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SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

CARMEN ANDREWS,
on behalf of herself
and all others similarly situated, Et Al.

Plaintiffs,

v.

THE GAP, INC., Et Al.,

Defendants.

Case No. CGC-18-567237

~~[PROPOSED]~~ ^(rbu)
**AMENDED ORDER
RE: CLASS ACTION
SETTLEMENT AND
PROVISIONAL CLASS
CERTIFICATION**

[Hon. Richard B. Ulmer, Jr.—Dept. 302]

[Amending Oder of May 10, 2019]

ORDER

On May 10, 2019, this Court heard Plaintiffs Carmen Andrews, Laurie Munning, Michael Pallagrosi and Caron Coladonato's ("Plaintiffs") motion for preliminary approval of class settlement and provisional class certification under California Rule of Court 3.769(c) and (d).

FILED
Superior Court of California
County of San Francisco
JUL - 9 2019
CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

1 This Court reviewed the motion, including the Settlement Agreement and Release (the
2 "Agreement" or "Settlement"). In addition, at a March 29, 2019, hearing, the Court requested
3 further information on several topics. Having received and considered Plaintiffs' supplemental
4 submissions on these topics (summarized below), and based on this review and the findings
5 below, the Court finds good cause to GRANT the motion.

6 On or about June 13, 2019, the Parties filed a Stipulation And Proposed Order to amend
7 the Order Re: Class Action Settlement And Provisional Class Certification (which was entered on
8 May 10, 2019) to continue the date of the Fairness Hearing and to allow more time for the Claims
9 Administrator, Angeion, to serve notice of the settlement upon the Class.

10 **FINDINGS:**

11 1. Unless otherwise specified, defined terms in this Preliminary Approval Order has
12 the same definition as the terms in the Agreement.

13 2. The Agreement falls within the range of possible approval as fair, reasonable and
14 adequate.

15 3. The Court finds that (a) the Full Notice, Email Notice, and Publication Notice
16 constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and
17 sufficient notice to all members of the Class, and (c) they comply fully with the requirements of
18 California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the
19 California and United States Constitutions, and other applicable law.

20 4. For settlement purposes only, the Class is so numerous that joinder of all Class
21 Members is impracticable, Plaintiffs' claims are typical of the Class's claims, there are questions
22 of law and fact common to the Class, which predominate over any questions affecting only
23 individual Class Members, and Class certification is superior to other available methods for the fair
24 and efficient adjudication of the controversy.
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1 **5. Realistic Range of Recovery.** Plaintiffs demonstrate that, even were they to win at
2 trial on liability, they might have no damages under case law. This is so, because it is not alleged
3 that the purchased items were defective or not worth the prices consumers paid. Further, consumers
4 knew the prices they were paying and could return items for a full refund if desired. (Supp. Brf.
5 2:16-11:17.)
6

7 **6. Coupons v. Vouchers.** Plaintiffs show that courts recognize differences between
8 often-disfavored settlement coupons (redeemable only if the consumer pays more money) and
9 settlement vouchers like those proposed here (redeemable for goods without an additional
10 purchase). (Supp. Brf. 11:18-14:17.)

11 **7. Nationwide Resolution.** Plaintiffs cite cases in which California state courts have
12 certified classes with out-of-state members (Supp. Brf. 14:19-15:18), including one in Ventura
13 County similar to the litigation plaintiffs have brought here. (Id. at 15:19-28.) It is also noted that
14 all defendants have San Francisco headquarters and defendants' contracts with their customers call
15 for dispute resolution in San Francisco. (Id. at 16:1-23.)
16

17 **8. Scope of Release.** Plaintiffs demonstrate that a general release of all claims that
18 were or could have been pled "is common in class action settlements," while their proposed release
19 is narrower. (*Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 820; Supp. Brf. 17:2-
20 18:17.)
21

22 **9. No Injunction.** Plaintiffs show that they are unable to obtain injunctive relief due
23 to a court ruling in one of the cases being settled. (Supp. Brf. 18:18-20:3.)

24 **10. Attorney Fees and Costs.** Plaintiffs make a sufficient preliminary showing that the
25 attorney fees and costs sought are reasonable. (Supp. Brf. 20:3-29:19.)

26 **11. Claim Rates in Consumer Class Actions.** I requested evidentiary support for
27 claims rates in consumer class actions with an eye to this litigation in specific. Plaintiffs filed a
28

1 declaration, but it mainly touts the services of a settlement administration firm, providing only brief
2 and summary information about claims rates. (Weisbrot Dec.) More detailed support will be
3 expected before a settlement is finally approved.

4 **12. Form of Voucher.** The form of the proposed \$6 voucher is provided. (DeNittis
5 Dec. Ex. P.)

6 **13. Items Under \$6.** A list of some 2,400 items available for \$6 or less from defendants
7 is also provided. (DeNittis Dec. Ex. I.)

8
9 **IT IS ORDERED THAT:**

10 **1. Settlement Approval.** The Agreement, including the Full Notice, Email Notices,
11 Publication Notice, and Claim Form attached to the Agreement as Exhibits B-E, is preliminarily
12 approved.

13 **2. Provisional Certification.** The Class is provisionally certified for settlement
14 purposes only as a class of all individuals who, between May 24, 2010 and the date of entry of the
15 Preliminary Approval Order, who made one or more in-store or online purchase(s) at a Gap Outlet,
16 Gap Factory Store or Banana Republic Factory Store located in the United States.

17 **3. Appointment of Class Representative and Class Counsel.** Plaintiffs Carmen
18 Andrews, Laurie Munning, Michael Pallagrosi and Caron Coladonato are conditionally certified as
19 the class representatives to implement the Parties' Settlement in accordance with the Agreement.
20 DeNittis Osefchen Prince, P.C. are conditionally appointed as Class Counsel. Plaintiff and Class
21 Counsel must fairly and adequately protect the Class's interests.

22 **4. Provision of Class Notice.** The Claims Administrator will notify Class Members
23 of the Settlement in the manner specified under Section 3.3 of the Agreement and will pay all costs
24 associated with claims administration and providing notice to Class Members as set forth in the
25 Settlement Agreement.

26 **5. Objection to Settlement.** Class Members who have not submitted a timely written
27 exclusion request pursuant to paragraph 7 below and who want to object to the Agreement may file
28

1 a written objection with the Court and serve such objection on Class Counsel and Gap's Counsel
2 no later than seventy-five (75) calendar days after entry of this Order. The delivery date is deemed
3 to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark, the date set
4 forth on an email or the date time stamp via facsimile machine. Written objections are required to
5 state: (1) the name and case number of the Action; (2) the Class Member's full name, address, and
6 telephone number; (3) the words "Notice of Objection" or "Formal Objection"; (4) in clear and
7 concise terms, the legal and factual arguments supporting the objection; (5) facts supporting the
8 person's status as a Class Member (e.g., either any unique identifier included by the Claims
9 Administrator in his/her notice, or the date and location of his/her relevant purchases); (6) the Class
10 Member's signature and the date; and (7) the following language immediately above the Class
11 Member's signature and date: "I declare under penalty of perjury under the laws of the State of
12 California that the foregoing statements regarding class membership are true and correct to the best
13 of my knowledge." Class Members have the option to appear at the Fairness Hearing, either in
14 person or through personal counsel hired at the Class Member's expense, to object to the fairness,
15 reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the
16 award of attorneys' fees. However, Class Members (with or without their attorneys) intending to
17 make an appearance at the Fairness Hearing must so-inform the Parties and the Court no later than
18 seventy-five (75) calendar days after entry of this Order by providing a "Notice of Intention to
19 Appear" to the Claims Administrator. Only Class Members who file and serve timely Notices of
20 Intention to Appear may speak at the Fairness Hearing.

21 **6. Failure to Object to Settlement.** Class Members who fail to object to the
22 Agreement in the manner specified above will: (1) be deemed to have waived their right to object
23 to the Agreement; (2) be foreclosed from objecting (whether by a subsequent objection,
24 intervention, appeal, or any other process) to the Agreement; and (3) not be entitled to speak at the
25 Fairness Hearing.

26 **7. Requesting Exclusion.** Class Members who want to be excluded from the
27 Settlement must send a letter, email, facsimile or postcard to the Settlement Administrator stating:
28 (a) the name and case number of the Action; (b) the full name, address, and telephone number of

1 the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the
2 Settlement, postmarked no later than seventy-five (75) calendar days after entry of this Order. If a
3 Class Member submits a Claim Form and a request for exclusion, the request for exclusion will be
4 deemed invalid.

5 **8. Claim Form.** Class Members must submit complete, valid and sufficient Claim
6 Forms no later than one hundred and eighty (180) calendar days after entry of this Order in order
7 to be included in the distribution of the Settlement Vouchers. Class Members may also be required
8 to provide proof of Qualifying Purchase(s) as described in Section 2.1 and 2.2 of the Agreement.
9 The Claim Form shall have a space for Class Members to elect the number of Settlement Purchase
10 Certificates he or she wishes to obtain that corresponds with his or her tier as described in Sections
11 2.1 and 2.2 of the Agreement.

12 **9. Termination.** If the Agreement terminates for any reason, the following will occur:
13 (a) this Order and all of its provisions will be vacated, including, but not limited to, vacating
14 conditional certification of the Class, conditional appointment of Plaintiffs as class representative,
15 and conditional appointment of Plaintiffs' Counsel as Class Counsel; (b) the Action will revert to
16 the status that existed before the Plaintiffs filed their motion for approval of the Preliminary
17 Approval Order; and (c) no term or draft of the Settlement Agreement, or any part of the Parties'
18 settlement discussions, negotiations or documentation will have any effect or be admissible into
19 evidence for any purpose in the Action or any other proceeding. This Order will not waive or
20 otherwise impact the Parties' rights or arguments.

21 **10. No Admissions.** Nothing in this Order is, or may be construed as, an admission or
22 concession on any point of fact or law by or against any Party.

23 **11. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and deadlines,
24 are stayed and suspended until further notice from the Court, except for such actions as are
25 necessary to implement the Agreement and this Order.

26 **12. Fairness Hearing.** On October 11, 2019, at 9:30 a.m., this Court will hold a
27 Fairness Hearing to determine whether the Agreement should be finally approved as fair,
28 reasonable, and adequate. All papers supporting Plaintiffs' request for attorneys' fees and costs


1 must be filed no later than fourteen (14) calendar days before the deadline for Class Members to
 2 object to the Settlement. All papers supporting final approval of the Agreement must be filed no
 3 later than fourteen (14) calendar days before the Fairness Hearing. Based on the date of this Order
 4 and the date of the Fairness Hearing, the following are the certain associated dates in this
 5 Settlement:

Event	Timing
Last day for Defendants, through the Claims Administrator, to send Email Notice and Publication Notice, and start operating Settlement Website	30 days after entry of this Order
Last day for Defendants, through the Claims Administrator to send 2 nd Email Notice	44 days after entry of this Order
Last day for Plaintiffs to file fee petition	61 days after entry of this Order
Last day for Class Members to request exclusion or object to the Settlement	75 days after entry of this Order
Last day for Class Members to file a claim	180 days after entry of this Order
Last day for Parties to file briefs in support of the Final Order and Judgment	15 days before Fairness Hearing

21 This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that
 22 occurs, the updated hearing date shall be posted on the Settlement Website but other than the
 23 website posting Defendant will not be required to provide any additional notice to Class Members.

24 **IT IS SO ORDERED.**

25 Dated: ^{July 9,} ~~June~~ __, 2019

26 
 27 HON. RICHARD B. ULMER JR.
 Judge of the San Francisco Superior Court