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11 Attorneys for Plaintiff STACI CHESTER, et al.

12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 EASTERN DIVISION
16

17 STACI CHESTER, et al.
18 Plaintiff,
19 vs.
20 THE TJX COMPANIES, INC., et al.,
21 Defendants.
22

EDCV 15-01437 ODW (DTBx)
CLASS ACTION
DECLARATION OF
CHRISTOPHER J. MOROSOFF IN
SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND COSTS
COSTS OF ADMINISTRATION
AND CLASS REPRESENTATIVES'
ENHANCEMENT PAYMENTS

Courtroom: 5D – First Street
Date: May 14, 2018
Time: 1:30 p.m.
Judge: Hon. Otis D. Wright, II

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 Office of Christopher J. Morosoff, attorney of record and co-counsel with Douglas Caiafa and Greg K. Hafif, for plaintiffs herein before this Court in the action *Staci Chester, et al. v. The TJX Companies, et al.* U.S.D.C., C.D. Cal. EDCV 15-01437 ODW (DTBx).
3. I submit this Declaration in Support of Plaintiffs' Motion for Attorneys' Fees and Costs of Administration 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 19 years and have defended and prosecuted numerous complex, multi-party actions, including over 25 class actions, and including multi-million-dollar wage and hour and consumer class action litigation and settlements.
5. I have been involved in and certified to act as class counsel in the representation of Plaintiffs in more than 20 different class action lawsuits in California and have successfully prosecuted and obtained significant recoveries in numerous class actions.
6. I support this lawsuit, will vigorously pursue and protect the Plaintiffs and the Class and believe that I am sufficiently qualified to act as class counsel in this action.
7. Prior to filing this action, Mr. Caiafa, Mr. Hafif and myself consulted with Plaintiffs, investigated Defendant's pricing practices and researched the law applicable to Plaintiffs' claims. After doing so, we filed the initial complaint against defendants The TJX Companies, Inc. and T.J. Maxx of CA, LLC (C.D.Cal., Case No. 5:15-cv-01437-DDP-DTBx) on July 17, 2015. We filed

1 additional complaints on July 23, 2017, against defendants Marshalls of CA,
2 LLC (Case No. 5:15-cv-01475-PA-DTBx) and HomeGoods, Inc. (Case No.
3 5:15-cv-01480-CAS-KKx).

4 8. After receiving permission from the Court to consolidate the three related cases
5 and file a consolidated complaint, Class Representatives Staci Chester, Robin
6 Berkoff, Daniel Friedman, and Theresa Metoyer filed a Consolidated Amended
7 Class Action Complaint against The TJX Companies, Inc., T.J. Maxx of CA,
8 LLC, Marshalls of CA, LLC, and HomeGoods, Inc. in the United States
9 District Court for the Central District of California (Case No. 5:15-cv-01437-
10 DDP-DTBx) (the “CAC”).

11 9. On August 18, 2016, the Court denied Defendant’s Motion to Dismiss
12 Plaintiffs’ operative CAC. (ECF No. 62). Defendant files its Answer to
13 Plaintiffs’ CAC on September 12, 2016. (ECF No. 65).

14 10. Throughout the Litigation, my co-counsel and I engaged in extensive class and
15 merits investigation and discovery. We have received, reviewed and analyzed
16 tens of thousands of documents that Defendant produced in the Litigation,
17 including its voluminous and detailed sales data. The parties engaged in
18 multiple rounds of written discovery, conducted by Defendants and Plaintiffs,
19 which required extensive meet and confer sessions, multiple motions to
20 compel, and multiple telephonic conferences with the magistrate. Tens of
21 thousands of documents were produced by both sides in the litigation.
22 Defendant took the depositions of each of the four Plaintiffs, including two
23 sessions with plaintiff Chester, and Plaintiffs took the 30(b)(6) depositions of
24 Defendant’s representative on two occasions.

25 11. On March 1, 2017, Plaintiffs filed a Motion for Class Certification (ECF No.
26 82), which was subsequently dismissed without prejudice as moot as a result of
27 the proposed Settlement. (ECF No. 107). Plaintiffs’ CAC sought certification
28 of the following class under Fed. R. Civ. Proc. 23(b)(2) and/or (b)(3):

1 All persons who, while in the State of California, and between July 17,
2 2011, and the present (the “Class Period”), purchased from TJ Maxx one
3 or more items at any TJ Maxx store in the State of California with a price
4 tag that contained a “Compare At” price which was higher than the price
5 listed as the TJ Maxx sale price on the price tag, and who have not
6 received a refund or credit for their purchase(s). Excluded from the Class
7 are Defendants, as well as Defendants’ officers, employees, agents or
8 affiliates, and any judge who presides over this action, as well as all past
9 and present employees, officers and directors of any Defendant.

10 12. Plaintiffs sought certification of two additional subclasses which are identically
11 defined in all respects other than that they include customers of Marshalls and
12 HomeGoods stores. (CAC ¶¶ 186, 188, 190). The three subclasses are referred
13 to collectively herein as the “Class.”

14 13. On April 21, 2017, Defendant filed a Motion for Summary Judgment. (ECF
15 No. 93).

16 14. In relation to Plaintiffs’ Motion for Class Certification and Defendant’s Motion
17 for Summary Judgment, the parties also engaged in extensive expert discovery.
18 Plaintiffs’ counsel, including myself, retained, consulted with and submitted
19 reports by expert witness Christian Tregillis in support of their Motion for
20 Class Certification, and in preparation for their opposition to Defendant’s
21 Motion for Summary Judgment. Plaintiffs counsel, including myself, also
22 reviewed multiple expert reports prepared and submitted by Defendant’s expert
23 witnesses in support of its Motion for Summary Judgment, and in opposition to
24 Plaintiffs’ Motion for Class Certification.

25 15. The Class which Plaintiffs seek to certify for settlement purposes is defined as:
26 All persons who in the State of California, and between July 17, 2011 and the
27 present (the “Settlement Class Period”), purchased from a T.J. Maxx,
28 Marshalls or HomeGoods store in California one or more items with a TJX

1 price tag that included a Compare At price, and who have not received a refund
2 or credit for all of their purchase(s). Excluded from the Settlement Class are
3 the Settling Defendants, as well as their past and present officers, directors,
4 employees, agents or affiliates, and any judge who presides over this
5 Litigation.

6 16. Throughout early 2017, the Parties engaged in extensive negotiations
7 concerning the possible structure of a class-wide settlement. These
8 negotiations led to mediation, on May 22, 2017, with Hon. Margaret Nagle
9 (Ret.) of JAMS, while the motions for class certification and summary
10 judgment were pending. (Id.). At the conclusion of a full day of mediation,
11 the parties reached a tentative agreement with respect to most of the material
12 terms of the Settlement as reflected in the Settlement Agreement attached
13 hereto as Exhibit A. The parties remained at an impasse with respect to certain
14 terms. Further conferences and negotiations were required, with the
15 participation and assistance of Judge Nagle, before final agreement was
16 reached on all material terms. The parties subsequently negotiated, drafted and
17 executed the comprehensive Settlement Agreement which was preliminarily
18 approved by the Court on December 5, 2017. (“Agreement”).

19 17. The parties modeled the Agreement, to the extent possible, after the settlement
20 agreement approved by the Ninth Circuit in *In re Online DVD-Rental Antitrust*
21 *Litig.*, 779 F.3d 934 (9th Cir. 2015).

22 18. The Settlement provides that Defendant will make available a fixed sum of
23 \$8,500,000.00 (the “Monetary Component”) for the benefit of the Class.
24 (Agreement at ¶3.1). Subject to Court approval, the Monetary Component will
25 be used to pay for Notice and Administration Costs (not to exceed \$1,000,000)
26 (Id. at ¶3.1.2), reasonable Attorneys’ Fees and Costs (not to exceed 25% of the
27 Class Settlement Amount), and Class Representative Enhancement Payments
28 (not to exceed \$7,500 to each Plaintiff). (Id. at ¶¶3.1.3-3.1.4). The amount

1 remaining after these payments shall be paid to Settlement Class Members in
2 the form of Merchandise Credits, redeemable for cash at the Claimant's option,
3 who submit a valid Claim Form on a pro rata basis. (Id. at ¶3.1.1).

4 19. The required portions of the Monetary Component of the Agreement shall be
5 funded through and deposited into a QSF as reflected in the Agreement. (Id. at
6 ¶¶3.2, 9.1-9.8). The QSF will qualify as a "qualified settlement fund" under
7 section 468B of the Internal Revenue Code and sections 1.468B-1, *et seq.* of
8 the Treasury Regulations, as: (1) the QSF is being established subject to
9 approval of the Court, and will be operated pursuant to the terms and
10 conditions of the Agreement; (2) the QSF will be subject to the continuing
11 jurisdiction of the Court; (3) the QSF is being established to resolve or satisfy
12 claims of alleged tort or violation of law; and (4) the QSF will be a trust, and
13 its assets will be segregated from the general assets of the trustee and/or
14 administrator and deposited therein.

15 20. Claimants will receive their share of the Monetary Component as a
16 Merchandise Credit redeemable for purchases at any TJ Maxx, Marshalls or
17 HomeGoods store in California. (Id. at ¶¶1.14, 3.1.1). Each Merchandise
18 Credit shall be fully transferable, stackable and may be used in connection with
19 any promotional discounts that are otherwise available. (Id.). Merchandise
20 Credits will have no expiration date and need not be used in full at any time.
21 (Id.). They will maintain a running balance that will be depleted based only on
22 use until the Claimant's balance is zero. (Id.). No minimum purchase amount
23 is required to use them. (Id.). In addition, Settlement Class Members have the
24 option of redeeming an unused Merchandise Credit for cash in an amount equal
25 to 75% of the Merchandise Credit at the time of its issuance by returning the
26 Merchandise Credit to the Claims Administrator within one (1) year after its
27 issuance. (Id. at ¶1.14). Claimants have ninety days from the date of Notice to
28 submit a Claim Form either electronically through the Settlement Website

1 maintained by the Administrator, or via mail to the Administrator. (Id. at
2 ¶¶5.1, 5.2.2). Following the Settlement Effective Date, Defendant will deliver
3 plastic Merchandise Credits to the Claims Administrator for distribution to all
4 Claimants. (Id. at ¶8.1.3).

- 5 21. Plaintiffs and their counsel have also obtained relief beyond the Monetary
6 Component. As a direct result of this Litigation, Defendant has also agreed to
7 implement changes to its price-comparison advertising practices. First,
8 Defendant has agreed that, as of the date of settlement, and continuing forward,
9 it will not violate Federal or California law, including California’s specific
10 price-comparison advertising statutes. (Id. at ¶3.5). Next, Defendant has also
11 agreed to enhance and expand programs intended to promote legal compliance,
12 including periodic (no less than once a calendar year) monitoring, training and
13 auditing to ensure compliance in its California T.J. Maxx, Marshalls and
14 HomeGoods stores with California and Federal price comparison laws. (Id. at
15 ¶¶3.4-3.7). In addition, Defendant has agreed to change the
16 disclosure/definition of its “Compare At” pricing on its T.J. Maxx, Marshalls
17 and HomeGoods websites and on the signs in its California stores. (Id. at
18 ¶3.4). Defendant has also agreed to prominently post additional signs in each
19 of its over 300 California stores describing its comparison pricing practices.
20 (Id. at ¶3.6). Finally, Defendant has agreed that it will not base any
21 comparison price on an estimate not based on actual market prices. (Id.).
- 22 22. The release language in the Agreement releases both known and unknown
23 claims, but is limited to the universe of facts, occurrences, transactions and
24 claims alleged in the FAC.
- 25 23. After consulting with and receiving bids from multiple candidates, the Parties
26 retained JND Legal Administration (“JND”) to serve as Claims Administrator.
27 (Id. at ¶1.6). JND has actively begun the claims administration duties outlined
28 in the Agreement. To date, JND has received over 150,000 claims from

1 Settlement Class Members. JND has agreed that all costs of Notice and
2 Administration will not exceed \$1,000,000. (Id. at ¶3.1.2).

3 24. The Agreement authorizes each named Plaintiff to seek a Class Representative
4 Payment in an amount to be determined by the Court but not to exceed \$7,500
5 each. The Settlement is not conditioned on the Court's approval of the full (or
6 any) amount of a Class Representative Payment, and Plaintiffs' right to seek
7 Class Representative Payments was not a condition of their approval of the
8 Settlement.

9 25. The Agreement also anticipates that Plaintiffs' counsel will seek an award of
10 attorney's fees equal to 25% (\$2,125,000) of the Monetary Component of the
11 Settlement. (Agreement at ¶3.1.3).

12 26. On September 18, 2017, Plaintiffs filed an Unopposed Motion for Preliminary
13 Approval of Class Action Settlement and Certification of a Settlement Class
14 ("MPA1"). (ECF No. 109). This Court denied Plaintiffs' MPA1 without
15 prejudice in an Order issued October 20, 2017 ("Order Denying MPA1").
16 (ECF No. 111). In its Order Denying MPA1, the Court stated that it took issue
17 with the form of the parties' proposed notices to be sent to potential settlement
18 class members, which were attached to the Settlement Agreement as Exhibits
19 3, 4, 5, 7. (ECF No. 109-3). Specifically, the Court found that the proposed
20 notices should include Defendants' retail logos to alert settlement class
21 members that the notices concern TJ Maxx, Marshalls and HomeGoods stores.
22 (ECF No. 111). The Court noted, however, that it was "inclined to
23 preliminarily approve the parties' proposed Settlement Agreement (ECF No.
24 109-3), if the proposed notice was amended to conform to the format addressed
25 in [the Court's] Order." (ECF No. 111).

26 27. Following issuance of the Court's Order Denying MPA1, the Parties reviewed
27 the Order, consulted with the Claims Administrator (JND), and took those
28 steps necessary to satisfy the Court's concerns and comply with the Court's

1 instructions. To that end, the Parties changed the format of Exhibits 3, 4, 5 & 7
2 to display the logos, in color, of Defendant TJX, Inc., and its subsidiary
3 retailers TJ Maxx, Marshalls, and HomeGoods.

4 28. On November 13, 2017, the Parties filed an Amended Motion for Preliminary
5 Approval of Class Action Settlement and Certification with all appropriate
6 supporting documents, including the Supplemental Declaration of Jennifer M.
7 Keough of JND, along with the revised notices to the class as requested by the
8 Court. (ECF No.112).

9 29. On December 5, 2017, this Court granted preliminary approval of class action
10 settlement and conditional certification of a settlement class, setting a hearing
11 date for final approval for May 14, 2018. (EFC No.113).

12 30. In terms of the hours of attorney time I have expended in connection with this case,
13 I have expended more than **1,410 hours**, over a period of approximately 3 years, as
14 follows:

15 31. I have expended in excess of **90 hours** prior to the filing of this action, on tasks
16 including, without limitation: meeting with clients and potential clients and
17 reviewing their documents and other evidence; visiting various locations of TJ
18 Maxx, HomeGoods and Marshalls in the Coachella Valley to investigate their
19 price tags and advertising of "Compare at" price discounts; engaging in
20 extensive legal research and facts investigation into the viability of claims for
21 false advertising against TJX, including review and analysis of case law and
22 pleadings in various state and federal cases, and drafting and filing the three (3)
23 original complaints filed against Defendants TJ Maxx, Marshals and
24 Homegoods.

25 32. I have expended in excess of **110 hours** prior to filing this action consulting
26 with experts in the field of advertised reference price advertising and
27 conducting independent research related to scholarly articles, surveys, expert
28

1 reports, etc., regarding decades of consumer and marketing research related to
2 advertised reference prices.

3 33. I have expended in excess of **430 hours** since the filing of the original three (3)
4 complaints in this consolidated action in connection with the legal research,
5 facts investigation and drafting of non-discovery related documents and
6 pleadings, including the CAC, motions, oppositions and replies to pleadings
7 and motions. These pleadings included a request to consolidate the 3 original
8 actions, the CAC, oppositions to Defendant's Motion to Dismiss, Plaintiffs'
9 Motion for Class Certification and all supporting documents, Plaintiffs' Reply
10 in Support of Motion for Class Certification and related documents; Plaintiffs'
11 Opposition to Motion for Summary Judgment filed by Defendants (including
12 opposition declarations, documents and Separate Statement of Disputed
13 Material Facts); Motions for Preliminary Approval of Settlement (MPA1 and
14 MPA2), together with proposed notices, supporting documents and
15 declarations, and draft of Plaintiffs' Motion for Final Approval and supporting
16 documents and declarations.

17 34. I have expended in excess of **600 hours** in connection with matters related to
18 discovery, including without limitation: drafting discovery requests,
19 responding to discovery requests, numerous meetings and conferences with
20 clients to respond to multiple sets of discovery; drafting and negotiating the
21 terms of a protective order for use in the production of documents, testimony
22 and other discovery material; consulting with clients regarding physical items
23 they purchased, preserving, gathering and producing those items for inspection;
24 meetings and conferences with clients in preparation for their depositions,
25 attendance at four (4) depositions including three (3) of the named Plaintiffs
26 and examination of Defendant's corporate designee, numerous meet and confer
27 sessions with opposing counsel and drafting and review of multiple meet and
28 confer letters related to multiple discovery disputes, limitations on discovery,

1 protective order concerns, etc.; preparation for and participation in multiple
2 telephonic discovery conferences with Magistrate Judge David T. Bristow and
3 opposing counsel in this action; further and additional factual investigation and
4 telephonic conferences with clients and review of thousands of pages of
5 documentation for responding to discovery and preparation for depositions;
6 support in the drafting and service of supplemental and further supplemental
7 responses to discovery; review and analysis of Defendant's responses to
8 discovery, document requests and interrogatories, deposition transcripts of all
9 deponents; further review of scholarly articles and consultation with leading
10 experts in the field of advertised reference prices; and, conducting factual
11 investigation of Defendant's latest price tags and advertising, on-line
12 advertising and brands, public filings, as well as those of Defendant's
13 competitors. In addition, continued and repeated efforts resulted in multiple
14 and additional production of information and documentation by Defendant
15 which was thoroughly reviewed and analyzed.

16 35. I have expended in excess of **75 hours** in connection with negotiation,
17 mediation and settlement of this action, including numerous meetings with
18 clients and co-counsel, negotiations with opposing counsel concerning the
19 terms and structure and eventual class-wide settlement, numerous conference
20 calls which led to private mediation, additional telephonic conferences with
21 mediator and retired Judge Nagle before reaching final agreement, and
22 negotiating and drafting the Settlement Agreement currently preliminarily
23 approved by the Court.

24 36. I have expended in excess of **105 hours** in connection with the preparation and
25 filing of all documents related to preliminary and final approval of the
26 Settlement, including research related to the Settlement; continuous
27 consultation with the Settlement Administrator, JND, regarding class notice,
28 claim-related issues, class size, notice reach, notice methods, website design,

1 toll-free Settlement telephone script and logistics, and costs of administration
2 activities; drafting and filing the first Motion for Preliminary Approval
3 (MPA1) and all related documents, proposed notices, and declarations; drafting
4 and filing the second Motion for Preliminary Approval (MPA2) and all related
5 documents, proposed notices, and declarations. This time also includes
6 multiple meetings with opposing counsel, my co-counsel, clients, and
7 personnel at JND, related to all aspects of the Settlement described in the
8 Agreement.

9 37. Thus, in sum, I have expended in excess of **1,410 total hours** through and
10 including this Declaration.

11 38. As a practicing attorney in this area for nearly 20 years, and based on my
12 extensive experience and expertise, my reasonable hourly rate for this type of
13 litigation is **\$650**. (*See e.g.*, approval of settlements and hourly rate of \$650 in
14 *Horosny, et al. v. Burlington Coat Factory of California, LLC*, 2:15-cv-05005-
15 SJO-MRW (Order dated July 24, 2017 (ECF Doc. No. 83)); *Price v. Uber*
16 *Technologies, Inc.*, Los Angeles Superior Case No. BC554512 (Order by Hon.
17 J. Maren E. Nelson dated January 18, 2018)). As such, my total current
18 loadstar on this action is **\$916,500**.

19 39. My out-of-pocket expenses for the prosecution of this case, including filing
20 fees, photocopy expenses, courier charges, parking, postage charges, on-line
21 research charges unique to this action and related expenses, as well as
22 deposition costs, incurred to date, which have not been reimbursed, is in excess
23 of **\$1,800.00**.

24 40. This case has been contentiously litigated from the start. The Settlement was
25 reached after extensive investigation and discovery, motion practice (including
26 resolution of a motion to dismiss, discovery proceedings before the Magistrate,
27 and a fully-briefed motion for class certification), and after protracted
28

1 settlement negotiations, including a full-day mediation with Judge Nagle, and
2 repeated follow-up negotiations and conferences with Judge Nagel.

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

9 42. Based on all of the factors related to the fairness, adequacy and reasonableness
10 of the proposed Settlement, including the Parties' compliance with this Court's
11 Order Denying MPA1, I, on behalf of Plaintiffs and my co-counsel,
12 respectfully request that this Court grant Plaintiffs' Motion for Attorneys' Fees
13 and Costs of Administration and Class Representatives' Enhancement
14 Payments.

15
16 I declare under penalty of perjury that the forgoing is true and correct.

17 Executed this 12th day of March, 2018, at Palm Desert, California.

18
19 /s/ Christopher J. Morosoff
20 Declarant, Christopher J. Morosoff