

1 LLP, appeared for Plaintiff Emily Nguyen and Douglas M. Bria of Littler Mendelson appeared on
2 behalf of JAG Footwear, Accessories And Retail Corporation (“Defendant”).

3 The Court having read and considered the papers on the motion, the arguments of counsel;
4 and the law, and good cause appearing therefore,

5 **IT IS ORDERED:**

6 1. The Court grants judicial notice of documents as requested by Plaintiff.

7 2. The Court grants final approval of the terms of settlement and agreed on procedures
8 as set forth in the Settlement Agreement executed by the Parties. The Court finds that the manner
9 and form of notice as set forth in the Settlement Agreement was provided to Class Members as
10 ordered by the Court on February 27, 2014. The Court finds the manner and form of notice as set
11 forth in the Settlement Agreement and approved and ordered by the Court, was the best practicable
12 notice under the circumstances, satisfying the requirements of due process and all other laws. The
13 Court further finds that the notice, as approved and ordered by the Court, gave notice to Class
14 Members of the fact of Settlement and the right to receive settlement benefits, to be excluded from
15 the Settlement, and raise objections to the Settlement.

16 3. The Court finds the proposed Settlement was reached following meaningful
17 discovery and investigation conducted by Class Counsel, the proposed settlement is a result of
18 adversarial, arms’ length negotiation between the parties, and the terms of the Settlement in all
19 respects are fair, adequate, and reasonable. In so finding, the Court considered evidence presented
20 regarding the strength of the Plaintiff’s claims, the risk, expense and complexity of the claims
21 presented, the likely duration of further litigation, the amount offered in settlement, the extent of
22 investigation and discovery completed, and the experience and views of Class Counsel. Plaintiff
23 adequately described the total maximum theoretical recovery for the Class, including penalties,
24 and explained why the value of the case was discounted for settlement purposes. Kullar v. Foot
25 Locker Retail, Inc., 168 Cal. App. 4th 116 (2008). The Court further considered the absence of
26 objection to the proposed settlement by class members, as well the number of requests for
27 exclusion (5) from the class filed by Class Members.

1 4. The Court certifies the Settlement Class, defined as follows, for settlement
2 purposes only: all current and former non-exempt hourly or salaried persons employed in
3 California by the Company at any time between September 27, 2008 and ^{Feb. 27, 2014} the date of preliminary
4 approval (the "Class Period"). In certifying the Settlement Class for settlement purposes only, the
5 Court finds that: (1) the Settlement Class is ascertainable and so numerous that joinder of all
6 members is impracticable; (2) there are questions of law and fact common to the Settlement Class,
7 and that such questions predominate over questions affecting only individual class members; (3)
8 the claims advanced by Plaintiff are typical of the Settlement Class in that they have no interests in
9 conflict with or antagonistic to those of the Settlement Class, and they have retained adequate
10 counsel; and, (4) a class action is superior to other available methods for resolving this
11 controversy.

12 6. The Court appoints Qualls & Workman, L.L.P. as Class Counsel.

13 7. The Court awards Class Counsel attorneys' fees in the amount of \$ 413,728.
14 The fee award is reasonable and appropriate for the reasons ^{set forth in Appendix A,} that follow. _{attached.}

15 ~~8. In evaluating the reasonableness of Class Counsel's lodestar and hourly rate, the~~
16 Court has considered a variety of factors, including: the experience, background, and reputation
17 of counsel; the prevailing hourly rates in the community for similar services charged by attorneys
18 of similar skill and experience; the time, effort, and skill of counsel both in terms of what occurred
19 during the litigation and what was reasonably required; the efficiency of counsel in performing the
20 work; the amount at stake in the litigation; the desirability or undesirability of the case; and the
21 character and quality of the documentation offered in support of the application of fees. Total
22 hours claimed by Class Counsel are approved based on evidence presented of the work performed
23 and the results achieved. In so finding, the Court considered evidence presented of skill exercised
24 by Class Counsel when addressing difficult factual and legal questions arising from the class
25 claims presented, the contingent risk assumed by Class Counsel, the preclusion of Class Counsel
26 from other employment, and the favorable results achieved for Class Members. The Court further
27 finds that the fees requested are reasonable under both the percentage of the recovery and lodestar
28 analyses. The Court also finds that the requested multiplier is reasonable and warranted given the

1 contingent nature of the fee award, the extent to which this litigation precluded Class Counsel
2 from working on other matters, and the skill involved in addressing the questions presented, and
3 the percentage of the common fund Class Counsel would have received on the fair market.

4 9. The Court orders that 10% of the attorney's fee award be held in an interest-bearing
5 account maintained by Class Counsel pending further order of the Court, following a final report
6 on the distribution process.

7 10. With respect to the distribution of funds pursuant to the Settlement Agreement, the
8 Claims Administrator, upon the completion of the process of such distribution, shall prepare, and
9 cause to be filed with this Court, a declaration regarding the distribution. The Court sets a
10 compliance hearing to occur on 10/1, 2014, at 2:30 a.m./p.m., for these
11 purposes, with a status report to be filed no later than five court days prior to the compliance
12 hearing date.

13 11. The Court awards Class Counsel costs in the amount of \$40,442.66. Those costs
14 were reasonable and necessary based on the evidence presented of actual costs incurred and in
15 light of the results achieved.

16 12. The Court appoints Plaintiff Emily Nguyen as the Class Representative, and grants
17 Plaintiff's request for an incentive payment in the amount of \$ 10,000. Ms. Nguyen's
18 declaration demonstrates that she spent approximately 50 hours on the case. The Court finds the
19 incentive payment to be fair and reasonable compensation based on the evidence presented.

20 13. The Court approves payment in the amount of \$35,000 to Heffler Claims Group.
21 ("Heffler") for services rendered by it as Claims Administrator. The Court finds that amount fair
22 and reasonable compensation based on evidence presented of the time and effort spent by Heffler
23 in administering the claims.

24 14. The Parties are directed to comply with the terms of the Settlement Agreement.

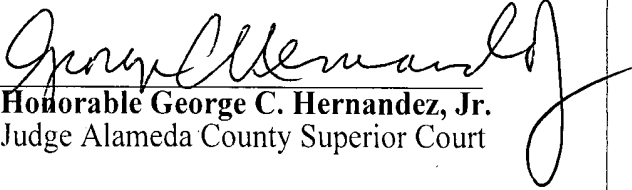
25 15. Without affecting the finality of this Order and Judgment in any respect, and
26 pursuant to Code of Civil Procedure Section 664.6 and Rule 3.769(h) of the California Rules of
27 Court, the Court retains jurisdiction over this action, the Class Representative, Settlement Class
28 Members, and Defendant for the purposes of: (a) the implementation and enforcement of the

1 Settlement Agreement until each and every act agreed to be performed by the parties to the
2 Settlement Agreement shall have been performed; (b) any other action necessary to conclude this
3 settlement and to implement the Settlement Agreement; and (c) the construction and interpretation
4 of the Settlement Agreement.

5 16. The Court finds that five (5) timely requests for exclusion were filed by the
6 following individuals: Yesenia Perez, Evelyn Hurtado, Juliana Avalos, Olivia Carta, and Maressa
7 Townsend. Accordingly, said individuals are excluded from the Settlement Class and are not
8 bound by the terms of the Settlement Agreement.

9
10 **IT IS SO ORDERED.**

11 Dated: 6-19-2014


12 **Honorable George C. Hernandez, Jr.**
13 Judge Alameda County Superior Court

APPENDIX A: ORDER GRANTING IN PART REQUEST FOR ATTORNEYS' FEES

1
2 Counsel requests a fee and cost award equivalent 28% of the gross fund. Although there were no
3 objections to the attorneys' fees request, the court has an independent duty to assure that fees
4 requested are "fair and proper, and may not simply act as a rubber stamp for the parties'
5 agreement." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555 [citing cases].)
6 This includes analysis primarily under the lodestar method. (See *Lealao v. Beneficial California,*
7 *Inc.* (2000) 82 Cal.App.4th 19, 31-36 [California still recognizes the distinction between
8 common fund and lodestar methods and lodestar method is appropriate in fee shifting cases].)
9 California courts may use "fees reasonably incurred" as the starting point, and, using a
10 percentage of the benefit cross check, apply a multiplier to ensure that the fee mimics the market.
11 (*Id.* at 49-50.) At the hearing, counsel repeatedly cited to *Lealao* but ignored its recognition that
12 the lodestar method is the appropriate analytical approach in cases involving fee-shifting statutes.
13 Further, the percentage-of-the-fund cross check is optional. (See *In re Consumer Privacy Cases,*
14 *supra*, 175 Cal.App.4th at 557, citing *Lealao*, *supra*, at 49-50.)

15 The lodestar method "is produced by multiplying the number of hours reasonably expended by
16 counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase or
17 decrease that amount by applying a positive or negative multiplier to take into account a variety
18 of other factors, including the quality of the representation, the novelty and complexity of the
19 issues, the results obtained, and the contingent risk presented." (See *In re Consumer Privacy*
20 *Cases*, 175 Cal.App.4th at 556, internal quotations omitted, quoting *In re Vitamin Cases* (2003)
21 110 Cal.App.4th 1041, 1052.)

22 The motion failed to describe any efforts to rationally divide tasks or areas of responsibility
23 among the attorneys who worked on the case. Although the court suggested in one of its prior
24 tentative rulings on preliminary approval that a task-based summary be supplied, none was
25 provided. (See, e.g., *Syers Properties III, Inc. v. Rankin* (Cal. Ct. App. May 5, 2014) No.
26 A137610, 2014 WL 2192362 at *5 [discussing usefulness of task-based summaries of hours
27 billed].) The motion also failed to provide any evidence that counsel has exercised "billing
28 judgment" to account for inefficiencies or work that had to be re-done (e.g., at the preliminary
approval stage). This is relevant where counsel seek a percentage of the fee award as a cross-
check to ensure that the lodestar amount "mimics the market." As to hourly-paying clients, a
billing partner customarily reviews firm time records and exercises billing judgment before
presenting an invoice to the client. At the hearing, counsel professed a lack of familiarity with
these issues; however, counsel's firm has appeared in this department on multiple final approval
and fee motions, and has been similarly admonished for not providing evidence related to the
foregoing issues.

The court's review of the time records and other evidence provided supports a slight reduction of
5% to the lodestar of \$272,190.09, for an adjusted lodestar of \$258,580. This is to account for
the failure to delegate some basic tasks to lower-priced attorneys, duplication among attorneys,
and lack of efficiency in the preliminary approval proceedings.

In the motion, counsel argued that application of a 1.92 multiplier across the board is justified by
the contingent nature of case and fact that counsel were precluded from working on other
matters, but have not elaborated on the latter factor. This case was not a particularly novel or
complex wage and hour case. Counsel have not justified the equal application of these factors
during the post-settlement phase of the case, where most complex issues have been resolved, the
need for witnesses is all but eliminated, and the likelihood of recovery is significantly increased.
By the court's calculation, approximately 43% percent of the hours billed in this case were billed
after a settlement had been reached at mediation. Because counsel did not segregate these hours,
the court will apply a blended multiplier to all hours billed.

At the hearing, counsel argued that attorneys should not be punished for early settlement of a

1 case, and noted that in *Thayer v. Wells Fargo Bank, N.A.* (2001) 92 Cal.App.4th 819, 836 cited in
2 the court's tentative ruling, the low multiplier was supported by findings that counsel did not
3 perform competently. The court did not intend to suggest that counsel's performance in this case
4 warranted a *negative* multiplier and tentatively applied a generous positive multiplier in light of
5 the risk of non-payment in the pre-settlement phase of this case and ostensible preclusion of
6 other work. (Compare *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1216-18
[wage and hour case in which the trial court was affirmed for declining to apply a 2.0 multiplier
and instead awarding 1.65 multiplier to some, but not all hours (including the contested fee
application); although the trial court acknowledged that the case was important, presented
several novel and complex issues, involved significant contingent risk, and was tried to
judgment].) The court merely cited *Thayer*, along with *Amaral*, as illustrative applications of the
factors relevant to determining a multiplier.

7 Counsel argued at the hearing that an award of less than 25% of the maximum gross fund is
8 insufficient, particularly given the risk undertaken by plaintiff's counsel in this and similar cases.
9 While some authority states that the market supports contingent fees averaging 33%, this is an
10 average, and courts have been upheld in approving much lower amounts. (See, e.g., *Consumer*
11 *Privacy Cases*, supra, at n.13 [upholding award of 17.6% of aggregate fund].) Counsel argued
12 that this and other authorities cited by the court to support awards less than 25% are anti-trust
cases with much larger gross funds (i.e., mega-fund cases). This was acknowledged in the
tentative ruling, which observed: "This may be due in part to the courts' observation that, where
the size of the common fund is due to the number of class members, and not to the size of
individual awards, the percentage may be much lower." (citing authorities)

13 In *Amaral*, supra, the fees awarded and upheld on appeal were approximately \$1.2 mil. but the
14 judgment was for approximately \$2 mil. (plus interest). Had a percentage of the benefit cross-
15 check been appropriate in that case, the percentage would have been 60% - well over the
16 percentages tolerated in the market - suggesting that a *reduction* in fees might have been
17 warranted. This illustrates why the cross-check may be less relevant in fee-shifting cases, where
18 the prevailing party is entitled (by statute or contract) to recover the reasonable value of services
provided regardless of the fees' proportion relative to relief obtained. [Counsel also reiterated the
risk incurred in contingency representation and the need for full compensation. However, in a
fee-shifting case, while there is still the risk of nonpayment if her client does not prevail, there is
no risk that the fee award will be reduced on the grounds that the cost of services were
disproportionate to the relief obtained. Thus, the risk is less than in a pure "common fund" case
or individual case with no fee shifting statute or agreement.]

19 Counsel also cited to *Young v. World Courier*, a trial court order. In that case the court declined
20 to award the amount sought by counsel and ultimately awarded an amount that constituted just
21 over 20% of the gross fund. While this is not binding authority, it is not materially different from
the percentage awarded here, which constitutes is 21.7% of the gross fund.

22 Based upon the foregoing, the court applies a 1.6 multiplier to the adjusted lodestar, for a
23 resulting award of \$413,728 in attorneys' fees.
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Superior Court of California, County of Alameda
Alameda County Administration Building
Department 17

Case Number: RG12 649759

ORDER

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

Executed on June 23, 2014

Executive Officer/Clerk of the Superior Court


By Timothy Lopez
Deputy Clerk

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