

COPY

1 KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, CAL. BAR NO. 185123
2 LIANE KATZENSTEIN LY, CAL. BAR NO. 259230
16133 Ventura Blvd., Suite 1200
3 Encino, California 91436
Telephone: (818) 990-8300
4 Facsimile: (818) 990-2903

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 15 2015

5 Class Counsel

Sherri R. Carter, Executive Officer/Clerk
By: Roxanne Arraiga, Deputy

6 VORYS, SATER, SEYMOUR AND PEASE LLP
7 MARK A. KNUEVE (admitted pro hac vice)
NATALIE M. McLAUGHLIN (admitted pro hac vice)
52 E. Gay Street
Columbus, Ohio 43215
Telephone: (614) 464-6400
10 Facsimile: (614) 464-6350

11 Attorneys for Defendants
12 ABERCROMBIE & FITCH STORES, INC.,
13 GILLY HICKS, LLC, and J.M. HOLLISTER, LLC

14 (Additional Attorneys for Defendants listed on following page)

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES
17

18 JESSICA APARICIO and JASON POLIRAN,)
19 on behalf of themselves and others similarly)
20 situated,)

Case No. BC499281

Assigned to the Honorable Judge
Kenneth R. Freeman, Dept. 310

21 Plaintiffs,)

22 v.)

~~PROPOSED~~ AMENDED
PRELIMINARY APPROVAL
ORDER

23 ABERCROMBIE & FITCH STORES, INC.,)
24 GILLY HICKS, LLC, J.M. HOLLISTER,)
25 LLC, and DOES 3 to 50, inclusive,)

26 Defendants.)
27)
28)

RECEIVED
OCT 14 2015

BY: SA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SHEPPARD, MULLIN, RICHTER, & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
CHARLES F. BARKER, CAL. BAR NO. 70076
333 South Hope St., 48th Floor
Los Angeles, California 90071
Telephone: (213) 617-4168
Facsimile: (213) 620-1398

Attorneys for Defendants
ABERCROMBIE & FITCH STORES, INC.,
GILLY HICKS, LLC, and J.M. HOLLISTER, LLC

1 Plaintiff Jason Poliran, having made an application pursuant to CRC Rule 3.769 for entry
2 of an order (a) preliminarily approving the settlement of the litigation pursuant to the Joint
3 Stipulation of Settlement and Release (hereinafter "Settlement Agreement") filed on February
4 26, 2015, (b) conditionally certifying a class under California Code of Civil Procedure § 382 for
5 purposes of proceedings in connection with the final approval of the Settlement Agreement, (c)
6 approving the form of the Class Notice and directing the manner of delivery thereof, (d)
7 approving Eric Kingsley and Liane Katzenstein Ly of Kingsley & Kingsley, APC as Class
8 Counsel, (e) approving Jason Poliran as Representative Plaintiff, (f) approving Rust Consulting,
9 Inc., as the Claims Administrator, and (g) scheduling a hearing to consider the fairness of the
10 Settlement Agreement pursuant to California Code of Civil Procedure § 382, and upon
11 consideration of the Settlement Agreement,
12

13 IT IS HEREBY ORDERED THAT:
14

15 1. This Order incorporates by reference the definitions in the Settlement Agreement, and
16 all terms defined herein shall have the same meaning as set forth in the Settlement Agreement,
17 attached hereto as Exhibit "1."

18 2. The Settlement Agreement is hereby PRELIMINARILY APPROVED as appearing
19 on its face to be fair, reasonable, and adequate and to have been the product of serious, informed,
20 and extensive arm's-length negotiations between the Plaintiff and Defendants Abercrombie &
21 Fitch Stores, Inc., Gilly Hicks, LLC and J.M. Hollister, LLC ("Defendants") (collectively with
22 the Plaintiff, the "Parties"). In making this preliminary finding, the Court considered the nature
23 of the claims, the relative strength of Plaintiff's claims, the amounts and kinds of benefits paid in
24 settlement, the allocation of settlement proceeds among the Class Members, and the fact that a
25 settlement represents a compromise of the Parties' respective positions rather than the result of a
26 finding of liability at trial. The Court further preliminarily finds that the terms of the Settlement
27 Agreement have no obvious deficiencies and do not improperly grant preferential treatment to
28

1 any individual class member. Accordingly, the Court preliminarily finds that the Settlement
2 Agreement was entered into in good faith.

3 3. The Court finds preliminarily, and for purposes of proceeding pursuant to California
4 Code of Civil Procedure § 382, for settlement purposes only and on approval of the Settlement
5 Agreement only, that the number of Class Members is sufficiently numerous, the Class
6 Members are ascertainable based on the Defendants' records, the Plaintiff's claims are typical of
7 those in the class and that there is adequate and fair representation.

8 4. Accordingly, for purposes of this Settlement only, the Court hereby certifies the
9 following class pursuant to California Code of Civil Procedure Section 382: All persons
10 employed in a non-exempt position in California who worked at least one shift of 3.5 hours or
11 greater in an Abercrombie & Fitch, Abercrombie or Hollister store at any time from February 26,
12 2012 to September 30, 2014 or in a Gilly Hicks store at any time from January 16, 2009 to
13 September 30, 2014.

14 5. The Court hereby APPOINTS for settlement Eric Kingsley and Liane Katzenstein Ly
15 of Kingsley & Kingsley, APC as Class Counsel for purposes of this Settlement.

16 6. The Court hereby APPROVES Plaintiff Jason Poliran as Representative Plaintiff of
17 the Settlement Class for settlement purposes only.

18 7. The Court hereby APPROVES Rust Consulting, Inc. as Claims Administrator for the
19 purpose of this Settlement.

20 8. A hearing (the "Final Approval and Fairness Hearing") is hereby SCHEDULED to be
21 held before the Court on March 15, 2016 at 10:00 am in Department 310 located at 600 S.
22 Commonwealth Avenue, Los Angeles, CA 90005 for the following purposes:

23 a. to determine finally whether this litigation satisfies the applicable prerequisites for
24 class action treatment of a settlement class;

25 b. to determine whether the proposed Settlement Agreement is fair, reasonable and
26 adequate and should be granted final approval by the Court;

27 c. to determine whether the Final Approval Order as provided under the Settlement
28

1 Agreement should be entered, and to determine whether the Released Parties should be released
2 of and from the Representative Plaintiff's Settled Claims and the Eligible Class Members'
3 Settled Claims as provided in the Settlement Agreement;

4 d. to determine whether the proposed plan of allocation of the Net Settlement Amount
5 is fair and reasonable and should be approved by the Court;

6 e. to finally consider Plaintiff Jason Poliran's application for an Enhancement Payment
7 not to exceed \$5,000.00;

8 f. to finally determine whether Class Counsel's application for an award of attorney fees
9 and for litigation costs is fair, reasonable, and adequate and should be approved by the Court;

10 g. to finally consider Rust Consulting, Inc.'s Claims Administration costs;

11 h. to finally consider a PAGA Payment of fifty-thousand US dollars (\$50,000.00), of
12 which thirty-seven thousand five hundred US Dollars (\$37,500.00) would be paid to the
13 California Labor & Workforce Development Agency; and

14 i. to rule upon such other matters as the Court may deem appropriate.

15 9. Plaintiff will file their Motion for Final Approval no later than February 16, 2016.

16 10. The form of the Class Notice appended to this Order as Exhibit "2" is
17 hereby APPROVED. No later than thirty (30) days after the date of this Order, the Claims
18 Administrator will send via first class mail with address service requested the Class Notice which
19 will include an explanation of opting out or objecting to the Class Members. The Claims
20 Administrator shall conduct a National Change of Address ("NCOA") update before mailing the
21 Class Notice.
22

23 11. Defendants shall provide to the Claims Administrator an electronic database, in a
24 format and with sufficient time so that the Claims Administrator can satisfy its duties in
25 preparing the Class Notice. Defendants agree to consult with the Claims Administrator prior to
26 the production date to ensure that the format will be acceptable to the Claims Administrator. The
27 Claims Administrator shall maintain the data as private and confidential.

28 12. The Court finds that the Class Notice constitutes the best notice practicable under the

1 circumstances and is in full compliance with the laws of the State of California, the United States
2 Constitution, and the requirements of due process. The Court further finds that the Class Notice
3 fully and accurately informs the Class Members of all material elements of the proposed
4 settlement, of the Class Members' right to be excluded from the Class, and of each Class
5 Member's right and opportunity to object to the settlement.

6
7 13. The Court hereby APPROVES the proposed procedure for opting out of the Class.
8 The Opt-Out Request must (a) be in writing, (b) request exclusion from the Class, and (c) be
9 post-marked no later than forty-five (45) days following the date the Claims Administrator
10 mailed the Class Notice to the Class Member submitting the request. The date of the postmark on
11 the return-mailing envelope shall be the exclusive means used to determine whether a request for
12 exclusion has been timely submitted. The Opt-Out Request must contain the name, address,
13 telephone number and social security number of the person requesting exclusion, and must be
14 personally signed by the Class Member who seeks to opt out. No Class Member may opt out by
15 a request signed by an actual or purported agent or attorney acting on behalf of a group of Class
16 Members. No Opt-Out Request may be made on behalf of a group of Class Members. Any
17 member of the Class who requests exclusion from the settlement will not be entitled to any share
18 of the settlement and will not be bound by the Settlement Agreement or have any right to object,
19 appeal or comment thereon. Members of the Class who fail to submit a valid and timely request
20 for exclusion shall be bound by all terms of the Settlement Agreement and the Final Approval
21 Order and Final Judgment, including the release of Eligible Class Members' Settled Claims,
22 regardless of whether they otherwise have requested exclusion from the settlement.

23 14. All reasonable costs of settlement and claims administration, including the mailing of
24 Class Notice, shall be paid for as provided in the Settlement Agreement.

25 15. To object, a Class Member must timely file with the Court a written objection and a
26 notice of intent to appear at the Final Approval Hearing, and must simultaneously serve copies of
27 the written objection and notice of intent to appear on the Parties' Counsel. To be considered
28 timely, the written objection must be filed and served no later than forty-five (45) days following

1 the date the Claims Administrator mailed the Class Notice to the Class Member submitting the
2 objection. The filing date of any written objection and notice of intent to appear shall be deemed
3 the exclusive means of determining if an objection is timely. The written objection must state:
4 (a) the full name, address and telephone number of the person objecting and (b) the basis for the
5 objection. Any person or entity who fails to make an objection in the manner specified in this
6 paragraph shall be deemed to have waived any objections and shall be foreclosed from making
7 any objection (whether by appeal or otherwise) to the Settlement Agreement.
8

9 16. Injunction. The Settlement Class Members are barred and enjoined from (i) filing,
10 commencing, prosecuting, maintaining, intervening in, participating in (as class members or
11 otherwise), or receiving any benefits or other relief from, any other claim, lawsuit, arbitration, or
12 administrative, regulatory or other proceeding or order in any jurisdiction based on the Eligible
13 Class Members' Settled Claims; and (ii) organizing or soliciting the participation of any Class
14 Members into a separate class for purposes of pursuing as a purported class action (including by
15 seeking to amend a pending complaint to include class allegations, or by seeking class
16 certification in a pending action) any claim, lawsuit or other proceeding based on the Eligible
17 Class Members' Settled Claims. The Court finds that issuance of this injunction is necessary and
18 appropriate in aid of the Court's jurisdiction over the Action and to protect and effectuate this
19 Order.

20 17. It is further ordered that pending further order of this Court, all proceedings in this
21 matter except those contemplated herein and as part of the settlement are stayed.

22 18. If the Court grants final approval, Eligible Class Members and their successors shall
23 conclusively be deemed to have given a release, as set forth in the Settlement Agreement and
24 Class Notice, against Released Parties, and all such Eligible Class Members and their successors
25 shall be permanently enjoined and forever barred from asserting any claim related to this action
26 against the Released Parties. If for any reason the Court does not execute and file a Final
27 Approval Order, the proposed settlement subject to this Order and all evidence and proceedings
28

1 had in connection herewith shall be without prejudice to the status quo ante rights of the parties
2 to the litigation.

3 19. Jurisdiction is hereby retained over this Action and the Parties to the Action, and
4 each of the Class Members, for all matters relating to this Action, the Settlement Agreement,
5 including (without limitation) all matters relating to the administration, interpretation,
6 effectuation, and/or enforcement of the Settlement Agreement and this Order.
7

8
9
10 Dated: OCT 15 2015

KENNETH R. FREEMAN
11 Hon. Kenneth R. Freeman
12 Judge of the Los Angeles County Superior
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28