

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ASHLEY TOTH, Personally, and on behalf of
all Pennsylvanians similarly situated,

Plaintiff,

v.

NORTHWEST SAVINGS BANK,

Defendant.

CIVIL DIVISION

NO. GD-12-008014

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

Plaintiff's counsel, Todd D. Carpenter, hereby declares and state as follows:

1. I am an attorney at law, licensed to practice before all courts in the State of California and I am the founder and owner of Carpenter Law Group. I started Carpenter Law Group on January 1, 2013. Prior to starting Carpenter Law Group, I was a shareholder at the law firm of Bonnett, Fairbourn, Friedman & Balint, P.C., a Phoenix-based law firm specializing in complex litigation.

2. I have personal knowledge of the facts stated in this declaration except as to those facts stated on information and belief or those facts, which I otherwise believe to be true. If called as a witness I could and would competently testify to the matters stated herein.

3. I have represented plaintiffs in numerous class action proceedings in California and throughout the country, in both state and federal courts. I have represented thousands of purchasers of consumer products, food, food supplements and over the counter drugs in state and federal courts throughout the United States in cases arising out of various false advertising claims made by manufacturers and retailers, including: Proctor & Gamble, General Mills, Bayer,

Clorox, WD-40, Dean Foods, Botanical Laboratories, Inc. and Pharmavite. As a shareholder, I was also counsel of record at my prior firm in the MDL proceeding, *In re: Hydroxycut Marketing and Sales Practices Litigation*, No. 09-02087 (S.D. Cal.), wherein my previous firm was designated as co-lead counsel for the class. I was also counsel of record for the Settlement Class in "FACTA" cases against Hugo Boss, U.S.A. Inc. in the Southern District of California; *Travis Benware v. Hugo Boss, U.S.A., Inc.*, Case No. 3:12-cv-01527-L-MDD (pending preliminary approval) and Southwest Airlines (*Lumos v. Southwest Airlines, Co.*, Case No. C-13-1429-CRB).

4. I have represented thousands of consumer credit card holders against several major retailers arising from violations of the Song-Beverly Credit Card Act section 1747.08. I have also represented thousands of consumer debit card holders against major commercial banks, including assuming a leadership role as prosecuting counsel in *In re: Checking Account Overdraft Litigation, Larsen v. Union Bank and Dee v. Bank of the West*, MDL No. 2036 (S.D. Fl.). I have filed similar actions against several other banks and credit unions across the country, alleging that each institution manipulated the processing of customer debit card purchases to maximize overdraft fees, including actions against Pinnacle National Bank (*John Higgins v. Pinnacle Bank*, Case No. 11-C4858, in the Circuit Court for the State of Tennessee, Twentieth Judicial District in Nashville) and Mission Federal Credit Union (*Taylor v. Mission Federal Credit Union*, Case No. 37-2012-00092073-CU-BT-CTL, San Diego Superior Court, Department 75, San Diego, California).

5. I have been recognized as a semi-finalist as a "Top Corporate Litigation Attorney," by the San Diego Daily Transcript in 2012, and I was recently named a San Diego "Super Lawyer" in the 2015 edition.

6. I have been in practice for ten years. My practice has focused exclusively on consumer class action litigation for at least nine and one half of those ten years.

7. My hourly rate for the duration of this litigation has been \$550.00 per hour. In addition to keeping up with prevailing market rates for similar professional services in published legal authorities, I frequently and periodically survey other consumer class action attorneys with similar levels of experience who are engaged in similar litigation. My prevailing rate has been approved by other Courts in the settlement of Class Action cases including most recently in: *Lumos v. Southwest Airlines, Co.*, Case No. C-13-1429-CRB, (Cal.No. Dist.) *Albence v. Healthy Back Store, LLC*, Case No. 37-2013-00050152-CU-MC-CTL (Superior Court for the State of California, County of San Diego), *John Higgins v. Pinnacle Bank*, Case No. 11-C4858, in the Circuit Court for the State of Tennessee, Twentieth Judicial District in Nashville. Also, attached to my Declaration as Exhibit No.1 is the 2013 National Law Journal's survey of prevailing billable or hourly rates among for partners at the top law firms in the country. Defendants in this case retained Roy Arnold, Esq., an equity partner at REED SMITH (a sophisticated, multi-national law firm) one of top consumer class action defense attorneys in the country. The average partner billing rate at REED SMITH according to the National Law Journal study is \$710.00 per hour. My rate is in line with the market rate for attorneys prosecuting and defending consumer class action cases.

I. SETTLEMENT RECOVERY AND THE SIZE OF THE CLASS

8. The Settlement requires Northwest to pay a total sum of \$2.35 million to compensate Plaintiff and Class Members, as well as to pay for the costs of administering the settlement and any Court ordered attorneys' fees, costs, and/or a service award to the Plaintiff.

9. The Payment Advisor, Plaintiff's expert Art Olsen, has completed the computation of individual Class Member damages, as called for in Paragraphs 86-87 of the Settlement Agreement.

10. Settlement Class Members do not have to submit claims or take any other affirmative steps to receive relief under the Settlement. Instead, within 30 days of the Effective Date of the Settlement (Agreement ¶88), Northwest and the Settlement Administrator will distribute the Net Settlement Fund to all Settlement Class Members who do not opt out of the Settlement.

11. Under the circumstances Plaintiff and Class Counsel appropriately determined that the Settlement reached with Northwest outweighs the gamble of continued litigation. The Settlement recovery is a fantastic result, particularly in light of the risks and delay associated with continued litigation and when compared to the recoveries achieved in similar litigation. This case involved complex issues, further supporting fee requested. Even more than in a typical class action, which always involve complex issues and challenges, this case presented additional complexities. Class Counsel was required to overcome numerous substantive arguments raised by Northwest's Objection and subsequent effort to appeal the Court's ruling on same. Defendant's Preliminary Objections raised unique issues of first impression, including: determinations as to (1) whether the economic loss doctrine applies to private actions based on the catch-all provision of the Pennsylvania Unfair Trade Practices and Consumer Protection Law and (2) whether a consumer can pursue a private cause of action based on the catch-all provision of the Pennsylvania Unfair Trade Practices and Consumer Protection Law without offering testimony regarding reliance. The substantive findings on these in favor of the Class increased Defendant's potential exposure by expanding the class period consistent with the broader statute

of limitations afforded actions under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

II. COSTS OF ADMINISTERING THE SETTLEMENT

12. The costs of administering the Settlement (*e.g.*, mailing notice, mailing checks, calculating individual class member damages, etc.) will be minimal. The Settlement Administrator, Gilardi & Co., LLC, has agreed to a cap on administrative costs of \$77,000.00. And, the Payment Advisor’s analysis has cost approximately \$49,225.00. Thus, Settlement Administration costs will likely not exceed approximately \$126,225.00.

IV. TIME SPENT IN THE PROSECUTION OF THE LITIGATION

10. Set forth below is a summary of the time spent by the Carpenter Law Group in the prosecution of this action by relevant litigation category and/or event:

Description of Work Performed:	Hours:	Total Time @ hourly rate:
Drafted application to be admitted pro hac; filed and served	0.9	
Prepared for oral arugment on Preliminary Objections	3.3	
Prepared for oral arugment on Preliminary Objections; drafted outline; reviewed Opposition to Preliminary Objections	2.6	
Traveled to Pittsburgh for hearing on Preliminary Objections	8.6	
Prepared for oral arugment on Preliminary Objections; drafted outline; reviewed Opposition to Preliminary Objections	3.2	
Met with co counsel to prepare for hearing on Preliminary Objections	1.3	
Attended hearing on Preliminary Objections	2.2	

Met with co counsel regarding outcome of hearing; discussed strategy moving forward for supplemental briefing	1.4	
Return Travel to San Diego from Pittsburgh for Preliminary Hearing	7.3	
Email with co counsel at Lieff regarding outcome of hearing on Preliminary Objections; Teleconference regarding same	0.7	
Research regarding reliance requirement of PA consumer protection statutes and failure to disclose material fact as implied misrepresentation	4.6	
Further research regarding reliance requirement of PA consumer protection statutes and failure to disclose material fact as implied misrepresentation	3.8	
Discussion with Camille Bass regarding response to petition for appellate review.	0.4	
Began reviewing petition for appellate review and the Court's previous order.	2.3	
Continued reviewing petition for appellate review and the Court's previous order.	2.6	
Finished reviewing petition for appellate review and the Court's previous order.	0.4	
Began drafting response to petition for appellate review (1.6). Research regarding same (2.4). Discussions with Camille Bass regarding same (0.2).	4.2	
Continued drafting response to petition for appellate review.	3.6	
Research regarding response to petition for appellate review.	1.9	
Research regarding response to petition for appellate review.	3.3	
Continued drafting response to petition for appellate review.	4.1	
Reviewed and edited response to petition for appellate review (2.8). Email and discussion with Camille Bass regarding same (0.2).	3.1	
Travel to Pittsburgh for mediation	8.4	
Preparation for mediation	2.2	

Preparation for mediation / meeting with Andrew Gross	1.8	
Attend mediation	12.4	
Draft Memo regarding settlement structure and proposed terms	2.3	
Emails regarding proposed structure finalizing terms and cost for expert to conduct analysis; inclusion of cost in structure for fund	0.3	
Return Travel from Pittsburgh	9.3	
Emails with Camille Bass regarding motion for preliminary approval.	0.3	
Worked on preliminary approval motion (4.0). Research regarding same (1.8).	5.8	
Further work on motion for preliminary approval (1.7). Discussion with Camille Bass regarding same (0.1).	1.8	
Drafted outline for oral argument on preliminary approval of class settlement; evaluate settlement agreement; notices and correspondence related to amount of recover per individual transaction and OD assessed; evaluation of mean recovery less costs	5.2	
Travel to Pittsburgh for Preliminary Approval Hearing	10.4	
Preparation for Preliminary Approval hearing; evaluation of comparable settlements in MDL and outside of MDL; review preliminary approval papers and settlement agreement	4.3	
Met with co counsel regarding preparation for preliminary approval of class action settlement	1.9	
Attended Preliminary Approval Hearing	2.2	
Met with Co counsel post hearing to discuss findings and potential recourse to recalculate potential recovery on a per class member basis	1.3	
Return Travel to San Diego from Preliminary Approval Hearing	9.5	
Drafted Motion for Attorneys' Fees & Costs; Accompanying Declaration	6.3	
TOTAL:	151.5	

Lodestar Calculation: 151.5 hours x \$550.00 =	\$83,325

11. Set forth below is a summary of the costs expended in the prosecution of this action by relevant category:

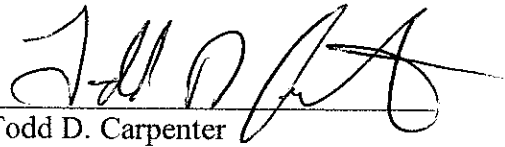
Category Expense:	Amount:
Airfare: (Four trips from San Diego to Pittsburgh, Oral argument on Preliminary Objections; Mediation; Preliminary Approval part 1; Preliminary Approval part 2; Final Approval April 7 th)(575.10)(571.60) (\$1,138.00) (\$587.90)(501.80)(1,143.20)	\$4,517.60
Hotels: (\$171.00)(375.06)(96.90)(163.70)(223.00)	\$1,1029.66
TOTAL:	\$5,547.26

12. Additionally, attached to my Declaration as Exhibit No. 2 is a full accounting of time and expenses generated by my former firm, Bonnett, Fairbourn, Freidman & Balint (hereafter, "BFFB"), in the prosecution of this lawsuit. BFFB spent 189.8 hours at a blended rate of approximately \$536.55 per hour for a total of \$101,837.00 in total lodestar. BFFB also advanced \$1,246.05 in actual costs, which included mostly filing fees and research expenses.

13. Thus, the combined amount of expenses incurred in the prosecution of this case for BFFB, Lieff, Cabraser, Heimann & Bernstein LLP, and Carpenter Law Group are \$11,230.25. The costs incurred include mediation, filing fees, computer research, postage, and travel.

14. Class Counsel expended 595.4 hours in the prosecution of this case and incurred a total aggregate lodestar of \$306,582.55. The fee award represents a reasonable 2.3 multiplier over the actual time incurred. The multiplier is reasonable to account for the substantial risk incurred by Class Counsel in litigating this matter and achieving an excellent result on behalf of the Class.

I declare under penalty of perjury of the laws of the state of California and the United States of America that the foregoing is true and correct. This declaration was executed in San Diego, California on February 17, 2015.


Todd D. Carpenter