

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| MELINDA MEHIGAN, et al. | : | CIVIL ACTION |
| | : | |
| vs. | : | |
| | : | NO. 15-724 |
| ASCENA RETAIL GROUP, INC., et al. | : | |
| | : | |

ORDER

AND NOW, this 27th day of October 2015, upon careful review of the claims and defenses in this putative class action filed by retail customers of Defendants Tween Brands, Inc. and Ascena Retail Group, Inc. d/b/a Justice Brand (“Justice”) and following consideration of the parties’ Joint Motion under Fed.R.Civ.P. 23(e) for an Order preliminarily approving a proposed settlement and directing notice of the proposed settlement (ECF Doc. No. 71), the parties’ Supplemental Joint Motion (ECF Doc. No. 76), extended oral argument on October 19, 2015 during which the Court challenged several aspects of the proposed settlement and having carefully considered the attached Settlement Agreement and Exhibits leading us to find substantial and sufficient grounds to proceed, it is **ORDERED** the parties’ Joint Motion (ECF Doc. No. 71) is **GRANTED**:

1. **Justice’s Cessation of Conduct.** Justice represents it ceased the persistent forty percent (40%) off everything sales, has changed its business model to reprice its merchandise and agrees to abide by all applicable laws with respect to price comparison and sale advertising.

2. **Preliminary Approval of Settlement.** The Proposed Settlement in the attached Settlement Agreement is preliminarily approved as fair, reasonable and

adequate.¹ This Order shall govern to the extent any terms in the Settlement Agreement differ from obligations imposed by this Order.

3. **Settlement Class Definition.** The Court hereby preliminarily certifies this action to proceed as a class action for purposes of the Settlement only under Fed.R.Civ.P. 23 on behalf of: **All persons throughout the United States who purchased any children's apparel, fashion accessories, or other products from Justice during the period from January 1, 2012 to February 28, 2015 (“Settlement Class”).**

a. The Settlement Class excludes Ohio residents within the scope of the class settlement in *Perez v. Tween Brands Inc.*, No. 14CV001119 (Ct. Comm. Pis. Lake Cty OH), which included all Ohio residents who made purchases from Justice stores in Ohio between July 1, 2012 and August 31, 2014 (“Excluded Ohio residents”). The Excluded Ohio residents remain members of the Settlement Class for purchases from Justice from January 1, 2012 to June 30, 2012 or from September 1, 2014 to February 28, 2015.

4. **Class Findings.** The Court preliminarily finds, for settlement purposes only, the parties satisfied prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3): (a) the large number of class members renders joinder of all members impracticable; (b) Justice’s conduct alleged in the Complaint, including sales advertising of a persistent forty percent (40%) off everything in the store, occurred in all forty-eight (48) states where Justice had retail stores and also applied to direct orders over the internet and phone throughout the United States; (c) there are questions of law and

¹ For purposes of this Order, the Court adopts all defined terms in the Settlement Agreement. Any inconsistencies between the Settlement Agreement and the Long Form Notice approved herein will be controlled by the language of the Settlement Agreement. The attached Settlement Agreement (“Exhibit A”) is incorporated.

fact common to the class; (d) the Plaintiffs' claims are typical of the claims of the class they seek to represent; (e) Plaintiffs and Pietragallo Gordon Alfano Bosick & Raspanti, LLP, Mansour Gavin, LPA, and Edward J. Westlow, Esq. (collectively, "Plaintiffs' Counsel") have and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the members of the class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Court also finds that the Settlement Class is readily ascertainable.

5. **Class Representative.** The Court preliminarily finds and concludes under Fed.R.Civ.P. 23, for purposes of settlement, Plaintiffs are adequate representatives of the Settlement Class and certifies them as representatives for the Settlement Class.

6. **Class Counsel.** Plaintiffs' Counsel are authorized to act on behalf of the Settlement Class with respect to all acts required by, or necessary to be taken under, the Settlement Agreement or such other acts that are reasonably necessary to consummate the Proposed Settlement set forth in the Settlement Agreement.

7. **May 20, 2016 Hearing on Final Approval.** Following notice, requests for exclusion or objections, filing of claim forms and the mandatory waiting period under 28 U.S.C. §1715 (d), we will hold a Settlement Fairness Hearing on **Friday, May 20, 2016 at 9:30 A.M.**, United States Courthouse, 601 Market Street, Courtroom 9A, Philadelphia, Pennsylvania 19106 ("Hearing on Final Approval") to determine whether:

a. the Settlement Class should be finally certified as a class action under Rules 23(a) and (b) for settlement purposes only;

b. the terms and conditions in the Settlement Agreement are fair, reasonable, and adequate and should be finally approved;

c. the Released Claims against Justice should be dismissed with prejudice as defined in the Settlement Agreement;

d. Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses should be approved;

e. the requested incentive award to Plaintiffs is appropriate for their efforts; and,

f. other matters we may deem appropriate.

8. The Court reserves the right to approve the Settlement, even if modified by the parties, without further notice of any kind.

9. **Mandated Statutory Notice.** On or before **November 6, 2015**, Justice shall provide notice to the Attorney General of the United States and the Attorneys General of each state or territory in which a Settlement Class Member resides under 28 U.S.C. § 1715. The Court finds compliance with this notice satisfies 28 U.S.C. § 1715.

10. **Approved Notices to Settlement Class.** The Court approves the form, substance, and requirements of the Long Form Notice, the Summary (email and post card) Notice, the Press Release, and the Publication Notice of the Justice Class Action Settlement (collectively referred to as the "Settlement Notices"), and the Proof of Claim Form (the "Claim Form") as filed with the Court (ECF Doc. No. 71-1), and finds the procedures established for publication, mailing, and emailing of such Settlement Notices meet Rule 23's requirements and due process, and constitute the best notice practicable under the circumstances.

11. To effectuate notice, and the collection, analysis, and determination of Claim Forms submitted in accordance with the terms of the Long Form Notice, and other actions required by this Order, the Court hereby appoints McGladrey LLP to serve as the Claims Administrator.

12. The Court-approved Claims Administrator is authorized and directed to issue the Settlement Notices, in substantially their present forms, to the Settlement Class as described in the Settlement Agreement.

13. The Court-approved Claims Administrator shall, no later than **May 3, 2016**, file with the Court proof of mailing and emailing of the Summary Notice to the Settlement Class. The Claims Administrator shall cause the Short Form Notice, substantially in the form appended to the attached Settlement Agreement as Exhibit 3, to be mailed and emailed no later than **December 21, 2015** to all members of the Settlement Class for whom Justice has an email or mailing address. The date of such initial emailing or mailing is the "Notice Date." The Claims Administrator shall also prepare a list of all Settlement Class members without a known e-mail or mailing address. This list shall be filed with the Plaintiffs' Motion for Final Approval.

14. On or before the Notice Date, the Long Form Notice, substantially in the form appended to the attached Settlement Agreement as Exhibit 4, and Claim Form, substantially in the form appended to the attached Settlement Agreement as Exhibit 1, shall be published on the web site maintained by the Claims Administrator, as approved by the Court.

15. **Final Approval Papers due by March 18, 2016.** Plaintiffs' Counsel shall file their motion for final approval of the Settlement, their application for attorney fees and reimbursement of litigation expenses, and the request for incentive awards for Plaintiffs on or before **March 18, 2016**.

Class Members' Exclusion or Objections

16. Class members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons request exclusion

from the Settlement Class in a timely and proper manner, as set forth in the Settlement Agreement.

17. Only Settlement Class members shall have rights with respect to approval of or objection to the Proposed Settlement, the application by Plaintiffs' Counsel for an award of attorney' fees and reimbursement of litigation expenses, and Plaintiffs' request for an incentive award.

18. Settlement Class members requesting exclusion from the Settlement Class shall not be entitled to receive any of the benefits described in the Settlement Agreement and Long Form Notice.

19. Any Settlement Class member who has not requested exclusion from the Settlement Class may appear at the May 18, 2016 Hearing on Final Approval to show cause as to his or her position on the Proposed Settlement and on the Court's reviewing the settlement approval as fair, reasonable, and adequate; why the proposed Order and Final Judgment should not be entered; why Plaintiffs' Counsel should not be awarded attorneys' fees and reimbursement of litigation expenses in the amounts sought by Plaintiffs' Counsel with the Plaintiffs' approval; or, why Plaintiffs should not be awarded an incentive award in the amount requested.

20. A class member may only be heard or entitled to contest the approval of the terms and conditions of the Proposed Settlement, the Order and Final Judgment, Plaintiffs' Counsel s application for an award of attorneys' fees and payment of expenses, or Plaintiffs' request for an incentive award by timely delivering written objections and copies of any supporting papers and briefs upon Plaintiffs' and Justice' counsel for delivery no later than **April 4, 2016**.

21. Any member of the Settlement Class may enter an appearance in the

Action, at his or her own expense, individually or through counsel of his or her own choice. Members of the Class who do not enter an appearance will be represented by Plaintiffs' Counsel. Any individual who excludes himself or herself from the Settlement Class may not object to the Proposed Settlement, the Order and Final Judgment, Plaintiffs' Counsel's application for an award of attorneys' fees and payment of expenses, or Plaintiffs' request for an incentive award.

22. Any Class Member who does not object in the manner prescribed above shall have waived such objection and shall be forever foreclosed from making any objection to the fairness, adequacy, or reasonableness of the Proposed Settlement or the Order and Final Judgment to be entered possibly approving the Settlement, Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses, or Plaintiffs' request for an incentive award.

23. Responses to any unresolved Objections shall be filed, with the attached unresolved Objection, no later than **April 29, 2016**.

24. **Stay pending Final Approval Hearing.** Pending final determination of whether the Proposed Settlement should be approved, all discovery and proceedings in this Court are **stayed**, except for proceedings expressly allowed by this Order.

Attorneys Fees, Costs and Incentive Awards

25. At or after the **May 20, 2016** Hearing on Final Approval, the Court will issue an Order on Plaintiffs' Counsel's motion for an award of attorneys' fees and reimbursement of out-of-pocket expenses and for an incentive award to Plaintiffs for their efforts as representatives of the Settlement Class.

26. All reasonable costs incurred in identifying and notifying Settlement Class members, as well as administering the Settlement and distributing payments

under the Settlement, shall be paid as set forth in the Settlement Agreement subject to the Court's Final Approval.

27. Should the Court grant Final Approval and grant Class Counsel's Motion for attorney's fees and reimbursement of expenses ("Fee Award"), then Plaintiffs shall disburse the Fee Award as follows, unless modified by the Court: fifty percent (50%) of the approved Fee Award shall be paid contemporaneously with issuing payments to Class Members and no later than twenty (20) days after the Effective Date; twenty-five percent (25%) of the approved Fee Award shall be paid ninety (90) days after the Effective Date; twenty-five percent (25%) of the approved Fee Award shall be paid upon the earlier of One Hundred and Eighty (180) days after the Effective Date or an Order approving early distribution based upon a certification filed by Class Counsel describing the complete efforts to distribute settlement proceeds to Settlement Class Members.

28. All reasonable fees and costs incurred in identifying and notifying Settlement Class members, as well as administering the Settlement and distributing payments under the Settlement, shall be paid as defined in the Settlement Agreement, except as modified: (a) Class Counsel will pay all reasonable costs and expenses for Claims Administration Expenses, including Notice Expenses, from the Cash Settlement Amount within thirty (30) days of receipt of the Claims Administrator's invoices by Class Counsel; (b) the Claims Administrator's reasonable fees will be deferred and paid from the Cash Settlement Amount as follows: fifty percent (50%) shall be paid within twenty (20) days after the Effective Date; twenty-five percent (25%) shall be paid ninety (90) days after the Effective Date; and, the remaining twenty-five percent (25%) shall be paid when Class Counsel is paid the remainder its last twenty-five percent (25%) of its fees; and, (c) if the Settlement Agreement is terminated for any reason set forth in

paragraph 50 of the Settlement Agreement, including but not limited to denial of Final Approval of this Class Action, the Claims Administrator may seek an Order from the Court to be paid in full from the Cash Settlement Amount for all accrued but deferred reasonable fees, Notice Expenses and Claims Administration Expenses.

29. If the Proposed Settlement is not approved or consummated for any reason whatsoever, the Proposed Settlement and all proceedings in connection therewith shall be without prejudice to the *status quo ante* rights of the parties to the Settlement Agreement, except as otherwise described in the Settlement Agreement. In such instance, the Proposed Settlement and Settlement Agreement shall be void *ab initio* and treated as if they never occurred, except as described in the Settlement Agreement.

30. The administration of the Proposed Settlement and the determination of all disputed questions of law and fact with respect to the validity of any claim or right of any person or entity to participate in the Settlement Benefits is under this Court's authority.

31. Pending final determination of whether the Proposed Settlement should be approved, Plaintiffs and all Settlement Class members, and anyone who acts or purports to act on their behalf, shall not institute, commence, prosecute, pursue, seek discovery in or in any other way progress in any other litigation covered by this Settlement Agreement and asserting Claims raised in the case against Justice unless so approved by this Court.



KEARNEY, J.