

1 Todd D. Carpenter (CA 234464)
tcarpenter@carlsonlynch.com
2 Scott G. Braden (CA 305051)
sbraden@carlsonlynch.com
3 **CARLSON LYNCH LLP**
1350 Columbia Street, Suite 603
4 San Diego, California 92101
Telephone: (619) 762-1900
5 Facsimile: (619) 756-6991

6 *Attorneys for Plaintiffs and the Settlement Class*

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10

11 MIGUEL OLMEDO, and SIOBHAN
12 MORROW, on behalf of themselves and all
others similarly situated,

13 Plaintiffs,

14 v.

15 PVH RETAIL STORES, LLC, a Delaware
16 Limited Liability Company, and DOES 1-20,

17 Defendants.
18

Case No: 37-2019-0003250-CU-MC-CTL

[E-FILE]

CLASS ACTION

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

Date: February 7, 2020

Time: 10:30 a.m.

Dept.: C-68

19 I, Todd D. Carpenter, declare:

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

24 2. I have personally been involved in the investigation and prosecution of this class action
25 from its inception through to the present. I oversaw the investigation into several locations of the
26 Defendants' stores. I directed the investigation through the use of my paralegals and reviewed their entries
27 accordingly. I was also actively involved in the management of the litigation. I assigned litigation tasks to
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1 my associates, but performed the high-level negotiation of the settlement and oversaw the approval
2 process law & motion work together with my co-counsel, Jeff Kaliel at Kaliel PLLC.

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

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

10 5. We have established our billable rates of: \$750.00 per-partner hour; \$395.00 per-associate
11 hour; and \$125 per-paralegal hour through an annual, informal survey of similarly experienced consumer
12 class action attorneys in the Southern California legal market. My firm has spent approximately
13 \$27,564.12 in un-reimbursed expenses incurred in connection with this case. A breakdown of my firm's
14 additional costs incurred in this action is set forth below:

15 **COSTS**

No.	General Description	Cost:	
1.	Mediation	\$6,000.00	
2.	Court fees	\$2,893.12	
3.	Electronic research	\$1,321.00	
4.	Scanning, photocopying, printing, and other office related costs	Waived	
5.	Expert Report	\$17,350.00	

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26 **TOTAL:** \$ 27,564.12

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

No.	General Description	Hours	Rate	Lodestar
1.	Pre-filing investigation; research establishing theory of liability: (Partner Time) Designed the pre-suit investigation, including in-person observation and recording of pricing practices and sales transactions. Coordinated the strategy and execution for observing pricing practices at 16 outlet stores throughout the state of California, including the surveillance of pricing strategies and practices on a near-daily basis for 14 consecutive months and a total 18 months out of a 24 month time-period. Assessed investigation-acquired pricing against Tommy Hilfiger website and in store pricing at four department stores which carry Tommy Hilfiger and Tommy Hilfiger outlet product lines. Designed and implemented the pre-suit comparison market investigation – identifying outlet items sold and comparing against retail channel stores. Research regarding statutory liability for false reference pricing; impact /damages analysis.	68.4	\$750	\$51,300
2.	Pleadings: (Associate Time) Research case law and review case database for filings regarding fraudulent sale discounting complaints; gather factual information for complaint and review corresponding investigation data; draft initial complaint and circulate for edits; gather and incorporate exhibits; incorporate revisions, revise, finalize, and file; issue for service; draft first amended complaint; circulate for review and incorporate edits; finalize, file, and e-serve; +assist with joint motions for enlargement of Defendant's time to respond	63.3	\$395	\$25,003
3.	Investigation Time (Paralegal time): Observed market pricing practices for 31 SKU items identified at outlet and 40 SKU items at regular department stores for 18 total months prior to suit and subsequent months preceding mediation.	672.2	\$125	\$84,025
4.	Discovery: (Associate time) Draft written discovery requests including Requests for Production of Documents and Special Interrogatories; circulate to co-counsel and partner for review and comment; incorporate suggested revisions; finalize and serve; calendar response deadline; draft notices of deposition for Defendants' corporate representative and percipient witness; Draft proposed ESI protocol and Cal. Rule of Court 3.724 meet and confer letter & circulate to partner for edits to topics regarding same; serve and correspond with opposing counsel regarding scheduling.	86.9	\$395	\$34,325
5.	Discovery: (Partner time): Strategize with team regarding goals of discovery; provide input into PMK; potential subpoena issues; Review written discovery;	24.2	\$750	\$18,150
6.	Evaluation, Retention and substantive work with Experts (Partner time): Screened, vetted and interviewed consumer behavior consultants / human factors experts and economists. Conference calls and email correspondence with consumer survey expert regarding consumer survey design with respect	143.2	\$750	\$107,400

1	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.			
2	Generated protocol for survey of department store quality merchandise to compare to outlet quality merchandise. Interviewed and met with linen and mercantile industry experts.			
3	Summarized and provided granular investigation data to damages expert; conference calls, email and discussion regarding the proposed damages models; use of regression analysis and conjoint theory for damages determination; market price impact analysis. Drafted numerous memorandums regarding critiques of damages models, summary of data acquired in investigation; assigning and ranking product attributes; comparison market data – items sold at competitive retail chains; outlet channels. Review of expert declaration / report in support of Plaintiffs' mediation statement. Follow up conference calls regarding substance of report; assessment of range of potential damages.			
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13	7. Law and Motion: (Associate time) Draft joint motion for leave to file amended complaint; circulate drafts to partner and incorporate edits;	13.4	\$395	\$5,293
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15	8. Law and Motion: (Partner time) Reviewed; amended complaints and moving papers for settlement approval.	8.6	\$750	\$6,450
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17	9. Settlement Agreement and Mediation: (Associate time) Attend full-day mediation session; follow-up telephonic conferences and email correspondence with mediator regarding final terms of settlement; draft settlement agreement and notices; conduct several telephonic meet and confer conferences with opposing counsel regarding various drafts of settlement agreement and notices; receive revisions and incorporate same; correspondence with claims administrator regarding settlement notices, website, and dissemination of notice.	51.3	\$395	\$20,263
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22	10. Mediation / Settlement: (Partner time) Prepared mediation brief; coordinated expert report to support available damages analysis; attended full day mediation; 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.	65.1	\$750	\$48,825
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26	11. Motions for Settlement Approval (Associate Time): research regarding motion in support of preliminary approval of class action settlement and draft the same; incorporate edits from partner; finalize, file, and serve; prepare for preliminary approval hearing; research and draft instant fee motion;	27.1	\$395	\$10,704
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1		circulate to partner for review and incorporate edits; finalize and filed.			
2	12.	Motions for Settlement Approval (Partner Time): Made revisions to motion for Preliminary Approval; met with client; prepared for and attended oral argument for preliminary approval; prepared for and attended follow-up hearing for preliminary approval.	18.2	\$750	\$13,650
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5	13.	General Case Management Issues: (Partner time) Preparation and participation in status conferences; periodic teleconferences; strategy meetings with team and experts.	20.2	\$750	\$15,150
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7	14.	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.	26.3	\$395	\$10,388
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10	15.	Motion for Attorneys' Fees / Motion for Final Approval: (Partner time) Evaluated and provided revisions to motion for attorneys' fees; prepared declaration.	7.3	\$750	\$5,475
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12	16.	Attendance at and preparation for Final Approval Hearing (Prospective) (Partner time):			
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15		TOTAL:			\$456,401

7. Both Plaintiffs Miguel Olmedo and Siobhan Morrow maintained continued involvement in the litigation, including reviewing initial pleadings and communicating with Class Counsel on the status of the action.

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

9. My hourly rate of \$750.00 per hour is in line with comparable hourly rates charged by other law firms that handle class action litigation in Southern California. Indeed, my current hourly rate of \$750.00 per hour was recently approved on September 27, 2019 by Judge Joel R. Wohfeil in *Rael v. RTW Retailwinds, Inc., et al*, Case No. 37-2019-00003850-CU-MC-CTL, and on July 12, 2019 by Judge Ronald F. Frazier in *Dennis v. Ralph Lauren Corporation, et al.*, Case No. 37-2018-00058462-CU-MC-CTL, both on unopposed fee applications in similar false and deceptive sale discounting class action cases. My hourly rate was also recently approved on April 5, 2019 in an \$8,000,000 all-cash FACTA Settlement in *Mocek*,

1 *Varoz, et al v. AllSaints USA Limited* (Case No. 2016-CH-10056; Circuit Court of Cook County, Illinois;
2 County Dept. Chancery Div.). My previous hourly rate of \$650.00 per hour was approved in 2017 by
3 Judge Judith Hayes on an unopposed fee application in a Song-Beverly Credit Card Act case, *Manner v.*
4 *Summit Pizza West, LLC*, Case No. 37-2015-5909-CU-MC-CTL. My rate has increased over the last two
5 years commensurate with other plaintiff's class action practitioners in Southern California with my level
6 of experience and success.

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

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

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

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

18 14. I have been recognized as a semi-finalist as a “Top Corporate Litigation Attorney,” by the
19 San Diego Daily Transcript in 2012, and I have been named a San Diego “Super Lawyer” in 2015, 2016,
20 2017, 2018 and 2019.

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

23
24 Dated: January 17, 2020

CARLSON LYNCH LLP

25
26 /s/ Todd D. Carpenter
27 Todd D. Carpenter

CARLSON LYNCH LLP
28 Todd D. Carpenter (CA 234464)

1 Scott G. Braden (CA 305051)
2 1350 Columbia Street, Suite 603
3 San Diego, California 92101
4 Telephone: (619) 762-1900
5 Facsimile: (619) 756-6991
6 tcarpenter@carlsonlynch.com
7 sbraden@carlsonlynch.com

8 *Attorneys for Plaintiff and the Settlement Class*

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO [E-FILE]	COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Todd D. Carpenter (CA 234464) Tel: (619) 762-1900 Scott G. Braden (CA 305051) CARLSON LYNCH LLP 1350 Columbia Street, Suite 603 San Diego, CA 92101	
SHORT CASE TITLE Olmedo, et al. v. PVH Retail Stores, LLC, et al.	JUDGE: RICHARD S. WHITNEY DEPT: 68
ATTORNEYS FOR Plaintiffs Miguel Olmedo and Siobhan Morrow	Case No. 37-2019-00003250-CU-MC-CTL

PROOF OF SERVICE

I, the undersigned, say: I am over 18 years of age, employed in the County of San Diego, California, in which the within-mentioned service occurred; and that I am not a party to the subject cause. My business address is 1350 Columbia Street, Suite 603, San Diego, California 92101.

On January 17, 2020, I caused the following document(s) to be served:

- **NOTICE OF UNOPPOSED MOTION AND MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD**
- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD**
- **DECLARATION OF TODD D. CARPENTER IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS**
- **[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD**

to each addressee named herein and addressed as follows:

Lary Alan Rappaport PROSKAUER 2029 Century Park East, Suite 2400 Los Angeles, CA 90067-3010 lrappaport@proskauer.com Lawrence Weinstein PROSKAUER 2029 Century Park East, Suite 2400 Los Angeles, CA 90067-3010 LWeinstein@proskauer.com	<i>Attorney for Defendant PVH Retail Stores, LLC</i>
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- () BY MAIL. I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a.

- () BY FAX. I faxed a copy of the document(s) to the person at the fax number(s) listed in the addressee(s). The telephone number of the sending party facsimile machine was 619.756.6991. The transmission was reported as complete and without error. No error was reported by the fax machine that I used.
- () BY PERSONAL SERVICE. Class Action Research hand-delivered said document(s) to the addressee(s) designated pursuant to Code of Civil Procedure §1011.
- (X) BY ELECTRONIC MAIL TRANSMISSION: A PDF format copy of such document(s) was sent by via e-mail or electronic mail transmission via email to each such person at the e-mail address listed above. The transmission was reported as complete and without error.
- () BY OVERNIGHT MAIL. I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery with Federal Express this same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 17, 2020.

_____/s/_____
Scott G. Braden