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9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 EASTERN DIVISION
13

14 JOSE JACOBO, et al,
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16 Plaintiffs,
vs.
17 ROSS STORES, INC., et al,
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19 Defendants.
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Case No. 2:15-cv-04701-MWF-AGRx

CLASS ACTION

**DECLARATION OF CHRISTOPHER
J. MOROSOFF IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, LITIGATION
COSTS, ADMINISTRATIVE
COSTS, AND CLASS
REPRESENTATIVES'
ENHANCEMENT PAYMENTS**

Courtroom: 5A – First Street
Date: July 22, 2019
Time: 10:00 a.m.
Judge: Hon. Michael W. Fitzgerald

DECLARATION OF CHRISTOPHER J. MOROSOFF

I, Christopher J. Morosoff, declare as follows:

1. I am an attorney licensed to practice law before all the courts of the State of California and before this Court.
2. I am the principal of the LAW OFFICES OF CHRISTOPHER J. MOROSOFF attorney of record and co-counsel with Douglas Caiafa, A Professional Law Corporation, for Plaintiffs herein before this Court in the action *Jose Jacobo et al. v. Ross Stores, Inc.*, U.S.D.C., C.D. Cal. 2:15-cv-04701-MWF-AGR_x.
3. I submit this Declaration in support of Plaintiffs' Motion for Attorneys' Fees, Litigation Costs, Administrative Costs, and Class Representatives' Enhancement Payments.
4. I have been admitted to practice and have actively practiced in California before both State and Federal Courts, including this one, for 20 years and have defended and prosecuted numerous complex multi-party actions, including over 25 class actions, and including multi-million dollar false advertising cases, wage and hour and consumer class action litigation and settlements.
5. Prior to filing this action, Mr. Caiafa and I consulted with Plaintiffs, as well as others who shopped at and purchased items at Ross Stores, investigated Defendant's pricing practices and researched the law applicable to Plaintiffs' claims. I personally met with customers of Ross, physically went to various Ross stores in Southern California, investigated Ross extensively on-line, investigated Ross's pricing practices and researched the applicable law. This pre-filing analysis included substantial time in the investigation and analysis of Ross's various disclosures, price tags, and various forms of advertising including television, on-line and in-store.
6. Mr. Caiafa and I researched and drafted Plaintiff Jose Jacobo's original Complaint, which was filed on June 20, 2015.

- 1 7. I assisted in the drafting and filing of a Joint Rule 26(f) Report file on January
2 4, 2016
- 3 8. I also assisted in the research, legal and factual analysis, and drafting of
4 Plaintiffs' Opposition to Defendant's Motion to Dismiss FAC ("MTD") filed
5 on January 15, 2016. I traveled to and attended the hearing on Defendant's
6 MTD on February 11, 2016. After the ruling granting Defendant's MTD with
7 leave to amend, I researched, analyzed, drafted and filed a Second Amended
8 Complaint ("SAC") to address the deficiencies in Plaintiffs' FAC.
- 9 9. In response to Defendant's Motion to Dismiss Plaintiffs' SAC ("MTD2"), Mr.
10 Caiafa and I analyzed the legal and factual bases of the arguments raised by
11 Defendant. I conducted research, drafted and filed Plaintiffs' Opposition to
12 Defendant's MTD2 on May 23, 2016.
- 13 10. On June 13, 2016, I traveled to and attended the hearing on Defendant's
14 MTD2.

15 **Discovery and Related Motion Practice:**

16 *a. Written Discovery and Discovery Motions Filed by Plaintiffs*

- 17 11. Mr. Caiafa and I researched, analyzed, drafted and served written discovery on
18 Defendant in the form of interrogatories, document demands and requests for
19 admissions. After many "meet and confers," on June 13, 2016, Mr. Caiafa and
20 I analyzed, researched, drafted and filed motions to compel further responses to
21 document demands and interrogatories. After Magistrate Judge Alicia G.
22 Rosenberg ordered the parties to meet and confer in connection with Plaintiffs'
23 Motion to Compel, Mr. Caiafa and I engaged in numerous "meet and confer"
24 sessions with Defendant's counsel concerning Defendant's responses to
25 discovery and in connection with Plaintiffs' Motion to Compel. After
26 Defendant provided supplemental responses to much of the discovery
27 requested by Plaintiffs, I reviewed, analyzed and researched Defendant's
28 supplemental responses. Because many discovery issues remained, Mr. Caiafa

1 and I analyzed and researched the remaining issues, and in coordination with
2 Defendant's counsel, we submitted a Joint Agenda and a Request for Review
3 of Joint Agenda re Motions to Compel Further Responses to Discovery
4 Requests on December 20, 2016. I assisted Mr. Caiafa with preparation for a
5 hearing before Magistrate Judge Rosenberg, which was held on December 21,
6 2016. Following the hearing, Judge Rosenberg granted Plaintiffs' motions in
7 part.

8 12. I reviewed, analyzed and researched Defendant's further supplemental
9 discovery responses, including further written responses and a representative
10 sampling of documents concerning sales of merchandise during the Class
11 Period. Mr. Caiafa and I engaged in further discussions with Defendant's
12 counsel concerning the production of a random sampling of documents based
13 on randomly selected weeks throughout the Class Period.

14 13. Additional disputes regarding discovery and depositions continued which
15 necessitated additional discovery conferences throughout most of the litigation
16 prior to this Court's granting of summary judgment in favor of Defendant on
17 August 2, 2017.

18 ***b. Depositions Taken by Plaintiffs and Defendant***

19 14. Defendant took the depositions of both named Plaintiffs Jose Jacobo (April 28,
20 2017) and Theresa Metoyer (May 1, 2017). I prepared for and attended the
21 deposition of Plaintiff Theresa Metoyer. I also assisted in the preparation for
22 the deposition of Plaintiff Jose Jacobo, which Mr. Caiafa attended.

23 15. I assisted in the research, analysis, and preparation for the deposition of
24 Defense witness Stephen Corvi, which Mr. Caiafa took over the course of 2
25 sessions on February 3, 2017 and May 16, 2017).

26 16. I assisted in the research, analysis, and preparation for the deposition of
27 Defense witness Rebecca Falzone, which Mr. Caiafa took on October 14, 2016.
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1 17. I assisted in the research, analysis, and preparation for the depositions of
2 Defense witnesses Tamara Saban and Clifford Chauca, both of which Mr.
3 Caiafa took on January 24, 2017.

4 **Motion by Defendant to Deny Class Certification:**

5 18. After Defendant filed a Motion to Deny Class Certification, I reviewed
6 Defendant's motion, analyzed the issues, researched the law, and drafted and
7 filed Plaintiffs Opposition on February 27, 2017. I further reviewed, analyzed
8 and researched Defendant's Reply. I also prepared for, traveled to and attended
9 the hearing on Defendant's Motion to Deny Class Certification.

10 **Mediation Prior to Appeal:**

11 19. Mr. Caiafa and I prepared for, traveled to and attended a private mediation
12 session before Bruce A. Friedman, a well-known and respected mediator at
13 JAMS in Century City on October 18, 2016.

14 **Motion for Summary Judgment Filed by Defendant and Motion to Certify**
15 **Class Filed by Plaintiffs:**

16 20. In response to a Motion for Summary Judgment ("MSJ") filed by Defendant, I
17 reviewed the MSJ and all supporting documents, analyzed the issues,
18 researched the law, and then drafted and filed an opposition thereto on June 5,
19 2017. I further reviewed, analyzed and researched Defenda't Response in
20 Support of MSJ. I also researched and prepared an application to file certain
21 documents under seal, and engaged in meet and confer sessions with
22 Defendant's counsel in connection thereto, prior to filing the application to file
23 under seal. After the Court granted the application, I prepared and filed the
24 relevant documents under seal.

25 21. Mr. Caiafa and I analyzed, researched, prepared and filed a Motion for Class
26 Certification along with supporting documentation and declarations. In
27 response to Defendant's Opposition, I reviewed the Opposition, analyzed the
28 issues raised, researched the law, prepared and filed a Reply in Support of

1 Motion to Certify Class. I again researched and prepared an application to file
2 certain documents under seal, and engaged in meet and confer sessions with
3 Defendant's counsel in connection thereto, prior to filing an application to file
4 under seal. After the Court granted the application, I prepared and filed the
5 relevant documents under seal.

- 6 22. Mr. Caiafa and I prepared for, traveled to, and attended the hearing on
7 Defendant's Motion for Summary Judgment and Plaintiffs' Motion for Class
8 Certification on June 29, 2017.

9 **Proceedings After Appeal:**

- 10 23. Following this Court's grant of summary judgment in favor of Defendant, Mr.
11 Caiafa and I filed a notice of appeal. We further analyzed, researched, prepared
12 and filed a Mediation Brief prior to mediation before appellate mediator Kay
13 Suk. I assisted in the preparation for the appellate mediation, which Mr. Caiafa
14 attended in person on November 9, 2017. The parties were able to agree to
15 most of the material terms of a settlement on that day and eventually finalized
16 their agreement as reflected in the current Settlement Agreement previously
17 submitted to the Court.

18 **Motion for Preliminary Approval of Settlement After Appeal**

- 19 24. Following the agreement to settle, Mr. Caiafa and I engaged in multiple
20 discussions with Defendant's counsel regarding the logistics of the settlement
21 process and procedure. We consulted and with and received bids from multiple
22 class action claims administrators, and eventually agreed upon and retained
23 CPT Group, Inc. ("CPT") to work as settlement administrator in this case.
24 25. Mr. Caiafa and I researched, prepared and filed a Motion for Preliminary
25 Approval of Class Action Settlement and Certification of a Settlement Class,
26 along with a Joint Stipulation to file an Amended Complaint on September 29,
27 2018.

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- 1 26. CPT has agreed that all costs of Notice and Administration will not exceed
2 \$600,000. Defendant has further agreed to reimburse Plaintiffs' counsel for
3 litigation costs in an amount not to exceed \$50,000. Because we have
4 experienced a higher than expected claims' rate and related postage costs, Mr.
5 Caiafa and I will move this Court to approve an additional payment to CPT of
6 any costs not expended and approved by this Court from Class Counsels'
7 portion of the \$50,000 in litigation costs allotted by the Settlement Agreement.
- 8 27. Unreimbursed costs of Class Counsel total \$19,750.00 (\$11,500 for Mr. Caiafa
9 and \$8,250 for Mr. Morosoff). As such, we will request that an additional
10 \$30,250 (i.e., \$50,000 available for costs minus \$19,750 of actual costs) be
11 approved as additional costs of administration and Notice, bringing the total
12 amount to be paid to CPT to \$630,250 (\$600,000 + \$30,250.)
- 13 28. The Agreement anticipates that Plaintiffs' counsel will seek an award of
14 attorney's fees equal to 25% (\$1,213,500) of the Monetary Component of the
15 Settlement, plus litigation costs not to exceed \$50,000. (Agreement at ¶3.1.3).
- 16 29. In terms of the hours of attorney time which I have expended in connection with
17 this case: I have expended in excess of **120 hours** prior to the filing of this
18 action, including without limitation: Meeting with clients and potential clients
19 and reviewing their documents and other evidence; visiting various locations of
20 Ross stores in Los Angeles and Riverside Counties to investigate their price
21 tags and advertising of "Compare At" price comparisons; engaging in legal
22 research and factual investigation into the viability of claims for false
23 advertising against Ross, including review and analysis of relevant statutes,
24 FTC regulations, case law, dozens of scholarly articles related to retail price
25 comparison advertising, and pleadings in various federal cases. I also spoke
26 with the authors of scholarly articles and experts in the field of consumer
27 behavior in response to retail price comparisons. I further participated in the
28 drafting of the original complaint.

1 30. I have expended in excess of **425 hours** since the filing of the original
2 complaint in this action in connection with the legal research, facts
3 investigation and drafting of non-discovery related documents and pleadings,
4 including complaints, motions, oppositions and replies to pleadings and
5 motions, as described herein. This time also includes multiple meetings with
6 opposing counsel, my co-counsel, and personnel at CPT related to all aspects
7 of the proposed Settlement.

8 31. I have expended in excess of **275 hours** in connection with matters related to
9 discovery, including without limitation: Drafting discovery requests,
10 responding to discovery requests, numerous meetings and conferences with
11 clients to respond to multiple sets of discovery, meetings and conferences with
12 clients in preparation for their depositions, attendance at depositions of one of
13 the named Plaintiffs and preparation for the depositions of Defendant's
14 corporate designees; numerous meet and confers with opposing counsel and
15 drafting of meet and confer letters; preparation for multiple telephonic
16 discovery conferences with Magistrate Judge Rosenberg and opposing counsel
17 in this action; drafting of motions to compel further discovery responses;
18 drafting of Joint Agenda in connection with motions to compel, further and
19 additional factual investigation and telephonic conferences with clients; review
20 and organization of thousands of pages of documents produced by Defendant
21 throughout the litigation; drafting supplemental and further supplemental
22 responses to discovery; review and analysis of Defendant's responses to written
23 discovery; review and analysis of deposition transcripts of all deponents;
24 participation in meet and confer efforts to obtain additional documents and
25 information, conferences with co-counsel and opposing counsel regarding
26 same; further review of scholarly articles and consultation with leading experts
27 in the field; conducting factual investigation of Defendant's latest price tags
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1 and advertising, on-line advertising and brands, public filings, as well as those
2 of Defendant's competitors.

3 32. I have expended in excess of **50 hours** in connection with preparation for and
4 participation in two separate mediations in this action (before and after appeal),
5 and in connection with the settlement of this action, including negotiations
6 concerning the terms and structure and eventual class-wide settlement,
7 numerous conference calls which led to private mediation, additional
8 telephonic conferences with the appellate mediator before reaching final
9 agreement, and negotiating and drafting portions of the Settlement Agreement
10 currently before the Court.

11 33. Thus, in sum, I have expended in excess of **870 total hours** in connection with
12 the filing, litigation and settlement of this action over the past 4 years, through
13 and including the date of this Declaration.

14 34. My firm maintains daily billing records which I have reviewed in connection
15 with this action. My reasonable hourly rate is currently \$650 per hour, which I
16 believe is consistent with comparable rates for attorneys in the Central District
17 of California of my age, experience and skill level in this type of litigation. My
18 rate at \$650 per hour has already been approved by many courts in the Central
19 District. As a practicing attorney in this area for over 20 years, and based on
20 my extensive experience and expertise, my reasonable hourly rate for such
21 litigation is \$650. (*See e.g.*, approval of settlements and hourly rate of \$750 in
22 *Horosny, et al. v. Burlington Coat Factory of California, LLC*, 2:15-cv-05005-
23 SJO-MRW (Order dated July 24, 2017 (ECF Doc. No. 83)) as well as other
24 recent state and federal class actions (*e.g.*, *Steven Russell, et al. v. Kohl's*
25 *Department Stores, Inc. et al.* U.S.D.C., C.D. Cal. 5:15-cv-01143-RSK-SPx;
26 *Staci Chester, et al. v. The TJX Companies, et al.* U.S.D.C., C.D. Cal. EDCV
27 15-01437 ODW (DTBx); *Price v. Uber Technologies, Inc.*, Los Angeles
28 Superior Case No. BC554512 (Order by Hon. J. Maren E. Nelson dated

1 January 18, 2018)). As such, my total current loadstar on this action is
2 **\$565,500.**

3 35. Based on the Declaration of Mr. Caiafa, his current loadstar calculation is
4 **\$693,750** making the total loadstar amount **\$1,259,250.** Counsel are requesting
5 a total attorney fee of 25% of the Settlement Amount, or \$1,213,500, exclusive
6 of costs, an amount less than our actual lodestar.

7 36. My out-of-pocket expenses for the prosecution of this case, including filing
8 fees, service of process, mediation expenses, deposition costs, travel on
9 multiple occasions from Palm Desert to Los Angeles, photocopy expenses,
10 parking, postage, on-line research charges unique to this action and related
11 expenses, incurred to date, which have not been reimbursed, is in excess of
12 \$8,250.00. According to the Declaration of Mr. Caiafa, he has expended in
13 excess of \$11,500.00. Accordingly, the total expenses for all of Plaintiffs'
14 counsel and for which Class Counsel seek reimbursement is **\$19,750.00**, an
15 amount expressly authorized and well below the \$50,000 limit on litigation
16 costs provided by the Agreement.

17 37. In addition, and as stated above, Class Counsel hereby request that the
18 remainder of the authorized litigation costs (\$30,250) be paid to CPT as and for
19 additional administrative costs incurred by CPT in the administration of this
20 action.

21 38. I support this lawsuit, will vigorously pursue and protect the Plaintiffs and the
22 Class and believe that I am sufficiently qualified to act as class counsel in this
23 action.

24 39. This case has been contentiously litigated from the start. The Settlement was
25 reached after investigation and discovery, motion practice, and protracted
26 settlement negotiations, including 2 full-day mediations and repeated follow-up
27 negotiations.

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1 40. Both parties were represented by experienced class counsel, and both Plaintiffs
2 participated throughout the settlement process. Moreover, the parties did not
3 discuss or negotiate Class Counsel's attorneys' fees and costs, or Plaintiffs'
4 proposed Class Representative Payments, until *after* all other material terms of
5 the Settlement were agreed upon. The Settlement presented to the Court here
6 is the product of non-collusive, arms-length negotiations.

7 41. Based on the factors related to the fairness, adequacy and reasonableness of the
8 proposed Settlement, on behalf of Plaintiffs and my co-counsel, I respectfully
9 request this Court grant Plaintiffs' Motion for Attorneys' Fees, Litigation and
10 Administrative Costs and Class Representatives' Enhancement Payments.

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13 I declare under penalty of perjury that the forgoing is true and correct.

14 Executed this 6th day of May 2019, at Palm Desert, California.

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16 /s/ Christopher J. Morosoff
17 Declarant, Christopher J. Morosoff
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