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Superior Court of California,
County of San Diego

10/24/2023 at 08:58:00 PM

Clerk of the Superior Court
By Elizabeth Sanchez, Deputy Clerk

6 *Attorneys for Plaintiffs and Class Counsel*

7 **SUPERIOR COURT OF CALIFORNIA**

8 **COUNTY OF SAN DIEGO**

9
10 STEPHANIE ABERL, DIANA VASQUEZ, and
11 SHANNON CUSTER, on behalf of themselves
and all others similarly situated,

12 Plaintiffs,

13 v.

14 ASHLEY GLOBAL RETAIL, LLC, a Delaware
limited liability company

15 Defendants.
16

Case No. 37-2023-00011536-CU-BT-NC

[E-FILE]

CLASS ACTION

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

Date: January 19, 2024

Time: 1:30 P.M.

Judge: Cynthia A. Freeland

Dept: N-27

17 I, Todd D. Carpenter, declare:

18 1. I am an attorney duly admitted to practice law before all courts of the State of California,
19 and I am a shareholder in the law firm of Lynch Carpenter, LLP, counsel for Plaintiffs and the Class¹
20 herein. I make this declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and
21 Incentive Award. If called as a witness, I could and would competently testify to the following:

22 2. I have personally been involved in the investigation and prosecution of this class action
23 from its inception through to the present. I oversaw the investigation into Ashley Global Retail, LLC's
24 ("Defendant" or "Ashley") e-commerce store ashleyfurniture.com. The investigation spanned more than
25 a year and involved online data collection as well as data from brick-and-mortar Ashley-branded stores in
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28 ¹ Capitalized terms herein, unless otherwise defined, have the same definitions as those terms in the
Settlement Agreement and Release. (See ROA No. 29, Ex. 1.)

1 Oregon, New York, and California.² I directed the investigation through the use of my paralegals, expert
2 consultants, and associates, and reviewed their time entries accordingly. I was also actively involved in
3 the management of the case. I assigned litigation tasks to my associates, but performed detailed review of
4 their work as well as the high-level negotiation of the Settlement. Furthermore, I oversaw the approval
5 process and law & motion work.

6 3. Our investigation revealed that Defendant appeared to offer items for sale online at a
7 discount off an “original” or “regular” price for extended periods of time. Defendant disagrees with our
8 conclusions. Based on our investigation, Lynch Carpenter partnered with Keller Postman, LLC, to assist
9 with the potential prosecution of individual arbitrations at scale. However, the Keller Postman firm
10 ultimately withdrew from this matter on August 11, 2022, which required the Lynch Carpenter firm to
11 prepare for the possibility that individual arbitrations needed to be prosecuted. Therefore, my firm Lynch
12 Carpenter expanded the build-out of its mass arbitration capacity.

13 4. In addition to the online data collection, our investigation indicated that, at Ashley-branded
14 retail stores, SKUs were also offered for sale at prices discounted from a “regular” or “original” reference
15 price. Based on this information, we concluded that Ashley’s products were, at the very least, infrequently
16 sold at the reference price. We believe this violated certain laws. Defendant disagrees that it violated the
17 law, and expressed an intention to vigorously defend itself in the event the Settlement was not approved.

18 5. As part of my analysis, I retained an economist to develop and support the damages model
19 alleged and used in connection with resolution of this matter.

20 6. My law firm, Lynch Carpenter, LLP has expended a substantial amount of time and effort
21 in prosecuting this case and achieved an outstanding benefit for the Class. Individuals who made
22 purchases on Ashley’s e-commerce website ashleyfurniture.com were subject to being compelled to
23 arbitration. Were it not for the potential for serial arbitration brought by my law firm, the matter would
24 not have been resolved as favorably if at all. The requested fee is reasonable and appropriate based on the
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26 _____
27 ² While Ashley and its subsidiary own and operate brick-and-mortar retail stores (enterprise stores),
28 there are unaffiliated retail stores that are independently owned by third-party companies that license the
Ashley brand. Ashley also operates a retail website to transact e-commerce business
(ashleyfurniture.com).

1 risks of litigation, Class Counsel's refusal of alternative employment opportunities with guaranteed
2 payment, and the benefit obtained for the Class.

3 7. Prior to mediation, Class Counsel prepared an extensive confidential mediation brief,
4 representing the culmination of Class Counsel's pre- and post-litigation investigative work, including
5 information related to Plaintiff's purchases, Defendant's pricing practices, and expert analysis thereof.
6 During this time, Class Counsel worked closely with their expert to develop the damages model alleged
7 against Defendant. Following settlement in principle, Class Counsel drafted the substantive terms of the
8 Settlement and Notice plan and engaged in further negotiation over the structure of the Settlement
9 Agreement.

10 8. Only after reaching an agreement on the material terms of the Settlement, the Parties
11 negotiated an agreement on attorneys' fees, costs, and incentive awards that Ashley will pay separate and
12 apart from its payment to the Class.

13 9. My firm's hourly rates are as follows: \$995.00 per-partner hour; \$450.00 per-associate
14 hour; and \$175.00 per-paralegal hour as of the date of this declaration. I have established my billable rate
15 through an annual, informal survey of similarly experienced consumer class action attorneys in the
16 Southern California legal market and in consulting defense counsel with respect to their hourly rates in
17 defense of similar matters. I expect to spend additional time to conclude this case, including following up
18 with the Claims Administrator, responding to objector(s) and preparing for and attending the Final
19 Fairness Hearing. Further, my firm has spent approximately \$97,304.48 of un-reimbursed expenses
20 incurred in connection with this case. A breakdown of these costs is set forth below:

21 **COSTS**

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No.	General Description	Cost:
1.	Mediation	\$14,825.00
2.	Court fees	\$2,039.62
3.	Service of Process	\$310.86
4.	Scanning, photocopying, printing, and other office related costs	Waived
5.	Data Mining/Damages Analysis	\$80,112.50

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6.	Travel/Parking fees	\$16.50
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TOTAL:

\$97,304.48

10. 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.	<i>Pre-filing investigation; research establishing theory of liability, addressable market and mass arbitration strategy: (Partner Time)</i> Designed the pre-suit investigation, including observation and recording of pricing practices and sales transactions. State by state advertising research and analysis of addressable market. Sales volume analysis. Research and conference time with co-counsel as to mass arbitration strategy. Coordinated the strategy and execution for the computer analysis of Ashley's website. Assessed investigation-acquired pricing between Ashley's website and WaybackMachine.org. Designed and implemented the pre-suit comparison market investigation – identifying items offered for sale and compared against other furniture stores with e-commerce websites. Compared data retrieved online to in-store investigations. Research regarding statutory liability for false reference pricing; impact /damages analysis. Design and construction of mass arbitration apparatus, retention system, implementation and training on CRM software, auto retention software, development of ads, review of potential client data, potential client communication(s) across multi-state footprint.	138.8	\$995	\$138,106.00
2.	<i>Pleadings: (Associate Time)</i> 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 complaint and circulate for edits; gather and incorporate exhibits; incorporate revisions, revise, finalize, and file; issue for service; prepare drafts of mediation statements; circulate for review and incorporate edits; finalize, file, and e-serve.	78.6	\$450	\$35,370.00
3.	<i>Investigation Time (Paralegal time):</i> Observed market pricing practices for thousands of products identified on ashleyfurniture.com for 16 total months prior to suit and subsequent months preceding the initial mediation, filing, service and other correspondence. Assist with the design and construction of mass arbitration apparatus, refine and fine tune user experience for the auto retention system, implementation and training on CRM software, auto retention software, development of ads, review of potential client data, potential client communication(s) across multi-state footprint.	181.2	\$175	\$31,710.00
4.	<i>Evaluation, Retention and substantive work with Experts (Partner time):</i> Screened, vetted and interviewed consumer behavior consultants / human factors experts and economists. Conference calls and email correspondence with consumer survey	10.1	\$995	\$10,049.50

No.	General Description	Hours	Rate	Lodestar
	expert regarding options for 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.			
5.	Law and Motion: (Associate time): Conduct legal research and respond to Motion to Compel arbitration research and draft memorandum of points and authorities and stipulation of the parties to move response deadlines. Research and draft response to JCCP coordination proceeding, draft report requested by the court for results of JCCP proceeding.	67.2	\$450	\$30,240.00
6.	Law and Motion: (Partner time) Reviewed drafts as referenced above.	21.1	\$995	\$20,994.50
7.	Settlement Agreement and Mediation: (Associate time) Draft settlement agreement and notices; correspond with partners and co-counsel regarding various drafts of settlement agreement and notices; receive revisions and incorporate same; research and assisted with draft of mediation statement with Ashley, research and draft mediation statement prior to coordination proceedings; correspondence with claims administrator regarding settlement notices, website, and dissemination of notice.	60.6	\$450	\$27,270.00
8.	Mediation / Settlement: (Partner time) Revised and edited mediation brief; coordinated with expert from damages expert to support available damages analysis; attended a full-day mediation(s) with Ashley and then jointly with the parties from the Cornateanu matter; traveled to Los Angeles and attended in-person and defended against a petition for coordination proceedings; follow up settlement issues; negotiated settlement details through multiple revisions and phone calls with opposing counsel. Post mediation settlement discussions and teleconferences; multiple revisions to Settlement Agreement; Notices.	81.9	\$995	\$81,490.50
9.	Motions for Settlement Approval (Associate Time): Research motion in support of preliminary approval of class action settlement and draft the same; incorporate edits from partner; finalize, file, and serve; assist with preparation for preliminary approval hearing; research and draft instant motion for attorneys' fees and costs; circulate to partner for review and incorporate edits; finalize and file; research and draft motion for final approval of settlement.	32.7	\$450	\$14,715.00
10.	Motions for Settlement Approval (Partner Time): Made revisions to Motion for Preliminary Approval; met with client; prepared for oral argument for Motion for Preliminary Approval.	7.8	\$995	\$7,761.00

No.	General Description	Hours	Rate	Lodestar
11.	General Case Management Issues: (Partner time) Preparation and participation in; periodic teleconferences with co-counsel, mediator(s), and opposing counsel.	25.2	\$995	\$25,074.00
12.	Motion for Attorneys' Fees / Motion for Final Approval (Associate Time): Research regarding motion for attorneys' fees and motion for final approval of class action settlement and draft the same; incorporate edits from partner; prepare for final approval hearing; research and draft instant fee motion; circulate to partner for review and incorporate edits; finalize and file.	27.2	\$450	\$12,240.00
13.	Motion for Attorneys' Fees / Motion for Final Approval: (Partner time) Evaluated and provided revisions to motion for attorneys' fees; prepared declaration. Prospective time for reviewing final approval moving papers.	14.8	\$995	\$14,726.00
14.	Attendance at and preparation for Final Approval Hearing (Prospective) (Partner time)	3.5	\$995	\$3,482.50
	TOTAL FEES:			\$453,229.00
	Expenses:			\$97,304.48

11. Plaintiffs Stephanie Aberl, Diana Vasquez, and Shannon Custer have maintained continued involvement in the litigation, including reviewing initial pleadings and communicating with Class Counsel on the status of the Federal Court Action and the subsequent Lawsuit filed in state court.

12. Lynch Carpenter agreed to accept Plaintiff's case on a pure contingency fee basis.

13. The hourly rate of \$995.00 per hour for Lynch Carpenter partners is in line with comparable hourly rates charged by other law firms that handle class action litigation in Southern California. My previous rate of \$750.00 per hour was approved by Judge Joel R. Wohlfeil on July 15, 2020, in *Petkevicius v. Lamps Plus, Inc.*, No. 37-2019-00020667-CU-MC-CTL (Super. Ct. San Diego Cnty.), and on September 27, 2019, in *Rael v. RTW Retailwinds, Inc., et al.*, No. 37-2019-00003850-CU-MC-CTL (Super. Ct. San Diego Cnty.), by Judge Richard S. Whitney on February 11, 2020, in *Olmedo v. PVH Retail Stores, LLC*, No. 37-2019-00003250-CU-MC-CTL (Super. Ct. San Diego Cnty.), and by Judge Ronald F. Frazier on July 12, 2019, in *Dennis v. Ralph Lauren Corporation, et al.*, No. 37-2018-00058462-CU-MC-CTL (Super. Ct. San Diego Cnty.)—each, like here, on unopposed fee applications in false and deceptive price discounting class action cases. My previous hourly rate was also recently approved on January 21, 2021, in a \$13,000,000 all-cash settlement in *Figuroa v. Capital One, N.A.*,

1 No. 3:18-cv-00692 (S.D. Cal.), and on April 5, 2019, in an \$8,000,000 all-cash FACTA Settlement in
2 *Mocek, Varoz, et al v. AllSaints USA Limited*, No. 2016-CH-10056 (Cir. Ct. Cook Cnty. Ch. Div.). My
3 previous rate of \$650.00 per hour was approved in 2017 by Judge Judith Hayes on an unopposed fee
4 application in a Song-Beverly Credit Card Act case, *Manner v. Summit Pizza West, LLC*, No. 37-2015-
5 5909-CU-MC-CTL (Super. Ct. San Diego Cnty.). My rate has increased since then commensurate with
6 other plaintiff's class action practitioners in Southern California with my level of experience and success.
7 The firm resume for Lynch Carpenter is attached as Exhibit 2.

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

16 15. I have represented plaintiffs in numerous class action proceedings in California and
17 throughout the country, in both state and federal courts. I have represented thousands of purchasers of
18 consumer products, food, food supplements and over-the-counter drugs in state and federal courts
19 throughout the United States in cases arising out of various false advertising claims made by
20 manufacturers and retailers, including: Proctor & Gamble, General Mills, Bayer, Clorox, WD-40, Dean
21 Foods, Botanical Laboratories, Inc., Irwin Naturals, Inc. General Nutrition Corporation and Pharmavite.
22 Recently, I was appointed interim co-lead class counsel in the multidistrict litigation. *In re: Folgers Coffee*
23 *Marketing*, No. 4:21-cv-02984-BP (W.D. Mo.) at ECF No. 48. I was also class counsel for the Settlement
24 Class in FACTA cases against Hugo Boss, U.S.A. Inc. in the Southern District of California (*Travis*
25 *Benware v. Hugo Boss, U.S.A., Inc.*, No. 3:12-cv-01527-L-MDD (S.D. Cal.)) and Southwest Airlines
26 (*Lumos v. Southwest Airlines, Co.*, No. C-13-1429-CRB (N.D. Cal.)), and *Mocek, Varoz, et al v. AllSaints*
27 *USA Limited*, No. 2016-CH-10056 (Cir. Ct. Cook Cnty. Ch. Div.).

1 16. I have also represented thousands of consumer credit cardholders against several major
2 retailers arising from violations of the Song-Beverly Credit Card Act, Civil Code section 1747.08 and
3 have achieved excellent results, including, but not limited to, class benefits valued between \$40 and \$120
4 against Gucci America, Inc. I have also represented thousands of consumer debit card holders against
5 major commercial banks, including assuming a leadership role as prosecuting counsel in *In re: Checking*
6 *Account Overdraft Litig., Larsen v. Union Bank and Dee v. Bank of the West*, MDL No. 2036 (S.D. Fl.).
7 I have filed similar actions against several other banks and credit unions across the country, which allege
8 that each institution manipulated the processing of customer debit card purchases to maximize overdraft
9 fees, including actions against Northwest Savings Bank (*Toth v. Northwest Savings Bank*, Case No. GD-
10 12-8014 (Ct. Com. Pl. Allegheny Cnty.); Pinnacle National Bank (*Higgins v. Pinnacle Bank*, No. 11-
11 C4858 (Cir. Ct. 12th Jud. Dist.); and Mission Federal Credit Union (*Taylor v. Mission Fed. Credit Union*,
12 No. 37-2012-00092073-CU-BT-CTL, (Super. Ct. San Diego Cnty.)). Recently, I served as lead counsel
13 in *Figueroa v. Capital One, N.A.*, in which the plaintiff alleged Capital One charged its accountholders
14 illegal balance inquiry fees in connection with the use out-of-network ATMs. That case was settled on a
15 class-wide basis for a total payment from defendant of \$13,000,000. *See Figueroa v. Capital One, N.A.*,
16 No. 3:18-cv-00692 (S.D. Cal.), ECF No. 93 at 2.

17 17. I have been recognized as a semi-finalist as a “Top Corporate Litigation Attorney,” by the
18 San Diego Daily Transcript in 2012, and I have been named a San Diego “Super Lawyer” every year since
19 2015.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct, and that this declaration was executed on October 24, 2023, in San Diego, California.

22 Dated: October 24, 2023

LYNCH CARPENTER, LLP

23 By: /s/Todd D. Carpenter

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