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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/06/2019** at 04:14:00 PM  
Clerk of the Superior Court  
By Carolina Miranda, Deputy Clerk

6 *Attorneys for Plaintiffs and the Settlement Class*

7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**

11 MONICA RAEL and ALYSSA HEDRICK, on  
12 behalf of themselves and all others similarly  
situated,

13 Plaintiffs,

14 v.

15 RTW RETAILWINDS, INC., a Delaware  
16 corporation, NEW YORK & COMPANY  
STORES, INC., a New York corporation, and  
DOES 1-20, inclusive,

17 Defendants.

Case No: 37-2019-0003850-CU-MC-CTL

[E-FILE]

**CLASS ACTION**

**DECLARATION OF TODD D. CARPENTER  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR ATTORNEYS' FEES, COSTS AND  
INCENTIVE AWARDS**

Date: September 27, 2019

Time: 9:00 a.m.

Dept.: C-73

19 I, Todd D. Carpenter, declare:

20 1. I am an attorney duly admitted to practice law before all courts of the State of California,  
21 and I am a shareholder in the law firm of Carlson Lynch LLP, for Plaintiffs and the Class herein. I make  
22 this declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Incentive  
23 Awards. If called as a witness, I could and would competently testify to the following:

24 2. I have personally been involved in the investigation and prosecution of this class action  
25 from its inception through to the present. I oversaw the investigation into several locations of the  
26 Defendants' stores. I directed the investigation through the use of my paralegals and reviewed their entries  
27 accordingly. I was also actively involved in the management of the litigation. I assigned litigation tasks to  
28

1 my associates, but performed the high-level negotiation of the settlement and oversaw the approval  
2 process law & motion work.

3 3. The law firm of Carlson Lynch LLP has expended a substantial amount of time and effort  
4 in prosecuting this action and achieving an adequate benefit for the Class. The requested fee is reasonable  
5 and appropriate based on the risks of litigation, Class Counsel's refusal of alternative employment  
6 opportunities with guaranteed payment, and the benefit obtained for the Class.

7 4. After reaching agreement on the material terms of the Settlement, the Parties negotiated an  
8 agreement on attorneys' fees, costs, and incentive awards that New York & Company will pay separate  
9 and apart from its payment to the Class.

10 5. My firm has spent 555.2 attorney hours (including 2.8 hours of prospective time) in  
11 prosecuting this case at the rates of: \$750.00 per-partner hour; \$395.00 per-associate hour; and \$125 per-  
12 paralegal hour on behalf of the Class through the date of this declaration. I have established my billable  
13 rate through an annual, informal survey of similarly experienced consumer class action attorneys in the  
14 Southern California legal market. I expect to spend another 2.8 hours to conclude this action, including  
15 preparing for and attending the Final Fairness Hearing. Further, my firm has spent approximately  
16 \$37,464.12 in un-reimbursed expenses incurred in connection with this case. A breakdown of my firm's  
17 additional costs incurred in this action is set forth below:

18 **COSTS**

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No.	General Description	Cost:	
1.	Mediation	\$6,000.00	
2.	Court fees	\$1,793.12	
3.	Electronic research	\$2,321.00	
4.	Scanning, photocopying, printing, and other office related costs	Waived	
5.	Expert Report On Point Analytics	\$27,350.00	

6.	Expert Report from Nera	N/A	
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**TOTAL:** \$ 37,464.12

6. My lodestar billing time records are available if required by the Court. A general summary of my firm's accrued time is as follows:

No.	General Description	Hours	Rate	Lodestar
1.	<b>Pre-filing investigation; research establishing theory of liability: (Partner Time)</b> Designed the pre-suit investigation, including in-person observation and recording of pricing practices and sales transactions. Coordinated the strategy and execution for the investigation at thirty six out of a possible 43 locations throughout the state of California, including the surveillance of pricing strategies and practices on a near-daily basis for 15 consecutive months and a total 18 months out of a 26 month time-period. Assessed investigation-acquired pricing against NY&Co website; and WaybackMachine.org. Designed and implemented the pre-suit comparison market investigation – identifying outlet items sold and comparing against retail channel stores. Research regarding statutory liability for false reference pricing; impact /damages analysis.	58.4	\$750	\$43,800.00
2.	<b>Pleadings: (Associate Time)</b> Research case law and review case database for filings regarding fraudulent sale discounting complaints; gather factual information for complaint and review corresponding investigation data; draft initial complaints for both <i>Rael</i> and <i>Hedrick</i> actions and circulate for edits; gather and incorporate exhibits; incorporate revisions, revise, finalize, and file; issue for service; draft first amended complaint in <i>Rael</i> ; circulate for review and incorporate edits; finalize, file, and e-serve; draft second amended complaint in <i>Rael</i> and corresponding joint motion for leave to file second amended complaint; circulate for review and incorporate edits; finalize, file, and e-serve; draft third amended complaint in <i>Rael</i> ; circulate for review and incorporate edits; finalize, file, and e-serve; review answers in both <i>Rael</i> and <i>Hedrick</i> actions.	44.3	\$395	\$17,577.50
3.	<b>Investigation Time (Paralegal time):</b> Observed market pricing practices for 24 SKU items identified at outlet and 32 SKU items at regular retail channel stores for 18 total months prior to suit and subsequent months preceding mediation.	968.4	\$125	\$121,050
4.	<b>Discovery: (Associate time)</b> Draft written discovery requests including Requests for Production of Documents and Special Interrogatories; circulate to co-counsel and partner for review and comment; incorporate suggested revisions; finalize and serve; calendar response deadline; draft notices of deposition for Defendants' corporate representative and percipient witness; circulate to partner for edits to topics regarding FRCP 30(b)(6) notice and incorporate same; serve and correspond with opposing counsel regarding scheduling.	36.9	\$395	\$14,575.50

1	5.	<b>Discovery: (Partner time):</b> Strategize with team regarding goals of discovery; provide input into 30b6 topics; potential subpoena issues; Review written discovery;	13.2	\$750	\$9,900.00
2	6.	<b>Evaluation, Retention and substantive work with Experts (Partner time):</b> Screened, vetted and interviewed consumer behavior consultants / human factors experts and economists. Conference calls and email correspondence with consumer survey expert regarding consumer survey design with respect to Defendant's pricing scheme; use of false reference prices; impact on consumer behavior. Drafted memorandum regarding substantive liability issues; scope of consumer purchase pattern and behavior impacted by false reference prices; correlating survey issues. Follow up correspondence and discussion regarding the use of open-ended survey questions; recall bias issues for consumer survey.	73.2	\$750	\$54,900.00
3		Summarized and provided granular investigation data to OnPoint Analytics; conference calls, email and discussion regarding the proposed damages models; use of regression analysis and conjoint theory for damages determination; market price impact analysis. Drafted numerous memorandum regarding critiques of damages models, summary of data acquired in investigation; assigning and ranking product attributes; comparison market data – items sold at competitive retail chains; outlet channels. Review of expert declaration / report in support of Plaintiffs mediation statement. Follow up conference calls regarding substance of report; assessment of range of potential damages.			
4	7.	<b>Law and Motion: (Associate time)</b> Draft joint motion for leave to file amended complaint; conduct legal research and draft oppositions to multiple rounds of motions to dismiss; circulate drafts to partner and incorporate edits; draft and file notice of supplemental authority regarding pending motion to dismiss; prepare for motion to dismiss hearings.	83.5	\$395	\$32,982.50
5	8.	<b>Law and Motion: (Partner time)</b> Reviewed draft oppositions; amended complaints; and prepared for oral argument on motions to dismiss.	14.3	\$750	\$10,725.00
6	9.	<b>Settlement Agreement and Mediation: (Associate time)</b> Attend full-day mediation session; follow-up telephonic conferences and email correspondence with mediator regarding final terms of settlement; draft settlement agreement and notices; conduct several telephonic meet and confer conferences with opposing counsel regarding various drafts of settlement agreement and notices; receive revisions and incorporate same; correspondence with claims administrator regarding settlement notices, website, and dissemination of notice.	47.7	\$395	\$18,841.50
7	10.	<b>Mediation / Settlement: (Partner time)</b> Prepared mediation brief; coordinated expert report from On Point Analytics to support available damages analysis; attended full day mediation; follow up settlement issues; negotiated settlement details through multiple revisions and phone calls with	53.2	\$750	\$39,900.00

	opposing counsel. Post mediation settlement discussions and teleconferences; multiple revisions to Settlement Agreement; Notices.			
11.	<b>Motions for Settlement Approval (Associate Time):</b> research regarding motion in support of preliminary approval of class action settlement and draft the same; incorporate edits from partner; finalize, file, and serve; prepare for preliminary approval hearing; draft amended preliminary approval papers to address the Court's initial concerns; circulate to partner for review; incorporate edits; file and serve; research and draft instant fee motion; circulate to partner for review and incorporate edits; finalize and filed.	47.7	\$395	\$18,841.50
12.	<b>Motions for Settlement Approval (Partner Time):</b> Made revisions to motion for Preliminary Approval; met with client; prepared for and attended oral argument for preliminary approval; prepared for and attended follow-up hearing for preliminary approval.	32.2	\$750	\$24,150.00
13.	<b>General Case Management Issues: (Partner time)</b> Preparation and participation in status conferences; periodic teleconferences.	11.2	\$750	\$8,400.00
14.	<b>Motion for Attorneys' Fees / Motion for Final Approval (Associate Time):</b> research regarding motion in support of preliminary approval of class action settlement and draft the same; incorporate edits from partner; finalize, file, and serve; prepare for preliminary approval hearing; draft amended preliminary approval papers to address the Court's initial concerns; circulate to partner for review; incorporate edits; file and serve; research and draft instant fee motion; circulate to partner for review and incorporate edits; finalize and filed..	28.3	\$395	\$11,178.50
15.	<b>Motion for Attorneys' Fees / Motion for Final Approval: (Partner time)</b> Evaluated and provided revisions to motion for attorneys' fees; prepared declaration.	8.3	\$750	\$6,225.00
16.	<b>Attendance at and preparation for Final Approval Hearing (Prospective) (Partner time):</b>	2.8	\$750	\$2,100.00
	<b>Associate Time:</b>	288.4	\$395	\$113,918.00
	<b>Partner Attorney Total:</b>	266.8	\$750	\$200,100.00
	<b>Investigation (Paralegal) Total:</b>	968.4	\$125	\$121,050.00
	<b>TOTAL:</b>			<b>\$435,068.00</b>

1           7.       Both Plaintiffs Monica Rael and Alyssa Hedrick maintained continued involvement in the  
2 litigation, including reviewing initial pleadings and communicating with Class Counsel on the status of  
3 the action.

4           8.       I agreed to accept Plaintiffs' cases on a pure contingency fee basis.

5           9.       My hourly rate of \$750.00 per hour is in line with comparable hourly rates charged by other  
6 law firms that handle class action litigation in Southern California. Indeed, my current hourly rate of  
7 \$750.00 per hour was recently approved on July 12, 2019 by Judge Ronald F. Frazier on an unopposed  
8 fee application in a similar false and deceptive sale discounting class action case, *Dennis v. Ralph Lauren*  
9 *Corporation, et al.*, Case No. 37-2018-00058462-CU-MC-CTL. My hourly rate was also recently  
10 approved on April 5, 2019 in an \$8,000,000 all-cash FACTA Settlement in *Mocek, Varoz, et al v. AllSaints*  
11 *USA Limited* (Case No. 2016-CH-10056; Circuit Court of Cook County, Illinois; County Dept. Chancery  
12 Div.). My previous hourly rate of \$650.00 per hour was approved in 2017 by Judge Judith Hayes on an  
13 unopposed fee application in a Song-Beverly Credit Card Act case, *Manner v. Summit Pizza West, LLC*,  
14 Case No. 37-2015-5909-CU-MC-CTL. My rate has increased over the last two years commensurate with  
15 other plaintiff's class action practitioners in Southern California with my level of experience and success.

16           10.      My hourly rate is consistent with my level of expertise in consumer class actions. I have  
17 extensive experience in class actions: During the course of my career, I have taken and defended over 100  
18 depositions in personal injury, complex and class action cases. I have successfully participated in  
19 mediations resulting in more than \$100,000,000 in settlements or awards in class action cases. I have  
20 drafted, filed, and argued multiple motions in complex consumer class actions, including all forms of  
21 discovery, dispositive and certification motions. My practice focuses exclusively on consumer class action  
22 and complex litigation, representing plaintiff classes in major insurance fraud, unfair business practices,  
23 false and deceptive advertising, product liability and anti-trust violations.

24           11.      I have represented plaintiffs in numerous class action proceedings in California and  
25 throughout the country, in both state and federal courts. I have represented thousands of purchasers of  
26 consumer products, food, food supplements and over-the-counter drugs in state and federal courts  
27 throughout the United States in cases arising out of various false advertising claims made by  
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1 manufacturers and retailers, including: Proctor & Gamble, General Mills, Bayer, Clorox, WD-40, Dean  
2 Foods, Botanical Laboratories, Inc., Irwin Naturals, Inc. General Nutrition Corporation and Pharmavite.  
3 As a shareholder, I was also counsel of record at my prior firm in the MDL proceeding, *In re: Hydroxycut*  
4 *Marketing and Sales Practices Litigation*, No. 09-02087 (S.D. Cal.), wherein my previous firm was  
5 designated as co-lead counsel for the class. I was also class counsel for the Settlement Class in FACTA  
6 cases against Hugo Boss, U.S.A. Inc. in the Southern District of California; *Travis Benware v. Hugo Boss,*  
7 *U.S.A., Inc.*, Case No. 3:12-cv-01527-L-MDD and Southwest Airlines (*Lumos v. Southwest Airlines, Co.*,  
8 Case No. C-13-1429-CRB) and *Mocek, Varoz, et al v. AllSaints USA Limited* (Case No. 2016-CH-10056;  
9 Circuit Court of Cook County, Illinois; County Dept. Chancery Div.)

10 12. I have represented thousands of consumer credit cardholders against several major retailers  
11 arising from violations of the Song-Beverly Credit Card Action section 1747.08 and have achieved  
12 excellent results, including, but not limited to a class benefit of a retail gift valued between \$40 and \$120  
13 in a class action settlement with Gucci America, Inc. I have also represented thousands of consumer debit  
14 card holders against major commercial banks, including assuming a leadership role as prosecuting counsel  
15 in *In re: Checking Account Overdraft Litigation, Larsen v. Union Bank* and *Dee v. Bank of the West*, MDL  
16 No. 2036 (S.D. Fl.). I have filed similar actions against several other banks and credit unions across the  
17 country, alleging that each institution manipulated the processing of customer debit card purchases to  
18 maximize overdraft fees, including actions against Northwest Savings Bank, (*Toth v. Northwest Savings*  
19 *Bank*, Case No. GD-12-8014, In the Court of Common Pleas of Allegheny County, Pittsburgh,  
20 Pennsylvania), Pinnacle National Bank (*John Higgins v. Pinnacle Bank*, Case No. 11-C4858, in the Circuit  
21 Court for the State of Tennessee, Twentieth Judicial District in Nashville) and Mission Federal Credit  
22 Union (*Taylor v. Mission Federal Credit Union*, Case No. 37-2012-00092073-CU-BT-CTL, San Diego  
23 Superior Court, Department 75, San Diego, California).

24 13. I was also appointed class counsel in *Plantier, et al. v. Ramona Municipal Water District*,  
25 San Diego, Superior Court Case No. 37-2014-00083195-CU-BT-CTL, and *Mendoza v. The Gar Wood*  
26 *Restaurant, LLP*, Placer County Case No. SCV 0034158.

1           14.    I have been recognized as a semi-finalist as a “Top Corporate Litigation Attorney,” by the  
2 San Diego Daily Transcript in 2012, and I have been named a San Diego “Super Lawyer” in 2015, 2016,  
3 2017, 2018 and 2019.

4           I declare under penalty of perjury under the laws of the State of California that the foregoing is  
5 true and correct, and that this declaration was executed on August 6, 2019, in San Diego, California.

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Dated: September 6, 2019

**CARLSON LYNCH LLP**

/s/ Todd D. Carpenter  
Todd D. Carpenter

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