reasons set forth in the Stipulation, the McKenna Fact Decl., this  
19 Motion, the accompanying Memorandum and Points of Authorities in Support  
20 thereof, and the other Declarations and exhibits submitted in support of this Motion,  
21 Plaintiff Klein respectfully requests that the Court grant the instant Motion, make a  
22 Fee and Expense Award of \$875,000, along with such other and further relief which  
23 the Court may deem just and proper.

24  
25  
26  
27  
28 <sup>1</sup> Terms not defined herein shall have the meanings ascribed to them in the Stipulation.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: June 15, 2018

**THE WAGNER FIRM**

By: /s/ Avi N. Wagner

Avi N. Wagner

1925 Century Park East, Suite 2100

Los Angeles, CA 90067

Telephone: (310) 491-7949

Facsimile: (310) 694-3967

Email: avi@thewagnerfirm.com

**GAINEY McKENNA & EGGLESTON**

Thomas J. McKenna (*pro hac vice*)

440 Park Avenue South, 5th Floor

New York, NY 10016

Telephone: (212) 983-1300

Facsimile: (212) 983-0383

Email: tjmckenna@gme-law.com

**Counsel for Plaintiff Melvyn Klein**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE BY ELECTRONIC POSTING**

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On June 15, 2018, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court’s Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 15, 2018, at Los Angeles, California.

*s/ Avi Wagner*  
\_\_\_\_\_  
Avi Wagner

## Mailing Information for a Case 8:17-cv-00123-AB-JPR Melvyn Klein v. Stephen H. Gordon et al

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Eric A Kuwana**  
ekuwana@cooley.com,calendardepartment@cooley.com,hector-gonzalez-3380@ecf.pacerpro.com
- **Alexandra Rex Mayhugh**  
amayhugh@cooley.com,calendardepartment@cooley.com,hector-gonzalez-3380@ecf.pacerpro.com,sbyrd@cooley.com
- **Thomas J McKenna**  
tjmckenna@gme-law.com,tjmlaw2001@yahoo.com,gmelawny@gmail.com
- **Caitlin B Munley**  
cmunley@cooley.com,calendardepartment@cooley.com,hector-gonzalez-3380@ecf.pacerpro.com
- **Samantha A Strauss**  
sastraus@cooley.com,calendardepartment@cooley.com,hector-gonzalez-3380@ecf.pacerpro.com
- **Avi N Wagner**  
avi@thewagnerfirm.com,anwagneresq@hotmail.com

### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)