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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. J.C. PENNEY CORPORATION, INC., a Delaware Corporation; and DOES 1 through 10, Inclusive, Defendant.	Case No. SACV12 0215 FMO (KESx) CLASS ACTION **NOTICE OF UNOPPOSED MOTION AND MOTION FOR MODIFICATION OF CLASS CERTIFICATION ORDER; PRELIMINARY APPROVAL OF SETTLEMENT; AND ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND** Judge: Honorable Fernando M. Olguin Ctrm: 22 – 5th Floor Date: December 3, 2015 Time: 10:00 a.m.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 3, 2015, at 10:00 a.m., in the courtroom of the Honorable Fernando M. Olguin, Plaintiff Cynthia E. Spann will and hereby does move for an Order Modifying the Court's Class Certification Order (ECF. No. 209) pursuant to Federal Rule 23(c); Preliminarily Approving the Parties' Class Action Settlement pursuant to Federal Rule 23(e); and Establishing a Qualified Settlement Fund.

This Motion is unopposed by Defendant J.C. Penney Corporation, Inc., and is made and based on this Notice of Motion, the accompanying Memorandum of Points and Authorities in support thereof, the accompanying Declarations of Cynthia E. Spann, Matthew J. Zevin, Adam Tarczynski, Jeanne C. Finegan, and Brian J. Bergmark, and all papers, pleadings, documents, argument of counsel, and/or other materials presented before or during the hearing on this Motion, and any other evidence and argument the Court may consider.

DATED: November 10, 2015

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. J.C. PENNEY CORPORATION, INC., a Delaware Corporation, Defendant.	**Case No.: SACV12-0215 FMO (KESx)** **CLASS ACTION** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR MODIFICATION OF CLASS CERTIFICATION ORDER; PRELIMINARY APPROVAL OF SETTLEMENT; AND ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND** Date: December 3, 2015 Time: 10:00 a.m. Judge: Hon. Fernando M. Olguin CTRM: 22 – 5th Floor Complaint Filed: 2/8/12

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I. INTRODUCTION

After more than three and a half years of hard-fought and contentious litigation, Plaintiff Cynthia E. Spann ("Plaintiff") and her counsel have achieved a superb settlement (the "Settlement") by which JCPenney will make available ***fifty million dollars*** ($50,000,000.00) for the benefit of Settlement Class Members.[1] In addition, and as a direct result of this Litigation, JCPenney has agreed to implement changes in its pricing practices, including training and auditing programs designed to ensure that it complies with California's price comparison advertising laws.

The Settlement is the product of multiple days of arms-length negotiations with a highly experienced mediator. The money from the Settlement will be used first to pay Notice and Administration Costs, reasonable Attorneys' Fees and Costs, and an Enhancement Payment to Plaintiff in amounts approved by the Court. The remainder will be distributed to Settlement Class Members, who may choose either cash or a JCPenney Store Credit of equal value. In this manner, the Settlement mirrors a settlement structure that was recently approved by the Ninth Circuit Court of Appeals. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015) ("*In re DVD-Rental*") (approving settlement that gives claimants the option to receive either cash or gift cards of equal value, and holding that the gift cards are not "coupons" within the meaning of the Class Action Fairness Act ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005)). In fact, the Settlement improves upon the structure of the *In re DVD-Rental* settlement because it allocates proceeds based on the amount that Settlement Class Members actually spent at JCPenney rather than providing an even, per capita allocation.

Through this Motion, Plaintiff seeks an order: 1) modifying the Class Certification Order for settlement purposes; 2) granting preliminary approval of the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure; 3)

[1] Unless otherwise noted, all capitalized terms herein are defined in the Settlement Agreement attached as Exhibit "A" ("Ex. "A") to the accompanying Declaration of Matthew J. Zevin ("Zevin Decl.").

approving the form and manner of disseminating Notice to Settlement Class Members; 4) establishing a Qualified Settlement Fund ("QSF"); and 5) setting a date for final fairness hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

Prior to filing this action, Plaintiff's counsel consulted with Plaintiff, investigated JCPenney's pricing practices and researched the law applicable to Plaintiff's claims. Zevin Decl. at ¶4; Declaration of Cynthia E. Spann ("Spann Decl") at ¶¶5-6. Plaintiff filed her initial complaint on February 8, 2012, a first amended complaint on March 19, 2012, a second amended complaint on April 23, 2012, a third amended complaint on July 22, 2013 and the operative fourth amended Complaint ("Complaint") [ECF No. 160] on March 5, 2014. Zevin Decl. at ¶4; Spann Decl. at ¶6.

Plaintiff alleges that, prior to February 1, 2012, JCPenney engaged in a pervasive false advertising scheme by which it advertised "sale" prices that were substantially lower than comparative "regular" or "original" prices for its private and exclusive branded apparel and accessories. *E.g.* Complaint ¶¶1, 26-34. Plaintiff alleges that the higher "regular" and "original" prices (and implied savings) were false and deceptive because JCPenney hardly, if ever, offered, sold or intended to sell its merchandise at those prices. *E.g. id.* at ¶¶2-5, 26-37. She alleges that JCPenney temporarily stopped using false price comparisons on February 1, 2012 when it initiated a "fair and square" pricing campaign but, after a significant decline in revenues, it returned to its original scheme, at least for some products, in early 2013. *E.g. id.* at ¶¶38-46. Plaintiff sought restitution and injunctive relief under California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* ("UCL"), False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.* ("FAL"), and Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA").

Throughout the Litigation, Plaintiff's counsel engaged in extensive legal

research and analysis and conducted thorough and substantial class and merits discovery, including depositions of four Rule 30(b)(1) witnesses, five Rule 30(b)(6) witnesses and two expert witnesses designated by JCPenney. Zevin Decl. at ¶5. These depositions took place in Washington D.C., Plano, Texas, and Los Angeles and Palo Alto, California. *Id.* Plaintiff and her expert were also deposed by JCPenney. *Id.*; Spann Decl. at ¶9. Plaintiff served interrogatories, requests for admissions and six sets of document requests. Zevin Decl. at ¶5. Plaintiff's counsel received, reviewed and analyzed JCPenney's written discovery responses, as well as the documents that JCPenney produced in the Litigation, including its voluminous and detailed sales data for the tens of millions of transactions entered into by the certified Class. *Id.* They also continued to monitor JCPenney's public filings and media reports, keeping a close eye on JCPenney's financial status and fluctuating pricing practices. *Id.* They developed alternative theories of remedies, engaged Torrey Partners, a forensic accounting firm, who assisted with further, detailed analysis of the sales data, and consulted with leading experts on advertising and consumer behavior related to price comparison advertising in general. *Id.*

There can be no question that this Litigation was vigorously pursued and hotly contested throughout. Plaintiff and her counsel repeatedly amended the complaint in order to keep up with changes in JCPenney's pricing practices; opposed three motions to dismiss and/or strike; opposed two motions for summary judgment; briefed three motions for class certification; and successfully opposed JCPenney's petition for interlocutory appellate review of the Court's order granting class certification. Zevin Decl. at ¶6. Meanwhile, the Parties engaged in numerous discovery disputes, including several motions to compel, and participated in countless hours of meet and confer negotiations, many of them transcribed, concerning a multitude of discovery issues and motion practice. *Id.*

On March 17, 2015, the Court denied JCPenney's Motion to Dismiss [or

Strike] the Complaint. ECF No. 202.[2] On March 23, 2015, the Court denied JCPenney's Motion for Summary Judgment ("Summary Judgment Order"). ECF No. 204. On May 18, 2015, the Court granted Plaintiff's Motion for Class Certification, appointed Plaintiff as class representative and appointed two of her counsel, Stanley Law Group and the Emge Firm, LLP, as Class Counsel (the "Certification Order"). ECF No. 209. The Court certified the following class:

> All persons who, while in the State of California and between November 5, 2010 and January 31, 2012 purchased from JCPenney one or more private or exclusive branded items of apparel or accessories advertised at a discount of at least 30% off of the stated "original" or "regular" price, and who have not received a refund or credit for their purchases.

Certification Order at 38.[3]

III. THE SETTLEMENT

A. The Settlement Negotiations Were Drawn Out and Contentious

During the summer of 2013, the Parties engaged in substantial negotiations concerning the possible structure of a class-wide settlement. Zevin Decl. at ¶9. These negotiations led to private mediation, on September 24, 2013, with the Honorable John Leo Wagner (Ret.) at Judicate West. *Id.* The mediation was attended by Plaintiff and her counsel, as well as representatives from JCPenney and its counsel. *Id.*; Spann Decl. at ¶13. Despite a full-day's work and follow-up discussions between the mediator and counsel, the Parties were unable to reach a settlement. Zevin Decl. at ¶9.

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[2] The Court, the Honorable James V. Selna presiding, previously denied JCPenney's Motion to Dismiss the original Complaint. ECF No. 24.

[3] Excluded from the certified class are defendant, as well as its past and present officers, employees, directors, agents or affiliates, and any judge who presides over this action. Also excluded is any person who only received a discount of 30% or more as a result of using one or more coupons. *Id.*

Over the next two years, the Parties periodically engaged in informal settlement negotiations, but these too proved unsuccessful. Zevin Decl. at ¶10. On July 2, 2015, the Parties attended another mediation, this time with David A. Rotman of the private mediation firm, Gregorio, Haldeman & Rotman in San Francisco. *Id.* at ¶11.[4] At the conclusion of this day-long session, the Parties had only made limited progress toward settlement, and Mr. Rotman extended a "mediator's proposal" which, if accepted by both Parties, would cause them to return for further negotiations. *Id.* Both Parties accepted and returned for another full day of mediation with Mr. Rotman on August 21, 2015. *Id.* at ¶12. At the conclusion of that day, the Parties still remained at an impasse, but Mr. Rotman made another mediator's proposal which was intended, if accepted by both Parties, to fully resolve the Litigation. *Id.* However, on September 9, 2015, Mr. Rotman informed the Parties that there had only been a conditional acceptance of the second mediator's proposal, subject to further negotiations. *Id.* at ¶13. Accordingly, on September 10, 2015, the Parties appeared for a third full day of mediation with Mr. Rotman, which concluded with the Parties finally agreeing to all material terms of the Settlement as reflected in a Memorandum of Settlement executed by the Parties. *Id.* The Parties subsequently negotiated, drafted and executed the comprehensive Settlement Agreement that is currently before the Court.

B. The Settlement Agreement

The Settlement Agreement is intended to resolve the Litigation in its entirety, and it is conditioned on the Court modifying the Certification Order, for settlement purposes only, and final approval by the Court. Ex. A at ¶¶3.9, 4.1, 5.2. Critically, the Parties agreed to model the Settlement Agreement, to the greatest extent

[4] This and the following mediation sessions were attended by Plaintiff's counsel, with Plaintiff participating by way of telephone and text communications with her counsel. *Id.* *See also* Spann Decl. at ¶¶13-16. JCPenney was represented by its outside counsel and various representatives from the Company. Zevin Decl. at ¶11.

practicable, after a settlement agreement approved by the Ninth Circuit in the *In re DVD-Rental* litigation. Zevin Decl. at ¶14.

1. The Settlement Provides $50 Million in Monetary Relief

The Settlement provides that JCPenney will make available a fixed sum of $50,000,000.00 (the "Class Settlement Amount") that will be comprised of both a Cash Component and a Class Allocation. Ex. A at ¶6.1. The Class Settlement Amount and all distributions shall be funded through a QSF. *Id.* at ¶¶11, 12. Subject to Court approval, the Cash Component will be used to pay for actual Notice and Administration Costs (estimated at $2,425,274 and not to exceed $2,667,000), reasonable Attorneys' Fees and Costs (not to exceed 27% of the Class Settlement Amount and $500,000, respectively), and a Class Representative Enhancement Payment (not to exceed $10,000). *Id.* at ¶6.1.1.[5] The amount remaining after all of these payments shall comprise the Class Allocation, which will be paid to Settlement Class Members who submit a valid Claim Form. *Id*. at ¶6.1.2.

Claimants may choose to receive their share of the Class Allocation as either a cash payment or a Store Credit of equal value at their option. Ex. A, ¶6.1.2. Claimants will have ninety days from the date of Notice to submit a Claim Form, and those who elect a Store Credit may submit a Claim Form electronically through a Settlement Website maintained by the Administrator, while those who choose cash must provide the last four digits of their social security number and mail a Claim Form to the Administrator. *Id.* at ¶¶8.1, 8.2.[6] Following the Effective Date, cash payments will be delivered to Claimants via First Class Mail, and Store Credits will be made available for download from the Settlement Website. *Id.* at ¶¶6.1.3, 6.1.4.

[5] Class Counsel will file a separate motion for Attorneys Fees and Costs at least seven days prior to the Preliminary Approval Hearing. *See* ECF No. 239 at 2.

[6] This process is designed to prevent fraud and is the same process that was used and approved of in the *In re DVD-Rental* litigation. 779 F.3d at 941.

Like the gift cards offered in the *In re DVD-Rental* settlement, the Store Credits offered in this Settlement are an alternative to cash, and are not "coupons" within the meaning of CAFA. They do not expire, may be used to purchase any product at a JCPenney store or on its website, and will maintain a running balance to be depleted based on actual use. Ex. A at ¶2.37. They are fully transferable, stackable and may be used in connection with any promotion or discount. *Id.*[7] Accordingly, the Store Credits have all of the same attributes that the Ninth Circuit found relevant in determining that the gift cards offered in the *In re DVD-Rental* settlement were not coupons. *See* 779 F.3d at 950-52 (citing authority and finding that the gift cards offered in settlement were not coupons because settlement class members could choose between receiving cash or a gift card, and because the gift cards could be used to purchase any product from the defendant, were freely transferable and did not expire).

The only significant deviation from the *In re DVD-Rental* settlement is that, rather than dividing settlement proceeds equally amongst Claimants, the Class Allocation shall be paid based on a point system that is intended to award compensation proportionately based on the amount of money that Claimants spent on qualifying purchases at JCPenney. Ex. A at ¶¶6.1.2.1 (and subsections thereunder). For example, Claimants who spent between $1-100 on qualified purchases will receive 2 points; those who spent between $101-200 will receive 3 points; $201-300 will receive 4 points, and so on. *Id.* The points allocated to each Claimant will then be divided by the total points of all Claimants who submit valid Claim Forms. *Id.* The quotient shall be the percentage of the Class Allocation that each Claimant will receive. *Id.* The points and allocation shall be determined by the Administrator based on JCPenney's sales data, but Claimants may submit receipts through the Settlement Website to support a greater amount of qualifying

[7] Because Claimants have the option to receive either a Store Credit or cash of equal value, Store Credits may not subsequently be exchanged for cash. *Id.*

purchases if sales data is missing or inaccurate. *Id.* Claimants for whom JCPenney has no record of making any qualifying purchases, and who do not submit their own receipt(s) but who submit a Claim Form sworn under penalty of perjury shall receive one point under the plan of allocation. *Id.* This structure is designed to allocate settlement proceeds in a more fair and equitable manner than the even allocation that was used in the *In re DVD-Rental* Litigation. 779 F.3d at 941 (noting that the Gift Card Component of the settlement "was split evenly among all valid claimants, regardless of the specific damages each individual claimant incurred.").

2. The Settlement Provides for Additional Remedial Measures

Plaintiff and her counsel have also obtained relief beyond the Class Settlement Amount. As a direct result of the Litigation, JCPenney has implemented changes to its price-comparison advertising policies and agrees that, as of the date of settlement, and continuing forward, it will not violate California law with respect to its price-comparison advertising. Ex. A at ¶6.1.7. More substantively, and as a further direct result of the Litigation, JCPenney will implement a compliance program, which will consist of periodic (no less than once a year) monitoring, training and auditing to further ensure compliance with California's price comparison laws for all of the hundreds of thousands of products offered for sale at any given time. *Id.*

3. The Cy Pres for Uncashed Settlement Checks

This is a non-reversionary settlement. The entire amount of the Class Allocation will be distributed to Settlement Class Members by way of cash or Store Credit. To the extent that any Claimant who selects to be paid in cash fails to negotiate his or her settlement check within six months of issuance, the proceeds will be distributed as a cy pres to the National Consumer Law Center ("NCLC"). Ex. A at ¶6.1.6.

The NCLC is a nonprofit advocacy organization whose purpose is to protect

and defend consumers' rights nationwide through consulting, training, legislation and litigation. It works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices and advance economic fairness. http://www.nclc.org/about-us/about-us.html.

The NCLC is an appropriate cy pres recipient, as it is guided by the objectives of this litigation (consumer protection against unfair and deceptive business practices) and has a substantial record of service in remedying these types of wrongs. It has previously been held to have the requisite nexus with consumer classes for qualification as a cy pres recipient. *See e.g. Led v. eBay, Inc.*, 2013 WL 6114379, at *8 (N.D. Cal. Nov. 20, 2013); *Lymburner v. U.S. Fin. Funding, Inc.* 2012, WL 398816, at *12 (N.D. Cal. Feb. 7, 2012); *Miller v. Ghiradelii Chocolate Co.*, 2015 WL 758094, at *8 (N.D. Cal. Feb. 20, 2015).

4. The Release

Settlement Class Members who do not opt out will be deemed to have released JCPenney from claims related to the Litigation. Ex. A at ¶¶2.27, 13.1 (and subsections thereunder). To the extent possible, the release language in the Settlement Agreement tracks verbatim the release language used in the *In re DVD-Rental* litigation, which was approved by the Ninth Circuit. Zevin Decl. at ¶14, Ex. B at pp. 20-21. While it releases both known and unknown claims, the Release is limited to the universe of facts, occurrences, transactions and causes of action alleged in the Complaint and which have been prosecuted and settled by Plaintiff and her counsel. Ex. A at ¶13.1.1-13.1.3. As a result, the Release is sufficiently limited in scope and should be granted preliminary approval. *See Cf. Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1126 (E.D. Cal. 2009) ("These released claims appropriately track the breadth of Plaintiffs' allegations in the action and the settlement does not release unrelated claims that class members may have against defendants.")

5. Notice and Administration

After consulting with and receiving bids from multiple candidates, Class Counsel retained Heffler Claims Group ("Heffler") to serve as Notice and Claims Administrator. Ex. A at ¶7.5; Zevin Decl. at ¶19. Heffler is a highly experienced class notice and administration company. Declaration of Jeanne C. Finegan ("Finegan Decl.") at ¶¶4-11. It estimates that all costs of Notice and Administration will be $2,425,274, and it has provided a "not-to-exceed" cap of $2,667,000 for all such costs. *Id.* at ¶38.[8]

Heffler will establish a toll-free number and email address from which Settlement Class Members can obtain information about the Settlement. Ex. A at ¶7.4; Finegan Decl. at ¶¶19, 32. It will also establish a Settlement Website where Settlement Class Members can: 1) view and download the Notice, Claim Form, Opt-Out Request Form, Complaint and Settlement Agreement; 2) view their qualifying transactions as reflected by JCPenney's sales records; 3) upload proof of additional qualifying purchass, if any; and 4) fill out and submit Claim Forms. Ex. A at ¶2.36; Finegan Decl. at ¶¶19, 21, 23, 33-35.

Within 30 days of preliminary approval, Heffler will send the E-Mailed Notice to the 2,615,180 Settlement Class Members for whom the Parties have an email address. Ex. A at ¶7.3; Finegan Decl. at ¶22. And within 50 days after Preliminary Approval, Heffler will send, via first class mail, a Post-Card Notice to the 3,037,118 Settlement Class Members for whom the Parties have only a physical address, but no email address, as well as to those Settlement Class Members for whom the E-Mailed Notice bounces back. Ex. A at ¶¶7.1.2, 7.3; Finegan Decl. at ¶22. The E-Mailed and Post-Card Notices will include a unique identifying number that each Settlement Class Member can enter onto the Settlement Website to view

[8] In comparison, notice and administration costs for the $27.25 million *In re DVD-Rental* settlement totaled roughly $4.5 million. 779 F.3d at 941.

their respective qualifying transactions and individual point allocations based on JCPenney's sales data. Ex. A at ¶¶7.1.1, 7.1.2.; Finegan Decl. at ¶23.

No later than 10 days after the E-Mailed and Post-Card Notices are sent out, Heffler will commence a comprehensive publication and media notice plan specifically tailored to reach those Settlement Class Members for whom the Parties lack any contact information. Ex. A at ¶7.3; Finegan Decl. at ¶¶24, 26-31. The publication notice will direct Settlement Class Members to the Settlement Website where they can see the full Notice and obtain further information about the Litigation and Settlement. Ex. A at ¶7.1.3

Upon Court approval, Heffler will establish a Qualified Settlement Fund to help facilitate the transfer and accounting of settlement proceeds, and it will ensure compliance with the notice to government officials required under the Class Action Fairness Act, 28 U.S.C. § 1715. Ex. A at ¶¶11.1, 12; Finegan Decl. at ¶36. It will also use JCPenney's sales data to calculate the points and allocation of settlement proceeds, it will process and audit Claims and Opt-Out Requests, it will mail checks to Claimants who choose to receive cash, and it will make Store Credits available for download on the Settlement Website. Ex. A at ¶6.1.3; Finegan Decl. at ¶37.

IV. THE CERTIFICATION ORDER SHOULD BE MODIFIED AS CONTEMPLATED BY THE SETTLEMENT AGREEMENT

On May 18, 2015, after receiving extensive briefing and evidence, the Court certified a Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3). Certification Order, ECF No. 209. Ordinarily, there would be no reason to revisit the Certification Order at this juncture. *Carter v. Anderson Merchandisers, LP*, 2010 WL 1946784, at *4 (C.D. Cal. May 11, 2010) ("[T]he Court is not required to revisit certification absent any evidence suggesting reconsideration is necessary."). However, the Settlement is conditioned upon the Court amending the Certification Order, for settlement purposes only, in two respects: 1) by expanding the Class Period to include the years 2013 and 2014; and 2) by removing the current

exclusion based on a consumer's use of coupons. Ex. A at ¶5.1. The Settlement Class definition would read as follows:

> All persons who, while in the State of California and between November 5, 2010 and January 31, 2012, and between January 1, 2013, and December 31, 2014, purchased from JCPenney one or more private or exclusive branded items of apparel or accessories advertised at a discount of at least 30% off the stated "original" or "regular" price, and who have not received a refund or credit for their purchase(s).

Excluded from the class are defendant, as well as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as all past and present employees, officers and directors of JCPenney. *Id.* at ¶5.1.1.

The Court is not bound by the class definition in the complaint, *Rovidoux v. Celani*, 987 F.2d 931, 937 (2nd Cir. 1993), and it can amend or alter the class definition at any time before a decision on the merits. Fed.R.Civ.P. 23(c)(1)(C); *Vizcaino v. U.S. Dist. Court for Western Dist. Of Washington*, 173 F.3d 713, 721 (9th Cir. 1999) (citing Rule 23(c)(1), which gives the Court "explicit permission to alter or amend a certification order before [a] decision on the merits…"); *Andrews Farms v. Calcot, Ltd.*, 268 F.R.D. 380, 384 (E.D. Cal. 2010) ("'Even after a certification order is entered, the judge remains free to modify it in light of subsequent developments in the litigation.'") (quoting *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 160, 102 S. Ct. 2364, 72 L. Ed. 2d 740 (1982)); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions v. Prudential Ins. Co. of Am.*, 148 F.3d 283, 326 (3rd Cir. 1998) (a district court is permitted to expand the scope of a settlement class so long as it generally corresponds to the allegations set forth in the complaint).

The requested modification should be granted because it is appropriate to include and award settlement proceeds to those additional consumers who were likely exposed to the same or similar practices as Plaintiff and the certified Class.

See Cal. Bus. & Prof. Code § 17203 (authorizing the Court to restore to any person any money "which may have been acquired" as a result of unfair competition); *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1020 (9th Cir. 2011), *cert denied*, 132 S. Ct. 1970 (2012) (recognizing that "relief under the UCL is available without individualized proof of deception, reliance, and injury."). It is also appropriate for JCPenney to buy and obtain peace with respect to *all* consumers who were likely exposed to such practices, and the Settlement was negotiated with these principles in mind. Zevin Decl. at ¶18.[9]

While the new class definition must satisfy the requirements of Rule 23, *Plascenia v. Lending 1st Mortg.*, 2012 WL 253319, at *3 (N.D. Cal. Jan. 26, 2012), those requirements are easily met here because the Parties seek only to add more people who were likely exposed to the same practices, and who have the same claims, as Plaintiff and the certified Class.

The Court previously found that the Class was sufficiently numerous under Rule 23(a)(1), (Certification Order at 9-10), and that fact is only more evident with the Settlement Class. The original Class had 3,256,888 members that can be identified from JCPenney's sales data. Declaration of Brian Bergmark ("Bergmark Decl.") at ¶9. Including consumers who purchased qualifying products in 2013 and 2014 will add 2,395,410 new and unique class members who can be identified, thus resulting in a total of 5,652,298 known and identifiable Settlement Class Members. *Id*. In addition, JCPenney estimates that there are between 3,116,875 and 5,454,532 Settlement Class Members who paid with cash or an unidentified credit or bank card and who, therefore, cannot be specifically identified from its sales data. Declaration of Adam Tarczynski at ¶14. Accordingly, the Parties estimate that the

[9] JCPenney has agreed to an expansion of the class and modification of the Certification Order for settlement purposes only. If for any reason the Settlement Effective Date does not occur, each Party shall retain all their respective rights as they existed prior to the execution of the Settlement Agreement, including maintenance of the original Class certified by the Court on May 18, 2015. Ex. A at ¶4.

Settlement Class has a total of between 8,769,173 and 11,106,830 members. Bergmark Decl. at ¶10. Since it would be impracticable to join these large numbers, Rule 23(a)(1) is easily satisfied. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964).

The Court previously found that the Class was adequately represented, (Certification Order at 13), and the same is true for the Settlement Class. Plaintiff is still unaware of any conflicts or interests antagonistic to members of the Settlement Class. Spann Decl. at ¶19. She and her counsel have continued to vigorously prosecute this action, including participating in multiple days of mediation and negotiating this Settlement. *See generally* Zevin Decl. at ¶¶8, 11-13; Spann Decl. at ¶¶12-18, 20.

The Court's prior analysis of commonality under Rule 23(a)(2), (Certification Order at 10-12), typicality under Rule 23(a)(3), (Certification Order at 13), and predominance under Rule 23(b)(3), (Certification Order at 14-29), also hold true with the Settlement Class. Plaintiff's claims continue to be based on the same facts and the same legal and remedial theories as the claims of the Settlement Class because they are all based on JCPenney's alleged use of deceptive price-comparisons.

Plaintiff specifically alleges that JCPenney only temporarily stopped using false price comparisons in February 2012, (Complaint, ¶6), but returned to that scheme in 2013. *Id.* at ¶7. It is undisputed that JCPenney began to "restore initial markups . . . to support the return to a promotional department strategy . . ." during that time period. Summary Judgment Order at 18 (citing Statement of Uncontroverted Facts ("SUF") at 39-40); *see also* SUF P39 (showing that, in 2013, JCPenney advertised some products with a comparative regular price that was higher than the everyday price advertised under its Fair and Square pricing) and SUF P40 (JCP went back to using a 14-day landing period for some items). Most importantly, it is undisputed that there was *no material difference* between the

pricing strategies used during the original Class Period and those used for some items in 2013 and 2014. SUF P41 (citing Joint appendix at A-11 at 313-15 (Bearden depo., 228:5-23:4)).[10] Thus, the same evidence that would prove common claims on behalf of the previously certified class would also be used to prove the claims of the expanded Settlement Class. *See* e.g. Certification Order at 11 (identifying common questions); and at 15 (identifying common evidence that could be used to establish classwide liability).

The Parties have also agreed, for settlement purposes only, to remove the exclusion from class membership based on a consumer's use of coupons. The evidence suggests that only a tiny fraction of Settlement Class Members would be subject to this exclusion, but Plaintiff has not discovered an automated or mechanical process to identify those persons with certainty. Zevin Decl. at ¶18. *See also*, Certification Order at 12 (citing evidence that very few products were ever offered at regular price). Accordingly, the cost and burden of determining which Settlement Class Members are excluded on that basis by manually reviewing customer receipts would greatly outweigh the utility of maintaining the exclusion through the settlement process. Zevin Decl. at ¶18. Moreover, Plaintiff contends that those few consumers who would be subject to this exclusion should never have been excluded in the first place because: 1) JCPenney's products were hardly ever offered at the stated regular price; 2) the use and dissemination of coupons at JCPenney was prolific; and 3) the grossly inflated "regular" and "original" prices were used to support, and could only be temporarily sustained by, the false price comparison scheme. In other words, the fact that consumers were led to believe they were getting a discount from a coupon, as opposed to a "sale" is a distinction

[10] While the evidence shows that only *some* items were promoted using the same false pricing scheme in 2013 and 2014, Plaintiff believes that this strongly suggests that the items for which *dissimilar* pricing practices were used were not likely to have been offered at a discount of 30% or more. Accordingly, people who were exposed *only* to dissimilar pricing practices are unlikely to be swept into the Settlement Class because membership is contingent on a 30% discount.

without a difference. *See B. Sanfield, Inc. v. Finlay Fine Jewelry Corp.*, 258 F.3d 578, 579-80 (7th Cir. 2001) (holding that a pricing scheme is "false and fraudulent" where products are hardly offered at regular price, less than 3% of sales are made at regular price, and the defendant is "happy to oblige" customers who ask for a discount during the short times that they are offered at regular price); *see also* Cal. Civ. Code § 1770(a) (prohibiting false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.").[11]

Finally, the superiority requirement of Rule 23(b)(3) remains satisfied because the ultimate recovery by Settlement Class Members would be dwarfed by the cost of litigating on an individual basis, any Settlement Class Member who wishes to opt out may do so pursuant to the proposed notice plan, and there are no other related cases. Certification Order at 35 (citing authorities).[12]

In sum, Plaintiff contends that the Court's prior Rule 23 analysis applies with equal force to the Settlement Class, and the Certification Order should be modified as requested.

V. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL

Federal Rule of Civil Procedure 23(e) provides that the Court must determine whether the proposed settlement is fair, reasonable, and adequate. Fed.R.Civ.Proc. 23(e)(2). Judicial approval is required regardless of whether the action is certified for trial and later settled or is certified for purposes of settlement. *Manual for Complex Litigation, Fourth,* § 21.61 (2004). However, there is a strong judicial policy that favors settlements. *Class Plaintiffs v. City of Seattle,* 955 F.2d 1268, 1276 (9th Cir. 1992). "[I]t must not be overlooked that voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation." *Officers for Justice v. Civil Service Commission,*

[11] Plaintiff agreed to the coupon-based exclusion as a result of meet and confer negotiations preceding the Motion for Class Certification. Zevin Decl. at ¶18.

[12] Since modification of the Certification Order is in the settlement context, the Court need not consider Rule 23's manageability requirement. *Amchem Products, Inc. v. Windsor* 521 U.S. 591, 620, 117 S. Ct. 2231, 138 L.Ed. 2d 689 (1997).

688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217, 103 S. Ct. 1219, 75 L. Ed. 2d 456 (1983).

The settlement approval process typically involves two steps. First, the Court must determine whether the proposed settlement merits preliminary approval so that notice can be issued to class members and a final fairness hearing can be scheduled. *West v. Circle K Stores, Inc.*, 2006 WL 1652598, at *2 (E.D. Cal. June 13, 2006); *see also Pereira v. Ralph's Grocery Co.*, 2010 WL 6510338, at *2 (C.D. Cal. Mar. 24, 2010) (noting that a full fairness analysis is unnecessary at the preliminary approval stage). Second, at the final approval stage, the Court makes a complete determination regarding the fairness, reasonableness, and adequacy of the settlement and hears any objections of class members. *West*, 2006 WL 1652598, at *2.

"[P]reliminary approval and notice of the settlement terms to the proposed class are appropriate where '[1] the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls with the range of *possible* approval . . . .' *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation and citation omitted) (emphasis added); *see also Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) ("To determine whether preliminary approval is appropriate, the settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval, after such time as any party has had a chance to object and/or opt out.") (emphasis in original). The Court does not need to "specifically weigh[] the merits of the class's case against the settlement amount and quantif[y] the expected value of fully litigating the matter." *Rodriquez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Instead, the Court must only evaluate whether the Settlement is "the product of an arms-length, non-collusive, negotiated resolution[]." *Id.*

A. The Settlement is a Product of Serious, Arms-Length Negotiations

The Ninth Circuit defers to the "private consensual decision of the parties" and emphasizes that the Court's analysis "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Rodriquez*, 563 F.3d at 965 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)).

This case was hard-fought and contentiously litigated throughout. *See generally* Zevin Decl. at ¶¶6, 11-13. The Settlement was reached near the completion of discovery, after substantial motion practice, including multiple motions to dismiss, motions for summary judgment and motions for class certification, and after protracted settlement negotiations spanning two full years, including *four* full-day mediations with two different mediators. *Id.* at ¶¶4-6, 8-13. Both parties were represented by highly experienced attorneys, and Plaintiff participated throughout the settlement process. *Id.* at ¶¶9-11; Spann Decl. at ¶¶13-16. Moreover, the parties did not discuss or negotiate Class Counsel's attorneys' fees and costs, or Plaintiff's proposed Enhancement Payment, until *after* all other material terms, including the $50 million monetary fund for the Settlement Class, were agreed upon. Zevin Decl. at ¶13.

A settlement negotiated by experienced attorneys and reached with the assistance of experienced mediators through a negotiating process lasting several years supports a determination that the process was not collusive. *See e.g. Carter*, 2010 WL 1946784, at *7 ("The court is . . . satisfied the Settlement Agreement is the product of arms-length negotiation[]" because it was reached through "formal mediation sessions presided over by an experienced mediator."). The Parties were fully versed with the relevant facts and law, and were in a prime position to evaluate "the likelihood of a plaintiffs' or defense verdict, the potential recovery,

and the chances of obtaining it[.]" *Rodriquez*, 563 F.3d at 965. *See also Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 302 (E.D. Cal. 2011) (finding arms-length negotiations where "[b]oth parties conducted extensive investigation and discovery allowing them to assess the strengths and weaknesses of the case."); *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012) (finding settlement fair and a result of arms-length negotiation where the parties engaged in formal written discovery and deposition). Here, there is every indication that the Settlement is the product of arms-length negotiations and *no evidence* to suggest that it is "the product of fraud or overreaching by, or collusion between, the negotiating parties[.]" *Rodriguez*, 563 F.3d at 965 (quoting *Hanlon*, 150 F.3d at 1027).

B. The Amount Offered in the Settlement is Fair and Reasonable, and Falls Within a Range of Possible Approval

As the Ninth Circuit has noted, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

> [I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is [thus] not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.

Id. at 625.

Here, the Class Settlement Amount of $50 million, combined with remedial relief, is substantial by any measure and certainly falls within a range of possible approval.[13] This is particularly true given the real and substantial risk that Plaintiff

[13] While Class Counsel believe that the remedial relief is significant, its value is not readily susceptible to quantification and Class Counsel will not seek fees based on a percentage of the value of this relief.

could have successfully proven liability at trial yet still recovered *nothing* because the fact and amount of restitution that could be recovered in this case are not certain.

While Plaintiff firmly believes that her liability case is exceptionally strong, JCPenney has consistently argued that she is not entitled to *any* restitution because (it says) restitution must be measured by the difference between the amount paid and value received which (it argues) equals zero. *See e.g.* Summary Judgment Order at 6-7. Plaintiff disputed this, and proposed three alternative measures of restitution. In its Summary Judgment Order, the Court rejected JCPenney's argument and held that, at trial, Plaintiff may present her alternative measures of recovery by which the Court "could order restitution." *Id.* at 9 (citation omitted). As the Ninth Circuit recently recognized, "restitution is available on a classwide basis once the class representative makes the threshold showing of liability under the UCL and FAL." *Pulaski & Middlman, LLC v. Google, Inc.*, 802 F.3d 979, 986 (9th Cir. 2015). But the fact and amount of restitution still remain subject to the Court's discretion. *Id.* (citing *Cortez v. Purolator Air filtration Prods. Co.*, 23 Cal. 4th 163, 173 (2000)). Accordingly, there would always be uncertainty as to whether Plaintiff would recover any restitution even if she proved liability at trial.

Perhaps no case makes this more clear than *In re Tobacco Cases II*, 2015 WL 5673070, at **5-9 (Cal. App. Sept. 28, 2015) ("*Tobacco*"), where the plaintiffs established liability on their UCL and FAL claims but the trial court declined to award *any* restitution because the plaintiffs failed to prove a difference between the amount paid and value received. *Id.* In fact, the court ordered the plaintiffs to pay the *defendant's* litigation costs of almost $800,000. *Id.* The court of appeals affirmed, holding that the trial court "lacked discretion to award restitution" because the plaintiffs did not establish any price/value differential. *Id.* at *13.

Here, it is difficult to dispute that each class member received products with *some* value. It could therefore be argued that restitution should be limited to the

difference between price paid and value received, which could conceivably result in *zero* recovery. *Id.* While Plaintiff believes her case is distinguishable from *Tobacco*, and that alternative measures of restitution remain viable in this case, there can be no doubt that JCPenney would have renewed its argument concerning Plaintiff's entitlement to restitution if this case did not settle, and the Parties negotiated the Settlement fully aware that the potentially pivotal *Tobacco* decision was forthcoming. Zevin Decl. at ¶15.

The Parties also litigated and negotiated under a huge cloud of uncertainty concerning JCPenney's financial stability. Zevin Decl. at ¶¶16-17. Plaintiff previously detailed JCPenney's disastrous financial results following its move to "fair and square" pricing. *E.g.* ECF No. 173-2 at 40-41. JCPenney's stock price is currently trading at a fraction of its value from 2011 and, for the fiscal year ended January 31, 2015, it suffered an adjusted net loss from operations of $816 million and had free cash flow of only $57 million. Zevin Decl. at ¶17. Since 2011, the Company has suffered a total adjusted net loss of more than $3 billion and has survived largely due to its access to debt financing. *Id*. These precarious metrics weighed heavily on the settlement negotiations and strongly support the reasonableness of the Settlement. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) ("Here one factor predominates to make clear that the district court acted within its discretion [approving the settlement]. That factor is [the defendant's] financial condition.")

In evaluating the Settlement, it is of course relevant to consider the amount that Settlement Class Members will actually recover. Simply dividing the $50 million Class Settlement Amount amongst the estimated 8,769,173 – 11,106,830 Settlement Class Members derives an average benefit of $4.50 - $5.70 per Settlement Class Member. In practice, however, only Claimants will receive cash or Store Credits, and the amount that they receive will depend on the fees and costs awarded by the Court, the number of Claims submitted and the amount that

Claimants spent on qualifying purchases. Ex. A at ¶6.1.2 (and subsections thereunder).

Assuming that Notice and Administration Costs equal Heffler's estimate of $2,425,274, and assuming *arguendo* that the Court awards the full amount requested for Attorneys Fees ($13,500,000), Costs ($250,000)[14] and Enhancement Payment ($10,000), there would be $33,814,726 remaining in the Class Allocation for distribution to Claimants. Bergmark Decl. at ¶19. From that, it is possible to calculate a range of expected benefits to Settlement Class Members based on estimated claim rates.

For example, a 1% claim rate is expected to provide a minimum benefit of $202.96 - $257.08; an average benefit of $304.44 - $385.62; and a maximum benefit of $1,014.80 - $1,285.40 for each Claimant that the Parties can identify through JCPenney's sales records or who submits their own documentation of a qualifying purchase. Bergmark Decl. at ¶¶21-22.[15] A 2% claim rate would provide a minimum benefit of $101.48 - $128.54; an average benefit of $152.22 - $192.81; and a maximum benefit of $507.40 - $642.70 per Claimant. *Id.* A 3% claim rate would provide a minimum benefit of $67.65 - $85.69; an average benefit of $101.48 - $128.54; and a maximum benefit of $338.27 - $428.47. *Id.* A 5% claim rate would result in a minimum benefit of $40.59 - $51.42; an average benefit of $60.89 - $77.12; and a maximum benefit of $202.96 - $257.08; while a 10% claim

[14] While the Settlement Agreement authorizes up to $500,000 in costs for Class Counsel, they currently estimate that their expenses are not more than $250,000.

[15] Under the plan of allocation, these Claimants will receive at least two points, an average of three points, and a maximum of ten points. Ex. A at ¶6.1.2.1.4; Bergmark Decl. at ¶20. Claimants who cannot be identified through JCPenney's sales data, and who do not submit their own proof of purchase but who, nonetheless, submit a sworn Claim Form will be given one point and therefore receive half of the minimum benefit provided to Claimants with proof of purchase (i.e. $101.48 - $128.54). Ex. A at ¶6.1.2.1.4; Bergmark Decl. at ¶¶20-22.

rate would provide a minimum benefit of $20.30 - $25.71; an average benefit of $30.44 - $38.56; and a maximum benefit of $101.48 - $128.54. *Id.*[16]

In comparison, the average amount that known Settlement Class Members spent at JCPenney during the Settlement Class Period was $154.19, and the average amount paid per item was $11.36. Bergmark Decl. at ¶¶11. The Settlement is therefore expected to provide the average Claimant with sufficient compensation to purchase at least two, if not several items at JCPenney, and it could very well return a significant portion of the total amount that many Claimants spent at JCPenney.[17]

The Court may also compare the Settlement amount with the maximum theoretical recovery if Plaintiff were to prevail at trial, but the Court's reliance on these figures must be tempered by the additional costs and delay of trial coupled with the risk that Plaintiff could prove liability yet still recover *nothing*. *See e.g. Schaffer v. Litton Loan Servicing, LP*, Case No. CV 05-07673 MMM(JCx), 2012 WL 10274679, at *11 (C.D. Cal. Nov. 13, 2012) ("Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)."); *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("'The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.'") (quoting *City of Detroit v. Grinnell Corp.*,

[16] These claim rate estimates are reasonable. In the *In re DVD-Rental* case, the parties sent direct notice to 35 million class members and received 1,183,444 claims, which represents a 3.4% claim rate. 779 F.3d at 941. *See also Couser v. Comenity Bank*, No. 12cv2484-MMA-BGS, 2015 WL 5117082, at *7 (S.D. Cal. May 27, 2015) (noting that a claim rate of 7.7% was "large" and "higher than average"). Here, the Parties are loath to predict a claim rate, but note that it might be depressed due to the fact that they cannot provide direct notice to roughly half of the Settlement Class. *See In re Toys R Us-Delaware, Inc. – (FACTA) Litig.*, 295 F.R.D. 438, 468 n134 (C.D. Cal. 2014) (citing authority that claim rates in consumer litigation generally range from two to twenty percent; but when direct notice is not possible for the entire class, the claim rate may be depressed).

[17] Prior to the Final Approval Hearing, the Parties will be able to tell the Court the actual claim rate and actual amounts to be distributed to Claimants.

495 F.2d 448, 455 & n. 2 (2d Cir. 1974)). *See also Tobacco*, 2015 WL 5673070, at **5-9 (plaintiff established liability but was awarded zero restitution).

Under her "complete restitution" measure, Settlement Class Members would obtain a full refund of their purchase price, but only if they returned their products to JCPenney. While the total sales figure for all products in the Settlement Class is $1,532,432,307 ($137.97 - $174.75 per Settlement Class Member),[18] that figure is not particularly informative because it is unknown how many Settlement Class Members would actually return their items for a refund, and those who did so would lose the benefit of the products that they purchased. In contrast, the Settlement allows Claimants to *keep* the items that they purchased *and* immediately receive their fair share of a substantial, fixed sum of money. In this light, the Settlement is fair and reasonable.

Under the second proposed measure of restitution, Settlement Class Members would receive the "transaction value" promised but not delivered by JCPenney's price comparisons. For example, if the actual prevailing price of a shirt was $15, but JCPenney advertised that shirt with a false "regular" price of $30 and a purported "sale" price of $15, a class member would receive restitution in the amount of the promised discount (i.e., 50% of the actual prevailing price) or $7.50. While the Settlement occurred before Plaintiff commissioned the complete and costly analysis that would be required to definitively calculate the maximum potential recovery under this methodology (Bergmark Decl. at ¶13), her expert has determined that the average promised "discount" per item was approximately 59.9%, and he estimates that the maximum, total amount of restitution due under this theory would be roughly $917,526,026, (or $82.61 to $104.63 per Settlement Class Member. Bergmark Decl. at ¶15. The $50 million Settlement thus guarantees an immediate recovery of approximately 5.5% of the estimated maximum recovery under this methodology.

[18] *See* Bergmark Decl. at ¶14.

Under her "net profit" measure of restitution, Plaintiff would present JCPenney's gross sales dollars as a baseline (approximately $1.53 billion), and JCPenney would be entitled to offer its cost of goods sold in order to demonstrate net profit. *American Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal. App. 4th 1451, 1487 (2014). For purposes of this calculation, the Parties would undoubtedly disagree as to which costs are appropriately deducted, and the Court would retain discretion to decide an equitable remedy. *See Park v. Cytodyne Technologies, Inc.*, 2003 WL 21283814, *23 (Cal. Super. Ct. May 30, 2003) (noting that the court has "broad" discretion to determine an appropriate equitable remedy and holding that it would be "inequitable" to allow a credit for the costs of misleading advertisements).[19]

Based on JCPenney's sales of $1,532,432,307, and its reported gross margins of approximately 35% during the relevant time period, Plaintiff estimates that the net profit and maximum recovery under this methodology would have been roughly $536,351,307, (or $48.29 to $61.16 per Settlement Class Member). Bergmark Decl. at ¶16. The Settlement therefore guarantees an immediate recovery of approximately 10.7% of the total amount that Plaintiff could have obtained under this methodology.

In sum, even if Plaintiff successfully proved her case at trial, the amount of restitution recovered, if any, could vary widely depending on a number of factors, including the Court's discretion as to whether and how much to award in restitution, and JCPenney's ability to satisfy a judgment awarding the maximum amounts sought by Plaintiff. And, if anything were recovered, it would take years to secure, as JCPenney would undoubtedly appeal an adverse judgment. In comparison, the Settlement provides a guaranteed, fixed, immediate and substantial recovery of $50

[19] Indeed, JCPenney could argue that, all relevant factors considered, its net profit during the time period was zero.

million, plus meaningful prospective remedial relief. The Settlement is therefore fair and reasonable, and certainly within the range of possible final approval.

C. The Settlement Agreement Does Not Improperly Grant Preferential Treatment to the Class Representative

The Settlement Agreement authorizes an Enhancement Payment for Plaintiff in an amount to be determined by the Court but not to exceed $10,000. Ex. A at ¶6.1.1.2. Critically, the Settlement is not conditioned on the Court's approval of the full (or any) amount of an Enhancement Payment, and Plaintiff's right to seek an Enhancement Payment was not conditioned upon her approval of the Settlement. *Id.*; *See also* Spann Decl. at ¶16.

"Incentive awards typically range from $2,000 to $10,000." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015) (collecting cases). *See also Chu v. Wells Fargo Invs., LLC*, Nos. C 05–4526 MHP, C 06–7924 MHP, 2011 WL 672645, at *5 (N.D. Cal. Feb. 16, 2011) (awarding two named plaintiffs $10,000 each). "Higher awards are sometimes given in cases involving much larger settlement amounts." *Bellinghausen*, 306 F.R.D. at 267 (citing *Glass v. UBS Fin. Servs.*, No. C–06–4068 MMC, 2007 WL 221862, at *16–17 (N.D. Cal. Jan. 26, 2007) (approving a $25,000 incentive award to four representatives in a $45 million settlement); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving $50,000 award in $76,723,213.26 settlement)).

In evaluating whether the Settlement grants preferential treatment to Plaintiff, the Court may consider whether there is a "significant disparity between the incentive award[] and the payments to the rest of the class members" such that it creates a conflict of interest. *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013). More important considerations, however, are "the number of class representatives, the average incentive award amount, and the proportion of the total settlement that is spent on incentive awards." *In re DVD-Rental*, 779 F.3d at 947 (quoting *Staton v. Boeing, Co.*, 327 F.3d 938, 977 (9th Cir.

2003)). The Court may also consider "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). Finally, the Court must evaluate whether a conflict exists due to the incentive award being conditioned on the class representative's approval and support of the Settlement. *Radcliffe*, 715 F.3d at 1161.

While the $10,000 requested represents many times more than the estimated monetary benefit per Claimant, this does not rise to the level of unduly preferential treatment. Indeed, courts have approved similar or greater disparities between incentive awards and individual class member payments. *See e.g. Cox v. Clarus Marketing Group, LLC*, 291 F.R.D. 473, 483 (S.D. Cal. 2013) (approving a $5,000 incentive award where class members would receive a maximum payment of $36); *see also Fulford v. Logitech, Inc.*, 2010 WL 807448, at *3 n.1 (N.D. Cal. Mar. 5, 2010 (collecting cases awarding incentive award payments ranging from $5,000 to $40,000).

More importantly, there is only one class representative who seeks, at most, only two one-thousandths (0.02%) of the $50 million Class Settlement Amount. This amount is reasonable considering how miniscule the award is in relation to the full amount of the settlement fund. *See In re DVD-Rental*, 779 F.3d at 947-948 (approving incentive awards that were roughly 417 times larger than $12 individual awards because the awards were reasonable, the number of representatives were relatively small, and the total amount of incentive awards "ma[d]e up a mere .17% of the total settlement fund"). *Cf. Staton*, 327 F.3d 16 976-77 (reversing approval of incentive awards that averaged $30,000 each for 29 class representatives, totaling $890,000, or roughly 6% of a potential $14.8 million settlement).

The amount requested is also appropriate given the time and risk of Plaintiff's participation in this action. Plaintiff spent approximately 118 hours

prosecuting this action (Spann Decl. at ¶22), she participated in the settlement negotiations (*id.* at ¶¶13-16), and she was exposed to real reputational risk as a result of significant media attention related to her involvement in the Litigation. *Id.* at ¶21-22.; Zevin Decl. at ¶7. These factors further support and justify the amount requested. *See e.g. Eddings v. Health Net, Inc.*, 2013 WL 3013867, at *7 (C.D. Cal. June 13, 2013) (approving $6,000 service award from $600,000 settlement to compensate the named plaintiff for her time, effort and risk in prosecuting the action); *Wilson v. Airborne, Inc.*, No. EDCV 07–770–VAP (OPx), 2008 WL 3854963, *13 (C.D. Cal. Aug. 13, 2008) (finding that the media attention class representatives attracted supported incentive awards).

Finally, Plaintiff's approval of the Settlement was not conditioned on her receiving an incentive award and, conversely, her right to seek an incentive award was not conditioned upon her approval of the Settlement. Spann Decl. at ¶16. Accordingly, Plaintiff's interests did not conflict with or diverge from the interests of the Settlement Class. *Radcliffe*, 715 F.3d at 1161.

D. The Settlement Agreement Has No Obvious Deficiencies

The Settlement guarantees a large amount of money plus remedial relief for the benefit of Settlement Class Members. It is structured, in all material respects, consistent with the $27,250,000 settlement that the Ninth Circuit approved of in the *In re DVD-Rental* litigation. However, it is more equitable than the settlement in that case because it allocates settlement funds proportionately based on actual spending habits rather than evenly distributing proceeds amongst Claimants. *Cf. In re DVD-Rental*, 779 F.3d at 941 (explaining that settlement proceeds would be allocated evenly regardless of specific damages incurred by each claimant). It, therefore, has no obvious defects.

VI. THE PROPOSED NOTICE PROGRAM SHOULD BE APPROVED

A. The Proposed Notice is Accurate and Informative

Rule 23(e) requires that a notice describe "'the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *In re DVD-Rental*, 779 F.3d at 946 (quoting *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012)); *see also Rodriguez*, 563 F.3d at 962 (holding that notice is adequate when it describes "the aggregate amount of the settlement fund and the plan for allocation."). It "does not require detailed analysis of the statutes or causes of action forming the basis for the plaintiff class's claims, and it does not require an estimate of the potential value of those claims." *Lane*, 696 F.3d at 826.

The E-Mailed, Post-Card and Publication Notices, attached respectively as Exhibits 2, 3 and 4 to the Settlement Agreement, clearly meet these standards. Each describes the Settlement Class and provides simple and straightforward information about the nature of the action; about what actions Settlement Class Members may take in the case; about the effect of their choices of action; and about the need to check the Settlement Website for more detail. Settlement Agreement at Exhibits 2-4. Each also states the amount of the settlement fund, and explains that Claimants may choose between cash or Store Credit of equal value, and that the amount of cash or Store Credit will depend on the amount of attorneys' fees and costs awarded, the amount of each Claimant's qualifying purchases, and on the number of valid claims that are filed. *Id.* The Notices further state the amount Class Counsel will seek in fees, expenses and Enhancement Payment, the fact that notice and administrative costs will be paid from the fund, the fact that Settlement Class Members will need to submit a Claim Form to obtain relief, the deadline for objecting, opting out or submitting a claim, and the date, time and place of the Final Approval hearing. *Id.* Finally, they list a toll-free phone number and e-mail address where Settlement Class Members can submit inquiries, and the E-Mailed

and Post-Card Notices provide known Settlement Class Members with a unique identification number by which they can view, update and/or dispute JCPenney's records concerning their qualifying purchases on the Settlement Website. *Id.* The Notices are, therefore, adequate and satisfy due process. *In re DVD-Rental*, 779 F.3d at 946 (describing adequate notice).

B. The Method of Sending Notice Satisfies Due Process

Rule 23(c)(2) of the Federal Rules of Civil Procedure requires the Court to direct to Class members the "best notice practicable" under the circumstances, including "individual notice to all members who can be identified through reasonable effort." *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Individual notice through email, or first class mail in situations where email was not successful, is "clearly the 'best notice practicable'" where the names and email addresses of Class Members are easily ascertainable. *See, e.g. Keirsey v. eBay, Inc.*, 2014 WL 644697, at *1 (N.D. Cal. Feb. 14, 2014).

Here, the Administrator will send the E-Mailed Notice to the 2,615,180 Settlement Class Members for whom the Parties have an email address. Finegan Decl. at ¶22. To the extent that email addresses are not known, and for those E-Mailed Notices that "bounce back" as undeliverable, Heffler will send the Post-Card Notice via First Class Mail to all Settlement Class Members for whom the Parties have a physical mailing address. *Id.* If the Post-Card Notice is also returned as undeliverable, the Settlement Administrator will perform a skip-trace to find the most current address and resend the Post-Card Notice. *Id.* This method of sending direct notice is anticipated to reach, conservatively, approximately 40-50 percent of the Settlement Class (*id.* at ¶¶20, 25), and it is designed to mirror, to the extent possible, the method used and approved of by the Ninth Circuit in *In re DVD-Rental*. 779 F.3d at 941 (email notice was sent to 35 million class members, with a follow up notice sent by mail to more than 9 million class members whose email addresses were invalid); *id.* at 946 (notice provided by both mail and email "was

sufficient under the Constitution and Rule 23(e)). *See also In re Magsafe Apple Power Adapter Litig.*, No. 5:091-cv-01911-EJD, 2015 WL 428105 (N.D. Cal. Jan. 30, 2015) (approving similar notice plan).

Finally, because the Parties do not have the names and contact information for all Settlement Class Members, they have agreed to publish notice as reflected in Exhibit 4 to the Settlement Agreement. This Notice will be published on the dedicated Settlement Website; in the California editions of *People Magazine* and *Sunset Magazine*; in seven California Spanish newspapers; in Internet banner advertising, on three internet networks, geo-targeted to California ISP addresses and specifically targeted to reach class members; in banner advertising in both English and Spanish on Social Media; and in a press release issued to California news outlets in both English and Spanish. Finegan Decl. at ¶¶26-31, 33. This combined media program is anticipated to reach 75 percent of the targeted population, on average, 2.3 times. *Id.* at ¶39.

In sum, the Parties have proposed a comprehensive and multi-channel media notice campaign that is reasonably calculated to provide notice that is consistent with best practicable court approved notice programs in similar matters, and which is consistent with the Federal Judicial Center's guidelines concerning appropriate reach. Finegan Decl. at ¶39. The Notice program therefore satisfies due process and should be approved.

VII. THE COURT SHOULD ORDER THE ESTABLISHMENT OF A QUALIFIED SETTLEMENT FUND

The Settlement Agreement provides that the Class Settlement Amount shall be funded through, and all disbursements shall come from, a QSF, pursuant to Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1. Ex. A at ¶¶11.1, 12. It also provides that Heffler, the Claims Administrator, shall serve as the "administrator" of the QSF within the meaning of Treasury Regulation § 1.468B-2(k)(3), and the Parties intend for Heffler to be appointed as Trustee of the QSF. *Id.*

at ¶12.1. The Settlement Agreement further provides that the Parties will cooperate in securing an order of the Court to establish the QSF, and that the Court retain jurisdiction over the administration of the QSF. *Id.* Accordingly, the Parties hereby request that the Court include in its Preliminary Approval Order provisions consistent with the Parties' Agreement. *See* 26 C.F.R. § 1.468B-1(c), (e) (Qualified Settlement Funds may be established only if "ordered by" or "approved by" a governmental authority, including a court).

VIII. PROPOSED SCHEDULE OF EVENTS

The following table sets forth the proposed relevant events and corresponding deadlines, predicated on the Court's preliminary approval of the Settlement on December 3, 2015.

Event	**Timing**
Deadline for Heffler to establish the Settlement Website and send E-Mail Notice to Settlement Class Members with known email addresses	January 4, 2016 (30 days after preliminary approval)
Deadline for Heffler to send Post-Card Notice to Settlement Class Members	January 22, 2016 (50 days after preliminary approval)
Deadline for Settlement Administrator to publish the Publication Notice	February 1, 2016 (60 days after preliminary approval)
Deadline for Class Members to submit Claims, requests for exclusion or objections to the Settlement and/or Plaintiff's Application for Attorneys Fees and Litigation Expenses	April 30, 2016 (90 days from the last date of Notice)
Settlement Administrator provides the Parties with data concerning the number of approved and rejected claims, dollar amounts awarded to Claimants, and opt-outs	May 20, 2016 (20 days after the deadline to file Claims or requests for exclusion)
Plaintiff to file brief in support of Final Approval of Settlement	June 30, 2016 (at least 15 court days prior to Final Approval Hearing)
Final Approval Hearing	July 14, 2016

IX. CONCLUSION

The parties have negotiated an exceptional Settlement that provides Settlement Class Members with substantial financial compensation and important prospective remedial relief. None of this would have happened but for the use of class action procedures, a dedicated and informed Class Representative, and experienced Class Counsel. Plaintiff respectfully requests that the Court modify the Certification Order as requested, preliminarily approve the Settlement, direct that Notice be provided to Settlement Class Members, order the establishment of a QSF, and set a Final Approval hearing date on July 14, 2016, or as soon thereafter as the Court's calendar permits.

DATED: November 10, 2015

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, on Behalf of Herself and All Others Similarly Situated,

Plaintiff,

v.

J.C. PENNEY CORPORATION, INC., a Delaware Corporation; and DOES 1 through 10, Inclusive,

Defendant.

Case No. SACV12 0215 FMO (KESx)

CLASS ACTION

DECLARATION OF MATTHEW J. ZEVIN IN SUPPORT OF UNOPPOSED MOTION FOR MODIFICATION OF CLASS CERTIFICATION ORDER; PRELIMINARY APPROVAL OF SETTLEMENT AND NOTICE PROGRAM; AND ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND

Judge: Honorable Fernando M. Olguin
Ctrm: 22 – 5th Floor
Date: December 3, 2015
Time: 10:00 a.m.

I, MATTHEW J. ZEVIN, declare:

1. I am an attorney at law duly licensed to practice in the State of California and before this Court. I work with the Stanley Law Group, based in Dallas, Texas. I am co-counsel of record for Plaintiff Cynthia E. Spann, and co-Class Counsel for the certified class in this case. I have personal knowledge of the facts and matters stated herein and if called as a witness, I could and would competently testify to the following.

2. This declaration is submitted in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Modification of Class Certification Order.

3. I was first licensed to practice law in 1994. Since 1996, my practice has focused exclusively on representing plaintiffs in securities and consumer class actions. Over the past 19 years, I have been appointed and served as lead or co-lead counsel for plaintiffs in dozens of class actions, and I have assisted in the recovery of hundreds of millions of dollars on behalf of consumers and/or investors. In January, 2002, I opened a satellite office in San Diego, California for my current firm, which is based in Dallas, Texas.

4. Prior to filing this case, my co-counsel and I met with the named Plaintiff, Cynthia E. Spann, investigated JCPenney's pricing practices and researched the law applicable to false price comparison advertising. We filed the initial complaint on February 8, 2012, a first amended complaint on March 19, 2012, a second amended complaint on April 23, 2012, a third amended complaint on July 22, 2013 and the operative fourth amended Complaint on March 5, 2014

5. Throughout the Litigation, my co-counsel and I engaged in extensive legal research and analysis and conducted thorough and substantial class and merits discovery, including depositions of four Rule 30(b)(1) witnesses, five Rule 30(b)(6) witnesses and two expert witnesses designated by JCPenney. These depositions took place in Washington D.C., Plano, Texas, and Los Angles and Palo Alto,

California. We also served interrogatories, requests for admissions and six sets of document requests, and we defended the depositions of Plaintiff and her expert, Brian Bergmark. We received, reviewed and analyzed JCPenney's written discovery responses, as well as the documents that JCPenney produced in the Litigation, including the extensive and voluminous sales data for the tens of millions of transactions entered into by the certified Class. We continuously monitored JCPenney's public filings and media reports, keeping a close eye on JCPenney's financial status and fluctuating pricing and promotional practices. We developed alternative theories of remedies, engaged Torrey Partners, a forensic accounting firm, who assisted with further, detailed analysis of the sales data, and consulted with leading experts on advertising and consumer behavior related to price comparison advertising in general.

6. My co-counsel and I amended the complaint in order to keep up with changes in JCPenney's pricing practices; opposed three motions to dismiss and/or strike; opposed two motions for summary judgment; briefed three motions for class certification; and successfully opposed JCPenney's petition for interlocutory appellate review of the Court's order granting class certification. We also engaged in numerous discovery disputes, including several motions to compel, and participated in countless hours of meet and confer negotiations, many of them transcribed, concerning a multitude of discovery issues and motion practice.

7. At various points in this litigation, I received an extensive number of inquiries concerning this case from multiple media outlets, including the Wall Street Journal, the Today Show, CNN and numerous others. Several of these outlets, including CNN and the Today Show, wanted to interview the named plaintiff in this case, Cynthia Spann. Although we declined each of those requests, Ms. Spann's name and involvement in this case was mentioned in numerous written media reports.

8. On May 18, 2015, the Court granted Plaintiff's Motion for Class

Certification and appointed my firm, the Stanley Law Group, and the Emge Firm LLP as Class Counsel. Since then, my co-counsel and I have vigorously prosecuted this case. For example, we continued to notice and take depositions, including the deposition of JCPenney's former CEO, Ron Johnson, and we continued to seek and obtain written discovery, including JCPenney's extensive sales data for each and every transaction for the Settlement Class. We also continued to engage in motion practice and discovery disputes, consult with experts, and generally prepare for trial. At the time that the settlement was reached, we had nearly completed discovery except for a couple of disputes that were briefed and pending before the Court.

9. During the summer of 2013, my co-counsel and I engaged in substantial negotiations with JCPenney's counsel concerning the possible structure of a class-wide settlement. These negotiations led to private mediation, on September 24, 2013, with the Honorable John Leo Wagner (Ret.) at Judicate West. The mediation was attended by Plaintiff and her counsel, as well as representatives from JCPenney and its counsel. Despite a full-day of mediation, and follow-up discussions between the mediator and counsel, the Parties were unable to reach a settlement.

10. Over the next two years, the Parties periodically engaged in informal settlement negotiations, but these too proved unsuccessful.

11. On July 2, 2015, the Parties attended another full day of mediation, this time with the assistance of David A. Rotman of the private mediation firm, Gregorio, Haldeman & Rotman in San Francisco. This and all subsequent mediations were attended in person by Plaintiff's counsel, JCPenney's counsel and various representatives from JCPenney's corporate headquarters in Dallas, Texas. Plaintiff participated by way of telephone calls, emails and text messages with her counsel. At the conclusion of the first session with Mr. Rotman, the Parties had only made limited progress toward a settlement. Mr. Rotman therefore extended a

"mediator's proposal" which, if accepted by both Parties, would cause them to return for further negotiations.

12. Both Parties accepted Mr. Rotman's proposal and returned for another full day of mediation on August 21, 2015. At the conclusion of that day, the Parties still remained at an impasse, but Mr. Rotman made another mediator's proposal which was intended, if accepted by both Parties, to fully resolve the Litigation.

13. On September 9, 2015, Mr. Rotman informed the Parties that there had only been a conditional acceptance of the mediator's proposal, subject to further negotiations. Accordingly, on September 10, 2015, my co-counsel and I appeared for a third day of mediation with Mr. Rotman, which concluded with the Parties agreeing to all material terms of the Settlement, which was documented in a short-form Memorandum of Settlement, executed by the Parties and counsel on September 10 and 11, 2015. The Parties did not discuss or negotiate the provisions concerning Class Counsel's request for Attorneys fees and Costs, or the proposed Enhancement Award to Plaintiff, until all other material terms, including the $50 million monetary fund for the settlement class, were agreed upon. At the conclusion of this session, the Parties drafted and executed a Memorandum of Settlement. Thereafter, the Parties negotiated, drafted and executed the comprehensive Settlement Agreement that is currently before the Court and attached hereto as Exhibit "A".

14. In settling this case, the Parties agreed to model the Settlement Agreement, to the greatest extent practicable, after the settlement approved by the Ninth Circuit in the *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015) ("*In re DVD-Rental*"). Accordingly, many of the terms and provisions in the Parties' Settlement Agreement, such as the release language, track verbatim the terms and provisions of the settlement agreement in that case. The most notable exception is the plan of allocation, which is intended to improve upon the *In re DVD-Rental* settlement by providing settlement proceeds on a pro rata basis instead

of a flat per capita basis. The Parties agreed that this is a more equitable way to distribute settlement funds. A true and correct copy of the settlement agreement from the *In re DVD-Rental* litigation is attached hereto as Exhibit B.

15. During their negotiations, the Parties were aware of at least two appellate court decisions that were imminently forthcoming, either one of which had the potential to materially impact this case - *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 879 (9th Cir. 2015); and *In re Tobacco Cases II*, 2015 WL 5673070 (Cal. App. Sept. 28, 2015).

16. The Parties also negotiated under a cloud of uncertainty concerning JCPenney's financial status and ability to pay a substantial sum in settlement, let alone its ability to pay a final judgment. In connection with her summary judgment and class certification briefing, Plaintiff previously documented JCPenney's faltering financial status following its stint with "fair and square" pricing beginning in February 2012.

17. A true and correct copy of relevant excerpts from JCPenney's Form 10-K, dated March 31, 2015 is attached hereto as Exhibit C. The Form 10-K shows that the Company's stock price ended at $7.27 and traded at under $10 for most of 2014, and that this was a significant decline from its stock price in the years prior to 2012. Ex. 3 at 21-22. It also shows that JCPenney suffered an adjusted net loss from operations of more than $1.4 billion in 2013 and $816 million in 2014, compared to an adjusted net income of $207 million in 2011. *Id.* at 23. Moreover, at the time of settlement, the Company had free cash flow of only $57 million and had, since 2011, suffered a total adjusted net loss of more than $3 billion. *Id.* To be sure, JCPenney's financial status, as disclosed in its public filings and media reports, weighed heavily on the settlement negotiations in this case.

18. The settlement is conditioned on the Court modifying its Certification Order by including persons who purchased qualifying products in 2013 and 2014, as well as by eliminating the exclusion based on a class member's use of coupons.

Plaintiff and her counsel agreed that it would be appropriate to expand the settlement class to include more persons who were likely subjected to JCPenney's deceptive price comparison advertising. They also believe that it is appropriate to eliminate the exclusion based on customers using coupons because they have not discovered any mechanical method of identifying such persons, and the cost and burden of manually identifying such persons through a review of customer receipts would greatly outweigh the benefit of maintaining this exclusion through the settlement process. Moreover, discovery strongly suggests that the number of class members to whom this exclusion would apply would be minimal, and Plaintiff and her counsel only agreed to include this exclusion in their class certification motion as a result of JCPenney's insistence during the Parties extensive meet and confer sessions preceding the motion for class certification. For its part, JCPenney sought to buy and obtain piece for as many consumers as possible, and the settlement was negotiated with these principles in mind.

19. Following mediation and execution of the Memorandum of Settlement, my co-counsel and I reached out to no less than three firms to receive bids and proposals for providing notice and administration duties related to the settlement. Each of the firms was highly experienced and qualified, and each provided thorough and competitive notice proposals. However, as a result of using different assumptions for claim rates and other metrics, and different proposals for publication notice, the bids were not easy to compare on a pure cost basis. Accordingly, my co-counsel and I spent considerable time going back and forth with the three firms in order to normalize the cost estimates for comparison purposes. At the end of this process, my co-counsel and I came to the conclusion that there was not a material difference between the three firms' cost estimates when normalized for comparable services. Accordingly, we selected one of the firms, Heffler Claims Group, primarily based on its reputation and our prior experience working with some of its principals.

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

_____
MATTHEW J. ZEVIN

EXHIBIT “A”

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. J.C. PENNEY CORPORATION, INC., a Delaware Corporation; and DOES 1 through 10, Inclusive, Defendant.	Case No. SACV12 0215 FMO (KESx) **CLASS ACTION** **SETTLEMENT AGREEMENT**

1. Preamble

1.1 This Settlement Agreement amends and supersedes the Memorandum of Settlement entered into on September 10 and 11, 2015, on behalf of the Named Plaintiff and Class Representative, the Settlement Class Members, and JCPenney Corporation, Inc. ("JCPenney" or "Defendant"), as further defined below.

2. Definitions

2.1 The term "Agreement" as used herein means this Settlement Agreement.

2.2 The term "Attorneys' Fees and Costs" as used herein means the attorneys' fees and costs to be requested by Class Counsel subject to Court approval in accordance with Section 6.1.1.1 of this Agreement

2.3 The term " Cash Component" as used herein means the portion of the Class Settlement Amount to be paid in cash in accordance with Section 6.1.1 of this Agreement

2.4 The term "Claim" as used herein means a Claim submitted by way of a Claim Form in accordance with this Agreement.

2.5 The term "Claim Form" as used herein means the Claim Form for the Settlement Class attached hereto as Exhibit "1" which is agreed to by the Parties subject to Court approval as the method by which a Class Member may submit a Claim. Only those Settlement Class Members who submit a Claim Form, in the manner set forth in this Agreement, shall be eligible to recover a share of the Settlement proceeds.

2.6 The term "Claimant" as used herein means any Settlement Class Member who submits a Claim Form.

2.7 The term "Claims Administrator" as used herein means Heffler Claims Group, or another entity subsequently selected, which, subject to Court approval, shall perform the duties of, among other things: (i) providing Notice, Claim Forms and Opt-Out Request Forms to Settlement Class Members; (ii) publishing the

Publication Notice; (iii) providing notice as required by the Class Action Fairness Act, 28 U.S.C. § 1715; (iv) tracking returned Claim Forms and Opt-Out Requests; (v) notifying the Parties of determinations regarding submitted Claim Forms and Opt-Out Requests consistent with this Agreement; (vi) distributing settlement checks and Store Credits; and (vii) other notice and administration duties in accordance with this Agreement and the District Court's orders.

2.8 The term "Class Allocation" as used herein means the amount in addition to the Cash Component up to the Class Settlement Amount which JCPenney agrees to pay in accordance with Section 6.1.2 of this Agreement.

2.9 The term "Class Counsel" as used herein means the following counsel who have appeared on behalf of the Named Plaintiff and who have been appointed by the Court as Class Counsel: Stanley Law Group and The Emge Firm, LLP.

2.10 The term "Class List" as used herein means the sales and transaction data for all private and exclusive branded products of apparel or accessories purchased at a discount of at least 30% by consumers in California during the Settlement Class Period.

2.11 The term "Class Representative" as used herein means Cynthia E. Spann, whom the District Court has appointed as Class Representative.

2.12 The term "Class Representative Enhancement Payment" as used herein means the amount Class Counsel shall request be paid in accordance with Section 6.1.1.2 of this Agreement.

2.13 The term "Class Settlement Amount" as used herein means $50,000,000 to be made available by JCPenney pursuant to this Settlement, which represents JCPenney's total liability under this Agreement.

2.14 All dates for events provided herein based on a number of calendar days (unless the date is expressed in terms of "business days") shall be calculated using the same approach as calculating days under the Federal Rules of Civil Procedure.

2.15 The term "District Court" as used herein means the United States District Court for the Central District of California and any appellate court which may review any orders related to this Settlement.

2.16 The term "Execution" as used herein refers to the signing of this Agreement by all signatories hereto.

2.17 The term "Final Judgment" as used herein refers to the Final Judgement and Order approving the Settlement and dismissing the Litigation with prejudice as against JCPenney, substantially in the form of the proposed Final Judgment attached hereto as Exhibit "5," which this Settlement contemplates will be entered and approved by the District Court.

2.18 The term "Litigation" means the underlying litigation between the Parties, *Spann v. J.C. Penney Corporation, Inc.*, Case No. SACV12-0215 FMO (KESx), pending in the District Court.

2.19 The term "Named Plaintiff" as used herein means the named plaintiff, Cynthia E. Spann.

2.20 The term "Notice" as used herein means a document substantially in the form of the Notice of Proposed Class Action Settlement Between Plaintiff and JCPenney attached hereto as Exhibit "2," which has been agreed to by the Parties subject to Court approval and which the Claims Administrator will send to each Settlement Class Member, or make available through the Settlement Website, explaining the terms of the Settlement and the Claims, Opt-Out, and objection processes.

2.21 The term "Notice and Administration Costs" as used herein means the costs to send Notice and administer the Settlement as contemplated by this Agreement.

2.22 The term "Parties" as used herein means the Named Plaintiff, the Settlement Class Members, and JCPenney.

2.23 The term "Post-Card Notice" as used herein means a Notice substantially in the form of the summary notice attached hereto as Exhibit "3," and which directs Settlement Class Members to the Settlement Website.

2.24 The term "Preliminary Approval," shall mean the Court's entry of an order pursuant to Rule 23e and the Court's Rules or Standings Orders.

2.25 The term "Publication Notice" as used herein means a summary Notice substantially in the form of the summary notice attached hereto as Exhibit 4 and which, subject to Court approval, shall be used for publication purposes.

2.26 The terms "Qualified Settlement Fund" or "QSF" as used herein means the Qualified Settlement Fund to be set up in accordance with Section 12 of this Agreement.

2.27 The term "Releasing Settlement Class Members" as used herein means the Named Plaintiff and all Settlement Class Members, other than those who submit Opt-Out Requests.

2.28 The term "Request to Opt Out" as used herein means the request for Opt Out to be sent by any Settlement Class Member not wishing to remain in the Settlement Class.

2.29 The term "Opt-Out Request Form" as used herein means a form that will be available for download on the Settlement Website which can be used by Settlement Class Members to Request to Opt Out. Settlement Class Members are not required to use the Opt-Out Request Form in order to communicate their desire to opt out of the Settlement.

2.30 The term "Settlement" as used herein means the compromise and settlement of the Litigation as contemplated by this Agreement.

2.31 The term "Settlement Class" as used herein means all persons who, while in the State of California and between November 5, 2010 and January 31, 2012, and between January 1, 2013 through December 31, 2014, purchased from JCPenney one or more private or exclusive branded items of apparel or accessories

at a discount of at least 30% off of the stated "original" or "regular" price, and who have not received a full refund or credit for their purchases. Excluded from the Settlement Class are Defendant, as well as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as all past and present employees, officers and directors of JCPenney.

2.32 The term "Settlement Class Member Released Claims" as used herein means the claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, or liabilities that are released, acquitted and discharged pursuant to Section 13 of this Agreement.

2.33 The term "Settlement Class Members" as used herein means the Named Plaintiff and all members of the Settlement Class.

2.34 The term "Settlement Class Period" as used herein means the period of time from November 5, 2010 to January 31, 2012, and January 1, 2013 through December 31, 2014.

2.35 The term "Settlement Effective Date" as used herein means the first day following the last of the following occurrences:

2.35.1 The date the time to appeal or seek permission to appeal or seek other judicial review of the entry of the Final Judgment approving the Settlement and dismissing this Litigation with prejudice as to JCPenney has expired with no appeal or other judicial review having been taken or sought; or

2.35.2 If an appeal or other judicial review has been taken or sought, the latest of: (i) the date the Final Judgment is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review therefrom; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the District Court following an appeal or other review, the date the Final Judgment

is entered by the District Court after remand and the time to appeal or seek permission to appeal or seek other judicial review of the entry of that Final Judgment has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

2.36 The term "Settlement Website" as used herein means an Internet website maintained by the Claims Administrator containing the Notice, Claim Form, Opt-Out Request Form, Settlement Class Member information about their individual allocation of the Settlement, instructions on how to submit a Claim Form and/or additional receipts providing evidence of additional qualifying purchases, and where Store Credits may be obtained.

2.37 The term "Store Credit" as used herein means an electronic Store Credit redeemable for purchases at any JCPenney store or www.jcpenney.com. Each Store Credit shall be fully transferable, stackable and may be used in connection with any promotional discount(s). Store Credits have no expiration date and need not be used in full at any time. They will maintain a running balance that is depleted based on use until the balance is zero, but are not redeemable for cash.

2.38 The term "Store Credit Amount" as used herein means the initial value of each electronic Store Credit, which shall be determined in accordance with Section 6.1.2.1.4 of this Agreement.

2.39 The term "Verified Claims" as used herein means those Claims which are approved by the Claims Administrator for payment after the deadline for audits allowable under Section 8.6 has expired, or, if an audit or objection is made, after all audits or objections have been resolved in accordance with Section 8.6 of this Agreement.

3. RECITALS

3.1 On February 8, 2012, Plaintiff Cynthia Spann filed a class action complaint against JCPenney in the United States District Court for the Central District of California.

3.2 Plaintiff filed a first amended complaint on March 19, 2012, a second amended complaint on April 23, 2012, a third amended complaint on July 22, 2013, and a fourth amended complaint ("Complaint") on March 5, 2014.

3.3 Plaintiff's Complaint alleges that JCPenney engaged in a scheme of false price comparison advertising prior to February 2012 and then again starting in 2013 through 2014. Specifically, Plaintiff alleges that JCPenney advertised "sale" prices that were substantially lower than its advertised "regular" or "original" prices for its private and exclusive branded apparel and accessories, but used false regular and original prices at which it hardly, if ever, offered, sold or intended to sell its merchandise. Plaintiff's allegations included claims under California's (1) Unfair Competition Law, Cal. Bus. & Prof. Code §§17200 *et seq.*; (2) False Advertising Law, Cal. Bus. & Prof. Code §§17500 *et seq.*; and (3) Consumers Legal Remedies Act, Cal. Civ. Code §§1750 *et seq.* Plaintiff sued for restitution and injunctive relief.

3.4 On March 23, 2015, the Court entered an order in which it denied JCPenney's motion for summary judgment.

3.5 On May 18, 2015, the Court entered an order in which it certified the following class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

> All persons who, while in the State of California and between November 5, 2010 and January 31, 2012 purchased from JCPenney one or more private or exclusive branded items of apparel or accessories advertised at a discount of at least 30% off of the stated "original" or "regular" price, and who have not received a refund or credit for their purchases.

Excluded from the class are defendant, as well as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as all past and present employees, officers and directors of JCPenney. Also excluded is any person who only received a discount of 30% or more as a result of using one or more coupons.

The Court also appointed Plaintiff as Class Representative and appointed The Stanley Law Group and The Emge Firm, LLP as Class Counsel.

3.6 Plaintiff and Class Counsel believe this Litigation is meritorious. They have conducted a thorough investigation into the facts of this case and have diligently pursued an investigation of JCPenney's price comparison advertising policies and practices, including, but not limited to; (i) researching the applicable law and the potential defenses; (ii) conducting numerous depositions in Washington D.C., Plano, Texas, Los Angeles and Palo Alto; (iii) reviewing and analyzing JCPenney's public filings and internal documents concerning its advertising, pricing and promotional practices, and reviewing and analyzing JCPenney's sales data for every private and exclusive branded product of apparel and accessory sold in California between November 5, 2010 and January 31, 2012; (iv) conducting in-store and online reviews to determine and document JCPenney's pricing practices throughout the Litigation; (v) hiring and consulting with experts; (vi) developing arguments for class certification; (vii) briefing numerous motions, including multiple motions to dismiss, three motions for class certification, two motions for summary judgment and various discovery related motions; (viii) obtaining class certification and defeating JCPenney's motion for summary judgment; (ix) attending four mediations; and (x) preparing for trial. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members as well as future California consumers, in light of all

known facts and circumstances, including the risk of significant delay, the defenses asserted by JCPenney, trial risk and appellate risk.

3.7 JCPenney denies liability and wrongdoing of any kind associated with the claims alleged and contends that this Litigation is not appropriate for class treatment. JCPenney continues to assert that the Plaintiff will not be able to establish any restitutionary remedy or injunctive relief at trial. JCPenney continues to assert that it has complied with all applicable provisions of California's price comparison advertising laws. JCPenney further states that despite its good faith belief that it is not liable for any of the claims asserted, and despite its good faith belief that certification was not appropriate, JCPenney will not oppose the District Court's certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. JCPenney's agreement to certification of the Settlement Class is without prejudice to JCPenney's rights to oppose certification of a class or oppose any other claim in the Action, should the Agreement not be approved or implemented for any reason.

3.8 In the event the Agreement is not approved or is otherwise terminated, this Agreement shall be deemed null and void and be of no further force or effect and may not be used by either Party for any purpose in this or any other Action.

3.9 The entry of Final Judgment in this Litigation shall dismiss with prejudice all claims which were or which could have been alleged in the Litigation by Settlement Class Members against JCPenney, with the exception of any claims which might be retained by Settlement Class Members who exclude themselves from the Settlement, if any. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to effectuate its terms, and to dismiss this Litigation with prejudice.

4. CERTIFICATION OF THE SETTLEMENT CLASS

4.1 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and

if for any reason the District Court does not grant final approval of the Settlement, or if final approval is not granted following appeal of any order by the District Court, the certification of the Settlement Class shall be deemed null and void, and each Party shall retain all their respective rights as they existed prior to the execution of the Settlement Agreement, including maintenance of the original Class certified by the Court on May 18, 2015.

5. SETTLEMENT CLASS

5.1 The Court has already certified a Class, but the Parties agree to request that the Court amend its certification order and certify for settlement purposes only the following Settlement Class:

5.1.1 All persons who, while in the State of California and between November 5, 2010 and January 31, 2012, and between January 1, 2013, and December 31, 2014, purchased from JCPenney one or more private or exclusive branded items of apparel or accessories advertised at a discount of at least 30% off the stated "original" or "regular" price, and who have not received a refund or credit for their purchase(s).

Excluded from the Settlement Class are defendant, as well as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as all past and present employees, officers and directors of JCPenney.

5.2 The Settlement is conditioned on the Court certifying this Settlement Class.

5.3 JCPenney and Class Counsel may agree to request that the Court certify additional settlement subclasses as may be appropriate.

6. TERMS OF SETTLEMENT

6.1 Subject to the other terms and conditions of this Agreement, and subject to Court approval, JCPenney agrees that the Class Settlement Amount shall be a fixed sum, not to exceed $50,000,000.00, to be composed of both a Cash Component and a Class Allocation as follows:

6.1.1 JCPenney agrees to pay a portion of the Class Settlement Amount in cash. This cash payment, called the Cash Component, shall cover the following:

6.1.1.1 Reasonable Attorneys' Fees and Costs. Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees not to exceed 27% of the Class Settlement Amount and an award of their actual and reasonable litigation expenses not to exceed $500,000. JCPenney will not oppose an application for a reasonable award of Attorneys' Fees and Costs sought in accordance with this Agreement. In the event that the Court does not approve the Award of Attorneys' Fees and Costs requested by Class Counsel, or if the Court awards Attorneys' Fees and Costs in an amount less than that requested by Class Counsel, the amount that is not awarded will be available for distribution to the Class and the Court's decision shall not affect the validity and enforceability of the Settlement and shall not be a basis for anyone to seek to void the Settlement or for rendering the entire Settlement null, void, or unenforceable. Class Counsel retain their right to appeal any decision by the Court regarding the Court's award of Attorneys' Fees and Costs.

6.1.1.2 Reasonable Class Representative Enhancement Payment. Class Counsel intends to seek $10,000.00 for the Class Representative. JCPenney will not oppose the application. Any request made by Class Counsel in accordance with this Section is without prejudice to the Class Representative's right to file a Claim as a Settlement Class Member. In the event that the Court does not approve the Class Representative Enhancement Payment, or the Court awards an amount that is less than sought, the amount that is not awarded will be available for distribution to the Class and shall not affect the validity and enforceability of the Settlement and shall not be a basis for anyone to seek to void the Settlement or for rendering the entire Settlement null, void, or unenforceable.

6.1.1.3 The actual Notice and Administration Costs incurred in

accordance with this Agreement, in an amount not to exceed $2,667,000.

6.1.1.4 The payments identified in Sections 6.1.1.1- 6.1.1.3 of this Agreement shall be paid solely from the Cash Component of the Class Settlement Amount. Any portion of the Class Settlement Amount not used for the Cash Component shall comprise the Class Allocation.

6.1.2 Payments to Claimants shall be paid from the Class Allocation, which shall consist of the amount remaining after the aggregate amount required to be used for the Cash Component has been subtracted from the Class Settlement Amount. For example, if the amount used for the Cash Component equals Sixteen Million Dollars ($16,000,000), the Class Allocation will be Thirty Four Million Dollars ($34,000,000) or, alternatively, if the amount used for the Cash Component equals Ten Million Dollars ($10,000,000), the Class Allocation will be Forty Million Dollars ($40,000,000). The Class Allocation shall be payable by either a Store Credit or, at the Claimant's election, a cash payment of equal amount instead of a Store Credit to those Claimants who submit an approved Claim Form in accordance with Section 8. The value of each Store Credit or cash payment shall be determined in accordance with Section 6.1.2.1.

6.1.2.1 The Store Credit Amount or cash payment shall be determined as follows. Each Claimant will be assigned points (see Section 6.1.2.1.4) that will be divided by the total points of all Claimants who submit timely and valid Claim Forms. The quotient shall be the percentage of the Class Allocation which each such Claimant will receive.

6.1.2.1.1 Points will be determined by the purchase value, including tax, of all private and exclusive branded apparel and accessories purchased at a discount of at least 30% off the stated "original" or "regular" price by the Claimant during the Settlement Class Period. For purposes of determining the purchase value, all amounts shall be rounded up to whole dollars.

6.1.2.1.2 The sales and transaction data for all qualifying

purchases for all known and identifiable Settlement Class Members will be supplied by JCPenney to the Claims Administrator who will determine the total number of points per Claimant and who shall include on each known and identifiable Settlement Class Member's on-line information, the date and purchase amount of each transaction.

6.1.2.1.3 At their option, Claimants who believe that their transaction data is missing, incomplete or inaccurate in any way may submit receipts demonstrating qualifying purchases, which may increase their allocation points. The Claims Administrator will compare all SKU numbers submitted by Claimants to determine whether or not they represent additional, qualified purchases.

6.1.2.1.4 Claimants who certify under penalty of perjury that they are members of the Settlement Class, but for which there is no information in the sales and transaction data supplied by Defendant and no receipts from the Claimant proving purchase, will receive one point. Claimants with corresponding sales and transaction data and/or receipts demonstrating total purchase amounts will be assigned points as follows:

$1-100 = 2 points

$101-200 = 3 points

$201-300 = 4 points

$301-400 = 5 points

$401-500 = 6 points

$501-600 = 7 points

$601-700 = 8 points

$701-800 = 9 points

$801 + = 10 points

6.1.3 Claimants who select a Store Credit will be able to download the Store Credit from the Settlement Website. JCPenney will maintain appropriate

systems in order to track the available balance(s), if any, remaining on Store Credits.

6.1.4 Claimants may elect to receive a cash payment instead of a Store Credit. Cash payments shall be mailed to the Claimant at the address provided by the Claimant in the Claim Form. The costs of mailing cash payments to Claimants shall be part of the costs of Notice and Administration as set forth in this Agreement, and shall be paid from the Cash Component. In the event such costs become prohibitively expensive relative to the Class Allocation and would unduly diminish the per Claimant recovery, the Parties agree to mediate with David Rotman, at their own expense, to devise alternatives.

6.1.5 Each Claimant who receives any monies paid in accordance with this Agreement is responsible for any taxes associated with the monies received by that recipient. If required by applicable law, the QSF shall issue 1099s to Class Counsel (for payments of Attorneys' Fees and Costs awarded by the District Court) and to the Named Plaintiff for any Class Representative Enhancement Payment authorized by the Court.

6.1.6 Cy Pres. To the extent that any settlement checks mailed to Claimants are not cashed within one hundred eighty (180) days from the date of issue, the amount represented by those uncashed checks shall be distributed to the National Consumer Law Center ("NCLC"), or another Cy Pres recipient agreed to by the Parties and approved by the Court.

6.1.7 Injunctive Relief. As a direct result of this Litigation, JCPenney agrees that its advertising and pricing practices as of the date of this Settlement Agreement, and continuing forward, will not violate Federal or California law, including California's specific price-comparison advertising statutes. Specifically, JCPenney agrees that any former price to which JCPenney refers in its price comparison advertising will be the actual, bona fide price at which the item was openly and actively offered for sale, for a reasonably substantial period of time, in

the recent, regular course of business, honestly and in good faith. As a further direct result of this Litigation, JCPenney shall implement a compliance program, which will consist of periodic (no less than once a year) monitoring, training and auditing to ensure compliance with California's price comparison laws.

7. NOTICE TO THE CLASS

7.1 Given the expected size of the Settlement Class, the Parties agree that direct notice via email is the best practicable notice for those Settlement Class Members for which such information exists. Where only a mailing address is available for a Settlement Class Member, or for all Settlement Class Members whose E-Mailed Notice was not deliverable, a Post-Card Notice shall be mailed by first class mail. Recognizing that there are Settlement Class Members for whom neither e-mail nor mailing addresses are available, notice by print and internet publication as agreed to by the Parties and authorized by the Court will be used to supplement the E-Mailed and Post-Card Notices. Class Counsel agrees to use their best efforts to obtain Preliminary Approval of a notice plan to achieve the best practicable notice consistent with this section.

7.1.1 The E-Mailed Notice shall provide Settlement Class Members with an unique identification number that may be used on the Settlement Website to access their allocation points and submit additional receipts should they have any. The E-Mailed Notice shall also advise Settlement Class Members of the deadline for submitting Claim Forms, their right to opt out of the Settlement or to object to the Settlement, the process by which such opt-outs or objections must be made, and the date set by the District Court for a hearing on final approval of the Settlement. Subject to Court approval, the E-Mailed Notice shall be substantially in the form attached hereto as Exhibit 2.

7.1.2 In the event that e-mail notice is impossible, impractical, or otherwise not the best practicable notice, Post-Card Notice shall be utilized to direct Settlement Class Members to the Settlement Website where their unique

identification number will provide them access to their allocation points and direct them on how to submit additional receipts should they have any. The Post-Card Notice shall be substantially in the form attached hereto as Exhibit 3.

7.1.3 Because some of the sales data during the Settlement Class Period do not have corresponding customer names or addresses, the Parties agree that notice by publication would be the best practicable notice for the balance of the Settlement Class. The Claims Administrator will utilize notice by publication in addition to the E-Mailed Notice and Post-Card Notice. The Publication Notice shall include instructions as to how to access the Settlement Website and how to request a Claim Form and instructions on how to submit it. The Publication Notice shall also advise Settlement Class Members of their right to opt out of the Settlement or to object to the Settlement, the process and deadlines by which such opt-outs or objection must be made and the date set by the District Court for a hearing on final approval of the Settlement. Subject to Court approval, the Publication Notice shall be substantially in the form attached hereto as Exhibit 4.

7.2 JCPenney will provide the Class List to the Claims Administrator in sufficient time for Notice to go out. JCPenney and Plaintiff agree that all Class List information shall be treated as confidential, and that the contents of the Class List shall not be shared with third parties other than the Claims Administrator and that the Claims Administrator shall be required to preserve the confidentially of the Class List.

7.3 The E-Mailed Notice shall be sent to Settlement Class Members within thirty (30) days following the District Court's Preliminary Approval of the Settlement, provided that any challenges or other barriers to the use of E-Mailed Notice have been resolved. The Post-Card Notice shall be sent to Settlement Class Members within fifty (50) days following the District Court's Preliminary Approval of the Settlement. The Publication Notice shall be published on the soonest practicable date after the E-Mailed Notice and Post-Card Notice is sent, but in no

event shall it commence more than ten (10) days later.

7.4 The E-Mailed Notice, Claim Form, Opt-Out Request Form, Complaint, Settlement Agreement and other materials as agreed to by the Parties shall be available on the Settlement Website. The Claims Administrator shall also establish a toll-free phone line and an e-mail box to respond to inquiries from Settlement Class Members. The Settlement Website address, toll-free phone number, and e-mail box address will be included in the E-Mailed Notice, Post-card Notice and in the Publication Notice.

7.5 Class Counsel shall obtain estimates from one (1) or more claims administrators as to the estimated costs of notice as described in Sections 7.1 and the estimated costs of administration of the Settlement. Notice and Administration Costs shall be capped at an amount equal to fifteen percent (15%) over the estimate provided by the chosen Claims Administrator. If the actual Notice and Administration Costs are less than the estimated Notice and Administration Costs, the balance will become part of the Class Allocation.

8. VERIFICATION PROCESS

8.1 In order to be eligible to receive a share of the Class Settlement Amount, a Settlement Class Member must submit a completed Claim Form within ninety (90) days from the date notice is disseminated. Only those Settlement Class Members who submit an approved Claim Form shall be eligible to receive an electronic Store Credit or cash. In order for a Claim Form to be considered timely, the Claims Administrator must receive the completed Claim Form by 11:59 p.m. Pacific Time on the ninetieth (90th) day from the date notice is disseminated. These deadlines shall be set forth clearly in the Notice. The Claim Form agreed to by the Parties subject to Court approval is attached hereto as Exhibit 1.

8.2 In order for a Claim Form to be approved, the Claimant must meet the following criteria:

8.2.1 Claim Forms shall be executed under penalty of perjury, but need

not be notarized.

8.2.2 Claimants who wish to receive an Electronic Store Credit may submit their Claim Forms electronically (on the Settlement Website) or by regular mail. If a Claimant prefers to receive cash instead of an electronic Store Credit, in order to minimize fraud risks, the Claimant may only submit the Claim Form by regular mail, and must include the Claimant's social security number.

8.3 Claim Forms and Opt-Out Request Forms shall be available on the Settlement Website. The E-Mailed Notice, the Post-Card Notice and notice by publication shall direct Settlement Class Members to the Settlement Website which shall contain the Claim Forms, Opt-Out Request Form and other documentation concerning the Litigation and Settlement.

8.4 Submission of more than one Claim Form, or submission of an incomplete Claim Form, may render the Claim Form submitted by that Settlement Class Member invalid. The Claims Administrator shall send to all Settlement Class Members who have submitted an incomplete or duplicative Claim Form a notice of deficiency with instructions on how to cure the deficiency. Settlement Class Members will have thirty (30) days to cure deficiencies.

8.5 Within twenty (20) days after the deadline to submit Claim Forms, the Claims Administrator shall provide a spreadsheet to Class Counsel and to JCPenney that contains sufficient information for the Parties to determine the number of approved Claims made by the members of the Settlement Class. The Claims Administrator shall also provide the total number of points calculated pursuant to Section 6.1.2.1.4, as well as summary information (e.g., averages, ranges, etc.) concerning the points and dollar amounts awarded to Claimants. The Claims Administrator shall also provide information regarding rejected Claims, as well as the reasons why each Claim was rejected. The Claims Administrator shall retain the originals of all Claim Forms (including any envelopes with the postmarks) received from Claimants, and shall make copies or the originals

available to JCPenney or Class Counsel within three (3) business days upon request.

8.6 Audit and Challenges Procedure.

8.6.1 Class Counsel and JCPenney shall each have the right to audit the information provided in any Claim Form, and to challenge the Claims Administrator's determinations regarding approval or denial of each Claim Form, in accordance with the following procedures.

8.6.2 Within fourteen (14) days of having received the information contemplated by Section 8.5 of this Agreement, Class Counsel and JCPenney's counsel shall meet and confer regarding any issues that either Class Counsel or JCPenney believes need to be raised with the Claims Administrator. Class Counsel and JCPenney agree to use their best efforts to resolve any disputes. If Class Counsel and JCPenney cannot resolve these issues within twenty-eight (28) days of having received the information contemplated by Section 8.5 of this Agreement, then Class Counsel or JCPenney may, within five (5) days of the expiration of the above twenty-eight (28) day period, provide written notice of their intent to audit the Claims Administrator's determinations with respect to a particular Claim or Claims.

8.6.3 If the audit is filed with the Claims Administrator, the decision of the Claims Administrator may be appealed, within fourteen (14) days of receipt of the Claims Administrator's decision. All decisions by the Court, or such person as the Court may direct, regarding audits shall be made expeditiously and are binding, final decisions which shall not be subject to appeal by any party. If a decision by the Claims Administrators is not presented to the Court, or to such person as the Court may direct, within fourteen (14) days of issuance, the decision of the Claims Administrator becomes a binding, final decision not subject to further appeal.

8.6.4 Class Counsel and JCPenney may invoke their rights under this Section by providing written notice to each other and to the Claims Administrator.

The notice shall identify the Claims that are the subject of the audit, and may be accompanied by supporting papers of no more than two (2) pages, double-spaced, 12-point type (excluding exhibits).

8.6.5 Within fourteen (14) days of receipt of the notice and supporting papers, the non-auditing party may submit a written response of no more than two (2) pages, double-spaced, 12-point type (excluding exhibits).

8.6.6 Given the cost of the audit process relative to the size of the individual claims, the Parties shall only appeal an audit decision to the Court, or to such person as the Court may direct, if the audit decision affects at least 10,000 claims. Audit decisions by the Claims Administrator affecting less than 10,000 claims shall be final and non-appealable.

8.6.7 Notice of audits, any paperwork submitted in support of, or in response to, any audit, and the decisions by the Claims Administrator may be served by e-mail or United States Mail.

9. OPT-OUT PROCESS

9.1 A Settlement Class Member who wishes to exclude himself or herself from this Settlement and from the release of claims pursuant to this Settlement shall submit a Request to Opt Out. For a Request to Opt Out to be accepted, it must be timely and valid. To be timely, it must be postmarked by the date which is ninety (90) days after the date notice is disseminated. To be valid, the Request to Opt Out must be signed and dated. Opt-Out Request Forms, substantially similar to the attached Exhibit 6, shall be available for download from the Settlement Website and, upon request by a Settlement Class Member, made available by the Claims Administrator through First Class Mail.

9.2 A Settlement Class Member who submits a Request to Opt Out is not eligible to recover a share of the Class Settlement Amount. No Settlement Class Member may submit both a Request to Opt Out and a Claim Form, and if a Settlement Class Member submits both a Request to Opt Out and a Claim Form, the

Request to Opt Out will govern.

9.3 The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to the Parties upon request. The Claims Administrator shall retain the originals of all Requests to Opt Out (including the envelopes with the postmarks) received from Settlement Class Members, and shall make copies or the originals available to JCPenney or Class Counsel within three (3) business days upon request.

9.4 JCPenney, at its sole discretion, has the right to terminate this Settlement pursuant to the terms of the confidential Supplemental Agreement Regarding Opt Outs.

10. OBJECTION PROCESS

10.1 A Settlement Class Member who wishes to object to the Settlement must notify the District Court of his or her objection, in writing, within ninety (90) days of notice being disseminated.

10.2 To be considered valid, an objection must be in writing, must include the objector's name and address, and must include the basis for the objection (including why the objector believes the Settlement is not in the best interests of the Settlement Class), along with any and all documents that support the objection. The objection must also indicate whether or not the objector intends to appear at the hearing on the motion for final approval of the Settlement. The objection must be filed with the Court on or before the deadline. Additional instructions regarding how to object to the Settlement are contained in the Notices.

10.3 Settlement Class Members who do not file a timely written objection in accordance with the procedures set forth in this Agreement and the Notices shall be deemed to have waived any objections to the Settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, or any aspect of the Settlement, including, without limitation, the fairness, reasonableness, or adequacy of the Settlement, or any award of Attorneys'

Fees and Costs, reimbursement of costs and expenses and/or the Class Representative Enhancement Payment.

11. DISTRIBUTION PROCESS

11.1 The Class Settlement Amount shall be funded through a QSF in accordance with Section 12 of this Agreement. The timing of the payments by JCPenney to the QSF shall be as follows:

11.1.1. Within ten (10) business days following the date on which the District Court enters an order granting Preliminary Approval of the Settlement, or within ten (10) business days of the date on which the District Court enters an order approving the QSF, whichever is later, JCPenney shall transfer to the QSF the estimated Notice and Administration Costs as determined in accordance with Section 7.5. JCPenney shall continue to periodically fund the QSF to cover additional Notice and Administration Costs, if required, in accordance with Section 7.5. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Claim Administrator for notice and administration shall not be refundable to JCPenney. If, however, JCPenney has paid into the QSF monies for Notice and Administration, those amounts not used by the Claims Administrator shall be refunded to JCPenney.

11.1.2. Within ten (10) business days following the Settlement Effective Date, JCPenney shall transfer to the QSF amounts sufficient to cover the remainder of the Cash Component, to include the Attorneys' Fees and Costs awarded by the Court pursuant to Section 6.1.1.1, and the Class Representative Enhancement Payment awarded by the Court pursuant to Section 6.1.1.2. Class Counsel shall provide the information as to where these payments should be made and that information may be included in the District Court's Final Judgment, or in a separate order to be entered by the District Court.

11.1.3 Within fifteen (15) business days after (i) the Settlement Effective Date or (ii) the date on which the claims process, including all audits of

any Claims, has been concluded and the final dollar value of all Approved Claims is known, whichever is later, JCPenney shall transfer to the QSF additional amounts sufficient to cover the approved Claims requesting a cash payment, up to the Class Settlement Amount. During the same period, and with the assistance of the Claims Administrator, the Parties shall agree on a reasonable and cost effective process to provide Store Credits to Claimants who elect to receive them instead of cash.

11.2 Distributions from the QSF shall be handled as follows:

11.2.1 Other than for purposes of paying invoices submitted by the Claims Administrator, the QSF shall not distribute any payments required under this Agreement until after the Settlement Effective Date has occurred.

11.2.2 Attorneys' Fees and Costs awarded by the Court pursuant to Section 6.1.1.1 and the Class Representative Enhancement Payment awarded by the Court pursuant to Section 6.1.1.2 shall be paid to the individuals or entities specified in the Court order and Final Judgment to be obtained in accordance with Section 15.

11.2.4. Subject to the other provisions of this Section, the payments shall be made from the QSF to the appropriate recipients within a reasonable time after receipt of the funds from JCPenney, or receipt of a Court order or other authorization for the release of such funds, as appropriate.

12. QUALIFIED SETTLEMENT FUND

12.1 At the times required by Section 11 of this Agreement, JCPenney shall transfer to a trustee selected jointly by Class Counsel and JCPenney (the "Trustee") the required portions of the Class Settlement Amount to be held in a separate trust constituting a QSF, as described in Treasury Regulation § 1.468B-1,26 C.F.R. § 1.468B-1. Class Counsel and JCPenney jointly shall cause the Trustee to take such steps as necessary to qualify the QSF under § 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and the regulations promulgated pursuant thereto. JCPenney shall be considered the "transferor" within the meaning of Treasury

Regulation § 1.468B-1(d)(1). The Claims Administrator shall be the "administrator" within the meaning of Treasury Regulation §1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its Preliminary Approval of the Settlement and Notice. The Court shall retain jurisdiction over the administration of the QSF. JCPenney shall supply to the Claims Administrator and to the Internal Revenue Service the statement described in Treasury Regulation § 1.468B-3(e)(2) no later than February 15 of the year following each calendar year in which JCPenney makes a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the "all events test" and the "economic performance" requirement of § 461(h)(1) of the Internal Revenue Code, and Treasury Regulation § 1.461-1(a)(2). Accordingly, JCPenney shall not include the income of the QSF in its income. Rather, the QSF shall be taxed on its modified gross income, excluding the sums transferred to it, and shall make payment of resulting taxes from its own funds. In computing the QSF's modified gross income, deductions shall be allowed for its administrative costs and other deductible expenses incurred in connection with the operation of the QSF, including, without limitation, state and local taxes, and legal, accounting, and other fees relating to the operation of the QSF.

12.2 Upon establishment of the QSF, the Trustee shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4).

12.3 If requested by either JCPenney or the Claims Administrator, the Claims Administrator, the Trustee and JCPenney shall fully cooperate in filing a relation-back election under Treasury Regulation § 1.468B-1(j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

12.4 Following its deposits as described in Section 12.1 of this Agreement, JCPenney shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of

Verifications and Opt-Out Requests, the allowance or disallowance of claims by Claimants, payments to Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge JCPenney's obligations to Claimants and Class Counsel and for expenses of administration in respect to the disposition of the Class Settlement Amount hereunder. Rather, the Claims Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Claimants and Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of JCPenney or Class Counsel to audit determinations of the Claims Administrator in accordance with Section 8.6 of this Agreement or to seek redress for any breach of the terms hereof.

12.5 The Claims Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(l)(2)(ii). The Claims Administrator may, at its own expense, retain legal counsel and an independent, certified public accountant to consult with and advise the Claims Administrator or the Trustee with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Either JCPenney or the Claims Administrator, independently or jointly, may, but are not required to, apply to the Internal Revenue Service and/or any applicable state taxing authority for an advance ruling as to any issue pertinent to the qualification of the QSF under Internal Revenue Code § 468B and Treasury Regulations promulgated thereunder, its tax status under applicable state law, and/or its tax payment, reporting and withholding duties. Settlement Class Members shall be responsible for payment of

appropriate federal, state, and local income taxes on any claim paid out pursuant to this Agreement. If, in any such ruling or otherwise, it is determined that JCPenney has any responsibility whatsoever for payment of any federal, state or local tax on any claim paid out pursuant to this Agreement, then JCPenney shall have the right to terminate this Agreement. The Parties agree that no portion of any distributions from the QSF to the Settlement Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation § 1.468B-1(g) related to Qualified Settlement Funds.

12.6 The taxable year of the QSF shall be the calendar year in accordance with Treasury Regulation § 1.468B-2(j). The QSF shall utilize the accrual method of accounting within the meaning of § 446 (c) of the Internal Revenue Code.

12.7 The Claims Administrator may amend either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established to maintain the qualification of the QSF pursuant to the above described authorities provided that the rights and liabilities of the Parties hereto and the Class are not altered thereby in any material respect.

13. COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL

13.1 Settlement Class Member Released Claims - Released by Settlement Class Members:

13.1.1 Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Releasing Settlement Class Members, do hereby irrevocably release, acquit, and forever discharge JCPenney of and from any and all claims, rights, causes of action, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Agreement), liens, charges, complaints, causes of action, obligations, or liability of any and every kind that were asserted in the Litigation, or that could have been asserted but were not asserted in the Litigation or in any other

court or forum, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and occurrences that were directly or indirectly alleged, asserted, described, set forth, or referred to in the Litigation whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local, including, without limitation, claims under federal or state unfair competition and false advertising laws.

13.1.2. The Settlement Class Member Released Claims also includes a release of all claims for Attorneys' Fees and Costs incurred by Releasing Settlement Class Members or by Class Counsel or any other attorney in connection with the Litigation and this Settlement.

13.1.3. Releasing Settlement Class Members understand and agree that the release of the Settlement Class Member Released Claims is a full and final general release applying to both those Settlement Class Member Released Claims that are currently known, anticipated, or disclosed to Releasing Settlement Class Members and to all those Settlement Class Member Released Claims that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class Members arising out of the alleged facts, circumstances, and occurrences underlying: (i) the claims set forth in the Litigation; or (ii) JCPenney's conduct with respect to the Litigation. Releasing Settlement Class Members acknowledge that the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all such unknown claims. In exchange for the good and valuable consideration set forth herein, all Releasing Settlement Class Members further waive any and all rights or benefits that they as individuals or the class may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation under the terms of § 1542 of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as

follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH DEBTOR.

13.2 JCPenney Released Claims - Release by JCPenney:

13.2.1. Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, JCPenney does hereby irrevocably release, acquit, and forever discharge all Releasing Settlement Class Members of and from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, attorneys' fees, costs and expenses (other than those costs and expenses required to be paid pursuant to this Agreement), liens, charges, complaints, causes of action, obligations, or liability that could have been asserted but were not asserted as a compulsory counterclaim against Releasing Settlement Class Members in this Litigation.

13.2.2 JCPenney understands and agrees that the release of the JCPenney Released Claims is a full and final general release applying to both those JCPenney Released Claims that are currently known, anticipated, or disclosed to JCPenney and to all those JCPenney Released Claims that are presently unknown, unanticipated, or undisclosed to JCPenney arising out of the alleged facts, circumstances, and occurrences, underlying any compulsory counterclaim that could have been asserted in the Litigation. JCPenney acknowledges that the facts could be different than it now knows or suspects to be the case, but it is nonetheless releasing all such unknown counterclaims. In exchange for the good and valuable consideration set forth herein, JCPenney further waives any and all rights or benefits that it may now have as a result of the alleged facts, circumstances, and

occurrences underlying such a potential compulsory counterclaim under the terms of § 1542 (a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH DEBTOR.

13.3 The Parties acknowledge that this Settlement, including the releases provided in this section, reflects a compromise of disputed claims.

13.4 The Final Judgment shall dismiss the Litigation with prejudice as to JCPenney and shall incorporate the terms of this release.

14. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY COURT APPROVAL

14.1 On or before November 10, 2015, or such other date as the Court approves, Class Counsel shall apply to the District Court for the entry of an order granting Preliminary Approval of the Settlement substantially in the following form:

14.1.1 Conditionally Certifying the Settlement Class;

14.1.2. Preliminarily approving the Settlement;

14.1.3 Approving as to form and content the proposed notices and notice plan, including the E-Mailed Notice, Post-card Notice, Publication Notice, Claim Form and Opt-Out Request Form;

14.1.4 Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class;

14.1.5 Approving Cynthia Spann as Settlement Class Representative;

14.1.6 Approving Stanley Law Group and The Emge Firm, LLP as

Class Counsel for the Settlement Class; and

14.1.7. Approving Heffler Claims Group as Claims Administrator.

14.2 JCPenney shall cooperate with Class Counsel as necessary to obtain Preliminary Approval.

15. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

15.1 Following Preliminary Approval by th District Court of the Settlement, and prior to the final fairness hearing, Class Counsel will submit a proposed Final Judgment substantially in the form attached hereto as Exhibit 5. The proposed Final Judgment shall:

15.1.1 Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

15.1.2. Approve Class Counsel's application for an award of Attorneys' Fees and Costs;

15.1.3. Approve the Class Representative Enhancement Payment;

15.1.4. Certify the Settlement Class for Settlement purposes in accordance with applicable legal standards and Section 5 of this Agreement; and

15.1.5 Dismiss this Litigation between the Named Plaintiff and the Settlement Class Members, on the one hand, and JCPenney on the other hand, on the merits and with prejudice and permanently bar the Named Plaintiff, and all Settlement Class Members (other than those who timely filed valid Opt-Out Requests) from further prosecuting any of the Settlement Class Member Released Claims against JCPenney.

15.2 JCPenney shall cooperate with Class Counsel as necessary to obtain final approval and the dismissal of the Litigation as to JCPenney.

15.3 The Final Judgment shall not be considered final until the occurrence of the Settlement Effective Date.

16. MUTUAL FULL COOPERATION

16.1 The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to execution of all necessary documents, and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of JCPenney and its counsel, take all necessary steps to secure the Court's Final Judgment.

17. STATEMENT OF NO ADMISSION

17.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing. JCPenney expressly denies liability for the claims asserted and specifically denies and does not admit any of the pleaded facts not admitted in its pleadings in the Litigation. Nor shall this Agreement constitute an admission by JCPenney as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Likewise, nothing in this Agreement shall be construed or deemed an admission by Plaintiff or the Settlement Class with regards to the validity of any of JCPenney's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

17.2 This Agreement, and all related documents, including the Memorandum of Settlement, the certification for settlement purposes entered pursuant to this Agreement, and any Claim Forms, Requests to Opt-Out or Objections submitted by Settlement Class Members and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement, are settlement documents and shall be inadmissible in

evidence and shall not be used for any purpose in this Litigation or any other judicial, arbitral, administrative, investigative, or other court tribunal, forum, or proceeding, or any other litigation against JCPenney, for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.

17.3 The Claim Forms, Opt-Out Requests or Objections, or other evidence produced or created by any Settlement Class Member in connection with the claims resolutions procedures pursuant to this Settlement, and any actions taken by JCPenney in response to such Claim Forms, Opt-Out Requests, Objections, or other evidence, do not constitute, and will not be deemed to constitute an admission by JCPenney of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

18. VOIDING THE AGREEMENT

18.1 Subject to Section 9.4, in the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement Agreement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, or other litigation against JCPenney.

18.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount request by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel are reduced, that finding shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs or Enhancement Award.

19. SIGNATORIES' AUTHORITIES

19.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

20. NO PRIOR ASSIGNMENTS

20.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber, to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

21. MISCELLANEOUS PROVISIONS

21.1 Construction. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negations between the Parties and that this Settlement shall not be construed in favor or of against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Settlement.

21.2 Captions and Interpretations. Paragraph tiles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

21.3 Modification. This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

21.4 Integration Clause. This Agreement, the Exhibits hereto, the Supplemental Agreement Regarding Opt-Outs, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No

rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

21.5 Binding on Assigns. This Settlement shall be binding upon, and insure to the benefit of, the Parties and their respective heirs, trustee, executors, administrators, successors, and assigns.

21.6 Class Counsel Signatories. It is agreed that because the Settlement Class Member are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement. The E-Mailed Notice, Post-Card Notice and Publication Notice will provide all Settlement Class Members with a summary of the Settlement, and will advise all Settlement Class Members of the binding nature of the release. Excepting only those Settlement Class Members who timely submit an Opt-Out Request, the E-Mailed Notice, Post-Card Notice and Publication Notice shall have the same force and effect as if this Settlement was executed by each Settlement Class Member.

21.7 Counterparts. This Agreement may be executed by facsimile signature and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

21.8 Applicable Law. This Agreement shall be governed by California law without regard to its choice of law or conflicts of law principles or provisions.

22. DISPUTES

22.1 Mediation. The Parties agree that they will first attempt to resolve any disagreements or disputes over the implementation of the terms of the Settlement, this Agreement, or any other documents necessary to effectuate the Settlement through mediation with David A. Rotman or, if Mr. Rotman is unavailable, through another mediator that is mutually agreeable to the Parties. In the event that one or more of the Parties institutes a legal action, arbitration or other proceeding against

any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, they will bear their own costs, expenses and attorney's fees.

23. CONFIDENTIALITY

23.1 Subject to the provision of Section 24 any and all negotiations related to this Agreement (including the negotiations related to the drafting of this Agreement, and any negotiations prior to Preliminary Approval or between the time of preliminary and final approval) will remain strictly confidential and shall not be discussed with anyone other than the Named Plaintiff and JCPenney, their retained attorneys, their accountants and financial or tax advisers, the retained consultants, the Court, and the mediator David A. Rotman and his staff, unless otherwise agreed to by Class Counsel and JCPenney or unless otherwise ordered by the Court. Notwithstanding the other provisions of this Section, JCPenney may disclose the Settlement in filings that JCPenney is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to investors. This provision does not prohibit the Parties from presenting to the Court as much information about their settlement negotiations as they mutually agree is necessary, or as the Court requires, to procure approval of this Settlement.

24. PRESS RELEASE

24.1 The Parties will work together to prepare a joint press release regarding this Settlement to be issued on a mutually agreeable date no later than ten (10) days after the filing of the motion for Preliminary Approval. Other than this press release, and prior to such time as final approval has been granted by the Court, neither side shall publish or make, in print, online or otherwise, including without limitation, Class Counsel's websites, any statement concerning the Settlement. Both sides shall decline to respond to media inquiries concerning the Settlement other than to refer the media to the press release until such time as final approval has been granted by the Court. This Paragraph does not preclude appropriate notice

by publication. This provision shall in no way limit JCPenney's statements in its filings with the Securities and Exchange Commission or during its earnings conference calls. After dismissal, the Parties retain their right to speak with the media and publish any appropriate statement concerning the Settlement as they deem appropriate.

25. DOCUMENTS AND DISCOVERY

25.1 Within thirty (30) days after a final, non-appealable Judgment is entered disposing of all claims in the Litigation, Class Counsel agrees to take steps necessary to destroy or erase all documents and data produced by JCPenney in the Litigation. Upon request from JCPenney, Class Counsel shall certify in writing to JCPenney their compliance with this provision. Nothing in this provision or Agreement shall prohibit Class Counsel from retaining a case file, including all pleadings, motion papers, court filings, deposition transcripts, legal memoranda, correspondence, notes, and work product, so long as any exhibits to such documents which contain documents or data marked "CONFIDENTIAL" continue to be treated as such under the Protective Order in this case.

ACCEPTED AND AGREED

By: _____ 11/9/15
For JCPenney Date

By: _____ _____
Cynthia Spann Date

by publication. This provision shall in no way limit JCPenney's statements in its filings with the Securities and Exchange Commission or during its earnings conference calls. After dismissal, the Parties retain their right to speak with the media and publish any appropriate statement concerning the Settlement as they deem appropriate.

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25.1 Within thirty (30) days after a final, non-appealable Judgment is entered disposing of all claims in the Litigation, Class Counsel agrees to take steps necessary to destroy or erase all documents and data produced by JCPenney in the Litigation. Upon request from JCPenney, Class Counsel shall certify in writing to JCPenney their compliance with this provision. Nothing in this provision or Agreement shall prohibit Class Counsel from retaining a case file, including all pleadings, motion papers, court filings, deposition transcripts, legal memoranda, correspondence, notes, and work product, so long as any exhibits to such documents which contain documents or data marked "CONFIDENTIAL" continue to be treated as such under the Protective Order in this case.

ACCEPTED AND AGREED

By: _____ _____
For JCPenney Date

By: Cynthia Spann _____ 11/9/15
Cynthia Spann Date

Approved as to form:

By: _____ 11/9/15
Moe Keshavarzi
JCPenney's Counsel
Date

By: _____
Derek J. Emge
Class Counsel
Date

By: _____
Matthew J. Zevin
Class Counsel
Date

Approved as to form:

By: _____ Date
Moe Keshavarzi
JCPenney's Counsel

By: _____ 11/9/15 Date
Derek J. Emge
Class Counsel

By: _____ 11/9/15 Date
Matthew J. Zevin
Class Counsel

Exhibit 1

JCPenney Settlement
Claim Form

If you purchased one or more private or exclusive branded items of apparel or accessories from JCPenney while in California between November 5, 2010 and January 31, 2012, or between January 1, 2013 and December 31, 2014, that were advertised at a discount of at least 30% off the stated "original" or "regular" price, and you have not received a refund or credit for your purchase, you will be eligible to receive benefits from a Settlement with JC Penney. You need to submit this Claim Form if you want to receive a cash payment or a store credit. The deadline to file a claim is _____.

The amount of the cash payment or store credit will be determined based on a formula contained in the Settlement Agreement and in the notice you received. Additional information regarding the formula and the Settlement can be found at _____.

To claim a store credit you may submit the Claim Form by mail or online at _____. If submitting by U.S. Mail, print and complete this Claim Form and mail it to the following address postmarked on or before _____:

Claims Administrator

To claim a cash payment, you must complete this Claim Form and mail it to the following address postmarked on of before_____:

Claims Administrator

You cannot file an online claim for a cash payment.

Please Complete Each Section On The Following Page In The Space Provided

SECTION I- CONTACT INFORMATION

Name(First/Last)	
Name at the time of your purchase(s)	
Street Address	
City, State, Zip Code	
Phone Numbers (primary)	
Current E-Mail Address	

SECTION II: AWARD SELECTION

Please tell us whether you prefer to receive an electronic store credit or a cash payment. You may not request both. If you are requesting a cash payment, you must also provide the last four digits of your social security number. You can give your store credit to someone else but it cannot be resold.

☐ **Electronic Store credit**
☐ **Cash Payment**

Last Four Digits of your Social Security Number *(for cash payment only)*: X X X – X X- _ _ _ _

SECTION III: AFFIRMATION

I hereby affirm, under penalty of perjury, that the information I have provided in this Claim Form is true and correct to the best of my knowledge and this is the only JCPenney Claim Form that I have submitted. I further understand, acknowledge, and agree that I am eligible to receive only **ONE** payment from this Settlement based on all my purchases from JCPenney. I further understand, acknowledge, and agree that the amount I will receive shall be calculated according to the terms of the Settlement Agreement and subject to the terms of the Settlement Agreement, including the release of claims.

Date: ___ ___/ ___ ___/___ ___ ___ ___ Signature:_____

Exhibit 2

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

If You Purchased Private or Exclusive Branded Apparel or Accessories from JCPenney,

You could receive money or a store credit from a class action settlement,

A federal Court authorized this Notice. This is not a solicitation from a lawyer.

A class action settlement has been reached concerning JCPenney's ("JCPenney") pricing practices. The lawsuit claims that JCPenney used false "regular" and "original" prices for its private and exclusive branded products. The lawsuit is known as *Spann v. JCPenney Corporation, Inc.*, Case No. 12-cv-0215FMO, pending in the U.S. District Court for the Central District of California. JCPenney believes that the lawsuit has no basis.

You may be an eligible class member if you purchased any JCPenney private or exclusive branded clothing or accessories in California at a discount of least 30 percent off of a "regular" or "original" price between November 5, 2010 and January 31, 2012, or between January 1, 2013 and December 31, 2014.

Your legal rights are affected whether you act or don't act. This Notice includes information on the Settlement. Please read the entire Notice carefully.

You can file a claim for benefits from the Settlement.	*see* Question 7
You can object or comment on the Settlement.	*see* Question 9
You can go to a court hearing and ask to speak about the Settlement.	*see* Questions 12-13
You may exclude yourself from the Settlement.	*see* Questions 9 & 10

- The Court in charge of the case still has to decide whether to approve the Settlement with JCPenney.
- YOU HAVE BEEN ASSIGNED THE FOLLOWING UNIQUE CUSTOMER ID NUMBER: _____. You may enter this number on the Settlement Website to review your qualifying purchases, upload evidence of additional purchases and submit a Claim Form.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION ..... PAGE 2
1. Why is there a notice?
2. What is the lawsuit about?
3. Why are there class actions?

THE SETTLEMENT CLASS ..... PAGE 3
4. How do I know if I'm part of the Settlement Class?
5. Why is there a Settlement?
6. What does the Settlement provide?
7. How can I get benefits?
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9. What are my rights in the Settlement?
10. What am I giving up to stay in the Settlement Class?
11. When and where will the Court decide whether to approve the Settlement?
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WHAT THIS NOTICE CONTAINS

For More Information: Call 1-800-000-0000 or Visit www._____.com

BASIC INFORMATION

1. Why is there a notice?

You have the right to know about the lawsuit and about your legal rights and options before the Court decides whether to approve the Settlement.

The Court in charge of the case is the United States District Court for the Central District of California, and the case is called *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, SACV12-0215 FMO (KESx). The person who sued is called the Plaintiff, and the company she sued, J.C. Penney Corporation, Inc. is called the Defendant.

2. What is the lawsuit about?

The lawsuit claims that JCPenney engaged in a scheme of false price comparison advertising prior to February 2012 and then again starting in 2013 through 2014. Plaintiff claims that JCPenney's conduct violated various California laws that prohibit false advertising and unfair competition. JCPenney

denies: (1) that it used false price comparison advertising, (2) that it has done anything wrong, and (3) that the Plaintiff or class has been harmed in any way. The Court has not decided who is right.

3. Why are there class actions?

In a class action, one or more people, called class representatives (in this case, Cynthia Spann) sue on behalf of people who have similar claims. All of the people with similar claims comprise the "class" and are referred to as "class members," except for those who exclude themselves from the class. U.S. District Judge Fernando Olguin in the United States District Court for the Central District of California is in charge of this class action.

THE SETTLEMENT CLASS

4. How do I know if I am part of the settlement class?

The Settlement Class includes the following persons: All persons who, while in the State of California and between November 5, 2010 and January 31, 2012, or between January 1, 2013, and December 31, 2014, purchased from JCPenney one or more private or exclusive branded items of apparel or accessories advertised at a discount of at least 30% off the stated "original" or "regular" price, and who have not received a refund or credit for their purchase(s).

Excluded from the class are the Defendant, as well as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as all past and present employees, officers and directors of JCPenney.

5. Why is there a settlement?

This case has been pending since February, 2012. JCPenney is not admitting that it did anything wrong, but both sides want to avoid the cost and risk of further litigation. The Court has not decided in favor of the Plaintiff or JCPenney. The Class Representative and her attorneys think the Settlement is best for everyone who is affected. The Settlement provides the opportunity for benefits to Class Members.

6. What does the settlement provide?

JCPenney has agreed to make available $50 million to compensate Class Members who file valid claims. The cash component of the Settlement will first pay notice and administrative costs in an amount not to exceed $2,667,000, plus attorneys' fees and costs and a payment to the Class Representative as approved by the Court (see Question 15). The remaining amount will be paid to Class Members. Class Members can decide whether they want to request a cash payment or a JCPenney store credit of equal value. The amount of the cash payment or store credit will be based on the amount of purchases you made of private and exclusive branded apparel and accessories during the class period and on the number of valid claims that are filed (see Question 7). Please note that you can give your store credit to someone else but it cannot be resold or exchanged for cash. Your store credit can be used for any on-line or in-store purchase, and it does not expire.

The Settlement Agreement describes more details about the Settlement. You can find a copy of the Settlement Agreement at the Settlement Website: www._____.com.

7. How can I get benefits?

To ask for benefits, you need to complete and submit a Claim Form. Claim Forms are available at the Settlement Website or by calling 1-800-000-0000. Please read the instructions carefully. Claim Forms can be completed and submitted online (for store credits only) by Month Day, 2016 or mailed so that it is postmarked by that date, to:

XXXX Settlement
PO Box 0000
City, ST 00000

8. When will I get benefits?

Benefits will be distributed to Class Members after the Court grants "final approval" of the Settlement and after any appeals are resolved. The "final approval" hearing is scheduled to occur on Month 00, 2016. If there are appeals to the final approval order, they can take time to resolve.

9. What are my rights in the Settlement Class?

Remain in the Settlement Class: If you wish to remain in the Settlement Class and get benefits from the Settlement, you need to file a Claim Form (*see* Question 7).

Get out of the Settlement Class: If you wish to keep your individual right to sue JCPenney about the claims in this case you must exclude yourself from the Settlement Class. However, you will lose the right to receive any benefits from the Settlement if you exclude yourself from the Settlement Class.

To exclude yourself from the Settlement Class, you must complete an Opt-Out Form, by filling out the following information:

- Your name, address, and telephone number,
- The name of the case (*Spann v. JCPenney*),
- A statement that you want to be excluded from this Settlement, and
- Your signature and date.

Opt-Out Forms are available at the Settlement Website or by calling 1-800-000-0000. You must electronically submit or mail your exclusion request, postmarked no later than **Month 00, 2016**, to:

JCPenney Settlement Exclusions
P.O. 0000
City, ST 00000

Remain in the Settlement Class and Object: If you disagree with any aspect of the Settlement, you may express your views to the Court. The written response needs to include:

- Your name and address,

- The name of the case (*Spann v. JCPenney*),
- The reasons you object to the Settlement,
- Copies of all documents that support your objection,
- Whether you intend to appear at the Fairness Hearing (*see* Question), and
- Your signature.

The response must be postmarked no later than **Month 00, 2016** and mailed to:

The United States District Court for the Central District of California
Courtroom 22-5th Floor
312 North Spring Street
Los Angeles, CA 90012

You will have no right to object to the Settlement if you exclude yourself from the Settlement Class.

10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement Class, you can't separately sue JCPenney for the claims and issues in this case. You also will be bound by any decisions by the Court relating to the Settlement. The "Release of Claims" is described more fully in the Settlement Agreement and describes the legal claims that you give up if you get benefits from the Settlement. The Settlement Agreement is available at www._____.com.

11. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at Time x.m. on Month 00, 2016, at the United States District Court for the Central District of California, located at 312 North Spring Street, Los Angeles, California, in Courtroom 22 on the 5th Floor. The hearing may be moved to a different date, time or location without additional notice, so it is a good idea to check www._____.com. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider how much to pay Class Counsel and the Class Representative. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

12. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

13. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear." In your letter you must include the following:

17. Your name, address, and telephone number,
18. The name of the case (*Spann v. JCPenney*),
19. The name, address, and telephone number of any attorney(s) who will be appearing on your behalf at the Fairness Hearing,
20. A brief statement detailing what you will be presenting to the Court, and
21. Your signature.

You must mail your Notice of Intention to Appear which must be postmarked no later than **Month 00, 2016,** to:

The United States District Court for the Central District of California
Courtroom 22, 5th Floor
312 North Spring Street
Los Angeles, CA 90012

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Yes. Plaintiff was represented by three law firms, and the Court has appointed two of those firms as "Class Counsel" to represent you and all Class Members: Matthew J. Zevin of the Stanley Law Group and Derek J. Emge of The Emge Firm, LLP. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers get paid?

The Court will decide how much the attorneys will be paid. Class Counsel have asked the Court to award a total of $13,500,000, (27% of the Settlement Fund), plus their out-of-pocket costs and expenses of $_____, all of which will be paid out of the cash part of the Settlement. In addition, they have requested an Enhancement Award of $10,000 for the Class Representative. Class Counsel's motion for Attorneys' Fees and Costs is available for viewing on the settlement website at www._____com.

GETTING MORE INFORMATION

16. How do I get more Information?

The Notice summarizes the lawsuit and the proposed Settlement. You can get more information about the lawsuit and Settlement at www._____com. You may also write with questions to: _____, P.O. Box 0000, City, State 00000, or by email at _____.com. You can also get a Claim Form or Opt-Out Request at the website, or by calling this toll free number, _____.

Exhibit 3

If You Purchased Private or Exclusive Branded Apparel or Accessories from JCPenney, You could receive money or a store credit from a class action settlement

Para una notificación en Español, llamar [add phone number]o visitar nuestro website [add website address].

A class action settlement has been reached concerning JCPenney's ("JCPenney") pricing practices prior to February 2012, and in 2013 and 2014. The lawsuit claims that JCPenney used false "regular" and "original" prices for its private and exclusive branded products. The lawsuit is known as *Spann v. JCPenney Corporation, Inc.*, Case No. 12-cv-0215FMO, pending in the U.S. District Court for the Central District of California. JCPenney denies that it used false price comparison advertising or that it has done anything wrong. The Court has not decided who is right.

Who is a class member?

You may be an eligible class member if you purchased any JCPenney private or exclusive branded clothing or accessories in California at a discount of least 30 percent off of a "regular" or "original" price between November 5, 2010 and January 31, 2012, or between January 1, 2013 and December 31, 2014. You have received this postcard because JCPenney identified you as a potential class member. YOU HAVE BEEN ASSIGNED THE FOLLOWING UNIQUE CUSTOMER ID NUMBER: _____. You may enter this number on the Settlement Website to review your qualifying purchases, upload evidence of additional purchases and submit a Claim Form.

What does the Settlement provide?

JCPenney has agreed to make available $50 million to settle the lawsuit. If you are eligible, you can choose either a cash payment or a store credit of equal value for use at any JCPenney store or on its website. The store credit will maintain a running balance, will not expire, and can be used to purchase any item(s) with or without discounts. You can give your store credit to someone else but it cannot be resold or exchanged for cash.

What do I need to do?

If you want to participate in the settlement, you must file a claim, by Month Day, 2016 to receive either cash or a store credit. If the Court approves the settlement, you will give up your right to sue JCPenney for any of the claims released in the settlement. Therefore, it is very important that you read the settlement agreement. If you don't want to participate, you may exclude yourself by Month Day, 2016. You will not receive cash or a store credit, but you will keep your right to sue JCPenney on your own for the same claims in this matter. You may object and tell the court why you don't like the settlement, but you must do so by Month Day, 2016. If you do nothing, you will NOT receive money or a store credit, and you **will** be bound by the decisions of the court.

The Court has appointed Class Counsel, who have requested attorneys' fees of $13,500,000 (27 percent of the Settlement Fund), plus reimbursement of $_____ in out of pocket expenses, and an Enhancement Award of $10,000 to the Representative Plaintiff. The Settlement Fund will also be used to pay up to $2,667,000 for the costs of a third-party notice and claim administrator. The remainder will be distributed to class members who submit valid claims. The motion for attorneys' fees and costs is posted on www._____.com. The amount that you receive will depend on the number of claims submitted, the amount that you spent on qualifying purchases at JCPenney, and the amount of fees and costs awarded by the Court.

The Court will hold a hearing on Month Day, 2016 at 00:00 a/p.m. to determine whether to approve the settlement and how much to award in fees and costs. You or your attorney may attend, but you don't have to. The date of the hearing may change without further notice, so please check the Settlement Website for updates.

This is only a summary. For the detailed notice and claim form, please visit www._____.com. You may also call _____ or email _____.com with any questions.

Exhibit 4

If You Purchased Private or Exclusive Branded Apparel or Accessories from JCPenney, You could receive money or a store credit from a class action settlement

Para una notificación en Español [add phone number], llamar o visitar nuestro website [add website address].

A class action settlement has been reached concerning JCPenney's ("JCPenney") pricing practices. The lawsuit claims that JCPenney used false "regular" and "original" prices for its private and exclusive branded products. The lawsuit is known as *Spann v. JCPenney Corporation, Inc.*, Case No. 12-cv-0215FMO, pending in the U.S. District Court for the Central District of California. JCPenney denies that it used false price comparison advertising or that it has done anything wrong, and denies that the Plaintiff or the class has been harmed in any way. The Court has not decided who is right.

Who is a class member?

You may be an eligible class member if you purchased any JCPenney private or exclusive branded clothing or accessories in California at a discount of least 30 percent off of a "regular" or "original" price between November 5, 2010 and January 31, 2012, or between January 1, 2013 and December 31, 2014.

What does the Settlement provide?

JCPenney has agreed to make available $50 million to settle the lawsuit. If you are eligible, you can choose either a cash payment or a store credit of equal value for use at any JCPenney store or on its website. The store credit will maintain a running balance, will not expire, and can be used to purchase any item(s) with or without discounts. You can give your store credit to someone else but it cannot be resold or exchanged for cash.

What do I need to do?

If you want to participate in the settlement, you must file a claim, by Month Day, 2016 to receive either cash or a store credit. If the Court approves the settlement, you will give up your right to sue JCPenney for any of the claims released in the settlement. If you don't want to participate, you may exclude yourself by Month Day, 2016. You will not receive cash or a store credit, but you will keep your right to sue JCPenney on your own for the same claims in this matter. You may object and tell the court why you don't like the settlement, but you must do so by Month Day, 2016. If you do nothing, you will NOT receive money or a store credit, and you **will** be bound by the decisions of the court.

The Court has appointed Class Counsel, who have requested attorneys' fees of $13,500,000 (27 percent of the Settlement Fund), plus reimbursement of $_____ in out of pocket expenses, and an Enhancement Award of $10,000 to the Representative Plaintiff. The Settlement Fund will also be used to pay up to $2,667,000 for the costs of a third-party notice and claim administrator. The remainder will be distributed to class members who submit valid claims. The motion for attorneys' fees and costs is posted on www._____.com. The amount that you receive will depend on the number of claims submitted, the amount that you spent on qualifying purchases at JCPenney, and the amount of fees and costs awarded by the Court.

The Court will hold a hearing on Month Day, 2016 at 00:00 a/p.m. to determine whether to approve the settlement and how much to award in attorneys' fees and costs. The date of the hearing may change without further notice, so please check the Settlement Website for updates.

This is only a summary. For the detailed notice and claim form, visit www._____.com. You may also call _____ or email _____.com with any questions.

Exhibit 5

United States District Court for the Central District of California
Cynthia E. Spann. v. J.C. Penney Corporation, Inc.
Case No. SACV12-0215 FMO (KESx)

OPT-OUT FORM

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CASE OF CYNTHIA E. SPANN v. J.C. PENNEY CORPORATION, INC. CASE NO. SACV12-0215 FMO (KESx). I UNDERSTAND THAT BY REQUESTING EXCLUSION FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY SHARE OF THE SETTLEMENT BENEFITS. I confirm that I have received written notice of the proposed settlement in this action. I have decided to exclude myself from the Settlement Class and not to participate in any portion of the proposed settlement.

Date: _____

Signature: _____

Printed Name: _____

Street Address: _____

City, State, Zip Code: _____

THIS FORM MUST BE COMPLETED AND SENT VIA U.S. MAIL WITH A POSTMARK DATED NO LATER THAN _____ TO:

CLAIMS ADMINISTRATOR
ADDRESS
CITY, STATE ZIP
TOLL FREE TELEPHONE

Exhibit 6

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. J.C. PENNEY CORPORATION, INC., a Delaware Corporation;, Defendant.	Case No. SA-CV-12-0215 FMO (KESx) Complaint Filed: February 12, 2012 **CLASS ACTION** PROPOSED ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT BETWEEN SETTLEMENT CLASS PLAINTIFFS AND JCPENNEY CORPORATION, INC. JUDGE: Honorable Fernando M. Olguin CTRM: 22-5th Floor

This matter came before the Honorable Fernando M. Olguin on Plaintiff's Motion for Final Approval of Settlement ("Final Approval Motion").

WHEREAS, a class litigation is pending before the Court entitled Cynthia E. Spann v. J.C. Penney Corporation, Inc., Case No. SA-CV-12-0215 FMO (KESx) (United States District Court for the Central District of California);

WHEREAS, the Court has received and reviewed the Settlement Agreement entered into between the Named Plaintiff, the Settlement Class Representative and the Settlement Class Members, on the one hand, and Defendant JCPenney on the other hand, dated _____ (the "Agreement"), and has considered the terms of the proposed settlement set forth therein (the "Settlement");

WHEREAS, all terms used herein shall have the same definitions and meanings as set forth in the Agreement unless otherwise defined herein;

WHEREAS, on _____, _____, the Court entered its order preliminary approving the Settlement of this class action as between the Named Plaintiff, the Settlement Class Representative and the Settlement Class Members, on the one hand, and JCPenney, on the other hand, and setting a date and time for a final fairness hearing to consider whether the Settlement should be finally approved by the Court pursuant to Rule 23(d) of the Federal Rules of Civil Procedure as fair, adequate, and reasonable (the "Preliminary Approval Order");

WHEREAS, the Court directed that all Settlement Class Members be given notice of the Settlement, and approved the form and method of notice, and of the date for the final fairness hearing;

WHEREAS, the Court has received declarations of _____ attesting to the e-mailing, mailing and publication of the Notice in substantial accordance with the Preliminary Approval Order;

WHEREAS, the Court entered a Conditional Class Certification Order on _____, _____, which reflects the Claims certified for Settlement purposes and the scope of the Settlement Class;

WHEREAS, the Court having considered all timely filed objections to the Settlement; and

WHEREAS, the Court having conducted a final fairness hearing on _____, _____ (the "Settlement Approval Hearing"), and having considered the arguments presented, all papers filed, and all proceedings had therein;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of this action, all Settlement Class Members, and the Defendant.

2. In accordance with Rule 23(d) of the Federal Rules of Civil Procedure and the requirements of due process, all members of the Settlement Class have been given proper and adequate notice of the Settlement. Based upon the evidence submitted by the parties to the Agreement, the Agreement, the arguments of counsel, and all the files, records, and proceedings in this case, the Court finds that the Notice and notice methodology implemented pursuant to the Agreement and the Court's Preliminary Approval Order (a) constituted the best practicable notice under the circumstances, (b) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Settlement Approval Hearing; (c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law.

3. The Agreement in this action warrants final approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure because it is fair, adequate, and reasonable to those it affects; it resulted from vigorously contested litigation, discovery and motion practice and extensive good-faith, arm's length negotiations between the parties; and it is in the public interest. In making this determination, the Court has

considered and balanced several factors, including the following factors identified by the Ninth Circuit Court of Appeals:

(a) The strength of the plaintiff's case

(b) The risk, expense, complexity, and likely duration of further litigation;

(c) The risk of maintaining class action status throughout the course of the litigation;

(d) The amount offered in settlement;

(e) The extent of discovery completed, and the stage of the proceedings;

(f) The experience and views of counsel; and

(g) The reaction of the class members to the proposed settlement.

See Torrisi v. Tucson Elec. Power Co., 8 F. 3d 1370, 1375 (9th Cir. 1993). Settlements that follow sufficient discovery and genuine arms-length negotiation are presumed fair. *Hanton v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

4. The Final Approval Motion is hereby GRANTED, and the Agreement is hereby APPROVED as fair, reasonable, adequate, and in the public interest, and the terms of the Agreement are hereby determined to be fair, reasonable, adequate, and for the exclusive benefit of the Settlement Class Members. The Parties to the Agreement are directed to consummate the Agreement in accordance with its terms.

5. The Court APPROVES payment of the Class Settlement Amount in accordance with the terms of the Agreement.

6. The Court APPROVES payment of a Class Representative Incentive Payment to Cynthia E. Spann in the amount of $10,000.

7. The Court APPROVES payment of Attorneys' Fees to Class Counsel in the amount of $_____ in accordance with the terms of the Agreement.

8. The Court APPROVES payment of litigation expenses to Class Counsel in the amount of $_____ in accordance with the terms of the Agreement.

9. The Allocation Plan is hereby APPROVED as fair, adequate, and reasonable. The Class Settlement Amount shall be distributed in accordance with the terms of the Agreement. Monies transferred to the QSF for purposes of paying Attorneys' Fees and Costs awarded in Paragraphs 7-8, shall be distributed to Class Counsel. Once JCPenney pays such monies into the QSF, JCPenney shall have no further liability as to the allocation of such funds. The Court further finds that no attorneys have asserted any attorney liens as to the attorneys' fees and costs awarded by the Court.

10. The Litigation as between the Named Plaintiff, the Settlement Class Representative, and the Settlement Class Members on the one hand, and JCPenney on the other hand, is DISMISSED WITH PREJUDICE and without costs to any Party, other than as specified in the Agreement and this Order.

11. In consideration of the Class Settlement Amount, and for other good and valuable consideration, each of the Releasing Settlement Class Members shall, by operation of this Judgment, have fully, finally, and forever released, relinquished, and discharged all Settlement Class Member Released Claims against JCPenney in accordance with Section _____ of the Agreement, the terms of which section are incorporated herein by reference; shall have covenanted not to sue JCPenney with respect to all such Settlement Class Member Released Claims; and shall be permanently barred and enjoined from instituting, commencing, prosecuting, or asserting any such Settlement Class Member Released Claim against JCPenney.

12. For good and valuable consideration, JCPenney shall, by operation of this Judgment, have fully, finally, and forever released, relinquished, and discharged all JCPenney Released Claims against the Releasing Class Members in accordance with Section _____ of the Settlement Agreement, the terms of which section are incorporated herein by reference; shall have covenanted not to sue Releasing Class Members with respect to all such JCPenney Released Claims; and shall be

permanently barred and enjoined from instituting, commencing, prosecuting, or asserting any such JCPenney Released Claims against Releasing Class Members.

13. This Judgment is the Final Judgment in the suit as to all Settlement Class Member Released Claims.

14. Without affecting the finality of this Judgment in any way, this Court retains jurisdiction over (a) implementation of the Settlement and the terms of the Agreement; (b) distribution of the Class Settlement Amount, the Class Representative Incentive Payment, the Attorneys' Fees and Costs Amount; and (c) all other proceedings related to the implementation, interpretation, administration, consummation, and enforcement of the terms of the Agreement and the Settlement, and the administration of Claims submitted by Settlement Class Members. The time to appeal from this Judgment shall commence upon its entry.

IT IS SO ORDERED.

_____, 2016

_____
The Honorable Fernando M. Olguin
Judge, United States District Court

EXHIBIT “B”

SETTLEMENT AGREEMENT

1. PREAMBLE

1.1 This Settlement Agreement is made and entered into as of the dates of Execution set forth below individually and on behalf of the Named Plaintiffs, the Class Representatives, and the Settlement Class Members, all as further defined below, and on behalf of Wal-Mart, as further defined below.

2. DEFINITIONS

2.1 The term "***Agreement***" as used herein means this Settlement Agreement.

2.2 The term *"**Approved Claimants**"* as used herein means those Claimants whose Claims have been approved for payment.

2.3 The term *"**Attorneys' Fees and Costs**"* as used herein means the attorneys' fees and costs to be requested by Class Counsel subject to Court approval in accordance with Section 6.1.1.1 of this Agreement.

2.4 The term ***"California State Actions"*** as used herein means the actions brought by putative Netflix subscribers and consolidated as *In re: Netflix and Walmart.com Antitrust Cases*, Judicial Council Coordination Proceeding No. 4595, Superior Court for the State of California in the County of Santa Clara (Judge James Paul Kleinberg). A list of the cases that make up the State Court Litigation is attached hereto as Exhibit 3-A.

2.5 The term "***California State Class Representatives***" as used herein means the putative class representatives of Netflix subscribers in the California State Actions who Class Counsel may request be awarded a Class Representative Incentive Award in accordance with Section 6.1.1.2.

2.6 The term "***Cash Component***" as used herein means the portion of the Class Settlement Amount to be paid in cash in accordance with Section 6.1.1 of this Agreement.

2.7 The term *"**Claim**"* as used herein means a Claim submitted by way of a Claim Form in accordance with this Agreement.

2.8 The term "***Claim Form***" as used herein means the Claim Form for the Settlement Class attached hereto as Exhibit 4 which is agreed to by the Parties subject to Court approval as the method by which a Claimant may submit a Claim. Only those Settlement Class Members who submit a Claim Form shall be eligible to recover a share of the Settlement proceeds.

2.9 The term "***Claimant***" as used herein means any Settlement Class Member who submits a Claim Form.

2.10 The term "***Claims Administrator***" as used herein means Rust Consulting, Inc., the entity which, subject to Court approval, shall perform the duties of, among other things:

(i) sending Notice and Claim Forms to Settlement Class Members (in the form ordered by the Court); (ii) publishing the Publication Notice; (iii) tracking returned Claim Forms and Opt-Out Letters; (iv) notifying the Parties of determinations regarding submitted Claim Forms and Opt-Out Letters consistent with this Agreement; and other notice and administration duties in accordance with this Agreement and the Court's orders.

2.11 The term "***Class Counsel***" as used herein means the following counsel who appeared on behalf of the Named Plaintiffs or any Settlement Class Member in the Litigation: Robert G. Abrams of Baker & Hostetler LLP; Guido Saveri of Saveri & Saveri, Inc.; David Sorensen of Berger & Montague, P.C., Joseph Tabacco of Berman DeValerio; and Eugene Spector of Spector Roseman Kodroff & Willis, P.C.

2.12 The term "***Class List***" as used herein means the listing of the Settlement Class Members to be obtained from Netflix in accordance with Section 7.3 of this Agreement.

2.13 The term "***Class Representatives***" as used herein means Bryan Eastman, Amy Latham, Melanie Salvi, Stan Magee, Michael Orozco, Andrea Resnick, Liza Sivek, Michael Weiner, and Scott Caldwell, who Class Counsel shall request be appointed by the District Court as class representatives for purposes of the Settlement Class.

2.14 The term "***Class Representative Incentive Payment***" as used herein means the amounts Class Counsel shall request be paid in accordance with Section 6.1.1.2 of this Agreement.

2.15 The term "***Class Settlement Amount***" as used herein means Twenty-Seven Million Two Hundred and Fifty Thousand Dollars ($27,250,000) to be paid by Wal-Mart pursuant to this Settlement.

2.16 The term "***Court***" as used herein means the District Court and any appellate court which may review any orders entered by the District Court related to this Settlement.

2.17 All dates for events provided herein based on a number of ***"days"*** (unless the date is expressed in terms of "business days") shall be calculated using the same approach as calculating days under the Federal Rules of Civil Procedure.

2.18 The term ***"District Court"*** as used herein means the United States District Court for the Northern District of California.

2.19 The term "***Execution***" as used herein refers to the signing of this Agreement by all signatories hereto.

2.20 The term "***Final Judgment and Order of Dismissal***" as used herein refers to the Final Judgment and Order of Dismissal approving the Settlement and dismissing the Litigation with prejudice as against Wal-Mart, substantially in the form of the proposed Final Judgment and Order of Dismissal attached hereto as Exhibit 6 which this Settlement contemplates will be entered and approved by the Court.

2.21 The term ***"Gift Card"*** as used herein means an electronic gift card redeemable for purchases at walmart.com. Each Gift Card shall be subject to applicable laws, the

walmart.com Terms of Use (available at www.walmart.com), and the walmart.com Gift Card Terms and Conditions (available at www.walmart.com), and any other terms of use or terms and conditions governing Gift Cards in effect at the time the Gift Cards are issued; provided, however, that unless an applicable law provides to the contrary, each Gift Card shall be fully transferable but may not be resold unless the Settlement Class Member is a licensed reseller.

2.22 The term ***"Gift Card Amount"*** as used herein means the value of each electronic Gift Card or cash payment instead of an electronic Gift Card which shall be determined in accordance with Section 6.1.2.1 of this Agreement.

2.23 The term "***Gift Card Component***" as used herein means the amount in addition to the Cash Component up to the Class Settlement Amount which Wal-Mart agrees to pay in accordance with Section 6.1.2 of this Agreement.

2.24 The term ***"Independent Settlement Counsel"*** as used herein means Craig C. Corbitt of Zelle Hofmann Voelbel & Mason LLP, who participated in settlement negotiations as counsel for the Netflix class and who is counsel for Scott Caldwell.

2.25 The term ***"Litigation"*** as used herein means the actions consolidated as *In re: Online DVD Rental Antitrust Litigation*, MDL No. 2029, United States District Court for the Northern District of California (Judge Phyllis J. Hamilton). A list of the cases that make up the Litigation is attached hereto as Exhibit 3-B.

2.26 The term "***Named Plaintiffs***" as used herein means the named plaintiffs in the Litigation, Bryan Eastman, Amy Latham, Melanie Salvi, Stan Magee, Michael Orozco, Andrea Resnick, Liza Sivek, and Michael Weiner. Class Counsel shall request that each of the Named Plaintiffs be appointed as a Class Representative.

2.27 The term "***Netflix***" as used herein means Netflix, Inc.

2.28 The term "***Notice***" as used herein means a document substantially in the form of the Notice of Proposed Class Action Settlement Between Plaintiffs and Wal-Mart attached hereto as Exhibit 1 which has been agreed to by the Parties subject to Court approval and which the Claims Administrator will send to each Settlement Class Member explaining the terms of the Settlement and the claims, Opt-Out, and objection processes.

2.29 The term "***Notice and Administration Costs***" as used herein means the costs to send notice and administer the Settlement as contemplated by this Agreement.

2.30 The term "***Parties***" as used herein means the Named Plaintiffs, the Class Representatives, the Settlement Class Members, and Wal-Mart.

2.31 The term "***Plaintiffs***" as used herein shall mean the Named Plaintiffs, the Class Representatives, and the Settlement Class Members.

2.32 The term "***Preliminary Approval***," shall mean the Court's entry of an order pursuant to Rule 23(e) and the Court's Rules or Standing Orders.

2.33 The term "***Publication Notice***" as used herein means a document substantially in the form of the summary notice attached hereto as Exhibit 2 which has been agreed to by the Parties subject to Court approval and which shall be used for publication purposes.

2.34 The terms "***Qualified Settlement Fund***" or "***QSF***" as used herein means the Qualified Settlement Fund to be set up in accordance with Section 14 of this Agreement.

2.35 The term "***Releasing Settlement Class Members***" as used herein means the Named Plaintiffs, Class Representatives, the California State Class Representatives, and all Settlement Class Members, other than those who submit Opt-Out Letters.

2.36 The term "***Request to Opt Out***" as used herein means the request for Opt Out to be sent by any Settlement Class Member not wishing to remain in the Settlement Class.

2.37 The term "***Settlement***" as used herein means the compromise and settlement of the Litigation as contemplated by this Agreement.

2.38 The term "***Settlement Class Member Released Claims***" as used herein means the claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, or liabilities that are released, acquitted and discharged pursuant to Section 15.1 of this Agreement.

2.39 The term "***Settlement Class Members***" as used herein means the Named Plaintiffs, Class Representatives, and all members of the Settlement Class.

2.40 The term "***Settlement Class Period***" as used herein means the period of time from May 19, 2005 up through and including the date the District Court grants preliminary approval to the Settlement.

2.41 The term "***Settlement Effective Date***" as used herein means the first day following the last of the following occurrences:

2.41.1. The date the time to appeal or seek permission to appeal or seek other judicial review of the entry of the Final Judgment and Order of Dismissal approving the Settlement and dismissing this Litigation with prejudice as to Wal-Mart has expired with no appeal or other judicial review having been taken or sought; or

2.41.2. If an appeal or other judicial review has been taken or sought, the latest of: (i) the date the Final Judgment and Order of Dismissal is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review therefrom; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the Circuit Court or to a lower appellate court following an appeal or other review, the date the Final Judgment and Order of Dismissal is entered by the Circuit Court after remand and the time to appeal or seek permission to appeal or seek other judicial review of the entry of that Final Judgment and Order of Dismissal has expired with no further appeal or other

judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

2.41.3. The provisions and deadlines set forth in this Section shall apply even if there are no objections to the Settlement.

2.42 The term ***"Superior Court"*** as used herein means the Superior Court for the State of California in the County of Santa Clara.

2.43 The term *"**Verified Claims**"* as used herein means those Claims which are approved by the Claims Administrator for payment after the deadline for audits allowable under Section 8.6 has expired, or, if an audit or objection is made, after all audits or objections have been resolved in accordance with Section 8.6 of this Agreement.

2.44 The term "***Wal-Mart***" as used herein means Wal-Mart Stores, Inc., Walmart.com USA LLC and each of their current or former subsidiaries, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders.

2.45 The term "***Wal-Mart Released Claims***" as used herein means the claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, or liabilities that are released, acquitted and discharged pursuant to Section 15.2 of this Agreement

3. RECITALS

3.1 On January 2, 2009, plaintiff Andrea Resnick filed a complaint against Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc. in the United States District Court for the Northern District of California, after which approximately sixty-five other complaints were filed in courts across the country. All of these cases—with the exception of seven cases filed in state court in California—either have been dismissed or have been consolidated before Judge Phyllis Hamilton in the Northern District of California as MDL 2029. The California State Actions have been coordinated before Judge James Paul Kleinberg in Santa Clara County.

3.2 All of these cases arise from a Promotion Agreement that Walmart.com entered into with Netflix, Inc. in May 2005, in connection with Walmart.com's decision to discontinue its online DVD rental business. Plaintiffs claim that this agreement was an illegal "market allocation" agreement. Plaintiffs allege that "[o]n or before May 19, 2005, Defendants completed and entered into an illegal anticompetitive agreement (the 'Market Allocation Agreement") to divide the markets for the sales and online rentals of DVDs in the United States, with the purpose and effect of monopolizing and unreasonably restraining trade in at least the online DVD rental market." Plaintiffs allege that "Walmart.com agreed to exit the Online DVD Rental Market and Netflix agreed not to enter the retail DVD market, but instead to actively promote DVD sales by Wal-Mart Stores and Walmart.com." Plaintiffs allege that as a result of this agreement, Netflix was able "to charge higher subscription prices for online DVD rentals than it [otherwise] would have"

in the absence of the agreement. The plaintiffs in MDL 2029 assert claims under the Sherman Act against all defendants for illegal market allocation (Section 1) and for conspiracy to monopolize the "online DVD rental market" (Section 2); and against Netflix only for monopolization and attempted monopolization of the "online DVD rental market" (Section 2). The plaintiffs in the California State Actions assert similar claims under California's antitrust laws (the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, 16727) and California's Unfair Competition Act (Cal. Bus. & Prof. Code § 17200) for a class of California citizens. Wal-Mart denies all of Plaintiffs' allegations as set forth in its Answer and Amended Answer to the Complaints in the Litigation. On December 23, 2010, the Court certified a class of Netflix subscribers. On March 11, 2011, the Court denied a Motion to Decertify the Netflix Class filed by Netflix.

3.3 Named Plaintiffs, the Class Representatives, and the Settlement Class believe this Litigation is meritorious. Class Counsel and Independent Settlement Counsel represent that they have conducted a thorough investigation into the facts of this case, and have diligently pursued an investigation of the Named Plaintiffs' and the Settlement Class Members' claims against Wal-Mart, including, but not limited to: (i) interviewing class members and analyzing the results of class member interviews; (ii) reviewing relevant documents; (iii) researching the applicable law and the potential defenses; (iv) conducting depositions; (v) hiring and consulting with experts; (vi) developing the argument for class certification; (vii) advocating for the rights of the putative class; and (viii) preparing for trial. Based on their own independent investigation and evaluation, Class Counsel and Independent Settlement Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Wal-Mart, trial risk, and appellate risk.

3.4 Wal-Mart denies any liability or wrongdoing of any kind associated with the claims alleged and contends that this Litigation is not appropriate for class or collective action treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other federal or state rule, statute, law, or provision. Wal-Mart continues to assert that the Litigation fails to meet the prerequisites necessary for class or collective action treatment under applicable law, especially, but not solely, with respect to predominance and manageability because the need to determine individualized issues make the Litigation unmanageable consistent with due process. Wal-Mart further asserts that it has complied with all applicable provisions of federal or state statutory and common law. Wal-Mart further states that despite its good faith belief that it is not liable for any of the claims asserted, and despite its good faith belief that certification is not appropriate, Wal-Mart will not oppose the District Court's certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Wal-Mart does not waive its objections to certification of the Settlement Class, or any other class, in this Litigation as a litigation class. In the event that the Court denies certification of a litigation class against Netflix, Class Counsel shall inform the Court of the Supreme Court decision in *Amchem Products, Inc. v. Windsor* and Wal-Mart may advise the Court of any applicable binding authority that Class Counsel has declined to bring to the Court's attention after having been requested by Wal-Mart to do so.

3.5 The entry of Final Judgment in this Litigation shall dismiss with prejudice all claims which were or which could have been alleged in the Litigation by Settlement Class Members against Wal-Mart, with the exception of any claims which might be retained by Settlement Class Members who exclude themselves from the Settlement, if any. Wal-Mart shall retain any existing defenses to such excluded claims. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to effectuate its terms, and, to the extent of the obligations set forth in Section 13 and 17, to dismiss this Litigation, and the California State Actions, against Wal-Mart with prejudice.

3.6 Each of these Recitals is incorporated into and made a part of this Agreement.

4. CERTIFICATION OF THE SETTLEMENT CLASS

4.1 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the District Court does not grant final approval of the Settlement, or if final approval is not granted following the appeal of any order by the District Court, or if for any reason the Settlement Effective Date does not occur, the certification of the Settlement Class shall be deemed null and void, and each Party shall retain all of their respective rights as they existed prior to execution of this Settlement Agreement, and neither this Settlement Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Settlement Agreement, shall be admissible or used for any purpose in this Litigation.

4.2 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is in no way an admission by Wal-Mart that class certification is proper in this Litigation or any other litigation against Wal-Mart. Moreover, Wal-Mart continues to assert that this Litigation fails to meet the prerequisites necessary for class action treatment under applicable law, especially, but not solely, with respect to predominance and manageability because the need to determine individualized issues make the case unmanageable consistent with due process. The Parties, Independent Settlement Counsel and Class Counsel further agree that, other than to effectuate the Settlement of this Litigation in this jurisdiction, the certification of the Settlement Class and all documents related thereto, including this Agreement and all accompanying exhibits and all orders entered by the Court in connection with this Agreement, are only intended to be used under the specific facts and circumstances of this case and are not intended to be used in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding against Wal-Mart.

5. SETTLEMENT CLASS

5.1 Subject to the provisions of the last sentence of Paragraph 3.4, the Parties agree to request that the Court enter a certification order and certify for settlement purposes only the following Settlement Class:

5.1.1. any person or entity residing in the United States or Puerto Rico that paid a subscription fee to rent DVDs online from Netflix on or after May 19, 2005, up to and including the date the Court grants Preliminary Approval of the Settlement, or some other date to be agreed to by the parties to this Agreement.

5.2 A person or entity whose name or identity appears in the Class List as a member of the Settlement Class more than once (such as, for example a person or entity that purchased a subscription to Netflix, terminated that subscription, and then subsequently purchased another Netflix subscription during the class period) shall only be counted once for the Settlement Class.

5.3 A person or entity that received a promotion for a free trial membership but did not subsequently purchase a subscription with Netflix shall not be included as a Settlement Class Member.

5.4 The Settlement is conditioned on the Court's certifying this Class for settlement purposes.

5.5 Wal-Mart and Class Counsel may agree to request that the Court certify additional settlement subclasses as may be appropriate.

6. TERMS OF SETTLEMENT

6.1 Subject to the other terms and conditions of this Agreement, and subject to Court approval, Wal-Mart agrees that the Class Settlement Amount shall be Twenty-seven Million, Two Hundred and Fifty Thousand Dollars ($27,250,000), to be composed of both a Cash Component and a Gift Card Component as follows:

6.1.1. Wal-Mart agrees to pay a portion of the Class Settlement Amount in cash. This cash payment, called the Cash Component, shall cover the following:

6.1.1.1. Reasonable Attorneys' Fees and Costs. Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees and Costs. Wal-Mart will not oppose an application for a reasonable award of Attorneys' Fees and Costs sought in accordance with this Agreement. In the event that the Court does not approve the award of Attorneys' Fees and Costs requested by Class Counsel, or the Court awards Attorneys' Fees and Costs in an amount less than that requested by Class Counsel, such decision shall not affect the validity and enforceability of the Settlement and shall not be a basis for anyone to seek to void the Settlement or for rendering the entire Settlement null, void, or unenforceable. Class Counsel retain their right to appeal any decision by the Court regarding the Court's award of Attorneys' Fees and Costs.

6.1.1.2. Reasonable Class Representative Incentive Payments. Class Counsel intend to seek Five Thousand Dollars ($5,000) for each Class Representative. This may include a request on behalf of the named plaintiffs or class representatives in the California State Actions. Any

request made by Class Counsel in accordance with this Section is without prejudice to any proposed recipient's right to seek additional incentive compensation in the event of a recovery from any defendant other than Wal-Mart, nor shall it preclude any proposed recipient of any Class Representative Incentive Payment from filing a Claim. The denial by the Court of any application by Class Counsel for Class Representative Incentive Payments shall not affect the validity and enforceability of the Settlement and shall not be a basis for anyone to seek to void the Settlement or for rendering the entire Settlement null, void, or unenforceable.

6.1.1.3. The actual Notice and Administration Costs incurred in accordance with Section 7.6 of this Agreement.

6.1.1.4. The payments identified in Sections 6.1.1.1 - 6.1.1.3 of this Agreement shall be paid solely from the Cash Component of the Class Settlement Amount. Any portion of the Class Settlement Amount not used for the Cash Component shall be allocated to the Gift Card Component.

6.1.2. Payments to Settlement Class Members shall be paid from the Gift Card Component, which shall consist of the amount remaining after the aggregate amount required to be used for the Cash Component has been subtracted from the Class Settlement Amount. For example, if the amount used for the Cash Component equals Seven Million Dollars ($7,000,000), the Gift Card Component will be Twenty Million, Two Hundred and Fifty Thousand Dollars ($20,250,000) or, alternatively, if the amount used for the Cash Component equals Ten Million Dollars ($10,000,000), the Gift Card Component will be Seventeen Million, Two Hundred and Fifty Thousand ($17,250,000). The Gift Card Component shall be payable on a per capita basis (see sub-section 6.1.2.1) by way of either a Gift Card or, at the Settlement Class Member's election, a cash payment instead of a Gift Card, to those Settlement Class Members who submit an approved Claim Form in accordance with Section 8.3. The value of each Gift Card or cash payment, shall be referred to as the Gift Card Amount and shall be determined in accordance with Section 6.1.2.1.

6.1.2.1. The Gift Card Amount shall be a fixed value to be determined as follows. The total Gift Card Component shall be divided by the total number of Settlement Class Members who submit valid Claims.

6.1.2.2. Any unused Gift Cards which are sent to an Approved Claimant but not activated or redeemed within the time specified by applicable law shall be handled in accordance with applicable laws. The Gift Cards shall state the applicable expiration date, if any.

6.1.2.3. Any Settlement Class Member who wishes to receive a cash payment instead of a Gift Card shall be eligible to do so in accordance with the terms of this Agreement. Cash payments instead of a Gift Card shall be in

the same amount as the Gift Card would have been for that Settlement Class Member as determined by Section 6.1.2.1. Cash payments shall be mailed to the Settlement Class Member at the address provided by the Settlement Class Member in the Claim Form, or otherwise made available to Settlement Class Members in a convenient and efficient manner. The costs of mailing or otherwise making such cash payments available to Settlement Class Members shall be part of the costs of Notice and Administration as set forth in Section 7.6, and shall be paid from the Cash Component. In the event such costs become prohibitively expensive relative to the Gift Card Component and would unduly diminish the per-claimant recovery, the Parties agree to mediation before Judge Layn Phillips to devise alternatives.

6.1.3. Each recipient of any monies paid in accordance with this Agreement is responsible for any taxes associated with the monies received by that recipient. If required by applicable law, the QSF shall issue 1099s to Class Counsel (for payments of Attorneys' Fees and Costs awarded by the Court) and to each recipient of any Class Representative Incentive Payments (for any Class Representative Incentive Payments awarded by the Court).

7. NOTICE TO THE CLASS

7.1 Given the expected size of the Settlement Class, the Parties agree that direct notice via email is the best practicable notice. Class Counsel agrees to use their best efforts to obtain preliminary approval of a notice plan to achieve the best practicable notice consisting of direct email notice and, to the extent necessary, publication notice. The E-Mailed Notice shall include a Claim Form and instructions on how to submit it. The E-Mailed notice shall also advise Settlement Class Members of their right to opt out of the Settlement or to object to the Settlement, the process by which such opt-outs or objections must be made, and the date set by the District Court for a hearing on final approval of the Settlement. Subject to Court approval, the E-Mailed Notice shall be substantially in the form attached hereto as Exhibit 1. In the event that e-mail notice is impossible, impractical, or otherwise not the best practicable notice, the Parties agree that notice by publication would be the best practicable notice for the Settlement Class. In that event, the references in this Settlement to E-Mailed Notice will apply to that publication notice to the extent reasonably practicable and economical.

7.2 Notice will also be made by way of publication in newspapers, magazines and/or websites to further alert the Settlement Class Members to the existence of the Settlement, the details of which may depend upon the results of the e-mail notice. The Publication Notice shall include instructions as to how to request a Claim Form and instructions on how to submit it. The Publication Notice shall also advise Settlement Class Members of their right to opt out of the Settlement or to object to the Settlement, the process and deadlines by which such opt-outs or objections must be made and the date set by the District Court for a hearing on final approval of the Settlement. Subject to Court approval, the Publication Notice shall be substantially in the form attached hereto as Exhibit 2. Plaintiffs, through their Class Counsel and Independent Settlement Counsel,

agree to use their best efforts to effectuate approval by the Court of the Notice plan described in this paragraph and in Section 7.1 above.

7.3 Wal-Mart and Plaintiffs shall cooperate in seeking to obtain the Class List, to include email addresses if available, from Netflix including serving subpoenas and/or other discovery requests to obtain such information if necessary. Wal-Mart and Plaintiffs agree that all Class List information shall be treated as confidential, and that the contents of the Class List shall not be shared with third parties other than the Claims Administrator and that the Claims Administrator shall be required to preserve the confidentiality of the Class List.

7.4 Subject to the provisions of Section 7.7 below, the E-Mailed Notice shall be first e-mailed to Settlement Class Members within thirty (30) days following the Claims Administrator's receipt of the Class List information, or within thirty (30) days following the District Court's preliminary approval of the Settlement, whichever is later, provided that any challenges or other barriers to the use of e-mail notice have been resolved. The Publication Notice shall be published on the soonest practicable date after the E-Mailed notice is first e-mailed to Settlement Class Members.

7.5 The E-Mailed Notice and other materials as agreed to by the Parties and approved by the District Court shall be available at a website to be set up by the Claims Administrator. The Claims Administrator shall also establish a toll-free phone line and an e-mail box to respond to inquiries from Settlement Class Members. The website address, toll-free phone number, and e-mail box address will be included in the E-Mailed Notice and in the Publication Notice.

7.6 With respect to Notice and Administration Costs, the Parties shall obtain estimates from one (1) or more claims administrators as to the estimated costs of notice as described in Sections 7.1. and 7.2, and the estimated costs of administration of the Settlement. Notice and Administration Costs shall be capped at an amount equal to fifteen percent (15%) over the estimate provided by the chosen Claims Administrator. If the actual Notice and Administration Costs are less than the estimated Notice and Administration Costs, Wal-Mart shall only be obligated to pay the actual Notice and Administration Costs. All Notice and Administration Costs paid by Wal-Mart shall be paid from the Cash Component.

7.7 Notwithstanding any of the foregoing provisions, in order to provide for efficient notice, to avoid the expense and possible confusion to Netflix subscribers from receiving multiple notices, and to minimize the burden on the Court and the parties, it is agreed that Notice of this Settlement may be deferred so as to permit it to be combined, to the maximum extent practical and consistent with legal requirements, with any notice to a class of Netflix subscribers regarding the certification of such class for the litigation against Netflix ("Netflix litigation class certification"). The parties shall request that notice of this Settlement and notice of the Netflix litigation class certification be combined to the maximum extent practical and consistent with legal requirements. If Notice of Netflix litigation class certification is combined, in whole or in part, with Notice of this Settlement, Class Counsel shall pay any additional costs attributable to the

costs of notice of the Netflix litigation class certification. For example, and solely to illustrate the concept, if a notice in a particular publication solely for this Settlement would cost Fifty Thousand Dollars ($50,000) and the additional text needed to address the Netflix litigation class certification increased the cost of that publication notice to Sixty Thousand Dollars ($60,000), Class Counsel would pay the additional Ten Thousand Dollars ($10,000).

8. VERIFICATION PROCESS

8.1 In order to be eligible to receive a share of the Class Settlement Amount, a Settlement Class Member must submit a completed Claim Form within ninety (90) days from the date notice is disseminated. Only those Settlement Class Members who submit an Approved Claim Form shall be eligible to receive an electronic Gift Card or to receive a cash payment instead of an electronic Gift Card. In order for a Claim Form to be considered timely, the Claims Administrator must receive the completed Claim Form by 11:59 pm Eastern Time on the ninetieth (90th) day from the date notice is disseminated. These deadlines shall be set forth clearly in the notice. The Claim Form agreed to by the Parties subject to Court approval is attached hereto as Exhibit 4.

8.2 In order for a Claim Form to be approved, the Claimant must meet the following criteria:

8.2.1. The Claimant must be a member of the Class as set forth in Section 5.1 Claim Forms shall be subject to audit and confirmation by the Claims Administrator or another third-party that the Claimant is, in fact, a Settlement Class Member and that the Claimant has submitted only one Claim Form. Wal-Mart shall pay for any audits beyond those expressly included in the estimate provided by the Claims Administrator.

8.2.2. Claim Forms shall be executed under penalty of perjury, but need not be notarized.

8.2.3. A Claimant shall also be required to attest to the fact that the Claimant has only submitted one Claim Form, and to provide identifying information that can be used to confirm that the Claimant is, in fact, a member of the Settlement Class.

8.2.4. Claimants who wish to receive an Electronic Gift Card may submit their Claim Forms electronically (by e-mail and/or by website) or by regular mail. If a Claimant prefers to receive cash instead of an Electronic Gift Card, in order to minimize fraud risks, the Claimant may only submit the Claim Form by regular mail, and must include the Claimant's social security number.

8.3 Claim Forms shall be sent with the E-Mailed Notice and shall also be available on the Claims Administrator's website. In the event that notice is only by publication, the Publication Notice shall direct Settlement Class Members to a website which shall contain the Claim Forms and other forms.

8.4 Submission of more than one Claim Form, or submission of an incomplete Claim Form, may render the Claim Form submitted by that Settlement Class Member invalid.

8.5 Within twenty (20) days after the deadline to submit Claim Forms, the Claims Administrator shall provide a spreadsheet to Class Counsel and to Wal-Mart that contains sufficient information for the Parties to determine the number of Approved Claims made by the members of the Settlement Class. The Claims Administrator shall also provide information regarding rejected claims, as well as the reasons why each claim was rejected. The Claims Administrator shall retain the originals of all Claim Forms (including any envelopes with the postmarks) received from Claimants, and shall make copies or the originals available to Wal-Mart or Class Counsel within three (3) business days upon request.

8.6 Audit and Challenge Procedure.

8.6.1. Class Counsel and Wal-Mart shall each have the right to audit the information provided in any Claim Form, and to challenge the Claims Administrator's determinations regarding approval or denial of each Claim Form, in accordance with the following procedures.

8.6.2. Within fourteen (14) days of having received the information contemplated by Section 8.5 of this Agreement, Class Counsel and Wal-Mart's counsel shall meet and confer regarding any issues that either Class Counsel or Wal-Mart believes need to be raised with the Claims Administrator. Class Counsel and Wal-Mart's counsel agree to use their best efforts to resolve any disputes. If Class Counsel and Wal-Mart cannot resolve these issues within twenty-eight (28) days of having received the information contemplated by Section 8.5 of this Agreement, then Class Counsel or Wal-Mart may, within five (5) days of the expiration of the above twenty-eight (28) day period, provide written notice of their intent to audit the Claims Administrator's determinations with respect to a particular Claim or Claims.

8.6.3. Audits may be presented to the Claims Administrator or to Judge Layn R. Phillips, at the auditing party's election. If the audit is first filed with the Claims Administrator, the decision of the Claims Administrator may be appealed to Judge Layn R. Phillips, or to such person as the Court may direct, within fourteen (14) days of receipt of the Claims Administrator's decision. All decisions by Judge Layn R. Phillips, or such person as the Court may direct, regarding audits shall be made expeditiously and are binding, final decisions which shall not be subject to appeal by any party. If a decision by the Claims Administrator is not presented to Judge Layn R. Phillips, or to such person as the Court may direct, within fourteen (14) days of issuance, the decision of the Claims Administrator becomes a binding, final decision not subject to further appeal.

8.6.4. Class Counsel and Wal-Mart may invoke their rights under this Section by providing written notice to each other and to the Claims Administrator, and if the audit is presented directly to Judge Layn R. Phillips, or to such person as the Court may direct, or is an appeal of a decision by the Claims Administrator, also to Judge Layn R. Phillips, or to such person as the Court may direct. The notice shall identify the Claims that are the subject of the audit, and may be

accompanied by supporting papers of no more than two (2) pages, double-spaced, 12-point type (excluding exhibits).

8.6.5. Within fourteen (14) days of receipt of the notice and supporting papers, the non-auditing party may submit a written response of no more than two (2) pages, double-spaced, 12-point type (excluding exhibits).

8.6.6. Given the cost of the audit process relative to the size of individual claims, the parties shall only appeal an audit decision to Judge Phillips, or to such person as the Court may direct, if the audit decision affects at least 25,000 claims. Audit decisions by the Claims Administrator affecting less than 25,000 claims shall be final and non-appealable.

8.6.7. Wal-Mart shall have the right to request cross examination of any Claimant whose Claim is submitted to Judge Layn R. Phillips, or to such person as the Court may direct, for decision, who shall have discretion whether to grant or deny such request. If the request is granted, the Claimant may require that cross-examination take place by telephone. If a party requests that such cross-examination be recorded or transcribed, that party shall bear all of the costs of such recording and/or transcription.

8.6.8. The Claims Administrator and Judge Layn R. Phillips, or such person as the Court may direct, shall each decide any audits presented to them within thirty (30) days of final submission.

8.6.9. The time periods and page limits set forth in this Section may be extended by agreement of the Parties, by Judge Layn R. Phillips, or by such person as the Court may direct, for good cause shown.

8.6.10. Notice of audits, any paperwork submitted in support of, or in response to, any audit, and the decisions by the Claims Administrator, Judge Layn R. Phillips, or such person as the Court may direct, shall be served by e-mail and United States Mail.

8.6.11. All costs of work done by Judge Layn R. Phillips, or by such person as the Court may direct, under this Section shall be treated as costs of claims administration and shall be paid using the same approach as for costs of the Claims Administrator itself.

9. OPT-OUT PROCESS

9.1 A Settlement Class Member who wishes to exclude himself or herself from this Settlement, and from the release of claims pursuant to this Settlement, shall submit a Request to Opt Out. For a Request to Opt Out to be accepted it must be timely and valid. To be timely it must be postmarked by the date which is ninety (90) days after the date notice is disseminated. To be valid, the Request to Opt Out shall contain a statement that the Settlement Class Member requests to be excluded from the Settlement Class and must be signed and dated.

9.2 A Settlement Class Member who submits a Request to Opt Out is not eligible to recover a share of the Class Settlement Amount. No Settlement Class Member may submit both a Request to Opt Out and a Claim Form, and if a Settlement Class Member submits both a Request to Opt Out and a Claim Form, the Request to Opt Out will govern.

9.3 The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to the Parties upon request. The Claims Administrator shall retain the originals of all Requests to Opt Out (including the envelopes with the postmarks) received from Settlement Class Members, and shall make copies or the originals available to Wal-Mart or Class Counsel within three (3) business days upon request.

9.4 Wal-Mart, at its sole discretion, has the right to terminate this Settlement pursuant to the terms of the confidential Supplemental Agreement Regarding Opt Outs.

10. OBJECTION PROCESS

10.1 A Settlement Class Member who wishes to object to the Settlement must notify the District Court of his or her objection, in writing, within 90 days of notice being disseminated.

10.2 To be considered valid, an objection must be in writing, must include the objector's name and address, and must include the basis for the objection (including why the objector believes the settlement is not in the best interest of the Settlement Class), along with any and all documents that support the objection. The objection must also indicate whether or not the objector intends to appear at the hearing on the motion for final approval of the Settlement. The objection must be filed with the Court on or before the deadline, and a copy must be served on Class Counsel and on Counsel for Wal-Mart. Additional instructions regarding how to object to the Settlement are contained in the E-Mailed Notice, Exhibit 1.

10.3 Settlement Class Members who do not file and serve timely written objections in accordance with the procedures set forth in this Agreement and the E-Mailed Notice shall be deemed to have waived any objections to the Settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, or any aspect of the Settlement, including, without limitation, the fairness, reasonableness, or adequacy of the proposed settlement, or any award of attorneys' fees or reimbursement of costs and expenses.

11. DISTRIBUTION PROCESS

11.1 The Class Settlement Amount shall be funded through a QSF in accordance with Section 14 of this Agreement. The timing of the payments by Wal-Mart to the QSF shall be as follows:

11.1.1. Within Ten (10) business days following the date on which the District Court enters an order granting preliminary approval of the Settlement, or within Ten (10) business days of the date on which the District Court enters an order

approving the QSF, whichever is later, Wal-Mart shall transfer to the QSF the estimated Notice and Administration Costs as determined in accordance with Section 7.6. Wal-Mart shall continue to periodically fund the QSF to cover additional Notice and Administration Costs, if required, in accordance with Section 7.6. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Claims Administrator for notice and administration shall not be refundable to Wal-Mart. If, however, Wal-Mart has paid into the QSF monies for Notice and Administration Costs which have not been used by the Claims Administrator, those amounts not used by the Claims Administrator shall be refunded to Wal-Mart.

11.1.2. Within Ten (10) business days following the Settlement Effective Date, Wal-Mart shall transfer to the QSF amounts sufficient to cover the remainder of the Cash Component, to include the Attorneys' Fees and Costs awarded by the Court pursuant to Section 6.1.1.1, and the Class Representative Incentive Payments awarded by the Court pursuant to Section 6.1.1.2. Class Counsel shall provide the information as to where these payments should be made and that information shall be included in the District Court's Final Judgment and Order of Dismissal, or in separate order to be entered by the District Court.

11.1.3. Within Fifteen (15) business days after (i) the Settlement Effective Date or (ii) the date on which the claims process, including all audits of any Claims, has been concluded and the final dollar value of all Approved Claims is known, whichever is later, Wal-Mart shall transfer to the QSF additional amounts sufficient to cover the approved claims up to the Class Settlement Amount. The Parties shall agree on a reasonable and cost effective process to provide the Gift Cards to Approved Claimants.

11.1.4. In the event that Wal-Mart has transferred monies in excess of the amount needed to pay the Cash Component plus all Approved Claims, the QSF shall, subject to reserving any amounts necessary to pay the QSF's final expenses including year-end income taxes, return to Wal-Mart any unused funds.

11.2 Distributions from the QSF shall be handled as follows:

11.2.1. Other than for purposes of paying invoices submitted by the Claims Administrator, the QSF shall not distribute any payments required under this Agreement until after the Settlement Effective Date has occurred.

11.2.2. If any liens for Attorneys' Fees and Costs have been filed prior to the transfer of funds for Attorneys' Fees and Costs out of the QSF, no monies shall be transferred out of the QSF for purposes of Attorneys' Fees and Costs until all such liens have been resolved and withdrawn.

11.2.3. Attorneys' Fees and Costs awarded by the Court pursuant to Section 6.1.1.1 and the Class Representative Incentive Payments awarded by the Court pursuant to

Section 6.1.1.2 shall be paid to the individuals or entities specified in the Court order to be obtained in accordance with Section 17.1.

11.2.4. Subject to the other provisions of this Section, the payments shall be made from the QSF to the appropriate recipients within a reasonable time after receipt of the funds from Wal-Mart, or receipt of a Court order or other authorization for the release of such funds, as appropriate.

12. SECTION 877.6 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE

12.1 This Settlement is conditioned upon a finding by the Court that the Settlement was made in good faith within the meaning of Section 877.6 of the California Code of Civil Procedure. Failure to obtain such a finding shall be a basis for Wal-Mart, at its sole discretion, to terminate the Settlement.

12.2 In addition, Class Counsel agree to use best efforts to obtain the issuance by the Court of a good faith settlement bar order in the form attached Exhibit 7 extinguishing and barring any and all claims that Netflix or any other person given notice of the application for such bar order may now or hereafter have against Wal-Mart in this Litigation for contribution or equitable indemnity based on or arising out of any claims that have been or could be asserted in the Litigation or the California State Actions or on any other basis arising out of the Settlement. If the Court does not enter such an order, Class Counsel agree that any settlement with Netflix that disposes of the remaining claims in this Litigation shall include a provision extinguishing and barring any and all claims for contribution or equitable indemnity by Netflix against Wal-Mart relating to this Litigation.

13. CALIFORNIA STATE ACTIONS

13.1 This Settlement is conditioned upon Class Counsel and Plaintiffs agreeing to a release which covers, to the maximum extent permitted by law, all claims which were or could have been asserted against Wal-Mart in the California State Actions. Class members in the California State Actions are members of the Settlement Class contemplated by Section 5 of this Agreement.

13.2 Class Counsel and Plaintiffs have made a good faith effort to persuade counsel for plaintiffs in the California State Actions to dismiss with prejudice their claims against Wal-Mart based on the merits of the Settlement. Lead counsel for plaintiffs in the California State Actions have agreed to the terms and conditions of this Settlement and Agreement. Upon final approval of this Settlement and Agreement, lead counsel for plaintiffs in the California State Actions shall dismiss with prejudice all claims against Wal-Mart in the California State Actions. Class Counsel and Plaintiffs agree not to oppose efforts by lead counsel for plaintiffs in the California State Actions to file a request for attorneys' fees and/or costs relating to the claims by the subscribers in the California State Actions to be paid from the Cash Component in accordance with Section 6.1.1.1. An award of attorneys' fees and/or costs for counsel in the California State Actions shall be included in the payments by Wal-Mart made under Section 6.1.1.1 of this Agreement and shall be disbursed in accordance with the timetable set forth in

Section 11.1.2 and 11.1.3 of this Agreement. Class Counsel reserve the right to oppose the amount of any such request, if there is no advance agreement between Class Counsel and lead counsel for Plaintiffs in the California State Actions on the amount of the request. Lead counsel for Plaintiffs in the California State Actions shall apply to the District Court for fees and/or expenses on behalf of all plaintiffs' counsel in the California State Actions relating to the claims by the Netflix subscribers in the California State Actions as contemplated by this Section as part of the process to approve this Settlement under Sections 16 and 17 of this Agreement, and shall be responsible for allocating any award of fees and/or expenses among all such plaintiffs' counsel.

14. QUALIFIED SETTLEMENT FUND

14.1 At the times required by Section 11.1 of this Agreement, Wal-Mart shall transfer to a trustee selected jointly by Class Counsel and Wal-Mart (the "***Trustee***") the required portions of the Class Settlement Amount, to be held as a separate trust constituting a QSF as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1. Class Counsel and Wal-Mart jointly shall, and shall cause the Trustee to, take such steps as shall be necessary to qualify the QSF under §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto. Wal-Mart shall be considered the "transferor" within the meaning of Treasury Regulation §1.468B-1(d)(1). The Claims Administrator shall be the "administrator" within the meaning of Treasury Regulation §1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement and Notice as described in Section 16.1. The Court shall retain jurisdiction over the administration of the QSF. Wal-Mart shall supply to the Claims Administrator and to the Internal Revenue Service the statement described in Treasury Regulation §1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Wal-Mart makes a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the "all events test" and the "economic performance" requirement of §461(h)(1) of the Internal Revenue Code, and Treasury Regulation §1.461-1(a)(2). Accordingly, Wal-Mart shall not include the income of the QSF in its income. Rather, the QSF shall be taxed on its modified gross income, excluding the sums transferred to it, and shall make payment of resulting taxes from its own funds. In computing the QSF's modified gross income, deductions shall be allowed for its administrative costs and other deductible expenses incurred in connection with the operation of the QSF, including, without limitation, state and local taxes and legal, accounting, and other fees relating to the operation of the QSF.

14.2 Upon establishment of the QSF, the Trustee shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation §1.468B-2(k)(4).

14.3 If requested by either Wal-Mart or the Claims Administrator, the Claims Administrator, the Trustee and Wal-Mart shall fully cooperate in filing a relation-back election under Treasury Regulation §1.468B-1(j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

14.4 Following its deposits as described in Section 14.1 of this Agreement, Wal-Mart shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of Verifications and Opt-Out Letters, the allowance or disallowance of claims by Claimants, payments to Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge Wal-Mart's obligations to Claimants and Class Counsel and for expenses of administration in respect to the disposition of the Class Settlement Amount hereunder. Rather, the Claims Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Claimants and Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Wal-Mart or Class Counsel to audit determinations of the Claims Administrator in accordance with Section 8.6 of this Agreement or to seek redress for any breach of the terms hereof.

14.5 The Claims Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(l)(2)(ii). The Claims Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Claims Administrator or the Trustee with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Either Wal-Mart or the Claims Administrator, independently or jointly, may, but are not required to, apply to the Internal Revenue Service and/or any applicable state taxing authority for an advance ruling as to any issue pertinent to the qualification of the QSF under Internal Revenue Code §468B and Treasury Regulations promulgated thereunder, its tax status under applicable state law, and/or its tax payment, reporting and withholding duties, so long as Wal-Mart and the remaining Parties are reasonably satisfied that such application and ruling will not compromise the confidentiality of settlement evidenced herein as required by Section 24 of this Agreement. Subject to any contrary holdings in any such ruling, Settlement Class Members shall be responsible for payment of appropriate federal, state, and local income taxes on any claim paid out pursuant to this Agreement. The Parties agree that no portion of any distributions from the QSF to the Settlement Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation § 1.468B-1(g), related to Qualified Settlement Funds.

14.6 The taxable year of the QSF shall be the calendar year in accordance with Treasury Regulation §1.468B-2(j). The QSF shall utilize the accrual method of accounting within the meaning of § 446(c) of the Internal Revenue Code.

14.7 The QSF shall be invested in United States Treasury bills or money market funds primarily invested in the same, provided that such portions of the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to Claimants or Class Counsel may be deposited in bank accounts which are federally

insured to the greatest extent practicable. All federal, state, and local taxes imposed with respect to income earned by, or property of, the QSF, shall be paid from the QSF.

14.8 The Claims Administrator may amend, either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established to maintain the qualification of the QSF pursuant to the above-described authorities provided that the rights and liabilities of the Parties hereto and the Class are not altered thereby in any material respect.

15. COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL

15.1 Settlement Class Member Released Claims - Release by Settlement Class Members

15.1.1. Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Releasing Settlement Class Members, do hereby irrevocably release, acquit, and forever discharge Wal-Mart of and from any and all claims, rights, causes of action, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Agreement), liens, charges, complaints, causes of action, obligations, or liability of any and every kind that were asserted in the Litigation or the California State Actions, or that could have been asserted but were not asserted in the Litigation or the California State Actions, or in any other court or forum, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and occurrences that were directly or indirectly alleged, asserted, described, set forth, or referred to in the Litigation or the California State Actions, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local, including, without limitation, claims under federal or state antitrust laws for the time period set forth in Section 2.40.

15.1.2. The Settlement Class Member Released Claims also includes a release of all claims for Attorneys' Fees and Costs incurred by Releasing Settlement Class Members or by Class Counsel or any other attorney in connection with the Litigation, the California State Actions, and this Settlement, and all claims related to conduct in discovery in the Litigation, including requests for discovery sanctions under Federal Rule of Civil Procedure 37 or any other similar rule of civil procedure, provided, however, that nothing in this subparagraph releases any Party from the obligations under Section 26 of this Agreement.

15.1.3. Releasing Settlement Class Members understand and agree that the release of the Settlement Class Member Released Claims is a full and final general release applying to both those Settlement Class Member Released Claims that are currently known, anticipated, or disclosed to Releasing Settlement Class Members and to all those Settlement Class Member Released Claims that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class

Members arising out of the alleged facts, circumstances, and occurrences underlying: (i) the claims set forth in the Litigation or the California State Actions; or (ii) Wal-Mart's conduct with respect to the Litigation or the California State Actions. Releasing Settlement Class Members acknowledge that the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all such unknown claims. In exchange for the good and valuable consideration set forth herein, all Releasing Settlement Class Members further waive any and all rights or benefits that they as individuals or the class may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation under the terms of Section 1542 (a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH DEBTOR.

15.2 Wal-Mart Released Claims - Release by Wal-Mart

15.2.1. Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, Wal-Mart does hereby irrevocably release, acquit, and forever discharge all Releasing Settlement Class Members of and from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Agreement), liens, charges, complaints, causes of action, obligations, or liability that could have been asserted but were not asserted as a compulsory counterclaim against Releasing Settlement Class Members in the Litigation or the California State Actions.

15.2.2. The release by Wal-Mart also includes a release of all claims related to conduct in discovery in the Litigation, including requests for discovery sanctions under Federal Rule of Civil Procedure 37 or any other similar rule of civil procedure, provided, however, that nothing in this subparagraph releases any Party from the obligations under Section 26 of this Agreement.

15.2.3. Wal-Mart understands and agrees that the release of the Wal-Mart Released Claims it is giving is a full and final general release applying to both those Wal-Mart Released Claims that are currently known, anticipated, or disclosed to Wal-Mart and to all those Wal-Mart Released Claims that are presently unknown, unanticipated, or undisclosed to Wal-Mart arising out of the alleged facts, circumstances, and occurrences underlying any compulsory counterclaim that could have been asserted in the Litigation or the California State Actions. Wal-Mart acknowledges that the facts could be different than it now knows or suspects to be the case, but it is nonetheless releasing all such unknown counterclaims. In

exchange for the good and valuable consideration set forth herein, Wal-Mart furthers waive any and all rights or benefits that it may now have as a result of the alleged facts, circumstances, and occurrences underlying such a potential compulsory counterclaim under the terms of Section 1542 (a) of the California Civil Code (or similar statute in effect in other jurisdiction), which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH DEBTOR.

15.3 The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.

15.4 The Final Judgment and Order of Dismissal shall dismiss the Litigation with prejudice as to Wal-Mart and shall incorporate the terms of this release.

16. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY COURT APPROVAL

16.1 Within twenty (20) days of the Execution of this Agreement, Class Counsel shall apply to the District Circuit Court for the entry of an order granting preliminary approval of the Settlement substantially in the following form:

16.1.1. Preliminarily approving the Settlement;

16.1.2. Approving as to form and content the proposed notices and notice plan, including the E-Mailed Notice, (and, to the extent applicable, U.S. Postal Service Mail Notice, and Publication Notice), and Claim Form;

16.1.3. Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class;

16.1.4. Approving Craig C. Corbitt as Independent Settlement Counsel;

16.1.5. Approving Bryan Eastman, Amy Latham, Melanie Salvi, Stan Magee, Michael Orozco, Andrea Resnick, Liza Sivek, Michael Weiner and Scott Caldwell as Settlement Class Representatives;

16.1.6. Approving Rust Consulting, Inc. as Claims Administrator.

16.2 Wal-Mart shall cooperate with Class Counsel as necessary to obtain preliminary approval.

16.3 The Parties shall continue to take any steps necessary to stay any pending proceedings so as to preserve the status quo in the event that the Settlement Effective Date does not occur.

17. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

17.1 The parties agree that following preliminary approval by the District Court of the Settlement, the previous Settlement Agreement dated December 2, 2011 is deemed null and void as to the Settlement Class Members, as defined in Section 2.39 above. Following preliminary approval by the District Court of the Settlement, Class Counsel will submit a proposed Final Judgment and Order of Dismissal substantially in the form attached hereto as Exhibit 6. The proposed Final Judgment and Order of Dismissal shall:

17.1.1. Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate and directing consummation of its terms and provisions;

17.1.2. Approve Class Counsel's application for an award of attorneys' fees and reimbursement of costs, as well as any separate application filed by Lead counsel for Plaintiffs in the California State Actions;

17.1.3. Approve the Class Representative Incentive Payments, including any Class Representative Incentive Payments on behalf of the named plaintiffs or class representatives in the California State Actions, if any;

17.1.4. Certify the Settlement Class for Settlement purposes in accordance with applicable legal standards and Section 4 and Exhibit 5 to this Agreement;

17.1.5. Dismiss this Litigation as between the Named Plaintiffs, the Settlement Class Representatives and the Settlement Class Members, on the one hand, and Wal-Mart on the other hand, on the merits and with prejudice and permanently bar the Named Plaintiffs, the Settlement Class Representatives, and all Settlement Class Members (other than those who timely filed valid Opt-Out Letters) from further prosecuting any of the Settlement Class Member Released Claims against Wal-Mart.

17.2 Wal-Mart shall cooperate with Class Counsel as necessary to obtain final approval and the dismissal of the Litigation as to Wal-Mart.

17.3 Class Counsel shall use best efforts to obtain the issuance by the Court of a good faith settlement bar order, in accordance with Section 12.

17.4 The Final Judgment and Order of Dismissal shall not be considered final until the occurrence of the Settlement Effective Date.

18. MUTUAL FULL COOPERATION

18.1 The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to execution of all necessary documents, and to take

such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Wal-Mart and its counsel, take all necessary steps to secure the Court's Final Judgment.

19. STATEMENT OF NO ADMISSION

19.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Wal-Mart, and Wal-Mart denies liability for any alleged wrongdoing. Wal-Mart expressly denies liability for the claims asserted and specifically denies and does not admit any of the pleaded facts not admitted in its pleadings in the Litigation. Nor shall this Agreement constitute an admission by Wal-Mart as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Likewise, nothing in this agreement shall be construed or deemed an admission by Plaintiffs or the Settlement Class with regards to the validity of any of Wal-Mart's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

19.2 This Agreement, and all related documents, including the Settlement Agreement, the certification for settlement purposes entered pursuant to this Agreement, and any Claim Forms, Opt-Out Letters or Objections submitted by Settlement Class Members and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement are settlement documents and shall be inadmissible in evidence and shall not be used for any purpose in this Litigation or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, or any other litigation against Wal-Mart, for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.

19.3 The Claim Forms, Opt-Out Letters or Objections, or other evidence produced or created by any Settlement Class Member in connection with the claims resolutions procedures pursuant to this Settlement, and any actions taken by Wal-Mart in response to such Claim Forms, Opt-Out Letters, Objections, or other evidence, do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Wal-Mart of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

19.4 The Parties and Class Counsel agree that certification of the Settlement Class in accordance with the terms of this Agreement is for settlement purposes only. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any class should be or should have been certified in this Litigation or in any other action or proceeding. Further, neither this Agreement, nor the Court's actions with regard to this Agreement, will be deemed admissible in this Litigation and are not intended to be

admissible (and Plaintiffs and Class Counsel shall not seek their admission), in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, or in any other litigation, regarding the propriety of class certification or collective treatment. In the event that this Agreement is not approved by the District Court or any appellate court, or otherwise fails to become effective and enforceable, or is terminated, or the Settlement Effective Date does not occur for any reason, Wal-Mart will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Litigation. Such objections and defenses include, but are not limited to, Wal-Mart's objections and defenses to any class-wide treatment and nothing in this Agreement or any document related to this Agreement shall be construed as a waiver by Wal-Mart of its contention that class certification is not appropriate and is contrary to law in this Litigation or any other case or proceeding.

20. VOIDING THE AGREEMENT

20.1 Subject to Section 9.4, in the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement Agreement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, or other litigation against Wal-Mart.

20.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel is reduced, that finding shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs.

21. SIGNATORIES' AUTHORITY

21.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

22. NO PRIOR ASSIGNMENTS

22.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

23. NOTICES

23.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail,

return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

23.1.1. To the Class:

Robert G. Abrams
BAKER & HOSTETLER LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, NW
Washington, DC 20036-5304
Tele: (202) 861-1699
Fax: (202) 861-1783
Email: rabrams@bakerlaw.com

Guido Saveri
Lisa Saveri
Saveri & Saveri, Inc.
706 Sansome Street
San Francisco, CA 94111
Tele: (415) 217-6810
Fax: (415) 217-6813
Email: Guido@Saveri.com
Lisa@Saveri.com

Craig C. Corbitt
ZELLE HOFMANN VOELBEL & MASON LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
Tele: (415) 633-1905
Fax: (415) 693-0770
Email: ccorbitt@zelle.com

23.1.2. To Wal-Mart:

Lawrence C. DiNardo
Paula W. Render
JONES DAY
77 West Wacker
Chicago, Illinois 60601-1692
Tele: (312) 782-3939
Fax: (312) 782-8585
Email: lcdinardo@jonesday.com
prender@jonesday.com

Neal S. Manne
Susman Godfrey, LLP
1000 Louisiana Street
Houston, Texas 77002-5096
Tele: (713) 651-9366
Fax: (713) 654-6666
Email: NManne@susmangodfrey.com

Marc Seltzer
Susman Godfrey, LLP
1901 Avenue of the Stars, Suite 950
Los Angeles, California 90067-6029
Tele: (310) 789-3100
Fax: (310) 789-3150
Email: MSeltzer@susmangodfrey.com

24. CONFIDENTIALITY

24.1 Subject to the provision of Section 25, the negotiations related to this Agreement (including the negotiations regarding the Term Sheet, negotiations related to the drafting of this Agreement, and any negotiations prior to preliminary approval or between the time of preliminary and final approval) will remain strictly confidential and shall not be discussed with anyone other than the named Plaintiffs and Wal-Mart, their retained attorneys, their accountants and financial or tax advisers, the retained consultants, the Court, and the mediator Judge Layn R. Phillips and his staff, unless otherwise agreed to by Class Counsel and Wal-Mart or unless otherwise ordered by the Court. Notwithstanding the other provisions of this Section, Wal-Mart may disclose the Settlement in filings that Wal-Mart Stores, Inc., is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to investors.

25. PRESS RELEASE

25.1 Wal-Mart shall be entitled to issue a press release regarding this Settlement at its discretion. The press release shall include a quote from Class Counsel. Neither side shall make any other statements to the media concerning the Settlement and both sides shall decline to respond to media inquiries concerning the Settlement other than to refer the media to the press release until such time as final approval has been granted by the Court; provided however that Wal-Mart may respond to comments to the media made by Netflix, Blockbuster, Plaintiffs' counsel in the California State Actions, or others at Wal-Mart's discretion. This Paragraph does not preclude appropriate notice by publication.

26. DOCUMENTS AND DISCOVERY

26.1 Wal-Mart agrees to reasonably cooperate with Class Counsel with respect to future discovery in the Litigation to provide reasonable assistance (by stipulation, affidavit, or witness testimony, the choice of which shall be based on the requirements to establish admissibility under the applicable circumstances) in establishing that documents and/or data produced by Wal-Mart in the Litigation are authentic business records, as well as other requirements of admissibility, if any.

26.2 Within sixty (60) days after a final, non-appealable judgment is entered disposing of all claims in the Litigation (including those against parties other than Wal-Mart), Class Counsel agrees to take steps necessary to destroy or erase all documents and data produced by Wal-Mart in the Litigation. Class Counsel shall certify to Wal-Mart their good faith efforts to comply with this provision.

27. MISCELLANEOUS PROVISIONS

27.1 Construction. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Settlement.

27.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or

describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

27.3 Modification. This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

27.4 Integration Clause. This Agreement, the Exhibits hereto, the Supplemental Agreement Regarding Opt Outs, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

27.5 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

27.6 Class Counsel Signatories. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement. The E-Mailed Notice and Publication Notice will provide all Settlement Class Members with a summary of the Settlement, and will advise all Settlement Class Members of the binding nature of the release. Excepting only those Settlement Class Members who timely submit an Opt-Out Letter, the E-Mailed Notice and Publication Notice shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.

27.7 Counterparts. This Agreement may be executed by facsimile signature and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

27.8 Arbitration. The Parties agree to binding, non-appealable arbitration before the Honorable Layn R. Phillips in accordance with the Federal Arbitration Act to resolve any disagreements over the implementation of the terms of the Settlement, this Agreement, or any other documents necessary to effectuate the Settlement. Unless otherwise ordered by Judge Phillips, the Parties will split the costs of the arbitration and all Parties will bear their own attorneys' fees.

27.9 Applicable Law. This Agreement shall be governed by California law without regard to its choice of law or conflicts of law principles or provisions.

27.10 Enforcement Actions. In the event that one or more of the Parties institutes any legal action, arbitration, or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

ACCEPTED AND AGREED:

By: _____ 7/11/11
Andrea Resnick — Date

By: _____
Bryan Eastman — Date

By: _____
Amy Latham — Date

By: _____
Stan Magee — Date

By: _____
Melanie Miscioscia Salvi — Date

By: _____
Michael Orozco — Date

By: _____
Liza Sivek — Date

By: _____
Michael Wiener — Date

By: _____
Scott Caldwell — Date

ON BEHALF OF PLAINTIFFS:

_____
Robert G. Abrams — Date
BAKER & HOSTETLER LLP

1539581v1

ACCEPTED AND AGREED:

By: _____ _____
Andrea Resnick Date

By: Bryan Eastman 7/12/14
Bryan Eastman Date

By: _____ _____
Amy Latham Date

By: _____ _____
Stan Magee Date

By: _____ _____
Melanie Miscioscia Salvi Date

By: _____ _____
Michael Orozco Date

By: _____ _____
Liza Sivek Date

By: _____ _____
Michael Wiener Date

By: _____ _____
Scott Caldwell Date

ON BEHALF OF PLAINTIFFS:

_____ _____
Robert G. Abrams Date
BAKER & HOSTETLER LLP

1539981v1

ACCEPTED AND AGREED:

By: _____ _____
Andrea Resnick Date

By: _____ _____
Bryan Eastman Date

By: Amy Latham 7/7/11
Amy Latham Date

By: _____ _____
Stan Magee Date

By: _____ _____
Melanie Miscioscia Salvi Date

By: _____ _____
Michael Orozco Date

By: _____ _____
Liza Sivek Date

By: _____ _____
Michael Wiener Date

By: _____ _____
Scott Caldwell Date

ON BEHALF OF PLAINTIFFS:

_____ _____
Robert G. Abrams Date
BAKER & HOSTETLER LLP

1539981v1

ACCEPTED AND AGREED:

By: _____ _____
Andrea Resnick Date

By: _____ _____
Bryan Eastman Date

By: _____ _____
Amy Latham Date

By: Stan Magee 7/5/2011
Stan Magee Date

By: _____ _____
Melanie Miscioscia Salvi Date

By: _____ _____
Michael Orozco Date

By: _____ _____
Liza Sivek Date

By: _____ _____
Michael Wiener Date

By: _____ _____
Scott Caldwell Date

ON BEHALF OF PLAINTIFFS:

_____ _____
Robert G. Abrams Date
BAKER & HOSTETLER LLP

1539981v1

By: _____ _____
Amy Latham Date

By: _____ _____
Stan Magee Date

By: Melanie Miscioscia Salvi 7/5/11
Melanie Miscioscia Salvi Date

By: _____ _____
Michael Orozco Date

By: _____ _____
Liza Sivek Date

By: _____ _____
Michael Wiener Date

By: _____ _____
Scott Caldwell Date

ON BEHALF OF PLAINTIFFS:

_____ _____
Robert G. Abrams Date
BAKER & HOSTETLER LLP

ACCEPTED AND AGREED:

By: _____ _____
Andrea Resnick Date

By: _____ _____
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By: _____ _____
Amy Latham Date

By: _____ _____
Stan Magee Date

By: _____ _____
Melanie Miscioscia Salvi Date

By: _____ 7/1/11
Michael Orozco Date

By: _____ _____
Liza Sivek Date

By: _____ _____
Michael Wiener Date

By: _____ _____
Scott Caldwell Date

ON BEHALF OF PLAINTIFFS:

_____ _____
Robert G. Abrams Date
BAKER & HOSTETLER LLP

1539981v1

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By: _____ _____
Andrea Resnick Date

By: _____ _____
Bryan Eastman Date

By: _____ _____
Amy Latham Date

By: _____ _____
Stan Magee Date

By: _____ _____
Melanie Miscioscia Salvi Date

By: _____ _____
Michael Orozco Date

By: Liza Sivek 7/6/11
Liza Sivek Date

By: _____ _____
Michael Wiener Date

By: _____ _____
Scott Caldwell Date

ON BEHALF OF PLAINTIFFS:

_____ _____
Robert G. Abrams Date
BAKER & HOSTETLER LLP

1539981v1

ACCEPTED AND AGREED:

By: _____ _____
Andrea Resnick Date

By: _____ _____
Bryan Eastman Date

By: _____ _____
Amy Latham Date

By: _____ _____
Stan Magee Date

By: _____ _____
Melanie Miscioscia Salvi Date

By: _____ _____
Michael Orozco Date

By: _____ _____
Liza Sivek Date

X By: _____ 7/5/2011
Michael Wiener Date

By: _____ _____
Scott Caldwell Date

ON BEHALF OF PLAINTIFFS:

_____ _____
Robert G. Abrams Date
BAKER & HOSTETLER LLP

1539981v1

ACCEPTED AND AGREED:

By: _____ _____
Andrea Resnick Date

By: _____ _____
Bryan Eastman Date

By: _____ _____
Amy Latham Date

By: _____ _____
Stan Magee Date

By: _____ _____
Melanie Miscioscia Salvi Date

By: _____ _____
Michael Orozco Date

By: _____ _____
Liza Sivek Date

By: _____ _____
Michael Wiener Date

By: Scott Caldwell 7/7/2011
Scott Caldwell Date

ON BEHALF OF PLAINTIFFS:

_____ _____
Robert G. Abrams Date
BAKER & HOSTETLER LLP

1539981v1

ACCEPTED AND AGREED:

By: _____ _____
Andrea Resnick Date

By: _____ _____
Bryan Eastman Date

By: _____ _____
Amy Latham Date

By: _____ _____
Stan Magee Date

By: _____ _____
Melanie Miscioscia Salvi Date

By: _____ _____
Michael Orozco Date

By: _____ _____
Liza Sivek Date

By: _____ _____
Michael Wiener Date

By: _____ _____
Scott Caldwell Date

ON BEHALF OF PLAINTIFFS:

Robert G. Abrams 7/7/11
Robert G. Abrams Date
BAKER & HOSTETLER LLP

1539981v1

By: _____ 7/7/11
Guido Saveri
SAVERI & SAVERI, INC.

By: _____ _____
Joseph J. Tabacco
BERMAN DEVALERIO

By: _____ _____
Eugene Spector
SPECTOR ROSEMAN KODROFF & WILLIS, P.C.

By: _____ _____
David Sorensen
BERGER & MONTAGUE, P.C.

By: _____ _____
Craig C. Corbitt
Independent Settlement Counsel
ZELLE HOFMANN VOELBEL & MASON LLP

By: _____ _____
William M. Audet
AUDET & PARTNERS LLP

1539981v1

By: _____ _____
Guido Saveri Date
SAVERI & SAVERI, INC.

By: _____ 7/8/11
Joseph J. Tabacco Date
BERMAN DEVALERIO

By: _____ _____
Eugene Spector Date
SPECTOR ROSEMAN KODROFF & WILLIS, P.C.

By: _____ _____
David Sorensen Date
BERGER & MONTAGUE, P.C.

By: _____ _____
Craig C. Corbitt Date
Independent Settlement Counsel
ZELLE HOFMANN VOELBEL & MASON LLP

By: _____ _____
William M. Audet Date
AUDET & PARTNERS LLP

By: _____ Date
Guido Saveri
SAVERI & SAVERI, INC.

By: _____ Date
Joseph J. Tabacco
BERMAN DEVALERIO

By: _____ Date 7/7/11
Eugene Spector
SPECTOR ROSEMAN KODROFF & WILLIS, P.C.

By: _____ Date
David Sorensen
BERGER & MONTAGUE, P.C.

By: _____ Date
Craig C. Corbitt
Independent Settlement Counsel
ZELLE HOFMANN VOELBEL & MASON LLP

By: _____ Date
William M. Audet
AUDET & PARTNERS LLP

1539981v1

By: _____ _____
Guido Saveri Date
SAVERI & SAVERI, INC.

By: _____ _____
Joseph J. Tabacco Date
BERMAN DEVALERIO

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Eugene Spector Date
SPECTOR ROSEMAN KODROFF & WILLIS, P.C.

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David Sorensen Date
BERGER & MONTAGUE, P.C.

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ZELLE HOFMANN VOELBEL & MASON LLP

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1539981v1

By: _____ _____
Guido Saveri Date
SAVERI & SAVERI, INC.

By: _____ _____
Joseph J. Tabacco Date
BERMAN DEVALERIO

By: _____ _____
Eugene Spector Date
SPECTOR ROSEMAN KODROFF & WILLIS, P.C.

By: _____ _____
David Sorensen Date
BERGER & MONTAGUE, P.C.

By: Craig Corbitt 7/11/11
Craig C. Corbitt Date
Independent Settlement Counsel
ZELLE HOFMANN VOELBEL & MASON LLP

By: _____ _____
William M. Audet Date
AUDET & PARTNERS LLP

1539981v1

By: _____ _____
Guido Saveri Date
SAVERI & SAVERI, INC.

By: _____ _____
Joseph J. Tabacco Date
BERMAN DEVALERIO

By: _____ _____
Eugene Spector Date
SPECTOR ROSEMAN KODROFF & WILLIS, P.C.

By: _____ _____
David Sorensen Date
BERGER & MONTAGUE, P.C.

By: _____ _____
Craig C. Corbitt Date
Independent Settlement Counsel
ZELLE HOFMANN VOELBEL & MASON LLP

By: _____ _____
William M. Audet Date
AUDET & PARTNERS LLP

1539981v1

ON BEHALF OF WAL-MART:

By: _____ July 5, 2011
Michael Bennett — Date
SENIOR VICE PRESIDENT - WALMART

By: _____ 7/5/2011
Lawrence C. DiNardo — Date
JONES DAY

By: _____ _____
Neal Manne — Date
SUSMAN GODFREY LLP

1539981v1

ON BEHALF OF WAL-MART:

By: _____ _____
Michael Bennett Date
SENIOR VICE PRESIDENT - WALMART

By: _____ _____
Lawrence C. DiNardo Date
JONES DAY

By: Neal Manne 7-12-11
Neal Manne Date
SUSMAN GODFREY LLP

1539981v1

EXHIBIT 1

To:
From: Online DVD Class Action Administrator
Subject: Online DVD Lawsuit – Current and Former Netflix Subscribers

If You Rented Online DVDs from Netflix
A Class Action and a Settlement with Wal-Mart May Affect Your Rights

Para una notificación en Español, llamar 1-800-000-0000 o visitar www.OnlineDVDclass.com

Records show that you paid a subscription fee to rent DVDs online from Netflix anytime from May 19, 2005 to Month 00, 2011. We are emailing to tell you about a Settlement and lawsuit that may affect your legal rights. You may be eligible to receive a cash payment or gift card from the Settlement. Please read this email carefully. Go to www.OnlineDVDclass.com for more information.

There is a lawsuit against Wal-Mart Stores Inc. and Walmart.com USA LLC (together called "Wal-Mart") and Netflix, Inc. ("Netflix") involving the price of online DVD rentals. The Class Action seeks money for current and former Netflix subscribers. A Settlement has been reached with Wal-Mart. Netflix and Wal-Mart believe that the lawsuits have no basis. Netflix has not settled the lawsuit and the litigation continues against it.

What is the lawsuit about?
The lawsuit claims that Wal-Mart and Netflix reached an unlawful agreement under which Wal-Mart would withdraw from the online DVD rental market and Netflix would not sell new DVDs. Wal-Mart and Netflix deny that they entered into such an agreement or that they have done anything wrong, that the Plaintiffs have been harmed in any way, or that the price of online DVD rentals was raised or inflated by any agreement between Wal-Mart and Netflix. The Court has not decided who is right.

The Litigation Class Against Netflix

Who's included in the Netflix Litigation Class? Any person or entity in the United States that paid a subscription fee to Netflix anytime from May 19, 2005 to September 30, 2010.

What are my rights in the Netflix Litigation Class?
Remain in the Litigation: If you wish to remain in the Litigation, you do not need to take any action at this time.
Get out of the Litigation: If you wish to keep your individual right to sue Netflix and/or Wal-Mart about these claims you must exclude yourself. To ask to be excluded, send a letter to the address below, postmarked by **Month 00, 2011,** that says you want to be excluded from *In re: Online DVD Rental Antitrust Litigation*, MDL No. 2029. Include your name, address, and telephone number.

The Wal-Mart Settlement Class

Who's included in the Wal-Mart Settlement Class? Any person or entity living in the United States or Puerto Rico that paid a subscription fee to rent DVDs online from Netflix anytime from May 19, 2005 to and including **[DATE OF PRELIM APPROVAL] Month 00, 2011**.

What does the Settlement provide? Wal-Mart will pay $27,250,000, in cash and gift cards, to settle the lawsuit. If you qualify, you can get a cash payment or a gift card that can be used at www.walmart.com. The actual amount paid in cash and in gift cards depends on the total number of valid claims filed.

Class Counsel will ask the Court to award the following: (1) attorneys' fees up to 25% of the Settlement Fund, plus costs that Class Counsel estimate at up to $1.7 million, (2) administration and notice costs, and (3) $5,000 for each of the Class Representatives (up to $80,000 total which could include the class representatives from cases filed in California state courts). After these fees and costs are deducted from the Settlement Fund, the remaining amount will be equally divided amongst the Wal-Mart Settlement Class Members who file valid claims.

How to get Settlement benefits? You must submit a Claim Form to get benefits. You can submit a Claim Form online (for gift cards only) or by mail. The deadline to submit a Claim Form is **Month 00, 2011.** Click here to get a Claim Form or call 1-800-000-0000.

What are my rights in the Wal-Mart Settlement Class?
Remain in the Settlement: If you wish to remain in the Wal-Mart Settlement Class and get benefits, you need to file a claim.
Get out of the Settlement: If you wish to keep your right to individually sue Wal-Mart about the claims in this case you must exclude yourself by **Month 00, 2011** from *both* the Wal-Mart Settlement Class and the Netflix Litigation Class. See the instruction on how to "Get out of the Litigation" above.
Remain in the Wal-Mart Settlement Class and Object: If you stay in the Wal-Mart Settlement Class you can object to it by **Month 00, 2011**.

The detailed notice, available at www.OnlineDVDclass.com or by calling 1-800-000-0000, explains how to exclude yourself or object.

The Court will hold a hearing on **Month 00, 2011** to consider whether to approve the Settlement, and a request for attorneys' fees, cost, and expenses. If you wish, you or your own attorney may ask to appear and speak at the hearing at your own cost.

For More Information: 1-800-000-0000 www.OnlineDVDclass.com
Netflix Lawsuit, PO Box 0000, City, ST 00000
Text: "DVD" to 00000 (Text messaging rates may apply)

EXHIBIT 2

If You Rented Online DVDs from Netflix,

A Class Action Lawsuit And A Settlement Could Affect You.

There is a lawsuit against Wal-Mart Stores Inc. and Walmart.com USA LLC (together called "Wal-Mart") and Netflix, Inc. ("Netflix") involving the price of online DVD rentals. The Class Action seeks money for current and former Netflix online subscribers. A Settlement has been reached with Wal-Mart. Netflix and Wal-Mart believe that the lawsuit has no basis. Netflix has not settled the lawsuit and the litigation continues against it.

What is the lawsuit about?

The lawsuit claims that Wal-Mart and Netflix reached an unlawful agreement under which Wal-Mart would withdraw from the online DVD rental market and Netflix would not sell new DVDs. Wal-Mart and Netflix deny that they entered into such an agreement or that they have done anything wrong, that the Plaintiffs have been harmed in any way, or that the price of online DVD rentals was raised or inflated by any agreement between Wal-Mart and Netflix. The Court has not decided who is right.

The Litigation Class Against Netflix

Who's included in the Netflix Litigation Class? Any person or entity in the United States that paid a subscription fee to Netflix anytime from May 19, 2005 to September 30, 2010.

What are my rights in the Netflix Litigation Class?

- Remain in the Litigation: If you wish to remain in the Litigation, you do not need to take any action at this time.
- Get out of the Litigation: If you wish to keep your individual right to sue Netflix and/or Wal-Mart about these claims you must exclude yourself. To ask to be excluded, send a letter to the address below, postmarked by Month 00, 2011, that says you want to be excluded from In re: Online DVD Rental Antitrust Litigation, MDL No. 2029. Include your name, address, and telephone number.

The Wal-Mart Settlement Class

Who's included in the Wal-Mart Settlement Class? Any person or entity living in the United States or Puerto Rico that paid a subscription fee to rent DVDs online from Netflix anytime from May 19, 2005 to **[DATE OF PRELIM APPROVAL] Month 00, 2011**.

What does the Settlement provide? Wal-Mart will pay $27,250,000, in cash and gift cards to settle the lawsuit. If you qualify, you can get a cash payment or a gift card that can be used at www.walmart.com. The actual amount paid in cash and in gift cards depends on the total number of valid claims filed.

Class Counsel will ask the Court to award the following: (1) attorneys' fees up to 25% of the Settlement Fund, plus costs that Class Counsel estimate at up to $1.7 million, (2) administration and notice costs, and (3) $5,000 for each of the Class Representatives (up to $80,000 total which could include the class representatives from cases filed in California state courts). After these fees and costs are deducted from the Settlement Fund, the remaining amount will be equally divided amongst the Wal-Mart Settlement Class Members who file valid claims.

More details are in the Settlement Agreement, which is available at www.OnlineDVDclass.com.

How to get Settlement benefits? You must submit a Claim Form to get benefits. You can submit a Claim Form online (for gift cards only) or by mail. The deadline to submit a Claim Form is **Month 00, 2011**. Claim Forms are available at the website or by calling 1-800-000-0000.

What are my rights in the Wal-Mart Settlement Class?

- Remain in the Settlement: If you wish to remain in the Wal-Mart Settlement Class and get benefits, you need to file a claim.
- Get out of the Settlement: If you wish to keep your right to individually sue Wal-Mart about the claims in this case you must exclude yourself by **Month 00, 2011** from ***both*** the Wal-Mart Settlement Class and the Netflix Litigation Class. See the instruction on how to "Get out of the Litigation" above.
- Remain in the Wal-Mart Settlement Class and Object: If you stay in the Wal-Mart Settlement Class you can object to it by **Month 00, 2011**.

The detailed notice, available at www.OnlineDVDclass.com or by calling 1-800-000-0000, explains how to exclude yourself or object.

The Court will hold a hearing on Month 00, 2011 to consider whether to approve the Settlement, and a request for attorneys' fees, cost, and expenses. If you wish, you or your own attorney may ask to appear and speak at the hearing at your own cost.

For More Information: 1-800-000-0000 www.OnlineDVDclass.com

Netflix Lawsuit, PO Box 0000, City, ST 00000

Text: "DVD" to 00000 (Text messaging rates may apply)

EXHIBIT 3A

EXHIBIT 3-A

In re: Netflix and Walmart.com Antitrust Cases
Table of Associated State Cases
Master File Case Number: 1-09-CV-138096

The Superior Court of California, County of Santa Clara

Case Number	Member Case
1-09-CV-138096	Collusi v. Netflix, Inc., et al.
1-09-CV-133576	Norem V. Netflix, Inc., et al.
1-09-CV-133878	Macias V. Netflix, Inc, et. al
1-09-CV-134759	Cornett V. Netflix, Inc., et al.
1-09-CV-134921	Randle V. Netflix, Inc., et al.
1-09-CV-139511	Kirkpatrick V. Netflix, Inc., et al.

The Superior Court of California, County of San Mateo

Case Number	Member Case
CIV 484165	Katz v. Netflix, Inc. et al.

EXHIBIT 3B

EXHIBIT 3-B
In re Online DVD Rental. Antitrust Litigation
Table of Associated Federal. Cases
Master File Case Number: 4:09-md-02029-PJH

Case Number	Member Case	CLOSED
4 :09-cv-00002-PJH	Resnick at al. v. Wamlart.com USA LLC et al.	
4:09-cv-00236-PJH	Anthony et al. v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-01740-PJH	Belai v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-02063-PJH	Bowles v. Netflix, Inc. et al.	CLOSED
4:09-cv-05151-PJH	Boynton v. Walmart.com USA LLC et al.	
4:09-cv-00445-PJH	Bruno et al. v. Walmart.com USA LLC et al.	CLOSED
4:11-cv-01928 PJH	Caldwell v. Netflix, Inc. et al.	
4:09-cv-00294-PJH	Chapman v. Netflix, Inc. et al.	CLOSED
* 4 :09-cv-0059-RET	Christina v. Netflix, Inc. et al.	CLOSED
4:09-cv-00391-PJH	Chatelain v. Netflix, Inc. et al.	CLOSED
4:09-cv-02156-PJH	Cleary v. Walmart.Com USA LLC et al.	CLOSED
4:09-cv-00111-PJH	Endzweig v. Walmart.com USA LLC. et al.	CLOSED
4:09-cv-00180-PJH	Faris v. Netflix, Inc. et al.	CLOSED
4:09-cv-00554-PJH	Gannon v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-00349-PJH	Grime v. Netflix, Inc. et al.	CLOSED
4:09-cv-00139-PJH	Groce et al. v. Netflix, Inc. et al.	CLOSED
4:09-cv-00958-PJH	Haddad v. Netflix, Inc. et al.	CLOSED
4:09-cv-00375-PJH	Hirsch v. Netflix, Inc. et al.	CLOSED
4:09-cv-02153-PJH	Hotard v. Netflix, Inc. et al.	CLOSED
4:09-cv-00553-PJH	Johnson v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-02152-PJH	Jones v. Netflix, Inc. et al.	CLOSED
4:09-cv-05048-PJH	Karatz v. Netflix, Inc. et al.	
4:09-cv-00400-PJH	Kober v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-02062-PJH	Kopera v. Netflix, Inc. et al.	CLOSED
4:09-cv-01499-PJH	Kra v. Netflix, Inc. et al.	CLOSED
4:09-cv-00402-PJH	Lacabe v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-00340-PJH	Landels et al. v. Netflix, Inc. et al.	CLOSED
4:09-cv-02155-PJH	Levin v. Walmart.Com USA LLC et al.	CLOSED
4:09-cv-02296-PJH	Levy et al. v. Wal.-Mart.Com USA LLC et al.	
4:09-cv-00138-PJH	Lynch et al. v. Walmart.com USA LLC et al.	
4:09-cv-01793-PJH	Magee v. Netflix Inc et al.	
4:09-cv-02067-PJH	Mayer v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-00361-PJH	Meyer v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-02065-PJH	Michalski et al. v. Netflix, Inc. et al.	CLOSED
4:09-cv-00399-PJH	Millrood v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-00377-PJH	Miscioscia v. Netflix, Inc. et al.	
4:09-cv-00096-PJH	O'Connor v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-00297-PJH	Orozco v. Netflix, Inc. et al.	
4:09-cv-02150-PJH	Ortiz-Cardona v. Netflix, Inc. et al.	CLOSED

4:09-cv-00496-PJH	Parikh v. Netflix, Inc. et al.	CLOSED
4:09-cv-00378-PJH	Patras et al. v. Netflix, Inc. et al.	CLOSED
4:09-cv-02163-PJH	Pierson v. Wal.-Mart.Com USA, LLC et al.	
4:09-cv-00244-PJH	Polk-Stamps v. Netflix, Inc. et al.	CLOSED
4:09-cv-00368-PJH	Randal.l v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-00002-PJH	Resnick et al. v. Walmart.com USA LLC et al.	
4:09-cv-00434-PJH	Roy v. Netflix, Inc. et al.	CLOSED
4:09-cv-00116-PJH	Schmitz v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-02151-PJH	Shafeek v. Netflix, Inc. et al.	CLOSED
4:09-cv-00274-PJH	Sheeler v. Walmart.com USA LLC et al.	CLOSED
4:09-cv-00156-PJH	Sivek v. Walmart.com USA LLC. et al.	
4:09-cv-00225-PJH	Slobodin v. Netflix, Inc. et al.	CLOSED
4:09-cv-02064-PJH	Spears v. Netflix, Inc.	
4:09-cv-02154-PJH	Touchton v. Netflix, Inc. et al.	CLOSED
4:09-cv-02184-PJH	Wagner v. Netflix, Inc., et al.	CLOSED
4:09-cv-02066-PJH	Walters et al. v. Netflix, Inc. et al.	CLOSED
4:09-cv-00398-PJH	Weiner v. Walmart.com USA LLC et al.	
4:09-cv-01274-PJH	Wiebe v. Netflix, Inc. et al.	CLOSED
4:09-cv-00678-PJH	Williams v. Netflix, Inc. et al.	CLOSED
4:09-cv-00447-PJH	Zaker v. Netflix, Inc. et al.	CLOSED

* *4 :09-cv-0059-RET Christina v. Netflix, Inc. et al.*
This case is not listed as a member case to the MDL and does not appear to have been transferred as ordered by CTO-1.

CHI-1808668v1

EXHIBIT 4

FOR OFFICIAL USE ONLY

WAL-MART SETTLEMENT

Claim Form

If you paid a subscription fee to rent DVDs from Netflix any time from May 19, 2005 to Month 00, 2011, you will be eligible to receive benefits from a Settlement with Wal-Mart Stores Inc. and Walmart.com USA LLC. You need to submit this Claim Form if you want to receive a cash payment or a gift card. The deadline to file claims is Month 00, 2011.

The amount of the gift card or cash payment will be determined based on a formula contained in the Settlement Agreement and in the notice you received. Additional information regarding the formula and the Settlement can be found at www.OnlineDVDclass.com.

To claim a gift card you may submit the Claim Form by mail or online at www.OnlineDVDclass.com. If submitting by U.S. Mail, print and complete this Claim Form and mail it to the following address postmarked on or before **Month 00, 0000**:

Claims Administrator
PO Box 0000
Faribault, MN 00000-0000

To claim a cash payment, you must complete this Claim Form and mail it to the following address postmarked on or before **Month 00, 0000**:

Claims Administrator
PO Box 0000
Faribault, MN 00000-0000

You cannot file an online claim for a cash payment.

Please Complete Each Section On The Following Page In The Spaces Provided

2814 *CF* *1-2*

SECTION I - CONTACT INFORMATION

Name: *(First/Last)*	
Name at the time of your membership with Netflix *(if different than above)*	
Street Address	
City, State, Zip Code	
Phone Numbers *(primary)*	
Phone Numbers *(secondary)*	
Current E-Mail Address	
E-Mail address associated with Netflix Account *(optional)*	

SECTION II: NETFLIX SUBSCRIPTION

[Subscriber] [Membership] Number *(optional)*	

SECTION III: AWARD SELECTION

Please tell us whether you prefer to receive an electronic Gift Card or a cash payment. You may not request both. If you are requesting a cash payment, you must also provide the last four digits of your social security number. You can give your gift card to someone else but it cannot be resold.

☐ **Electronic Gift Card**

☐ **Cash Payment**

→ Last Four Digits of your Social Security Number *(for cash payments only)*: X X X - X X - ___ ___ ___ ___

SECTION IV: AFFIRMATION

I hereby affirm, under penalty of perjury, that the information I have provided in this Claim Form is true and correct to the best of my knowledge and this is the only Netflix Claim Form that I have submitted. I further understand, acknowledge, and agree that I am eligible to receive only **ONE** payment from this Settlement based on my subscription to a Netflix Online DVD service. I further understand, acknowledge, and agree that the amount I will receive shall be calculated according to the terms of the Settlement Agreement and subject to the terms of the Settlement Agreement, including the release of claims.

Date: ___ ___ / ___ ___ / ___ ___ ___ ___ Signature: _____

FOR OFFICIAL USE ONLY

WAL-MART SETTLEMENT

Claim Form

NAME
ADDRESS
CITY STATE ZIPCODE

If the pre-printed address to the left is incorrect or out of date OR there is no preprinted data to the left, check this box and provide your current name and address:

Name: _____

Address: _____

City: _____

State: __ __ Zip Code: __ __ __ __ __

If you paid a subscription fee to rent DVDs from Netflix any time from May 19, 2005 to Month 00, 2011, you will be eligible to receive benefits from a Settlement with Wal-Mart Stores Inc. and Walmart.com USA LLC. You need to submit this Claim Form if you want to receive a cash payment or a gift card. The deadline to file claims is Month 00, 2011.

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City, State, Zip Code	
Phone Numbers *(primary)*	
Phone Numbers *(secondary)*	
Current E-Mail Address	
E-Mail address associated with Netflix Account *(optional)*	

SECTION II: NETFLIX SUBSCRIPTION

[Subscriber] [Membership] Number *(optional)*	

SECTION III: AWARD SELECTION

Please tell us whether you prefer to receive an electronic Gift Card or a cash payment. You may not request both. If you are requesting a cash payment, you must also provide the last four digits of your social security number. You can give your gift card to someone else but it cannot be resold.

☐ **Electronic Gift Card**

☐ **Cash Payment**

→ Last Four Digits of your Social Security Number *(for cash payments only)*: X X X - X X - ___ ___ ___ ___

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I hereby affirm, under penalty of perjury, that the information I have provided in this Claim Form is true and correct to the best of my knowledge and this is the only Netflix Claim Form that I have submitted. I further understand, acknowledge, and agree that I am eligible to receive only **ONE** payment from this Settlement based on my subscription to a Netflix Online DVD service. I further understand, acknowledge, and agree that the amount I will receive shall be calculated according to the terms of the Settlement Agreement and subject to the terms of the Settlement Agreement, including the release of claims.

Date: ___ ___ / ___ ___ / ___ ___ ___ ___ Signature: _____

EXHIBIT “C”

Morningstar® Document Research℠

FORM 10-K

J C PENNEY CO INC - JCP

Filed: March 23, 2015 (period: January 31, 2015)

Annual report with a comprehensive overview of the company

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended January 31, 2015

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from _____ to _____

Commission File Number: 001-15274

JCPenney

J. C. PENNEY COMPANY, INC.

(Exact name of registrant as specified in its charter)

Delaware	**26-0037077**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

6501 Legacy Drive, Plano, Texas 75024-3698
(Address of principal executive offices)
(Zip Code)

(972) 431-1000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock of 50 cents par value	**New York Stock Exchange**
Preferred Stock Purchase Rights	**New York Stock Exchange**

Securities registered pursuant to Section 12(g) of the Act:

None
(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter (August 2, 2014). $2,930,303,291

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.
305,120,922 shares of Common Stock of 50 cents par value, as of March 16, 2015.

DOCUMENTS INCORPORATED BY REFERENCE

Documents from which portions are incorporated by reference	**Parts of the Form 10-K into which incorporated**
J. C. Penney Company, Inc. 2015 Proxy Statement	Part III

Source: J C PENNEY CO INC, 10-K, March 23, 2015 Powered by Morningstar® Document Research℠
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PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market for Registrant's Common Equity

Our common stock is traded principally on the New York Stock Exchange (NYSE) under the symbol "JCP." The number of stockholders of record at March 16, 2015, was 26,540. In addition to common stock, we have authorized 25 million shares of preferred stock, of which no shares were issued and outstanding at January 31, 2015.

The table below sets forth the quoted high and low intraday sale prices of our common stock on the NYSE for each quarterly period indicated and the quarter-end closing market price of our common stock:

Fiscal Year 2014	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Market price:				
High	$ 9.28	$ 9.93	$ 11.30	$ 8.30
Low	$ 4.90	$ 8.03	$ 6.73	$ 5.90
Close	$ 8.58	$ 9.63	$ 7.61	$ 7.27
Fiscal Year 2013	**First Quarter**	**Second Quarter**	**Third Quarter**	**Fourth Quarter**
Market price:				
High	$ 23.10	$ 19.63	$ 14.65	$ 10.30
Low	$ 13.55	$ 13.97	$ 6.24	$ 5.68
Close	$ 17.26	$ 14.28	$ 8.14	$ 5.92

Since May 2012, the Company has not paid a dividend. Under our 2013 senior secured term loan and 2014 senior asset-based credit facility, we are subject to restrictive covenants regarding our ability to pay cash dividends.

Additional information relating to the common stock and preferred stock is included in this Annual Report on Form 10-K in the Consolidated Statements of Stockholders' Equity and in Note 12 to the Consolidated Financial Statements.

Issuer Purchases of Securities

No repurchases of common stock were made during the fourth quarter of 2014 and no amounts remained authorized for share repurchases as of January 31, 2015.

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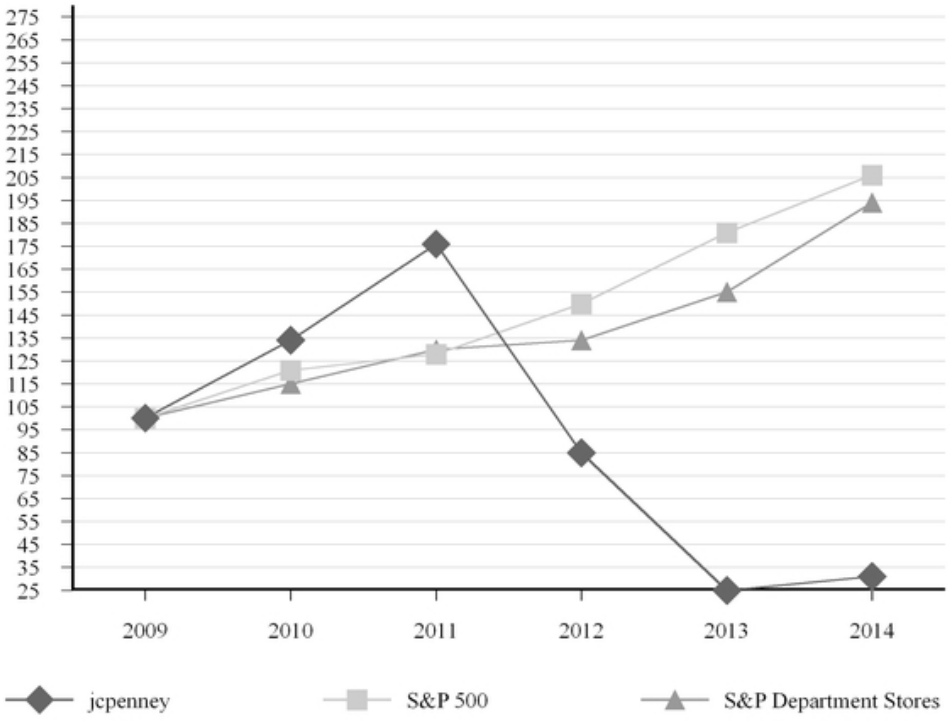
Five-Year Total Stockholder Return Comparison

The following presentation compares our cumulative stockholder returns for the past five fiscal years with the returns of the S&P 500 Stock Index and the S&P 500 Retail Index for Department Stores over the same period. A list of these companies follows the graph below. The graph assumes $100 invested at the closing price of our common stock on the NYSE and each index as of the last trading day of our fiscal year 2009 and assumes that all dividends were reinvested on the date paid. The points on the graph represent fiscal year-end amounts based on the last trading day of each fiscal year. The following graph and related information shall not be deemed "soliciting material" or to be "filed" with the Securities and Exchange Commission, nor shall such information be incorporated by reference into any filing under the Securities Act of 1933 or Securities Exchange Act of 1934, each as amended, except to the extent that we specifically incorporate it by reference into such filing.



S&P Department Stores:
JCPenney, Dillard's, Macy's, Kohl's, Nordstrom, Sears

	2009	2010	2011	2012	2013	2014
JCPenney	$100	$134	$176	$85	$25	$31
S&P 500	100	121	128	150	181	206
S&P Department Stores	100	115	130	134	155	194

The stockholder returns shown are neither determinative nor indicative of future performance.

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Item 6. Selected Financial Data

Five-Year Financial Summary

($ in millions, except per share data)	2014	2013	2012	2011	2010
Results for the year					
Total net sales	$ 12,257	$ 11,859	$ 12,985	$ 17,260	$ 17,759
Sales percent increase/(decrease):					
Total net sales	3.4 %	(8.7)% (1)	(24.8)% (1)	(2.8)%	1.2%
Comparable store sales(2)	4.4 %	(7.4)%	(25.1)%	0.3 %	2.6%
Operating income/(loss)	(308)	(1,420)	(1,310)	(2)	832
As a percent of sales	(2.5)%	(12.0)%	(10.1)%	0.0 %	4.7%
Net income/(loss) from continuing operations	(771)	(1,388)	(985)	(152)	378
Net income/(loss) from continuing operations before net interest expense, income tax (benefit)/expense and depreciation and amortization (EBITDA) (non-GAAP)(3)	323	(819)	(767)	516	1,343
Adjusted EBITDA (non-GAAP)(3)	242	(636)	(396)	1,054	1,596
Adjusted net income/(loss) (non-GAAP) from continuing operations(3)	(816)	(1,431)	(766)	207	533
Per common share					
Earnings/(loss) per share from continuing operations, diluted	$ (2.53)	$ (5.57)	$ (4.49)	$ (0.70)	$ 1.59
Adjusted earnings/(loss) per share from continuing operations, diluted (non-GAAP)(3)	$ (2.67)	$ (5.74)	$ (3.49)	$ 0.94 (4)	$ 2.24
Dividends declared(5)	—	—	0.20	0.80	0.80
Financial position and cash flow					
Total assets	$ 10,404	$ 11,801	$ 9,781	$ 11,424	$ 13,068
Cash and cash equivalents	1,318	1,515	930	1,507	2,622
Total debt, including capital leases and note payable	5,416	5,601	2,982	3,102	3,099
Free cash flow (non-GAAP)(3)	57	(2,746)	(906)	23	158

(1) Includes the effect of the 53rd week in 2012. Excluding sales of $163 million for the 53rd week in 2012, total net sales decreased 7.5% and 25.7% in 2013 and 2012, respectively.

(2) Comparable store sales are presented on a 52-week basis and include sales from new and relocated stores that have been opened for 12 consecutive full fiscal months and Internet sales. Stores closed for an extended period are not included in comparable store sales calculations, while stores remodeled and minor expansions not requiring store closures remain in the calculations. Beginning in 2014, the Company simplified its comparable store sales calculation to better reflect year-over-year comparability. Certain items, such as sales return estimates and store liquidation sales, are now excluded from the Company's calculation. Prior periods have been adjusted to reflect this new methodology. Our definition and calculation of comparable store sales may differ from other companies in the retail industry.

(3) See Non-GAAP Financial Measures beginning on the following page for additional information and reconciliation to the most directly comparable GAAP financial measure.

(4) Weighted average shares–diluted of 220.7 million was used for this calculation as adjusted income/(loss) from continuing operations was positive. 3.3 million shares were added to weighted average shares–basic of 217.4 million for assumed dilution for stock options, restricted stock awards and stock warrant.

(5) On May 15, 2012, we announced that we had discontinued the quarterly $0.20 per share dividend.

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Five-Year Operations Summary

	2014	2013	2012	2011	2010
Number of department stores:					
Beginning of year	1,094	1,104	1,102	1,106	1,108
Openings	1	—	9 (1)	3	2
Closings	(33)	(10)	(7) (1)	(7)	(4)
End of year	1,062	1,094	1,104	1,102	1,106
Gross selling space *(square feet in millions)*	107.9	110.6	111.6	111.2	111.6
Sales per gross square foot(2)	$ 113	$ 107	$ 116	$ 154	$ 153
Sales per net selling square foot(2)	$ 155	$ 147	$ 161	$ 212	$ 210
Number of the Foundry Big and Tall Supply Co. stores(3)	—	10	10	10	—

(1) Includes 3 relocations.
(2) Calculation includes the sales and square footage of JCPenney department stores that were open for the full fiscal year and sales for jcpenney.com.
(3) All stores opened during 2011 and closed during 2014. Gross selling space was 51 thousand square feet as of the end of 2013, 2012 and 2011.

Non-GAAP Financial Measures

We report our financial information in accordance with generally accepted accounting principles in the United States (GAAP). However, we present certain financial measures and ratios identified as non-GAAP under the rules of the Securities and Exchange Commission (SEC) to assess our results. We believe the presentation of these non-GAAP financial measures and ratios is useful in order to better understand our financial performance as well as to facilitate the comparison of our results to the results of our peer companies. In addition, management uses these non-GAAP financial measures and ratios to assess the results of our operations. It is important to view non-GAAP financial measures in addition to, rather than as a substitute for, those measures and ratios prepared in accordance with GAAP. We have provided reconciliations of the most directly comparable GAAP measures to our non-GAAP financial measures presented.

The following non-GAAP financial measures are adjusted to exclude the impact of markdowns related to the alignment of inventory with our prior strategy, restructuring and management transition charges, the impact of our qualified defined benefit pension plan (Primary Pension Plan), the loss on extinguishment of debt, the net gain on the sale of non-operating assets, certain net gains, the proportional share of net income from our joint venture formed to develop the excess property adjacent to our home office facility in Plano, Texas (Home Office Land Joint Venture) and the tax impact related to the allocation of tax expense to other comprehensive income items. Unlike other operating expenses, the impact of markdowns related to the alignment of inventory with our prior strategy, restructuring and management transition charges, the loss on extinguishment of debt, the net gain on the sale of non-operating assets, certain net gains, the proportional share of net income from the Home Office Land Joint Venture and the tax impact related to the allocation of tax expense to other comprehensive income items are not directly related to our ongoing core business operations. Primary Pension Plan expense/(income) is determined using numerous complex assumptions about changes in pension assets and liabilities that are subject to factors beyond our control, such as market volatility. Accordingly, we eliminate our Primary Pension Plan expense/(income) in its entirety as we view all components of net periodic benefit expense/(income) as a single, net amount, consistent with its presentation in our Consolidated Financial Statements. We believe it is useful for investors to understand the impact of markdowns related to the alignment of inventory with our prior strategy, restructuring and management transition charges, Primary Pension Plan expense/(income), the loss on extinguishment of debt, the net gain on the sale of non-operating assets, certain net gains, the proportional share of net income from the Home Office Land Joint Venture and the tax impact related to the allocation of tax expense to other comprehensive income items on our financial results and therefore are presenting the following non-GAAP financial measures: (1) adjusted EBITDA; (2) adjusted net income/(loss); and (3) adjusted earnings/(loss) per share-diluted.

In addition, we believe that EBITDA is a useful measure in assessing our operating performance and are therefore presenting this non-GAAP financial measure in addition to the non-GAAP financial measures listed above.

Source: J C PENNEY CO INC, 10-K, March 23, 2015 Powered by Morningstar® Document Research℠
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EBITDA and Adjusted EBITDA. The following table reconciles net income/(loss), the most directly comparable GAAP measure, to EBITDA and adjusted EBITDA, which are non-GAAP financial measures:

($ in millions)	2014	2013	2012	2011	2010
Net income/(loss) from continuing operations	$ (771)	$ (1,388)	$ (985)	$ (152)	$ 378
Add: Net interest expense	406	352	226	227	231
Add: Loss on extinguishment of debt	34	114	—	—	20
Total interest expense	440	466	226	227	251
Add: Income tax expense/(benefit)	23	(498)	(551)	(77)	203
Add: Depreciation and amortization	631	601	543	518	511
EBITDA (non-GAAP)	323	(819)	(767)	516	1,343
Add: Markdowns - inventory strategy alignment	—	—	155	—	—
Add: Restructuring and management transition charges	87	215	298	451	32
Add: Primary pension plan expense/(income)	(2)	100	315	87	221
Less: Net gain on the sale of non-operating assets	(25)	(132)	(397)	—	—
Less: Proportional share of net income from home office land joint venture	(53)	—	—	—	—
Less: Certain net gains	(88) (1)	—	—	—	—
Adjusted EBITDA (non-GAAP)	$ 242	$ (636)	$ (396)	$ 1,054	$ 1,596

(1) Represents the net gain on the sale of one department store location and the net gain recognized on a payment received from a landlord to terminate an existing lease prior to its original expiration date.

Adjusted Net Income/(Loss) and Adjusted Diluted EPS from Continuing Operations. The following table reconciles net income/(loss) and diluted EPS from continuing operations, the most directly comparable GAAP financial measures, to adjusted net income/(loss) and adjusted diluted EPS from continuing operations, non-GAAP financial measures:

($ in millions, except per share data)	2014	2013	2012	2011	2010
Net income/(loss) (GAAP) from continuing operations	$ (771)	$ (1,388)	$ (985)	$ (152)	$ 378
Diluted EPS (GAAP) from continuing operations	$ (2.53)	$ (5.57)	$ (4.49)	$ (0.70)	$ 1.59
Add: markdowns - inventory strategy alignment, net of tax of $-, $-, $60, $- and $-	—	—	95 (1)	—	—
Add: restructuring and management transition charges, net of tax of $-, $28, $116, $145 and $12	87 (2)	187 (3)	182 (1)	306 (4)	20 (1)
Add/(deduct): primary pension plan expense/(income), net of tax of $-, $10, $122, $34, and $86	(2) (2)	90 (5)(6)	193 (1)	53 (1)	135 (1)
Add: Loss on extinguishment of debt, net of tax of $-, $-, $-, $- and $-	34 (2)	114 (2)	—	—	—
Less: Net gain on sale or redemption of non-operating assets, net of tax of $-, $1, $146, $- and $-	(25) (2)	(131) (7)	(251) (4)	—	—
Less: Proportional share of net income from home office land joint venture, net of tax of $-, $-, $-, $- and $-	(53) (2)	—	—	—	—
Less: Certain net gains, net of tax of $2, $-, $-, $- and $-	(86) (7)	—	—	—	—
Less: Tax benefit resulting from other comprehensive income allocation	—	(303) (8)	—	—	—
Adjusted net income/(loss) (non-GAAP) from continuing operations	$ (816)	$ (1,431)	$ (766)	$ 207	$ 533
Adjusted diluted EPS (non-GAAP) from continuing operations	$ (2.67)	$ (5.74)	$ (3.49)	$ 0.94 (9)	$ 2.24

(1) Tax effect was calculated using the Company's statutory rate of 38.82%.
(2) Reflects no tax effect due to the impact of the Company's tax valuation allowance.

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(3) Tax effect for the three months ended May 4, 2013 was calculated using the Company's statutory rate of 38.82%. The last nine months of 2013 reflects no tax effect due to the impact of the Company's tax valuation allowance.
(4) Tax effect was calculated using the effective tax rate for the transactions.
(5) Tax benefit for the last nine months of 2013 is included in the line item Tax benefit resulting from other comprehensive income allocation. See footnote 8 below.
(6) Tax effect for the three months ended May 4, 2013 was calculated using the Company's statutory rate of 38.82%.
(7) Tax effect represents state taxes payable in separately filing states related to the sale of assets.
(8) Represents the tax benefits related to the allocation of tax expense to other comprehensive income items, including the amortization of actuarial losses and prior service costs related to the Primary Pension Plan and the results of our annual remeasurement of our pension plans.
(9) Weighted average shares–diluted of 220.7 million was used for this calculation as 2011 adjusted income/(loss) from continuing operations was positive. 3.3 million shares were added to weighted average shares–basic of 217.4 million for assumed dilution for stock options, restricted stock awards and stock warrant.

Free Cash Flow

Free cash flow is a key financial measure of our ability to generate additional cash from operating our business. We define free cash flow as cash flow from operating activities, less capital expenditures and dividends paid, plus the proceeds from the sale of operating assets. Free cash flow is a relevant indicator of our ability to repay maturing debt, revise our dividend policy or fund other uses of capital that we believe will enhance stockholder value. Free cash flow is considered a non-GAAP financial measure under the rules of the SEC. Free cash flow is limited and does not represent remaining cash flow available for discretionary expenditures due to the fact that the measure does not deduct payments required for debt maturities, pay-down of pension debt, and other obligations or payments made for business acquisitions. Therefore, it is important to view free cash flow in addition to, rather than as a substitute for, our entire statement of cash flows and those measures prepared in accordance with GAAP.

The following table reconciles net cash provided by/(used in) operating activities, the most directly comparable GAAP measure, to free cash flow, a non-GAAP financial measure.

($ in millions)	2014	2013	2012	2011	2010
Net cash provided by/(used in) operating activities (GAAP)	$ 239	$ (1,814)	$ (10)	$ 820	$ 592
Less:					
Capital expenditures	(252)	(951)	(810)	(634)	(499)
Dividends paid, common stock	—	—	(86)	(178)	(189)
Tax benefit from pension contribution	—	—	—	—	(152)
Plus:					
Discretionary cash pension contribution	—	—	—	—	392
Proceeds from sale of operating assets	70	19	—	15	14
Free cash flow (non-GAAP)	$ 57	$ (2,746)	$ (906)	$ 23	$ 158

Source: J C PENNEY CO INC, 10-K, March 23, 2015 Powered by Morningstar® Document Research℠
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. J. C. PENNEY CORPORATION, INC., a Delaware Corporation; and DOES 1 through 10, inclusive, Defendants.	**Case No. SACV12-0215 FMO(KESx)** **<u>CLASS ACTION</u>** **DECLARATION OF CYNTHIA E. SPANN IN SUPPORT OF APPROVAL OF CLASS ACTION SETTLEMENT** Date: December 3, 2015 Time: 10:00 a.m. Judge: Hon. Fernando M. Olguin CTRM: 22 – 5th Floor Complaint Filed: 2/8/12

I, Cynthia E. Spann, declare:

1. The following facts are known to me of my own personal knowledge and circumstances in the above entitled matter as they relate to this declaration, and if called upon, I could and would testify competently thereto.

2. At all relevant times, I have been a resident of Los Angeles County in the City of West Covina.

3. I am the sole named Plaintiff in this action and authorized its filing by my counsel.

4. I am represented in this action by Matthew J. Zevin of the Stanley Law Group, Derek J. Emge of the Emge Firm, LLP, and David A. Huch of the Law Offices of David A. Huch.

5. After discussions with my counsel as to the duties and obligations of a named plaintiff in a proposed class action, I agreed to serve as the named plaintiff in this action.

6. After providing information to my counsel, I reviewed a draft of the original complaint and authorized my counsel to file it in order to commence a lawsuit in February 2012 against Defendant J.C. Penney Corporation, Inc. ("Defendant" or "J.C. Penney") on behalf of myself and a proposed class of California consumers. Since then, I have reviewed and authorized the filing of three amended complaints on behalf of myself and the proposed class.

7. Since the initial filing of this action in February 2012, I have vigorously pursued this suit on behalf of the proposed class to the best of my abilities and with the assistance of my counsel.

8. Throughout this action, I have actively participated in discovery. I have reviewed and responded to written discovery propounded by J.C. Penney, including two sets of Requests for Production of Documents and two sets of Interrogatories. I have conducted diligent searches for, and produced, documents and tangible items requested by my attorneys and by Defendant.

9. On February 22, 2013, I appeared for a deposition in Costa Mesa, California. In preparation for my deposition, I met with my counsel in person on three separate occasions. For the first meeting, I traveled to my counsel's law offices in San Diego. This meeting lasted approximately five hours. For the second meeting, I met with my counsel near my workplace in San Dimas, California. This second meeting lasted approximately three hours. For the third meeting, I met with my counsel in Costa Mesa on the evening prior to the deposition. This third meeting lasted approximately two hours. In addition to the three in-person meetings, I spoke with my counsel via telephone on two separate occasions for a total of four hours.

10. From the filing of the original complaint to the present, I have actively monitored this litigation; and I will continue to do so while the litigation is still active. I have frequently communicated with my counsel regarding the status of the litigation, and will continue to do so while the litigation is still active.

11. In addition to numerous telephone calls with counsel to discuss the case, I also exchanged with my counsel dozens of emails about the progress of the case and sent and received correspondence via regular mail and fax. My counsel often needed information from me, which I provided to them readily. For example, upon request from my counsel, I carefully reviewed my deposition transcript and offered clarifications and corrected several typos.

12. On May 18, 2015, I was appointed by the Court as the sole class representative on behalf of the following class:

> All persons who, while in the State of California and between November 5, 2010 and January 31, 2012 purchased from [JCPenney] one or more private or exclusive branded items of apparel or accessories advertised at a discount of at least 30% off of the stated 'original' or 'regular' price, and who have not received a refund or credit for their purchase(s).

13. Recently, my counsel and I reached a class action settlement with J.C. Penney. This settlement was reached after four rounds of mediation. I attended the first mediation in downtown Los Angeles during September 2013. Although due to work obligations I was unable to attend the second, third and fourth mediations with David Rotman in San Francisco on July 9, August 21, and September 10, 2015, I frequently communicated with my counsel throughout the course of those mediations, via telephone and text messaging.

14. At the conclusion of the first mediation with Mr. Rotman, the mediator submitted a mediator's proposal for all parties' consideration. I reviewed this proposal with my counsel in great detail and, after discussions, we agreed to accept the proposal and continue to negotiate a class-wide settlement with J.C. Penney.

15. I also reviewed the second mediator's proposal, furnished to the parties on August 21, 2015, with my counsel in great detail and, after extensive discussions, we agreed to accept the proposal and continue discussions on September 10, 2015.

16. At the conclusion of the final mediation on September 10, 2015, I agreed with my counsel that the settlement terms offered should be accepted in the best interests of the class and presented to the court for its review. My approval of the settlement was not dependent or conditioned on the promise of any special treatment, compensation or “enhancement award,” and my right to seek or request an “enhancement award” was not dependant or conditioned upon my approval of the settlement.

17. I filed this lawsuit for the main reason that I wanted to put a stop to what I thought was the misleading way J.C. Penney advertised prices by comparing "original" or "regular" prices to so-called "sale" prices. I also wanted to try to recover money for consumers, like me, who may have been misled by J.C. Penney’s practices. I feel that these goals have been achieved in the proposed

settlement because J.C. Penney has agreed to pay back $50 million dollars and is implementing significant changes to its pricing practices.

18. In the course of mediation, the parties agreed, for settlement purposes only, to expand the class description to include "all persons who, between January 1, 2013 and December 31, 2014, purchased from JCP one or more private or exclusive branded items of apparel or accessories at a discount of at least 30% off of the stated "original" or "regular" price, and who have not received a refund or credit for their purchase(s)." I feel that this is justified because my attorneys' investigation indicated that J.C. Penney had returned to using false price comparisons in 2013, and the large settlement could be used to compensate more victims of J.C. Penney's practices.

19. I am not aware of any conflicts of interest or interests antagonistic to the members of the proposed Settlement Class.

20. If the court does not approve the class action settlement, I intend to continue with the litigation and appear and testify at trial, should the action go to trial. I have been exposed to significant personal and reputational scrutiny and risk from the publicity and media attention associated with this class action lawsuit. ABC News, Reuters, CNN and numerous other news outlets have attempted to contact me, reported about this lawsuit and mentioned my name in their reporting. For example, during July 2013, *The Today Show* on NBC featured an investigative report about my lawsuit and J.C. Penney's alleged false advertising practices. During June 2013, an ABC News article entitled, "*J.C. Penney Returns to Coupons and Marks Up Prices*," states: "The original plaintiff who filed a lawsuit against J.C. Penney last year is Cynthia Spann of Los Angeles County..."

21. The large amount of publicity and media attention focused on this lawsuit has led to my boss, co-workers, family members and friends asking me questions about the lawsuit and whether I was actually involved in the litigation,

such as: "Is that really you?" "Are you the Cynthia Spann who sued J.C. Penney?" etc.

22. I have not kept detailed daily or other time records which would show the precise amount of time that I have devoted to this case. However, I have reviewed my calendars, records of my communications with my counsel and the vast volume of court papers I received and reviewed. I estimate that my total time devoted to this litigation, including all of my phone calls, emails, text messages and other consultations with my counsel; reviewing the pleadings and other court filings in the case; reviewing, answering and verifying responses to discovery propounded by J.C. Penney and producing relevant documents and tangible items in my possession; traveling to and from San Diego, San Dimas and Costa Mesa to prepare for and sit for my deposition; traveling to and from downtown Los Angeles to attend the first mediation in this matter; and reviewing the terms of the proposed class action settlement and the written settlement papers, involved approximately 118 hours of my time from February 2012 to the present.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 2nd day of November 2015 at West Covina, California.

Cynthia E. Spann

Cynthia E. Spann

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CYNTHIA E. SPANN, Individually and On Behalf of Others Similarly Situated, Plaintiff, v. J. C. PENNEY CORPORATION, INC. a Delaware Corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. SACV12-0215 FMO (KESx) **CLASS ACTION** **DECLARATION OF ADAM TARCZYNSKI**

DECLARATION OF ADAM C. TARCZYNSKI

I, Adam C. Tarczynski, declare as follows:

1. I have personal knowledge of all matters set forth herein and, if called upon to testify to them, I could and would do so competently.

2. I have been employed by J. C. Penney Corporation, Inc. ("JCPenney") for approximately 31 years. I am currently a Store Operations Director. I have held this position since April 2013. From January 2012 to April 2013, I was the Director of Store Systems. From October 2011 to January 2012, I was the Customer Experience Enhancement Director. Prior to that, from 2009 to October 2011, I was the Director of Store Systems and Pricing and Signing. Prior to that, I held several different positions at JCPenney, including sales associate, Merchandise Assistant, Merchandiser, Senior Merchandiser, Basic/Logic Coordinator, Basic Logic Merchandise Manager, Sales and Merchandise Planner, Project Manager, Senior Project Manager and Manager of Store Systems. In my current position, I manage the development and implementation of store hardware standards by store box-type. I also manage and support all current store pricing systems, including systems for maintenance.

3. I have analyzed the raw data of the number of JCPenney customers who fall within the class definition from JCPenney's databases to estimate the number of unique unknown class members. They are unknown because they either paid with cash, or with a card and we did not record a name with the sale.

4. First, we started with the raw data. During the class period, there were 22,899,930 customers who are either unknown card customers or customers who paid cash to purchase an item that was sold at more than 30% off. Of these customers, 5,638,696 are unknown card customers and 17,261,234 paid with cash. These numbers assume that each transaction made by an unknown card customer

and a customer who paid cash are unique customers. This assumption is incorrect. This raw data does not represent the true number of unique unknown customers.

5. The raw data shows there were 17,261,234 cash transactions. This represents 34% of the total sales dollars for the class period. Historically on average 17.7% of JCPenney's sales are in cash. The number of cash transactions is therefore inflated. It is inflated because it includes exchange transactions, operational transactions, and it includes customers who become known to JCPenney and are counted in both the unknown cash transactions and the known transactions.

6. An exchange transaction occurs when a customer returns an item and then buys another item, often at an even exchange. In an even exchange, no funds pass between JCPenney and the customer. These transactions are flagged as "cash," even though 60% or more were paid for originally with a card. Similarly, for a less or greater exchange, the transaction is rung as "cash" for convenience, because only a small refund or payment was required and the customer preferred to use cash instead of using a credit or debit card. Exchange transactions typically represent approximately 8.1% of all transactions.

7. An operational transaction occurs when an item is used for an in-store purpose and no funds are ever paid by a customer. Operational transactions include merchandise used on mannequins for displays, contest or sweepstakes give-a-ways, and sales audit corrections and mark offs made after a customer has left the store or where no customer is involved for damaged goods. Operational transactions typically represent approximately 2% of all transactions.

8. The exchange and operational transactions need to be removed from the number of cash customers, which the raw data lists as 17,261,234. There were 54,253,430 total store transactions (excluding jcp.com transactions) during the class period where an item was more than 30% off. Of these transactions, we estimate that a total of approximately 10.1% were exchange and operational transactions (8.1% are exchange transactions and 2% are operational transactions). To be

conservative, we estimated the number of exchange and operational transactions to be 8% instead of 10.1%. Eight percent of the total store transactions is 4,340,274 (54,253,430 x .08 = 4,340,274). This number must then be reduced from the total number of cash transactions. The number of unknown cash transactions is accordingly reduced from 17,234,434 to 12,920,960 (17,261,234 - 4,340,274 = 12,920,960). After taking into account the number of exchange and operational transactions, there are 12,920,960 cash transactions.

9. The next step is to determine the number of unique customers who comprise the 12,920,960 cash transactions. Based on research on historical customer shopping behaviors and patterns, the average JCPenney customer shops at JCPenney between 2 to 4 times a year. During the 39 month class period, the average JCPenney customer would make a purchase 6 to 12 times. To be conservative, we estimated the number of purchasing visits to be six. The number of cash transactions must be divided by six, the number of purchasing visits. The number of unique cash transactions is reduced from 12,920,960 to 2,153,493 (12,920,960 ÷ 6 = 2,153,493).

10. Combining the unique cash customers of 2,153,493 with the unique unknown card customers of 5,638,696, there are 7,792,189 potential unique customers, assuming there is no overlap between the two groups (2,153,493 + 5,638,696 = 7,792,189).

11. Everyday unknown customers become known through a variety of means, including JCPenney credit cards, rewards enrollment, or other payment verification processes. These customers are then duplicated in both the known and unknown categories. Based on historical conversion rates, the number of unknown customers who become known can range from 10%-28.5% annually. JCPenney enrolls over two million customers in its private label credit program each year. During the fifty months ranging from the start of the first class period to the end of the second class period, 11 million customers were enrolled in the private label

credit program. Six million additional customers were enrolled in the rewards program in 2014, outside of those who enrolled in the private label credit program. During 2014, 28.5% of the cash and gift card transactions had a rewards membership attached to them. To avoid double counting certain customers, the number of customers who became known during the class period must then be reduced from the number of unknown customers.

12. Applying a very conservative approach of an annual conversion rate of 10% for the 39 month class period results in 30% of unknown customers either receiving a JCPenney private label credit card or enrolling in the rewards program, and therefore becoming duplicated into the known customer category when shopping in a subsequent year. Thirty percent of 7,792,189 is 2,337,656 (7,792,189 x .3 = 2,337,656), which means the number of potentially unique customers is reduced from 7,792,189 to 5,454,532 (7,792,189 - 2,337,656 = 5,454,532).

13. At a more aggressive annual conversion rate of 20% for the 39 month class period, there would be 60% of unknown customers becoming known and being duplicated in both the known and unknown customer category. Sixty percent of 7,792,189 is 4,675,313 (7,792,189 x .6 = 4,675,313), which means the number of potentially unique customers is reduced from 7,792,189 to 3,115,103 (7,792,189 - 4,675,313 = 3,116,875).

14. It is reasonable to believe the annual conversion rate is between 10% and 20%, and therefore the unique number of unknown customers during the class period is between 3,116,875 and 5,454,532.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed November 3, 2015, at Plano, Texas.

Adam C Tarczynski

ADAM C. TARCZYNSKI

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Attorneys for Plaintiff Cynthia E. Spann
and Class Counsel

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. J.C. PENNEY CORPORATION, INC., a Delaware Corporation; and DOES 1 through 10, Inclusive, Defendant.	Case No. SACV12 0215 FMO (KESx) **CLASS ACTION** **DECLARATION OF BRIAN J. BERGMARK IN SUPPORT OF PLAINTIFF'S MOTION FOR MODIFICATION OF CERTIFICATION ORDER AND PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** DATE: December 3, 2015 TIME: 10:00 a.m. JUDGE: Honorable Fernando M. Olguin CTRM: 22 – 5th Floor

I, BRIAN J. BERGMARK, hereby declare:

1. I have been retained by Cynthia E. Spann ("Ms. Spann"), on behalf of herself and all others similarly situated (collectively referred to as "the Plaintiff"), through her attorneys, Stanley Law Group and The Emge Firm, LLP, to provide financial, economic and damage analysis pertaining to the above-referenced matter. Unless otherwise indicated, the following is set forth based on my own personal knowledge, and if called upon to testify, I would do so competently.

2. I am a Managing Director and one of the Founders of Torrey Partners, an economic and accounting services firm, whose services include providing independent expert testimony and analysis and strategic consulting services to clients including corporations, law firms, and local, state and federal governments and agencies. I am licensed in the State of California as a Certified Public Accountant. I am accredited in Business Valuation by the American Institute of Certified Public Accountants and as a Senior Appraiser by the American Society of Appraisers. I attended the University of California at Los Angeles (Bachelor of Science, Economics-Systems Science graduate), and San Diego State University (Master of Business Administration, emphasis in Finance). My curriculum vitae, which summarizes my professional and educational background, is attached hereto as Exhibit A.

3. During my professional career, I have provided economic loss, damage analysis, valuation and consulting services for international accounting and consulting firms and local accounting firms and businesses since 1984. Since 1989 my work has been focused on providing economic loss, damage quantification, and valuation analysis in litigation and non-litigation matters involving businesses and individuals. I have performed hundreds of analyses of economic losses addressing issues similar to those raised in this matter.

4. I have previously submitted declarations in this matter addressing various financial and damages issues. I was deposed in this matter on June 3, 2013.

5. Aspects of the declaration and deposition testimony that I previously provided in this matter pertained to identifying various alternative analyses of the damages sustained by (and/or restitution owed to) Ms. Spann and other members of the Class in this matter that I could perform using the data that has been provided by JCPenney.

6. At the time of my deposition and initial declarations in this matter, I was provided and reviewed a sample of sales data reflecting, for the period of November 5, 2010 through October 24, 2011, all California-related sales of the ten items that Plaintiff purchased from JCPenney on March 5, 2011 ("Initial Data Set"). This included line-by-line details for a total of 23,211 units sold.

7. Since then, I have been provided with data reflecting all of JCPenney's sales of private and exclusive branded products of apparel and accessories sold in California between November 5, 2010 and January 31, 2012, and between January 1, 2013 and December 31, 2014 at a discount of at least 30% off of a "regular" or "original" price. ("Second Data Set"). This production includes a massive amount of data covering the sale of almost 135 million units in more than 55.5 million unique transactions, and it represents more than $1.5 billion in total sales dollars.

8. Like the Initial Data Set, the Second Data Set is searchable and sortable. It includes, on a line-by-line basis, such detail as the identification (name and SKU number) of each unit sold, the regular price of each unit sold, the sale price of each unit sold, and the store, date and time of each transaction. It also includes the names and various degrees of contact information (email address, physical addresses and/or telephone numbers) associated with the sale of 75,629,772 units in 28,553,750 unique transactions.

9. Based on my review of the Second Data Set, I have determined that

there are a total of 3,256,888 Settlement Class Members who can be identified[1] for the period of November 5, 2010 through January 31, 2012 (the original Class Period), and another 2,395,410 Settlement Class Members who can be identified for the period of January 1, 2013 through December 31, 2014. Thus, in total, the parties can identify 5,652,298 Settlement Class Members associated with 28,553,750 transactions. However, there are another 27,028,569 transactions, representing 59,300,526 units sold, for which there is no associated contact information.

10. My staff has worked with employees of JCPenney to determine the estimated number of Settlement Class Members for whom there is no name or contact information. I understand from these discussions that such information is missing from JCPenney's records when a customer pays in cash or with a credit card that has not been associated with a customer profile. Based on its analysis, JCPenney estimates that there are between 3,116,875 and 5,652,298 additional Settlement Class Members for whom the parties lack any contact or identifying information. Accordingly, for purposes of this declaration, I have worked off of the assumption that there are a total of between 8,769,173 and 11,106,830 Settlement Class Members.

11. Based on my review and analysis of the Second Data Set, I have been able to estimate numerous characteristics of the entire Settlement Class, including the following:

a. Total number of units sold: 134,930,298 units;

b. Total number of unique transactions: 55,582,319;

c. Total sales dollars: $1,532,432,307;

d. Average price of each unit sold: $11.36;

[1] Where JCPenney has provided either a name (first and/or last) along with either a physical and/or email address.

e. Average number of transactions per Settlement Class Member: 5.1; and

f. Average amount spent by known Settlement Class Member: $154.19.

Damages Analysis:

12. I have also been asked to provide observations regarding the potential magnitude of the total damages/restitution that could be awarded to the entire Settlement Class, using the three alternative approaches for calculating restitution identified in my prior declarations and discussed in the Court's order denying JCPenney's Motion for Summary Judgment.

13. The data supplied to me is sufficient to perform a comprehensive analysis of restitution owed to the Settlement Class under two of the three measures of restitution proposed by Plaintiff and, if provided with JCPenney's cost basis for each item in the Second Data Set, I could perform a comprehensive analysis under the third measure of restitution proposed by Plaintiff. However, based on the size of the Second Data Set, I estimate that a full damages analysis for the Settlement Class would take multiples of more than ten times the original approximately $35,000 of fees we accumulated in preparing our analysis for the Initial Data Set. To avoid burdening the Settlement Class with these significant costs, I have performed the following summary analyses, for settlement purposes only, which I believe provides a reasonable estimate of the total amount of damages/restitution that would be owed to the Settlement Class if Plaintiff were to prevail at trial.

14. The first model, "complete restitution," would provide a full refund for every product purchased. If Settlement Class Members were awarded the entire amount that they spent to purchase each item sold at a discount of 30% or more, the total amount due would be $1,532,432,307. Based on a total Settlement Class size of 8,769,173 to 11,106,830, the estimated average amount of restitution per Class Member would be approximately $137.97 to $174.75. For comparison purposes, I

previously calculated that, based on her purchase of 10 items, Ms. Spann would be owed $211.95 under this model of restitution. It should be noted, however, that Ms. Spann and all Settlement Class Members would be required to return and give up the items that they purchased in order to recover anything under this model of restitution.

15. The second model of restitution, "transaction value," is based on the amount of the discount promised by JCPenney applied to the *actual* prevailing price paid for that particular product. For purposes of this declaration, I have determined that the average promised "discount" per item was approximately 59.9%, and the average price paid per item was $11.36. Multiplying the product of those numbers ($11.36 x 59.9% = $6.80) by the total number of units sold (134,930,298) derives a figure of approximately $917,526,026, or approximately $82.61 to $104.63 per Settlement Class Member. While this estimate is based on average discounts and average prices, rather than the actual promised discounts and actual prevailing market prices per item, it provides a rough, but relatively reasonable estimate of the total amount of restitution that would be due under this model. For comparison purposes, I previously calculated that, based on her purchase of 10 items, Ms. Spann would be owed $77.02 under this model of restitution.

16. The third proposed model of restitution is based on the incremental profits received by JCPenney through its misleading price comparisons. In order to make this calculation with certainty, I would need access to JCPenney's cost data for each item sold to Settlement Class Members, which I have not yet been provided. Nevertheless, I have analyzed many of JCPenney's public filings with the Securities and Exchange Commission, including its Form 10-Ks for the years ending January 31, 2010 through 2015 and, based on these disclosures, I have determined that JCPenney's average overall gross profit margin is approximately 35%. As discussed above, JCPenney received revenues of $1,532,432,307 from its

sale of products to Settlement Class Members. Accordingly, I can roughly estimate that JCPenney's incremental profit from these transactions is approximately $536,351,307, or between $48.29 and $61.16 per Settlement Class Member, although I understand that JCPenney may disagree with the appropriate amount of expenses to deduct when applying this approach.

17. The above analysis is not final, nor is it meant to be exhaustive of the potential means by which I could calculate classwide damages or restitution in this case. But, for purposes of evaluating the settlement, it does provide reasonable estimates of the amount that would be due under the alternative models of restitution proposed by Plaintiff and her counsel.

Settlement Benefit Analysis:

18. I have also been asked to provide an analysis of the estimated monetary benefit that Settlement Class Members who file Claims will receive from the Settlement. I understand that the actual benefit that each Claimant receives will be based on a number of factors, including: 1) the amount of fees and costs awarded by the Court; 2) the amount that each Claimant spent on qualifying purchases at JCPenney; and 3) the total number of Claim Forms filed.

19. I understand that Notice and Claim Administration costs are estimated to be $2,425,274, and that Class Counsel expect to request a total of $13,760,000 in fees, costs and Enhancement Award. Assuming the full amounts are awarded and deducted from the Class Settlement Amount, there would be $33,814,726 remaining in the Class Allocation to be distributed to Claimants.

20. The Settlement Agreement awards points to Claimants based on the amount that they spent on qualifying purchases at JCPenney so that those Claimants that were affected more by JCPenney's advertising practices would receive a greater share of the settlement than class members that were less affected. Based on my analysis of the Second Data Set, I have determined that the average Settlement Class Member spent approximately $154.19 at JCPenney. Based on my

understanding of the point system, the point allocation for this amount spent would be 3 points, which is the allocation for Claimants who spent between $101 and $200 in qualifying purchases. The minimum distribution – 1 point, will be reserved for Claimants who file a sworn Claim Form but who have no proof of purchase, 2 points will be awarded to Claimants who can be identified by JCPenney's records or who submit their own proof of purchase, and the maximum distribution – 10 points, will be awarded to Claimants who have qualifying purchases in excess of $801.

21. Based on a total class size of 8,769,173[2], and applying varying rates of the percentage of Settlement Class Members that actually make a claim, I have determined the following estimated range of monetary benefits that will be provided to Claimants:

Assumed Claim Rate	Minimum Benefit Without Proof of Purchase (1 Point)	Minimum Benefit With Proof of Purchase (2 Points)	Average Benefit (3 Points)	Maximum Benefit (10 Points)
1%	$128.54	$257.08	$385.62	$1,285.40
2%	$64.27	$128.54	$192.81	$642.70
3%	$42.85	$85.69	$128.54	$428.47
5%	$25.71	$51.42	$77.12	$257.08
10%	$12.85	$25.71	$38.56	$128.54
20%	$6.43	$12.85	$19.28	$64.27
30%	$4.28	$8.57	$12.85	$42.85

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[2] The number of identified Settlement Class Members plus the estimated low-end for additional Settlement Class Members (per JCPenney) for whom the parties lack any contact or identifying information.

22. Based on a total class size of 11,106,830[3], and a range of claim rates, I have determined the following range of monetary benefits that will be provided to Claimants:

Assumed Claim Rate	Minimum Benefit Without Proof of Purchase (1 Point)	Minimum Benefit With Proof of Purchase (2 Points)	Average Benefit (3 Points)	Maximum Benefit (10 Points)
1%	$101.48	$202.96	$304.44	$1,014.80
2%	$50.74	$101.48	$152.22	$507.40
3%	$33.83	$67.65	$101.48	$338.27
5%	$20.30	$40.59	$60.89	$202.96
10%	$10.15	$20.30	$30.44	$101.48
20%	$5.07	$10.15	$15.22	$50.74
30%	$3.38	$6.77	$10.15	$33.83

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of November 2015, at San Diego, California.

BRIAN J. BERGMARK

[3] The number of identified Settlement Class Members plus the estimated high-end for additional Settlement Class Members (per JCPenney) for whom the parties lack any contact or identifying information.

EXHIBIT A

TORREY PARTNERS

Brian J. Bergmark, MBA, CPA, ABV, ASA

Managing Director

Brian J. Bergmark, MBA, CPA, ABV, ASA, is a Managing Director of Torrey Partners and offers his clients over 20 years experience providing damage analysis, business valuation, business consulting, and accounting services to clients involved in dispute resolution, business management and tax matters.

Mr. Bergmark's industry experience includes construction, telecommunication, healthcare, computer hardware and software, real estate, manufacturing, and professional businesses, among others. His appraisal experience includes the valuation and apportionment of tangible and intangible assets, analyses prepared for estate and gift tax purposes, marital dissolution, ownership transfers, eminent domain and various consulting matters.

Mr. Bergmark has extensive experience providing business analysis and qualified testimony on complex business, wage loss, wage and hour, economic, valuation, and marital dissolution matters in Federal and State Superior Courts. The scope of his involvement in litigation matters includes discovery assistance, causation analysis, damage quantification and forensic accounting / fraud investigations.

Professional Experience

2011 to present	**Torrey Partners**	Managing Director
2006 to 2011	**LECG**	Director
1992 to 2006	**Mack|Barclay Inc.**	Shareholder
1989 to 1992	**Brodshatzer, Wallace, Spoon & Yip**	Senior Manager
1988 to 1989	**Engicon**	Controller
1986 to 1988	**Steres, Alpert & Carne**	Senior Accountant
1984 to 1986	**Ernst & Whinney**	Auditor

Education

Master of Business Administration, San Diego State University, 1992
Emphasis in Finance.
Bachelor of Science in Economics – Systems Science, University of California, Los Angeles, 1984

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CERTIFICATIONS AND LICENSES

Certified Public Accountant, California
Accredited in Business Valuation
Accredited Senior Appraiser
Certified in Financial Forensics
Certified Management Accountant (Inactive)

MEMBERSHIPS IN PROFESSIONAL ORGANIZATIONS

American Institute of Certified Public Accountants
California State Society of Certified Public Accountants
American Society of Appraisers

TEACHING

University of California, San Diego Department of Extended Studies – instructor
San Diego State University School of Business - guest lecturer
University of San Diego School of Law - guest lecturer
Various law firms and seminars - MCLE instructor

F & C International: A Case Study of an I.P.O. Valuation –
Co-authored - Journal of Financial Education - Spring, 1997

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Attorneys for Plaintiff Cynthia E. Spann
and Class Counsel

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. J.C. PENNEY CORPORATION, INC., a Delaware Corporation; and DOES 1 through 10, Inclusive, Defendant.	Case No. SACV12 0215 FMO (KESx) CLASS ACTION **DECLARATION OF JEANNE C. FINEGAN IN SUPPORT OF PRELIMINARY APPROVAL OF SETTLMENT AND NOTICE PROGRAM** Judge: Honorable Fernando M. Olguin Ctrm: 22 – 5th Floor Date: December 3, 2015 Time: 10:00 a.m.

I, JEANNE C. FINEGAN, declare as follows:

INTRODUCTION

1. I am President of HF Media, LLC, ("HF Media") a division of Heffler Claims Group LLC. This Declaration is based upon my personal knowledge as well as information provided to me by counsel for the Parties, my associates and staff, and information reasonably relied upon in the fields of advertising media and communications.

2. Pursuant to the proposed Settlement Agreement ("Agreement"), section 2.7, and subject to this Court's approval, Heffler Claims Group LLC ("Heffler Claims") has been engaged by Class Counsel as the Claims Administrator in the above captioned litigation (the "Action"), to develop and implement the notice procedures and administer the settlement. The Notice Program outlined in the Agreement and discussed below is designed to inform potential class members of the proposed class action settlement described in the Agreement.

3. Pursuant to section 5.1 of the Agreement, the Settlement Class is defined as follows:

(a) All persons who, while in the State of California and between November 5, 2010 and January 31, 2012, and between January 1, 2013 through December 31, 2014, purchased from J.C. Penney one or more private or exclusive branded items of apparel or accessories at a discount of at least 30 percent off of the stated "original" or "regular" price, and who have not received a full refund or credit for their purchases.

(b) Excluded from the Settlement Class are Defendant, as well as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as all past and present employees, officers and directors of J.C. Penney.

/ / /

QUALIFICATIONS

4. Heffler Claims provides class action notice, claims administration, and other significant data management processes services related to class actions and mass tort actions. Heffler Claims has provided class action settlement services in more than 1,000 cases of varying sizes and complexity over the past 45 years. Heffler Claims has expertise in all aspects of administration for consumer, antitrust, securities, employment, mass tort, and government enforcement matters.

5. The credentials that qualify me to provide an expert opinion include more than 25 years of communications and advertising experience. I am the only Notice Expert accredited in Public Relations (APR) by the Universal Accreditation Board, a program administered by the Public Relations Society of America. Further, I have provided testimony before Congress on issues of notice. I have also lectured, published and been cited extensively on various aspects of legal noticing, product recall and crisis communications. In addition, I have served as an expert to he Consumer Product Safety Commission (CPSC) to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns.

6. I have served as an expert directly responsible for the design and implementation of hundreds of class action notice programs, some of which are the largest and most complex programs ever implemented in both the United States and in Canada. My work includes a wide range of class actions and regulatory and consumer matters that include product liability, construction defect, antitrust, asbestos, medical pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance and bankruptcy.

7. Further, I have been at the forefront of modern notice, integrating new media and social media into court approved legal notice programs such as *In Re: TracFone Unlimited Service Plan Litigation*, No. C-13-3440 EMC (ND Ca), *In re: Reebok Easytone Litigation*, No. 10-CV-11977 (D. MA), and *In re: Skechers Toning Shoes Products Liability Litigation*, No. 3:11-MD-2308-TBR (W.D. KY.).

8. As detailed below, courts have repeatedly recognized my work as an expert:

(a) For example, in his order granting the Motion for Settlement in *In re: Skechers Toning Shoes Products Liability Litigation*, No. 3:11-MD-2308-TBR (W.D. KY 2012), the Honorable Thomas B. Russell stated:

> … The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.

(b) *Quinn v. Walgreen Co.*, 12 Civ 8187- VB (SDNY 2015) (Jt. Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti concluded:

> "The notice plan was the best practicable under the circumstances. … [and] the proof is in the pudding." This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims.

(c) Brody v. Merck & Co., Inc., et al., No. 3:12-cv-04774-PGS-DEA (NJ) (Jt. Hearing for Prelim. App., Sept. 27, 2012, transcript page 34). During the Hearing on the Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan praised my work, noting:

> "Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim."

(d) DeHoyos, et al. v. Allstate Ins. Co., No. 01-CA-1010 (W.D. TX). Similarly, in the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

> [T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. … This program was vigorous and specifically structured to reach the African-American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts.

(e) And in Stern v. AT&T Mobility Wireless, No. 09-cv-1112 CAS-AGR (C.D.Cal.), in the Final Approval Order, the Honorable Christina A. Snyder stated:

> [T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.

(f) Other courts have expressed similar approval in many cases, including: *Gemelas v. The Dannon Company*, No. 1:08-cv-00236 (N.D. Ohio, E. iv.). In the Judgment, Final Order, and Decree, Judge Dan Aaron Polster approved the notice program, stating:

> In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, the Class Action Settlement Administrator caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. In addition, the Settlement was widely publicized using Internet banner ads, press releases, audio news releases, via a Settlement Website, and through a toll-free number. … The Declaration of Jeanne C. Finegan [sic], attesting to the dissemination of the Class Notice, demonstrates compliance with this Court's

> Preliminary Approval Order. … The distribution of the Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.

(g) In re Expedia Hotel Taxes and Fees Litigation, Case No. 05-2-02060-1 SEA, Superior Court of Washington in and for King County (2009). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

> The Notice of the Settlement given to the Class … was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceedings and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of [FRCP] 23 and due process.

9. Additionally, I have published extensively on various aspects of legal noticing, including the following publications and articles:

(a) Author, ‘Being 'Media-Relevant' — What It Means And Why It *atters* - Law360.com, New York (September 11, 2013, 2:50 PM ET).

(b) Co-Author, “New Media Creates New Expectations for Bankruptcy Notice Programs,” ABI Journal, Vol. XXX, No 9, November 2011.

(c) Quoted Expert, “Effective Class Action Notice Promotes Accessto Justice: Insight from a New U.S. Federal Judicial Center Checklist,” Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

(d) Co-Author, with Hon. Dickran Tevrizian, “Expert Opinion: It’s

More Than Just a Report…Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," BNA Class Action Litigation Report, 12 CLASS 464, 5/27/11.

(e) Co-Author, with Hon. Dickran Tevrizian, "Your Insight: It's More Than Just a Report…Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape, TXLR, Vol. 26, No. 21, 5/26/2011.

(f) Author, Five Key Considerations for a Successful International *Notice Program*, BNA Class Action Litigation Report, 4/9/10 Vol. 11, No. 7 p. 343.

(g) Quoted: Technology Trends Pose Novel Notification Issues for *Class Litigators*, BNA Electronic Commerce and Law Report, 15, ECLR 109, 1/27/10.

(h) Author, Legal Notice: R U ready 2 adapt? BNA Class Action Litigation Report, Vol. 10, No. 14, 7/24/2009, pp. 702-703.

(i) Author, On Demand Media Could Change the Future of Best *Practicable Notice*, BNA Class Action Litigation Report, Vol. 9, No. 7, 4/11/2008, pp. 307-310.

(j) Quoted in, Warranty Conference: Globalization of Warranty *and Legal Aspects of Extended Warranty*, Warranty Week, February 28, 2007, available at www.warrantyweek.com/archive/ww20070228.html.

(k) Co-Author, Approaches to Notice in State Court Class Actions, For The Defense, Vol. 45, No. 11, November 2003.

(l) Author, The Web Offers Near, Real-Time Cost Efficient Notice, American Bankruptcy Institute Journal, Vol. XXII, No. 5, 2003.

(m) Author, Determining Adequate Notice in Rule 23 Actions, For The Defense, Vol. 44, No. 9, September 2002.

(n) Co-Author, The Electronic Nature of Legal Noticing, American Bankruptcy Institute Journal, Vol. XXI, No. 3, April, 2002.

(o) Author, Three Important Mantras for CEO's and Risk Managers

in 2002, International Risk Management Institute, irmi.com/, January, 2002.

(p) Co-Author, *Used the Bat Signal Lately*, The National Law Journal, Special Litigation Section, February 19, 2001.

(q) Author, *How Much is Enough Notice*, Dispute Resolution Alert, Vol. 1, No. 6, March, 2001.

(r) Author, *Monitoring the Internet Buzz*, The Risk Report, Vol. XXIII, No. 5, January 2001.

(s) Author, High-Profile Product Recalls Need More Than the Bat *Signal*, International Risk Management Institute, irmi.com/, July 2001.

(t) Author, The Great Debate - How Much is Enough Legal Notice? American Bar Association -- Class Actions and Derivatives Suits Newsletter, Winter 1999.

(u) Author, What are the best practicable methods to give notice? Georgetown University Law Center Mass Tort Litigation Institute, CLE White Paper: Dispelling the communications myth -- A notice disseminated is a notice communicated, November 1, 2001.

10. In addition, I have lectured or presented extensively on various aspects of legal noticing. A sample list includes the following:

(a) San Francisco Banking Attorney Association ("SFBAA") "How a Class Action Notice can Make or Break your Client's Settlement," San Francisco, CA May 2015.

(b) Perrin Class Action Conf. Faculty Panelist, "Being Media Relevant, What It Means and Why It Matters – The Social Media Evolution: Trends, Challenges and Opportunities," Chicago, IL May 2015.

(c) Bridgeport Continuing Ed., Speaker, Webinar "Media Relevant in the Class Notice Context." July 2014.

(d) Bridgeport Continuing Ed. Faculty Panelist, "Media Relevant in the Class Notice Context," April 2014.

(e) CASD 5th Annual Speaker, "The Impact of Social Media on Class Action Notice." Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.

(f) Law Seminars International, Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable… What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011.

(g) CLE International, Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California, May 2011.

(h) Consumer Attorneys of San Diego (CASD), Faculty Panelist, "21st Century Class Notice and Outreach," 2nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.

(i) Consumer Attorneys of San Diego (CASD), Faculty Panelist, "The Future of Notice," 2nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2009.

(j) American Bar Association, Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard."

(k) American Bar Association, Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.

(l) Faculty Panelist, Women Lawyers Association of Los Angeles (WLALA) CLE Presentation, "The Anatomy of a Class Action." Los Angeles, CA, February 2008.

(m) Faculty Panelist, Practicing Law Institute (PLI) CLE Presentation, 11th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures -- "Evolving Notice Standards in the Internet Age." *New York/Boston* (simulcast) March 2006; *Chicago*, April 2006; and *San*

Francisco, May 2006.

(n) Expert Panelist, U.S. Consumer Product Safety Commission. I was the only legal notice expert invited to participate as an expert to the Consumer Product Safety Commission to discuss ways in which the CPSC could enhance and measure the recall process. As an expert panelist, I discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.

(o) Expert Speaker, American Bar Association. Presentation: "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits, Chicago, August 6, 2001.

11. A comprehensive description of my credentials and experience that qualify me to provide expert opinions on the adequacy of class action notice programs is attached as Exhibit A.

NOTICE PROGRAM METHODOLGY

12. In order to provide an expert opinion and analysis, HF Media uses a scientific methodology (discussed herein) that is used throughout the advertising industry, and one that has been embraced by courts throughout the United States. See *Daubert v. Merrell Dow Pharmaceuticals,* 509 U.S. 579 (1993) (experts must: apply a technique that may be tested by peers and use industry accepted methodology); *Kumho Tire Co. v. Carmichael,* 526 U.S. 137 (1999) (same).

13. In formulating our media suggestions, we have studied data provided by nationally syndicated media research bureaus, including GfK Mediamark

research and Intelligence, LLC[1] ("MRI") and comScore[2].

14. MRI and online measurement currency comScore, among others, provide media consumption habits and audience delivery verification of targeted populations. These data are used by advertising agencies nationwide as the basis to select the most appropriate media to reach specific target audiences. The resulting key findings are instrumental in our selection of media channels and outlets in order to determine the estimated net audience reached[3] through this legal Notice Program.

15. Specifically, this research identifies which media channels are favored by the target audience (*i.e.*, the potential class members), including, for example, browsing behaviors on the internet, on social media channels and in magazines.

16. While traditional media[4] is typically purchased based on both demographic (*i.e.*, age, gender, ethnicity, income, education) and psychographic characteristics (*i.e.*, lifestyle, product and brand preference, media usage, and media definition), online media, including Internet and mobile, may be purchased through more granular target audience characteristics such as shopping behavior.

17. Further to this point, HF Media will employ California specific online

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[1] GfK MRI is a nationally syndicated research tool. It is the leading supplier of multi-media audience research, and provides comprehensive reports on demographic, lifestyle, product usage and media exposure. MRI conducts more than 26,000 personal interviews annually to gather their information, and is used by more than 450 advertising agencies as the basis for the majority of media and marketing campaigns.

[2] comScore is a global Internet information provider on which leading companies and advertising agencies rely for consumer behavior insight and Internet usage data. comScore maintains a proprietary database of more than 2 million consumers who have given comScore permission to monitor their browsing and transaction behavior, including online and offline purchasing.

[3] Based on these research tools, we are able to measure and report to the Court the percentage of a class that will be reached by the notice publication component and how many times the target audience had the opportunity to see the message. In advertising, this is commonly referred to as a "Reach and Frequency" analysis, where "Reach" refers to the estimated percentage of the unduplicated audience exposed to the campaign, and "Frequency" refers to how many times, on average, the target audience had the opportunity to see the message. The calculations are used by advertising and communications firms worldwide, and have become a critical element to help provide the basis for determining adequacy of notice in class actions.

[4] Traditional media is a reference to pre-internet media: e.g., magazines and newspapers.

audience targeting[5] to reach potential class members with a focus on past purchasers and in-market JC Penny Shoppers in both English and Spanish.

18. Reliant on the data described above, and for the purpose of appropriately selecting media best suited to reach members of this class, we are using the following media target definition from MRI: *"Adults who shop at J.C. Penney in California*[6]*."* Based on this definition, we are able to estimate that 75 percent of J.C. Penney Shoppers in California will be reached by the notice component on average 2.3 times.

19. The Notice Program outlined in the Agreement and described in detail below has been designed with a modern approach to notice to reach the target audience through a comprehensive paid media program. It incorporates traditional and new media outlets, along with the creation of a Settlement Website where potential class members can obtain information about the proposed settlement and find important case-related documents including the Agreement, the Long-form Settlement Class Notice and online Claim Form. A toll-free information line and email address where potential class members can obtain basic information about the settlement or seek other assistance.

FACTORS IN NOTICE DEVELOPMENT

20. In order to develop recommendations for this proposed Settlement in a reasonably calculated manner; HF Media took into consideration the following:

- Direct Notice will be accomplished using J.C. Penney transactional records and loyalty information. This outreach effort represents about 50 percent of class members. HF Media is assuming

[5] Audience targeting and contextual targeting are now used by major brands such as AT&T, Proctor & Gamble and Toyota, among many others. Audience targeting means that online banners are served based on specific target audience criteria and browsing behaviors.

[6] While MRI specifically measures JCP shoppers who live in California, Internet currency, comScore measures the Pacific Census Region. Therefore, in order to appropriately calculate the estimated program reach, it is measured against the broader definition of JCP shopper and lives in the Pacific Census region.

a potential 10 percent undeliverable rate.

- After careful analysis of GfK MRI data relevant to the media usage habits of J.C. Penney shoppers who live in California, we see that the most effective and efficient combination of media includes both magazines and internet. This assumption is based on MRI data, which reports that 77.5 percent of JCP shoppers who live in California read magazines, and about 80 percent of these shoppers are online.

21. Accordingly, the proposed Notice Program includes the following components:

- Direct notice via U.S. First Class Mail and email to potential class members for whom Defendant has name and address records or who can be located by reverse directory searches of telephone numbers (as a conservative measure, taking into account undeliverable mail, we estimate that approximately 40 percent of the potential class will be reached through direct mail);
- One-time publication of a short-form notice ("Summary Notice") in the California edition of *People Magazine* and *Sunset Magazine*[7];
- Publication of the Summary Notice once in seven local California Spanish newspapers;
- Internet banner advertising, on three internet networks, geo-targeted to California ISP[8] addresses, specifically targeted to reach class members in English and Spanish;

[7] *Sunset Magazine's* California edition includes circulation of 665,000, which includes Hawaii and Nevada; California only circulation is 602,655.

[8] ISP – ISP stands for Internet Service Provider and IP address means Internet Protocol Address. An IP address provides another computer with the ID of a computer that is trying to communicate to it and which one is requesting information. The IP address is the stamp that is placed on a file when it's transmitted on any network.

- Banner advertising on Social Media platform Facebook;
- A press release issued to California news outlets in English and Spanish;
- An informational website; and
- A toll-free information line where class members may call 24/7 for more information about the settlement.

DIRECT MAIL AND EMAIL

22. Pursuant to section 7 of the Agreement, given the expected size of the Settlement Class, the Parties agree that direct notice via email and mailed postcards are the best practicable notice for those Settlement Class Members for which such information exists. The E-mailed Notice will be sent within 30 days of the Preliminary Approval Order to an estimated 2,615,180 Settlement Class Members for whom the Parties have an email address. For the approximate 3,037,118 Settlement Class Members for whom the Parties have only a physical address, and for those Settlement Class Members whose E-Mailed Notice was not deliverable, a Post-Card Notice will be mailed by U.S. First class mail within 50 days of the Preliminary Approval Order. If the Post-Card Notice is also returned as undeliverable, Heffler will perform a skip-trace in order to find the most current address and resend the Post-Card Notice.

23. Further, pursuant to sections 7.1.1 and 7.1.2 of the Agreement, the E-mailed and Post-Card Notices shall provide Settlement Class Members with an unique identification number that may be used on the Settlement Website to access their allocation points and submit additional receipts should they have any. The E-Mailed and Post-Card notices shall also advise Settlement Class Members of the deadline for submitting Claim Forms, their right to opt out of the Settlement or to object to the Settlement, the date by which such opt-outs or objections must be made, and the date set by the District Court for a hearing on final approval of the Settlement.

24. Recognizing that there are Settlement Class Members for which neither email nor mailing addresses are available, notice by print and internet publication as agreed to by the Parties and authorized by the Court will be used to supplement the emailed and post card notices.

25. I have been informed by Class Counsel that the Parties have name and address records for at least 50 percent of the Settlement Class Members. However, as a conservative measure, taking into consideration the potential undeliverable addresses, this program assumes that the direct mail effort will reach an estimated 40 percent of the Settlement Class. If the direct mail effort yields a greater number of deliverable addresses, the anticipated overall reach will increase. A complete report will be filed upon completion of the Notice Program, which will fully describe the analysis of the data and the results of the mail and email effort.

PUBLICATION ELEMENTS - MAGAZINE

26. *People Magazine* is a weekly generally circulated magazine. It is particularly well suited to reach class members in this case, as they are 23 percent more likely than the average person to be reading *People*. As part of the Notice Program, we intend to publish the Summary Notice in the California edition, circulation of 317,000 and more than 3,777,400 readers[9]. The Summary notice will be published once as a black and white, full-page ad.

27. *Sunset Magazine*[10] is a monthly generally circulated magazine, which according to MRI data is 403 percent more likely to be read by this target than the general population. It has a California circulation of 602,655, with 2,097,239 California readers[11]. The Summary notice will be published once as a black and white, ½-page ad.

[9] Readers are defined as those who read a magazine in addition to the subscriber. Readers are calculated based on a pass along factor. *People Magazine's* pass along is 11.89. *Sunset Magazine's* pass along is 3.38. Source: GfK MRI Spring 2015.
[10] The California circulation includes Northern Cal. and includes Nevada, except Clark County and also includes Hawaii.
[11] GfK MRI Spring 2015.

28. Combined the magazines have a circulation of over 919,655, with more than 5,874,639 readers.

PUBLICATION ELEMENTS – SPANISH LOCAL NEWSPAPER

29. Additionally, to enhance the program and extend the program's reach into the Spanish speaking JCP target, the Summary Notice will be published once in seven California Spanish newspapers: Hoy, Hoy Fin De Semana, La Opinion de la Bahia, Vida en el Valle (Sacramento), Enlace, E! Popular, and Vida en el Valle (Fresno). Combined, these papers have a circulation of 1,339,000. According to the chart below, the Summary Notice will be published once as a black and white, ¼-page ad.

Spanish Local Newspapers			
Title	Circulation	Edition	Language
Hoy – Los Angeles	142,000	3 Times Week (Saturday)	Spanish
Hoy Fin De Semana – Los Angeles	814,000	Weekly (Saturday)	Spanish
La Opinion de la Bahia - San Francisco, Oakland, San Jose	103,800	Weekly (Sunday)	Spanish
Vida en el Valle - Sacramento	36,150	Weekly (Wednesday)	Spanish
Enlace - San Diego	176,000	Weekly (Saturday)	Spanish
El Popular-Bakersfield	24,000	Weekly (Friday)	Spanish
Vida en el Valle – Fresno	43,137	Weekly (Wednesday)	Spanish
Total Circulation	1,339,087		

PUBLICATION ELEMENTS - INTERNET

30. As noted above, 80 percent of JCP shoppers have been online in the last 30 days. Here, HF media intends to employ a particularly sophisticated and highly targeted approach to outreach, which combines audience targeting and geo-targeting on three highly trafficked internet networks and a social media site: Xaxis, Conversant, Pulpo Media and Facebook. We are planning to deliver impressions using Audience (Data) Targeting, which taps first (website data), second (marketing data) and third party data (offline, transactional, loyalty behavioral data) to create customized segments of online users who fit within our defined audience, such as *J.C. Penney Shoppers* over the age of 18 in California and those who are interested in J.C. Penney or are Frequent Shoppers or Department stores shoppers. Banner ads will appear in both English and Spanish.

PUBLICATION ELEMENTS – PRESS RELEASE

31. Further, HF Media intends to issue a press release in English and Spanish across PR Newswire (California distribution California Hispanic) newslines. After the release is issued, HF Media will monitor for resulting articles and news mentions and provide a report to the Court upon completion of this outreach effort.

TOLL FREE INFORMATION LINE

32. Pursuant to section 7.4 of the Agreement, Heffler Claims will establish and will maintain a 24-hour toll-free telephone line where callers may obtain information about the class action. In addition to the automated information that will be available, Heffler will staff the call center with live agents who will be available during normal business hours. The agents will be trained to answer caller's questions regarding the settlement using the approved Frequently Asked Questions. Heffler will provide the parties with regular detailed reports documenting the call center activities.

OFFICIAL WEBSITE

33. Pursuant to section 7.4 of the Agreement, Heffler Claims will establish and maintain an official Settlement Website. The website will serve as a "landing page for the banner advertising," where Class Members may continue to obtain information including: the Claim Form, Opt-Out Request Form, a copy of the original Complaint, Settlement Agreement and other materials as agreed to by the Parties.

34. Pursuant to section 7.1.1 of the Agreement, Heffler Claims will build the Settlement Website in such a manner to enable Class Members who received a direct notice access to their allocation points and submit additional receipts should they have any.

35. Visitors to the website will also have the ability to submit questions they may have about the settlement, and submit change of address requests.

QUALIFIED SETTLEMENT FUND AND COMPLIANCE WITH CAFA

36. Pursuant to section 11 of the Agreement, and upon Court approval, Heffler will establish and serve as the Administrator and Trustee of a Qualified Settlement Fund to help facilitate the transfer and accounting of settlement proceeds, and it will ensure compliance with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715.

DISTRIBUTION OF SETTLEMENT PROCEEDS

37. Pursuant to section 6.1.3, Heffler will use JCPenney's sales data to calculate the points and allocation of settlement proceeds, it will process and audit Claims and Opt-out Requests, it will mail checks to Claimants who choose to receive cash, and it will make Store Credits available for download on the Settlement Website.

PROJECT BUDGET

38. The estimated budget for the project, inclusive of all activities described in Settlement Agreement including numerous services not described in

this declaration is $2,425,274. Heffler Claims is providing a total project not to exceed captive of $2,667,000.

CONCLUSION

39. In my opinion, the outreach efforts described in the Agreement and above reflect a particularly appropriate, highly targeted and modern way to provide notice to this class. Through a multi-channel approach to notice, combining direct mail, email and paid media outreach, 75 percent of targeted potential class members are estimated to be reached by the media program, on average, 2.3 times. In my opinion, the efforts used in this Notice Program have been reasonably calculated to provide notice that is consistent with best practicable court approved notice programs in similar matters, and which are consistent with the Federal Judicial Center's guidelines concerning appropriate reach.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4th day of November, 2015 in Tigard, Oregon.

Jeanne C Finegan

Jeanne C. Finegan APR

Heffler Claims Group

Exhibit A

Jeanne C. Finegan CV

Heffler Claims Group

JEANNE C. FINEGAN, APR

BIOGRAPHY

Jeanne Finegan, APR, is President of HF Media, LLC. (a division of Heffler Claims Group), named by *Diversity Journal* as one of the "Top 100 Women Worth Watching," has more than 25 years of communications and advertising experience and is a distinguished legal notice and communications expert. During her tenure, she has planned and implemented hundreds of high profile, complex legal notice communication programs. She is a recognized notice expert in both the United States and in Canada, with extensive international notice experience spanning more than 140 countries and over 40 languages.

Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications. She has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns. Further, she has planned and implemented large-scale government enforcement notice programs for the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America (PRSA), and has served on examination panels for APR candidates. Additionally, she has served as a judge for prestigious PRSA awards.

Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has conducted numerous media audits of proposed notice programs to assess the adequacy of those programs under Fed R. Civ. P. 23(c)(2) and similar state class action statutes.

She was an early pioneer of plain language in notice (as noted in a RAND study,[1]) and continues to set the standard for modern outreach as the first notice expert to integrate social and mobile media into court approved legal notice programs.

In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, antitrust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.

1 Deborah R. Hensler et al., CLASS ACTION DILEMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).

JUDICIAL COMMENTS AND LEGAL NOTICE CASES

In evaluating the adequacy and effectiveness of Ms. Finegan's notice campaigns, courts have repeatedly recognized her excellent work. The following excerpts provide some examples of such judicial approval.

In re: Skechers Toning Shoes Products Liability Litigation, No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his Final Order and Judgement granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

> … ***The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.***

Brody v. Merck & Co., Inc., et al, No. 3:12-cv-04774-PGS-DEA (N.J.) (Jt Hearing for Prelim App, Sept. 27, 2012, transcript page 34). During the Hearing on Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan praised Ms. Finegan, noting:

> ***Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim.***

Quinn v. Walgreen Co., Wal-Mart Stores Inc., 7:12 CV-8187-VB (NYSD) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti gave accolades to Ms. Finegan, noting:

> ***"The notice plan was the best practicable under the circumstances. … [and] "the proof is in the pudding. This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims."***

In Re: TracFone Unlimited Service Plan Litigation, *No. C-13-3440 EMC (ND Ca).* In the Final Order and Judgment Granting Class Settlement, July 2, 2015, the Honorable Edward M. Chen noted:

> ***"…[D]epending on the extent of the overlap between those class members who will automatically receive a payment and those who filed claims, the total claims rate is estimated to be approximately 25-30%. This is an excellent result...***

DeHoyos, et al. v. Allstate Ins. Co., No. SA-01-CA-1010 (W.D.Tx. 2001). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

> ***[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. … This program was vigorous and specifically structured to reach the African-American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.***

In re: Reebok Easytone Litigation, No. 10-CV-11977 (D. MA.). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

> ***The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Preliminary Approval Order… constituted the best practicable notice to Class Members under the circumstances of the Actions.***

Bezdek v. Vibram USA and Vibram FiveFingers LLC, No 12-10513 (D. MA) The Honorable Douglas P. Woodlock stated in the Final Memorandum and Order:

> ***…[O]n independent review I find that the notice program was robust, particularly in its online presence, and implemented as directed in my Order authorizing notice. …I find that notice was given to the Settlement class members by the best means "practicable under the circumstances." Fed.R.Civ.P. 23(c)(2).***

Gemelas v. The Dannon Company Inc., No. 08-cv-00236-DAP (N.D. Ohio). In granting final approval for the settlement, the Honorable Dan A. Polster stated:

> ***In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, [Ms. Finegan] caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. … The distribution of Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.***

Pashmova v. New Balance Athletic Shoes, Inc., 1:11-cv-10001-LTS (D. Mass.). The Honorable Leo T. Sorokin stated in the Final Approval Order:

> ***The Class Notice, the Summary Settlement Notice, the web site, and all other notices in the Settlement Agreement and the Declaration of [Ms Finegan], and the notice***

> ***methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the Settlement and their rights under the settlement … met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.***

Hartless v. Clorox Company, No. 06-CV-2705 (CAB) (S.D.Cal.). In the Final Order Approving Settlement, the Honorable Cathy N. Bencivengo found:

> ***The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.***

McDonough et al v. Toys 'R' Us et al, No. 09:-cv-06151-AB (E.D. Pa.). In the Final Order and Judgment Approving Settlement, the Honorable Anita Brody stated:

> ***The Court finds that the Notice provided constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.***

In re: Pre-Filled Propane Tank Marketing & Sales Practices Litigation, No. 4:09-md-02086-GAF (W.D. Mo.) In granting final approval to the settlement, the Honorable Gary A. Fenner stated:

> ***The notice program included individual notice to class members who could be identified by Ferrellgas, publication notices, and notices affixed to Blue Rhino propane tank cylinders sold by Ferrellgas through various retailers. ... The Court finds the notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process and provided to the Class the best notice practicable under the circumstances.***

Stern v. AT&T Mobility Wireless, No. 09-cv-1112 CAS-AGR (C.D.Cal. 2009). In the Final Approval Order, the Honorable Christina A. Snyder stated:

> ***[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.***

In re: Processed Egg Prods. Antitrust Litig., MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement , Judge Gene E.K. Pratter stated:

> ***The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.… Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.***

In re Polyurethane Foam Antitrust Litigation, 10- MD-2196 (N.D. OH). In the Order Granting Final Approval of Voluntary Dismissal and Settlement of Defendant Domfoam and Others, the Honorable Jack Zouhary stated:

> ***The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.***

Rojas v Career Education Corporation, No. 10-cv-05260 (N.D.E.D. IL) In the Final Approval Order dated October 25, 2012, the Honorable Virgina M. Kendall stated:

> ***The Court Approved notice to the Settlement Class as the best notice practicable under the circumstance including individual notice via U.S. Mail and by email to the class members whose addresses were obtained from each Class Member's wireless carrier or from a commercially reasonable reverse cell phone number look-up service, nationwide magazine publication, website publication, targeted on-line advertising, and a press release. Notice has been successfully implemented and satisfies the requirements of the Federal Rule of Civil Procedure 23 and Due Process.***

Golloher v Todd Christopher International, Inc. DBA Vogue International (Organix), *No. C 1206002 N.D CA*. In the Final Order and Judgment Approving Settlement, the Honorable Richard Seeborg stated:

> ***The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.***

Stefanyshyn v. Consolidated Industries, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

> ***The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. … The proposed notice program was properly designed, recommended, and implemented … and constitutes the "best practicable" notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. … The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.***

McGee v. Continental Tire North America, Inc. et al, No. 06-6234-(GEB) (D.N.J.).

> ***The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices,***

Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al., No. 04-2702 (JLL) (D.N.J.). The Court stated that:

> [A]***ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. … By working with a nationally syndicated media research firm, [Finegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). . . . The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).***

In re: Nortel Network Corp., Sec. Litig., No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. *See* www.nortelsecuritieslitigation.com. Of the U.S. notice program, the Honorable Loretta A. Preska stated:

> ***The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement … constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.***

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

> ***The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages have been available through the worldwide web site nortelsecuritieslitigation.com on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.***

Mayo v. Walmart Stores and Sam's Club, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

> ***According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail.***
> ***The Settlement Administrator … has classified the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.'… The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.***

Fishbein v. All Market Inc., (d/b/a **Vita Coco**) No. 11-cv-05580 (S.D.N.Y.). In granting final approval of the settlement, the Honorable J. Paul Oetken stated:

> ***"The Court finds that the dissemination of Class Notice pursuant to the Notice Program…constituted the best practicable notice to Settlement Class Members under the circumstances of this Litigation … and was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice, and fully satisfied the requirements of the Federal Rules of Civil Procedure, including Rules 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws."***

Lucas, et al. v. Kmart Corp., No. 99-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

> ***The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).***

In re: Johns-Manville Corp. **(Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement)**, No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

> ***As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. . . . The results simply speak for themselves.***

Pigford v. Glickman and U.S. Department of Agriculture, No. 97-1978. 98-1693 (PLF) (D.D.C.). This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

> ***The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations. . . . The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.***

In re: Louisiana-Pacific Inner-Seal Siding Litig., Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

> ***The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement…[through] a broad and extensive multi-media notice campaign.***

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

> ***…well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).***

In re: Expedia Hotel Taxes and Fees Litigation, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

> ***The Notice of the Settlement given to the Class … was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.***

Rene Rosales v. Fortune Ins. Co., No. 99-04588 CA (41) (11th Judicial Dist. Ct. of Miami-Dade County, Fla.). Ms. Finegan provided expert testimony in this matter. She conducted an audit on behalf of intervening attorneys for the proposed notification to individuals insured with personal injury insurance.
Based upon the audit, Ms. Finegan testified that the proposed notice program was inadequate. The Court agreed and signed an Order Granting Intervenors' Objections to Class Action Settlement, stating:

> ***The Court finds that Ms. Finegan is qualified as an expert on class notice and effective media campaigns. The Court finds that her testimony is credible and reliable.***

Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

> ***The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. … The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see id. ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.***

Wilson v. Massachusetts Mut. Life Ins. Co., No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. www.insuranceclassclaims.com. In granting preliminary approval to the settlement, the Honorable Art Encinias found:

> [***T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. …[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.***

Sparks v. AT&T Corp., No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States.
In granting final approval to the settlement, the Court found:

> ***The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.***

In re: Georgia-Pacific Toxic Explosion Litig., No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-born toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

> ***[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).***

In re: American Cyanamid, No. CV-97-0581-BH-M (S.D.Al.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

> ***The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.***

In re: First Alert Smoke Alarm Litig., No. CV-98-C-1546-W (UWC) (N.D.Al.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

> ***…constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.***

In re: James Hardie Roofing Litig., No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:

> ***The notice program required by the Preliminary Order has been fully carried out… [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.***

Barden v. Hurd Millwork Co. Inc., et al, No. 2:6-cv-00046 (LA) (E.D.Wis.) (***"The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under***

the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1).")

Altieri v. Reebok, No. 4:10-cv-11977 (FDS) (D.C.Mass.) (***"The Court finds that the notices … constitute the best practicable notice….. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices."***)

Marenco v. Visa Inc., No. CV 10-08022 (DMG) (C.D.Cal.) (***"[T]he Court finds that the notice plan…meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law."***)

Palmer v. Sprint Solutions, Inc., No. 09-cv-01211 (JLR) (W.D.Wa.) (***"The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide3d with notice."***)

In re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation, No. 1:08-md-01982 RDB (D. Md. N. Div.) (***"The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement.")***

Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara) (***"Notice provided was the best practicable under the circumstances."***).

Deke, et al. v. Cardservice Internat'l, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles) (***"The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances."***).

Levine, et al. v. Dr. Philip C. McGraw, et al., Case No. BC 312830 (Los Angeles County Super. Ct., Cal.) (***"[T]he plan for notice to the Settlement Class … constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class … and satisfies the requirements of California law and federal due process of law."***).

In re: Canadian Air Cargo Shipping Class Actions, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court (***"I am satisfied the***

proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate.").

Fischer et al v. IG Investment Management, Ltd. et al, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

In re: Vivendi Universal, S.A. Securities Litigation, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

In re: Air Cargo Shipping Services Antitrust Litigation, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

Berger, et al., v. Property ID Corporation, et al., No. CV 05-5373-GHK (CWx) (C.D.Cal.).

Lozano v. AT&T Mobility Wireless, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

Howard A. Engle, M.D., et al., v. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp., No. 94-08273 CA (22) (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Royal Dutch/Shell Transport Securities Litigation, No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).

In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding, No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

UAW v. General Motors Corporation, No: 05-73991 (E.D.MI).

Wicon, Inc. v. Cardservice Intern'l, Inc., BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

In re: SmithKline Beecham Clinical Billing Litig., No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.). Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

MacGregor v. Schering-Plough Corp., No. EC248041 (Sup. Ct. Cal., County of Los Angeles). This nationwide notification program was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

In re: Swiss Banks Holocaust Victim Asset Litig., No. CV-96-4849 (E.D.N.Y.). Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors. www.swissbankclaims.com.

In re: Exxon Valdez Oil Spill Litig., No. A89-095-CV (HRH) (Consolidated) (D. Alaska). Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

In re: Johns-Manville Phenolic Foam Litig., No. CV 96-10069 (D. Mass). The nationwide multi-media legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

Bristow v Fleetwood Enters Litig., No Civ 00-0082-S-EJL (D. Id). Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

In re: New Orleans Tank Car Leakage Fire Litig., No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000). This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

Garria Spencer v. Shell Oil Co., No. CV 94-074(Dist. Ct., Harris County, Tex.). The nationwide notification program was designed to reach individuals who owned real property or structures in the United States which contained polybutylene plumbing with acetyl insert or metal insert fittings.

In re: Hurd Millwork Heat Mirror™ Litig., No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara). This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc, No. CV–97-C-629-W (N.D. Ala.). Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

In re: StarLink Corn Prods. Liab. Litig., No. 01-C-1181 (N.D. Ill).. Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

In re: MCI Non-Subscriber RatePayers Litig., MDL Docket No. 1275, 3:99-cv-01275 (S.D.Ill.). The advertising and media notice program, found to be "more than adequate" by the Court, was designed with the understanding that the litigation affected all persons or entities who were

customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. www.rateclaims.com.

In re: Albertson's Back Pay Litig., No. 97-0159-S-BLW (D.Id.). Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

In re: Georgia Pacific Hardboard Siding Recovering Program, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.). Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements, which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

***In re: Diet Drugs* (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig**., Nos. 1203, 99-20593. Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court's Memorandum and Pretrial Order 1415, approving the settlement,

***In re: Diet Drugs* (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig**., 2000 WL 1222042, Nos. 1203, 99-20593 (E.D.Pa. Aug. 28, 2002).

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

In re: Florida Microsoft Antitrust Litig. Settlement, No. 99-27340 CA 11 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Montana Microsoft Antitrust Litig. Settlement, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

In re: South Dakota Microsoft Antitrust Litig. Settlement, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).

In re: Kansas Microsoft Antitrust Litig. Settlement, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.) ("The Class Notice provided was the best notice

practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3.”).

In re: North Carolina Microsoft Antitrust Litig. Settlement, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).

In re: ABS II Pipes Litig., No. 3126 (Sup. Ct. of Cal., Contra Costa County). The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

In re: Avenue A Inc. Internet Privacy Litig., No: C00-1964C (W.D. Wash.).

In re: Lorazepam and Clorazepate Antitrust Litig., No. 1290 (TFH) (D.C.C.).

In re: Providian Fin. Corp. ERISA Litig., No C-01-5027 (N.D. Cal.).

In re: H & R Block., et al Tax Refund Litig., No. 97195023/CC4111 (MD Cir. Ct., Baltimore City).

In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp., No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

In re: Sprint Corp. Optical Fiber Litig., No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

In re: Shelter Mutual Ins. Co. Litig., No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

In re: Conseco, Inc. Sec. Litig., No: IP-00-0585-C Y/S CA (S.D. Ind.).

In re: Nat’l Treasury Employees Union, et al., 54 Fed. Cl. 791 (2002).

In re: City of Miami Parking Litig., Nos. 99-21456 CA-10, 99-23765 – CA-10 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm., No. L 1:01CV658 (E.D. Tx.).

Alsea Veneer v. State of Oregon A.A., No. 88C-11289-88C-11300.

SEC ENFORCEMENT NOTICE PROGRAM EXPERIENCE

SEC v. Vivendi Universal, S.A., et al., Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.).
The Notice program included publication in 11 different countries and eight different languages.

SEC v. Royal Dutch Petroleum Company, No.04-3359 (S.D. Tex.)

FEDERAL TRADE COMMISSION NOTICE PROGRAM EXPERIENCE

FTC v. TracFone Wireless, Inc., Case No. 15-cv-00392-EMC.

FTC v. Skechers U.S.A., Inc., No. 1:12-cv-01214-JG (N.D. Ohio).

FTC v. Reebok International Ltd., No. 11-cv-02046 (N.D. Ohio)

FTC v. Chanery and RTC Research and Development LLC [Nutraquest], No :05-cv-03460 (D.N.J.)

BANKRUPTCY EXPERIENCE

Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

In re AMR Corporation [American Airlines], et al., No. 11-15463 (SHL) (Bankr. S.D.N.Y.) ***("****due and proper notice [was] provided, and … no other or further notice need be provided.")*

In re Jackson Hewitt Tax Service Inc., et al., No 11-11587 (Bankr. D.Del.) (2011). The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and the administrator, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The *Jackson Hewitt* notice program constituted one of the first large chapter 11 cases to incorporate online advertising.

In re: Nutraquest Inc., No. 03-44147 (Bankr. D.N.J.)

In re: General Motors Corp. et al, No. 09-50026 (Bankr. S.D.N.Y.). This case is the 4th largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

In re: ACandS, Inc., No. 0212687 (Bankr. D.Del.) (2007) (***"Adequate notice of the Motion and of the hearing on the Motion was given."***).

In re: United Airlines, No. 02-B-48191 (Bankr. N.D Ill.). Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was

published in 11 countries and translated into 6 languages. Ms. Finegan worked closely with legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. www.pd-ual.com.

In re: Enron, No. 01-16034 (Bankr. S.D.N.Y.). Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

In re: Dow Corning, No. 95-20512 (Bankr. E.D. Mich.). Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

In re: Harnischfeger Inds., No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.). Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

In re: Keene Corp., No. 93B 46090 (SMB), (Bankr. E.D. MO.). Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

In re: Lamonts, No. 00-00045 (Bankr. W.D. Wash.). Ms. Finegan designed an implemented multiple bankruptcy notice programs.

In re: Monet Group Holdings, Nos. 00-1936 (MFW) (Bankr. D. Del.). Ms. Finegan designed and implemented a bar date notice.

In re: Laclede Steel Co., No. 98-53121-399 (Bankr. E.D. MO.). Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Columbia Gas Transmission Corp., No. 91-804 (Bankr. S.D.N.Y.). Ms. Finegan developed multiple nationwide legal notice notification programs for this case.

In re: U.S.H. Corp. of New York, et al. (Bankr. S.D.N.Y). Ms. Finegan designed and implemented a bar date advertising notification campaign.

In re: Best Prods. Co., Inc., No. 96-35267-T, (Bankr. E.D. Va.). Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

In re: Lodgian, Inc., et al., No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y).

In re: Internat'l Total Servs, Inc., et al., Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y).

In re: Decora Inds., Inc. and Decora, Incorp., Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.).

In re: Genesis Health Ventures, Inc., et al, No. 002692 (PJW) (Bankr. D. Del.).

In re: Tel. Warehouse, Inc., et al, No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.).

In re: United Cos. Fin. Corp., et al, No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.).

In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et al., No. 95-B44080 (JLG) (Bankr. S.D.N.Y).

In re: Physicians Health Corp., et al., No. 00-4482 (MFW) (Bankr. D. Del.).

In re: GC Cos., et al., Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.).

In re: Heilig-Meyers Co., et al., Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

PRODUCT RECALL AND CRISIS COMMUNICATION EXPERIENCE

Reser's Fine Foods. Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

Gulf Coast Claims Facility Notice Campaign. Finegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign includes extensive advertising in newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) is an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

City of New Orleans Tax Revisions, Post-Hurricane Katrina. In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. An administration firm served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a

heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.

ARTICLES

Author, 'Being 'Media-Relevant' — What It Means And Why It Matters - Law360.com, New York (September 11, 2013, 2:50 PM ET).

Co-Author, "New Media Creates New Expectations for Bankruptcy Notice Programs," ABI Journal, Vol. XXX, No 9, November 2011.

Quoted Expert, "Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist," Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

Co-Author, with Hon. Dickran Tevrizian – "Expert Opinion: It's More Than Just a Report…Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," BNA Class Action Litigation Report, 12 CLASS 464, 5/27/11.

Co-Author, with Hon. Dickran Tevrizian, Your Insight, "Expert Opinion: It's More Than Just a Report -Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," TXLR, Vol. 26, No. 21, 5/26/2011.

Quoted Expert, "Analysis of the FJC's 2010 Judges' Class Action Notice and Claims Process Checklist and Guide: A New Roadmap to Adequate Notice and Beyond," BNA Class Action Litigation Report, 12 CLASS 165, 2/25/11.

Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, 4/9/10 Vol. 11, No. 7 p. 343.

Quoted Expert, "Communication Technology Trends Pose Novel Notification Issues for Class Litigators," BNA Electronic Commerce and Law, 15 ECLR 109 1/27/2010.

Author, "Legal Notice: R U ready 2 adapt?" BNA Class Action Report, Vol. 10 Class 702, 7/24/2009.

Author, "On Demand Media Could Change the Future of Best Practicable Notice," BNA Class Action Litigation Report, Vol. 9, No. 7, 4/11/2008, pp. 307-310.

Quoted Expert, "Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty," Warranty Week, warrantyweek.com/archive/ww20070228.html/ February 28, 2007.

Co-Author, "Approaches to Notice in State Court Class Actions," For The Defense, Vol. 45, No. 11, November, 2003.

Citation, "Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior," U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

Author, "The Web Offers Near, Real-Time Cost Efficient Notice," American Bankruptcy Institute, ABI Journal, Vol. XXII, No. 5., 2003.

Author, "Determining Adequate Notice in Rule 23 Actions," For The Defense, Vol. 44, No. 9 September, 2002.

Author, "Legal Notice, What You Need To Know and Why," Monograph, July 2002.

Co-Author, "The Electronic Nature of Legal Noticing," The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, "Three Important Mantras for CEO's and Risk Managers," - International Risk Management Institute, irmi.com, January 2002.

Co-Author, "Used the Bat Signal Lately," The National Law Journal, Special Litigation Section, February 19, 2001.

Author, "How Much is Enough Notice," Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, "Monitoring the Internet Buzz," The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, "High-Profile Product Recalls Need More Than the Bat Signal," - International Risk Management Institute, irmi.com, July 2001.

Co-Author, "Do You Know What 100 Million People are Buzzing About Today?" Risk and Insurance Management, March 2001.

Quoted Article, "Keep Up with Class Action," Kentucky Courier Journal, March 13, 2000.

Author, "The Great Debate - How Much is Enough Legal Notice?" American Bar Association – Class Actions and Derivatives Suits Newsletter, winter edition 1999.

SPEAKER/EXPERT PANELIST/PRESENTER

SF Banking Attorney Assc.	Speaker, "How a Class Action Notice can Make or Break your Client's Settlement," San Francisco, CA May 2015.
Perrin Class Action Conf.	Faculty Panelist, "Being Media Relevant, What It Means and Why It Matters – The Social Media Evolution: Trends, Challenges and Opportunities," Chicago, IL May 2015.
Bridgeport Continuing Ed.	Speaker, Webinar "Media Relevant in the Class Notice Context." July, 2014.
Bridgeport Continuing Ed.	Faculty Panelist, "Media Relevant in the Class Notice Context." Los Angeles, California, April 2014.
CASD 5th Annual	Speaker, "The Impact of Social Media on Class Action Notice." Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.
Law Seminars International	Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable… What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011. ***Voted by attendees as one of the best presentations given.***
CASD 4th Annual	Faculty Panelist, "Reasonable Notice - Insight for practitioners on the FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*. Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, October 2011.
CLE International	Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.
CASD	Faculty Panelist, "21st Century Class Notice and Outreach." 3nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.
CASD	Faculty Panelist, "The Future of Notice." 2nd Annual Class Action Symposium CASD Symposium, San Diego California, October 2009.
American Bar Association	Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice In the United States and

	Internationally – Meeting the Best Practicable Standard."
	Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
Women Lawyers Assn.	Faculty Panelist, Women Lawyers Association of Los Angeles of Los Angeles, 2008.
(WLALA) CLE Presentation,	"The Anatomy of a Class Action." Los Angeles, CA, February, 2008.
Warranty Chain Mgmt.	Faculty Panelist, Presentation Product Recall Simulation. Tampa, Florida, March 2007.
Practicing Law Institute (PLI)	Faculty Panelist, CLE Presentation, 11th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.
U.S. Consumer Product Safety Commission	Ms. Finegan participated as an expert panelist to the Consumer Product Safety Commission to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda MD, September 2003.
Weil, Gotshal & Manges	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." New York, June 2003.
Sidley & Austin	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." Los Angeles, May 2003.
Kirkland & Ellis	Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April 2002.
Georgetown University Law	Faculty, CLE White Paper: "What are the best practicable methods to Center Mass Tort Litigation give notice? Dispelling the communications myth – A notice Institute disseminated is a notice communicated," Mass Tort Litigation Institute. Washington D.C., November, 2001.

American Bar Association	Presenter, "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.
McCutchin, Doyle, Brown	Speaker to litigation group in San Francisco and simulcast to four other & Enerson McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.
Marylhurst University	Guest lecturer on public relations research methods. Portland, OR, February 2001.
University of Oregon	Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.
Judicial Arbitration & Mediation Services (JAMS)	Speaker on the definition of effective notice. San Francisco and Los Angeles, CA, June 2000.
International Risk Management Institute	Past Expert Commentator on Crisis and Litigation Communications. www.irmi.com.
The American Bankruptcy Institute Journal (ABI)	Past Contributing Editor – Beyond the Quill. www.abi.org.

BACKGROUND

Ms Finegan's past experience includes working in senior management for leading Class Action Administration firms including The Garden City Group ("GCG") and Poorman-Douglas Corp., ("EPIQ"). Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

Heffler Claims Group

Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing $50 million in programming. She was also the program/promotion manager at KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

MEMBERSHIPS, PROFESSIONAL CREDENTIALS

APR - The Universal Board of Accreditation Public Relations Society of America – Accredited.
Member of the Public Relations Society of America
Member Canadian Public Relations Society

Also see *LinkedIn* page.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, On Behalf of Herself and All Others Similarly Situated, Plaintiffs, v. J.C. PENNEY CORPORATION, INC., a Delaware Corporation, Defendant.	**Case No.: SACV12-0215 FMO (KESx)** **CLASS ACTION** **[PROPOSED] ORDER MODIFYING CLASS CERTIFICATION ORDER; GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; APPROVING NOTICE PLAN; AND ESTABLISHING QUALIFIED SETLEMENT FUND** Date: December 3, 2015 Time: 10:00 a.m. Judge: Hon. Fernando M. Olguin CTRM: 22 – 5th Floor Complaint Filed: 2/8/12

This matter has come before the Court pursuant to Plaintiff Cynthia E. Spann's ("Plaintiff") Unopposed Motion for Modification of Class Certification Order; Preliminary Approval of Settlement and Notice Program; and Establishment of Qualified Settlement Fund ("Motion").

The Court, having considered the Motion, as well as the accompanying memorandum of points and authorities, declarations of Matthew J. Zevin, Cynthia E. Spann, Brian Bergmark, Jeanne C. Finegan and Adam Tarczynski, as well as the Settlement Agreement between Plaintiff and Defendant J.C. PENNEY CORPORATION, INC. ("JCPenney" or "Defendant") and all of the files, records, and proceedings herein, and it appearing to the Court that upon preliminary examination the Settlement appears fair, reasonable and adequate, and that a hearing should and will be held after Class Notice has been provided to the Settlement Class to confirm that the Settlement is fair, reasonable, and adequate, and to determine whether a Judgment approving the Settlement and an Order dismissing the Action based upon the Settlement should be entered;

NOW, THEREFORE, IT IS HEREBY ORDERED:

I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The terms of the Settlement Agreement including all exhibits thereto, which is attached as Exhibit 1 to the Declaration of Matthew J. Zevin, are preliminarily approved as fair, reasonable and adequate, are sufficient to warrant sending notice to the Class, and are subject to further consideration thereof at the Fairness Hearing referenced below. This Order incorporates herein the Settlement Agreement, and all of its exhibits and related documents. Unless otherwise provided herein, the terms defined in the Settlement Agreement shall have the same meanings in this Order. The Settlement Agreement was entered into only after extensive arm's length negotiations by experienced counsel and with the assistance and oversight of mediator David A. Rotman. The Court finds that the Settlement is sufficiently within the range of reasonableness so that notice of the

Settlement should be given as provided in the Settlement Agreement and this Order. The Court further finds that the Settlement Agreement does not improperly grant preferential treatment to the Class Representative, and it has no obvious deficiencies. In making these determinations, the Court has considered the current posture of this litigation and the risks and benefits to the Parties involved in both settlement of these claims and continuation of the Litigation.

II. MODIFICATION OF THE CLASS CERTIFICATION ORDER

2. The Settlement is contingent on the Court modifying its prior Order Granting Class Certification (the "Certification Order") [ECF No. 209] by amending the class definition, for settlement purposes only. The Court previously found that all of the requirements of Rules 23(a) and (b)(3) were satisfied and hereby finds that they continue to be met with the amended class definition proposed in the Settlement Agreement.

3. Specifically, the Court finds that: (a) the number of Settlement Class Members is so numerous that their joinder in one lawsuit would be impractical; (b) there are questions of law or fact common to the Settlement Class; (c) the claims of the Class Representative are typical of the claims of the Settlement Class Members she seeks to represent; (d) the Class Representative and Class Counsel – the Stanley Law Group and the Emge Law Firm, LLP - have fairly and adequately represented the interests of the Settlement Class; and (e) the questions of law or fact common to the Settlement Class predominate over any questions affecting individual Settlement Class Members.

4. Accordingly, the Court hereby amends the Certification Order and, for settlement purposes only, certifies the following Settlement Class:

> All persons who, while in the State of California and between November 5, 2010 and January 31, 2012, and between January 1, 2013 through December 31, 2014, purchased from JCPenney one or more private or exclusive branded items of apparel or accessories at a

discount of at least 30% off of the stated "original" or "regular" price, and who have not received a full refund or credit for their purchases. Excluded from the Settlement Class are Defendant, as well as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as all past and present employees, officers and directors of JCPenney.

5. The Court hereby affirms appointment of the Stanley Law Group and the Emge Firm, LLP as Class Counsel for the Settlement Class.

6. The Court hereby affirms appointment of Cynthia Spann as Class Representative for the Settlement Class.

7. If the Settlement is not finally approved by the Court, or for any reason the Final Order and Final Judgment are not entered as contemplated in the Settlement Agreement, or the Settlement is terminated pursuant to its terms for any reason or the Settlement Effective Date does not occur for any reason, then:

(a) All orders and findings entered in connection with the Settlement Agreement shall become null and void and have no force or effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;

(b) The modification of the Certification Order and certification of the Settlement Class pursuant to this Order shall be vacated automatically and the Action shall resume with the Class originally certified on May 18, 2015;

(c) All of the Court's prior Orders, subject to this Order, remain in force and effect.

III. NOTICE TO CLASS MEMBERS

8. The Court has considered the form and manner of providing Notice as contemplated in the Settlement Agreement and proposed in the Motion and finds that the Notice and methodology as described in the Settlement Agreement and in the Declaration of Jeanne C. Finegan: (a) meet the requirements of due process and

Rules 23(c) and (e) of the Federal Rules of Civil Procedure; (b) constitutes the best notice practicable under the circumstances to all persons entitled to notice; and (c) satisfies the Constitutional requirements regarding notice. In addition, the forms of notice attached as Exhibits 2, 3 and 4 to the Settlement Agreement (a) apprise Settlement Class Members of the pendency of the Action, the terms of the proposed settlement, and their rights and deadlines under the Settlement; (b) are written in simple terminology; and (c) are readily understandable by Settlement Class Members.

9. The Court approves, as to form and content, the E-Mailed Notice, the Post-Card Notice, and the Publication Notice. The Court further approves the establishment of the Settlement Website as provided in the Settlement Website. The website shall provide Class Members with access to important Settlement documents, including the full E-Mailed Notice, Claim Form, and Opt-Out Request Form, as well as Settlement Class Member information about their individual transactions and allocation of the Settlement proceeds, and instructions on how to submit a Claim Form and/or additional receipts providing evidence of additional qualifying purchases.

10. The Court hereby orders that the E-Mailed Notice be sent to Settlement Class Members within thirty (30) days following the date of this Order, the Post-Card Notice be sent to Settlement Class Members within fifty (50) days following the date of this Order, and the Publication Notice be published in the manner described in the Declaration of Jeanne C. Finnegan on the soonest practicable date after the E-Mailed Notice and Post-Card Notice is sent, but in no event shall it commence more than ten (10) days later. All reasonable effort shall be made to accomplish the notice process as expeditiously as possible.

11. The Court appoints Heffler Claims Group as the Notice and Claims Administrator. Responsibilities of the Notice and Claims Administrator are found in the Settlement Agreement.

IV. REQUEST FOR EXCLUSION FROM THE CLASS

11. Any Settlement Class Member who wishes to exclude himself or herself from this Settlement and from the release of claims pursuant to the Settlement shall submit a Request to Opt Out. For a Request to Opt Out to be accepted, it must be timely and valid. To be timely, it must be postmarked by the date which is ninety (90) days after the date notice is disseminated. To be valid, the Request to Opt Out must be signed and dated. Opt-Out Request Forms shall be available for download from the Settlement Website and, upon request by a Settlement Class Member, made available by the Notice and Claims Administrator through email or First Class Mail.

12. Settlement Class Members who timely and validly exclude themselves from the Settlement Class shall not be bound by the Settlement, or the Final Order and Final Judgment. If a Settlement Class Member files a Request to Opt Out, he/she may not assert an objection to the Settlement. The Notice and Claims Administrator shall provide copies of any Requests to Opt Out to Class Counsel and JCPenney's Counsel as provided in the Settlement Agreement.

13. Any Settlement Class Member who does not properly and timely exclude himself/herself from the Settlement Class shall remain a Settlement Class Member and shall be bound by all the terms and provisions of the Settlement Agreement and the Final Order and Final Judgment, whether or not such Class Member objects to the Settlement or submits a Claim Form(s).

V. OBJECTIONS

14. A Settlement Class Member who wishes to object to the Settlement must notify the District Court of his or her objection, in writing, within ninety (90) days of notice being disseminated. To be considered valid, an objection must be in writing, must include the objector's name and address, and must include the basis for the objection (including why the objector believes the Settlement is not in the best interests of the Settlement Class), along with any and all documents that

support the objection. The objection must also indicate whether or not the objector intends to appear at the hearing on the motion for final approval of the Settlement. The objection must be filed with the Court on or before the deadline. Objections that fail to satisfy these requirements or to satisfy any other requirements found in the Class Notice shall not be considered by the Court.

15. Settlement Class Members who do not file a timely written objection in accordance with the procedures set forth in the Settlement Agreement and the Notice shall be deemed to have waived any objections to the Settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, or any aspect of the Settlement, including, without limitation, the fairness, reasonableness, or adequacy of the Settlement, the form and manner of Notice, or any award of Attorneys' Fees and Costs, reimbursement of costs and expenses and/or the Class Representative Enhancement Payment.

VI. FAIRNESS HEARING

16. The Final Approval Hearing will be held on July 14, 2016 at 10:00 a.m. (Pacific Standard Time) before this Court, at the United States District Court, Central District of California, Courtroom 22, Fifth Floor, 312 North Spring Street, Los Angeles, CA 90012, to consider, *inter alia*, the following: (a) whether the Settlement should be finally approved as fair, reasonable and adequate; (b) Class Counsel's application for attorneys' fees and expenses; and (d) Plaintiff's request for an Enhancement Award.

17. The date and time of the Fairness Hearing shall be subject to adjournment by the Court without further notice to the Settlement Class Members other than that which may be posted at the Court, on the Court's website, and/or on the Settlement Website.

VII. STAY OF LITIGATION

18. Pending the Final Approval Hearing and the Court's decision whether to finally approve the Settlement, all proceedings in the Action, other than

proceedings necessary to carry out or enforce the Settlement Agreement or this Order, are stayed and suspended, until further order from this Court.

VIII. QUALFIED SETTLEMENT FUND

19. A "Qualified Settlement Fund" shall be created pursuant to Sections 11 and 12 of the Settlement Agreement and Treasury Regulation § l.468B-1, 12 C.F.R. § 1.468B-1.

20. Heffler Claims Group, the Claims Administrator under the Parties' Settlement Agreement, shall be the Trustee and Administrator of the Qualified Settlement Fund.

IX. OTHER PROVISIONS

21. The Parties are authorized to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement.

22. The deadlines set forth in this Order, including, but not limited to, the Final Approval Hearing, may be extended by Order of the Court, for good cause shown, without further notice to the Settlement Class Members – except that notice of any such extensions shall be included on the Settlement Website. Settlement Class Members should check the Settlement Website regularly for updates and further details regarding extensions of these deadlines.

23. Class Counsel and JCPenney's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the Settlement Agreement, to the form or content of the Class Notice or to any other exhibits that the parties jointly agree are reasonable or necessary.

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24. This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Class.

IT IS SO ORDERED.

DATED: _____

_____
HONORABLE FERNANDO M. OLGUIN
UNITED STATES DISTRICT COURT

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Attorneys for Plaintiff Cynthia E. Spann
and Class Counsel
[Additional Counsel on Signature Page]

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA E. SPANN, on Behalf of Herself and All Others Similarly Situated, Plaintiff, v. J.C. PENNEY CORPORATION, INC., a Delaware Corporation; and DOES 1 through 10, Inclusive, Defendant.	Case No. SACV12 0215 FMO (KESx) **<u>CLASS ACTION</u>** **PROOF OF SERVICE** JUDGE: Honorable Fernando M. Olguin CTRM: 22 – 5th Floor

PROOF OF SERVICE

Spann v. J.C. Penney, et al.

CASE NO: SACV12 0215 FMO (RNBx)

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action. I am employed in the County of San Diego, State of California. My business address is: 10021 Willow Creek Road, Suite 200, San Diego, CA 92131.

That on November 10, 2015, I served the following document(s) entitled:

1. **NOTICE OF UNOPPOSED MOTION AND MOTION FOR MODIFICATION OF CLASS CERTIFICATION ORDER; PRELIMINARY APPROVAL OF SETTLEMENT; AND ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND**

2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR MODIFICATION OF CLASS CERTIFICATION ORDER; PRELIMINARY APPROVAL OF SETTLEMENT; AND ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND**

3. **DECLARATION OF MATTHEW J. ZEVIN IN SUPPORT OF UNOPPOSED MOTION FOR MODIFICATION OF CLASS CERTIFICATION ORDER; PRELIMINARY APPROVAL OF SETTLEMENT AND NOTICE PROGRAM; AND ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND**

4. **DECLARATION OF CYNTHIA E. SPANN IN SUPPORT OF APPROVAL OF CLASS ACTION SETTLEMENT**

5. **DECLARATION OF ADAM TARCZYNSKI**

6. **DECLARATION OF BRIAN J. BERGMARK IN SUPPORT OF PLAINTIFF'S MOTION FOR MODIFICATION OF CERTIFICATION ORDER AND PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

7. **DECLARATION OF JEANNE C. FINEGAN IN SUPPORT OF PRELIMINARY APPROVAL OF SETTLMENT AND NOTICE PROGRAM**

8. **[PROPOSED] ORDER MODIFYING CLASS CERTIFICATION ORDER; GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; APPROVING NOTICE PLAN; AND ESTABLISHING QUALIFIED SETLEMENT FUND**

on ALL REGISTERED ECF USERS:

☒ **BY CM/ECF ELECTRONIC SERVICE:** I caused such document to be served via the Court's (NEF) electronic filing system on all registered parties.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 10, 2015, at San Diego, California.

/s/ Matthew J. Zevin
MATTHEW J. ZEVIN