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6

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9

10 MICHAEL BATEMAN, individually
11 and on behalf of all others similarly
12 situated,

13 Plaintiffs

14 v.

15 AMERICAN MULTI-CINEMA, INC.;

16 and DOES 1-10,

17 Defendants.
18
19

Case No. CV 07 - 00171 JHN-AJWx

CLASS ACTION

**DECLARATION OF J. MARK
MOORE IN SUPPORT OF
PLAINTIFF'S MOTION FOR
AWARD OF ATTORNEY'S FEES,
COSTS AND ENHANCEMENT
PAYMENT**

Date: September 26, 2011
Time: 10:00 a.m.
Ctm: 790 (Roybal)

1 I, J. Mark Moore, declare:
2

3 1. I am an attorney licensed to practice law in the state of California and
4 have been admitted to practice before this Court. I am counsel in the law firm Spiro
5 Moss LLP and was lead counsel in the settled *Soualian v. International Coffee & Tea*
6 case discussed by Defendant in its opposition to Plaintiff's motion for attorney fees.
7 I have personal knowledge of the matters stated herein and if called and sworn as a
8 witness, I would and could competently testify under oath thereto.
9

10 2. *Soualian* was a problematic and unusual case for many reasons, not the
11 least of which was the fact that Judge Klausner denied class certification based on the
12 superiority analysis which the Ninth Circuit has now found, as a result of the present
13 case, was improper. In addition, Judge Klausner set a very tight case schedule, and
14 stuck to it. I successfully sought review of his order denying class certification,
15 pursuant to Rule 23(f) - the first time the Ninth Circuit granted review. However,
16 Judge Klausner denied my client's unopposed motion, in which the defendant filed a
17 joinder, to stay the case pending the Rule 23(f) appeal, thereby effectively requiring
18 the parties to go to trial on an individual basis while the appeal was pending. A true
19 and correct copy of Judge Klausner's order denying a stay pending the appeal, dated
20 Feb. 26, 2008, is attached hereto as Exhibit A. Moreover, Judge Klausner had
21 previously described my client's evidence of willfulness as "weak" in denying the
22 defendant's motion for summary judgment. Trial on an individual basis was fast
23 approaching, and there were discussions in Congress about legislative action that
24 might wipe out the case (which involved expiration dates alone, and thus fell within
25 the scope of the "Clarification Act"). Indeed, the "Clarification Act" ultimately
26 became law on June 3, 2008, less than three months after our settlement in *Soualian*
27 was reached on or about March 14, 2008.
28

DECLARATION OF J. MARK MOORE IN SUPPORT OF MOTION FOR
AWARD OF ATTORNEY'S FEES, COSTS AND ENHANCEMENT PAYMENT

1 3. In order to obtain some benefit for the class, and to avoid further
2 litigation and expenditure of time in an individual trial where the results were at best
3 uncertain, where a loss might have mooted the appeal, and where congressional
4 action was being contemplated that could have (and would have, but for the
5 settlement) eliminated the case entirely, I elected to settle the case. In doing so, as
6 discussed further below, I agreed to accept far less in fees than I might reasonably
7 have obtained had circumstances been different.

8
9 4. Though our lodestar was approximately \$235,000, I ultimately agreed,
10 very reluctantly, to take slightly less than \$100,000 in order to settle the case.
11 Defense counsel was adamant that his client would not agree, as part of a settlement,
12 to pay anything close to our lodestar, and the fact was that his client held most of the
13 cards: class certification had been denied, a potential legislative "fix" was on the
14 horizon; trial, in a case in which the court had described my client's willfulness
15 evidence as "weak" was looming; and defense counsel knew I was extremely busy
16 with other cases, including other FACTA cases in which he was defense counsel. (I
17 was the attorney at our firm who filed and handled the bulk of the firm's FACTA
18 cases -- something I now regret for obvious financial reasons, since these cases
19 ultimately were far from profitable and my time would have been more profitably
20 spent on other matters such as the cases I am now handling.) Knowing that it held all
21 the cards, defendant in *Soualian* took a very hard line in the fee negotiations.
22 Ultimately, given all the circumstances, I concluded I was not going to hold up the
23 settlement based on my inability to recover fees that I believed were unquestionably
24 warranted, legally and based on the work I had done in the case. I also did not
25 believe there was any reasonable chance that Judge Klausner would award fees that
26 amounted to more than 30% of the class member benefits, based on the defendant's
27 estimate of the value of its settlement vouchers.

28

Exhibit A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 07-502-RGK (JCx) Date February 26, 2008
Title TALINE SOUALIAN v. INTERNATIONAL COFFEE AND TEA LLC

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams Not Reported N/A
Deputy Clerk Court Reporter / Recorder Tape No.

Attorneys Present for Plaintiffs: Attorneys Present for Defendants:
Not Present Not Present

Proceedings: (IN CHAMBERS) PLAINTIFFS' MOTION TO STAY THE CASE IN THE
EVENT SUMMARY JUDGMENT IS DENIED (DE 109)

Upon review of the parties arguments, this Court finds insufficient good cause to stay this action pending resolution of the discretionary appeal. Therefore, the Court hereby **denies** Plaintiff's Motion to Stay Case.

IT IS SO ORDERED.

Initials of Preparer : slw

Exhibit B

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18 Attorneys for Plaintiffs and the proposed Settlement Class

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 PATRICK J. MCGEE, individually and on
22 behalf of all others similarly situated,

23 Plaintiff,

24 v.

25 ROSS STORES, INC., and DOES 1-10,

26 Defendants.

27 AMBER TOLLEY-MCNERNEY,
28 individually and on behalf of all others
similarly situated,

Plaintiff,

v.

ROSS STORES, INC.

Defendant.

Case No. C06-7496 CRB
Consolidated Case No. C07-4503 CRB

**~~[PROPOSED]~~ ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
AWARD OF ATTORNEYS' FEES, COSTS
AND INCENTIVE AWARDS**

Date: January 9, 2009
Time: 10:00 a.m.
Ctrm: 8
Judge: Hon. Charles R. Breyer

Date Action Filed: 12/6/2006

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[Redacted]

1 On July 25, 2008, Plaintiffs, Patrick J. McGee and Amber Tolley-McNerney, individually
2 and on behalf of others similarly situated ("Plaintiffs") filed a Motion for Preliminary Approval of
3 Class Settlement ("Motion") upon the terms and conditions set forth in the Stipulation of Settlement
4 and Release ("Stipulation of Settlement" or "Agreement"), a true and correct copy of which was
5 attached to the Motion as Exhibit 1.

6 On August 11, 2008, the Court entered an Order granting preliminary approval of the
7 proposed class action Settlement subject to certain revisions as to the manner and content of the
8 notice to be given to the members of the Settlement Class.

9 Pursuant to a stipulation by and between counsel for Plaintiffs and counsel for Ross Stores,
10 Inc. ("Defendant"), on August 19, 2008 the Court entered a further order approving of a
11 modification to the content of some of the in-store notices to be provided by Defendant, which order
12 also approved of the shifting of the costs of the in-store notice to Defendant.

13 On December 12, 2008, Plaintiffs filed a Motion for Final Approval of Settlement of Class
14 Action Settlement and a Motion For Attorneys Fees, Costs and Incentive Awards (hereinafter
15 collectively referred to as "The Final Approval Motions"). Filed concurrently with The Final
16 Approval Motions was the Declaration of Jacqueline Hitomi submitted on behalf of the Settlement
17 Administrator which set forth the efforts made by the Settlement Administrator to administer the
18 Settlement and the results of those efforts.

19 Having duly considered all submissions and arguments presented, IT IS HEREBY
20 ORDERED, DECREED AND ADJUDGED AS FOLLOWS:

21
22 1. The Court, for purposes of this order ("Order"), adopts all defined terms as set forth
23 in the Stipulation of Settlement.

24
25 2. The Court hereby grants final approval of the Settlement upon the terms and
26 conditions set forth in the Stipulation of Settlement and as modified by this Courts' orders of August
27

1 11, 2008 and August 19, 2008. The Court finds that the terms of the Settlement are fair, reasonable,
2 and adequate and comply with Rule 23(e) of the Federal Rules of Civil Procedure (“FRCP”).

3
4 3. The Court finds that, for purposes of approving the Settlement, the proposed
5 Settlement Class meets all of the requirements for certification under FRCP Rule 23: (a) the
6 proposed Settlement Class is ascertainable and so numerous that joinder of all members is
7 impracticable; (b) there are questions of law and fact common to the proposed Settlement Class and
8 there is a well-defined community of interest among members of the proposed Settlement Class with
9 respect to the subject matter of the litigation; (c) the claims of the representatives of the Settlement
10 Class, Patrick J. McGee and Amber Tolley-McNerney, and potential defenses thereto, are typical of
11 the claims and defenses thereto of the members of the proposed Settlement Class; (d) the
12 representatives of the Settlement Class, Patrick J. McGee and Amber Tolley-McNerney, will fairly
13 and adequately protect the interests of the Settlement Class; (e) the counsel of record for the
14 representative of the Settlement Class are qualified to serve as counsel for Patrick J. McGee and
15 Amber Tolley-McNerney in their own capacity as well as in their representative capacity for the
16 Settlement Class and have no conflicts of interests with any Settlement Class member; (f) common
17 issues of fact and law predominate over individual issues; and (g) a class action is superior to other
18 available methods for an efficient adjudication of this controversy.

19
20 4. For purposes of this Judgment, the Court hereby certifies the following class for
21 settlement purposes ("Settlement Class"):

22 All consumers who received electronically printed credit card receipts
23 from Defendant between January 1, 2005, and February 22, 2007,
24 wherein the receipt displayed (1) more than the last five digits of the
25 person’s credit card number, and/or (2) displayed the expiration date
26 of the person’s credit card.

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2 5. The Court appoints Patrick J. McGee and Amber Tolley-McNerney as the Class
3 Representatives.

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5 6. The Court appoints J. Mark Moore of Spiro Moss Barness LLP, Chant Yedalian and
6 Douglas A. Linde of The Linde Law Firm, and Eric A. Grover of Keller Grover LLP as Class
7 Counsel. Class Counsel is authorized to act on behalf of Settlement Class members with respect to
8 all acts or consents required by, or which may be given pursuant to, the Settlement, and such other
9 acts reasonably necessary to consummate the Settlement.

10
11 7. The Court finds the Stipulation of Settlement was the product of serious, informed,
12 non-collusive negotiations conducted at arm's length by the Parties in the presence of the Honorable
13 Charles A. Legge, United States District Court Judge (Ret.). In making these findings, the Court
14 considered, among other factors, the total potential statutory damages claimed in this Action on
15 behalf of Plaintiffs and members of the Settlement Class, Defendant's potential liability, the risks of
16 continued litigation, including but not limited to a new law entitled The Credit and Debit Card
17 Receipt Clarification Act of 2007, the equitable relief provided by the Settlement, the substantial
18 cash benefits available to Settlement Class members as part of the Settlement, and the fact that the
19 proposed Settlement represents a compromise of the Parties' respective positions rather than the
20 result of a finding of liability at trial. The Court further finds that the terms of the Stipulation of
21 Settlement have no obvious deficiencies and do not improperly grant preferential treatment to any
22 individual member of the Settlement Class. The Court also finds that settlement at this time results
23 in substantial benefits to the Settlement Class and will avoid additional substantial costs, as well as
24 avoid the delay and risks that would be presented by the further prosecution of this Action.

25
26 8. Notice of Settlement (including the Opt-Out Form) directed to the Settlement Class
27

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1 members has been completed in conformity with the Court's preliminary approval order of August
2 11, 2008 (and as further modified through the Court's August 19, 2008 order). Distribution of the
3 notice of Settlement and the Opt-Out Form was the best notice practicable under the circumstances
4 and was in full compliance with the United States Constitution and the requirements of due process.
5 The Court further finds that said notice fully and accurately informed Settlement Class members of
6 all material elements of the proposed class action Settlement, of each member's right to be excluded
7 from the Settlement Class, and each member's right and opportunity to object to the proposed class
8 action Settlement.

9
10 9. Zero Settlement Class members have timely requested exclusion from the Settlement
11 Class. Zero Settlement Class members have objected to the Settlement.

12
13 10. All Settlement Class members who have not timely excluded themselves from the
14 Settlement Class shall be bound by the releases set forth in the Stipulation of Settlement.

15
16 11. To the extent permitted by law, all Settlement Class members who have not timely
17 excluded themselves from the Settlement Class are permanently barred and enjoined from asserting
18 against the Defendant any claims released in the Stipulation of Settlement.

19
20 12. Based upon the agreement of the Parties and as hereby ordered by the Court: Ross
21 Stores, Inc. shall not print more than the last five digits of the credit or debit card number nor the
22 credit or debit card expiration date upon any receipt provided to any credit or debit cardholder at the
23 point of any sale or transaction. Within 10 days of entry of this Order, Ross Stores, Inc. shall
24 implement, and distribute as appropriate, a written company policy stating that it shall not print more
25 than the last five digits of the credit or debit card number nor the credit or debit card expiration date
26 upon any receipt provided to any credit or debit cardholder at the point of any sale or transaction.

1
2 13. If a change in law occurs which impairs or impedes Ross Stores, Inc.'s ability to
3 lawfully implement its obligations set forth in paragraph 12, above, the Parties reserve the right to
4 seek declaratory or other relief from this Court, including modification of judgment pursuant to
5 FRCP Rule 60 based upon such change in law.

6
7 14. The Court hereby awards Class Counsel reasonable attorneys' fees and costs in the
8 aggregate amount of \$438,413.50, representing \$400,000 in attorneys' fees and costs and \$38,413.50
9 in costs and expenses, to be paid from the Settlement Fund.

10
11 15. The Court hereby awards each of the Class Representatives, Patrick J. McGee and
12 Amber Tolley-McNerney, an enhancement fee in the amount of \$5,000 for each of their services as
13 representatives for the Settlement Class, to be paid to each of them from the Settlement Fund.

14
15 16. The Court hereby approves the Settlement Administrator CPT Group, Inc.'s fees and
16 costs in the amount of \$45,000, which is to be paid from the Settlement Fund.

17
18 17. The Court hereby directs the Parties and the Settlement Administrator, CPT Group,
19 Inc., to effectuate all terms of the Settlement.

20
21 18. The Court hereby dismisses the Action with prejudice pursuant to the terms set forth
22 in the Stipulation of Settlement. Each of the Parties is to bear their own costs except as expressly
23 provided herein, in the Stipulation of Settlement and/or in this Court's order of August 19, 2008.
24 Without affecting the finality of this Judgment in any way, this Court hereby retains continuing
25 jurisdiction over the interpretation, implementation and enforcement of the Settlement and all orders
26 and judgments entered in connection therewith.

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19. Under FRCP Rule 58, the Court, in the interests of justice, there being no just reason for delay, expressly directs the Clerk of the Court to enter this Order as a Judgment, and hereby decrees, that upon entry, it be deemed as a final judgment.

IT IS SO ORDERED.

Dated: January 9, 2009



Honorable Charles R. Breyer
United States District Judge