

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 **DOMINIQUE MORRISON,**

5 Plaintiff,

6 vs.

7 **ROSS STORES, INC., ET AL.,**

8 Defendants.
9

CASE NO. 4:18-cv-2671-YGR

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND SETTING DEADLINES
FOR NOTICE, OBJECTION, EXCLUSION, AND
FINAL FAIRNESS HEARING**

Dkt. No. 98

10 On July 13, 2021, the Court held a hearing on the motion of plaintiff Dominique Morrison
11 for conditional certification of a settlement class in this action; preliminary approval of the parties'
12 proposed settlement; approval of the Class Notice Packet; appointing Class Representatives, Class
13 Counsel and the proposed Settlement Administrator; and setting a date for the hearing on final
14 approval of the settlement. (Dkt. No. 98.)

15 Having considered the motion briefing, the arguments of counsel, the relevant law, the
16 terms of the settlement agreement and the class notice, as well as the supplemental briefing and
17 record in this case, and based on the reasons and terms set forth herein, the Court **GRANTS** the
18 parties' motion for preliminary approval of class action settlement.

19 **I. BACKGROUND**

20 Plaintiffs filed the putative class action complaint on May 7, 2018 against defendant Ross
21 Stores, Inc. ("Ross"), AQ Textiles, LLC ("AQ"), and Creative Textile Mills Private Limited
22 ("Creative") alleging that they engaged in deceptive acts and unconscionable business practices
23 designed to deceive and mislead consumers into believing that defendants' bedding and linen
24 products had higher thread counts than they really have. Plaintiff's amended complaint alleges
25 claims for the following against Ross: (1) violation of the Magnusson Moss Warranty Act, 15 U.S.C.
26 §§ 2301, *et seq.* ("MMWA"); (2) fraud; (3) violations of the California Consumer Legal Remedies
27 Act, Civil Code § 1750 *et seq.* ("CLRA"); (4) unlawful business practices under California Business
28 and Professions Code § 17200 *et seq.* ("UCL"); (5) unfair business practices under California

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1 Business and Professions Code § 17200, *et seq.*; (6) fraudulent business practices under California
2 Business and Professions Code, § 17200, *et seq.*; (7) misleading and deceptive advertising under
3 California Business and Professions Code, § 17500, *et seq.*; (8) breach of express warranty; (9)
4 breach of warranty of merchantability; (10) negligent misrepresentation; (11) violation of the
5 Missouri Merchandising Practices Act; and (12) unjust enrichment

6 The parties reached a settlement prior to class certification with the assistance of an
7 experienced mediator, Judge Elizabeth Laporte (ret.).

8 **II. KEY TERMS OF THE SETTLEMENT AGREEMENT**

9 **A. Injunctive Relief for the Class**

10 For a period of up to twelve years, but no less than seven years, Ross is required to ensure
11 that the thread count of the AQ products it receives and intends to sell conform to industry standards
12 for the testing and verification of thread count, so that the actual thread count for such products are
13 consistent with the representations regarding thread count listed on the labeling. Accordingly, Ross
14 has agreed to do the following:

- 15 a. Ross will require AQ to certify in writing on an annual basis beginning on January 1st
16 after the Effective Date that the description of the thread count on its packaging for
17 Products accurately reflects the actual thread count as determined by ASTM 3775, as
18 officially interpreted and amended from time to time, or any successor industry standard
19 for textile thread count for Products sold to Ross. Ross shall not be required to obtain a
20 certification from AQ if it has not purchased any Products within the previous year and
21 has not issued any purchase orders for future purchases of Products; provided, however,
22 that Ross shall require AQ to provide a certification before issuing any subsequent
23 purchase orders for Products to AQ.
- 24 b. Require AQ to report in writing on an annual basis, beginning on January 1st after the
25 Effective Date, as to whether there are any known investigations by any outside entity or
26 pending claims or lawsuits regarding AQ's representations concerning thread count on
27 the Products, any remedial actions taken regarding these claims or investigations, and if
28 no remedial actions were taken, the reasons for which remedial actions were not taken.

1 c. Commencing no later than the Effective Date, Ross will require AQ to supply a passing
2 test report for each new style of Products showing compliance with ASTM 3775, as
3 officially interpreted and amended from time to time, or any successor industry standard
4 for textile thread count, before taking possession of such style. Only one test report is
5 required if the Product differs only by size or color.

6 The aforementioned injunctive relief will remain in effect for twelve years following final
7 approval of this settlement, with such terms automatically terminating after twelve years. Ross
8 may seek early termination of the injunctive relief terms no earlier than seven years, provided that
9 there have been no violations of the required injunctive relief terms within the preceding three
10 years.

11 **B. Claims Administrator**

12 Under the terms of the Settlement Agreement, Ross will retain CPT Group as Settlement
13 Administrator to assist with the administration and notice of the Settlement and will pay for all of the
14 costs and notice and the claims administration.

15 **C. Attorneys' Fees and Costs**

16 Under the Settlement Agreement, plaintiff's counsel agreed to seek up to \$750,000 in
17 attorneys' fees plus reimbursement of Class Counsel's costs and expenses. The parties also agreed
18 that Ross shall pay Ms. Morrison up to \$5,000 as an incentive award in exchange for a general
19 release of all claims against Ross.

20 **III. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

21 **A. Legal Standard**

22 A court may approve a proposed class action settlement of a class proposed to be certified
23 only "after a hearing and on finding that it is fair, reasonable, and adequate," and that it meets the
24 requirements for class certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement,
25 a court need not address whether the settlement is ideal or the best outcome, but only whether the
26 settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class.
27 *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998), *overruled on other grounds by*
28 *Dukes*, 564 U.S. at 131. The *Hanlon* court identified the following factors as relevant to assessing a

1 settlement proposal: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and
 2 likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial;
 3 (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the
 4 proceeding; (6) the experience and views of counsel; (7) the presence of a government participant;
 5 and (8) the reaction of class members to the proposed settlement. *Id.* at 1026 (citation omitted); *see*
 6 *also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

7 Settlements that occur before formal class certification also “require a higher standard of
 8 fairness.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such
 9 settlements, in addition to considering the above factors, a court also must ensure that “the
 10 settlement is not the product of collusion among the negotiating parties.” *In re Bluetooth Headset*
 11 *Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

12 **B. Class Definition and Basis for Conditional Certification**

13 The Settlement Agreement, attached hereto as **Exhibit A**, defines the class as:

14 All persons in the United States who purchased the Products for
 15 personal use from a Ross store on or after May 7, 2014, to the
 16 Objection/Exclusion Deadlines. Excluded from the Settlement Class
 17 are: (a) Ross’s employees, officers, directors, or attorneys; (b) person
 18 who timely and properly excluded themselves from the Settlement
 Class as provided herein, and (c) the Court, the Court’s immediate
 family, and Court staff.

19 (“the Settlement Class”). The proposed class definition is nearly identical to the class definition
 20 alleged in the complaint, with the major differences being defining the exact products at issue and
 21 the insertion of the time frame of May 7, 2014 until the objection deadline.

22 The Court finds that, for purposes of settlement, plaintiff has satisfied the requirements of
 23 Rule 23(a) as well as the requirements for certification under one or more subsections of Rule 23(b).
 24 With respect to numerosity under Rule 23(a)(1), the Settlement Class includes 800,000 members,
 25 making it so numerous that joinder of all members is impracticable.

26 Rule 23(a)(2) commonality requires “questions of fact or law common to the class,” though
 27 all questions of fact and law need not be in common. *Hanlon*, 150 F.3d at 1026. The focus of this
 28 action—whether Ross known, or should have known, that the thread counts on its AQ-supplied

1 sheets were inflated beyond the ASTM standard—is common to all class members.

2 Rule 23(a)(3) requires that the plaintiff show that “the claims or defenses of the
3 representative parties are typical of the claims or defenses of the class.” Plaintiff’s and members of
4 the Settlement Class claims all stem from the same alleged conduct, *i.e.* thread count inflation and
5 misrepresentation on the Products’ packaging, making plaintiff’s claims typical of class members.

6 With respect to Rule 23(a)(4), the Court finds the representative parties and class counsel
7 have fairly and adequately represented the interests of the Class. No conflicts of interest appear as
8 between plaintiff and the members of the Settlement Class. Class Counsel have demonstrated that
9 they are qualified and have experience with prosecuting class actions of this kind and therefore
10 adequate to represent the Settlement Class as well.

11 The Settlement Class further satisfies Rule 23(b)(3) in that common issues predominate and
12 “a class action is superior to other available methods for fairly and efficiently adjudicating” the
13 claims here.

14 Based on the foregoing, the proposed class is conditionally certified pursuant to Rule
15 23(c).

16 **C. Settlement Agreement Appears Fair and Reasonable**

17 The settlement agreement, a copy of which is attached hereto as **Exhibit A**, is granted
18 preliminary approval pursuant to Rule 23(e)(2). Based upon the information before the Court, the
19 Settlement Agreement falls within the range of possible approval as fair, adequate and reasonable,
20 and there is a sufficient basis for notifying the Class and for setting a Fairness and Final Approval
21 Hearing.

22 As to the *Hanlon* factors, the Court finds that they indicate the settlement here is fair and
23 reasonable. Absent the settlement, plaintiff would have been required to show that Ross did more
24 than just sell sheets that were deceptively labeled by AQ, which would have been difficult for
25 plaintiff to do. As reflected in the relevant deposition testimony of Ross employees, Ross did not
26 design the sheets, nor did Ross specify their thread count, draft the language on the product
27 labeling, or own or license the brand name “Grande Estate.” While Ross approved the aesthetic
28 design of the label insert for the sheets, Ross did not make, approve, or otherwise adopt any

1 representations about the sheets. Nor did Ross advertise the thread count of the Grande Estate
2 sheets to consumers. Thus, plaintiff would have faced challenges establishing liability against
3 Ross.

4 Importantly, although the class members are releasing their damages claims as to Ross, the
5 release does not cover the claims that can be brought against AQ or Creative, the distributor and
6 manufacturer, respectively, of the sheets. Given the challenges in establishing liability against
7 Ross, and the fact that class members can still seek damages against AQ and Creative, the
8 settlement for injunctive relief only provides value to the class members, many of which are repeat
9 customers.

10 Further, proceeding to trial would have been costly; recovery was not guaranteed; and
11 there was the possibility of protracted appeals.

12 The Settlement Agreement appears to have been the product of arm's length and informed
13 negotiations. The settlement occurred only after extensive litigation including: the exchange of
14 thousands of pages of documents in response to discovery requests, many depositions, including
15 that of plaintiff's and Ross's 30(b)(6) designee, service of several subpoenas on AQ and other
16 third parties, and extensive briefing on motions seeking dismissal including a preview of Ross's
17 summary judgment motion based on the innocent retailer defense. Thus, the parties have vetted
18 their claims and know the strengths and weaknesses of their case.

19 In addition, the three mediation sessions conducted by the Honorable Jay C. Gandhi and
20 the Honorable Hon. Elizabeth D. Laporte (twice), demonstrates that the settlement reached by the
21 parties was a result of serious, informed, non-collusive, and arms-length negotiation. Counsel for
22 both parties are highly experienced. Accordingly, the Court finds that the record does not indicate
23 collusion or self-dealing. *See In re Bluetooth*, 654 F.3d at 946-47.

24 The relief provided for the Class appears to be adequate, taking into account:

- 25 (i) the costs, risks, and delay of trial and appeal;
- 26 (ii) the effectiveness of any proposed method of distributing relief to the class;
- 27 (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
- 28 (iv) any agreements required to be identified under Rule 23(e)(3).

1 Moreover, the Settlement Agreement appears to treat Class members equitably relative to
2 each other.

3 Based on the foregoing, the Court conditionally certifies the class and provisionally
4 appoints Audet & Partners, LLP, Cueno, Gilbert & LaDuca, LLP, Levin, Sedran & Berman, and
5 Steckler Wayne Cochran Cherry PLLC, as Class Counsel and plaintiff Dominique Morrison as
6 class representative(s).

7 **IV. PLAN OF NOTICE AND ADMINISTRATION**

8 **A. Notice Plan**

9 A court must “direct notice [of a proposed class settlement] in a reasonable manner to all
10 class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “The class must be
11 notified of a proposed settlement in a manner that does not systematically leave any group without
12 notice.” *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982). Adequate
13 notice requires: (i) the best class notice practicable; (ii) reasonably calculated, under the
14 circumstances, to apprise the Class members of the proposed settlement and of their right to object
15 or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due,
16 adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable
17 requirements of due process and any other applicable requirements under federal law. *Phillips*
18 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Due process requires “notice reasonably
19 calculated, under all the circumstances, to apprise interested parties of the pendency of the action
20 and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr.*
21 *Co.*, 339 U.S. 306, 314 (1950).

22 The parties’ proposed notice plan appears to be constitutionally sound in that plaintiff has
23 made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under
24 the circumstances, to apprise the Class members of the proposed settlement and of their right to
25 object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and
26 constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv)
27 meet all applicable requirements of due process and any other applicable requirements under
28 federal law.

1 The Court approves form of the [long-form] Notice of Proposed Class Action Settlement
2 attached as **Exhibit B** to this Order. The Court also approves the form of the Short-Form Notice
3 attached hereto as **Exhibit C**. The Settlement Administrator will have the long-form class notice
4 translated into Spanish, as well as the settlement website. Furthermore, the press release will
5 include a subheader in Spanish informing class members that there are Spanish translations of the
6 relevant notice documents. Taken together these notices are sufficient to inform Class members of
7 the terms of the Settlement Agreement, their rights under the Settlement Agreement, their rights to
8 object to or comment on the Settlement Agreement, their right to receive a payment or opt out of
9 the Settlement Agreement, the process for doing so, and the date and location of the Fairness and
10 Final Approval hearing. The forms of plan of notice are therefore **APPROVED**.

11 **B. Settlement Administrator**

12 CPT Group, Inc. is appointed to act as the Settlement Administrator, pursuant to the terms
13 set forth in the Settlement Agreement.

14 The Settlement Administrator shall distribute the Class Notice according to the notice plan
15 described in the Settlement Agreement and substantially in the form approved herein, no later than
16 September 24, 2021 (“Notice Date”). Proof of distribution of the Class Notice shall be filed by the
17 parties in conjunction with the motion for final approval.

18 Ross is directed to provide to the Settlement Administrator the Class members’ contact
19 data as specified by the Settlement Agreement no later than September 10, 2021.

20 **D. Exclusion/Opt-Out**

21 Any Class Member shall have the right to be excluded from the Class by mailing a request
22 for exclusion to the Settlement Administrator no later than November 29, 2021. Requests for
23 exclusion must be in writing and set forth the name and address of the person [or entity] who
24 wishes to be excluded, [as well as all trade names or business names and addresses used by such
25 person or entity,] and must be signed by the class member seeking exclusion. No later than
26 January 11, 2022, Class Counsel shall file with the Court a list of all persons or entities who have
27 timely requested exclusion from the Class as provided in the Settlement Agreement.
28

1 Any Class Member who does not request exclusion from the settlement class as provided
2 above shall be bound by the terms and provisions of the Settlement Agreement upon its final
3 approval, including but not limited to the releases, waivers, and covenants described in the
4 Settlement Agreement, whether or not such person or entity objected to the Settlement Agreement
5 and whether or not such person or entity makes a claim upon the settlement funds.

6 **E. Objections**

7 Any Class Member who has not submitted a timely request for exclusion from the
8 Settlement Agreement shall have the right to object to (1) the Settlement Agreement, (2) and/or
9 Class Counsel’s motion for attorneys’ fees and Class Representative Awards by mailing to the
10 Settlement Administrator a written objection and stating whether they intend to appear at the
11 Fairness Hearing, as set forth in the Class Notice, no later than November 29, 2021. Failure to
12 submit a timely written objection will preclude consideration of the Class Member’s later
13 objection at the time of the Fairness Hearing.

14 **F. Attorneys’ Fees and Class Representative Awards**

15 Plaintiff(s) and their counsel shall file their motion for attorneys’ fees and for Class
16 Representative awards no later than October 18, 2021. Each settlement class member shall have
17 the right to object to the motion for attorneys’ fees and Class Representative awards by filing a
18 written objection with the Court no later than November 15, 2021.

19 Plaintiffs shall file a reply brief responding to any timely objection no later than November
20 29, 2021

21 **G. Fairness and Final Approval Hearing**

22 All briefs, memoranda, and papers in support of final approval of the settlement shall be
23 filed no later than December 17, 2021.

24 The Court will conduct a Fairness and Final Approval Hearing on Tuesday, January 25,
25 2022, at 2:00 p.m., to determine whether the Settlement Agreement should be granted final
26 approval as fair, reasonable, and adequate as to the Class. The Court will hear all evidence and
27 argument necessary to evaluate the Settlement Agreement and will consider Class Counsel’s
28 motion for attorneys’ fees and for Class Representative awards.

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1 Class members may appear, by counsel or on their own behalf, to be heard in support of or
2 opposition to the Settlement Agreement and Class Counsel’s Motion for attorneys’ fees and Class
3 Representative awards by filing a Notice of Intention to Appear no later than December 24, 2021.

4 The Court reserves the right to continue the date of the final approval hearing without
5 further notice to Class members.

6 The Court retains jurisdiction to consider all further applications arising out of or in
7 connection with the Settlement.

8 **H. Post-Distribution Accounting**

9 If final approval is granted, the parties will be required to file a Post-Distribution
10 Accounting in accordance with this District’s Procedural Guidance for Class Action Settlements
11 and at a date set by the Court at the time of the final approval hearing. Counsel should prepare
12 accordingly.

Summary of Key Dates	
Event	Date
Class data to be provided to Settlement Administrator	September 10, 2021
Class Notice to be sent by	September 24, 2021
Class Counsel to file their motion for fees and costs and Class Representative awards	October 18, 2021
Postmark deadline to submit objection or request for exclusion	November 29, 2021
Motion for Final Approval to be filed by	December 17, 2021
Class counsel and settlement administrator to submit supplemental statements regarding status of notice program, objections, opt-outs	January 11, 2022
Fairness and Final Approval Hearing	January 25, 2022
	NOTE: Subject to change without further notice to the Class.

23 **IT IS SO ORDERED.**

24 This terminates Docket No. 98.

25 Dated: August 27, 2021

26 
27 YVONNE GONZALEZ ROGERS
28 UNITED STATES DISTRICT COURT JUDGE