

David P. Rossmiller, OSB No. 983395

E-Mail: dpr@dunn-carney.com

Matthew R. Wilmot, OSB No. 061936

E-Mail: mrw@dunn-carney.com

Laura N. Althouse, OSB No. 073185

E-Mail: lna@dunn-carney.com

Dunn Carney Allen Higgins & Tongue LLP
851 SW Sixth Avenue, Suite 1500

Portland, OR 97204

Telephone: (503) 224-6440

Facsimile: (503) 224-7324

Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MARGARET FURLONG, an individual, and
CARRIAGE HOUSE STUDIO, INC., dba
MARGARET FURLONG DESIGNS, an Oregon
corporation,

Plaintiffs,

v.

PURE GRACE, INC., a Delaware corporation,
WISH YOU WERE HERE, INC.!, an Oregon
corporation, BEYOND JORDAN, INC., JAY
CALLAWAY, ALEKSANDR VITYUKOV,
IRINA PRESNAYA, ALEKSANDR
GOLOVIZNIN, MARIYA NESTEROVICH,
ANDREY SHALASHOV, OKSANA
VITYUKOVA, and JOHN and JANE DOES 1-
10,,

Defendants.

No. 07-CV-0556-MO

**DECLARATION OF DAVID
ROSSMILLER IN SUPPORT OF
MOTION FOR ATTORNEY FEES
AND COSTS BY DEFENDANTS
PURE GRACE, WISH YOU WERE
HERE AND BEYOND JORDAN**

I, David Rossmiller, under penalty of perjury do hereby declare:

1. I am one of the attorneys for defendants in the above referenced matter. I have personal knowledge of the facts and other information set forth herein.

2. Attached as Exhibit “1” to this declaration are billing records from Dunn Carney relating to this case. These records have been modified for purposes of preserving defendants’ attorney work product and attorney client privileges in light of the fact that this is an ongoing case. I have personal knowledge of the services rendered that are reflected in these billing records and I have closely examined each entry for reasonableness and relevance. I have segregated from these records entries for claims unrelated to those on which the defendants are prevailing parties. I have also written off work that may arguably be duplicative or unnecessary. I certify that the hourly rates reflected in these invoices are in line with the prevailing market rate for similar legal work in Portland. I also certify that the costs claimed from these invoices in defendants’, Bill of Costs, and the attorney and legal fees claimed by defendants are reasonable and were necessary in the course of this lawsuit.

3. Attached as Exhibit “2” to this declaration is a Standard Rate List outlining the billing rates for Dunn Carney lawyers. The hourly rates claimed by defendants in this fee petition are all standard firm billing rates.

4. This case involves complex factual and legal issues that have required a substantial time commitment on the part of Dunn Carney lawyers. Dunn Carney lawyers were required to familiarize themselves with the nuances of the ceramics industry, in particular, the tools and methods used to manufacture the ceramic products at issue. In addition, nearly all of the individual defendants are not native English speakers and Dunn Carney was required to communicate with its clients through an interpreter. This also affected the defense of the corporate defendants – Pure Grace, Beyond Jordan, and Wish You Were Here – as the individual defendants are employees and/or manufacture products on behalf of these companies.

5. This is in addition to the unique factual circumstances underlying this litigation. The individual defendants are former employees of Margaret Furlong Designs, the majority of whom started work in the early to mid 1990s. These individual defendants continued to be employed until late 2001 when Margaret Furlong Designs, a seemingly successful business, shut

its doors and laid off its employees suddenly and without warning. Furlong inexplicably blames the individual defendants for the demise of her company. In addition, this is the second round of litigation between the parties, involving largely the same issues and facts – Dunn Carney was not involved in that prior lawsuit. Dunn Carney was therefore required to come up to speed very quickly on the facts surrounding the individual defendants’ prior employment, the voluntary shut down of Margaret Furlong Designs, and the factual and procedural history of the prior lawsuit.

6. The claims on which Dunn Carney seeks the recovery of fees were also complex and novel. For example, in defending against the breach of contract claim for the disclosure of trade secrets, Dunn Carney was required to brief such complex legal issues as Uniform Trade Secret Act preemption and the applicability of legal standards relating to non-compete contracts to non-disclosure contracts. These are complex areas of the law that required substantial analysis with very little guidance from existing Oregon precedent.

7. Discovery during this case was also very extensive. Discovery deadlines were moved back on two separate occasions so as to allow for the completion of discovery. In addition to substantial document production and review, Dunn Carney was required to retain a trade secrets expert and to attend three facility inspections – one for Pure Grace, one for Beyond Jordan and Wish You Were Here, and one for Margaret Furlong Designs. This is in addition to 23 total depositions taken during the course of this litigation – this includes depositions for both parties and non-parties. The vast majority of the issues discussed during these depositions related to Furlong’s trade secret claims.

8. While it is true that the individual defendants are also Dunn Carney clients, the corporate defendants would have incurred these same costs even if the individual defendants were represented by other lawyers. Dunn Carney lawyers would have been required to communicate and conduct discovery relating to the individual defendants, as these are the same individuals whom the corporate defendants are accused of acquiring trade secrets from. This would have included attending the depositions of the individual defendants and the depositions

of those individuals not party to this lawsuit.

9. Discovery also involved substantial motion practice. Furlong's attorneys filed numerous motions to quash and motions for injunctions relating to medical records and subpoenas to medical providers seeking to prevent the discovery of certain evidence relating to Furlong's psychiatric condition. This information, which had previously been obtained by Dunn Carney through a valid, unopposed subpoena, was relevant to the defense of both the individual and corporate defendants.

10. Defendants conferred on numerous occasions prior to filing dispositive motions and asked that Furlong dismiss her Unfair Trade Practices Act ("UTPA") claims against Pure Grace, Beyond Jordan, and Wish You Were Here. Dunn Carney filed an initial motion to dismiss/motion for summary judgment shortly after Furlong filed her amended complaint. Dunn Carney later filed a separate motion for summary judgment against Furlong's UTPA claim on separate grounds. Furlong agreed to dismiss these claims only on July 15, 2007, after defendants had gone to the time and effort of filing multiple motions for summary judgment.

11. The complexity of this case has required a substantial time investment on the part of Dunn Carney lawyers. At many points during the course of this litigation, myself and two of my colleagues – Matthew Wilmot and Laura Althouse – have worked nearly full time on this case. As a result, Dunn Carney has been unable to accept other employment.

12. The Court's website contains a memorandum instructing litigations to refer to the Oregon State Bar's Economic Survey in discussing the reasonableness of hourly rates. The most recent OSB Economic Survey, conducted in 2007, shows an average of \$283 an hour for business litigation in Portland with a median of \$275 per hour. A more specific breakdown based on years of experience is as follows:¹

¹ These figures have been adjusted upwards by 3% so as to account for inflation for the one-year period between 2007 to 2008.

<u>Year</u>	<u>Average</u>	<u>25th Percentile</u>	<u>75th Percentile</u>	<u>95th Percentile</u>
0-3	\$182.31	\$166.86	\$195.70	\$222.48
10-12	\$242.05	\$169.95	\$298.70	\$344.02

13. The hourly rates sought by Dunn Carney are standard firm billing rates which have not been enhanced for this lawsuit and are in line with the OSB's Economic Survey. I am a partner at Dunn Carney and have ten years experience in business and commercial litigation. My billing rate is \$290 an hour. Matthew Wilmot, a Dunn Carney associate with three years experience specializing in intellectual property law, has an hourly rate of \$230 an hour. While Mr. Wilmot's rate is slightly above the 95th percentile rate for attorneys with three years experience, he specializes in complex intellectual property matters, a specialty area which generally demands a heightened billing rate – a factor I do not believe is accounted for by the OSB Economic Survey. More importantly, Mr. Wilmot's rate is his standard rate charged in all matters and only marginally exceeds the OSB's Economic Survey. Lastly, Laura Althouse, a Dunn Carney associate with approximately one year of civil litigation experience, has a billing rate of \$190 an hour, well within the range of rates listed above.

14. As noted above, defendants also seek their costs incurred in defending against Furlong's UTPA claim and related claims, as reflected in defendants' Bill of Costs. These costs were reasonably and necessarily incurred, and consist of copying costs, court fees, witness fees, and court reporter costs.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

DATED this 31st day of July, 2008.

/s/ David P. Rossmiller
David P. Rossmiller, OSB No. 983395