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9 *Attorneys for Plaintiff and Class Counsel*

10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 MARION WILLIAMS, on behalf of himself and
14 all others similarly situated,

15 Plaintiff,

16 v.

17 UDEMY, INC., a Delaware limited liability
company, and DOES 1- 50, inclusive,

18 Defendants.

Case No. 37-2023-00003666-CU-BT-NC

[E-FILE]

CLASS ACTION

**DECLARATION OF TODD D. CARPENTER
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT AND PROVISIONAL CLASS
CERTIFICATION**

Date: April 21, 2023

Time: 1:30 P.M.

Judge: Robert P. Dahlquist

Dept: N-29

Reservation No.: 2945340

21
22 I, Todd D. Carpenter, declare:

23 1. I am an attorney duly admitted to practice law before all courts of the State of California,
24 and I am an owner of the law firm of Lynch Carpenter, LLP, counsel for Plaintiffs and the proposed Class¹
25 herein. I make this declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of
26 Settlement and Provisional Class Certification. If called as a witness, I could and would testify to the
27 following:

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¹ Capitalized terms herein, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement and Release, filed concurrently herewith as Exhibit 1.

1 2. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement Agreement and
2 Release (“Settlement Agreement”) negotiated and entered into by the Parties. The Claim Form, Proposed
3 Order Granting Preliminary Approval, Email Settlement Notice, proposed Full Settlement Notice,
4 Exclusion Form and Proposed Final Approval Order are attached as Exhibits A-F, respectively, to the
5 Settlement Agreement.

6 3. I have personally been involved in the investigation and prosecution of this class action
7 from its inception through the present, including conducting a thorough pre-suit investigation into
8 Defendant’s pricing practices on its e-commerce retail website, Udemy.com, for 24 months through online
9 data collection and analysis.

10 4. Prior to commencement of the Federal Court Action as defined in the Settlement
11 Agreement, my firm performed an unprecedented pre-suit investigation. I retained and deployed a
12 preeminent computer programmer and data expert to construct a data collection software application that
13 monitored, *on a daily basis*, Udemy’s pricing practices for every course offered for sale for at various
14 periods in the 24 months preceding the filing of the lawsuit. The process used to obtain the original and
15 sale price for products on Udemy.com leveraged an open-source software library which is used for
16 software test automation. Our expert developed a proprietary application utilizing the library that initiated
17 a web browser, loaded the respective URLs, then inspected the content of the page, isolating each of the
18 links to the course. The application crawled through each link, loading the pages one at a time and
19 ultimately spanning the entire website. The application was designed to mimic what a search engine like
20 Google does when it indexes a website. Once it loaded each page, the application sought out each of the
21 courses that were on sale. When it identified a course on sale, the application would record all the
22 information about that course—e.g., price, sale, date, URL—and take a screenshot of the course
23 advertisement. The application would also take a screenshot of the entire webpage, top to bottom, for
24 verification that the data was not made up or tampered with in any way. This application was run twice a
25 day, every day, on 3 different servers in different geographic locations around the country. This data was
26 later aggregated into a single database where a timeline of the sale price for each course could be
27 established. The data was collected at various points from 2019 to 2021 and through the filing of the
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1 Federal Court Action Complaint. Technical adjustments were made to the application following the filing
2 of the lawsuit to ensure that the data collection would continue, uninterrupted.

3 5. Our data collection demonstrated that Udemey's pricing policies were to consistently
4 discount its courses on a rolling basis. Our investigation revealed that Defendant appeared to continually
5 discount its courses by setting a strikethrough price (meant to convey that it was a former price) and a
6 corresponding "sale" for price more than 90 days at a time. We were able to determine that Udemey offered
7 thousands of courses for sale at prices continually discounted from a false reference price.

8 6. While my firm was conducting a comprehensive pre-suit investigation to establish liability
9 for the use of false reference prices, my firm was simultaneously preparing along with Keller
10 Postman LLC to litigate potentially thousands of individual arbitration claims against Udemey. Udemey,
11 like many large corporations and retailers, deploy the use of compulsory arbitration through contracts of
12 adhesion with consumers who purchase their merchandise. We anticipated that 100% of Udemey customers
13 would be subjected to arbitration given that all purchases had taken place online and were subject to their
14 Terms and Conditions, denying consumers any meaningful recovery from the proposed class action
15 lawsuit. In all likelihood, any consumer forced to arbitrate their claims would abandon them because of
16 the attenuated cost to pursue a low dollar claim through the cost-prohibitive arbitration forum. Lynch
17 Carpenter expended significant resources developing its own mass arbitration practice, which is
18 particularly suited for matters such as this, where consumers with low dollar claims are compelled to
19 arbitration through a standard purchase contract of adhesion. Because our infrastructure, which included
20 an investment in developing proprietary client retention and case management software narrowly tailored
21 to the specific restraints of individual arbitrations, Lynch Carpenter is uniquely positioned to level the
22 playing field on behalf of consumers faced with the transaction costs and the delay of litigating individual
23 claims in arbitration. It was this infrastructure, together with the resources and partnership with Keller
24 Postman that provided the unique capability to represent thousands of individual claimants in arbitration
25 that led to the broad Settlement Class, inclusive of millions of consumers who would have otherwise been
26 compelled to litigate their individual claims in arbitration. Shortly after the filing of Udemey's Motion to
27 Compel Arbitration of the Federal Court Action, Lynch Carpenter and Keller Postman communicated our
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1 accumulation of the sales data and unveiled our unique capability to retain and litigate thousands of class
2 arbitration claims.

3 7. It is my belief that the presence of these two pieces of information led to the global
4 Settlement.

5 8. Following the inception of the litigation, my firm continued investigating Defendant's
6 pricing practices. Once our information was unveiled to Udemy, the Parties together analyzed the relevant
7 legal issues and negotiations eventually took shape wherein the Parties eventually agreed to stay formal
8 discovery efforts and engage in informal discovery with the goal of attending private mediation. Prior to
9 the mediation session, counsel for the Parties engaged in informal pre-mediation discovery regarding the
10 estimated Class size, the types of contact information Defendant had for the Class, and Defendant's sales
11 data and merchandise pricing data. This data allowed Plaintiff to consider feasible settlement structures
12 utilized in recent, comparable false discount pricing settlements and assisted in formulating an initial
13 demand.

14 9. In addition to our pre-suit investigation, my firm retained a prominent economic damages
15 expert with significant experience in retail sales and sale price discounting practices employed by
16 ecommerce retailers such as Udemy. A preliminary analysis of the data provided to our expert suggested
17 that consumers paid a price premium as a result of the alleged misconduct. Previous analysis on cases
18 with similar facts yielded damages in the range of 8% to 25% of the average purchase price, which here
19 for Udemy is \$11.00 per course, with corresponding damages ranging from \$0.88 and \$2.75. Thus, the
20 recovery of \$4.00 per course ranges from 150% to 400% of a Class Members individual damages on a
21 given course purchase. This is an excellent result for the Class.

22 10. Following the filing of Udemy's Motion to Compel Arbitration, the Parties engaged in
23 arm's-length negotiations to attempt to resolve the matter. From January 6, 2022, through December 12,
24 2022, the Parties engaged in settlement discussions, including three mediation sessions, two facilitated by
25 JAMS Mediator Robert Meyer on January 28, 2022, and March 25, 2022, with a third mediation session
26 facilitated by JAMS Mediator Shirish Gupta on December 12, 2022. At the close of the mediations, and
27 after exchanging numerous proposals, the Parties reached a tentative Class-wide settlement. In the
28 following months, the Parties heavily negotiated the details of the Settlement Agreement, ultimately

1 agreeing to all material terms of the Settlement and reaching the Settlement Agreement currently before
2 this Court.

3 11. I believe this Settlement was the result of effective arm's-length negotiations with the
4 assistance of the Mediator, and only after gathering critical facts regarding Defendant's disputed sale
5 discounting policies and practices. Plaintiff has also taken into account the uncertainties of outcome and
6 risks involved in continued complex class action litigation such as this, including Class certification (e.g.,
7 presenting a viable damages/restitution model in light of the Ninth Circuit's decision *Chowning v. Kohl's*
8 *Dep't Stores, Inc.*),² summary judgment, trial (e.g., issues of liability and damages), and appeal, which
9 could take several more years to litigate without any guarantee of recovery to the Class.

10 12. Indeed, counsel on both sides share the view that this Settlement is a fair and reasonable
11 result in light of the complexities of this case, the state of the law and/or the uncertainties associated with
12 Class certification, trial and appeal. Counsel agree this is a good result for the Class.

13 13. Each aspect of the Settlement Agreement was heavily negotiated, including the value of
14 the Settlement, the distribution cash to Class Members, and the intricacies of any proof of purchase
15 requirements for Class Members (i.e., confirmation via checkbox and declaration under penalty of
16 perjury). Importantly, the Parties did not discuss or negotiate proposed Class Counsel's attorneys' fees
17 and costs, or Plaintiff's proposed Individual Settlement Award until after agreeing on all material terms
18 of the Settlement.

19 14. I believe the proposed manner and content of the proposed Notice, (Exhibits C-D to the
20 Settlement Agreement) accomplish all requirements under the law because they provide sufficient
21 information to inform Class Members of their rights and obligations under the terms of the Settlement.

22 15. In connection with Plaintiff's motion for final approval of class action settlement, Plaintiff
23 will request the Court to approve an Individual Settlement Award to Plaintiff for acting as Class
24 Representative in the amount of \$2,500.00. Defendant does not oppose the request for or the amount of
25 the Individual Settlement Award. Importantly, Plaintiff's Individual Settlement Award is to be paid
26 separate and apart from the Class award, and any reduction of the Individual Settlement Award by the
27 Court shall not affect the rights and obligations under the Settlement. Plaintiff's award was not predicated
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² 735 F. App'x 924, 925 (9th Cir.), *amended on denial of reh'g*, 733 F. App'x 404 (9th Cir. 2018).

1 under the existence of any special treatment. The basis for such award is purely to compensate Plaintiff
2 for his efforts in initiating the lawsuit, staying abreast of all aspects of the litigation, and fairly and
3 adequately protecting the interest of absent Class Members.

4 16. Plaintiff understands that his role as a Class Representative is to remain informed regarding
5 the lawsuit and assist Class Counsel in the interest of the Class. There is no evidence in the record that
6 Plaintiff harbors any interest antagonistic to the interests of the Class. Plaintiff has stayed abreast of the
7 proceedings thus far, and if necessary, would sit for a deposition and participate in discovery.

8 17. Prior to the response deadline for Class Members to opt-out or object to the Settlement,
9 Plaintiff will submit to the Court Plaintiff's motion for attorneys' fees and costs not to exceed \$1,000,000.
10 The requested amount will be supported by a summary accounting of Plaintiff's Counsel's year-to-date
11 billing and investigation costs. Defendant will not oppose this motion.

12 18. My firm, Lynch Carpenter, LLP, as well as the firm of Keller Postman LLC, are highly
13 experienced and knowledgeable in complex consumer class action litigation and well-equipped to
14 efficiently represent the proposed Class. Class Counsel are experienced consumer class action attorneys,
15 have litigated many cases involving California's Unfair Competition Laws (Cal. Bus. & Prof. Code
16 §§ 17200, *et seq.*), California's False Advertising Laws (Cal. Bus. & Prof. Code §§ 17500, *et seq.*), and
17 California's Consumer Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*) claims and have vigorously
18 investigated and prosecuted this case since inception.

19 19. Attached hereto as Exhibit 2 is the firm resume of Lynch Carpenter, LLP.

20 20. In *Petkevicius v. Lamps Plus Inc.* (Super. Ct. S.D. County, No. 37-2019-00020667-CU-
21 MC-CTL), this firm served as class counsel and the San Diego Superior Court preliminarily approved the
22 settlement consisting of \$20 vouchers to be directly distributed to class members for use at Lamps Plus
23 locations.

24 21. In *Olmedo v. PVH Retail Stores LLC* (Super. Ct. S.D. County, No. 37-2019-00003250-
25 CU-MC-CTL), this firm served as class counsel and the San Diego Superior Court preliminarily approved
26 the settlement consisting of \$10 merchandise certificates to be directly distributed to class members for
27 use at Tommy Hilfiger outlet store locations.
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1 22. In *Rael v. RTW Retailwinds Inc.* (Super. Ct. S.D. County, No. 37-2019-00003850-CU-MC-
2 CTL), this firm served as class counsel and the San Diego Superior Court preliminarily approved the
3 settlement consisting of \$7.50 vouchers to be directly distributed to class members for use at New York
4 and Co. retail and outlet store locations.

5 23. In *Courtney Dennis v. Ralph Lauren Corp., et al.* (Super. Ct. S.D. County, No. 37-2018-
6 58462-CU-MC-CTL), this firm served as class counsel and the San Diego Superior Court preliminarily
7 approved the settlement consisting of \$10 merchandise certificates to be directly distributed to class
8 members for use at Ralph Lauren outlet store locations.

9 I declare under penalty of perjury that the facts stated in this declaration are true and correct, and
10 that this declaration was executed on March 7, 2023, in San Diego, California.

11 Dated: March 7, 2023

LYNCH CARPENTER LLP

12 By: /s/Todd D. Carpenter

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