

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

CASE No.: 3:14-cv-00335-RNC

MARK SHALLIN, BRYAN WINSLOW,
JUAN TERRY, MELISSA PENNINGTON, and
LATOYA MANIGAULT

individually and on behalf of all others similarly situated,

Plaintiffs,

versus

PAYLESS SHOESOURCE, INC.,
COLLECTIVE BRANDS, INC., and
COLLECTIVE BRAND SERVICES, INC.,

Defendants.

**ORDER APPROVING PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT, CONDITIONAL CLASS CERTIFICATION AND ISSUANCE OF
CLASS NOTICE AND AWARD OF COMMON FUND ATTORNEY'S FEES TO
PLAINTIFFS' COUNSEL**

The Court, having reviewed the Joint Motion For Preliminary Approval Of Settlement And Conditional Certification Of The Classes And For Court Supervision Of Class Notice ("Settlement Agreement"), and in recognition of the Court's duty to make a preliminary determination as to the reasonableness of any proposed collective action settlement, and if preliminarily determined to be reasonable, to ensure proper notice is provided to Class Members in accordance with due process requirements; to make a preliminary determination as to the fairness and reasonableness of the collective action settlement; and to conduct a Final Approval Hearing as to the good faith, fairness, adequacy and reasonableness of any proposed collective

action settlement, THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:

1. The Court finds, on a preliminary basis, that the Settlement Agreement, incorporated in full by this reference and made a part of this Order for Preliminary Approval, appears to be within the range of reasonableness of a settlement which could ultimately be given final approval by this Court; the Court notes that Defendants, Payless Shoesource, Inc., Collective Brands, Inc., and Collective Brand Services, Inc. (“Payless” or “Defendants”), have agreed to pay up to the Maximum Settlement Amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000.00) to Plaintiffs, Class Members, the Class Representatives, Class Counsel, and the Administrator in full satisfaction of the claims more specifically described in the Settlement Agreement.

2. It further appears to the Court, on a preliminary basis, that the Settlement is fair and reasonable to the Class Members when balanced against the probable outcome of further litigation relating to class certification, liability and damages issues, and potential appeals of rulings. It further appears that settlement at this time will avoid substantial costs, delay and risks that would be presented by further prosecution of the litigation. It also appears that the proposed Settlement has been reached as the result of intensive, informed and non-collusive negotiations between the Parties.

3. The Court finds on a preliminary basis and for purposes of this settlement only that the members of the proposed collective action are similarly situated as required under section 216(b) of the Fair Labor Standards Act, and thereby the Court conditionally and preliminarily certifies the collective action.

ACCORDINGLY, GOOD CAUSE APPPEARING, THE MOTION FOR ORDER OF PRELIMINARY APPROVAL OF COLLECTIVE ACTION SETTLEMENT IS HEREBY

GRANTED; AND THE COURT HEREBY TEMPORARILY AND CONDITIONALLY CERTIFIES THE NATIONAL FLSA CLASS AND NEW YORK CLASS FOR SETTLEMENT PURPOSES ONLY PURSUANT TO THE TERMS AND CONDITIONS CONTAINED IN SAID SETTLEMENT AGREEMENT.

4. The Court finds, on a preliminary basis, an award of attorney's fees and litigation expenses not to exceed thirty three and one third percent of the Maximum Settlement Amount is fair, reasonable and justified given the: time and effort Class Counsel has expended pursuing the Class' claims; the legal precedent in this Circuit, and other Circuits, finding an attorney's fee award of one third of the common fund to be fair and reasonable; and the substantial benefit conferred upon the Class as a result of the settlement terms.

5. It further appears to the Court, on a preliminary basis, that an incentive award not to exceed Three Thousand Eight Hundred Dollars (\$3,800.00) to each of the Class Representatives and Two Hundred Dollars (\$200.00) to each of the remaining fifty-five (55) individuals that filed opt-in notices prior to November 25, 2014 is fair, reasonable and justified given their services and the risks they incurred during the course of this litigation and the value of the individual claims the Class Representatives are settling. These awards are in addition to the Class Representatives' and Class Members' individual settlement shares.

6. It further appears to the Court, on a preliminary basis, that the \$55,000.00 for Settlement Administrator Costs and Expenses is appropriate and reasonable.

ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT PRELIMINARILY APPROVES THE APPLICATIONS BY CLASS COUNSEL FOR ATTORNEY'S FEES AND COSTS AND FOR INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES AND CLASS MEMBERS.

7. It further appears to the Court that the National FLSA Class¹ and New York Class² shall receive a Class Notice of Proposed Settlement and Consent to Join Form. The Court finds that the Class Notice of Proposed Settlement and Consent to Join Form sufficiently advise the putative Class Members of the pendency of this Collective Action lawsuit and of the proposed Settlement, claim submission timing and procedures, and of their rights to object to the Settlement. The Court finds that the Class Notice and Consent to Join Form clearly comport with all constitutional requirements including those of due process.

ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES THE PROPOSED CLASS NOTICE OF PROPOSED SETTLEMENT AND CONSENT TO JOIN FORM.

8. The mailing to the present and/or last known addresses of the Class Members constitutes an effective method of notifying Class Members of their rights with respect to the Collective Action and Settlement.

ACCORDINGLY, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:

- (a) No later than ten (10) business days from the entry of this Order, Payless will provide the Settlement Administrator with Class Data necessary to determine if a claimant is a Class Member and to calculate Class Members' individual Settlement Shares.

¹ (1) all individuals who are currently employed, or formerly employed, by Payless as a Store Leader in the United States (except in New York state), and (2) are/were classified as non-exempt (thus eligible for overtime compensation), at any time from March 14, 2011, through the date of Preliminary Approval of the Class Action Settlement Agreement ("National Class Period").

² (1) all individuals who are currently employed, or formerly employed, by Payless as a Store Leader in New York, and (2) are/were classified as non-exempt (thus eligible for overtime compensation), at any time from August 14, 2008, through the date of Preliminary Approval of the Class Action Settlement Agreement ("New York Class Period").

- (b) The Class Data shall include the Class Members': dates of employment, last known address, telephone number, date of birth and social security number.
- (c) No later than ten (10) business days from the entry of this Order, Payless will pay to Class Counsel \$55,000.00 for Settlement Administrator costs and expenses.
- (d) No later than thirty (30) days from the entry of this Order, the Settlement Administrator shall mail the Class Notices to all Class Members via first-class regular U.S. Mail. All mailings shall be made to the present and/or last known mailing address of the Class Members based on the Class Data, as well as addresses that may be located by the Administrator, who will conduct standard address searches in case of returned mail. The Court finds that the mailing of notices to Class Members as set forth in this paragraph is the best means practicable by which to reach Class Members and is reasonable and adequate pursuant to all constitutional and statutory requirements including all due process requirements.

9. IT IS FURTHER ORDERED no later than five (5) days before the Final Approval Hearing, the Settlement Administrator shall file with the Court a declaration summarizing the number of Settlement Class Members that submitted objections, a general summary of the specific objections and list of Settlement Class Members that preserved their rights to and are anticipated to address their objections to the Court, at the Final Approval Hearing or otherwise, either personally or through counsel.

10. IT IS FURTHER ORDERED that any party to this case, including Class Members, may appear at the Final Approval Hearing, if one is necessary, in person or by counsel, and may be heard to the extent allowed by the Court, in support of or in opposition to, the Court's

