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FILED
Clerk of the Superior Court
FEB 20 2018
By: A. Wagoner
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

MATT MCDUFFEE, on behalf of himself
and others similarly situated,

Plaintiff,

v.

SPORTS WAREHOUSE, a California
corporation, and DOES 1 through 10,
inclusive,

Defendant.

Case No. 37-2017-00001781-CU-BT-NC

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

PRELIMINARY APPROVAL HEARING
Hearing Date: February 16, 2018
Time: 1:30 p.m.
Dept.: N-29

1 Plaintiff Matt McDuffee (“Plaintiff,” “Class Representative” or “McDuffee”) individually and
2 on behalf of the Settlement Class, and Defendant Sports Warehouse (“Defendant” or “Sports
3 Warehouse”) entered into a class action settlement, the terms and conditions of which are set forth in
4 the parties’ Stipulation For Class Action Settlement (“Settlement Agreement”), which is attached as
5 Exhibit “1” to the Declaration of Anthony J. Orshansky filed with this Court. Unless otherwise
6 provided in this Order, all capitalized terms shall have the same meaning as set forth in the Settlement
7 Agreement.

8 A preliminary approval hearing was held before this Court on February 16, 2018, for purposes
9 of, among other things, determining whether the proposed Settlement terms are within the range of
10 approval at the final approval hearing. The Court, having reviewed the papers and documents
11 presented, having heard the statements of counsel, and having considered the matter, hereby makes
12 the following findings and rulings.

13 **IT IS HEREBY ORDERED:**

14 1. The Court GRANTS preliminary approval of the terms and conditions contained in the
15 Settlement Agreement. The Court finds that the terms of the Settlement Agreement are within the
16 range of possible approval at the final approval hearing.

17 2. The Court FINDS that the following class should be preliminarily certified for
18 settlement purposes only: “All citizens of the State of California, who (1) purchased merchandise from
19 Sports Warehouse that was advertised with a picture comparison, (2) who was a citizen of the State of
20 California at the time of the purchase, and (3) made his or her purchase between January 17, 2013 and
21 October 23, 2017.” (“Settlement Class”) Excluded from the Settlement Class are Defendant, as well
22 as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as
23 all past and present employees, officers and directors of Defendant.

24 3. The Court APPOINTS as Class Counsel, CounselOne, PC.

25 4. The Court APPROVES as Claims Administrator, CPT Group, Inc., to administer the
26 claims process as set forth in the Settlement Agreement.

27 5. The Court APPROVES as Class Representative, Matt McDuffee.

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1 6. The Court APPROVES the notice program set forth in the Settlement Agreement,
2 including the E-Mail Notice that outlines the proposed Settlement terms shall be sent by e-mail to each
3 Settlement Class Member for whom Defendant has an e-mail address, along with the Website Notice,
4 which shall be posted on a settlement website hosted by the Claims Administrator. An abbreviated
5 notice, Postcard Notice, will also be sent by postal mail to the Settlement Class Members for whom
6 Defendant does not have an e-mail address and/or there are any e-mail bounce-back that are
7 undeliverable. The Court finds that the notice program described in the Settlement Agreement
8 constitutes the best notice practicable under the circumstances and is in full compliance with the law
9 of the State of California, including without limitation, California Code of Civil Procedure section
10 382, California Rules of Court 3.766 and 3.769, and the requirements of due process. The Court further
11 finds that the notice program fully and accurately informs Settlement Class Members of all material
12 elements of the Settlement Agreement, of each Settlement Class Member's right to submit a claim, of
13 each Settlement Class Member's right to be excluded from the Settlement, and of each Settlement
14 Class Member's right to object to the Settlement. The notice program shall be implemented on the
15 timelines set forth in the Settlement Agreement.

16 7. The Court APPROVES the proposed procedure set forth in the Settlement Agreement
17 for Settlement Class Members to submit a Claim Form.

18 8. The Court APPROVES the proposed procedure set forth in the Settlement Agreement
19 for Settlement Class Members to submit a request for exclusion from the Settlement. Any Settlement
20 Class Member requesting exclusion from the Settlement must mail a signed written request for
21 exclusion to the Claims Administrator so that it is postmarked no later than 60 calendar days from the
22 date that Notice is originally distributed. Any Settlement Class Member who submits a valid and
23 timely request for exclusion shall no longer be a member of the Settlement Class, shall be barred from
24 participating in this Settlement and shall receive no benefit from this Settlement.

25 9. The Court further ORDERS that, as provided in the Settlement Agreement, each
26 Settlement Class Member shall be given a full opportunity to object to the Settlement, including the
27 plan of distribution and the request for attorneys' fees, costs, and Plaintiff's enhancement award. As
28 explained in the Settlement Agreement, any Settlement Class Member seeking to object to the

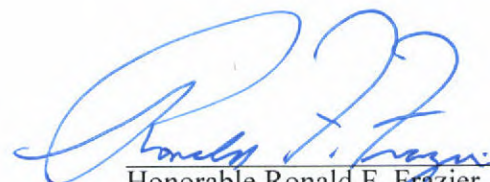
1 Settlement shall file their objection with the Court and shall serve that objection on Class Counsel and
2 Defense Counsel no later than 60 calendar days from the date that Notice is originally distributed.
3 Should any party wish to file a written response to any written objection submitted by a Settlement
4 Class Member, that response shall be filed within 7 calendar days of the final approval hearing.
5 However, the failure to file a written response shall not bar any party from presenting oral argument
6 or evidence concerning any objection at the final approval. Any Settlement Class Member who fails
7 to file and serve a timely written objection shall be foreclosed from objecting to the Settlement unless
8 otherwise ordered by the Court.

9 10. All proceedings in this Action are stayed until further order of the Court, except as may
10 be necessary to implement the Settlement or comply with the terms of the Settlement Agreement or
11 this Order.

12 11. The final approval hearing is scheduled for 6/15, 2018 at
13 1:30 p. m. in Department 29 of this Court.

14
15 **IT IS SO ORDERED.**

16 Dated: 2/20/18, 2018



Honorable Ronald F. Frazier
RONALD F. FRAZIER