

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-05005 SJO (MRWx)	Date	June 9, 2016
Title	James Horosny, et al v. Burlington Coat Factory of California, LLC et al		

Present: The Honorable JAMES OTERO, Judge presiding

Victor Cruz

Not Present

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: IN CHAMBERS : Re Unopposed Motion for Preliminary Approval of Class Action Settlement and Motion for Certification of Settlement Class [#52]

The Court is in receipt of Plaintiffs James Horosny ("Horosny") and Jennifer Price's ("Price") (together, "Plaintiffs") Unopposed Motion for Preliminary Approval of Class Action Settlement and Motion for Certification of Settlement Class ("Motion"), filed May 9, 2016. The Court DENIES the Motion without prejudice in light of the Court's concerns regarding (1) whether the proposed notice plan provides the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable efforts," Fed. R. Civ. P. 23(c)(2)(A); and (2) "whether the terms of the parties' settlement appear fair, adequate, and reasonable," *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 664 (E.D. Cal. 2008).

Plaintiffs may file a renewed motion for preliminary approval within sixty (60) days of this Order. The renewed motion should address the following issues:

Issues Regarding Notice Plan

1. How is the information of the approximately 3.1 million Known Class Members stored in Burlington's databases?
2. Does Burlington know how many purchases each Known Class Member has made?
3. Does Burlington know how frequently Known Class Members shop at Burlington?
4. Why was Burlington given the sole option to choose mail vs. email notice?
5. How will Burlington communicate its election to the Claims Administrator?
6. How did the parties estimate the number of Unknown Class Members to be 600,000?
7. Why did the parties choose USA Today for publication notice, and why only the Los Angeles and San Francisco regions?
8. Will this advertisement only be run in one edition of the magazine?
9. Why did the parties prohibit Claim Forms from being submitted online?
10. If Burlington objects to a particular Claim Form, will that Claim Form automatically be rejected? If not, what is the process by which such an Unknown Class Member may amend or submit additional information?
11. On the Class Notice, why is the nature and importance of the "Compare" price tag

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not specified?

12. Where in the Burlington stores will the In-Store Notice be displayed? Would it be feasible to require cashiers to inform customers about the settlement? Would it be feasible to have the Notice displayed on the front door or at the registers?

13. What will the name of the settlement website be? Will Burlington have any input into the selection or approval of the chosen URL?

Issues Regarding Fairness, Adequacy, and Reasonableness of the Proposed Settlement Agreement

Issues Regarding Merchandise Certificates

1. Why will each Class Member receive \$7.50, regardless of the nature of their particular allegations? Theoretically, Burlington should have information regarding the amount spent by a large number of Known Class Members. Burlington might also have information regarding the difference between the sale price and the "Compare" price for some or all of their items.
2. How much would it cost to compile, monitor, etc. a more finely tuned payment scheme?
3. Why is it equitable to require Class Members to redeem the certificates by purchasing more merchandise from Burlington? Why not give a voucher to any department store, or instead a cash refund?
4. Did the parties consider awarding some amount of money to a consumer protection or consumer watchdog group?
5. Why did the parties not agree to a cy pres distribution, particularly in the event the amount of Claim Forms submitted by Unknown Class Members is relatively small?
6. Are there any items at Burlington stores that Class Members could fully pay for (or at least cover a large portion of the items) with a \$7.50 certificate? Can the parties provide evidence of this? Are there any other cases in which similar "vouchers" or "certificates" were not found to be "coupons"?
7. What data is there regarding the difference between the "Compare" or "Compare at" prices listed on the tags and the actual price at which merchandise was sold?

Issues Regarding Injunctive Relief

1. Where will the proposed disclosures be posted, and how prominent will the disclosures be?
2. What information will Burlington provide to customers regarding the pricing practices?
3. Who will be doing the training and the auditing?
4. What measures are there to ensure compliance and enforcement?

Issues Regarding Opting Out and Objecting

1. Why are objectors required to file and serve signed, written objections that significantly detail the bases for their objections, in addition to a Notice of Intention to Appear should they wish to appear at the final approval hearing?

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Issues Regarding the Cost of the Settlement to Burlington and the Calculation of Attorneys' Fees

1. What is the estimated total cost to Burlington of the proposed settlement? Does this estimate take into account the possibility that some customers who otherwise would not shop at Burlington's stores might go to a Burlington store to because of the voucher? Does it attempt to calculate the marginal additional dollars of apparel or other merchandise purchased by customers that is attributable to the vouchers?
2. What methodology is used to calculate this total cost?
3. Is Plaintiffs' counsel's request for attorneys' fees tied to the value of the coupons, the total cost to Burlington, or some other metric? To the extent Plaintiffs' calculations refer to a certain percentage of the overall settlement, such a calculation should be based on the total cost of the settlement to Burlington.
4. What is the lodestar calculation for Plaintiffs' counsel's attorneys' fees?

IT IS SO ORDERED.

Initials of Preparer

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