

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

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

Plaintiffs,

v.

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

Defendants.

Case No: 37-2019-00003850-CU-MC-CTL

DECLARATION OF DANIEL P. WERNER, PH.D., CPA

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I. QUALIFICATIONS

1. I am a Senior Consultant in the San Francisco office of NERA Economic Consulting, Inc. (“NERA”), where I provide expert economic and financial analysis to clients on a variety of issues. My assignments typically involve the analysis of economic damages, financial statements, and financial forecasts. In the course of my litigation consulting experience I have analyzed issues relating to false advertising, business valuation, fraudulent inducement of investments, financial reporting, breach of contract, financial liquidity and solvency, lost wages, and anti-competitive behavior, among others. I have also authored several articles in various professional and legal publications on the topic of damages under false advertising allegations, in addition to presenting on the topic as part of an accredited continuing legal education (“CLE”) course for lawyers. My business address is 4 Embarcadero Center, Suite 400, San Francisco, CA, 94111.

2. I am a Certified Public Accountant (“CPA”) in the state of California and have held an active CPA license since 2010. My prior professional experience includes working as an Economist for OnPoint Analytics, where I developed and implemented rigorous financial and economic analyses to support complex corporate litigation in a variety of industries. In addition, I audited and analyzed financial statements while working at Ernst & Young (now doing business as EY), one of the largest accounting firms in the world.

3. I received my Ph.D. and M.S. degrees from the University of Maryland, College Park and I received my B.A. from the University of California, Santa Barbara from which I graduated with highest honors. My prior academic experience includes the economic analysis of various data in the consumer products and electricity sectors. I have presented my academic research at several conferences and have served as a peer review referee for academic journal

publications. I have been the recipient of ten awards, honors, scholarships, and grants for my prior academic accomplishments.

4. A more detailed list of my qualifications and experience may be found in my curriculum vitae, attached as Exhibit A. In the course of my consulting experience, I have provided testimony as an expert witness, which is also listed on Exhibit A.

II. SCOPE OF WORK

5. I understand that this case was brought by Monica Rael and Alyssa Hedrick, on behalf of themselves and all others similarly situated (the “Plaintiffs”), against RTW Retailwinds, Inc. and New York & Company Stores, Inc. (collectively, “Defendants”), regarding alleged “false and misleading advertisement of ‘regular’ prices, and corresponding phantom ‘savings’ on clothing, accessories, and fashion apparel sold in their retail and factory outlet stand-alone stores.”¹ Plaintiffs allege that Defendant New York & Company,² a retailer of women’s clothing and accessories, advertises its products using a “% Off” reference even though the “regular price” referenced by these advertisements were “either never offered to the general public, or they were offered for an inconsequential period of time and then continuously discounted, rendering the ‘regular price’ false, evasive and misleading.”³

6. I understand that Plaintiffs and Defendants have reached a settlement agreement, whereby each Authorized Claimant⁴ will be issued one voucher, redeemable for either (i) \$7.50 off

¹ Class Action Complaint, filed January 22, 2019 (“Complaint”), at ¶1.

² Throughout this Declaration I refer to New York & Company interchangeably with RTW Retailwinds, Inc., although it is my understanding that New York & Company changed its name to RTW Retailwinds, Inc. effective November 19, 2018 (BusinessWire. “New York & Company, Inc. Becomes RTW Retailwinds, Inc”, November 9, 2018, accessed via <https://www.businesswire.com/news/home/20181109005107/en/New-York-Company-RTW-Retailwinds>).

³ Complaint, at ¶2.

⁴ Settlement Agreement and Release, at p.3 (“‘Authorized Claimant’ means any Class Member who either (i) receives notice via publication notice and timely submits a complete and sufficient Claim Form or (ii) receives direct notice via email or mail,

a purchase (no minimum purchase) or (ii) 25% off a purchase of up to \$100 (\$25 maximum discount).⁵

7. I have been retained by Plaintiffs' counsel to review the settlement in this case and describe how legal settlements are typically accounted for under U.S. Generally Accepted Accounting Principles ("GAAP"). To support my analysis, I have reviewed and analyzed various case documents, accounting standards, and Defendants' publicly available financial statements. A list of the materials that I relied upon in the course of my work is attached hereto as Exhibit B.

8. NERA is being compensated for my services in this matter at a rate of \$550 per hour. Members of the staff at NERA have worked at my direction to assist me in this engagement, and NERA is compensated for their services at their normal and customary rates. No part of my compensation or NERA's compensation depends on the outcome of this litigation. Throughout this declaration, I have used the terms "I" and "my" to refer to work performed by me and/or others under my direction.

III. ANALYSIS AND OPINIONS

9. The Financial Accounting Standards Board ("FASB") is the independent, nonprofit organization that "establishes financial accounting and reporting standards for public and private companies and not-for-profit organizations that follow Generally Accepted Accounting Principles," with a goal to provide useful information to investors and other stakeholders using financial reports.⁶ FASB standards are recognized as authoritative by the U.S. Securities and Exchange

according to the terms of this Settlement Agreement and does not validly request exclusion from the Class and proposed Settlement").

⁵ Settlement Agreement and Release, at p. 7.

⁶ Financial Accounting Standards Board. "About the FASB," accessed via <https://www.fasb.org/facts/index.shtml>.

Commission (“SEC”), state Boards of Accountancy, and the American Institute of CPAs (“AICPA”).⁷ The FASB Accounting Standards Codification (“ASC”) is “the source of authoritative generally accepted accounting principles (GAAP) recognized by the FASB to be applied to nongovernmental entities.”⁸

10. Under GAAP, revenues and expenses are recognized under an accrual accounting basis (as opposed to a cash accounting basis), meaning that revenues and expenses are typically recorded at the time they occur (as opposed to the timing of cash receipt or disbursement). When accounting for loss contingencies⁹ (e.g., pending litigation and a potential settlement outcome) the estimated loss is to be accrued if (1) “it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements” and (2) “the amount of loss can be reasonably estimated.”¹⁰ Thus, accrual of potential losses may be appropriate during litigation, depending on factors outlined within the FASB ASC, which help determine whether accrual and/or disclosure is required for pending litigation and actual or possible claims.¹¹ Ultimately, the evaluation of these factors and the preparation of financial statements and reporting of such information is the responsibility of each company’s management.¹²

11. Once a settlement is reached, an expense is recorded for the difference between any amount previously accrued and the final amount of the settlement. Settlements for non-cash

⁷ Financial Accounting Standards Board. “About the FASB,” accessed via <https://www.fasb.org/facts/index.shtml>.

⁸ Financial Accounting Standards Board. *About the Codification*. December 2014, v 4.10, at p. 4.

⁹ FASB defines a contingency as “an existing condition, situation, or set of circumstances involving uncertainty as to possible gain (gain contingency) or loss (loss contingency) to an entity that will ultimately be resolved when one or more future events occur or fail to occur” (FASB ASC 420-20-20 Glossary).

¹⁰ FASB ASC 420-20-25-02.

¹¹ For example, see: FASB ASC 420-20-55-10 through 420-20-55-17.

¹² For example, the report of the Defendants’ independent auditor notes, “These financial statements and schedule are the responsibility of the Company’s management” (New York and Company. Company 10-k for fiscal year ending January 30, 2016, at p. 48).

consideration are generally recognized and recorded at fair value on the settlement date and will be similarly netted against any amount previously accrued for. Based upon my review of Defendants' publicly available financial statements, the general procedure outline above is consistent with the Defendants' historical practices. For example, Defendants' financial statements are prepared in accordance with GAAP and "charges related to a settlement of a wage and hour class action lawsuit in the state of California" were recognized on the Defendants' financial statements for the 2015 fiscal year under selling, general, and administrative expenses.¹³

12. To the extent that Defendants have already accrued for the settlement outcome in this case as a contingent loss liability, it would have been previously recognized on the financial statements as an expense (*i.e.*, ultimately resulting in a reduction to net income and incorporated into the balance sheet as a liability recorded at its estimated fair value¹⁴). I have reviewed the publicly available financial statements from Defendants for the fiscal years 2015 through 2018,¹⁵ and note that fiscal year 2018 "includes legal accruals related to an ongoing trademark infringement case and a class action lawsuit."¹⁶ However, it is not clear from the financial statements whether the referenced class action lawsuit is indeed this case. To the extent that the settlement outcome in this case has been recorded as a liability by Defendants' management in 2018 because of the mediated settlement, then it would have similarly impacted the operating income of the Defendants.

¹³ New York and Company. Company 10-k for fiscal year ending January 30, 2016, at p. 31 and p. 48.

¹⁴ "[F]air value is not an estimate of the ultimate settlement amount or the present value of an estimate of the ultimate settlement amount. Uncertainty in the amount and timing of the future cash flows necessary to settle a liability and the likelihood of possible outcomes are incorporated into the measurement of the fair value of the liability... Recognizing the fair value of an obligation results in recognition of some obligations for which the likelihood of future settlement, although more than zero, is less than probable from a loss contingencies perspective" (FASB ASC 420-20-05-06).

¹⁵ New York and Company. Company 10-k for fiscal year ending January 30, 2016; New York and Company. Company 10-k for fiscal year ending January 28, 2017; New York and Company. Company 10-k for fiscal year ending February 3, 2018; RTW Retailwinds, Inc. Company 10-k for fiscal year ending February 2, 2019.

¹⁶ RTW Retailwinds, Inc. Company 10-k for fiscal year ending February 2, 2019, at p. 34.

13. Importantly, regardless of how Defendants have historically accounted for the settlement in this case, FASB ASC notes:

*“Accrual of a loss related to a contingency [such as pending litigation] does not create or set aside funds to lessen the possible financial impact of a loss... Accounting accruals are simply a method of allocating costs among accounting periods and have no effect on an entity's cash flow. Those accruals in no way protect the assets... Accrual, in and of itself, provides no financial protection that is not available in the absence of accrual.”*¹⁷

14. In other words, the Defendants’ prior accounting treatment does not impact the economic substance of the settlement in this case, which will ultimately reduce Defendants’ cash flows and net income.

15. Certain aspects of the voucher in this case (*e.g.*, it is transferable and has no minimum purchase required) render it more similar to a gift card that expires, as opposed to a coupon (which generally require a minimum purchase).¹⁸ While the redemption rates for class settlement awards vary depending on the nature and amount of the award, an academic study focused on 15 small-stakes consumer class action lawsuits reported redemption rates of 37%-75% for automatically distributed settlements.¹⁹ In addition, publicly available information estimates that approximately 85% of gift cards are used within 60 days,²⁰ which suggests that the majority of consumers who redeem the voucher in this case will not be limited by the voucher’s expiration date

¹⁷ FASB ASC 420-20-05-08 and 420-20-05-10.

¹⁸ I note that under ASC 606, which governs revenue accounting, coupons are not recorded as liabilities and expenses, but instead are accounted for as a reduction to revenue. For example, see ACS 606-10-32-25, which notes “Consideration payable to a customer also includes credit or other items (for example, a coupon or voucher) that can be applied against amounts owed to the entity... An entity shall account for consideration payable to a customer as a reduction of the transaction price and, therefore, of revenue unless the payment to the customer is in exchange for a distinct good or service.” In this case, the reduction to revenue ultimately translates to a reduction in cash flows and net operating income.

¹⁹ Fitzpatrick, Brian T., and Robert C. Gilbert. “An empirical look at compensation in consumer class actions.” *NYU Journal of Law and Business* 11, no 4. (2014): 767-792, at p. 770.

²⁰ Kim, Susana. “\$41 Billion in Unused Gift Cards Since '05.” ABC News, December 29, 2011, accessed via <https://abcnews.go.com/Business/unused-gift-cards-shrinking/story?id=15249093>.

of six months.²¹ Given this information (and the fact that the voucher in this case is automatically disbursed)²² it is reasonable to assume that 31% to 64% of vouchers in this case will be redeemed.²³

16. If the Defendant accrued for the settlement outcome in this case as a contingent loss liability and estimated a corresponding expense under the assumption that 50% of Class Members redeem the voucher for \$7.50 (and remaining 50% of vouchers are unredeemed),²⁴ the financial statement impact would be an expense of \$2.4 million.²⁵ These accounting treatments and corresponding dollar figures are provided for illustrative purposes only, as the actual accounting treatment and the preparation of financial statements is the responsibility of each company's management after they analyze the relevant factors in accordance with GAAP.²⁶

IV. CONCLUSIONS

17. In my opinion, the settlement agreement in this case represents a real economic transfer from Defendants to Plaintiffs and will ultimately be reflected as a reduction to cash flows and net operating income on the Defendants' financial statements to the extent that Class Members redeem the associated vouchers.

²¹ Settlement Agreement and Release, at p. 6.

²² "Class Members who receive direct notice (the Class Members for whom New York & Company has valid email or mailing addresses), need not do anything in response to the Notice and will automatically receive a Voucher no later than (60) calendar days after the Final Settlement Date. New York & Company estimates that it has valid email and/or mailing addresses for approximately 640,000 Class Members" (Settlement Agreement and Release, at p.7).

²³ $31.5\% = 37\%$ (lower range of automatically distributed settlement) $\times 85\%$ (gift card redemption within 6 months). $63.8\% = 75\%$ (upper range of automatically distributed settlement) $\times 85\%$ (gift card redemption within 6 months).

²⁴ As previously noted, settlements for non-cash consideration are generally recognized and recorded at fair value on the settlement date. Importantly, fair value "is not an estimate of the ultimate settlement amount" but instead considers "[u]ncertainty in the amount and timing of the future cash flows necessary to settle a liability and **the likelihood of possible outcomes**" (FASB ASC 420-20-05-06, emphasis added).

²⁵ $\$2.4 \text{ million} = 640,000 \text{ estimated Class Members} \times 50\% \text{ redemption} \times \7.50 (Settlement Agreement and Release, at p. 7).

²⁶ As previously noted, the report of the Defendants' independent auditor notes, "These financial statements and schedule are the responsibility of the Company's management" (New York and Company. Company 10-k for fiscal year ending January 30, 2016, at p. 48).

18. My opinions and conclusions as expressed in this report are to a reasonable degree of professional and scientific certainty. My conclusions have been reached through the proper application of standard methodologies relied upon by experts in the field of economics and accounting. I reserve the right to update and or supplement my opinions if additional information is provided to me, to the extent that the court allows. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'D. P. Werner', is written over a horizontal line.

Daniel P. Werner, Ph.D., CPA
Senior Consultant
September 5, 2019

Exhibit A

Daniel Werner, Ph.D., CPA **Senior Consultant**

Dr. Daniel Werner specializes in economic, financial, and statistical analysis to support complex litigation and other business challenges. He has applied his expertise to matters involving economic damages, consumer fraud and false advertising, anti-competitive behavior, class certification, agricultural and mineral production, risk, business valuation, financial liquidity and solvency, and lost wages, among others. Dr. Werner has also provided oral and written expert testimony in connection with his economic analysis. His economic consulting experience has covered a wide range of industries, including consumer retail products, energy and mining, food processing, technology, real estate, and insurance, among others.

Prior to joining NERA, Dr. Werner served as an economist at a boutique consulting firm in the San Francisco bay area and analyzed financial data while working at a Big 4 accounting firm. Dr. Werner has also conducted empirical academic research in the field of applied microeconomics, presenting his work at several academic conferences and serving as a peer review referee for academic journal publications.

Select Projects

Representative examples of Dr. Werner's engagement experience include:

Antitrust Litigation

- Antitrust (dairy markets) – Analyzed economic market and managed econometric analyses to investigate the price impact arising from an alleged conspiracy to reduce product supply by producers of fresh dairy products. Calculated damages to direct purchaser plaintiff, which was used to support plaintiff's claim.
- Antitrust (real estate management software) – Analyzed damages model and economic market definition put forth by plaintiff's expert to investigate the impact on prices and sales arising from alleged anticompetitive behavior, which was used to refute plaintiff's claim.
- Antitrust (seafood markets) – Analyzed economic market and managed econometric analyses to investigate the price impact of alleged price-fixing activities by producers of canned seafood products. Calculated damages to direct purchaser plaintiff, which was used to support plaintiff's claim.

Breach of Contract and Wrongful Conduct Litigation

- Breach of contract (almond processing) – Analyzed economic market potential for an almond processing business with emerging technology. Calculated damages based on lost profits, which was used to support plaintiff’s claim.
- Fraud (consumer retail) – Analyzed financial statement information to examine material misstatement of financial information to investors. Investigated financial solvency issues and calculated damages associated with material financial misstatements, which was used to support plaintiff’s claim.
- Breach of contract (wind farm) – Reviewed financial information and analyzed market data to estimate the economic valuation of wind farm assets. Critiqued lost profits analyses and corresponding valuation put forth by plaintiff’s expert, which was used to refute plaintiff’s claim.
- Fraud (mortgage lending) – Analyzed real estate market, mortgage lending data, and corporate financial statements to assess solvency issues and representations made to investors, which was used to support plaintiff’s claim.

Economic and Statistical Consulting (Non-litigation)

- Economic consulting (food processing) – Analyzed economic market for thick viscosity tomatoes, which was used to support strategic initiatives within a processed food company.
- Economic consulting (mining) – Performed economic impact analysis to quantify potential changes to GDP and employment from proposed regulation, which was used by a mining company to oppose regulatory changes.
- Economic consulting (satellite technology) – Performed economic impact analysis to quantify potential changes to GDP and social costs arising from the use of newly generated satellite data, which was used by a communications company in their dealings with stakeholders.

False Advertising Litigation

- False advertising (retail grocery products) – Analyzed economic market and designed econometric analysis of purchase data to determine the valuation of various product features in connection with false labeling allegations for “organic” labels on grocery products. Calculated damages based on the price premium paid by consumers, which was used to support plaintiff’s class action.
- False advertising (personal care products) – Analyzed economic market and designed econometric analysis of purchase data to determine the valuation of various product features in connection with false labeling allegations for “all natural” and “organic” labels on personal care products. Calculated damages based on the price premium paid by consumers, which was used to support plaintiff’s class action.
- False advertising (baby/children’s apparel) – Analyzed economic market and designed econometric analysis to determine the valuation of various product features in connection with deceptive pricing allegations for retail baby/children’s clothing products, which was used to support plaintiff’s class action.

- False advertising (apparel) – Analyzed economic market and designed econometric analysis to determine the valuation of various product features in connection with deceptive pricing allegations for retail clothing products, which was used to support plaintiff’s class action.

Labor and Employment Litigation

- Wrongful termination (legal services) – Analyzed economic market opportunity for legal services company and personal income data of owner/partner in connection with damages allegations. Calculated lost profits and critiqued damages calculation put forth by plaintiff’s expert, which was used to refute plaintiff’s claim.
- Wrongful death (wealth management consulting) – Analyzed financial information of financial services firm, along with personal income data of owner/partner in connection with damages arising from wrongful death allegations. Calculated lost profits and critiqued plaintiffs’ business valuation analysis, which was used to refute plaintiff’s claim.
- Personal injury (digital media) – Analyzed economic market opportunity of digital media company, along with corresponding financial income data of business owner in connection with damages arising from personal injury allegations. Concluded that a profitable market opportunity did exist but-for the alleged injury, which was used to support plaintiff’s claim.
- Personal injury (landscape design) – Analyzed economic market opportunity and financial information of garden design business, along with corresponding income data of business owner, in connection with damages allegations arising from personal injury claim. Calculated lost profits and lost wage income, which was used to support plaintiff’s claim.

Education

- 2015 University of Maryland, College Park
Ph.D. in Agricultural and Resource Economics
Dissertation: “Electricity Markets: Price Risk, Pollution, and Policies”
- 2014 University of Maryland, College Park
M.S. in Agricultural and Resource Economics
Qualifying Paper: “Residential Electricity Demand, Split Incentives, and Refrigerator Efficiency”
- 2009 University of California, Santa Barbara
B.A. in Business Economics, Environmental Studies
Graduated with Highest Honors

Certifications

- 2010 California Board of Accountancy
Certified Public Accountant (CPA)

Professional Experience

- 2019 - present **NERA Economic Consulting**, San Francisco, CA
Senior Consultant
Economic damages / litigation consulting
- 2015 - 2019 **OnPoint Analytics, Inc.**, Emeryville, CA
Economist
Economic damages / litigation consulting
- 2011 - 2015 **University of Maryland**, College Park, MD
Graduate Research Assistant
Research in applied microeconomics
- 2009 - 2010 **Ernst & Young, LLP**, San Francisco, CA
Assurance Associate
Financial statement audit and analysis
- 2008 - 2009 **University of California**, Santa Barbara, CA
Economics Research Assistant
Research in applied microeconomics

Honors, Awards, and Grants

- 2014 Dennis J. O'Brien Best Student Paper Award, United States Association for Energy Economics, 37th IAEE International Conference. Awarded for "Electricity Market Price Volatility: The Importance of Ramping Costs"
- 2014 Student Scholarship Award, National Capital Area Chapter of the United States Association for Energy Economics
- 2014 Jacob K. Goldhaber Travel Award, University of Maryland Graduate School
- 2013 Bessie H. DeVault Award for best paper written by a second year student, University of Maryland AREC Department. Awarded for "Renewable Portfolio Standards: Policies for Pollution or Pride?"
- 2013 Jacob K. Goldhaber Travel Award, University of Maryland Graduate School
- 2013 Heartland Conference Travel Grant, University of Illinois at Urbana-Champaign
- 2009 UCSB Academic Excellence Award, award for exceptional academic and community service
- 2009 College Honors, UCSB College of Letters & Sciences

- 2009 Senior Scholastic Award, UCSB Economics Department
- 2009 Outstanding Academic Achievement Award, UCSB Environmental Studies Program

Publications

1. New Research on the Effectiveness of Bidding Rings: Implications for Competition Policies (coauthored with John M. Connor). *CPI Antitrust Chronicle*. Competition Policy International, April 2019
2. Recent Developments in Estimating Damages Under Deceptive Pricing Allegations. *What's in Store*. American Bar Association, Committees on Consumer Protection, Privacy, and Advertising Disputes & Litigation, Fall 2018
3. Applying Regression Analysis to Valuation and Forensic Engagements. *FVS Consulting Digest*, Issue 34. American Institute of Certified Public Accountants, Summer 2018
4. Using Advanced Data Analytics to Measure Economic Damages in Consumer Fraud and False Advertising Cases. *FVS Consulting Digest*, Issue 33. American Institute of Certified Public Accountants, January 2018
5. Keys To Estimating Damages In Deceptive Pricing Cases (coauthored with Stephen F. Hamilton). *Law360*. Portfolio Media, Inc. September 22, 2017
6. Electricity Market Price Volatility: The Importance of Ramping Costs. In *Energy & the Economy, 37th IAEE International Conference Proceedings*. International Association for Energy Economics, June 2014

Presentations

1. Overview of Damage Analysis in False Advertising Cases, co-presented with A.C. Davis and G. Macartney at Jeffer Mangels Butler & Mitchell LLP, San Francisco, CA, 2018
2. Electricity Market Price Volatility: The Importance of Ramping Costs, presented at:
 - (i) 37th International Association for Energy Economics Conference, New York, NY, 2014
 - (ii) Agricultural and Applied Economics Association Annual Meeting, Minneapolis, MN, 2014
3. Renewable Portfolio Standards: Policies for Pollution or Pride, presented at: Heartland Environmental and Resource Economics Workshop, University of Illinois at Urbana-Champaign, 2013

4. Heterogeneity in Renewable Portfolio Standards: A Local Pollution Analysis, presented at: 15th Annual University of Colorado Environmental and Resource Economics Workshop, Vail, Colorado, 2013
5. Residential Electricity Demand, Split Incentives, and Refrigerator Efficiency, research poster presented at: Agricultural and Applied Economics Association Annual Meeting, Washington, D.C., 2013

Other Professional and Non-Profit Activities

- 2015 - present The Energy Journal, International Association for Energy Economics
Peer Review Referee
- 2016 - 2018 Capture the Dream, Oakland, CA
Vice President of Finance
- 2008 - 2009 Santa Barbara Student Housing Cooperative, Santa Barbara, CA
Treasurer of Board of Directors

Expert Designations and Testimony

1. Madonna Messina et al. v. Angus Mack Walker et al., Superior Court of Washington, County of King, Case No. 16-2-30032-4 SEA. Disclosed as expert.
2. Suzanne Kunda-Cvitkovic v. CSAA Insurance Exchange, ADR Services, Inc., ADRS Case No. 17-4469-BLS. Deposition Testimony given October 3, 2018. Arbitration Testimony given 2018.
3. Andrew Huff v. Royal Inn Hotel et al., Superior Court of California, County of San Francisco, Case No. CGC-17-556945. Deposition Testimony given May 23, 2018.
4. Tyrian Purple LLC v. Scott C. Clay, et al., Superior Court of Arizona, County of Maricopa, Case No. CV2016-016224. Expert Report filed August 28, 2017.

Exhibit B

Materials Relied Upon

Legal Filings

- Class Action Complaint, filed January 22, 2019
- Settlement Agreement and Release

Accounting Guidance, Research, and Financial Statements

- BusinessWire. “New York & Company, Inc. Becomes RTW Retailwinds, Inc”, November 9, 2018, accessed via <https://www.businesswire.com/news/home/20181109005107/en/New-York-Company-RTW-Retailwinds>
- FASB ASC 420-20
- FASB ASC 606-10
- Financial Accounting Standards Board. “About the FASB,” accessed via <https://www.fasb.org/facts/index.shtml>
- Financial Accounting Standards Board. *About the Codification*. December 2014, v 4.10
- Fitzpatrick, Brian T., and Robert C. Gilbert. “An empirical look at compensation in consumer class actions.” *NYU Journal of Law and Business* 11, no 4. (2014): 767-792.
- Kim, Susana. “\$41 Billion in Unused Gift Cards Since '05.” ABC News, December 29, 2011, accessed via <https://abcnews.go.com/Business/unused-gift-cards-shrinking/story?id=15249093>
- New York and Company. Company 10-k for fiscal year ending February 3, 2018
- New York and Company. Company 10-k for fiscal year ending January 28, 2017
- New York and Company. Company 10-k for fiscal year ending January 30, 2016
- RTW Retailwinds, Inc. Company 10-k for fiscal year ending February 2, 2019