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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 JAMES HOROSNY, et al.

14 Plaintiffs,

15 vs.

16 BURLINGTON COAT FACTORY OF
17 CALIFORNIA, LLC, et al.,

18 Defendants.
19
20
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22
23

Case No. 2:15-cv-05005-SJO-MRWx

CLASS ACTION

**PLAINTIFFS' NOTICE OF
MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
CERTIFICATION OF
SETTLEMENT CLASS**

Courtroom: 1 – 2nd Floor
Date: October 31, 2016
Time: 10:00 a.m.
Judge: Hon. S. James Otero

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **October 31, 2016**, at 10:00 a.m., or as
3 soon thereafter as the matter may be heard, in Courtroom 1 on the 2nd Floor of the
4 United States District Court for the Central District of California, located at 312
5 North Spring Street, Los Angeles, CA 90012, Plaintiffs James Horosny and Jennifer
6 Price (collectively “Plaintiffs”) will, and hereby do, respectfully move this Honorable
7 Court for an order: (1) granting preliminary approval of the settlement agreement
8 Plaintiffs have executed with Defendant Burlington Coat Factory of California, LLC
9 (“Burlington”) for \$29,667,500 (Merchandise Certificates and cash) pursuant to Fed.
10 R. Civ. Proc. 23(e); and, (2) certifying a class for settlement purposes pursuant to
11 Fed. R. Civ. Proc. 23(b)(3).

12 This Motion is unopposed by Defendant and is based upon this Notice of
13 Motion; Plaintiff’s Memorandum of Points and Authorities In Support of Plaintiffs’
14 Motion for Preliminary Approval of Class Action Settlement and Certification of
15 Settlement Class; the Declarations of Christopher J. Morosoff, Douglas Caiafa,
16 Marisa Miloszewski, Gregory Camaratta, Elizabeth Trivino-Velasco, and Daniel
17 Burke in support thereof; all filed and served concurrently herewith; as well as the
18 pleadings and papers on file in this action, argument of counsel, any other material
19 which may be submitted to the Court, and any other evidence or argument the Court
20 may consider.

21 Dated: September 19, 2016

22 Respectfully submitted,
23 LAW OFFICE OF CHRISTOPHER J. MOROSOFF

24 By: /s/ Christopher J. Morosoff
25 Christopher J. Morosoff
26 Attorneys for Plaintiffs
27 JAMES HOROSNY and JENNIFER PRICE
28

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CLASS ACTION

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CLASS**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION:

Plaintiffs James Horosny (“Horosny”) and Jennifer Price (“Price”) (collectively “Plaintiffs”) and their counsel have achieved a settlement (the “Settlement”) of this action with Defendant Burlington Coat Factory of California, LLC (“Defendant” or “Burlington”). The Settlement is the product of over nine months of arms-length negotiations between the parties, including mediation with a highly experienced mediator, Jeffrey Krivis. Defendant has agreed to pay up to twenty-nine million six-hundred sixty-seven thousand five hundred dollars **(\$29,667,500)** in Merchandise Certificates, administrative costs, attorneys’ fees and expenses, and incentive awards (collectively the “Settlement Amount”)¹. The Settlement Amount includes up to \$27,750,000 in Merchandise Certificates to be distributed to Class Members for use in one of Defendant’s stores in California.² In addition, Defendant will provide up to \$975,000 to be used to pay for notice and administration costs, and, subject to approval by the Court, up to \$927,500 for reasonable attorneys’ fees and costs, and up to \$15,000 for Class representative payments (not to exceed \$7,500 each). (See Amended Settlement Agreement, dated September 19, 2016 (“Agreement”), attached as Exhibit A to the Declaration of Christopher J. Morosoff (“Morosoff Dec.”)). The Merchandise Certificates along with notice of the Settlement will be distributed directly to Known Class Members (those Class Members for whom Defendant has contact information, and who comprise over 95% of the Class) without the need for any such person to submit a claim, and to those Unknown Class Members (those Class Members for whom Defendant does not have contact information, and who comprise less than 5% of the Class) who submit a valid claim within the claim period.

^{1/} Since the filing of the original Motion for Preliminary Approval of May 9, 2016, Defendant has agreed to increase the amount it will pay for the cost of administering the Settlement by \$75,000 (from the \$900,000 originally agreed upon to \$975,000), and Plaintiffs have agreed to reduce the amount they will seek in attorney’s fees by \$22,500 (from \$950,000 to \$927,500).

^{2/} Pursuant to the parties’ agreement, Class members need not do anything to activate the Merchandise Certificates. They become redeemable not later than thirty (30) days after the Court enters its Order granting Final Approval of the Settlement.

1 In addition, and as a direct result of this litigation, Defendant has agreed to disclose its
2 pricing practices in its California stores and on its website, has agreed to train its Buyers for its
3 California locations about its pricing practices, and has agreed to audit those practices in
4 California.

5 Through this Motion, Plaintiffs seek an order: (1) certifying a Settlement Class for
6 settlement purposes only; (2) granting preliminary approval of the Settlement pursuant to Fed.
7 R. Civ. Proc. 23(e); (3) approving the form and manner of notice to the Class; and, (4) setting
8 a date for a final approval hearing. The Settlement satisfies the standards for preliminary
9 approval and should be approved – it is within the range of possible approval to justify sending
10 and publishing notice of the Settlement to Class Members and scheduling final approval
11 proceedings. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015) (“*In*
12 *re Online DVD*”).

13 **II. FACTUAL AND PROCEDURAL BACKGROUND:**

14 Prior to filing this action on July 1, 2015, Plaintiffs’ counsel consulted with Plaintiffs,
15 investigated Defendant’s pricing practices and researched the law applicable to Plaintiffs’
16 claims. (Morosoff Dec. at ¶7). In the operative First Amended Complaint (“FAC”) filed on
17 September 17, 2015 (ECF No. 15), Plaintiffs allege that throughout the Class Period,
18 Defendant has engaged in a deceptive pricing scheme by which it advertised “sale” prices that
19 were substantially lower than advertised “Compare” prices for the products sold in its
20 California Burlington stores. Plaintiffs further allege that the higher Compare prices were
21 deceptive because the Compare prices were not based on actual prices that identical items sold
22 for either at Burlington or other retailers, and that Defendant failed to adequately disclose to
23 consumers what its Compare reference prices were intended to represent. The FAC seeks
24 restitution and injunctive relief under California’s Unfair Competition Law, Cal. Bus. & Prof.
25 Code §§ 17200 *et seq.* (“UCL”), False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et*
26 *seq.* (“FAL”), and Consumer Legal Remedies Act, Cal. Civ. Code §1750 *et seq.* (“CLRA”).
27 Defendant denies any wrongdoing in this case, denies Plaintiffs’ allegations, and further denies
28

1 Plaintiffs’ assertion that the retailer’s pricing practices constituted a violation of California law
2 and/or of Federal Trade Commission guidelines.

3 Throughout the Litigation, Plaintiffs’ counsel engaged in extensive legal research and
4 analysis and conducted informal discovery. (Morosoff Dec. at ¶8). Plaintiffs’ counsel
5 received, reviewed and analyzed documents that Defendant produced in the Litigation,
6 including its voluminous and detailed sales data. (Id.). Plaintiffs’ counsel also continuously
7 monitored Defendant’s public filings, keeping a close eye on Defendant’s financial status and
8 pricing practices. (Id.).

9 On October 26, 2015, the Court denied Defendant’s Motion to Dismiss. (ECF No. 30).
10 On December 4, 2015, Plaintiffs filed a Motion for Class Certification (ECF No. 24), which
11 was subsequently taken off calendar to allow for further discovery and briefing. (ECF No.
12 34). Plaintiffs’ FAC sought certification of the following Class, which Defendant estimates to
13 include approximately 3.7 million individuals, under Fed. R. Civ. Proc. 23(b)(2) and/or (b)(3):

14 All persons who, while in the State of California, and between July 1, 2011, and
15 the present (the “Class Period”), purchased from Burlington Coat Factory³ one or
16 more items at any Burlington Coat Factory store in the State of California with a
17 price tag that contained a “Compare” price which was higher than the price listed
18 as the Burlington sale price on the price tag, and who have not received a refund
19 or credit for their purchase(s). Excluded from the Class are Defendant, as well as
20 Defendant’s officers and directors, agents or affiliates, and any judge who
21 presides over this action, as well as all past and present officers and directors of
22 Defendant.

23 On May 9, 2016, Plaintiffs filed an Unopposed Motion for Preliminary Approval of
24 Class Action Settlement and Motion for Certification of Settlement Class (“MPA”). (ECF No.
25 52). On June 9, 2016, the Court denied Plaintiffs’ MPA with leave to file a new motion
26 (“Order”). (ECF No. 53). In its June 9, 2016, Order, the Court instructed Plaintiffs to address
27 several enumerated issues in any renewed motion for approval of the proposed Settlement.
28 Those issues are each addressed here in Section III of the instant Motion.

^{3/} Burlington Coat Factory stores is now known as Burlington.

1 **III. THE SETTLEMENT:**

2 Unlike other settlements, the Settlement here is primarily a direct distribution settlement
3 that puts Merchandise Certificates directly into the hands of Known Class Members, the
4 overwhelming majority of Class Members, without the need for any of them to make a claim.
5 The small percentage of Unknown Class Members may also obtain relief via a straightforward
6 claim process designed to make the process for submitting a claim simple for those who wish
7 to make claims.

8 **A. Settlement Negotiations:**

9 Throughout the winter of 2015-2016, the parties engaged in extensive negotiations
10 concerning the possible structure of a class-wide settlement. (Morosoff Dec. at ¶11). These
11 negotiations led to mediation, on February 10, 2016, with Jeffrey Krivis of First Mediation
12 Corporation. (Id.) At the conclusion of a full day of mediation, the parties reached a tentative
13 agreement with respect to most of the material terms of the Settlement as reflected in the
14 Agreement. (Id.) The parties remained at an impasse with respect to certain terms. Further
15 conferences and negotiations were required before final agreement was reached on all terms.
16 The parties subsequently negotiated, drafted and executed a comprehensive Agreement that
17 was presented to the Court as Exhibit A to the Declaration of Christopher J. Morosoff in
18 Plaintiffs' original MPA.

19 After receipt of the Court's June 9, 2016, Order, the parties continued negotiations and
20 made certain revisions to the original Settlement Agreement. The Amended Settlement
21 Agreement is attached hereto as Exhibit A to the Declaration of Christopher J. Morosoff
22 ("Morosoff Dec."). In particular, to address some of the Court's concerns, the parties agreed
23 that Defendant will no longer have the option to choose the method of sending direct notice to
24 Known Class Members. Rather each Known Class Member for whom Defendant has a valid
25 email address will receive notice of the Settlement via email, and for those Known Class
26 Members for whom Defendant has only a postal mailing address, they will receive notice of
27 the Settlement via U.S. Mail. (Morosoff Dec., Exh.A). In addition, the notice has been
28

1 amended to include language describing in more detail the nature of Plaintiffs' legal claims
2 against Defendant. (Amended Settlement Agreement, Exhs. B, C, E, and F).

3 **B. Terms of the Settlement:**

4 The Agreement is intended to resolve the Litigation in its entirety, and is conditioned on
5 the Court certifying a Settlement Class, for settlement purposes only, and granting final
6 approval of the Settlement. (Exh. A at ¶III.M). The parties have modeled the Agreement, to
7 the extent possible, after the settlement agreement approved by the Ninth Circuit in *In re*
8 *Online DVD*. (Morosoff Dec. at ¶12).

9 **1. Monetary Relief:**

10 The Settlement provides that Defendant will make available up to \$27,750,000 in
11 Merchandise Certificates for the benefit of the Class, good for purchase of any item at any
12 Burlington store in California. The Class consists of approximately 3.7 million individuals.
13 Merchandise Certificates will be distributed directly to Settlement Class Members with known
14 contact information ("Known Class Members"). (Exh. A at ¶III.C and D). Of the 3.7 million
15 Class Members, 3.55 million (or over 95%) are Known Class Members and will directly be
16 sent Merchandise Certificates along with notice of the Settlement without the need to submit a
17 claim or take any further action. Defendant will also distribute Merchandise Certificates to
18 those Class Members with no known contact information ("Unknown Class Members") who
19 submit a claim. (Id. at ¶¶III.D and M.5). There are approximately 145,000 Unknown Class
20 Members, who make less than 5% of the Class. Defendant will also pay up to \$975,000 to be
21 used for Notice and Administration Costs (Id. at ¶III.F), and, subject to approval by the Court,
22 up to \$927,500 for reasonable attorneys' fees and costs (Id. at ¶III.E.2), and up to \$15,000 for
23 Class Representative Payments (\$7,500 for each Representative). (Id. at ¶III.E.1).

24 Claimants will receive their share of the monetary relief as Merchandise Certificates
25 redeemable for purchases at any Burlington store in California. Each Merchandise Certificate
26 shall be fully transferable, may be used in connection with any promotional discounts that are
27 otherwise available, and multiple Merchandise Certificates can be used in a single transaction.
28

1 Merchandise Certificates will have no expiration date and may be used toward the purchase of
2 any item at any Burlington store in California. (Exh. A, ¶III.C). Known Class Members (over
3 95% of the Class) will be sent their Merchandise Certificates directly along with the Notice to
4 the Class, without the need to submit a claim. Unknown Class Members (the remaining 4%)
5 will have ninety (90) days from the date of Notice to submit a Claim Form via mail to the
6 Administrator, to receive their Merchandise Certificates. (Id. at ¶III.C, D, and M.5).

7 Like the gift cards offered in *In re Online DVD*, the Merchandise Certificates here are
8 not “coupons” within the meaning of the Class Action Fairness Act (“CAFA”). They do not
9 expire, and may be used to purchase any product at any Burlington store in California. (Exh.
10 A at ¶III.C and D). The Merchandise Certificates here have many of the same attributes as
11 those in *In re Online DVD*, where the gift cards were found not to be coupons because, among
12 other things, they could be used to purchase any product from defendant, were freely
13 transferable and did not expire. *Id.* at 950-52.

14 **a. Response to the Court’s Concerns Regarding Merchandise**
15 **Certificates:**

16 In its Order of June 9, 2016, denying Plaintiffs’ Motion for Preliminary Approval
17 without prejudice, the Court invited Plaintiffs to file a renewed motion which addresses a
18 number of issues, including 7 issues specifically related to Merchandise Certificates. (ECF No.
19 53, at *2). Those 7 issues are addressed here.

20 Issue No. 1: Why will each Class Member receive \$7.50, regardless of the nature
21 of their particular allegations? Theoretically, Burlington should have
22 information regarding the amount spent by a large number of Known
23 Class Members. Burlington might also have information regarding the
24 difference between the sale price and the "Compare" price for some or all
25 of their items.

26 While Burlington has consumer information which allows it to identify over ninety-five
27 percent of Class Members, it does not have accurate and/or customer-specific data regarding
28

1 what and how often and/or frequently the Known Class Members in California purchased
2 items at its stores during the Class Period. (See Declaration of Marisa Miloszewski at ¶4). Nor
3 can Burlington accurately identify all items an individual purchased during the Class Period.
4 (Id.). Burlington also does not have a loyalty or rewards program, and does not have a
5 branded credit card that would enable Burlington to track customer purchases. (Id.).

6 Additionally, Burlington’s database does not have the customer data that evidences
7 which customers purchased items with “Compare” tags versus customers who purchased
8 items without “Compare” tags. (Id. at ¶7). The administrative cost of gathering this
9 information is prohibitive and, more importantly would be grossly inaccurate. (Id.).

10 Furthermore, to structure a settlement on the basis of this information would require customers
11 to complete lengthy and complicated claim forms and provide proof of purchase, which would
12 be a burden on the Class Members and dramatically increase the cost of administration. The
13 direct mailing of Merchandise Certificates allows a remedy that imposes a minimal burden on
14 the Class and maximizes the amount received by each Class Member. This type of pro-rata
15 distribution has been approved by the Ninth Circuit in *In re Online DVD*, 779 F.3d at 950-52.

16 It is important to note that the amount of the Certificate is sufficient to enable Class
17 Members to purchase from a wide array of products that Burlington sells. Specifically, there
18 are approximately **2,529,484** SKUs in California stores that can be purchased for \$7.50 or less.
19 (See Declaration of Gregory Camaratta at ¶4). There are another approximately 1.5 million
20 products that are offered for sale at \$7.50 or less in Burlington stores in California that do not
21 use a “Compare” price tag. These products are sold in a wide array of departments, including
22 Men’s, Women’s, Girl’s (Juniors), and Kid’s apparel and clothing, bags and accessories,
23 sports and athletic wear, shoes, bath products, and cosmetics. (Id.)

24 If Class Members are inclined to purchase additional or more expensive items, there are
25 over one million more SKUs offered for sale in Burlington’s stores in California for between
26 \$7.51 and \$10.00. (Id. at ¶6). And there are another approximately one million products that
27 are offered for sale at between \$7.51 and \$10.00 that do not use a “Compare” price tag.
28

1 Likewise, these products are sold in a wide array of departments, including Men’s, Women’s,
2 Girl’s (Juniors), and Kid’s apparel and clothing, bags and accessories, sportswear, shoes, bath
3 products, and beauty cosmetics. (Id.).

4 Issue No. 2: How much would it cost to compile, monitor, etc. a more finely
5 tuned payment scheme?

6 Due to limitations with Burlington’s consumer database (caused by the lack of a loyalty
7 or rewards program and/or a branded credit card program), developing a more finely tuned
8 settlement scheme would be prohibitively difficult if, in fact, it would even be possible.
9 (Miloszewski Dec. at ¶7). Such a scheme would require each Class Member to individually
10 make a claim for relief accompanied by some type of proof of purchase, and would therefore
11 eliminate the possibility of a direct distribution of relief to the almost 96% of the Class. Even
12 if the database were analyzed, Defendant would not be able to determine whether the products
13 purchased by consumers utilized “Compare” or regular price tags.

14 It would also increase the claims administration costs due to the need for additional
15 information requested on a more comprehensive claim form (e.g., more specific and detailed
16 transaction information and evidence of purchases) that would have to be submitted by Class
17 Members.

18 Issue No. 3: Why is it equitable to require Class Members to redeem the
19 certificates by purchasing more merchandise from Burlington? Why not
20 give a voucher to any department store, or instead a cash refund?

21 First, and most importantly, the amount of the certificates is sufficient to enable Class
22 Members to purchase from over four million SKUs without having to spend additional money
23 (aside from sales tax). (Camaratta Dec. at ¶¶4-6). In other words, Class Members will obtain a
24 concrete benefit from the Settlement. Class Members that choose to spend more than the
25 amount of the certificate also receive a concrete benefit in the form of a \$7.50 credit off of
26 Burlington’s already low prices (and there are another one million plus items for sale between
27 \$7.51 and \$10.00 dollars). (Id.).

1 Second, Class Members, by definition, are Burlington customers and purchased items
2 from Burlington stores in California during the Class Period. Providing them Merchandise
3 Certificates to purchase additional items at Burlington, a place where it is undisputed that they
4 shop, is the most logical and efficient way to address the Class’s allegations in the FAC and
5 resolve Burlington’s purported failure to disclose its “Compare” pricing policy to them.

6 Finally, the parties agreed to provide Class Members with Merchandise Certificates in
7 order to provide them with maximum value rather than a smaller cash award with an onerous
8 claims process.

9 Issue No. 4: Did the parties consider awarding some amount of money to a
10 consumer protection or consumer watchdog group?

11 The parties agreed that it would be most appropriate to give the Merchandise
12 Certificates (and the vast majority of the Settlement Amount) to Class Members, rather than to
13 a consumer protection or watchdog group.

14 Issue No. 5: Why did the parties not agree to a *cy pres* distribution, particularly
15 in the event the amount of Claim Forms submitted by Unknown Class
16 Members is relatively small?

17 The Settlement provides for actual direct distribution to over 95% of the Class. The
18 remaining 4% (Unknown Class Members) can receive Merchandise Certificates by submitting
19 a straightforward and simple claim form. In cases where a claims process is used instead of
20 the direct distribution of the class benefit, the typical claim rate is between 2% and 5%.
21 Because the parties agreed to directly distribute the Merchandise Certificates, over 95%
22 percent of the Class here will be sent the class benefit. Based on its experience, the Claims
23 Administrator estimates that over eighty-five percent of the Known Class Members will
24 actually receive the Merchandise Certificates. (See Burke Dec. at ¶15)

25 Because of the direct distribution, the Settlement does not (and neednot) utilize a
26 qualified cash settlement fund. All proceeds available for distribution to Class Members are in
27 the form of Merchandise Certificates. The parties do not believe it is in the interest of the
28

1 Class to divert any amount from the Settlement Amount to any outside group. As such, a cy
2 *pres* distribution is neither necessary (considering the extremely high claim/distribution rate),
3 nor possible (considering the relief is in the form of directly distributed Merchandise
4 Certificates).

5 Issue No. 6: Are there any items at Burlington stores that Class Members could
6 fully pay for (or at least cover a large portion of the items) with a \$7.50
7 certificate? Can the parties provide evidence of this? Are there any other
8 cases in which similar "vouchers" or "certificates" were not found to be
9 "coupons"?

10 As set forth above, there are millions of SKUs at Burlington stores in California that
11 can be purchased for \$7.50 or less. (Camaratta Dec. at ¶¶4-5). These products include, among
12 many others, Men's Power Train V-Neck shirt (\$4.99), Women's Peasant Blouses (in multiple
13 colors and styles) (\$6.99), Girl's Knit Denim Shorts (\$5.99), Solid Skinny Jeans - Jr. (\$6.99),
14 Swimming Dory and Nemo Graphic T-Shirt (\$4.99), Boy's Brush Striped Dress Pants (\$6.99),
15 and Oakland Athletics Backpack (\$6.99). In addition to apparel, other items available include,
16 among many others: Matte Blush Powders (\$3.99), Sweet Violet Tuscan Extra Fine Soap
17 (\$3.99), Ellen Tracy 4 Piece Brush Set (\$5.99), and D&G Mascaras (\$3.99). (See Camaratta
18 Dec. at ¶5, Exh. A (Photographs of these items)).

19 If Class Members are inclined to purchase additional or more expensive items, there are
20 over a million more SKUs sold in different departments in Burlington's stores in California for
21 between \$7.50 and \$10.00, and the Merchandise Certificate will cover a large portion of the
22 cost of these items. (See Camaratta Dec. at ¶¶6-7, Exhibit A (Photographs of these items)).

23 The most notable and controlling case that found "vouchers" or "certificates" to not be
24 coupons is *In re Online DVD*, which is discussed more fully below. 779 F.3d at 950-52. See
25 also *Petersen v. Lowe's JIW, Inc.*, Nos. C 11-01996 RS, C 11-02193 RS (N.D. Cal. Aug 24,
26 2012) (approving settlement and attorney's fees award, outside the strictures of CAFA, that
27 provided class members with a \$9 gift cards to Lowe's).

1 Issue No. 7: What data is there regarding the difference between the "Compare"
2 or "Compare at" prices listed on the tags and the actual price at which
3 merchandise was sold?

4 The difference between the "Compare" price and the sales price is not based on a
5 formula; rather, it is based on the market research performed by Burlington's buying team to
6 establish what price the same or similar product has been offered for sale in other channels.
7 Burlington contends that its pricing practices were compliant with California law for both the
8 branded and non-branded products it sold. Burlington's business as an off-price retailer that
9 sells products at low prices distinguishes it from other recent settlements involving "Compare
10 At" price advertising by other major retailers.

11 **2. Injunctive Relief:**

12 Prior to this lawsuit and Settlement, Defendant provided no disclosure to its customers
13 concerning how Burlington set its "Compare" prices. As a direct result of this Litigation,
14 Defendant has now agreed to provide clear and conspicuous disclosures regarding its
15 "Compare" prices or similar pricing practices that offer a comparison price to consumers, both
16 in its California stores and online. (Exh. A at ¶¶III.G and H). Defendant has also agreed to
17 provide additional training for its Buyers who are responsible for setting and disseminating its
18 "Compare" reference prices or similar pricing practices that offer a comparison price to
19 consumers at its California locations. (Exh. A at ¶¶III.I). Defendant has further agreed to
20 implement periodic auditing programs related to its in-store and online disclosures for goods
21 sold in California, as well as its "Compare" reference pricing practices or similar pricing
22 practices that offer a comparison price to consumers. (Exh. A at ¶¶III.J and K).

23 **a. Response to the Court's Concerns Regarding Injunctive
24 Relief:**

25 In its Order of June 9, 2016, the Court asked Plaintiffs to address 4 issues specifically
26 related to the injunctive relief aspect of the proposed settlement. (ECF No. 53, at *2). Those 4
27 issues are addressed here.

1 Issue No. 1: Where will the proposed disclosures be posted, and how prominent
2 will the disclosures be?

3 In-Store notices describing Burlington’s “Compare” pricing policy will be prominently
4 displayed in the front of each store and on Burlington’s website. The notices are
5 approximately 22”x28” and shall be contained in sign holders. (See Declaration of Elizabeth
6 Trivino-Velasco ¶2, Exhibit A).

7 Issue No. 2: What information will Burlington provide to customers regarding
8 the pricing practices?

9 The Notices will inform customers of Burlington’s Pricing Policy. (Id).

10 Issue No. 3: Who will be doing the training and the auditing?

11 Burlington’s Learning & Development team will design training for its California
12 buyers with guidance from the Legal Department. Auditors from Burlington’s Internal Audit
13 group will audit Burlington’s compliance with the disclosure aspect of the settlement. The
14 results of these audits will be reported to Burlington’s Legal Department.

15 Issue No. 4: What measures are there to ensure compliance and enforcement?

16 See response to Issue No. 3 above. Burlington’s Internal Audit group will audit steps
17 taken by Burlington to comply with the Amended Settlement Agreement. Burlington shall
18 retain documentation to evidence compliance with the Agreement.

19 **3. The Release:**

20 Settlement Class Members who do not opt out will be deemed to have released
21 Defendant from claims related to the Litigation. (Exh. A at ¶III.N). To the extent possible, the
22 release language in the Agreement follows the release language approved by the Ninth Circuit
23 in *In re Online DVD*. (Morosoff Dec. at ¶12). While it releases both known and unknown
24 claims, the Release is limited to the universe of facts, occurrences, transactions and claims
25 alleged in the FAC. (Exh. A at ¶III.N.1). As a result, the Release is sufficiently limited in
26 scope and should be given preliminary approval. *See Vasquez v. Coast Valley Roofing, Inc.*,
27 670 F. Supp. 2d 1114, 1126 (E.D. Cal. 2009).
28

1 **4. Notice and Claims Administration:**

2 After consulting with and receiving bids from multiple candidates, the parties retained
3 KCC, LLC (“KCC”) to serve as Claims Administrator. (Exh. A at ¶I.G). KCC is a highly
4 experienced class action claims administration company. (Declaration of Daniel Burke
5 (“Burke Dec.”) at ¶¶8-12). KCC estimates that all costs of Notice and Administration will not
6 exceed \$975,000, and has provided a cap of \$975,000 for all such costs. (Id. at ¶7).

7 KCC will establish a toll-free telephone number and internet address from which
8 Settlement Class Members can obtain information about the Settlement. (Exh. A at ¶III.M;
9 Burke Dec. at ¶¶21-22). It will also establish a Settlement Website
10 (bcfpricingclasssettlement.com) where Settlement Class Members can view and download the
11 Notice, Claim Form, Opt-Out Request Form, FAC and Settlement Agreement. (Exh. A at
12 ¶III.M; Burke Dec. at ¶21).

13 No later than 30 days following preliminary approval, KCC will send a Merchandise
14 Certificate and Post-Card Notice to the approximately 3,550,000 Known Class Members for
15 whom the parties have address information. (Exh. A at ¶III.M.2; Burke Dec. at ¶¶15-16).
16 Notice and Merchandise Certificates will be sent via email to those Settlement Class Members
17 for whom the parties have email addresses, and by Post Card Notice via United States mail to
18 those Settlement Class Members for whom the parties have only a mailing address. (Exh. A at
19 ¶III.M.2.a; Burke Dec. at ¶¶15-16).

20 No later than 30 days following preliminary approval, KCC will also commence a
21 publication notice plan tailored to reach the approximately 150,000 Unknown Class Members
22 for whom the parties lack any contact information. (Exh. A at ¶III.M.3; Burke Dec. at ¶¶17-
23 20). The publication notice will direct Settlement Class Members to the Settlement Website
24 where they can view the full Notice and obtain further information about the Litigation and
25 Settlement. (Id.). KCC will also process and audit Claims by Unknown Class Members and
26 Opt-Out Requests, and make Merchandise Certificates available to Claimants. (Exh. A at
27 ¶III.m; Burke Dec. at ¶4).

1 **a. Response to the Court’s Concerns Regarding the Notice**
2 **Plan:**

3 In its Order of June 9, 2016, the Court asked Plaintiffs to address 13 issues specifically
4 related to the proposed notice plan. (ECF No. 53, at *2). Those 13 issues are addressed here.

5 Issue No. 1: How is the information of the approximately 3.1 million Known
6 Class Members stored in Burlington's databases?

7 The number of Known Class Members has increased from 3.1 million to approximately
8 3.55 million. Based on the transaction records in the database, Burlington can identify
9 approximately 3.7 million unique California customer records during the Class Period dating
10 back to July 2011. (Miloszewski Dec. at ¶8). For 3.55 million of those customers, Burlington
11 has either a postal address, an email address, or both. (Id.).

12 Burlington does not have a customer management database dedicated to tracking
13 individual customer purchases. While Burlington can identify approximately 95% of the
14 Class Members, it cannot reliably track all of those customers’ actual purchases. (Id. at ¶¶2-4).
15 The information collected by Burlington in its database dates from July 3, 2011 to January 28,
16 2015, which is when Burlington stopped collecting contact information from customers in
17 California. (Id.). Burlington does not have a loyalty or rewards program and does not have a
18 branded credit card. (Id. at ¶4). The fact that approximately thirty-five (35%) percent of
19 California customers pay in cash for their purchases further impacts the amount and type of
20 information contained in the database. The database is used for general marketing purposes,
21 including store location analysis, advertising spend analysis, and consumer shopping habits.
22 (Id. at ¶3).

23 Issue No. 2: Does Burlington know how many purchases each Known Class
24 Member has made?

25 No, Burlington does not have accurate and/or customer specific data regarding how
26 frequently the Known Class Members in California shopped at its stores during the Class
27 Period. (Id. at ¶¶4-5). Nor can Burlington accurately identify all items an individual purchased
28

1 during the Class Period. (Id.). Unlike other retailers in pricing cases, Burlington does not have
2 a loyalty or rewards program and does not have a branded credit card that would enable
3 Burlington to track customer purchases. (Id.).

4 Issue No. 3: Does Burlington know how frequently Known Class Members shop
5 at Burlington?

6 No. See Response to Issue No. 2 above.

7 Issue No. 4: Why was Burlington given the sole option to choose mail vs. email
8 notice?

9 Burlington no longer has that option. The Amended Settlement Agreement provides
10 that notice will be sent via email to those Known Class Members for whom Defendant has
11 email addresses, and via mail only to those Known Class Members for whom Defendant has a
12 mailing address but no email address. The Settlement Agreement provides for a direct
13 distribution to Known Class Members with the information that Burlington has on record.
14 KCC will send an email notice and a Merchandise Certificate to Known Class Members for
15 whom Burlington has an email address on record. A postcard notice, with a Merchandise
16 Certificate, will be provided to the Known Class Members for whom Burlington does not have
17 a valid e-mail address on record.

18 Issue No. 5: How will Burlington communicate its election to the Claims
19 Administrator?

20 Pursuant to the terms of the Amended Settlement Agreement, the parties specifically
21 agreed on the method to send notice to Known Class Members, and there is no longer any
22 election for Burlington to communicate to the Claims Administrator. The Claims
23 Administrator will be provided with a copy of the Amended Settlement Agreement. The
24 Claims Administrator has been advised of this change.

25 Issue No. 6: How did the parties estimate the number of Unknown Class
26 Members to be 600,000?

1 The number of Unknown Class Members is now estimated to be less than 150,000.
2 (Miloszewski Dec. at ¶8). This estimate was calculated by subtracting the total number of
3 unique customers in Burlington's database for which Burlington has either a postal address or
4 an e-mail address (or both) (i.e., the 3.55 million Known Class Members), from the total
5 number of unique California customers (calculated to be approximately 3.7 million). (Id.).

6 Issue No. 7: Why did the parties choose USA Today for publication notice, and
7 why only the Los Angeles and San Francisco regions?

8 In addition to in-store and website notice, the parties have agreed to publish notice of
9 the Settlement in newspapers. The parties have worked with the Claims Administrator on
10 other cases and have utilized the same publication notice in USA Today in both the Los
11 Angeles and San Francisco Regions. The Claims Administrator also has administered similar
12 publication notices in other consumer class actions approved by other courts in California. A
13 declaration from the Claims Administrator is submitted herewith addressing both the
14 sufficiency of the publication notice and the breadth of the distribution of the class relief
15 compared with other settlements approved by other courts. (Burke Dec.). The parties believe
16 that the publication notice may be comparatively less critical in this case because Defendant
17 has contact information for the vast majority of Class Members (over 95%), who will receive
18 notice and a Merchandise Certificate directly without the need to make a claim. Publication
19 notice is only being utilized in this case as an effort to reach less than 5% of the Class.

20 Issue No. 8: Will this advertisement only be run in one edition of the magazine?

21 Yes. It is the parties' intention that the Notice run once in each edition of USA Today
22 as outlined in response to Issue No. 7 above. This is sufficient since over 95% of the Class
23 will be sent the Notice and Merchandise Certificates directly without the need to file any type
24 of claim. Additionally, in-store notices and the Settlement website will provide further notice
25 of the Settlement to Burlington consumers.

26 Issue No. 9: Why did the parties prohibit Claim Forms from being submitted
27 online?
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1 The overwhelming majority of the Class (the known Class Members) will not be
2 required to submit any claim form. Merchandise Certificates will be sent directly to Known
3 Class Members without the need for any such Class Member to submit a claim form. For the
4 remaining 4% of the Class (the Unknown Class Members), Burlington is concerned that the
5 use of an on-line claim system materially increases the risk of fraud in the claims process.
6 Known Class Members need not submit any Claim Form at all. They will receive a
7 Merchandise Certificate directly with the Notice. In addition, allowing submission of a Claim
8 Form online may cause an increase in administrative costs where Known Class Members
9 submit unnecessary claims.

10 Issue No. 10: If Burlington objects to a particular Claim Form, will that Claim
11 Form automatically be rejected? If not, what is the process by which such
12 an Unknown Class Member may amend or submit additional
13 information?

14 As set forth in the Amended Settlement Agreement, a Claim Form will not be
15 automatically rejected if Burlington objects to it. Rather, if Burlington objects to a claim, the
16 Claims Administrator will review the objection and any information provided to it by
17 Burlington, and will provide a notice of any deficiency to the claimant. The claimant will then
18 have fourteen (14) days from the date of the notice of deficiency to cure any defect(s), submit
19 additional information, and return a corrected Claim Form. The Claims Administrator will
20 ultimately decide how to deal with rejections.

21 Issue No. 11: On the Class Notice, why is the nature and importance of the
22 "Compare" price tag not specified?

23 The Class Notice has been revised to include language describing the nature and
24 importance of Burlington's "Compare" price tags to Plaintiffs' claims. The language in the
25 original proposed notice ("The lawsuit alleges that Defendant misled shoppers by using
26 comparative reference prices of products sold at its California stores and/or on its website
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1 and by failing to disclose its pricing practices to consumers”) has been replaced with the
2 following:

3 "The Plaintiffs in the lawsuit allege that Burlington used “Compare” reference prices on
4 its price tags that compare Burlington’s sales prices to higher prices at other retailers, which
5 lead customers to believe they were getting a better deal than they may actually be getting.
6 The Plaintiffs allege that Burlington’s price tags were deceptive because the “Compare” prices
7 may be higher than the actual sales prices for identical products at other retailers. Because
8 Burlington did not disclose to customers what the “Compare” price means, Plaintiffs allege
9 that Burlington did not provide an accurate basis for consumers to compare its prices and
10 products with those sold at other retailers. Burlington denies these claims and contends that it
11 has done nothing wrong.”

12 Issue No. 12: Where in the Burlington stores will the In-Store Notice be
13 displayed? Would it be feasible to require cashiers to inform customers
14 about the settlement? Would it be feasible to have the Notice displayed on
15 the front door or at the registers?

16 In-Store Notices regarding the Settlement will be displayed in the front of each store.
17 Based on different store configurations, it is not feasible to have the Notice on the front door of
18 a store. In some cases, the doors are automatic sliding doors where the Notice would be
19 hidden as soon as the customer approached the door. The Notices will be displayed on an
20 easel that adheres to a shelf or a counter. The easel will have tear-off sheets so customers can
21 take a copy of the Notice to review at their convenience.

22 Due to staffing levels, training obligations and customer needs, it is not feasible to
23 require cashiers to discuss the terms of, or inform customers about, the Settlement. Cashiers
24 are not trained or qualified to discuss legal issues or describe terms of a class action settlement
25 with customers. They also could forget to tell customers about the Settlement or could give
26 customers incorrect information. From an operational standpoint, increased conversation
27 between cashiers and customers would also slow down the transaction process and increase
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1 customer wait times. As a result, cashiers will be instructed to direct customers to the In-Store
2 Notice in response to any inquiries.

3 Issue No. 13: What will the name of the settlement website be? Will Burlington
4 have any input into the selection or approval of the chosen URL?

5 The parties have jointly chosen www.bcfpricingclasssettlement.com as the name of the
6 settlement website. This website URL will be secured by the Claims Administrator.

7 **b. Response to the Court's Concerns Regarding Opting Out
8 and Objecting:**

9 In its Order of June 9, 2016, the Court asked Plaintiffs to address 1 issue specifically
10 related to how Class Members can opt out and/or object to the settlement. (ECF No. 53, at *2).
11 That 1 issue is addressed here.

12 Issue No. 1: Why are objectors required to file and serve signed, written
13 objections that significantly detail the bases for their objections, in
14 addition to a Notice of Intention to Appear should they wish to appear at
15 the final approval hearing?

16 It is a benefit to the Court, the parties, the Class, and any objecting Class Member, to
17 ensure that any objections are clearly articulated in advance of the final approval hearing so
18 that the parties may thoroughly and efficiently address and respond to any objections at the
19 Final Approval or Fairness hearing. Doing so will also conserve the Court's and parties' time
20 and resources.

21 **c. Response to the Court's Concerns Regarding the Cost of the
22 Settlement to Burlington and the Calculation of Attorneys'
23 Fees:**

24 In its Order of June 9, 2016, the Court asked Plaintiffs to address 4 issues specifically
25 related to the cost of the proposed settlement to Burlington and the calculation of attorneys'
26 fees. (ECF No. 53, at *2). Those 4 issues are addressed here.

1 Issue No. 1: What is the estimated total cost to Burlington of the proposed
2 settlement? Does this estimate take into account the possibility that some
3 customers who otherwise would not shop at Burlington's stores might go
4 to a Burlington store because of the voucher? Does it attempt to calculate
5 the marginal additional dollars of apparel or other merchandise purchased
6 by customers that is attributable to the vouchers?

7 The total cost to Burlington will depend upon the ultimate redemption rate of the
8 Certificates. The Merchandise Certificates, the vast majority of which are being directly sent
9 to Class Members, are transferrable and do not have an expiration date, and once redeemed,
10 will become a direct cost to Burlington. The total cost of the Settlement to Burlington
11 includes: (1) the cost of administration, which includes the cost of preparing and distributing
12 Merchandise Certificates (\$975,000.00), plus (2) the total value of the Merchandise
13 Certificates (up to \$7.50 x 3.7 million Class Members), plus (3) Attorneys' Fees and Costs (up
14 to \$927,500.00), and (4) Representative Enhancement Bonuses (up to \$15,000.00). Therefore,
15 the total cost to Burlington is estimated to be up to \$29,667,500.

16 Only individuals who shop or have shopped at Burlington are members of the Class and
17 will receive a Merchandise Certificate. Therefore, the Settlement will not induce any
18 individual who has not previously shopped at Burlington to shop there because of the
19 Merchandise Certificate (unless a Class Member transfers the certificate to him/her). There
20 also is no way to forecast whether a Class Member will use his or her Certificate to obtain
21 merchandise worth \$7.50 or more.

22 Issue No. 2: What methodology is used to calculate this total cost?

23 See response to Issue No. 1 above.

24 Issue No. 3: Is Plaintiffs' counsel's request for attorneys' fees tied to the value of
25 the coupons, the total cost to Burlington, or some other metric? To the
26 extent Plaintiffs' calculations refer to a certain percentage of the overall
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1 settlement, such a calculation should be based on the total cost of the
2 settlement to Burlington.

3 Merchandise Certificates of \$7.50 each will be directly distributed to 3.55 million
4 Known Class Members, all of whom are Burlington shoppers. Those Certificates do not expire
5 and are freely transferable (among other pro-use benefits) and, as such, it is reasonably
6 expected that a material percentage of them will eventually be redeemed, and will at that time
7 become a direct cost to Burlington. If all Known Class Members receive and eventually
8 redeem their certificates, the total settlement value will be \$26,625,000 ($\7.50×3.55 million).
9 Should only half of all Known Class Members receive and redeem their certificates, the total
10 settlement value will be \$13,312,500.

11 Neither of these estimates include the cost to Burlington of administering the settlement
12 of \$975,000, Class Counsel's attorneys' fees and costs of up to \$927,500.00 and the Plaintiffs'
13 Incentive Awards of up to \$15,000.00 (up to \$7,500 each).

14 Plaintiffs' counsels' request for attorneys' fees in the amount of \$927,500 represents
15 only 7% of the Settlement Amount, and the monetary relief to the Class, where only half of
16 the Known Class Members redeem their Certificates. Should all of them be redeemed, Class
17 Counsels' fees would represent only approximately 3.5% of the Settlement Amount.

18 Plaintiffs' counsel will move the Court for approval of their request for attorneys' fees
19 at the time designated and ordered by the Court. Plaintiffs' counsel's motion for attorneys'
20 fees will describe in detail the basis for the request and will provide support for the request as
21 required.

22 Issue No. 4: What is the lodestar calculation for Plaintiffs' counsel's attorneys'
23 fees?

24 Plaintiffs will support their motion for attorneys' fees, at the time ordered by the Court,
25 with a lodestar calculation.
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1 **IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED:**

2 The Settlement here is conditioned upon the Court certifying a Settlement Class, for
3 settlement purposes only, under Fed. R. Civ. Proc. 23(b)(3), to pursue claims for monetary, as
4 well as injunctive, relief. (Exh. A at ¶III.M). The Settlement Class will be defined to include:
5 all persons who purchased one or more product(s) that were advertised with a
6 “Compare at” price and an “Our Low” price or simply a lower price at a
7 Burlington Coat Factory store in California and/or on its e-commerce website and
8 had product(s) shipped to a California address between July 1, 2011, and the date
9 Preliminary Approval of this Settlement is granted [estimated to be October 17,
10 2016].

11 The Court is endowed with the authority to certify a class for settlement purposes at any
12 time before a decision on the merits. Fed. R. Civ. Proc. 23(c)(1)(C); *Vizcaino v. U.S. Dist.*
13 *Court for Western Dist. Of Washington*, 173 F.3d 713, 721 (9th Cir. 1999). The requested
14 certification order should be granted because it is appropriate to provide monetary, as well as
15 injunctive, relief to Class Members who were exposed to the pricing practices complained of
16 in Plaintiffs’ FAC.

17 Plaintiffs’ FAC alleges that Plaintiffs purchased multiple products from Burlington in
18 reliance on Defendant’s “Compare” reference prices and the supposed savings which
19 Defendant falsely represented that Plaintiffs would receive, which they would not otherwise
20 have purchased but for Defendant’s false, deceptive and/or misleading advertising. (FAC at
21 ¶¶ 115-128). The FAC further alleges that Defendant’s representations were likely to mislead
22 reasonable consumers into believing that Defendant’s prices were significantly lower than the
23 prices consumers would pay for the identical products at other retailers, and that Class
24 Members would enjoy significant savings by purchasing those products from Defendant.
25 (FAC at ¶¶ 49-50).

26 The purpose of class certification is a procedural tool for the Court “to select the
27 metho[d] best suited to adjudication of the controversy fairly and efficiently.” *Amgen Inc. v.*
28

1 *Connecticut Ret. Plans & Trust Funds*, — U.S. —, 133 S.Ct. 1184, 1191, 185 L.Ed.2d 308
2 (2013). This action should be certified to proceed as a class action because: (1) the claims of
3 the named Plaintiffs and all other Class Members arise from Defendant’s common pricing
4 practices; (2) the legal claims of the named Plaintiffs - that Defendant’s comparative reference
5 price practices violate the UCL, FAL and CLRA - are common to all Class Members; (3) the
6 issues to be tried in this case – whether Defendant’s comparative reference price claims are
7 material to and likely to deceive a reasonable consumer – are common to all Class Members;
8 and, (4) the injunctive and monetary relief provided by the Settlement here will benefit all
9 Class Members. See e.g., Order Certifying Settlement Class in *Russell v. Kohl’s Department*
10 *Stores, Inc.*, 5:15-cv-01143-RGK-SPx (C.D.Cal. April 11, 2016), ECF No. 71.

11 While the Settlement Class must satisfy the requirements of Rule 23, those
12 requirements are easily met here. FRCP 23 provides that “[o]ne or more members of a class
13 may sue . . . as representative parties on behalf of all members” if the prerequisites of FRCP
14 23(a), and the requirements of at least one subsection of FRCP 23(b), are satisfied. The
15 prerequisites of FRCP 23(a) include that: (1) the class be “so numerous that joinder of all
16 members is impracticable;” (2) “there are questions of law or fact common to the class;” (3)
17 the claims of the class representatives are “typical” of the claims of the other class members;
18 and, (4) the class representatives and their counsel will fairly and adequately represent the
19 interests of the class.

20 **A. Numerosity:**

21 “In the Ninth Circuit, numerosity is presumed to be satisfied when the class exceeds 40
22 members.” *Alvidres v. Countrywide Financial Corp.*, 2008 WL 1766927 (C.D. Cal. 2008), at
23 *2. The Settlement Class here includes approximately 3,700,000 members and therefore
24 satisfies Rule 23(a)(1)’s numerosity requirement.

25 **B. Commonality:**

26 Federal Rule of Civil Procedure 23(a)(2) conditions class certification on demonstrating
27 that members of the proposed class share common “questions of law or fact.” *Stockwell v.*
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1 *City & County of San Francisco*, 749 F.3d 1107 (9th Cir. 2014). Rule 23(a)(2) requires only
2 “a single significant question of law or fact.” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d
3 952, 957 (9th Cir.2013). Further, a common contention need not be one that “will be
4 answered, on the merits, in favor of the class.” *Amgen*, 133 S.Ct. at 1191. Instead, it only must
5 be of such a nature that it is capable of classwide resolution. Rule 23(a)(2)’s commonality
6 requirement is construed permissively. *Alvidres*, 2008 WL 1766927 at *2 (“There is no
7 requirement that all questions of fact and law be the same for all members of the class. Rather,
8 as long as there are shared legal issues common to the class,” which drive the resolution of
9 Plaintiffs’ claims, “commonality may be satisfied.”).

10 The crux of Plaintiffs’ claims here is that Defendant’s reference pricing was deceptive
11 which was common and consistent throughout Defendant’s California stores. The common
12 questions of whether Defendant’s price comparisons resulted in deceptive price comparisons
13 that were likely to deceive a reasonable consumer is common to all Class Members.

14 In this case, all putative Class Members purchased merchandise from Defendant at one
15 or more of Defendant’s stores in California at some time during the Class Period. The putative
16 Class Members were exposed to Defendant’s comparative pricing practices. The putative
17 Class Members also purchased one or more products from Defendant which had a
18 comparative reference price which Plaintiffs allege were deceptive. Each putative Class
19 Member’s claim arises under the UCL, FAL and CLRA. Plaintiffs’ claims and those of all
20 other Class Members arise out of a common course of conduct by Defendant, i.e., Defendant’s
21 comparative reference price practices described in Plaintiffs’ FAC. Thus, Rule 23(a)(2)’s
22 commonality requirement is satisfied here. (See e.g., *Russell v. Kohl’s* at *4).

23 **C. Typicality:**

24 FRCP 23(a)(3) requires that “the claims or defenses of the representative parties are
25 typical of the claims or defenses of the class.” The purpose of the typicality requirement “is to
26 assure that the interest of the named representative aligns with the interests of the class.”
27 *Wolin v. Jaguar Land Rover North Am. LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). “The test
28

1 of typicality is whether other members have the same or similar injury, whether the action is
2 based on conduct which is not unique to the named plaintiffs, and whether other class
3 members have been injured by the same course of conduct.” *Id.* “Similar to commonality, the
4 typicality requirement is a permissive standard.” *Alvidres*, 2008 WL 1766927 at *2.

5 Here, Plaintiffs’ claims are based on the same facts and same legal and remedial
6 theories as the claims of the rest of the Class Members. All putative Class Members were
7 exposed to the same allegedly deceptive pricing by the same Defendant. Plaintiffs and each
8 Class Member they seek to represent have all been exposed to Defendant’s allegedly deceptive
9 comparative pricing practices. Thus, Plaintiffs’ claims are typical of every other putative
10 Class Member’s claim. Rule 23(a)(3)’s typicality requirement is therefore satisfied.

11 **D. Adequacy:**

12 FRCP 23(a)(4) requires that class representative and their counsel “fairly and
13 adequately protect the interests of the class.” A two-prong test is used to determine whether
14 this standard is met: “(1) do the named plaintiffs and their counsel have any conflicts of
15 interest with other class members and (2) will the named plaintiffs and their counsel prosecute
16 the action vigorously on behalf of the class?” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970,
17 985 (9th Cir. 2011).

18 In this case, Plaintiffs have no interests antagonistic to the interests of other Class
19 Members, have diligently litigated this action on behalf of the Class, and have reached a
20 settlement favorable to all Class Members equally. In addition, Plaintiffs’ counsel are
21 experienced class action attorneys, will continue to diligently prosecute this action on behalf of
22 the Class, and will continue to commit the time and resources necessary to protect the interests
23 of the Class. (See, *Morosoff Dec.* at ¶¶4-6).

24 Here, there is no conflict of interest between either Plaintiff and any other Settlement
25 Class Member. Nor are there any issues with respect to the competency of Plaintiffs’ counsel.
26 Thus, Rule 23(a)(4)’s adequacy requirement is met here.

1 **E. Rule 23(b)(3) Settlement Class:**

2 In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620-21 (1997), the Supreme Court
3 clarified the difference between certifying a litigation class under Fed. R. Civ. Proc. 23(a) and
4 (b), and certifying a settlement class under Rule 23(e). In recognizing that “[s]ettlement is
5 relevant to a class certification,” the Supreme Court held that when “[c]onfronted with a
6 request for settlement-only class certification, a district court need not inquire whether the
7 case, if tried, would present intractable management problems,” because the proposal in a
8 request to certify a class for settlement purposes “is that there be no trial.” *Id.* at 620.

9 The focus here is “whether [the] proposed class has sufficient unity so that absent
10 members can fairly be bound by decisions of [the] class representatives.” *Id.* at 621. Rule
11 23(b)(3) requires that common questions predominate over individual questions. However, it
12 is not necessary to show that each question will be answered in favor of the Class, but only
13 that there is a common methodology for proving liability on behalf of the Class. *Amgen*, 133
14 S. Ct. at 1191. Under Rule 23(b)(3), the Court need only form a “reasonable judgment” on
15 each certification requirement “[b]ecause the early resolution of the class certification question
16 requires some degree of speculation[.]” *Spann v. J.C. Penney Corp.*, 307 F.R.D. 508, 514
17 (C.D. Cal. 2015) (“*Spann*”). “District courts in California routinely certify consumer class
18 actions arising from alleged violations of the CLRA, FAL, and UCL.” *Tait v. BSH Home*,
19 2012 WL 6699247 at *12 (C.D. Cal. Dec. 20, 2012). In another false pricing case, the court in
20 *Spann* found that “[t]his case is one of those routine cases.” 307 F.R.D. at 518. The
21 overriding common question in this case is “whether defendant’s [price-comparison]
22 advertisements were likely to deceive a reasonable consumer.” *Id.* at 518. “Courts often find
23 that common questions predominate in FAL actions because they call for analysis under an
24 objective reasonable person test.” *Id.* at 523. As in *Spann*, “the basic common question [here]
25 – whether defendant’s price comparison scheme generated false advertisements that deceived
26 consumers – predominates under the UCL, CLRA, and §17500 of the FAL.” *Id.* at 529.

1 At this stage, Plaintiffs must merely “present a likely method for determining class
2 damages, though it is not necessary to show that their method will work with certainty at this
3 time.” *Chavez v. Blue Sky Natural Beverage Co.*, 268 F.R.D. 365, 379 (N.D. Cal. 2010).
4 “[T]he presence of individualized damages cannot, by itself, defeat class certification under
5 Rule 23(b)(3).” *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013). Plaintiffs
6 must simply show that damages “stemmed from the defendant’s actions that created the legal
7 liability.” *Id.* at 513.

8 Finally, the superiority requirement of Rule 23(b)(3) is satisfied because the ultimate
9 recovery by Settlement Class Members would be dwarfed by the cost of litigating on an
10 individual basis, and any Member who wishes to opt out may do so pursuant to the proposed
11 notice plan. In this case, “each class member’s claim for restitution involves a relatively small
12 sum of money, and litigation costs would render individual prosecution of such claims
13 prohibitive.” *Spann*, 307 F.R.D. at 531. In sum, Plaintiffs contend that the proposed
14 Settlement Class here satisfies the requirements of Rule 23(a), (b)(3), and (e), classwide
15 monetary relief is appropriate here, and the proposed Settlement Class should be certified as
16 requested. (See e.g., *Russell v. Kohl’s* at *4).

17 **V. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED:**

18 The Court must determine whether the proposed settlement is fair, reasonable, and
19 adequate. Fed. R. Civ. Proc. 23(e)(2). However, there is a strong judicial policy that favors
20 settlements. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “[I]t must
21 not be overlooked that voluntary conciliation and settlement are the preferred means of dispute
22 resolution.” *Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir.
23 1982), *cert. denied*, 459 U.S. 1217, 103 S. Ct. 1219, 75 L. Ed. 2d 456 (1983).

24 The settlement approval process typically involves two steps. First, the Court must
25 determine whether the proposed settlement merits preliminary approval so that notice can be
26 issued to class members and a final fairness hearing can be scheduled. See e.g., *Pereira v.*
27 *Ralph’s Grocery Co.*, 2010 WL 6510338, at *2 (C.D. Cal. Mar. 24, 2010) (noting that a full
28

1 fairness analysis is unnecessary at the preliminary approval stage). Second, at the final
2 approval stage, the Court makes a complete determination regarding the fairness,
3 reasonableness, and adequacy of the settlement and hears any objections of class members.
4 *West v. Circle K Stores, Inc.*, 2006 WL 1652598, at *2 (E.D. Cal. June 13, 2006).

5 “[P]reliminary approval and notice of the settlement terms to the proposed class are
6 appropriate where ‘[1] the proposed settlement appears to be the product of serious, informed,
7 non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant
8 preferential treatment to class representatives or segments of the class, and [4] falls within the
9 range of *possible* approval’ *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079
10 (N.D. Cal. 2007) (emphasis added); *see also Acosta v. Trans Union, LLC*, 243 F.R.D. 377,
11 386 (C.D. Cal. 2007) (“To determine whether preliminary approval is appropriate, the
12 settlement need only be *potentially* fair, as the Court will make a final determination of its
13 adequacy at the hearing on Final Approval, after such time as any party has had a chance to
14 object and/or opt out.”) (emphasis in original). The Court does not need to “specifically
15 weigh[] the merits of the class’s case against the settlement amount and quantif[y] the
16 expected value of fully litigating the matter.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948,
17 965 (9th Cir. 2009). Rather, the Court need only evaluate whether the Settlement is “the
18 product of an arms-length, non-collusive” negotiation. *Id.*

19 **A. The Settlement is the Product of Informed, Arms-Length Negotiations:**

20 This case has been contentiously litigated from the start. (Morosoff Dec. at ¶21). The
21 Settlement was reached after informal discovery, motion practice (including resolution of a
22 motion to dismiss), and protracted settlement negotiations. (*Id.*). Both parties were
23 represented by experienced class counsel, and Plaintiffs participated throughout the settlement
24 process. (Morosoff Dec. at ¶22). Moreover, the parties did not discuss or negotiate Class
25 Counsel’s attorneys’ fees and costs, or Plaintiffs’ proposed Class Representative Payments,
26 until *after* all other material terms of the Settlement were reached, including the almost \$28
27 million in Merchandise Certificates. (*Id.*)
28

1 A settlement negotiated by experienced attorneys and reached with the assistance of an
2 experienced mediator through a negotiating process supports a determination that the process
3 was not collusive. *See e.g. Carter v. Anderson Merchandisers, LP*, 2010 WL 1946784, at *7
4 (C.D. Cal. May 11, 2010) (Settlement is product of arms-length negotiation if it is reached
5 through “formal mediation sessions presided over by an experienced mediator.”). The
6 mediator in this action, Jeffrey Krivis, is one of the most well-respected mediators by both
7 plaintiffs and defendants in complex and class action litigation. Moreover, and at the time of
8 negotiating the Settlement here, the Parties were fully versed with the relevant facts and law,
9 and were in a position to make an informed evaluation of “the likelihood of a plaintiffs’ or
10 defense verdict, the potential recovery, and the chances of obtaining it[.]” *Rodriquez*, 563 F.3d
11 at 965. The Settlement here is the product of arms-length negotiations and there is *no*
12 *evidence* to suggest that it is “the product of fraud or overreaching by, or collusion between,
13 the negotiating parties[.]” *Id.*

14 **B. The Amount Offered in Settlement is Fair and Reasonable:**

15 As the Ninth Circuit has noted, “the very essence of a settlement is compromise, ‘a
16 yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at
17 624. “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and
18 expensive litigation that induce consensual settlements. The proposed settlement is not to be
19 judged against a hypothetical or speculative measure of what might have been achieved by the
20 negotiators.” *Id.* at 625.

21 Here, the Class Settlement Amount of up to \$27,750,000 in Merchandise Certificates,
22 combined with the injunctive relief, is substantial and falls well within a range of possible
23 approval. This is particularly true given the real and substantial risk that Plaintiffs could have
24 successfully proven liability at trial yet still recovered *nothing* because the entitlement to and
25 amount of restitution in this case are not certain.

26 While Plaintiffs firmly believe that their liability case is exceptionally strong, Defendant
27 has consistently argued that they are not entitled to *any* restitution because restitution must be
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1 measured by the difference between the amount paid and value received which, Defendant
2 argues, equals zero. While Plaintiffs dispute this, and have proposed other alternative
3 measures of restitution, the fact and amount of restitution still remain hotly contested and
4 subject to the Court’s discretion. *Pulaski & Middlman, LLC v. Google, Inc.*, 802 F.3d 979,
5 986 (9th Cir. 2015). Accordingly, there is considerable uncertainty as to whether Plaintiffs
6 could recover any restitution even if they were able to prove liability at trial.

7 The recent decision in *In re Tobacco Cases II*, 2015 WL 5673070, at **5-9 (Cal. App.
8 Sept. 28, 2015) (“*Tobacco*”), makes this clear, where the plaintiffs established liability on their
9 UCL and FAL claims but the trial court declined to award *any* restitution because the plaintiffs
10 failed to prove a difference between the amount paid and value received. *Id.* In fact, the court
11 in *Tobacco* ordered the plaintiffs to pay the *defendant’s* litigation costs of almost \$800,000.
12 *Id.* The court of appeals affirmed, holding that the trial court “lacked discretion to award
13 restitution” because the plaintiffs did not establish any price/value differential. *Id.* at *13.

14 Here, it is difficult to dispute that each Class Member received products with *some*
15 value. It could therefore be argued that restitution should be limited to the difference between
16 price paid and value received, which could conceivably result in no monetary recovery. *Id.*
17 While Plaintiffs believe their case is distinguishable from *Tobacco*, and that alternative
18 measures of restitution remain viable in this case, there can be no doubt that Defendant would
19 have renewed its argument concerning Plaintiffs’ entitlement to restitution if this case did not
20 settle. Settlement negotiations in this case took place with the *Tobacco* decision in mind.
21 (Morosoff Dec. at ¶24).

22 In evaluating the Settlement, it is appropriate to consider the amount that Settlement
23 Class Members will actually recover. Here, Claimants will be sent Merchandise Certificates
24 in the guaranteed amount of \$7.50, which will allow them to purchase one or more products
25 from Defendant’s California stores, from an array of over 4 million products, without having
26 to spend any of their own money, other than any applicable sales tax. (Exh. A at ¶III.C).
27 Moreover, Known Class Members, who comprise over 95% of the Settlement Class, will
28

1 directly receive their Merchandise Certificates without the need to submit a claim or take any
2 further action. In other words, over 95% of the Class will be sent the class benefit without
3 having do anything to obtain it - an extraordinary result by any measure.

4 Any evaluation of Plaintiffs' theoretical recovery if they were to prevail at trial, must
5 also consider the additional costs and delay of trial and the risk that Plaintiffs could prove
6 liability yet still recover nothing. *See e.g. Schaffer v. Litton Loan Servicing, LP*, 2012 WL
7 10274679, at *11 (C.D. Cal. Nov. 13, 2012) ("Estimates of a fair settlement figure are
8 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the
9 expected delay in recovery (often measured in years)."); *Linney v. Cellular Alaska*
10 *Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may
11 only amount to a fraction of the potential recovery does not . . . mean that the proposed
12 settlement is grossly inadequate and should be disapproved."). Even if Plaintiffs successfully
13 proved their case at trial, the amount of restitution recovered, if any, could vary widely. And,
14 if anything were recovered, it could take years to secure, as Defendant would undoubtedly
15 appeal an adverse judgment. In comparison, the Settlement here provides a fixed, immediate
16 and substantial potential Class recovery of almost \$28 million, plus meaningful prospective
17 remedial relief. The Settlement is therefore fair and reasonable, and certainly within the range
18 of possible final approval.

19 **C. The Settlement Does Not Improperly Grant Preferential Treatment to**
20 **the Class Representatives:**

21 The Agreement authorizes Class Representative Payments for the named Plaintiffs in
22 an amount to be determined by the Court but not to exceed \$7,500.00 each. (Exh. A at
23 ¶III.E.1). Incentive awards typically range from \$2,000.00 to \$10,000.00." *Bellinghausen v.*
24 *Tractor Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015) (collecting cases). In evaluating
25 incentive awards, the Court may consider whether there is a "significant disparity between the
26 incentive award[] and the payments to the rest of the class members" such that it creates a
27 conflict of interest. *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1165 (9th Cir.
28

1 2013). More importantly, however, are “the number of class representatives, the average
2 incentive award amount, and the proportion of the total settlement that is spent on incentive
3 awards.” *In re Online DVD*, 779 F.3d at 947. Finally, the Court must evaluate whether the
4 incentive award was conditioned on class representative’s approval and support of the
5 Settlement. *Radcliffe*, 715 F.3d at 1161. Here, it was not. (Morosoff Dec. at ¶26).

6 The \$7,500.00 incentive award requested here does not rise to the level of unduly
7 preferential treatment. Indeed, courts have approved similar or greater disparities between
8 incentive awards and individual class member payments. *See e.g. Fulford v. Logitech, Inc.*,
9 2010 WL 807448, at *3 n.1 (N.D. Cal. Mar. 5, 2010) (collecting cases awarding incentive
10 award payments ranging from \$5,000 to \$40,000).

11 Here, there are only two class representatives who seek, at most, less than one tenth of
12 1% (0.05%) of the \$29,667,500 Settlement Amount. This amount is reasonable considering
13 how small the award is in relation to the full amount of the settlement fund. *See In re Online*
14 *DVD*, 779 F.3d at 947-948 (approving incentive awards that “ma[d]e up a mere .17% of the
15 total settlement fund.”). Finally, Plaintiffs did not condition their approval and support of the
16 Settlement on either of them receiving an incentive award. (Morosoff Dec. at ¶26).
17 Accordingly, Plaintiffs’ interests do not conflict with or diverge from the interests of the
18 Settlement Class. *Radcliffe*, 715 F.3d at 1161.

19 **D. The Proposed Settlement Has No Obvious Deficiencies:**

20 The Settlement makes available a large amount of monetary relief, plus remedial relief,
21 for the benefit of Settlement Class Members. It is structured to be consistent with *In re Online*
22 *DVD*, where the gift card settlement proceeds were allocated evenly regardless of specific
23 damages incurred by each claimant. 779 F.3d at 941. Examination of the Settlement here
24 reveals no obvious defects.

25 **VI. THE PROPOSED NOTICE SHOULD BE APPROVED:**

26 Rule 23(e) requires that the notice to the Class describe “the terms of the settlement in
27 sufficient detail to alert those with adverse viewpoints to investigate and to come forward and
28

1 be heard.” *In re Online DVD*, at 946; *see also Rodriguez*, 563 F.3d at 962 (notice is adequate
2 when it describes “the aggregate amount of the settlement fund and the plan for allocation.”).
3 It “does not require detailed analysis of the statutes or causes of action forming the basis for
4 the plaintiff class’s claims, and it does not require an estimate of the potential value of those
5 claims.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012).

6 **A. The Proposed Form of Notice is Accurate and Adequately Informs**
7 **Class Members of Their Rights:**

8 The Merchandise Certificate and Post-Card Notice, Summary Publication Notice, and
9 Email Notice, attached respectively as Exhibits A, E and F to the Agreement, clearly meet
10 these standards. Each describes the Settlement Class and provides simple and straightforward
11 information about the nature of the action, what options Settlement Class Members have in the
12 case, the effect of their choices of action, and the need to check the Settlement Website for
13 more detail. Each also explains that Claimants will receive Merchandise Certificates in the
14 amount of \$7.50. (*Id.*). The Notices further state the amount Class Counsel may seek in fees,
15 expenses and Class Representative Payments, the fact that Unknown Class Members will need
16 to submit a Claim Form to obtain relief, the deadline and procedure for objecting, opting out or
17 submitting a claim, and the date, time and place of the Final Approval hearing. (*Id.*). The
18 Notices list a toll-free phone number and website where Settlement Class Members can
19 submit inquiries. (*Id.*). The Notices are, therefore, adequate and satisfy due process. *In re*
20 *Online DVD*, 779 F.3d at 946.

21 **B. The Proposed Method of Notice Provides for the Best Notice**
22 **Practicable:**

23 Rule 23(c)(2) requires the Court to direct to Class Members the “best notice
24 practicable” under the circumstances, including “individual notice to all members who can be
25 identified through reasonable effort.” *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994).
26 Individual notice through email, or United States mail in situations where email is not
27 successful, is “clearly the ‘best notice practicable’” where the names and email addresses of
28

1 Class Members are easily ascertainable. *See, e.g. Keirsev v. eBay, Inc.*, 2014 WL 644697, at
2 *1 (N.D. Cal. Feb. 14, 2014).

3 Here, KCC will send a Merchandise Certificate and Post-Card Notice to all of the
4 approximately 3,550,000 Known Class Members via e-mail where Defendant has valid e-mail
5 addresses in its databases, or via U.S. Mail where Defendant has a mailing address but no
6 email address, using the contact information from Defendant's databases. (Burke Dec. at
7 ¶¶15-19). The Summary Publication Notice shall provide Class Members with instructions
8 regarding how they can elect not to participate or object. (Agreement, Exh. E.). For those
9 Merchandise Certificates and Post-Card Notices that are returned as undeliverable, KCC will
10 perform a skip-trace to find the most current address and resend the Merchandise Certificate
11 and Post-Card Notice. (Burke Dec. at ¶¶15-19). This method of sending notice and monetary
12 benefits is anticipated to reach, conservatively, slightly over 85% of the Settlement Class. (Id.
13 at ¶19). It is also designed to resemble, to the extent possible, the method used and approved
14 of by the Ninth Circuit in *In re Online DVD*, 779 F.3d at 941; *see also Id.* at 946 (notice
15 provided by both mail and email was sufficient under the Constitution and Rule 23(e)).
16 Finally, the parties have agreed to publish notice as reflected in Exhibit C to the Agreement, in
17 each Burlington store in California, and on the dedicated Settlement Website. To supplement
18 the individual notice effort, and reach the remaining Unknown Class Members, a quarter-page
19 Summary Publication Notice will appear once in the Los Angeles and San Francisco regional
20 editions of *USA Today*. (Burke Dec. at ¶¶4, 23).

21 In sum, the Parties have proposed a comprehensive notice campaign that is reasonably
22 calculated to provide notice that is consistent with court approved notice programs in similar
23 matters, and which is consistent with the Federal Judicial Center's guidelines concerning
24 appropriate reach. (Burke Dec. at ¶¶25-26). The Notice program therefore satisfies due
25 process and should be approved.

1 **VII. CONCLUSION:**

2 The parties have negotiated a fair and valuable Settlement that provides Settlement
3 Class Members with ample financial compensation and important prospective remedial relief.
4 None of this would have happened but for the use of class action procedures, dedicated and
5 informed Class Representatives, and experienced Class Counsel. Plaintiffs respectfully
6 request that the Court certify the Settlement Class as requested, preliminarily approve the
7 Settlement, direct that Notice be provided to Settlement Class Members, and set a Final
8 Approval hearing date on April 17, 2017, or as soon thereafter as the Court's calendar permits.

9
10 Dated: September 19, 2016

Respectfully submitted,
LAW OFFICE OF CHRISTOPHER J. MOROSOFF

11
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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 JAMES HOROSNY, et al.
18 Plaintiff,

19 vs.

20 BURLINGTON COAT FACTORY OF
21 CALIFORNIA, LLC, et al.,
22 Defendants.

23 Case No. 2:15-cv-05005-SJO-MRWx

24 CLASS ACTION

25 **DECLARATION OF**
26 **CHRISTOPHER J. MOROSOFF IN**
27 **SUPPORT OF PLAINTIFFS'**
28 **UNOPPOSED MOTION FOR**
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AND UNOPPOSED MOTION FOR
CERTIFICATION OF
SETTLEMENT CLASS

Courtroom: 1 – 2nd Floor
Date: October 31, 2016
Time: 10:00 a.m.
Judge: Hon. S. James Otero

DECLARATION OF CHRISTOPHER J. MOROSOFF

I, Christopher J. Morosoff, declare as follows:

1. I am an attorney licensed to practice law before all the courts of the State of California and before this Court.
2. I am the principal of the Law Office of Christopher J. Morosoff, attorney of record and co-counsel with Douglas Caiafa, for plaintiffs herein before this Court in the action *James Horosny, et al. v. Burlington Coat Factory of California, LLC, et al.* U.S.D.C., C.D. Cal. 2:15-cv-05005-SJO-MRWx.
3. I submit this Declaration in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Motion for Certification of Settlement Class.
4. I have been admitted to practice and have actively practiced in California before both State and Federal Courts, including this one, for over 17 years and have defended and prosecuted numerous complex, multi-party actions, including over 25 class actions, and including multi-million dollar wage and hour and consumer class action litigation and settlements.
5. I have been involved in and certified to act as class counsel in the representation of Plaintiffs in more than 20 different class action lawsuits in California and have successfully prosecuted and obtained significant recoveries in numerous class actions. Most recently, my co-counsel Douglas Caiafa and I were certified as class counsel in another false price advertising case in this District, *Steven Russell, et al. v. Kohl's Department Stores, Inc.*, 5:15-cv-01143-RGK-SPx (C.D.Cal. April 11, 2016).
6. I support this lawsuit, will vigorously pursue and protect the Plaintiffs and the Class and believe that I am sufficiently qualified to act as class counsel in this action.
7. Prior to filing this action, Mr. Caiafa and myself consulted with Plaintiffs, investigated Defendant's pricing practices and researched the law applicable to

1 Plaintiffs' claims. After doing so, we filed an initial complaint on July 1, 2015,
2 and the operative First Amended Complaint ("FAC") on September 17, 2015.
3 (ECF No. 15).

4 8. Throughout the Litigation, Mr. Caiafa and I engaged in extensive legal
5 research and analysis and conducted class and merits investigation and
6 discovery. In addition, we received, reviewed and analyzed documents that
7 Defendant produced in the Litigation, including its voluminous and detailed
8 sales data related to transactions entered into by the putative Class. We also
9 continuously monitored Defendant's public filings, keeping a close eye on
10 Defendant's financial status and pricing practices.

11 9. On October 26, 2015, this Court denied Defendant's Motion to Dismiss. (ECF
12 No. 30). On December 4, 2015, Plaintiffs filed a Motion for Class
13 Certification (ECF No. 24), which was subsequently taken off calendar to
14 allow for further discovery and briefing. (ECF No. 34). Plaintiffs' FAC sought
15 certification of the following class under Fed. R. Civ. Proc. 23(b)(2) and/or
16 (b)(3):

17 All persons who, while in the State of California, and between July 1,
18 2011, and the present (the "Class Period"), purchased from Burlington
19 Coat Factory one or more items at any Burlington Coat Factory store in
20 the State of California with a price tag that contained a "Compare" price
21 which was higher than the price listed as the Burlington sale price on the
22 price tag, and who have not received a refund or credit for their
23 purchase(s). Excluded from the Class are Defendants, as well as
24 Defendants' officers, employees, agents or affiliates, and any judge who
25 presides over this action, as well as all past and present employees,
26 officers and directors of any Defendant.

27 10. The Class which Plaintiffs seek to certify for settlement purposes is defined as:
28

1 All persons who purchased one or more product(s) that were advertised with a
2 “Compare at” price and an “Our Low” price or simply a lower price at a
3 Burlington store in California and/or on its e-commerce website and had
4 product(s) shipped to a California address between July 1, 2011, and the date
5 Preliminary Approval of this Settlement is granted [estimated to be October 31,
6 2016].

- 7 11. Throughout the winter of 2015-2016, the parties engaged in extensive
8 negotiations concerning the possible structure of a class-wide settlement.
9 These negotiations led to mediation, on February 10, 2016, with Jeffrey Krivis
10 of First Mediation Corporation in Encino, California. At the conclusion of a
11 full day of mediation, the parties reached a tentative agreement with respect to
12 most of the material terms of the Settlement. The parties remained at an
13 impasse with respect to certain terms. Further conferences and negotiations
14 were required before final agreement was reached on all terms. The parties
15 subsequently negotiated, drafted and executed a comprehensive agreement that
16 was presented to the Court on May 9, 2016. Following the Court’s Order on
17 June 9, 2016, denying Plaintiffs’ original Motion for Preliminary Approval
18 without prejudice and with leave to file a new motion (ECF No. 53), the parties
19 began a new series of negotiations in an effort to address the concerns
20 articulated by the Court. After numerous further negotiations, the parties
21 finally agreed on, drafted and executed the comprehensive Amended
22 Settlement Agreement that is currently before the Court. (A true and correct
23 copy of the Amended Settlement Agreement, dated September 19, 2016.
24 (“Agreement”), is attached hereto as Exhibit A).
- 25 12. The parties have modeled the Agreement, to the extent possible, after the
26 settlement agreement approved by the Ninth Circuit in *In re Online DVD-*
27 *Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015).

- 1 13. The Settlement provides that Defendant will make available up to
2 \$27,750,000.00 in Merchandise Certificates for the benefit of the Class, good
3 for purchase of any item at any Burlington store in California, which will be
4 distributed directly to Settlement Class Members with known contact
5 information (“Known Class Members”). (Ex. A at ¶III.C and D). Defendant
6 will also distribute Merchandise Certificates to those Class Members with no
7 known contact information (“Unknown Class Members”) who submit a claim.
8 (Id. at ¶III.D). In addition, Defendant will provide up to \$975,000.00 to be
9 used to pay for Notice and Administration Costs (Id. at ¶III.F), and, subject to
10 approval by the Court, up to \$927,500.00 for reasonable Attorneys’ Fees and
11 Costs (Id. at ¶III.E.2), and up to \$15,000.00 for Class Representative Payments
12 (not to exceed \$7,500 each). (Id. at ¶III.E.1).
- 13 14. Class Members will receive their share of the monetary relief as Merchandise
14 Certificates redeemable for purchases at any Burlington store in California.
15 Each Merchandise Certificate shall be fully transferable, and may be used in
16 connection with any promotional discounts that are otherwise available.
17 Merchandise Certificates will have no expiration date and may be used toward
18 the purchase of any item at any Burlington store in California. (Ex. A, ¶III.C).
19 Known Class Members will receive their Merchandise Certificate directly
20 along with the Notice to the Class, without the need to submit a claim.
21 Unknown Class Members will have ninety (90) days from the date of Notice to
22 submit a Claim Form via mail to the Administrator, to receive their
23 Merchandise Certificate. (Ex. A at ¶III.C, D and M.5).
- 24 15. Plaintiffs and their counsel have also obtained relief beyond the Monetary
25 Component. As a direct result of the Litigation, Defendant has agreed to
26 provide clear and conspicuous disclosures regarding its “Compare” prices, both
27 in its California stores and online. (Ex. A at ¶III.G and H). Defendant also has
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1 agreed to provide additional training for its Buyers for its California locations.
2 (Ex. A at ¶III.I). Defendant has further agreed to implement periodic auditing
3 programs related to its in-store and online disclosures for goods sold in
4 California, as well as its “Compare” or similar pricing practices that offer a
5 comparison price to consumers for goods sold in California. (Ex. A at ¶¶III.J
6 and K).

7 16. The release language in the Agreement releases both known and unknown
8 claims, but is limited to the universe of facts, occurrences, transactions and
9 claims alleged in the FAC.

10 17. After consulting with and receiving bids from multiple candidates, we have
11 retained KCC LLC (“KCC”) to serve as Claims Administrator. KCC is a
12 highly experienced class action claims administration company. (See
13 Declaration of Daniel Burke (“Burke Dec.”) at ¶¶4-11). KCC estimates that all
14 costs of Notice and Administration will be no more than \$975,000, and it has
15 provided a cap of \$975,000 for all such costs.

16 18. The proposed Settlement here is conditioned upon the Court certifying a
17 Settlement Class to pursue claims for monetary, as well as injunctive, relief.
18 The Settlement Class will be defined as: all persons who purchased one or
19 more product(s) that were advertised with a “Compare at” price and an “Our
20 Low” price or simply a lower price at a Burlington store in California and/or on
21 its e-commerce website and had product(s) shipped to a California address
22 between July 1, 2011, and the date Preliminary Approval of this Settlement is
23 granted [estimated to be October 31, 2016].

24 19. I believe that the Settlement Class should be certified because it is appropriate
25 to provide monetary and injunctive relief to Class Members who were exposed
26 to the Defendant’s pricing practices complained of in the FAC and in order for
27 Defendant to buy and obtain peace with respect to *all* consumers who were
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1 likely exposed to such practices, and the Settlement was negotiated with these
2 principles in mind.

3 20. Plaintiffs and their counsel are unaware of any conflicts or interests
4 antagonistic to members of the Settlement Class. Mr. Caiafa and myself, as
5 well as Plaintiffs, have continued to vigorously prosecute this action, including
6 participating in mediation and additional negotiations related to the Settlement.

7 21. This case has been contentiously litigated from the start. The Settlement was
8 reached after investigation and discovery, motion practice (including resolution
9 of a motion to dismiss), and after protracted settlement negotiations, including
10 a full-day mediation with Jeffrey Krivis, and repeated follow-up negotiations.

11 22. Both parties were represented by experienced counsel, and both Plaintiffs
12 participated throughout the settlement process. Moreover, the parties did not
13 discuss or negotiate Class Counsel's attorneys' fees and costs, or Plaintiffs'
14 proposed Class Representative Payments, until *after* all other material terms,
15 including the up to \$27,750,000 in Merchandise Certificates for the Settlement
16 Class, were agreed upon. The Settlement presented to the Court here is the
17 product of non-collusive, arms-length negotiations.

18 23. Here, the Class Settlement Amount of up to \$27,750,000, combined with the
19 injunctive relief Plaintiffs obtained, is substantial and falls at least within a
20 range of possible approval. This is particularly true given the real and
21 substantial risk that Plaintiffs could have successfully proven liability at trial
22 yet still recovered *nothing* because the entitlement to and amount of restitution
23 in this case are not certain. (*See, Pulaski & Middlman, LLC v. Google, Inc.*,
24 802 F.3d 979, 986 (9th Cir. 2015); *see also, In re Tobacco Cases II*, 2015 WL
25 5673070, at **5-9 (Cal. App. Sept. 28, 2015) ("*Tobacco*").

26 24. Here, it seems obvious that each Class Member received products with *some*
27 value. It could therefore be argued that restitution should be limited to the
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difference between price paid and value received, which could conceivably result in no monetary recovery. *Id.* While Plaintiffs believe their case is distinguishable from *Tobacco*, and that alternative measures of restitution remain viable in this case, there can be no doubt that Defendant would have renewed its argument concerning Plaintiffs' entitlement to restitution if this case did not settle. Settlement negotiations in this case took place with the *Tobacco* decision in mind.

25. As part of the Settlement here, each of the approximately 3,550,000 Known Class Members will receive a Merchandise Certificate in the amount of \$7.50 directly without the need to submit a claim. In addition, each of the approximately 145,000 Unknown Class Members who submit a timely valid claim will also receive a Merchandise Certificate in the amount of \$7.50.

26. The Agreement authorizes each named Plaintiff to seek a Class Representative Payment in an amount to be determined by the Court but not to exceed \$7,500 each. The Settlement is not conditioned on the Court's approval of the full (or any) amount of a Class Representative Payment, and Plaintiffs' right to seek Class Representative Payments was not a condition of their approval of the Settlement.

I declare under penalty of perjury that the forgoing is true and correct.
Executed this 19th day of September, 2016, at Palm Desert, California.

/s/ Christopher J. Morosoff
Declarant, Christopher J. Morosoff

EXHIBIT A

AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement (“Agreement”) is made by and between James Horosny and Jennifer Price (“Plaintiffs”), on behalf of themselves and the Class Members, as defined below, on the one hand, and Burlington Coat Factory of California, LLC (“Defendant”), on the other hand. Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.” This Agreement is subject to the approval of the United States District Court for the Central District of California.

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the original lawsuit and subsequent amended complaints entitled *James Horosny, et al, vs. Burlington Coat Factory of California, LLC* pending in the United States District Court for the Central District of California, Case No. 2:15-cv-05005-SJO-MRW.
- B. “Merchandise Certificate and Post-Card Notice” means a notice in substantially the same form of the Summary Notice and Merchandise certificate attached hereto as **Exhibit A**. The Merchandise Certificate is redeemable for up to seven dollars and fifty cents (\$7.50) credit at one of Defendant’s Stores in California. Additional terms and conditions applicable to Merchandise Certificate are listed in Section III(C) of the Agreement.
- C. “Merchandise Certificate” means a certificate redeemable for up to seven dollars and fifty cents (\$7.50) credit at one of Defendant’s Stores in California. Additional terms and conditions applicable to Merchandise Certificate are listed in Section III(A) of the Agreement.
- D. “Claim Deadline” means ninety (90) days after Notice to the Class is disseminated pursuant to Section III(M) of this Agreement.
- E. “Class” or “Class Members” means all persons who purchased one or more product(s) that were advertised with a “Compare at” price and an “Our Low” price or simply a lower price at one of Defendant’s stores in California and/or on its e-commerce website and had product(s) shipped to a California address between July 1, 2011, and the date Preliminary Approval of this Settlement is granted [estimated to be October 17, 2016].

Excluded from the Class are: (a) officers and directors of Defendant and its corporate parents, subsidiaries, affiliates, or any entity in which Defendant has a controlling interest, and the legal representatives, successors, or assignees of any such excluded persons or entities; and (b) the Court.

- F. “Class Counsel” means Douglas Caiafa, A Professional Corporation and Christopher J. Morosoff, Law Office of Christopher J. Morosoff.

- G. “Claims Administrator” means KCC, LLC.
- H. “Claim Form” means the form Unknown Class Members must complete in order to receive a Merchandise Certificate under this Agreement. The Claim Form must be substantially in the form of **Exhibit D** attached hereto.
- I. “Class Counsel Fees and Litigation Expenses Payment” means the amounts awarded to Class Counsel by the Court to compensate them for their fees and costs/expenses in connection with the Action.
- J. “Class Notice” means the long form Notice (and Website Notice) to Unknown Class Members Re: Pendency of Class Action Settlement, substantially in the form as evidenced by **Exhibit B**, and Notice of Hearing on Proposed Settlement which will be posted in Defendant’s California retail stores substantially in the form as evidenced by **Exhibit C** to this Agreement. It also means the Summary Publication Notice which shall be published in the form as evidenced by **Exhibit E** to this Agreement.
- K. “Class Period” means the period of time from July 1, 2011 through the date Preliminary Approval of this Settlement is granted [estimated to be October 17, 2016].
- L. “Class Representative Payments” means the incentive payment made to Plaintiffs in their capacity as “Class Representatives” to compensate them for initiating the Action and performing work in support of the Action.
- M. “Court” means the United States District Court for the Central District of California.
- N. “Effective Date” means the date by which all of the following have occurred:
1. Defendant has not voided this Settlement pursuant to Section III(M) of this Agreement;
 2. This Agreement is finally approved by the Court; and
 3. The Judgment becomes Final.
- O. “Final” means the date upon which any of the following events occurs: (1) the expiration of the time for filing an appeal if there are any objections filed by any Class Member; (2) the conclusion of any appeal taken if there are any objections filed by any Class Member; (3) the withdrawal of the last objection to the Settlement; or (4) if there are no objections filed by any Class Member, the date the Court has entered judgment. When the Judgment becomes final, all claims which were made and/or could have been made in the Action shall be dismissed.
- P. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement.

- Q. “Final Approval Order” means the Court’s order granting final approval of the terms of this Agreement.
- R. “Settlement Amount” means the maximum gross amount of twenty seven million seven hundred and fifty thousand dollars (\$27,750,000.00) that could be paid to an estimated 3.7 million Class Members in the form of Merchandise Certificates by Defendant as provided by this Agreement. In addition, Defendant will pay the Claims Administrator up to nine hundred seventy five thousand dollars (\$975,000.00) in claims administration fees, pay Plaintiffs up to fifteen thousand dollars (\$15,000.00) (up to seven thousand five hundred dollars (\$7,500.00) each) in incentive fees, and up to nine hundred and twenty seven thousand five hundred dollars (\$927,500.00) in reasonable fees and costs.
- S. “Defendant’s Counsel” means Seyfarth Shaw LLP.
- T. “Judgment” means the Judgment entered by the Court following the final approval of this Agreement.
- U. “Known Class Members” means all Class Members for whom Defendant has a name and valid home and/or e-mail address and whose Merchandise Certificate and Post-Card Notice is not returned as undeliverable.
- V. “Unknown Class Members” means all Class Members for whom Defendant does not have a valid home address and/or e-mail address or whose Merchandise Certificate and Post-Card Notice is returned as undeliverable.
- W. “Participating Class Member” means a Class Member, Known or Unknown, who does not submit a valid and timely Election Not to Participate in Settlement.
- X. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- Y. “Preliminary Approval of the Settlement” means the Court’s Order preliminarily approving the Settlement.
- Z. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
- AA. “Settlement Tasks” means the administration task of reviewing claims for completeness and sending the class benefit.

II. RECITALS

- A. Through this Action, Plaintiffs allege that Defendant violated California Business and Professions Code sections 17200 *et seq.* and 17500 *et seq.*, California Civil Code sections 1770 and 1750 *et seq.* (the “California Consumer Legal Remedies Act”, and the Federal Trade Commission Act (“FTCA”) by using false, deceptive, or misleading comparative reference prices on the price tags of products sold in

California and by failing to disclose its pricing practices to consumers. Plaintiffs seek actual damages, restitution and/or other equitable relief, injunctive relief and attorneys' fees and costs. Defendant denies these allegations and wrongdoing of any kind associated with the claims alleged and contends that this Action is not suitable for class treatment.

- B. Since filing the Action, the Parties have engaged in meaningful exchanges of information, documents and discovery, and Defendant has provided Class Counsel with extensive documents and data regarding the claims in the Action, which were thoroughly analyzed by Plaintiffs.
- C. On February 10, 2016, the Parties participated in mediation presided over by Jeffrey L. Krivis, Esq. of First Mediation.
- D. The Parties hereto have reached an agreement to settle this case fully and finally. In that regard, Defendant does not admit any liability or that it has in any way violated Business and Professions Code sections 17200 *et seq.* and 17500 *et seq.*, Civil Code sections 1770 and 1750 *et seq.* (the "California Consumer Legal Remedies Act", and the Federal Trade Commission Act ("FTCA") and/or any other provision of law.

Based on these Recitals, which are incorporated herein below, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Certification of the Settlement Class.** For the purposes of the Settlement only and the proceeding contemplated herein, the Parties stipulate and agree that: (1) the Class shall be certified in accordance with the definition contained in Section I(E) above; (2) Plaintiffs shall represent the Class for settlement purposes and shall be the Class representatives; and (3) Plaintiffs' Counsel shall be appointed as Class Counsel.
- B. **Decertification of the Settlement Class if Settlement Not Approved.** Defendant does not consent to certification of the Class for any purpose other than to effectuate settlement of the Action. If the Court does not enter Final Approval of the Settlement reflected in this Agreement, or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that Final Approval of the Settlement is not achieved: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used

or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

- C. **Merchandise Certificate Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Merchandise Certificate Settlement Amount that Defendant can pay under this Settlement is twenty seven million seven hundred and fifty thousand (\$27,750,000.00) dollars which shall be paid solely in the form of Merchandise Certificates in the amount of seven dollars and fifty cents (\$7.50) each. The Merchandise Certificate are subject to the following terms and conditions: (a) they do not expire; (b) each Class Member is entitled to receive only one Merchandise Certificate regardless of the number of alleged violations; (c) they may only be used once, but may be used on more than one product in the same visit to a retail store in California; (d) they are redeemable for in-store purchases of merchandise at California retail stores only and may not be used on telephone orders and/or on BurlingtonCoatFactory.com; (e) they are fully transferable; (f) they are not redeemable for cash, and no monetary refund, cash, or change of any kind shall be provided for all or any unused portion of the Merchandise Certificate's value; (g) they are not gift cards or gift certificates under California law. Thus, it is the Parties' belief and intent that the Merchandise Certificates are not subject to the restrictions and terms found under California law or any similar state or federal law regarding gift cards or gift certificates; (h) they are not valid for past purchases; (i) they will not be replaced if lost, stolen, expired, or damaged; (j) Class Members are responsible for any applicable sales tax; (k) they may be used on sale item(s), and may be combined with other discount program, promotional coupon or voucher but only one Merchandise Certificate can be used during each visit to a store in California; (l) they may not be used to purchase gift cards or certificates; (m) no minimum or maximum purchase amount is required to use them; and (n) they must be surrendered at time of purchase, and (o) copies will not be accepted.

- D. **Settlement Distribution.** Given the expected size of the Settlement Class, the Parties agree that direct distribution of the Merchandise Certificate and Post-Card Notice is the best practicable manner to distribute the Settlement and the Notice for Known Class Members. No later than thirty (30) days after the Court enters its Order granting Preliminary Approval of the Settlement, Known Class Members will be sent via the United States mail a Merchandise Certificate and Post-Card Notice valued at seven dollars and fifty cents (\$7.50) each (substantially in the form of **Exhibit A**). The Merchandise Certificate shall become effective and redeemable no later than thirty (30) days of the Court entering its Order granting Final Approval of this Settlement, but in no event sooner than January 15, 2017, due to the peak retail holiday season. Unknown Class Members who submit a valid and timely Claim Form, shall also receive a Merchandise Certificate.
- E. **Payments to Plaintiffs and Class Counsel.** Subject to the terms and conditions of this Agreement, Defendant will make the following payments as follows:
1. **To Named Plaintiffs:** In addition to their respective Merchandise Certificates, each Plaintiff will apply to the Court for an incentive award of not more than seven thousand five hundred dollars (\$7,500.00) as a Class Representative Payment. Defendant will not oppose a request for a Class Representative Payment of seven thousand five hundred dollars (\$7,500.00) to each named Plaintiff.
 2. **To Class Counsel:** Class Counsel will apply to the Court for an award of attorneys' fees and actual Litigation Expenses of up to nine hundred twenty seven thousand five hundred dollars (\$927,500.00). Class Counsel shall not seek Class Counsel Fees or Litigation Expenses in excess of these amounts. Defendant will not oppose any request by Class Counsel of up to nine hundred twenty seven thousand five hundred dollars (\$927,500.00) for reasonable attorneys' fees and actual and reasonable Litigation Expenses.
- F. **Claims Administrator and Settlement Implementation Costs.** Defendant will pay reasonable claims administration costs and the cost of providing notice of the proposed Settlement to the Class as set forth in this Agreement not to exceed nine hundred seventy five thousand dollars (\$975,000.00).
- G. **Customer Notice – In-Store Signage.** Defendant agrees that no later than thirty (30) days after entry of a Final Approval Order, it shall post in its California stores a notice, visible to its customers in each of its California locations, disclosures concerning its “Compare at” or similar pricing practices for so long as it uses “Compare at” or similar pricing practices that offer a comparison price to consumers.
- H. **Customer Notice – Website Posting.** Defendant agrees that no later than thirty (30) days after entry of a Final Approval Order, it shall publish on its e-commerce

website disclosures concerning its “Compare at” or similar pricing practices for so long as it uses “Compare at” or similar pricing practices that offer a comparison price to consumers.

- I. **Existing and New Employee Training.** Defendant agrees that no later than ninety days (90) days after entry of a Final Approval Order, it will hold at least one training session for its existing Buyers for its California locations for purposes of reviewing Defendant’s pricing policies. Defendant will also train new Buyers for its California locations on its pricing practices, for so long as it uses “Compare at” or similar pricing practices that offer a comparison price to consumers.
- J. **Auditing of California Pricing Practices.** No later than sixty (60) days after entry of a Final Approval Order, Defendant will implement a program of auditing pricing practices for goods sold in its California stores.
- K. **Auditing of In- Store Signage and Website Posting.** No later than sixty (60) days after entry of a Final Approval Order, Defendant will implement a program auditing the in-store signage in its California retail stores and website posting agreed to pursuant to Sections III. G and H of this Agreement.
- L. **No Obligation to Report/Notify.** Nothing contained in this Agreement requires Defendant to notify Plaintiffs and/or Class Counsel of any future changes to in-store signage, training, website posting, polic(ies), practice(s), and/or procedure(s) and/or report such changes to any third party.
- M. **Procedure for Approving Settlement.**
 1. **Unopposed Motion for Preliminary Approval of the Settlement by the Court.**
 - a. Plaintiffs will file an unopposed motion for an order conditionally certifying the Class, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice, and Claim Forms (the “Unopposed Motion for Preliminary Approval”).
 - b. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Motion, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing Class Representatives and Class Counsel, approving the forms of notice to the Class of the Settlement, Claim Form, and setting the Final Approval Hearing.
 - c. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the

definition contained above, that Plaintiffs shall be conditionally appointed class representatives for the Class, and that Plaintiffs' Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve any material aspect of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

2. **Notice to Known Class Members.** After the Court enters its order granting Preliminary Approval of the Settlement, a Merchandise Certificate and Post-Card Notice informing Known Class Members of their rights will be distributed as follows:
 - a. **Direct Notice:** No later than thirty (30) days after the Court enters its order granting Preliminary Approval of the Settlement, the Claims Administrator will send the Merchandise Certificate and Post-Card Notice to all Known Class Members via email where Defendant has valid e-mail address(es) in its databases for the Known Class Members. Where Defendant has valid mailing address information but no valid email address, Claims Administrator will mail the Merchandise Certificate and Post-Card Notice via U.S. Mail using the mailing address information from Defendant's databases. The Post-Card Notice (substantially in the form of **Exhibit A**) and Email Notice (substantially in the form of **Exhibit F**) shall provide Known Class Members with instructions regarding how they can elect not to participate or object.
3. **Notice to Unknown Class Members.** After the Court enters its order granting Preliminary Approval of the Settlement, the following means of notice will be utilized to provide notice to Unknown Class Members:
 - a. **In-Store Notice:** No later than thirty (30) days after the Court enters its order granting Preliminary Approval of the Settlement, Defendant will post in each of its California stores, a clear and conspicuous copy of the Summary In-Store Notice (substantially in the form attached as **Exhibit C**) containing instructions for Unknown Class Members to submit a claim, elect not to participate or object. These notices shall remain posted in Defendant's stores for at least thirty (30) days.
 - b. **Published Notice:** No later than thirty (30) days after the Court enters its order granting Preliminary Approval of the Settlement, the Claims Administrator will run a Summary Publication Notice (substantially in the form attached as **Exhibit E**) in a quarter ($\frac{1}{4}$) page advertisement in USA Today San Francisco and Los Angeles

regional editions containing instructions for Unknown Class Members to submit a claim, elect not to participate, or object.

As part of its weekly status report, the Claims Administrator will inform Class Counsel and Defendant's Counsel of the timely Elections Not to Participate in Settlement it receives. The Claims Administrator will provide to Defendant and Class Counsel the names of the Non-Participating Class Members.

- c. **Settlement Website.** No later than thirty (30) days after the Court enters its order granting Preliminary Approval of the Settlement, the Claims Administrator shall establish a toll-free number and create and maintain a settlement website containing the Class Notice (substantially in the form of **Exhibit B**) and Claim Form (substantially in the form of **Exhibit D**), which website shall be maintained until the Effective Date. Claim forms can be downloaded from this website, but they cannot be submitted on line.
 - d. No later than fourteen (14) days prior to the Final Approval Hearing, the Claims Administrator will serve on Class Counsel and Defendant's Counsel and file with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Claims Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
4. **Class Action Fairness Act Notice.** Defendant shall serve upon all applicable governmental officials notice of the proposed Settlement in accordance with 28 U.S.C. section 1715 *et seq.*
 5. **Claim Process for Unknown Class Members:**

Completing Claim Forms: Unknown Class Members shall have ninety (90) days after Class Notice is disseminated pursuant to Section III(M) of this Agreement to complete a Claim Form (substantially in the form attached as **Exhibit D**). Information on the transaction and the product purchased shall be listed by the Unknown Class Member on the Claim Form for each of the respective transactions at issue for that Unknown Class Member.

The date of the postmark on the envelope containing the completed Claim Form shall be the exclusive means used to determine whether a Class Member has "timely" returned the Claim Form on or before the Claim Deadline.

The Claims Administrator may review all submitted Claim Forms for completeness, validity, accuracy and timeliness, and may contact any Class Member to request additional information and/or documentation to determine the validity of any claim. The Claims Administrator also may review the submitted Claim Forms and other information from Defendant to confirm that each Class Member has received only one Merchandise Certificate.

For purposes of this Settlement, a Claim Form shall be deemed valid only if the Unknown Class Member has (a) provided any requested information on the Claim Form, and (b) signed the Claim Form under penalty of perjury. If a Claim Form is timely returned to the Claims Administrator but defective as to any of the above, the Class Member shall be given one opportunity to cure the defect(s). The Claims Administrator shall mail a notice of deficiency with a copy of the defective Claim Form to the Class Member who submitted the Claim. The Class Member shall be given fourteen (14) days from the date the notice of deficiency was mailed to cure the defect(s) and return the corrected Claim Form to the Claims Administrator. If the corrected Claim Form is not completely corrected and postmarked no later than the fourteen (14) day period, it shall be deemed untimely and rejected.

Confirmation and Objections by Defendant

No later than ten (10) days after the conclusion of the claims period, the Claims Administrator shall provide Defendant's counsel with copies of all Claim Forms submitted by Class Members, so that Defendant also may have an opportunity to confirm that information submitted by the Unknown Class Member is consistent with the information in Defendant's databases. Defendant shall notify the Claims Administrator and Class Counsel no later than ten (10) days thereafter of any objections to any Claims Forms submitted by Unknown Class Members, and the basis for such objection.

An Unknown Class Member who does not file a timely Claim Form and does not file a timely Election Not to Participate in Settlement as set forth below in Section III(M) shall not be eligible to receive a benefit under this Settlement, but shall be a Participating Class Member who is bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment.

6. **Objections to Settlement; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and Class Members who decide to opt-out of the Settlement shall submit an Election Not to Participate in Settlement form pursuant to the following procedures:

- a. **Objections to Settlement.** The Class Notice will provide that Participating Class Members who wish to object to the Settlement must file with the Court and serve on Class Counsel, Defendant's Counsel, and Claims Administrator not later than ninety (90) days after Notice is disseminated pursuant to Section III(M) of this Agreement, a written objection to the Settlement. Participating Class Members who fail to serve timely written objections as set forth above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

It shall be the objector's responsibility to ensure receipt of any objection by the Court, Class Counsel, Defendant's Counsel and Claims Administrator. Written objections must include: (a) the name and case number of the Action, "*James Horosny, et al, vs. Burlington Coat Factory of California, LLC* pending in the United States District Court for the Central District of California, Case No. 2:15-cv-05005-SJO-MRW; (b) the full name, address, and telephone number of the person objecting; (c) a statement of each objection; and (d) the specific reasons for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s). Any Class Member who files and serves a written objection, as described in this Section, has the option to appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of attorneys' fees. However, Settlement Class Members (with or without their attorneys) intending to make an appearance at the Fairness Hearing must also deliver to Class Counsel, Defendant's Counsel, and Claims Administrator and file with the Court a "Notice of Intention to Appear" no later than ninety (90) calendar days after Notice is disseminated pursuant Section III(M) of this Agreement. If the objecting Class Member intends to appear at the Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. If the objecting Class Member intends to request the Court to allow the Class Member to call witnesses at the Fairness

Hearing, such request must be made in the Class Member's written objection, which must also contain a list of any such witnesses. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorney's fees and costs.

- b. **Election Not to Participate in Settlement.** The Merchandise Certificate and Post-Card Notice and the Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Claims Administrator, not later than ninety (90) days after Notice is disseminated pursuant Section III(M) of this Agreement, a signed Election Not to Participate in Settlement. A Class Member who submits a valid Election Not to Participate in Settlement form shall be considered a Non-Participating Class Member. The Election Not to Participate in Settlement form must be in substantially the same form as the Op-Out Form attached as **Exhibit G**. A Non-Participating Class Member will not participate in or be bound by the Settlement and Judgment nor have any right to object to, comment on, or appeal the Settlement and/or Judgment.

A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

Class Members may elect not to be part of the Class and not to be bound by this Agreement. To make this election, Class Members must send a letter or postcard to the Claims Administrator stating: (a) the name and case number of the Action, "*James Horosny, et al, vs. Burlington Coat Factory of California, LLC* pending in the United States District Court for the Central District of California, Case No. 2:15-cv-05005-SJO-MRW"; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Settlement, postmarked no later than ninety (90) calendar days after Notice is disseminated pursuant Section III(M) of this Agreement .

- c. **Reporting.** Not later than fourteen (14) days after the deadline for submission of Elections Not to Participate in Settlement, the Claims Administrator will provide Class Counsel with a complete and accurate list of all Non-Participating Class Members.

- d. **Blow-up Clause.** Despite this Agreement, if more than five thousand (5,000) Class Members request exclusion, then Defendant may, in its sole discretion, at any time before the Fairness Hearing, notify Class Counsel in writing that it has elected to terminate this Agreement. If this Agreement is terminated, it will be deemed null and void *ab initio*. In that event: (i) the Preliminary Approval and Provisional Class Certification Order and all of their provisions will be vacated by its own terms; (ii) the Action will revert to the status that existed before the Agreement's execution date; and (iii) no term or draft of this Agreement, or any part or aspect of the Parties' settlement discussions, negotiations, or documentation will have any affect or be admissible into evidence, for any purpose, in this Action or any other proceeding.
7. **No Solicitation of Comment, Objection, or Election Not to Participate.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to elect not to participate in the Settlement, comment on or object to the Settlement, or appeal from the Judgment.
8. **Right to Void Settlement.** Defendant will have the right, but not the obligation, to void the Settlement if any of the following occurs:
 - (a) If five thousand (5,000) or more Class Members timely opt-out of the Settlement, Defendant will have the right, but not the obligation, to void the Settlement and, in that event, Defendant will have no further obligations under the Settlement;
 - (b) If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the terms of the Settlement with respect to the payments to be made to Participating Class Members, or the scope of the release of claims, then Defendant will have the right, but not the obligation, to void the Settlement. If that occurs, Defendant will have no further obligations under the Settlement, including any obligation to pay the Settlement Amount or any amounts that otherwise would have been owed under the Settlement. Furthermore, this Agreement will be deemed null and void *ab initio*. In that event, (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, including, but not limited to, vacating conditional certification of the Class, conditional appointment of named Plaintiffs as class representatives and conditional appointment of named Plaintiffs' counsel as Class Counsel, (b) the Action will revert to the status that existed before the Agreement's execution date, and (c) no term or draft of this Agreement, or any part of the Parties' settlement discussions, negotiations or

documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement or enter the Final Order and Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Defendant shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Agreement or other papers or proceedings related to the settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action. Defendant also will remain responsible for any administration costs incurred; or

- (c) If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then Defendant will have the right to void the Settlement. If that occurs, Defendant will have no further obligations under the Settlement, including any obligation to pay the Settlement Amount or any amounts that otherwise would have been owed under the Settlement. Defendant will remain liable for any incurred administration expenses. A vacation, reversal, or modification of the Court's award of the Class Representatives' Payments, the Class Counsel Fees and Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment.

9. Effect of An Award of Lower Fees and/or Costs than Plaintiffs Request.

- (a) An award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representatives' Payments, the Class Counsel Fees and Litigation Expenses Payment will not constitute a material change to the Settlement and shall not affect Plaintiffs' or Class Counsel's rights and/or obligations under the Agreement.

10. Additional Briefing and Final Approval.

- a. Not later than twenty-eight (28) days before the Final Approval Hearing, Plaintiffs will file with the Court and serve on Defendant a supporting memorandum of points and authorities, and any necessary supporting declarations for final approval of the Settlement.

- b. Not later than twenty-eight (28) days before the Final Approval Hearing, Plaintiffs will file with the Court and serve on Defendant a supporting memorandum of points and authorities, and any necessary supporting declarations for final approval for the awards of the Class Representatives' Payments, and the Class Counsel Fees and Litigation Expenses Payment pursuant to this Settlement.
 - c. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present the proposed Final Approval Order and Judgment, respectively, to the Court for approval and entry. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
11. **Waiver of Right to Appeal.** Except as otherwise provided herein, and provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs, Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude the parties from appealing a refusal by the Court to award the requested Class Representatives' Payments or the Class Counsel Fees and Litigation Expenses Payment in the amounts set forth above in Section III(E).
12. **Timing of Provision of Payments.** No later than fifteen (15) days after the Judgment is entered, Defendant shall deliver the Court-approved Class Representatives' Payments to Plaintiff and the Court-approved Class Counsel Fees and Litigation Expenses Payment to a qualified settlement trust fund of Class Counsel's choice established for the benefit of Plaintiff and Class Counsel. These payments will not be made if there have been any objections or appeals filed by any party or Class Member.
13. **Final Report by the Claims Administrator Regarding Settlement Tasks.** No later than thirty (30) days of the disbursement of the Settlement Amount and Payments set forth above, the Claims Administrator will serve on the Parties and file with the Court, and serve on Class Counsel, a declaration confirming the disbursements of all funds required under the Settlement.

N. **Release of Claims.**

1. **Release by Plaintiffs and the Class.** As of the Effective Date of this Agreement, Plaintiffs and all Class Members shall be deemed to hereby fully and irrevocably release, waive, and discharge Defendant and each of its respective past, present and future owners, stockholders, parent corporations, including but not limited to Burlington Coat Factory, Inc., related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest (the "Released Parties"), from any and all past, present, and future liabilities, claims, causes of action (whether in contract, tort, or otherwise, including statutory, common law, property, and equitable claims), damages, costs, attorneys' fees, losses, or demands, whether known or unknown, existing or potential, or suspected or unsuspected, which were or could have been asserted in the Action based on the facts alleged therein including but not limited to claims under California Business and Professions Code sections 17200 *et seq.* and 17500 *et seq.*, California Civil Code sections 1770 and 1750 *et seq.* (the "California Consumer Legal Remedies Act", and/or under the Federal Trade Commission Act and/or guidance ("FTCA") (the "Released Claims") and claims for failure to disclose information, false advertising, fraud, unjust enrichment, and any additional constitutional, common law and/or statutory claims.
2. **California Civil Code Section 1542 Waiver.** Plaintiffs and the Class Members also expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code section 1542, or any other similar provision under Federal and/or other states' law, which provides:

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

Plaintiffs and the Class Members are deemed to understand and acknowledge the significance of this waiver of California Civil Code section 1542 and/or of any other applicable law relating to limitations on releases. Plaintiffs, the Class Members, and/or Plaintiffs' Counsel may hereafter discover facts in addition to or different from those which any of them now know or believe to be true with respect to the subject matter of the released claims, but Plaintiffs, upon the Effective Date, shall have fully, finally, and forever settled and released any and all Released Claims,

known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts.

3. **Release by Defendant.** As of the Effective Date of this Agreement, Defendant releases and forever discharges the Plaintiffs, and their attorneys, from any claims of abuse of process, malicious prosecution, or any other claims arising out of the institution, prosecution, assertion, or resolution of the claims in the Action, including, but not limited to, sanctions of any kind.

O. **Miscellaneous Terms.**

1. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
2. **Change of Time Periods.** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class. If notice is delayed, the corresponding time periods for Class Members to respond, etc. shall likewise be extended.
3. **Modifications and Amendments.** Except as set forth in Section III(O.2), above, no amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel.
4. **No Admission of Liability.** This Agreement reflects the compromise and settlement of disputed claims among the Parties. Its constituent provisions, and any and all drafts, communications, and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person, including Defendant, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Defendant does not admit to any liability and this Agreement, and any Judgment entered based thereon, shall not be considered or operate as a finding of wrongdoing.

5. **Voluntary Agreement.** This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm or entity.
6. **Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.
7. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases all such documents, supplemental provisions and assistance of the Court will be consistent with this Agreement.
8. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
9. **Parties in Interest.** In executing this Agreement, the Parties warrant and represent that they, including Plaintiffs in their individual capacity, are the only persons having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Action, and, except as provided herein, neither said claims nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.
10. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
11. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. This Agreement has been, and shall be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter shall have no force or effect.

12. **Inadmissibility.** This Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Agreement and any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.
13. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
14. **Plaintiffs' Waiver of Right to be Excluded and Object.** Plaintiffs agree that by signing this Agreement they become bound by the terms herein stated and further agrees not to opt-out of the Settlement or object to any of the terms of the Settlement. Thus, any non-compliance with this paragraph (*e.g.*, request for exclusion or objection) shall be void and of no force or effect.
15. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
16. **Exhibits.** The exhibits to this Agreement are integral parts of the Agreement and the Settlement and are incorporated into this Agreement as though fully set forth in the Settlement Agreement.
17. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third (3rd) business day after mailing by United States mail, addressed as follows:

To the Plaintiffs and Class:

Douglas Caiafa
DOUGLAS CAIAFA, A PROFESSIONAL CORPORATION
11845 West Olympic Boulevard, Suite 1245
Los Angeles, California 90064
Telephone: (310) 444-5240
Facsimile: (310) 312-8260
Email: dcaiafa@caiafalaw.com

Christopher J. Morosoff
THE LAW OFFICES OF CHRISTOPHER J. MOROSOFF
77-760 Country Club Drive, Suite G
Palm Desert, California 92211
Telephone: (760) 469-5986
Facsimile: (760) 345-1581
Email: cjmorosoff@morosofflaw.com

To Defendant:

Janet Dhillon
Executive Vice President, General Counsel, & Corporate Secretary
Burlington Stores, Inc.
2006 Route 130 North
Burlington, New Jersey 08016
Telephone: (609) 387-7800
Email: jdhillon@burlingtonstores.com

Michael J. Burns
SEYFARTH SHAW LLP
560 Mission Street, Suite 3100
San Francisco, California 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549
Email: mburns@seyfarth.com

18. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided no later than seven (7) days. Any executed counterparts will be admissible as evidence to prove the existence and contents of this Agreement.

A. **List of Exhibits:** The following exhibits are attached to this Agreement:

Exhibit A Merchandise Certificate and Post-Card Notice

Exhibit B Class Notice

Exhibit C Summary In-Store Notice

Exhibit D Claim Form

Exhibit E Summary Publication Notice

Exhibit F E-Mail Notice

Exhibit G Opt Out Notice

[CONTINUED ON FOLLOWING PAGE]

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

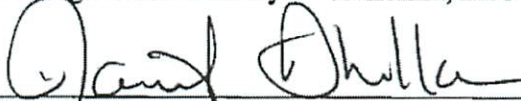
Dated: September ~~17~~¹⁹, 2016 James Horosny



Dated: September ¹⁹, 2016 Jennifer Price



Dated: September ¹⁹, 2016 Burlington Coat Factory of California, LLC

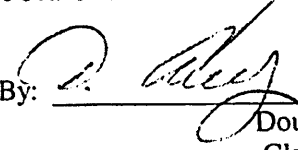


By:
Its:

AGREED AS TO FORM:

Dated: September 17, 2016

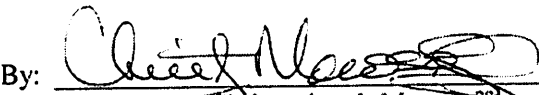
DOUGLAS CAIAFA, A PROFESSIONAL CORPORATION

By: 

Douglas Caiafa
Class Counsel

Dated: September 19, 2016

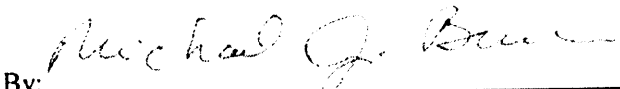
THE LAW OFFICES OF CHRISTOPHER J. MOROSOFF

By: 

Christopher J. Morosoff
Class Counsel

Dated: September 19, 2016

SEYFARTH SHAW LP

By: 

Michael J. Burns
Counsel for Defendant

EXHIBIT A

Burlington Class Action Settlement +
Claims Administrator
P.O. Box 43391
Providence, RI 02940-3391

BBV

<<Barcode>>

PostalService: Please do not mark barcode

Claim # BBV - <<ClaimIDs>> <<MailPac>>

<<First1>> <<Last1>>

<<CO>>

<<Addr2>>

<<Addr1>>

<<City>>, <<St>> <<Zip>>

<<Country>>

Burlington

\$7.50 MERCHANDISE CERTIFICATE

*One Merchandise Certificate ("Certificate") per customer. Certificate does not expire. Certificate is redeemable for in-store purchases of merchandise at Burlington Coat Factory of California, LLC's retail stores in California only and may not be used on telephone orders and/or on burlingtoncoatfactory.com orders. Certificate may only be used once, but may be used on more than one product in the same visit to a retail store in California. Certificate is transferable. Certificate is not redeemable for cash, and no monetary refund, cash, or change of any kind shall be provided for all or any unused portion of the Certificate's value. Certificate is not a gift card or gift certificate under California law. Certificate is not valid for past purchases. Certificate will not be replaced if lost, stolen, expired, or damaged. Customer is responsible for any applicable sales tax. Certificate may be used on sale item(s), and may be combined with other discount program, promotional coupon or voucher but only one Certificate can be used during each visit to a store. Certificate may not be used to purchase gift cards or certificates. No minimum or maximum purchase amount is required to use the Certificate. Certificate must be surrendered at time of purchase. Copying is prohibited and copies will not be accepted.

- 1.) Scan all items
- 2) Press the F6 Tender Key
- 3) Press the F9 More / F7 Merch Claim Cert Key
- 4) At the 'Enter Merch Claim Cert number' prompt, scan certificate barcode

****This is a SAMPLE****

*BBV<<ClaimID>>

<<ClaimID>>

BBVPC02

+

If You Bought Products at a Burlington Store in California and/or Bought Products from BurlingtonCoatFactory.com and Had Them Shipped to a California Address, then You May Be Eligible for a Merchandise Certificate from a Class Action Settlement
A Settlement has been reached in a class action lawsuit concerning the comparative pricing of merchandise sold by Burlington Coat Factory of California, LLC ("Burlington" or "Defendant") during the period July 1, 2011 through [Date of Preliminary Approval by Court].

What Is this Settlement about?

The lawsuit alleges that Defendant misled shoppers through comparative reference prices of products sold in California and misled them by failing to disclose its pricing practices to consumers. Defendant denies these claims and contends that it did nothing wrong.

Who Is included?

Individuals who purchased merchandise from Defendant between July 1, 2011 and [Date of Preliminary Approval by Court], are included in the Settlement Class. This includes individuals who purchased merchandise that was advertised with a "Compare at" price and an "Our Low" price or simply a lower price at one of Defendant's stores in California and/or on its e-commerce website and had the merchandise shipped to a California address between July 1, 2011, and [Date of Preliminary Approval by Court].

What are the Settlement Terms?

Defendant has agreed to provide each eligible class member with a Merchandise Certificate in the amount of \$7.50 for use at one of Defendant's stores in California. Defendant has agreed to train its California Buyers about its pricing practices, has agreed to disclose its pricing practices in its California stores and on its website, and has agreed to audit those practices in California.

What do I need to do to get a Merchandise Certificate.

Nothing. The other side of this postcard is the Merchandise Certificate which shall become effective and redeemable not later than thirty (30) days of the Court entering its Order granting Final Approval of this Settlement, but in no event sooner than January 15, 2017.

Your Rights May Be Affected.

If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class. Your request to exclude must be postmarked no later than 90 days after Notice is disseminated. If you do not exclude yourself, you will release your same claims in this matter against Defendant and will not be able to sue Defendant for any claim relating to its pricing practices and the disclosure thereof and/or the lawsuit. If you stay in the Settlement Class, you may object to it by 90 days after Notice is disseminated. For further information on how to opt-out or object to the Settlement, please visit the website, or call the phone number, listed below.

The Court will hold a hearing on [Date to be determined by court], 2016, to consider whether to approve the Settlement and a request for Incentive Awards of \$7,500.00 each for the Plaintiffs and attorneys' fees and costs of up to \$927,500.00, along with the reimbursement of expenses. You may appear at the hearing, but you are not required to attend. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information: www.bcfpricingclasssettlement.com or 1-800-XXX-XXXX

Do not contact Defendant or the Court for information.

All capitalized terms herein have the same meanings as those in the Settlement Agreement.

EXHIBIT B

NOTICE OF CLASS ACTION SETTLEMENT

If You Bought Products at a Burlington Coat Factory Store in California and/or Bought Products from BurlingtonCoatFactory.com and Had Them Shipped to a California Address, then You May Be Eligible for a Merchandise Certificate from a Class Action Settlement

A federal court authorized this notice. This is not a solicitation from a lawyer.

A Settlement has been reached in a class action lawsuit concerning the comparative pricing of merchandise sold by Burlington Coat Factory of California, LLC (“Burlington” or “Defendant”) during the period July 1, 2011 through [Date of Preliminary Approval by Court]. The lawsuit is known as *Horosny et al. v. Burlington Coat Factory of California, LLC*, Case No. 2:15-cv-05005-SJO-MRW, pending in the U.S. District Court for the Central District of California.

Your legal rights are affected whether you act or don’t act. Please read this entire notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
RECEIVE SETTLEMENT BENEFITS	If you received notice of this Settlement in the mail or by email, then you are a Known Class Member and have been mailed a Merchandise Certificate automatically. If you did not receive notice of this Settlement by mail or email and would like to receive a Merchandise Certificate, then you must follow the instructions for obtaining and submitting a claim form as set forth in this Notice.
EXCLUDE YOURSELF	Get no Settlement benefits, and be able to bring your own suit.
OBJECT	Write to the Court about why you don’t like the Settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Settlement benefits will become available if the Court approves the Settlement and after any appeals are finished. Please be patient.

WHAT THIS NOTICE CONTAINS

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- 1. Why does this website exist?
- 2. What is this lawsuit about?
- 3. Why is this a class action?
- 4. Why is there a Settlement?

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- 5. How do I know if I am part of the Settlement?

THE SETTLEMENT BENEFITS—WHAT YOU GET PAGE 4

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- 7. How can I participate in the Settlement?
- 8. When will I be able to use my Settlement benefits?
- 9. What am I giving up to stay in the Class and receive a benefit?

EXCLUDING YOURSELF FROM THE SETTLEMENT PAGE 6

- 10. How do I get out of the Settlement?
- 11. If I don't exclude myself, can I sue Defendant for the same thing later?
- 12. If I exclude myself, can I still benefit from this Settlement?

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- 17. When and where will the Court decide whether to approve the Settlement?
- 18. Do I have to come to the hearing?
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- 20. What happens if I do nothing at all?

GETTING MORE INFORMATION PAGE 9

- 21. Are there more details about the Settlement?
- 22. How do I get more information?

BASIC INFORMATION

1. Why does this website exist?

The Court ordered this Notice because you have a right to know about a proposed Settlement of a class action lawsuit of which you may be a member, and about your options, before the Court decides whether to approve the Settlement.

If the Court approves it, and after any objections and appeals are resolved, each eligible class member will be permitted to use a Merchandise Certificate that has been sent to them. This Notice explains the lawsuit, the Settlement, your legal rights, the benefits available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court, Central District of California, and the case is entitled *Horosny et al. v. Burlington Coat Factory of California, LLC, et al.*, Case No. 2:15-cv-05005-SJO-MRW. The persons who sued are called the Plaintiffs, and the company they sued is called the Defendant.

2. What Is This Lawsuit About?

The Plaintiffs in the lawsuit allege that Burlington used “Compare” reference prices on its price tags that compare Burlington’s sales prices to higher prices at other retailers, which lead customers to believe they were getting a better deal than they may actually be getting. The Plaintiffs allege that Burlington’s price tags were deceptive because the “Compare” prices may be higher than the actual sales prices for identical products at other retailers. Because Burlington did not disclose to customers what the “Compare” price means, Plaintiffs allege that Burlington did not provide an accurate basis for consumers to compare its prices and products with those sold at other retailers. Burlington denies these claims and contends that it has done nothing wrong.

3. Why Is This a Class Action?

In a class action, one or more people, called Class Representatives (in this case James Horosny and Jennifer Price), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who ask to be excluded from the Class. Judge S. James Otero is the judge in charge of this class action.

4. Why Is There a Settlement?

Both sides agreed to the Settlement. Plaintiffs and their attorneys think the Settlement is best for the Class Members because it will avoid the cost and delay of appeals, and the risks inherent with continuing to litigate the claims.

WHO IS IN THE SETTLEMENT

5. How Do I Know if I Am Part of the Settlement?

You are part of the Settlement if you purchased merchandise that was advertised with a “Compare at” price and an “Our Low” price or simply a lower price at one of Defendant’s stores in California and/or on its e-commerce website and had the merchandise shipped to a California address between July 1, 2011, and [Date of Preliminary Approval by Court].

THE SETTLEMENT BENEFITS—WHAT YOU GET

6. What Does the Settlement Provide?

As part of the settlement, each Class Member will receive a Merchandise Certificate in the amount of seven dollars and fifty cents (\$7.50) for use in one of Defendant’s stores in California. The Merchandise Certificates are subject to the following terms and conditions: (a) the Merchandise Certificates do not expire; (b) each Class Member is entitled to receive only one Merchandise Certificate regardless of the number of alleged violations; (c) they may only be used once, but may be used on more than one product in the same visit to a retail store in California; (d) they are redeemable for in-store purchases of merchandise at California retail stores only and may not be used on telephone orders and/or on BurlingtonCoatFactory.com; (e) they are fully transferable; (f) they are not redeemable for cash, and no monetary refund, cash, or change of any kind shall be provided for all or any unused portion of the Merchandise Certificate’s value; (g) they are not gift cards or gift certificates under California law. Thus, it is the Parties’ belief and intent that the Merchandise Certificates are not subject to the restrictions and terms found under California law or any similar state or federal law regarding gift cards or gift certificates; (h) they are not valid for past purchases; (i) they will not be replaced if lost, stolen, expired, or damaged; (j) Class Members are responsible for any applicable sales tax; (k) they may be used on sale item(s), and may be combined with other discount program, promotional coupon or voucher but only one Merchandise Certificate can be used during each visit to a store in California; (l) they may not be used to purchase gift cards or certificates; (m) no minimum or maximum purchase amount is required to use them; and (n) they must be surrendered at time of purchase, and (o) copies will not be accepted.

HOW YOU CAN PARTICIPATE IN THE SETTLEMENT

7. How Can I Participate in the Settlement?

The process to receive benefits offered under the Settlement depends on whether or not you received notice of the Settlement in the mail or by email.

If you received notice of this Settlement by mail or email, then Defendant’s records show that you are a Known Class Member and have already been sent a Merchandise Certificate. (It is on the front side of the Merchandise Certificate and Post-Card Notice.)

If you did not receive notice of this Settlement in the mail or email, and you want to receive the benefits offered under this Settlement, then you will need to submit a valid Claim Form. On the Claim Form, you will provide your name, contact information, and you will attest under penalty of perjury that you purchased one or more of Defendant’s product(s) that was advertised with a

“Compare at” and an “Our Low Price” or simply a lower price at a California store and/or on its website and had it sent to a California address. You may obtain a Claim Form by downloading one from www.bcfpricingclasssettlement.com and/or by calling 1-800-XXX-XXXX and asking for one to be mailed to you.

This Claim Form must be sent by United States mail to the Claims Administrator at the following address and postmarked no later than ninety (90) days after Notice is sent out:

Burlington Class Action Settlement

If the Court approves the Settlement, the Claim Form will be reviewed by the Claims Administrator, and if you are eligible, you will receive your Merchandise Certificate. You can check on the progress of the Settlement by visiting the website www.bcfpricingclasssettlement.com.

8. When Will I Be Able to Use My Settlement Benefits?

The Court will hold a hearing on _____, 2016, at _____ .m. at _____ to decide whether to approve this Settlement.

If the Court approves the Settlement, there may be appeals. It is always uncertain how these appeals might be resolved, and resolving them can take time, perhaps even more than a year. You may continue to check on the progress of the Settlement by visiting the website www.bcfpricingclasssettlement.com.

9. What Am I Giving up to Stay in the Class and Receive a Benefit?

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Defendant and certain affiliated companies and people about the legal issues in this case if the Settlement is approved. It also means that all of the Court's orders will apply to you and legally bind you.

As part of the Settlement, all claims of the members of Settlement Class relating to the claims brought in the Action will be released. This means, for example, that all persons who do not opt-out of the Settlement will be barred from bringing any claims on their own against Defendant for violations of California Business and Professions Code sections 17200 et seq. and 17500 et seq., California Civil Code sections 1770 and 1750 et seq. (the “California Consumer Legal Remedies Act”, and/or under the Federal Trade Commission Act and/or guidance (“FTCA”) (the “Released Claims”) and claims for failure to disclose information, false advertising, fraud, unjust enrichment, and any additional constitutional, common law and/or statutory claims, even if they do not file a claim or receive a benefit.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to participate in this Settlement, but you want to keep the right to sue or continue to sue Defendant on your own about the legal issues in this case, then you must take steps to get out. This is called excluding yourself, and is sometimes referred to as opting out of the Class.

10. How Do I Get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail to the Claims Administrator, Class counsel and Defendant's counsel saying that you want to be excluded from the Settlement. Be sure to include your name, address, telephone number, your signature, and refer to the case - *Horosny et al. v. Burlington Coat Factory of California, LLC*, Case No. 2:15-cv-05005-SJO-MRW pending in the United States District Court for the Central District of California. Your exclusion request must be postmarked no later than ninety (90) days after Notice is sent and mailed to:

Burlington Class Action Settlement

You can't exclude yourself by phone or e-mail. If you ask to be excluded, you will not receive and/or not be allowed to use any of the Settlement benefits, and you cannot object to the Settlement. You will also not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendant in the future.

11. If I Don't Exclude Myself, Can I Sue Defendant for the Same Thing Later?

No. Unless you exclude yourself, you give up the right to sue Defendant for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is ninety (90) days after Notice is sent out.

12. If I Exclude Myself, Can I Get Benefits From This Settlement?

No. If you exclude yourself, you cannot seek benefits under the Settlement. But, you may sue, continue to sue, or be part of a different lawsuit against Defendant for the same claim.

THE LAWYERS REPRESENTING YOU

13. Do I Have a Lawyer in the Case?

The Court has appointed the law firms of Douglas Caiafa, APLC and the Law Office of Christopher J. Morosoff to represent you and the Class. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How Will the Lawyers Be Paid?

The attorneys who brought the cases on your behalf will request reasonable attorney fees and reimbursement of actual, reasonable expenses in the amount of up to \$927,500.00, which must be approved by the Court. The Class Representatives will also seek compensation for their efforts in the amount of \$7,500.00 each, which must be approved by the Court. The Court may award less than these amounts. Defendant will pay the fees and expenses that the Court awards and the costs to administer the Settlement of up to \$975,000.00.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

15. How Do I Tell the Court That I Don't Like the Settlement?

If you stay in the Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the Settlement in *Horosny et al. v. Burlington Coat Factory of California, LLC*, Case No. 2:15-cv-05005-SJO-MRW pending in the United States District Court for the Central District of California. Be sure to include the case name (*Horosny v. Burlington Coat Factory of California, LLC*, Case No. 2:15-cv-05005-SJO-MRW) your name, address, telephone number, your signature, and the specific reasons you object to the Settlement, including any legal and factual support. File the objection with the Court and mail the objection to Class Counsel, Defendant's Counsel, and Claims Administrator postmarked no later than ninety (90) days after Notice is sent to the following addresses:

Douglas Caiafa
Douglas Caiafa, APLC
11845 West Olympic Boulevard,
Suite 1245
Los Angeles, CA 90064

Christopher J. Morosoff
Law Office of Christopher J.
Morosoff
77-760 Country Club Drive,
Suite G
Palm Desert, CA 92211

Michael J. Burns
Seyfarth Shaw LLP
560 Mission Street,
Suite 3100
San Francisco, CA 94105

Burlington Class Action Settlement

16. What's the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you cannot object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

17. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing on _____, 2016, at _____m. at _____, to consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be continued without further notice.

18. Do I have to Come to the Hearing?

No. Class Counsel will answer questions the Court may have. You are welcome to come at your own expense. If you send a written objection, 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 retain and pay your own lawyer to attend.

19. May I Speak at the Hearing?

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 Intention to Appear in *Horosny et al. v. Burlington Coat Factory of California, LLC*, Case No. 2:15-cv-05005-SJO-MRW pending in the United States District Court for the Central District of California." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than ninety (90) days after Notice is sent, and be sent to the Class Counsel, Defendant's Counsel and the Claims Administrator, at the addresses listed in Question 15. You cannot speak at the hearing if you excluded yourself.

IF YOU DO NOTHING

20. What Happens if I Do Nothing at all?

If you do nothing at all, you will remain in the Class and whether or not you receive a benefit from the Settlement depends on whether you received notice of the Settlement by mail or email. For any questions as to how to claim a benefit under the Settlement, see Question 7 above: "How can I participate in the Settlement?"

If you do not exclude yourself, did not receive notice of this Settlement in the mail, and do not return a valid and completed claim form you will receive no benefit from the Settlement, and you

won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant about the legal issues in this case.

GETTING MORE INFORMATION

21. Are There More Details About the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can obtain a copy of the Settlement Agreement online by visiting the Claims Administrator's website at www.bcfpricinglassettlement.com.

22. How Do I Get More Information?

You can write to the Claims Administrator, _____, _____, or call 1-800-XXX-XXXX to ask questions about the Settlement, sign up to be notified if the Settlement is approved, or obtain other information to help you determine whether you are a Class Member and whether you are eligible for a payment. You may also visit www.bcfpricingclasssettlement.com or contact Class Counsel, Defendant's Counsel and the Claims Administrator listed under Question 15 above, or by email at xxx@xxxxxxx.com.

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS LAWSUIT TO THE CLERK OF THE COURT, THE JUDGE, COUNSEL FOR DEFENDANT, OR TO ANY OF DEFENDANT'S AGENTS OR EMPLOYEES. They are not permitted to answer your questions.

EXHIBIT C

If You Bought Products at a Burlington Coat Factory Store in California and/or Bought Products from BurlingtonCoatFactory.com and Had Them Shipped to a California Address, then You May Be Eligible for a Merchandise Certificate from a Class Action Settlement

A Settlement has been reached in a class action lawsuit concerning the comparative pricing of merchandise sold by Burlington Coat Factory of California, LLC (“Defendant”) during the period July 1, 2011 through [Date of Preliminary Approval by the Court]. The lawsuit is known as *Horosny v. Burlington Coat Factory of California, LLC.*, Case No. 2:15-cv-05005-SJO-MRW, pending in the U.S. District Court for the Central District of California. The Plaintiffs in the lawsuit allege that Burlington used “Compare” reference prices on its price tags that compare Burlington’s sales prices to higher prices at other retailers, which lead customers to believe they were getting a better deal than they may actually be getting. The Plaintiffs allege that Burlington’s price tags were deceptive because the “Compare” prices may be higher than the actual sales prices for identical products at other retailers. Because Burlington did not disclose to customers what the “Compare” price means, Plaintiffs allege that Burlington did not provide an accurate basis for consumers to compare its prices and products with those sold at other retailers. Burlington denies these claims and contends that it has done nothing wrong.

Who is a class member?

Individuals who purchased merchandise from Defendant between July 1, 2011 and [Date of Preliminary Approval by the Court], are included in the Settlement Class. This includes individuals who purchased merchandise that was advertised with a “Compare at” price and an “Our Low” price or simply a lower price at one of Defendant’s store in California and/or on its e-commerce website and had the merchandise shipped to a California address between July 1, 2011, and [Date of Preliminary Approval by the Court].

What does the Settlement provide?

Defendant has agreed to provide eligible class members each with a merchandise certificate in the amount of \$7.50 for use at one of Defendant’s stores in California. Defendant has agreed to train its California Buyers about its pricing practices, has agreed to disclose its pricing practices in its California stores and on its website, and has agreed to audit those practices in California.

What do I need to do?

If you purchased a Product from Defendant between July 1, 2011, and [Date of Preliminary Approval by the Court], and Defendant has your contact information, it will send you a merchandise certificate via United States Mail. If you do not receive one in the mail, and you would like to receive one, you must submit a Claim Verification Form by mail. If you would like to submit the claim form, you may obtain one by downloading it from www.bcfpricingclasssettlement.com and/or by calling 1-800-XXX-XXXX. All Claim Verification Forms must be fully completed and postmarked no later than ninety (90) days after dissemination of Class Notice.

If the Court approves the settlement, you will give up your right to sue Defendant for any of the claims released in the settlement. Therefore, it is very important that you read the settlement agreement. If you do not want to participate, you may exclude yourself no later than ninety (90) days after dissemination of Class Notice. You will not be allowed to use the merchandise

certificate sent to you and/or will not be allowed to receive a merchandise certificate if one was not, but you will keep your right to sue Defendant on your own for the same claims in this matter. You may object and tell the court why you do not like the settlement, but you must do so no later than ninety (90) days after dissemination of Class Notice. If you do nothing, you **will** be bound by the decisions of the Court.

The Court will hold a hearing on [Date to be determined by the Court], to consider whether to approve the Settlement and a request for Incentive Awards of up to \$7,500.00 each for the Plaintiffs and reasonable attorneys' fees and costs of up to \$927,500.00 for Plaintiffs' counsel. You may appear at the hearing, but you are not required to attend. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing. The motion for attorneys' fees and costs is posted on www.bcfpricingclasssettlement.com. 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.bcfpricingclasssettlement.com. You may also call 1-800-XXX-XXXX with any questions.

EXHIBIT D

BURLINGTON COAT FACTORY SETTLEMENT

Settlement Administrator

PO Box #####

_____-####

<<MAIL ID>>

«NAME 1>>

«NAME 2>>

«ADDRESS 1>>

«ADDRESS 2>>

«CITY>>, «STATE>> «ZIP CODE>>

«DATE>>

CLAIM VERIFICATION FORM INSTRUCTIONS

If you purchased one or more product(s) that were advertised with a “Compare At” price and an “Our Low Price” or simply a lower price from a Burlington Coat Factory of California, LLC (“Defendant”) store in California and/or on its e-commerce website and had that product(s) shipped to a California address between July 1, 2011, and DATE, 2016, and you wish to make a claim in this case, then please complete this claim verification form.

The claim verification form must be completed truthfully. The address you fill in on the form must be the address at which you intend to receive your Merchandise Certificate, in the event you are eligible to receive it as a settlement class member, and should be an address that you will continue to receive mail through the date the Court approves the settlement of this case. You cannot submit an on-line claim form. All forms must be submitted via U.S. mail and must be postmarked no later than ninety (90) days after Class Notice is sent. Should you have any questions regarding the completion of this form, please contact the Administrator at www.bcfpricingclasssettlement.com.

SECTION 1 — ADDRESS INFORMATION FOR DELIVERY OF CLASS AWARD

First	Middle	Last	
Street Number & Name	City	State	Zip Code
() _____ Telephone Number			

SECTION 2 — TRANSACTION INFORMATION

Have you purchased a Burlington Coat Factory product at one or more Burlington Coat Factory Stores in California and/or on its website and had that product(s) shipped to a California address between July 1, 2011, and [DATE]?

Yes ____ No ____

If Yes, you understand that by signing this claim verification form, you certify under the penalty of perjury under the laws of the State of California that you purchased one or more Burlington Coat Factory product(s) that was advertised with a "Compare at" and an "Our Low Price" or simply a lower price at a California store and/or on its website and had it sent to a California address.

SECTION 3 — VERIFICATION UNDER PENALTY OF PERJURY

By signing and submitting this Claim Verification Form, you certify under the penalty of perjury of the laws of the State of California, that the information you have provided in this claim form is true and correct and that this is the only claim form that you have submitted and/or will submit. You also understand, acknowledge, and agree that you are eligible to receive only **ONE** (1) Merchandise Certificate from this settlement based on all your purchases from Defendant in California and/or on its website, and that you have not already received a certificate in the United States mail.

Signature: _____

Name (please print): _____

Executed on (date): ____ - ____ - 2016

PLEASE NOTE THAT ALL CLAIM VERIFICATION FORMS WILL BE SUBJECT TO REVIEW FOR COMPLETENESS AND AUTHENTICITY BY THE SETTLEMENT CLAIMS ADMINISTRATOR. THIS CLAIM FORM MUST BE COMPLETED AND MAILED TO THE SETTLEMENT CLAIMS ADMINISTRATOR WITH A POSTMARK DATED NO LATER THAN [DATE], 2016, TO THE ADDRESS BELOW:

Burlington Coat Factory Settlement
Settlement Administrator
PO Box #####
XXXXXX, XX-####

If you have any questions about this lawsuit, your rights, or completing the Claim Form, please contact Class Counsel at Burlington Coat Factory Class Action, Douglas Caiafa, A Professional Law Corporation, or dcaifa@caifalaw.com.

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS LAWSUIT TO THE CLERK OF THE COURT, THE JUDGE, COUNSEL FOR BURLINGTON COAT FACTORY, OR TO ANY BURLINGTON COAT FACTORY AGENT OR EMPLOYEE. THEY ARE NOT PERMITTED TO ANSWER YOUR QUESTIONS.

EXHIBIT E

If You Bought Products at a Burlington Store in California and/or Bought Products from BurlingtonCoatFactory.com and Had Them Shipped to a California Address, then You May Be Eligible for a Merchandise Certificate from a Class Action Settlement

A Settlement has been reached in a class action lawsuit concerning the comparative pricing of merchandise sold by Burlington Coat Factory of California, LLC (“Burlington” or “Defendant”) during the period July 1, 2011 through [Date of Preliminary Approval by Court].

What Is this Settlement about?

The Plaintiffs in the lawsuit allege that Burlington used “Compare” reference prices on its price tags that compare Burlington’s sales prices to higher prices at other retailers, which lead customers to believe they were getting a better deal than they may actually be getting. The Plaintiffs allege that Burlington’s price tags were deceptive because the “Compare” prices may be higher than the actual sales prices for identical products at other retailers. Because Burlington did not disclose to customers what the “Compare” price means, Plaintiffs allege that Burlington did not provide an accurate basis for consumers to compare its prices and products with those sold at other retailers. Burlington denies these claims and contends that it has done nothing wrong.

Who Is included?

Individuals who purchased merchandise from Defendant between July 1, 2011 and [Date of Preliminary Approval by Court], are included in the Settlement Class. This includes individuals who purchased merchandise that was advertised with a “Compare at” price and an “Our Low” price or simply a lower price at one of Defendant’s stores in California and/or on its e-commerce website and had the merchandise shipped to a California address between July 1, 2011, and [Date of Preliminary Approval by Court].

What are the Settlement Terms?

Defendant has agreed to provide each eligible class member with a merchandise certificate in the amount of \$7.50 for use at one of Defendant’s stores in California. Defendant has agreed to train its California Buyers about its pricing practices, has agreed to disclose its pricing practices in its California stores and on its website, and has agreed to audit those practices in California.

How to get a Merchandise Certificate.

If you purchased a product from Defendant between July 1, 2011, and [Date of Preliminary Approval by Court], and Defendant has your contact information, it will send you a merchandise certificate via United States Mail. If you do not receive one in the mail, and you would like to receive one, you must submit a Claim Verification Form by mail. If you would like to submit the form, you may obtain one by downloading it from www.bcfpricingclasssettlement.com, and/or by calling 1-800-XXX-XXXX. All Claim Verification Forms must be fully completed and postmarked no later than 90 days after Notice is disseminated.

Your Rights May Be Affected.

If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class. Your request to exclude must be postmarked no later than 90 days after

Notice is disseminated. If you do not exclude yourself, you will release your same claims in this matter against Defendant and will not be able to sue Defendant for any claim relating to its pricing practices and the disclosure thereof and/or the lawsuit. If you stay in the Settlement Class, you may object to it by 90 days after Notice is disseminated. For further information on how to opt-out or object to the Settlement, please visit the website, or call the phone number, listed below.

The Court will hold a hearing on [Date to be determined by Court], to consider whether to approve the Settlement and a request for Incentive Awards of \$7,500.00 each for the Plaintiffs and attorneys' fees and costs of up to \$927,500.00, along with the reimbursement of expenses. You may appear at the hearing, but you are not required to attend. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

**For more information: www.bcfpricingclasssettlement.com or 1-800-XXX-XXXX
Do not contact Defendant or the Court for information.**

All capitalized terms herein have the same meanings as those in the Settlement Agreement.

EXHIBIT F

If You Bought Products at a Burlington Store in California and/or Bought Products from BurlingtonCoatFactory.com and Had Them Shipped to a California Address, then You May Be Eligible for a Merchandise Certificate from a Class Action Settlement

A Settlement has been reached in a class action lawsuit concerning the comparative pricing of merchandise sold by Burlington Coat Factory of California, LLC (“Burlington” or “Defendant”) during the period July 1, 2011 through [Date of Preliminary Approval by Court].

What Is this Settlement About?

The Plaintiffs in the lawsuit allege that Burlington used “Compare” reference prices on its price tags that compare Burlington’s sales prices to higher prices at other retailers, which lead customers to believe they were getting a better deal than they may actually be getting. The Plaintiffs allege that Burlington’s price tags were deceptive because the “Compare” prices may be higher than the actual sales prices for identical products at other retailers. Because Burlington did not disclose to customers what the “Compare” price means, Plaintiffs allege that Burlington did not provide an accurate basis for consumers to compare its prices and products with those sold at other retailers. Burlington denies these claims and contends that it has done nothing wrong.

Who is Included?

Individuals who purchased merchandise from Defendant between July 1, 2011 and [Date of Preliminary Approval by Court], are included in the Settlement Class. This includes individuals who purchased merchandise that was advertised with a “Compare at” price and an “Our Low” price or simply a lower price at one of Defendant’s stores in California and/or on its e-commerce website and had the merchandise shipped to a California address between July 1, 2011, and [Date of Preliminary Approval by Court].

What are the Settlement Terms?

Defendant has agreed to provide each eligible class member with a merchandise certificate in the amount of \$7.50 for use at one of Defendant’s stores in California. Defendant has agreed to train its California employees about its pricing practices, has agreed to disclose its pricing practices in its California stores and on its website, and has agreed to audit those practices in California.

What do I need to do to get a Merchandise Certificate.

Nothing. Included in this email is the Merchandise Certificate which shall become effective and redeemable not later than thirty (30) days of the Court entering its Order granting Final Approval of this Settlement, but in no event sooner than January 15, 2017.

Your Rights May Be Affected.

If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class. Your request to exclude must be postmarked no later than 90 days after Notice is disseminated. If you do not exclude yourself, you will release your same claims in this matter against Defendant and will not be able to sue Defendant for any claim relating to its pricing

practices and the disclosure thereof and/or the lawsuit. If you stay in the Settlement Class, you may object to it by 90 days after Notice is disseminated. For further information on how to opt-out or object to the Settlement, please visit the website, or call the phone number, listed below.

The Court will hold a hearing on [Date to be determined by court], 2016, to consider whether to approve the Settlement and a request for Incentive Awards of \$7,500.00 each for the Plaintiffs and attorneys' fees and costs of up to \$927,500.00, along with the reimbursement of expenses. You may appear at the hearing, but you are not required to attend. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information: www.bcfpricingclasssettlement.com or 1-800-XXX-XXXX

Do not contact Defendant or the Court for information.

All capitalized terms herein have the same meanings as those in the Settlement Agreement.

EXHIBIT G

United States District Court for the Central District of California
Horosny, et al. v. Burlington Coat Factory of California, LLC.
Case No. 2:15-cv-05005-SJO-MRW

OPT-OUT FORM

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CASE OF JAMES HOROSNY, ET AL. v. BURLINGTON COAT FACTORY OF CALIFORNIA, LLC, CASE NO. 2;15-CV-05005-SJO-MRW PENDING IN THE UNITED STATES DISTRICT COURT OF THE CENTRAL DISTRICT OF CALIFORNIA 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 [90 DAYS AFTER NOTICE IS DISSEMINATED] TO:

**CLAIMS ADMINISTRATOR
ADDRESS
CITY, STATE ZIP
TOLL FREE TELEPHONE**

1 Douglas Caiafa, Esq. (SBN 107747)
DOUGLAS CAIAFA, A Professional Law Corporation
2 11845 West Olympic Boulevard, Suite 1245
Los Angeles, California 90064
3 (310) 444-5240 - phone; (310) 312-8260 - fax
Email: dcaiafa@caiafalaw.com

4 Christopher J. Morosoff, Esq. (SBN 200465)
LAW OFFICE OF CHRISTOPHER J. MOROSOFF
5 77-760 Country Club Drive, Suite G
Palm Desert, California 92211
6 (760) 469-5986 - phone; (760) 345-1581 - fax
Email: cjmorosoff@morosofflaw.com

7 Attorneys for Plaintiffs JAMES HOROSNY, et al.
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 JAMES HOROSNY, et al.,
14 Plaintiffs,

15 vs.

16 BURLINGTON COAT FACTORY OF
17 CA, LLC, et al.,
18 Defendants.

Case No. 2:15-cv-05005-SJO-MRWx

**DECLARATION OF DOUGLAS
CAIAFA IN SUPPORT OF
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Courtroom: 1
Date: October 31, 2016
Time: 10:00 a.m.
Judge: Hon. S. James Otero

Complaint Filed:

DECLARATION OF DOUGLAS CAIAFA

I, Douglas Caiafa, declare as follows:

1. I am an attorney licensed to practice law before all the courts of the State of California and before this Court. I am the principal of Douglas Caiafa, A Prof. Law Corp., attorney of record and co-counsel with Christopher Morosoff, for plaintiffs herein before this Court in the action *James Horosny, et al. v. Burlington Coat Factory of CA, LLC*, U.S.D.C., C.D. Cal. 2:15-cv-05005-SJO-MRWx. I submit this Declaration in Support of Plaintiffs' Renewed Motion for Preliminary Approval of Class Action Settlement and Unopposed Motion for Certification of Settlement Class.
2. I have been admitted to practice and have actively practiced in California before both State and Federal Courts, including this one, for over 32 years and have defended and prosecuted numerous complex, multi-party actions, including over 25 class actions, and including multi-million dollar wage and hour and consumer class action litigation and settlements. I have also tried numerous bench and jury trials and received multiple seven figure verdicts.
3. I support this lawsuit, will vigorously pursue and protect the Plaintiffs and the Class and believe I am qualified to act as class counsel in this action.
4. Prior to filing this action, Mr. Morosoff and myself consulted with Plaintiffs, investigated Defendant's pricing practices and researched the law applicable to Plaintiffs' claims. After doing so, we a complaint on July 1, 2015, and the operative First Amended Complaint ("FAC") on September 17, 2015. (ECF No. 15). Throughout the litigation Mr. Morosoff and I have engaged in extensive legal research and analysis of the issues of this case.
5. In late 2015 and early 2016 the parties engaged in extensive negotiations regarding a potential settlement and concerning the possible structure of a class-wide settlement. These negotiations led to private mediation, on February 10, 2016, with Jeffrey Krivas of First Mediation. At the conclusion of a full

1 day mediation, the parties reached a tentative agreement with respect to most
2 of the material terms of the Settlement as reflected in the Term Sheet executed
3 by the parties. Further negotiations were necessary with respect to certain
4 terms until the parties eventually reached a full and final agreement on all
5 material terms. The parties subsequently negotiated, drafted and executed the
6 Settlement Agreement currently before the Court.

- 7 6. The parties have modeled the Agreement, to the extent possible, after the
8 settlement agreement approved by the Ninth Circuit in the *In re Online DVD*.
- 9 7. The proposed Settlement provides a "Settlement Amount" which represents
10 the gross sum of \$27,750,000.00 to be paid by Defendant to an estimated 3.7
11 million Class Members in the form of Merchandise Certificates ("Certificates")
12 (3.7 million x \$7.50 = \$27,750,000.00).
- 13 8. In addition, Defendant will pay for actual Notice and Administration Costs (not
14 to exceed \$975,000, reasonable Attorneys' Fees and Costs (not to exceed
15 \$927,500.00), and Class Representative Enhancement Payments (not to exceed
16 \$7,500 each for a total of \$15,000).
- 17 9. Plaintiffs and their counsel have also obtained relief beyond the Monetary
18 Component of the Settlement Amount as described in detail in the Settlement
19 Agreement, Motion for Preliminary Approval and the Declaration of
20 Christopher J. Morosoff. In short, prior to the instant Settlement, Defendant
21 had no disclosures of any kind in connection with its "Compare At"
22 advertising. As a result of and as provided in the Settlement, Defendant has
23 agreed, for as long as it utilizes "Compare At" Pricing, to comply with all
24 relevant California and Federal laws impacting such advertising and has
25 specifically agreed to: (1) Post in its California stores a notice, visible to its
26 customers in each of its California locations, disclosures concerning its
27 "Compare at" pricing practices; (2) Provide Customer Notice and Website
28

1 Posting - where it will publish on its e-commerce website disclosures
2 concerning its “Compare at” pricing practices; (3) Hold at least one training
3 session for its existing Buyers for its California locations for purposes of
4 reviewing Burlington Coat Factory’s pricing policies and also train new Buyers
5 for its California locations on its pricing practices; (4) Audit its pricing
6 practices in California to ensure compliance with applicable California and/or
7 Federal law; and, (5) audit and confirm that its retail stores in California and its
8 website comply with the in-store signage and website posting required by the
9 Settlement Agreement.

10 10. I personally consulted with multiple Claims Administrators and received bids
11 prior to selecting KCC LLC (“KCC”). I believe KCC to be a highly
12 experienced and qualified class action claims administration company. (See
13 Declaration of Daniel Burke (“Burke Dec.”) at ¶¶8-12).

14 11. I am unaware of any conflicts of interests or interests antagonistic to members
15 of the Settlement Class.

16 12. During the mediation process, both parties were represented by experienced
17 class counsel and the parties did not discuss or negotiate Class Counsel’s
18 attorneys’ fees and costs, or Plaintiffs’ proposed Enhancement Payments, until
19 *after* all other material terms, including the above-described injunctive relief
20 and the \$27,750,000.00 Settlement Amount were agreed upon. As such, the
21 Settlement is the product of arms-length negotiations.

22 I declare under penalty of perjury that the forgoing is true and correct.
23 Executed this 16th day of September, 2016, at Los Angeles, California.

24 /s/Douglas Caiafa
25 Douglas Caiafa
26

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13 Attorneys for Plaintiff JAMES HORONSY, et al.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 JAMES HOROSNY, et al,
18 Plaintiffs,

19 vs.

20 BURLINGTON COAT FACTORY OF
21 CALIFORNIA, LLC, et al,
22 Defendants.

Case No. 2:15-cv-05005-SJO-MRWx
JCCP 4681

**SUPPLEMENTAL
DECLARATION OF DANIEL
BURKE ON SETTLEMENT
NOTICE PROCEDURES**

23 I, DANIEL BURKE, declare as follows:

24 1. I have personal knowledge of the matters set forth herein, and I
25 believe them to be true and correct.

26 2. I am an Executive Vice President at Kurtzman Carson Consultants
27 LLC (“KCC”). KCC is one of the largest full-service class action notice and claims
28 administrators in the country.

1 3. The purpose of this Declaration is to provide the Court with updated
2 information and details regarding the Notice Plan proposed in this case.

3 **OVERVIEW**

4 4. As stated in my April 28, 2016 declaration, KCC was retained by the
5 parties to, among other tasks: (1) email and mail Notices and Merchandise
6 Certificates to Class Members for whom direct contact information is available; (2)
7 develop and maintain a settlement website that will provide general information
8 about the Settlement and include, among other things, a detailed notice of the
9 Settlement and answers to frequently asked questions; (3) provide supplemental
10 notice to Class Members via published notice in the Los Angeles and San
11 Francisco regional editions of *USA Today*; (4) process opt-outs and objections; (5)
12 provide automated telephone support to Class Members; (6) process Claim Forms;
13 and (7) mail Merchandise Certificates to eligible claimants.

14 5. The Notice Plan we developed utilizes individual notice to known
15 Class Members, supplemented with notice placements in the regional editions of a
16 national daily newspaper. The individual notice effort alone is expected to reach
17 approximately 85.4% of the Class, as explained below. Coverage will be further
18 enhanced by paid notice placements in the Los Angeles and San Francisco regional
19 editions of *USA Today*.

20
21 6. We have worked with the parties to develop the various forms of
22 Notice for Court approval. The Notices have been designed to be noticeable, clear
23 and concise, and written in plain, easily understood language.

24 7. The estimated cost of the settlement administration, inclusive of the
25 Notice Plan, processing of claims, opt-outs and objections, telephone and website
26 support, and certificate disbursements, is approximately \$975,000.
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EXPERIENCE RELEVANT TO THIS CASE

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2 8. KCC is a leading class action administrator that provides
3 comprehensive class action services, including legal notification, email and postal
4 mailing campaign implementation, website design, call center support, class
5 member data management, claims processing, check and voucher disbursements,
6 tax reporting, settlement fund escrow and reporting, and other related services
7 critical to the effective administration of class action settlements. With more than
8 thirty years of industry experience, KCC has developed efficient, secure and cost-
9 effective methods to properly handle the voluminous data and mailings associated
10 with the noticing, claims processing and disbursement requirements of these
11 matters to ensure the orderly and fair treatment of class members and all parties in
12 interest. Since 1984, KCC has administered more than 6,000 matters and
13 distributed settlement payments totaling well over \$20 billion in assets.

14 9. Some consumer case examples in which KCC has been involved
15 include: *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales*
16 *Practices, and Products Liability Litigation*, No. 8:10-ml-02151 (C.D. Cal.);
17 *Edwards v. National Milk Producers Federation*, No. 11-cv-04766 (N.D. Cal.); *In*
18 *re Mattel, Inc., Toy Lead Paint Products Liability Litigation*, No. 2:07-ml-01897
19 (C.D. Cal.); *Pappas v. Naked Juice Co.*, No. 2:11-cv-08276 (C.D. Cal.); *Lavender*
20 *v. Skilled Healthcare Group, Inc.*, No. DR060264 (Cal. Super. Ct.); *Utility*
21 *Consumers' Action Network and Eric Taylor v. Sprint Solutions, Inc.*, No.
22 3:2007cv02231 (S.D. Cal.); *In re Bank of America Credit Protection Marketing*
23 *and Sales Practices Litigation*, No. 11-md-02269 (N.D. Cal.); *In re Aurora Dairy*
24 *Corp. Organic Milk Marketing and Sales Practices Litigation*, No. 08-md-01907
25 (E.D. Mo.); “*American Idol*”/“*Deal or No Deal*” *Litigation—Couch v. Telescope*
26 *Inc./Herbert v. Endemol USA, Inc.*, No. 2:07-cv-03916 (C.D. Cal.); *In re Bayer*
27 *Corp. Combination Aspirin Products Marketing and Sales Practices Litigation*,
28

1 No. 1:09-md-02023 (E.D.N.Y.); *Benware v. Hugo Boss, U.S.A.*, No. 12-cv-01527
2 (S.D. Cal.); *Lerma v. Schiff Nutrition International, Inc.*, No. 3:11-CV-01056 (S.D.
3 Cal.); *Thomas v. Lennox Industries Inc.*, No. 1:13-CV-07747 (N.D. Ill.); *Cobb v.*
4 *BSH Home Appliances Corp.*, No. 8:10-CV-0711 (C.D. Cal.); *Roberts v.*
5 *Electrolux Home Products, Inc.*, No. 8:12-CV-01644 (C.D. Cal.); *Cappalli v. BJ's*
6 *Wholesale Club, Inc.*, No. 1:10-CV-00407 (D. R.I.); *Stroud v. eMachines, Inc.*, No.
7 CJ-2003-968 L (D. Ct. Cleveland Cnty, Okla.); *In re Nissan*
8 *Radiator/Transmission Cooler Litig.*, No. 10-CV-07493 (S.D.N.Y.); and *Robles v.*
9 *Lucky Brand Dungarees, Inc.*, No. 10-CV-04846 (N.D. Cal.).

10 10. KCC's Legal Notification Services department specializes in
11 designing, developing, analyzing and implementing legal notification plans that
12 support due process. These notice campaigns have involved a wide range of
13 industries and substantive issues, including apparel, automotive, computers,
14 consumer packaged goods, communications, entertainment, environment, financial
15 services, food, healthcare, insurance, internet shopping, labor, product liability,
16 railroad, real estate, restaurants, securities, technology, tobacco, and utilities. We
17 have experience designing and implementing notice programs that incorporate
18 media such as newspapers, magazines, trade journals, radio, television, social
19 media and the internet to meet due process requirements. We also develop press
20 releases, social media enhancements, and broadcast public service announcements
21 (PSAs).

22
23 11. In my role, I oversee all department activity as it relates to these
24 services and am familiar with, or have been directly responsible for, large class
25 action notice programs involving all aspects of notice dissemination. Since 2007, I
26 have personally overseen thousands of matters requiring notice, hundreds of which
27 have involved the design and implementation of court-approved publication notice
28 programs.

1 12. Prior to my role at KCC, I served as a Deputy District Attorney in
2 Alameda County for 14 years. I received my B.S. in Marketing from Santa Clara
3 University and J.D. from Golden Gate University. I am also a member of the
4 California State Bar.

5 **NOTICE PLAN SUMMARY**

6 13. We designed the Notice Plan to reach Class Members with noticeable
7 Notices that they will understand and be able to act upon if they so choose. The
8 Notice Plan effectively reaches the Class through an Email and Postcard Notice
9 effort that will be sent directly to all identifiable Class Members. The individual
10 notice effort will be supplemented with notice placements in the Los Angeles and
11 San Francisco regional editions of *USA Today*.

12 ***Case Analysis***

13 14. The following known factors were considered when determining our
14 recommendation: (1) the Class consists of approximately 3.7 million persons who
15 purchased one or more product(s) that were advertised with a “Compare” price and
16 an “Our Low” price or simply a lower price at a Burlington Coat Factory store in
17 California and/or on its e-commerce website and had product(s) shipped to a
18 California address between July 1, 2011, and the date on which Preliminary
19 Approval of this Settlement is granted; (2) email and/or postal addresses exist for
20 approximately 3.55 million Class Members; and (3) Class Members are located
21 throughout the state of California.

22 ***Individual Notice***

23 15. An Email Notice containing a summary of the Settlement in the body
24 of the email, as well as a link to the settlement website will be sent to all available
25 email addresses. It is our understanding that email addresses are available for
26 approximately 401,500 Class Members.
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1 *USA Today*. In addition to the national market, *USA Today* offers advertising in 24
2 print markets. Of these markets, two cover the California area. The Los Angeles
3 regional edition has an average Monday-Thursday circulation of 70,834. The San
4 Francisco regional edition has an average Monday-Thursday circulation of 36,100.
5 Combined, these editions cover the entire state of California.

6 ***In-Store Notice***

7 21. In addition to the email and postal notice and the published notice in
8 the California regional editions of *USA Today*, Defendants will post a Summary
9 Notice in all of its California retail store locations. Although not measureable, the
10 in-store notice will help in spreading word about the settlement as well as provide
11 an opportunity for repeat customers and customers who do not receive the
12 individual notice to learn about their rights and options.

13 ***Case Website***

14 22. An informational website will be established that will allow Class
15 Members the ability to obtain additional information and documents about the
16 Settlement. The website will contain relevant case documents, important dates, and
17 answers to frequently asked questions. The website address will be prominently
18 displayed in all printed notice materials and accessible through an embedded
19 hyperlink in the email notice.
20

21 ***Toll-Free Number***

22 23. A toll-free number will be established to allow a simple way for Class
23 Members to learn more about the Settlement in the form of frequently asked
24 questions and answers. It will also allow Class Members to request to have more
25 information mailed directly to them. The toll-free number will be prominently
26 displayed in all printed notice materials.

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Reach

24. The individual notice effort alone is expected to reach approximately 85.4% of the Class. Coverage will be further enhanced by paid notice placements in the Los Angeles and San Francisco regional editions of *USA Today*.

Notice Design

25. The Notices have been designed to be “noticed” and understood by Class Members. They contain easy-to-read summaries of all of the key information affecting Class Members’ rights and options. All information required by Federal Rule of Civil Procedure 23, as well as the *Manual for Complex Litigation, Fourth*, has been incorporated into the notice documents. Many courts, as well as the FJC, have approved notices that have been written and designed in a similar fashion.

CONCLUSION

26. The Notice Plan will effectively reach Class Members by way of the individual notice effort alone. This effort will be further enhanced by the supplemental media efforts and in-store notice. The Notice Plan has been designed to deliver “noticeable” Notices that will capture Class Members’ attention and provide them with information necessary to understand their rights and options.

27. In my opinion, the Notice Plan is consistent with other effective notice programs. It is the best notice practicable and meets the “desiring to actually inform” due process communications standard set forth in *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950).

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1 28. At the conclusion of the Notice Plan, KCC will provide a final report
2 verifying its adequacy and effective implementation.

3 29. I declare under penalty of perjury under the laws of the United States
4 of America that the foregoing is true and correct.

5 Executed this 19th day of September, 2016, at San Rafael, California.
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11 _____
Daniel Burke

12 © 2016 KCC
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DECLARATION OF GREGORY CAMARATTA

I, Gregory Camaratta, declare as follows:

1. I am presently employed as the Director of Merchandising Information & Operations Support at Burlington Stores, Inc. ("Burlington"). The following facts are true of my own personal knowledge, as to which I could competently testify.

2. Burlington is an off-price retailer that offers good values and low prices compared to other retailers.

3. I am familiar with, have access to, and have reviewed information regarding the products sold in Burlington's stores in California that can be purchased for \$7.50 or less and for \$10.00 or less.


4. There are approximately 2,529,484 SKU's in different stores available for sale in Burlington's retail stores in California for \$7.50 and less that use "Compare At" price tags. There are another approximately 1.5 million products that are offered for sale at \$7.50 or less that do not utilize a "Compare At" price tag. These products are sold in a wide array of departments including: Men's, Women's, Girl's (Juniors), Kid's apparel and clothing, bags and accessories, sports and athletic wear, shoes, bath products, and cosmetics.

5. The following products can currently be purchased from Burlington's retail stores in California for \$7.50 and less: Men's Power Train V-Neck shirt (\$4.99), Women's Peasant Blouses (in multiple colors and styles) (\$6.99), Girl's Knit Denim Shorts (\$5.99), Solid Skinny Jeans - Jr. (\$6.99), Matte Blush Powders (\$3.99), Sweet Violet Tuscan Extra Fine Soap (\$3.99), Swimming Dory and Nemo Graphic T-Shirt (\$4.99), Ellen Tracy 4 Piece Brush Set (\$5.99), D&G Mascaras (\$3.99), Boy's Brush Striped Dress Pants (\$6.99), and Oakland Athletics Backpack (\$6.99). Attached hereto as **Exhibit A** are true and correct copies of photographs of these items.

1 6. There are an additional 1,216,194 SKU's sold in Burlington's retail
2 stores in California with prices between \$7.51 and \$10.00 that use "Compare At"
3 price tags. There are another approximately one million products that are offered
4 for sale at \$10.00 or less that do not utilize a "Compare At" price tags. These
5 products are sold in a wide array of departments including: Men's, Women's,
6 Girl's (Juniors), Kid's apparel and clothing, bags and accessories, sportswear;
7 shoes, bath products, and beauty cosmetics.

8 7. The following products can currently be purchased from Burlington's
9 retail stores in California for between \$7.51 and \$10.00: Crystal Medallion Thong
10 Sandals (\$9.99) and City Color Collection Blush & Bronzing Sticks (\$7.99).
11 Attached hereto as **Exhibit B** are true and correct copies of photographs of these
12 items.

13 I declare under penalty of perjury under the laws of the State of California
14 and the United States of America that the foregoing is true and correct and was
15 executed this 19th day of September 2016, in Burlington, NJ.

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18 Gregory Camaratta

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EXHIBIT A

Men's Power Train V-Neck
Price \$4.99



Women's Peasant Blouses
Price \$6.99



Girl's Knit Denim Shorts
Price: \$5.99



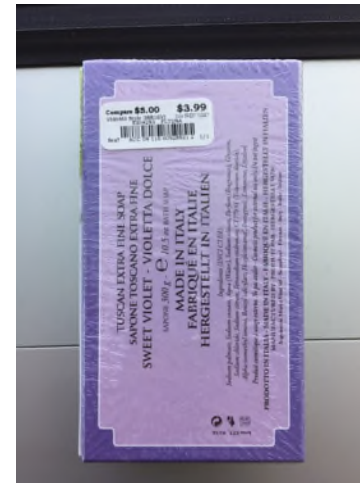
Solid Skinny Jeans - Jr.
Regularly \$9.99
On Clearance for \$6.99



Matte Blush Powders
Price: \$3.99



Sweet Violet Tuscan Extra Fine Soap
Price: \$3.99



Swimming Dory and Nemo Graphic T-Shirt
(2T-4T)
Price \$4.99



Ellen Tracy 4 Piece Brush Set
Price: \$5.99



D&G Mascaras
Price: \$3.99



Boy's Brush Striped Dress Pants
Price: \$6.99



Oakland Athletics Backpack

Price: \$9.99

Sale: \$6.99



EXHIBIT B

Crystal Medallion Thong Sandals
Price \$9.99



City Color Collection Blush & Bronzing
Sticks
Price \$7.99



DECLARATION OF MARISA MILOSZEWSKI

Marisa Miloszewski, declare as follows:

1. I am presently employed as the Director of CRM at Burlington Stores, Inc. ("Burlington"). The following facts are true of my own personal knowledge, as to which I could competently testify.

2. Burlington does not maintain a customer database that tracks consumer purchase activity. The transaction information for California customers collected by Burlington in this third-party database dates from July 3, 2011 to January 28, 2015, which is when Burlington stopped collecting contact information from California customers.

3. The database is used for general marketing purposes, including store location analysis, advertising spend analysis, and consumer shopping habits.

4. Since Burlington no longer collects customer information in California, and because of limitations in its database, it does not have complete customer specific data regarding how frequently the Known Class Members shopped at its retail stores in California and/or cannot identify all of the items that they purchased during the class period. There also may be instances where Burlington has no data on a specific customer. Furthermore, due to operational and infrastructure limitations, human error, legal restrictions, and other database limitations (e.g., the inability to track cash purchases), Burlington does not have the capability to recreate complete customer profiles evidencing all of a specific customer's transactions, evidencing all of the items a specific customer bought and when those items were bought. Burlington also does not have a loyalty or rewards program, and does not have a branded credit card that would enable Burlington to track customer purchases. For these reasons, in California, Burlington is only able to match less than fifteen (15%) percent of transactions to a specific customer.

1 5. Burlington would not know how many purchases each Known Class
2 Member made even if it (Burlington) analyzed every single transaction in California
3 during the class period. For the reasons stated above, doing so would still not
4 provide an accurate record of all of each Class Member's purchases during the class
5 period.

6 6. Another factor complicating Burlington's ability to identify the purchases
7 made by Known and Unknown Class Members is the fact that approximately thirty-
8 five (35%) percent of California customers pay in cash for their purchases which
9 eliminates the possibility of identifying any customer.

10 7. Burlington does not have customer data showing which customers
11 purchased items with "Compare At" tags versus customers who purchased items
12 without "Compare At" tags. To the extent doing so would be possible, the
13 administrative cost of gathering this information is more than prohibitive and, more
14 importantly would be grossly inaccurate.

15 8. After the Court denied the parties' initial motion for preliminary approval
16 of the settlement, my department re- analyzed the transaction data. Burlington once
17 again identified approximately 3.7 million unique California customer records during
18 the class period dating back to July 2011. This time, however, Burlington determined
19 that for 3.55 million customers, it has either a postal address, an email address, or both.
20 Thus, there are only approximately 150k customers for which Burlington has neither a
21 postal nor email address.

22 I declare under penalty of perjury under the laws of the State of California and
23 the United States of America that the foregoing is true and correct and was executed
24 this 19 day of September 2016, in Florence Township, NJ.

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Marisa Miloszewski

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DECLARATION OF ELIZABETH TRIVINO-VELASCO

I, Elizabeth Trivino-Velasco, declare as follows:

1. I am presently employed as Legal Specialist at Burlington Stores, Inc. (“Burlington”). The following facts are true of my own personal knowledge, as to which I could competently testify.

2. In-Store notices describing Burlington’s “Comparable Value” pricing policy will be prominently displayed in the front of each store and on Burlington’s website. The notices are approximately 22”x28” and shall be contained in sign holders. Photographs of the In-Store Signage are attached hereto as **Exhibit A**.

3. The Notices will inform customers of Burlington’s Pricing Policy.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and was executed this 19 day of September 2016, in Burlington, NJ.

Elizabeth Trivino-Velasco
Elizabeth Trivino-Velasco

EXHIBIT A



22" x 28" Three Tier Sign Holder &
22" x 28" Vestibule Snap Frame Option

Store Graphics

Three Tier Sign Holder



- All CA Stores have either a three tier sign holder positioned at the main entrance or a entrance vestibule that has a snap frames available
- Contact CA Store RVP's to ensure all stores have one of these sign holder options
- Create and print 1 permanent 22x28 brand right "Our Pricing Policy" sign for each CA Store to post

Vestibule Snap Frames Sign Holder



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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

JAMES HOROSNY, *et al.*,
Plaintiffs,
vs.
BURLINGTON COAT FACTORY OF
CALIFORNIA, LLC,
Defendants.

Case No. 2:15-cv-05005-SJO-MRWx
CLASS ACTION
**[PROPOSED] ORDER GRANTING
PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND UNOPPOSED
MOTION FOR CERTIFICATION
OF SETTLEMENT CLASS**

Courtroom: 1 – 2nd Floor
Judge: Hon. S. James Otero

1 This matter has come before the Court pursuant to Plaintiffs’ Unopposed
2 Motion for Preliminary Approval of Class Action Settlement and Motion for
3 Certification of Settlement Class (“Motion”).

4 The Court, having considered the Motion, as well as the accompanying
5 memorandum of points and authorities, declarations of Christopher J. Morosoff,
6 Douglas Caiafa, Marisa Miloszewski, Gregory Camaratta, Elizabeth Trivino-Velasco,
7 and Daniel Burke, as well as the Settlement Agreement between Plaintiffs James
8 Horosny and Jennifer Price (“Plaintiffs”) and Defendant Burlington Coat Factory of
9 California, LLC (“Burlington” or “Defendant”) and all of the files, records, and
10 proceedings herein, and it appearing to the Court that upon preliminary examination
11 the Settlement appears fair, reasonable and adequate, and that a hearing should and
12 will be held after Class Notice has been provided to the Settlement Class to confirm
13 that the Settlement is fair, reasonable, and adequate, and to determine whether a
14 Judgment approving the Settlement and an Order dismissing the Action based upon
15 the Settlement should be entered;

16 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

17 **I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT:**

18 The terms of the Amended Settlement Agreement including all exhibits
19 thereto, which is attached as Exhibit A to the Declaration of Christopher J. Morosoff,
20 are preliminarily approved as fair, reasonable and adequate, are sufficient to warrant
21 sending notice to the Class, and are subject to further consideration thereof at the
22 Final Approval Hearing referenced below. This Order incorporates herein the
23 Amended Settlement Agreement, and all of its exhibits and related documents.
24 Unless otherwise provided herein, the terms defined in the Amended Settlement
25 Agreement shall have the same meanings in this Order. The Amended Settlement
26 Agreement was entered into only after extensive arm’s length negotiations by
27 experienced counsel and with the assistance and oversight of mediator Jeffrey Krivis.
28 The Court finds that the Settlement is sufficiently within the range of reasonableness

1 so that notice of the Settlement should be given as provided in the Amended
2 Settlement Agreement and this Order. The Court further finds that the Amended
3 Settlement Agreement does not improperly grant preferential treatment to either Class
4 Representative, and it has no obvious deficiencies. In making these determinations,
5 the Court has considered the current posture of this litigation and the risks and
6 benefits to the Parties involved in both settlement of these claims and continuation of
7 the Litigation.

8 **II. CERTIFICATION OF SETTLEMENT CLASS:**

9 The Settlement is contingent on the Court certifying a Settlement Class for
10 settlement purposes only. The Court finds that all of the requirements of Rules 23(a)
11 are satisfied, and that the requirements of Rule 23(b)(3) are also met here.

12 Specifically, the Court finds that: (a) the number of Settlement Class Members
13 is so numerous that their joinder in one lawsuit would be impractical; (b) there are
14 questions of law or fact common to the Settlement Class; (c) the claims of the Class
15 Representatives are typical of the claims of the Settlement Class Members they seek
16 to represent; (d) the Class Representatives and Class Counsel – the Law Office of
17 Christopher J. Morosoff and Douglas Caiafa, APLC – have fairly and adequately
18 represented the interests of the Settlement Class; and (e) the questions of law or fact
19 common to the Settlement Class predominate over any questions affecting individual
20 Settlement Class Members.

21 Accordingly, the Court hereby certifies the following Settlement Class:

22 All persons who purchased one or more product(s) that were advertised
23 with a “Compare at” price and an “Our Low” price or simply a lower
24 price at a Burlington store in California and/or on its e-commerce website
25 and had product(s) shipped to a California address between July 1, 2011,
26 and the date Preliminary Approval of this Settlement is granted
27 [estimated to be October 31, 2016].
28

1 Excluded from the Class are: (a) officers and directors of Burlington and
2 its corporate parents, subsidiaries, affiliates, or any entity in which
3 Burlington has a controlling interest, and the legal representatives,
4 successors, or assignees of any such excluded persons or entities; and (b)
5 the Court.

6 The Court hereby affirms appointment of the Law Office of Christopher
7 J. Morosoff and Douglas Caiafa, APLC, as Class Counsel for the Settlement
8 Class.

9 The Court hereby affirms appointment of James Horosny and Jennifer Price as
10 Class Representatives for the Settlement Class.

11 If the Settlement is not finally approved by the Court, or for any reason the
12 Final Order and Final Judgment are not entered as contemplated in the Amended
13 Settlement Agreement, or the Settlement is terminated pursuant to its terms for any
14 reason or the Settlement Effective Date does not occur for any reason, then:

- 15 1. All orders and findings entered in connection with the Amended Settlement
16 Agreement shall become null and void and have no force or effect whatsoever,
17 shall not be used or referred to for any purposes whatsoever, and shall not be
18 admissible or discoverable in this or any other proceeding;
- 19 2. The certification of the Settlement Class pursuant to this Order shall be vacated
20 automatically and the Action shall resume with the same procedural posture it
21 had prior to entry of this Order;
- 22 3. All of the Court's prior Orders, subject to this Order, remain in force and
23 effect.

24 **III. NOTICE TO CLASS MEMBERS:**

25 The Court has considered the form and manner of providing Notice as
26 contemplated in the Amended Settlement Agreement and proposed in the Motion and
27 finds that the Notice and methodology as described in the Amended Settlement
28 Agreement and in the Declaration of Daniel Burke: (a) meet the requirements of due

1 process and Rules 23(c) and (e) of the Federal Rules of Civil Procedure; (b)
2 constitutes the best notice practicable under the circumstances to all persons entitled
3 to notice; and (c) satisfies the Constitutional requirements regarding notice. In
4 addition, the forms of notice attached as Exhibits A, B, C, D, E, F and G to the
5 Amended Settlement Agreement (a) apprise Settlement Class Members of the
6 pendency of the Action, the terms of the proposed settlement, and their rights and
7 deadlines under the Settlement; (b) are written in simple terminology; and (c) are
8 readily understandable by Settlement Class Members.

9 The Court approves, as to form and content, the Email Notice, the Merchandise
10 Certificate and Post-Card Notice, the Summary In-Store Notice, the Class Notice and
11 the Summary Publication Notice. The Court further approves the establishment of the
12 Settlement Website as provided in the Amended Settlement Agreement. The website
13 shall provide Class Members with access to important Settlement documents,
14 including the full Class Notice, Claim Form, and Opt-Out Request Form, as well as
15 instructions on how to submit a Claim Form.

16 The Court hereby orders that the Merchandise Certificates and Post-Card
17 Notice be sent to Settlement Class Members no later than thirty (30) days following
18 the date of this Order, and the Summary Publication Notice be published in the
19 manner described in the Declaration of Daniel Burke no later than thirty (30) days
20 following the date of this Order. All reasonable effort shall be made to accomplish
21 the notice process as expeditiously as possible.

22 The Court appoints KCC LLC as the Claims Administrator. Responsibilities of
23 the Claims Administrator are found in the Amended Settlement Agreement.

24 **IV. REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS:**

25 Any Settlement Class Member who wishes to exclude himself or herself from
26 this Settlement and from the release of claims pursuant to the Settlement shall submit
27 a Request to Opt Out. For a Request to Opt Out to be accepted, it must be timely and
28 valid. To be timely, it must be postmarked no later than ninety (90) days after the date

1 notice is disseminated. To be valid, the Request to Opt Out must be signed and dated.
2 Opt-Out Request Forms shall be available for download from the Settlement Website
3 and, upon request by a Settlement Class Member, made available by the Claims
4 Administrator through email or United States First Class Mail.

5 Settlement Class Members who timely and validly exclude themselves from
6 the Settlement Class shall not be bound by the Settlement, or the Final Order and
7 Final Judgment. If a Settlement Class Member files a Request to Opt Out, he/she may
8 not assert an objection to the Settlement. The Claims Administrator shall provide
9 copies of any Requests to Opt Out to Class Counsel and Defendant's Counsel as
10 provided in the Amended Settlement Agreement.

11 Any Settlement Class Member who does not properly and timely exclude
12 himself/herself from the Settlement Class shall remain a Settlement Class Member
13 and shall be bound by all the terms and provisions of the Amended Settlement
14 Agreement and the Final Order and Final Judgment, whether or not such Class
15 Member objects to the Settlement or submits a Claim Form.

16 **V. OBJECTIONS:**

17 A Settlement Class Member who wishes to object to the Settlement must notify
18 the District Court of his or her objection, in writing, no later than ninety (90) days of
19 notice being disseminated. To be considered valid, an objection must be in writing,
20 must include the objector's name and address, and must include the basis for the
21 objection (including why the objector believes the Settlement is not in the best
22 interests of the Settlement Class), along with any and all documents that support the
23 objection. The objection must also indicate whether or not the objector intends to
24 appear at the hearing on the motion for final approval of the Settlement. The
25 objection must be filed with the Court on or before the deadline. Objections that fail
26 to satisfy these requirements or to satisfy any other requirements found in the Class
27 Notice shall not be considered by the Court.

1 Settlement Class Members who do not file a timely written objection in
2 accordance with the procedures set forth in the Amended Settlement Agreement and
3 the Notice shall be deemed to have waived any objections to the Settlement and shall
4 forever be foreclosed from making any objection (whether by appeal or otherwise) to
5 the Settlement, or any aspect of the Settlement, including, without limitation, the
6 fairness, reasonableness, or adequacy of the Settlement, the form and manner of
7 Notice, or any award of Attorneys' Fees and Costs, reimbursement of costs and
8 expenses and/or any Class Representative Payment.

9 **VI. FINAL APPROVAL HEARING:**

10 The Final Approval Hearing will be held on April 17, 2017, at 10:00 a.m.
11 (Pacific Standard Time) before this Court, at the United States District Court, Central
12 District of California, Courtroom 1 – 2nd Floor, 312 North Spring Street, Los
13 Angeles, California 90012, to consider, *inter alia*, the following: (a) whether the
14 Settlement should be finally approved as fair, reasonable and adequate; (b) Class
15 Counsel's application for attorneys' fees and expenses; and (d) Plaintiffs' request for
16 Class Representative Payments.

17 The date and time of the Fairness Hearing shall be subject to adjournment by
18 the Court without further notice to the Settlement Class Members other than that
19 which may be posted at the Court, on the Court's website, and/or on the Settlement
20 Website.

21 **VII. STAY OF LITIGATION:**

22 Pending the Final Approval Hearing and the Court's decision whether to
23 finally approve the Settlement, all proceedings in the Action, other than proceedings
24 necessary to carry out or enforce the Settlement Agreement or this Order, are stayed
25 and suspended, until further order from this Court.

26 **VIII. OTHER PROVISIONS:**

27 The Parties are authorized to take all necessary and appropriate steps to
28 establish the means necessary to implement the Amended Settlement Agreement.

1 The deadlines set forth in this Order, including, but not limited to, the Final
2 Approval Hearing, may be extended by Order of the Court, for good cause shown,
3 without further notice to the Settlement Class Members – except that notice of any
4 such extensions shall be included on the Settlement Website. Settlement Class
5 Members should check the Settlement Website regularly for updates and further
6 details regarding extensions of these deadlines.

7 Class Counsel and Defendant’s Counsel are hereby authorized to use all
8 reasonable procedures in connection with approval and administration of the
9 Settlement that are not materially inconsistent with this Order or the Amended
10 Settlement Agreement, including making, without further approval of the Court,
11 minor changes to the Amended Settlement Agreement, to the form or content of the
12 Class Notice or to any other exhibits that the parties jointly agree are reasonable or
13 necessary.

14 This Court shall maintain continuing jurisdiction over these settlement
15 proceedings to assure the effectuation thereof for the benefit of the Settlement Class.
16

17 **IT IS SO ORDERED**

18
19
20 Dated: _____, 2016

21 HON. S. JAMES OTERO
22 United States District Judge
23
24
25
26
27
28