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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ELAINE OXINA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

LANDS' END, INC.,

Defendant.

Case No.: 14cv2577-MMA (NLS)

**ORDER GRANTING JOINT
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

[Doc. No. 34]

Plaintiff Elaine Oxina has filed a Joint Motion for Preliminary Approval of Class Action Settlement pursuant to Federal Rule of Civil Procedure 23(e). Doc. No. 34 (“the Motion”). Having reviewed Plaintiff’s submissions, the Court **GRANTS** the joint motion as follows:

1. The Court **PRELIMINARILY APPROVES** the proposed Class Settlement Agreement and Release dated February 10, 2016 (the “Settlement Agreement”), submitted with the Motion, as fair, reasonable, adequate and within the range of reasonableness for preliminary settlement approval.¹

¹ All defined terms set forth herein shall have the same meaning as that in the Settlement Agreement.

- 1 2. Based upon the submissions of the parties, and for purposes of this
2 settlement only, the Court conditionally makes the following findings:
- 3 a. With respect to the Settlement Class, the Court finds and concludes
4 that:
- 5 (i) the Settlement Class Members are so numerous as to make
6 joinder of them impracticable;
- 7 (ii) there are questions of law and fact common to the Settlement
8 Class;
- 9 (iii) Plaintiff’s claims and the defenses asserted thereto are typical
10 of the claims of Settlement Class Members and the defenses
11 asserted thereto;
- 12 (iv) Plaintiff and her counsel have fairly and adequately protected
13 the interests of Settlement Class Members throughout this
14 action; and
- 15 (v) Accordingly, for settlement purposes only, the Court
16 **PRELIMINARILY APPROVES** Plaintiff as a representative
17 of the Settlement Class, and **CONDITIONALLY**
18 **CERTIFIES** a Settlement Class comprised of all Persons who,
19 at any time from October 29, 2010 through October 29, 2014,
20 purchased the “Kids to-be-tied Plaid Necktie” (SKU No.
21 3668260) in the State of California.
- 22 3. The Settlement Class is preliminarily certified for settlement purposes only,
23 pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3). If the Court
24 does not finally approve the settlement, Lands’ End retains the right to assert
25 that this action may not be certified as a class action, and no party shall rely
26 on this preliminary approval as support for the certification of a class in this
27 or any other action.
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- 1 4. Upon consideration of the factors enumerated in Federal Rule of Civil
2 Procedure 23(g)(1)(A), the Court **APPOINTS** Kazerouni Law Group, APC
3 and Hyde & Swigart as Class Counsel.
- 4 5. A final hearing (the “Fairness Hearing”) shall be held before this Court on
5 **October 17, 2016 at 2:30 p.m.**, to determine whether:
- 6 (a) this action meets each of the prerequisites for class certification set
7 forth in Federal Rule of Civil Procedure 23(a), and may properly be
8 maintained as a class action on behalf of the Settlement Class under
9 Federal Rule of Civil Procedure 23(b)(3);
- 10 (b) the Settlement Agreement should receive final approval as fair,
11 reasonable, adequate, and in the best interests of the Settlement Class;
- 12 (c) orders granting final approval of the Settlement Agreement, entering
13 final judgment and dismissing the Second Amended Complaint with
14 prejudice, as provided in the Settlement Agreement, should be
15 entered; and
- 16 (d) the application of Class Counsel for the payment of attorneys’ fees
17 and expenses should be granted. The Fairness Hearing may be
18 postponed, adjourned or continued by further order of this Court,
19 without further notice to the parties or the members of the Settlement
20 Class.
- 21 6. At the Fairness Hearing, the Court will consider and determine whether
22 the Settlement Agreement should be finally approved as fair, adequate and
23 reasonable in light of any objections presented by Settlement Class Members
24 and the parties’ responses to any such objections.
- 25 7. Any Settlement Class Member may object to the fairness, reasonableness or
26 adequacy of the settlement. Any member of the Settlement Class who so
27 objects may appear at the Fairness Hearing, in person or through counsel, to
28 show cause why the settlement should not be approved as fair, adequate and

1 reasonable. Each Settlement Class Member who wishes to object to any
2 term of the Settlement Agreement must do so in writing by filing a written
3 objection with the Clerk of the Court and mailing it to counsel for the
4 parties at the addresses set forth in the Settlement Agreement. Any such
5 objection must be filed with the Clerk of the Court and received by
6 counsel for the parties no later than 30 days before the date of the Fairness
7 Hearing. The objection must:

- 8 (a) identify the date on which the objecting party purchased a “Kids
9 to-be-tied Plaid Necktie” (SKU No. 3668260) in the State of
10 California;
- 11 (b) attach copies of any materials that will be submitted to the Court or
12 presented at the Fairness Hearing;
- 13 (c) be signed by the Settlement Class Member; and
- 14 (d) clearly state in detail:
- 15 (i) the legal and factual ground(s) for the objection;
- 16 (ii) the Settlement Class Member’s name, address and
17 telephone number; and
- 18 (iii) if represented by counsel, such counsel’s name, address
19 and telephone number.

20 Any objection that fails to satisfy the requirements of this paragraph, or
21 that is not properly and timely submitted, shall not be effective, will not
22 be considered by this Court, and will be deemed waived, and those
23 Settlement Class Members shall be bound by the final determination of this
24 Court.

- 25 8. Any Person included within the Settlement Class who wishes to be
26 excluded, or to “opt out,” from membership in the Settlement Class must do
27 so in writing by mailing a request for exclusion from the Settlement to
28 counsel for the parties at the addresses set forth in the Settlement

1 Agreement, so that such request is postmarked no later than 30 days before
2 the date of the Fairness Hearing. Such a request must

- 3 (a) be signed by the Settlement Class Member;
4 (b) identify the date on which the objecting party purchased a “Kids to-
5 be-tied Plaid Necktie” (SKU No. 3668260) in the State of California.
6 (c) clearly express the Settlement Class Member’s desire to be excluded
7 from the Settlement Class; and
8 (d) include the Settlement Class Member’s name, address and telephone
9 number, and, if represented by counsel, counsel’s name, address and
10 telephone number.

11 Any Person within the Settlement Class who wishes to be excluded from the
12 Settlement Class can only opt out for himself or herself and, except for
13 minors, cannot opt out for any other Person. No Person within the
14 Settlement Class may authorize another Person to opt out on his or her
15 behalf. Any request for exclusion that fails to satisfy the requirements of
16 this paragraph, or is not properly or timely submitted, shall not be effective,
17 and the Person making such a request shall be deemed to have waived all
18 rights to opt out of the Settlement, and to be a Settlement Class Member for
19 all purposes pursuant this Order.

- 20 9. Except for good cause shown, no person (other than the parties and their
21 respective representatives and counsel) may appear or be heard at the
22 Fairness Hearing, or file papers, briefs or other submissions regarding the
23 Fairness Hearing, unless, no later than 15 days before the Fairness Hearing,
24 such person or their counsel files with the Clerk of this Court and
25 simultaneously serves on counsel for all parties at the addresses set forth in
26 the Settlement Agreement a written notice of request to appear at the
27 Fairness Hearing. Such notice must:
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- (a) state the name, address and telephone number of the Settlement Class Member, as well as the name, address and telephone number of the person who seeks to appear at the Fairness Hearing on his or her behalf;
- (b) indicate that the Settlement Class Member has previously or contemporaneously objected to the Settlement in compliance with the requirements of paragraph 8 of this Order;
- (c) identify the date on which the objecting party purchased a “Kids to-be-tied Plaid Necktie” (SKU No. 3668260) in the State of California;
- (d) contain the Settlement Class Member’s signature; and
- (e) include a detailed statement of the ground(s) for objection that the Settlement Class Member intends to raise at the Fairness Hearing.

Any request to appear that fails to satisfy the above requirements, or that is not properly and timely submitted, shall not be effective and will not be considered by this Court, and the Person who made such a request shall not be permitted to appear or be heard at the Fairness Hearing, or otherwise comment on the settlement.

10. The Court finds that the manner and content of the Settlement Notice set forth in Exhibit B to the Settlement Agreement will provide the best notice practicable to the Settlement Class under the circumstances. All costs incurred in connection with the preparation and dissemination of any notices to the Settlement Class shall be borne by Lands’ End.
11. If the Settlement Agreement is finally approved, the Court shall enter a separate order finally approving the Settlement Agreement, entering judgment and dismissing the Class Action Complaint with prejudice. Such order and judgment shall be fully binding with respect to all members of the Settlement Class.

1 12. In the event that the proposed settlement provided for in the Settlement
2 Agreement is not approved by this Court, or entry of the final order and
3 judgment described above does not occur for any reason, then the Settlement
4 Agreement, all drafts, negotiations, discussions, and documentation relating
5 thereto, and all orders entered by this Court in connection therewith shall
6 become null and void. In such event, the Settlement Agreement and all
7 negotiations and proceedings relating thereto shall be withdrawn without
8 prejudice to the rights of the parties, who shall be restored to their
9 respective positions as of August 24, 2015.

10 13. The parties shall abide by the following scheduled dates:

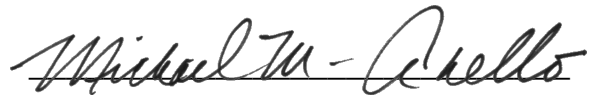
- 11 (a) The direct notice to the Settlement Class shall be disseminated by
12 Lands' End, as more fully described in the Settlement Agreement,
13 within 30 days of entry of this Order.
- 14 (b) The parties shall file and serve papers in support of final approval of
15 the settlement, including any responses to proper and timely
16 objections filed thereto, within 120 days following dissemination of
17 notice to the Settlement Class.
- 18 (c) Class Counsel shall file any applications for an award of attorneys'
19 fees, costs and litigation expenses, or incentive awards to Plaintiff
20 **no later than thirty (30) days prior to the Fairness Hearing** and
21 subject to the terms of the Settlement Agreement. Defendant has
22 agreed not to oppose such application by Class Counsel so long as the
23 amounts requested are not more than a total of \$32,500.

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1 (d) The Fairness Hearing shall be held on **October 17, 2016 at 2:30 p.m.**
2 **in Courtroom 3A** of the United States District Court for the Southern
3 District of California, Edward J. Schwartz U.S. Courthouse, 221 West
4 Broadway, San Diego, California 92101.

5 **IT IS SO ORDERED.**

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7 Dated: April 6, 2016

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9 Hon. Michael M. Anello
10 United States District Judge
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