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*Attorneys for Plaintiff and
Proposed Class Counsel*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

HARLEY SEEGER, individually, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

P.F. CHANG'S CHINA BISTRO, INC., a
Delaware Corporation; and DOES 1 through 20,
inclusive,

Defendant.

Case No: 37-2017-00016131-CU-MC-CTL

[E-FILE]

CLASS ACTION

**DECLARATION OF TODD D.
CARPENTER IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 12, 2019

Time: 1:30 p.m.

Dept.: C-69

Judge: Hon. Katherine Bacal

1 I, Todd D. Carpenter, declare:

2 1. I am an attorney duly admitted to practice law before all courts of the State of California,
3 and I am a shareholder in the law firm of Carlson Lynch LLP, for Plaintiff and the Class herein. I make
4 this declaration in support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement.

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

8 3. On May 3, 2017, Plaintiff filed a putative class action complaint in the Superior Court of
9 California, County of San Diego, entitled *Harley Seegert v. P.F. Chang's China Bistro, Inc.*, Case No. 37-
10 2017-00016131-CU-MC-CTL (the "Lawsuit"). Plaintiff alleged, among other things, that Defendant
11 violated the Song-Beverly Credit Card Act (California Civil Code § 1747.08) by utilizing a credit card
12 transaction form which contained a preprinted space specifically designated for filling in his telephone
13 number or e-mail address at each one of its P.F. Chang's restaurant locations in California.

14 4. Defendant filed an Answer denying generally each and every allegation asserted by
15 Plaintiff and setting forth eighteen affirmative defenses.

16 5. After a mutual exchange of information through informal discovery and negotiation talks,
17 on June 5, 2018, the parties participated in a full-day mediation with the Honorable Edward A. Infante
18 (Ret.). At the close of the mediation, the parties reached a settlement in principle and over the course of
19 approximately six months, worked to finalize the settlement consistent with the terms agreed upon in
20 mediation. Pursuant to the negotiated settlement, Defendant agreed to contribute, with no reversion, a
21 Maximum Settlement Fund of \$1,000,000.00 from which Authorized Claimants (*i.e.*, those who do not
22 properly request exclusion and submit a valid claim) shall receive a cash settlement check of a pro rata
23 share of the Net Settlement Fund, up to a maximum of \$1,000.00 each. Further, Defendant agreed to revise
24 its California credit card transaction form so that it does not contain spaces for customers to write down
25 their email address or telephone number. The settlement also provided that Defendant would not oppose
26 a motion for the following amounts to be awarded separate and apart from the amount to be distributed to
27 the Class: (i) up to \$358,000.00 in fees and costs for Class Counsel; and (ii) a \$5,000.00 incentive award
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1 for Plaintiff. Each term of the settlement was negotiated through arms'-length bargaining, the fees/costs
2 to be requested from the Court were negotiated and agreed to after agreement on the class-wide benefit.

3 6. Plaintiff and Defendant have conducted an investigation and discovery of the necessary
4 facts and have analyzed the relevant legal issues in regard to the claims and defenses assert in the Lawsuit.
5 Plaintiff and his counsel believe that the claims asserted have merit. Defendant believes that the claims
6 asserted are without merit and that Defendant has complete defenses thereto. Plaintiff and Defendant have
7 each looked at the uncertainties of trial and the benefits to be obtained under the proposed settlement and
8 have considered the costs, risks, and delays associated with the continued prosecution of this complicated
9 and time consuming litigation and the likely appeals of any rulings in favor of either Plaintiff or Defendant.
10 Should this case not resolve through these proceedings, the parties believe there are legitimate factual and
11 legal issues in dispute that will undoubtedly be vigorously contested in any future legal proceeding.

12 7. Prior to commencement of the Lawsuit, Class Counsel undertook a significant
13 investigation of the facts, which included an investigation of the Defendant's practices and evaluation of
14 the settlements and relevant holdings and authorities in similar cases. In advance of mediation with Judge
15 Infante, and in connection with the parties' negotiations, the parties requested and exchanged informal
16 discovery sufficient to adequately assess the factual strengths and weaknesses in the case.

17 8. The proposed settlement class is defined as: All persons who engaged in a credit card
18 transaction at a California P.F. Chang's Restaurant during the Class Period, during which Defendant
19 provided a Credit Card Transaction Form that contained a space that allowed the credit cardholder to fill
20 in his or her personal identification information. The term "Class Period" means May 3, 2016 until
21 February 22, 2019. The term "California P.F. Chang's Restaurant" means any P.F. Chang's branded
22 restaurant located in the State of California. Excluded from the Class are Defendant, its officers, directors,
23 employees, and attorneys, and the judge presiding over the Action.

24 9. As of June 6, 2019, the Settlement Administrator emailed 353,369 email notices to Class
25 Members for whom Defendant has an email address. 60,271 of the email notices were undeliverable, but
26 293,098 emails were deemed successful. Of the successful emails delivered, 1,636 emails were responded
27 to. Moreover, the Settlement Administrator implemented an online banner ad on the Google Display
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1 Network, which will place up to 4 million impressions geographically targeted to California adults, and
2 will direct Class Members to visit the Settlement Website.

3 10. As stated in the notices, the Settlement Administrator established a website at
4 “www.SeegertVPFChangSettlement.com” to provide information about the settlement and to allow
5 visitors to file a claim and to download copies of the Long-Form Notice of Class Action Settlement. The
6 notices also provided a postal mailing address through which Class Members could contact the Settlement
7 Administrator with inquiries regarding the Settlement and claims process.

8 11. The deadline to opt-out and/or object has passed—there were zero (0) objections and only
9 one (1) person opted-out. As of June 6, 2019, there have been a total of 11,254 claims submitted.

10 12. In connection with the filing of the instant Unopposed Motion for Final Approval of Class
11 Action Settlement, Plaintiff filed an Unopposed Motion for Fees, Costs, and Incentive Award (the “Fee
12 Motion”), requesting \$358,000.00 in attorneys’ fees and costs. The requested fees and costs are based on:
13 (a) the 418.2 hours spent litigating the case to date (which includes the time spent preparing this motion),
14 plus the estimated time to prepare for and attend the Final Approval Hearing, which at the respective
15 hourly rates set forth in the attorney declarations totals \$220,330 in fees; plus (b) costs of \$9,789.21
16 Although this totals \$230,119.21, Class Counsel believes a multiplier of 1.55 is warranted, as thoroughly
17 explained in Plaintiff’s Unopposed Motion for Fees, Costs, and Incentive Award.

18 13. I have extensive experience in class actions. During the course of my career, I have taken
19 and defended over 100 depositions in personal injury, complex and class action cases. I have successfully
20 participated in mediations resulting in more than \$50,000,000 in settlements or awards in class action
21 cases. I have drafted, filed, and argued multiple motions in complex consumer class actions, including all
22 forms of discovery, dispositive and certification motions. My practice focuses exclusively on consumer
23 class action and complex litigation, representing plaintiff classes in major insurance fraud, unfair business
24 practices, false and deceptive advertising, product liability and anti-trust violations.

25 14. I have represented plaintiffs in numerous class action proceedings in California and
26 throughout the country, in both state and federal courts. I have represented thousands of purchasers of
27 consumer products, food, food supplements and over the counter drugs in state and federal courts
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1 throughout the United States in cases arising out of various false advertising claims made by
2 manufacturers and retailers, including: Proctor & Gamble, General Mills, Bayer, Clorox, WD-40, Dean
3 Foods, Botanical Laboratories, Inc., Irwin Naturals, Inc. General Nutrition Corporation and Pharmavite.
4 As a shareholder, I was also counsel of record at my prior firm in the MDL proceeding, *In re: Hydroxycut*
5 *Marketing and Sales Practices Litigation*, No. 09-02087 (S.D. Cal.), wherein my previous firm was
6 designated as co-lead counsel for the class. I was also counsel of record for the Settlement Class in
7 "FACTA" cases against Hugo Boss, U.S.A. Inc. in the Southern District of California; *Travis Benware v.*
8 *Hugo Boss, U.S.A., Inc.*, Case No. 3:12-cv-01527-L-MDD and Southwest Airlines (*Lumos v. Southwest*
9 *Airlines, Co.*, Case No. C-13-1429-CRB).

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

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

1 17. I have been recognized as a semi-finalist as a “Top Corporate Litigation Attorney,” by the
2 San Diego Daily Transcript in 2012, and I have been named a San Diego “Super Lawyer” in 2015, 2016,
3 and 2017.

4 18. Based on my years of experience and my own independent investigation and evaluation, I
5 am of the opinion that the settlement for the consideration and on the terms set forth in the Agreement is
6 fair, reasonable, and adequate and it is in the best interests of the settlement class in light of all known
7 facts and circumstances and the expenses and risks inherent in litigation. Were the class not certified,
8 most class members would likely not make any individual claims. Moreover, I am familiar with other
9 class action settlements involving the Song Beverly Credit Card Act Section 1747.08 and have a strong
10 understanding of the trends in the value of settlements. Counsel for Plaintiff and Defendant have
11 significant experience in class action litigation. Both Counsel believe this settlement is fair, reasonable
12 and adequate in light of the circumstances of this case.

13 19. My firm conducted an extensive investigation of the factual allegations involved in this
14 case. I am of the opinion that the settlement for each participating class member is fair, reasonable, and
15 adequate given the inherent risk of litigation and the risk relative to the class.

16 20. Fairness of the settlement is further demonstrated by the uncertainty and risks to the
17 Plaintiff involved both in not prevailing on the merits and in non-certification of the class. Plaintiff
18 undoubtedly faced complicated legal issues resolving the putative claims. Further, were the class not
19 certified, it is unlikely that any putative Class Members would maintain individual actions against
20 Defendant given the relatively small individual recoveries at stake.

21 21. It is appropriate to recognize the contributions of the Named Plaintiff is prosecuting this
22 litigation. I am of the opinion that it is fair and reasonable that Plaintiff Seegert receive a \$5,000 incentive
23 award per the Agreement. The Named Plaintiff is the proposed Class Representative for the settlement
24 Class and has actively represented the proposed class throughout this litigation. The enhancement is fair
25 given the amount of the overall settlement and the time and effort the Named Plaintiff spent on assisting
26 in the prosecution of this case, including reviewing initial pleadings and communicating with Class
27 Counsel on the status of the action.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct, and that this declaration was executed on June 19, 2019, in San Diego, California.
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5 Dated: June 19, 2019

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