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

13
14 JOSE JACOBO, et al,
15
16 Plaintiffs,
17 vs.
18 ROSS STORES, INC., et al,
19 Defendants.

Case No. 2:15-cv-04701-MWF-AGRx

CLASS ACTION

**DECLARATION OF DOUGLAS
CAIAFA 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 DOUGLAS CAIAFA

I, Douglas Caiafa, 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 Douglas Caiafa, A Professional Law Corporation, attorney of record and co-counsel with Christopher J. Morosoff, 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-AGRx.
3. I submit this Declaration in support of Plaintiffs' Motion for Attorneys' Fees, Litigation and 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 over 36 years and have defended and prosecuted numerous complex, multi-party actions, including over 30 class actions, and including multi-million dollar false advertising cases, wage and hour and consumer class action litigation and settlements. I have also tried numerous jury and bench trials and have received multiple seven-figure verdicts.
5. Prior to filing this action, Mr. Morosoff 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. Class Counsel met with customers of Ross, physically went to various locations of Ross 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.

- 1 6. Mr. Morosoff and I researched and drafted Plaintiff Jose Jacobo's original
2 Complaint, which was filed on June 20, 2015, and which sought restitution and
3 injunctive relief under California's Unfair Competition Law (Cal. Bus. & Prof.
4 Code § 17200 *et seq.*) ("UCL"), False Advertising Law (Cal. Bus. & Prof.
5 Code § 17500 *et seq.*) ("FAL"), and Consumer Legal Remedies Act ("CLRA").
6 (ECF #1). On October 12, 2015, Plaintiff Jacobo filed a First Amended
7 Complaint ("FAC") adding Theresa Metoyer as an additional Plaintiff.
- 8 7. On October 29, 2015, Defendant filed a Motion to Dismiss the First Amended
9 Complaint under F.R.C.P 12(b)(1), 12(b)(6) and 9(b), on the grounds that
10 Plaintiffs lacked standing, that Plaintiffs failed to state a claim upon which
11 relief could be granted and that the fraud claim lacked sufficient particularity
12 (ECF#10).
- 13 8. On January 4, 2016, the parties filed a Joint Rule 26(f) Report and on January
14 6, 2016, the Court set a Scheduling Conference for February 8, 2016 pursuant
15 to FRCP Rule 16(b).
- 16 9. Mr. Morosoff and I thoroughly researched and analyzed the legal and factual
17 bases of the arguments raised in Defendant's Motion to Dismiss and on
18 January 15, 2016, we filed Plaintiffs' Opposition to Defendant's Motion to
19 Dismiss FAC along with a Request for Judicial Notice. Defendant filed its
20 Response in Support of Motion to Dismiss on January 23, 2016 and a hearing
21 was held on February 11, 2016. On February 23, 2016, the Court granted
22 Defendant's motion with leave to amend and on March 28, 2016, Plaintiffs
23 filed a Second Amended Complaint ("SAC") which pleaded fraudulent
24 business practices with additional particularity under the UCL (ECF#49).
- 25 10. In response, on April 14, 2016, Defendant filed another motion to dismiss.
- 26 11. Once again, Mr. Morosoff and I analyzed the legal and factual bases of the
27 arguments raised in Defendant's Motion to Dismiss the SAC and on May 23,
28 2016, Plaintiffs filed their Opposition.

1 12. On May 27, 2016, Defendant filed its Reply. On June 13, 2016, the Court
2 heard Defendant's motion to dismiss the Second Amended Complaint and on
3 June 17, 2016, this Court granted in part and denied in part Defendant's Motion
4 to Dismiss the SAC (ECF#56). Specifically, this Court generally denied the
5 motion as to all claims, except as to Plaintiffs' claims under the CLRA. On
6 July 5, 2016, Defendant Ross filed its Answer to the SAC (ECF#57).

7 **Discovery and Related Motion Practice:**

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

9 13. Plaintiffs drafted and served thorough discovery on the Defendants in the form
10 of interrogatories, document demands and requests for admissions. After many
11 "meet and confers," on June 13, 2016, Plaintiffs filed motions to compel
12 further responses to document demands and interrogatories against Defendant.
13 On July 7, 2016, Magistrate Judge Alicia G. Rosenberg ordered the parties to
14 meet and confer in connection with Plaintiffs' Motion to Compel no later than
15 July 26, 2016. During this time period and afterwards the parties engaged in
16 numerous "meet and confer" sessions concerning Defendant's responses to
17 discovery and in connection with Plaintiffs' Motion to Compel. Plaintiffs'
18 motion was continued several times while the parties met and conferred
19 throughout July, August, September and October. During this time period
20 Defendants provided supplemental responses to much of the discovery
21 requested by Plaintiffs, even though substantial issues remained. Eventually,
22 the parties submitted a Joint Agenda listing the issues remaining in dispute and
23 Plaintiffs filed a Request for Review of Joint Agenda re Motions to Compel
24 Further Responses to Discovery Requests on December 20, 2016. On
25 December 21, 2016, after a hearing before Magistrate Judge Rosenberg,
26 Plaintiffs' motions were granted in part and denied in part as to both
27 interrogatories and document demands.
28

1 14. Defendant supplemented its responses and agreed to provide further
2 supplemental responses including further written responses and a
3 representative sampling of documents responsive to document demands
4 concerning sales of merchandise during the Class Period based on randomly
5 selected weeks by the parties.

6 15. Additional disputes regarding discovery and depositions continued which
7 necessitated additional discovery conferences throughout most of the litigation
8 prior to this Court's granting of summary judgment in favor of Defendant on
9 August 2, 2017 (ECF#125).

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

11 16. Defendant took the depositions of both named Plaintiffs Jose Jacobo (April 28,
12 2017) and Theresa Metoyer (May 1, 2017). Plaintiffs took the Person Most
13 Qualified depositions of Defendant under F.R.C.P. Rule 30(b)(6) of Stephen
14 Corvi (2 sessions: February 3, 2017 & May 16, 2017) and Rebecca Falzone
15 (October 14, 2016). Plaintiffs also took the depositions of two buyers of the
16 Defendant, Tamara Saban (January 24, 2017) and Clifford Cauca (January 24,
17 2017).

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

19 17. On December 21, 2016, Defendant filed a Motion to Deny Class Certification
20 (#78) and Plaintiffs filed an Opposition on February 27, 2017 (ECF #89).
21 Defendant filed its Reply on March 6, 2016, and, after a court hearing and oral
22 argument, the Court took the matter under submission. On May 1, 2017, the
23 Court denied Defendant's motion (ECF#95).

24 **Mediation Prior to Appeal:**

25 18. On October 18, 2016, the parties engaged in private mediation before Bruce A.
26 Friedman, a well-known and respected mediator at JAMS in Century City. The
27
28

1 parties were unable to reach any agreement on settlement despite their best
2 efforts.

3 **Motion for Summary Judgment Filed by Defendant and Motion to Certify**
4 **Class Filed by Plaintiffs:**

- 5 19. On May 26, 2017, Defendant filed a Motion for Summary Judgment along with
6 a Separate Statement and supporting Declarations (ECF#99), and on June 5,
7 2017 Plaintiff filed their Opposition (ECF#112). On June 12, 2017 Defendant
8 filed its Response in Support of Motion for Summary Judgment (ECF#113).
9 On June 16, 2017, Plaintiffs filed sealed documents in connection with their
10 Opposition to Defendant's Motion for Summary Judgment, after the Court
11 granted their application to do so (ECF#120).
- 12 20. On May 26, 2017, Plaintiffs filed a Motion for Class Certification along with
13 supporting documentation and declarations (ECF#103). On June 5, 2017
14 Defendant filed its Opposition (ECF#109). On June 12, 2017, Plaintiffs filed
15 their Reply in Support of Motion to Certify Class (ECF#114). On June 16,
16 2017, Plaintiffs filed sealed documents in connection with their Motion for
17 Class Certification, after the Court granted their application to do so
18 (ECF#119).
- 19 21. On June 29, 2017, a hearing was held in connection with Defendant's Motion
20 for Summary Judgment and Plaintiffs' Motion for Class Certification. After
21 taking the matter under submission, on August 2, 2017, the Court granted
22 Defendant's Motion for Summary Judgment and denied Plaintiffs' Motion for
23 Class Certification as moot (ECF#125).

24 **Proceedings After Appeal:**

- 25 22. On August 15, 2017, Plaintiffs filed a Notice of Appeal of the District Court's
26 granting of summary judgment in favor of Defendant Ross (ECF#126).
27 Appearances were made by counsel for both parties and counsel filed
28 Mediation Questionnaires agreeing to appellate mediation. Defendant Ross

1 and Plaintiffs each submitted Mediation Briefs to appellate mediator Kay Suk
2 on November 2, 2017 and an all-day mediation was held before Mediator Suk
3 on November 9, 2017. The parties were able to agree to most of the material
4 terms of a settlement on that day and eventually finalized their agreement as
5 reflected in the current Settlement Agreement previously submitted to the
6 Court.

- 7 23. On December 4, 2017, Plaintiffs/Appellants Jacobo and Metoyer filed a
8 Stipulation to Dismiss their appeal without prejudice to reinstatement in the
9 event the District Court denied the parties' request to retain jurisdiction for
10 purposes of vacating the judgment and enforcing the terms of the proposed
11 settlement agreement (and Proposed Order thereon).

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

- 13 24. On September 29, 2018, Plaintiffs filed a Motion for Preliminary Approval of
14 Class Action Settlement and Certification of a Settlement Class (ECF #133),
15 along with a Joint Stipulation to file an Amended Complaint (ECF#134),
16 approved and ordered by the Court on October 2, 2018 (ECF#135).
- 17 25. On December 7, 2018, the Court granted Plaintiffs' Motion for Preliminary
18 Approval and Certification of a Settlement Class (ECF#138). On January 3,
19 2019, the Court re-set the dates for the final approval hearing to July 22, 2019
20 and set the current briefing schedule.
- 21 26. After consulting with and receiving bids from multiple candidates, the Parties
22 retained CPT Group, Inc. ("CPT") to serve as Claims Administrator. (Id. at
23 ¶1.6). CPT has actively begun the claims administration duties outlined in the
24 Agreement. As of April 29, 2019, CPT has received over 256,000 claims from
25 Settlement Class Members. CPT has agreed that all costs of Notice and
26 Administration will not exceed \$600,000. (Id. at ¶3.1.2). However, and based
27 on a higher than expected claims' rate and postage costs, Class Counsel will
28 move this Court to approve an additional payment to CPT of any costs not

1 expended and approved by this Court from Class Counsels' portion of the
2 \$50,000 in litigation costs allotted by the Settlement Agreement.

3 27. Unreimbursed costs of Class Counsel total \$19,750.00 (\$11,500 for Mr. Caiafa
4 and \$8,250 for Mr. Morosoff). As such, Class Counsel requests that an
5 additional \$30,250 be approved as costs of administration and Notice, bringing
6 the total amount to be paid to CPT to \$630,250 (\$600,000 + \$30,250.)

7 28. The Agreement authorizes each named Plaintiff to seek a Class Representative
8 Payment in an amount to be determined by the Court but not to exceed \$5,000
9 each. The Settlement is not conditioned on the Court's approval of the full (or
10 any) amount of a Class Representative Payment, and Plaintiffs' right to seek
11 Class Representative Payments was not a condition of their approval of the
12 Settlement. (Id. at ¶3.1.4).

13 29. The Agreement also 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 30. In terms of the hours of attorney time I have expended in connection with this case:
17 I have expended in excess of **50 hours** prior to the filing of this action,
18 including without limitation: Meeting with clients and potential clients and
19 reviewing their documents and other evidence; visiting various locations of
20 Ross stores in Los Angeles and the Coachella Valley to investigate their price
21 tags and advertising of "Compare at" price discounts; engaging in legal
22 research and facts investigation into the viability of claims for false advertising
23 against Ross (UCL & FAL), including review and analysis of case law and
24 pleadings in various federal cases, and participation with Mr. Morosoff in
25 review and drafting of the original complaint.

26 31. I have expended in excess of **390 hours** since the filing of the original
27 complaint in this action in connection with the legal research, facts
28 investigation and drafting of non-discovery related documents and pleadings,

1 including complaints, motions, oppositions and replies to pleadings and
2 motions. These pleadings included the original complaint, first amended and
3 second amended complaints, Oppositions to Motions to Dismiss, Opposition to
4 Defendant's Motion to Deny Class Certification, Plaintiffs' Motion for Class
5 Certification and supporting documents, Reply in Support of Motion for Class
6 Certification; Opposition to Motion for Summary Judgment filed by
7 Defendants (including opposition declarations, documents and Separate
8 Statement of Disputed Material Facts); Motions for Preliminary Approval and
9 supporting documents and declarations, and draft of Motion for Final Approval
10 and supporting documents and declaration. This time also includes multiple
11 meetings with opposing counsel, my co-counsel, and personnel at CPT Group,
12 the Claims Administrator related to all aspects of the Settlement described in
13 the Agreement.

14 32. I have expended in excess of **415 hours** in connection with matters related to
15 discovery, including without limitation: Drafting discovery requests,
16 responding to discovery requests, numerous meetings and conferences with
17 clients to respond to multiple sets of discovery, meetings and conferences with
18 clients in preparation for their depositions, attendance at depositions of two (2)
19 of the named Plaintiffs and preparation, travel and attendance at the depositions
20 of Defendant's corporate designees; numerous meet and confers with opposing
21 counsel and drafting of extensive and repeated meet and confer letters detailing
22 the legal and factual positions of Plaintiffs concerning the viability of
23 objections, limitations on discovery, protective order concerns, etc.;
24 preparation for and participation in multiple telephonic discovery conferences
25 with the Magistrate Judge Alicia G. Rosenberg and opposing counsel in this
26 action; drafting of motions to compel further discovery responses; drafting of
27 Joint Agenda in connection with motions to compel, further and additional
28 factual investigation and telephonic conferences with clients and review of

1 thousands of pages of documentation for responding to discovery and
2 preparation for depositions; support in the drafting supplemental and further
3 supplemental responses to discovery; review and analysis of Defendant's
4 responses to discovery, document requests and interrogatories, deposition
5 transcripts of all deponents, participation in meet and confer efforts to obtain
6 additional documents and information, conferences with co-counsel and
7 opposing counsel regarding same; review of sales data focusing on sales
8 transactions, factual investigation of Defendant's advertising; further review of
9 scholarly articles and consultation with leading experts in the field; conducting
10 factual investigation of Defendant's latest price tags and advertising, on-line
11 advertising and brands, public filings, as well as those of Defendant's
12 competitors; and, extensive and protracted negotiations concerning numerous
13 discovery disputes, especially those concerning privilege and trade secrets. In
14 addition, continued and repeated efforts resulted in multiple and additional
15 production of information and documentation by Defendant which was
16 thoroughly reviewed and analyzed.

17 33. I have expended in excess of **70 hours** in connection with negotiations and two
18 separate mediations of this action (before and after appeal), and in connection
19 with the settlement of this action, including negotiations concerning the terms
20 and structure and eventual class-wide settlement, numerous conference calls
21 which led to private mediation, additional telephonic conferences with the
22 appellate mediator before reaching final agreement, and negotiating and
23 drafting portions of the Settlement Agreement currently before the Court.

24 34. Thus, in sum, I have expended in excess of **925 total hours** since before the
25 filing of this action over 4 years ago in June of 2015, through and including the
26 date of this Declaration.

27 35. My firm maintains daily billing records which I have reviewed in connection
28 with this action. My reasonable hourly rate is currently \$750 per hour, which I

1 believe is consistent with comparable rates for attorneys in the Central District
2 of California of my age, experience and skill level in this type of litigation. My
3 rate at \$750 per hour has already been approved by many courts in the Central
4 District. As a practicing attorney in this area for over 36 years, and based on
5 my extensive experience and expertise, my reasonable hourly rate for such
6 litigation is \$750. (*See e.g.*, approval of settlements and hourly rate of \$750 in
7 *Horosny, et al. v. Burlington Coat Factory of California, LLC*, 2:15-cv-05005-
8 SJO-MRW (Order dated July 24, 2017 (ECF Doc. No. 83)) as well as other
9 recent federal class actions; *Price v. Uber Technologies, Inc.*, Los Angeles
10 Superior Case No. BC554512 (Order by Hon. J. Maren E. Nelson dated
11 January 18, 2018)). As such, my total current loadstar on this action is
12 **\$693,750.00**.

13 36. Based on the Declaration of Mr. Morosoff, his current loadstar calculation is
14 \$565,000.00, making our **total loadstar \$1,259,250**. Class counsel are
15 requesting a total attorney fee of 25% of the Settlement Amount, or
16 \$1,213,500, exclusive of costs, and amount less than our actual loadstar.

17 37. My out-of-pocket expenses for the prosecution of this case, including filing
18 fees, service of process, mediation expenses (\$2,168.00), deposition costs
19 (\$4,714.10), plane travel (\$503.00), photocopy expenses, courier charges,
20 parking, postage charges, on-line research charges unique to this action and
21 related expenses, incurred to date, which have not been reimbursed, is in
22 excess of \$11,500.00. According to the Declaration of Mr. Morosoff, he has
23 expended in excess of \$8,250.00. Accordingly, the total expenses for all of
24 Plaintiffs' counsel and for which Class Counsel seek reimbursement is
25 **\$19,750.00**, an amount expressly authorized and well within the \$50,000 limit
26 on litigation costs provided by the Agreement.

27 38. In addition, and as stated above, Class Counsel hereby request that the
28 remainder of the authorized litigation costs (\$30,250) be paid to CPT as and for

1 additional administrative costs incurred by CPT in the administration of this
2 action.

3 39. I support this lawsuit, will vigorously pursue and protect the Plaintiffs and the
4 Class and believe that I am sufficiently qualified to act as class counsel in this
5 action.

6 40. This case has been contentiously litigated from the start. The Settlement was
7 reached after investigation and discovery, motion practice (including resolution
8 of a motion to dismiss), and after protracted settlement negotiations, including
9 2 full-day mediations and repeated follow-up negotiations.

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

16 42. Based on the factors related to the fairness, adequacy and reasonableness of the
17 proposed Settlement, on behalf of Plaintiffs and my co-counsel, I respectfully
18 request this Court grant Plaintiffs' Motion for Attorneys' Fees, Litigation and
19 Administrative Costs and Class Representatives' Enhancement Payments.

20
21
22 I declare under penalty of perjury that the forgoing is true and correct.

23 Executed this 6th day of May 2019, at Los Angeles, California.

24
25 /s/ Douglas Caiafa
26 Declarant, Douglas Caiafa