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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE AMERICAN APPAREL, INC. SHAREHOLDER LITIGATION	) Case No. CV-10-6352 MMM (JCG)) (**Consolidated**)
This Document Relates To: ALL ACTIONS.	) **LEAD PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**) Date: March 31, 2014) Time: 10:00 a.m.) Room: 780, Los Angeles - Roybal) Judge: Hon. Margaret M. Morrow

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NOTICE OF MOTION AND UNOPPOSED MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 31, 2014, at 10:00 a.m., in Courtroom 780 of the United States District Court for the Central District of California, U.S. Courthouse, 255 East Temple Street, Los Angeles, California 90012, the Honorable Margaret M. Morrow presiding, Lead Plaintiff Charles Rendelman will and hereby does move for an Order pursuant to Rule 23 of the Federal Rules of Civil Procedure: (1) preliminarily approving the proposed settlement of this action; (2) preliminarily certifying the proposed class for purposes of settlement; (3) approving the form and manner of giving notice of the proposed settlement to the class; and (4) scheduling a final approval hearing before the Court. The grounds for this motion are that the proposed settlement is within the range of what could be found to be fair, reasonable, and adequate so that notice of its terms may be disseminated to members of the class and a hearing for final approval of the proposed settlement scheduled.

This motion is based upon this Notice of Motion and Unopposed Motion, the Memorandum of Points and Authorities set forth below, the Stipulation and Agreement of Settlement dated January 17, 2014, filed simultaneously herewith, the pleadings and records on file in this action, and other such matters and argument as the Court may consider at the hearing of this motion. This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on December 9, 2013.

DATED: January 17, 2014

Respectfully submitted,

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Lead Counsel for Lead Plaintiff and the Class

Court-appointed Lead Plaintiff Charles Rendelman ("Lead Plaintiff") respectfully submits this Memorandum of Points and Authorities in support of his unopposed motion for preliminary approval of the settlement in the above-captioned action ("Action"), and entry of the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") submitted herewith. The Preliminary Approval Order will, among other things: (i) grant preliminary approval of the proposed class action settlement on the terms set forth in the Stipulation and Agreement of Settlement dated January 17, 2014 ("Stipulation" or "Settlement");[1] (ii) preliminarily certify the proposed class ("Class") for purposes of settlement;[2] (iii) approve the form and manner of notice of the proposed Settlement to the Class; and (iv) schedule a hearing date for final approval of the Settlement ("Settlement Fairness Hearing") and a schedule for various deadlines in connection with the Settlement.

I. INTRODUCTION

After over three years of litigation, the parties have reached an agreement to resolve the Class's claims against American Apparel, Dov Charney ("Charney") and Adrian Kowalewski ("Kowalewski") (the "Individual Defendants" and, collectively with American Apparel, "American Apparel Defendants"), and Lion Capital LLP and Lion Capital (Americas) Inc. (together, "Lion Capital") (collectively, "Defendants")

[1] All capitalized terms not defined herein have the meanings ascribed to them in the Stipulation.

[2] The proposed Class is defined as all persons and entities who purchased or otherwise acquired the publicly-traded common stock of American Apparel, Inc. ("American Apparel" or the "Company") between November 28, 2007 and August 17, 2010, inclusive. Excluded from the Class are Defendants, the directors and officers of American Apparel and their families and affiliates. Also excluded from the Class are all persons and entities who exclude themselves from the Class by timely requesting exclusion in accordance with the requirements set forth in the Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys' Fees and Litigation Expenses, and Settlement Fairness Hearing ("Notice"), attached to the Stipulation as Exhibit A(1).

pursuant to the accompanying Stipulation. The Settlement provides for the payment of $4,800,000.00 for the benefit of the Class.

The Settlement is the product of lengthy and contentious litigation followed by well-informed and extensive arm's-length negotiations between experienced and knowledgeable counsel, facilitated by Jed D. Melnick, Esq., an accomplished mediator at JAMS. By the time the Settlement was reached, Kessler Topaz Meltzer & Check, LLP ("Lead Counsel") and/or its agents had: (i) conducted an extensive investigation, including review of filings with the Securities and Exchange Commission ("SEC"), press releases, news reports, filings in related litigation, analyst reports, the findings of various government entities and other publicly available information; (ii) filed three amended complaints, with several rounds of extensive briefing on those pleadings; (iii) consulted with experts; (iv) conducted exhaustive research of the applicable law for claims in this Action and the potential defenses thereto; (v) conducted multiple interviews with former American Apparel employees; (vi) issued and reviewed documents received pursuant to a Freedom of Information Act ("FOIA") request to United States Immigration and Customs Enforcement ("ICE"); (vii) participated in a hard-fought, arm's-length mediation process; and (viii) engaged in targeted confirmatory discovery.

Based on an informed evaluation of the facts and governing legal principles and their recognition of the substantial risk and expense of continued litigation, the parties respectfully submit that the proposed Settlement is fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"). Accordingly, Lead Plaintiff respectfully moves for preliminary approval and submits this Memorandum of Points and Authorities in support thereof.

II. SUMMARY OF THE LITIGATION

On August 25, 2010, the first putative class action complaint asserting violations of the federal securities laws captioned *Andrade v. American Apparel, Inc.*, No. 2:10-cv-06352-MMM-JCG, was filed in the Central District of California. Two

additional actions, captioned *Ormsby v. American Apparel, Inc.*, No. 2:10-cv-06513-MMM-RC and *Costa v. American Apparel, Inc.*, No. 2:10-cv-06516-MMM-RC, were filed on August 31, 2010. A fourth action, *Childs v. American Apparel, Inc.*, No. 2:10-cv-06680-MMM-JCG was filed on September 8, 2010. On October 25, 2010, Mr. Rendelman and one other movant filed motions for appointment as lead plaintiff. On December 3, 2010, the Court consolidated the related cases. On March 15, 2011, the Court issued an Order appointing Mr. Rendelman Lead Plaintiff and approving his selection of Kessler Topaz Meltzer & Check, LLP to serve as Lead Counsel.

On April 29, 2011, Lead Plaintiff filed his Consolidated Class Action Complaint for Violation of Federal Securities Laws. On May 31, 2011, Defendants moved to dismiss. Briefing was completed on July 14, 2011. On September 7, 2011, after months of effort, Lead Counsel received a response from the U.S. Department of Homeland Security ("DHS") and ICE pursuant to Lead Counsel's FOIA request, including hundreds of pages of documents. On September 12, 2011, the Court held a hearing on and issued a tentative Order granting Defendants' motions to dismiss.

The Court indicated, however, that the recently received ICE documents might further support scienter. As a result, the Court asked the parties for additional briefing on Lead Plaintiff's Supplemental Request for Judicial Notice, which the parties filed on September 14, 2011. On January 13, 2012, the Court issued its final Order largely adopting its tentative ruling, but granting Lead Plaintiff leave to amend. On February 27, 2012, Lead Plaintiff filed his First Amended Class Action Complaint for Violation of the Federal Securities Laws ("FAC"). On March 30, 2012, Defendants filed motions to dismiss the FAC, which were fully briefed on May 7, 2012. On May 21, 2012, the Court issued its tentative opinion and heard oral argument. On January 16, 2013, the Court issued an Order granting in part and denying in part Defendants' motions to dismiss. The Court upheld the FAC's allegations regarding American Apparel Defendants' immigration compliance statements as to the Company only. The Court dismissed the FAC's allegations regarding the effects of the terminations

and the Company's 2010 Annual Report but granted Lead Plaintiff one final opportunity to amend.

On February 15, 2013, Lead Plaintiff filed his Second Amended Class Action Complaint for Violation of Federal Securities Laws ("SAC"). On March 15, 2013, Defendants filed their motions to dismiss and briefing was completed on May 20, 2013. On June 3, 2013, the Court issued a tentative Order and held oral argument. On August 8, 2013, the Court issued its final Order, upholding the SAC's immigration compliance statements as to the Company and the Individual Defendants and 2010 Annual Report statements as to the Company. The Court also upheld control person allegations against Lion Capital (for the 2010 Annual Report statements only) and the Individual Defendants (for both sets of statements). The Court dismissed with prejudice allegations regarding the effects of the terminations.

The parties thereafter engaged in substantial mediation efforts, including submitting detailed mediation briefs at the request of the mediator and attending a formal mediation session at which both parties made detailed presentations regarding the strengths and weaknesses of their cases. The parties were not able to reach final resolution during that session, however, following an additional week and a half of arm's-length negotiations, the parties reached an agreement-in-principle to settle the Action. Thereafter, Lead Counsel engaged in targeted confirmatory discovery and the parties negotiated a formal settlement agreement, executing the Stipulation on January 17, 2014.

III. SUMMARY AND REASONS FOR THE PROPOSED SETTLEMENT

Lead Plaintiff entered this Settlement with a solid understanding of the strengths and weaknesses of his claims. This understanding is based on Lead Counsel's (or its agents') extensive investigation and discovery during the prosecution of this Action which has included, *inter alia*: (i) review and analysis of filings made with the SEC by American Apparel and Deloitte & Touche LLP during the relevant time period; (ii) review and analysis of securities analyst reports, press releases, and

media reports regarding American Apparel and other publications issued by and through the Company or Charney; (iii) review and analysis of pleadings in related actions; (iv) review and analysis of the findings of government agencies, including documents obtained from ICE *via* a FOIA request; (v) interviews with numerous former employees of the Company; (vi) research of the applicable law with respect to the claims asserted in the Action and potential defenses thereto; (vii) targeted confirmatory discovery; and (viii) consultation with experts.

Based on a careful analysis of the considerations listed above, as well as the substantial expense and length of time necessary to prosecute this Action through the completion of merits and expert discovery, trial and appeals, the significant reduction in damages resulting from the dismissal with prejudice of claims relating to the effects of the terminations, and the considerable uncertainties in predicting the outcome of complex litigation, Lead Plaintiff concluded that a substantial risk existed that the Class could recover less than the Settlement, or nothing, if the Action were to continue. Mr. Melnick also recommends and endorses the Settlement and, indeed, the agreement is the result of Mr. Melnick's proposal, compiled after vigorous arm's-length negotiations. Accordingly, Lead Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.[3]

IV. ARGUMENT

A. The Law Favors and Encourages Settlements

Rule 23 requires judicial approval of any compromise of claims brought on a class-wide basis. Rule 23(e) ("The claims…of a certified class may be settled…only

[3] *See generally Rafton v. Rydex Series Funds*, 2011 U.S. Dist. LEXIS 103141 (N.D. Cal. 2011); *In re Merix Corp. Sec. Litig.*, No. 04-cv-00826-MO, slip op. (D. Or. 2010) (Declaration of Stacey M. Kaplan in Support of Lead Plaintiff's Unopposed Motion for Preliminary Approval of Proposed Settlement ("Kaplan Decl."), Exhibit 1); *Johnson v. Aljian, et al.*, No. 03-cv-05986-DMG-PJW, slip op. (C.D. Cal. 2010) (Kaplan Decl., Exhibit 2); *In re Amkor Tech. Inc. Sec. Litig.*, No. 07-cv-00278-PGR, slip op. (D. Ariz. 2009) (Kaplan Decl., Exhibit 3); *In re Marvell Tech. Grp. Ltd. Sec. Litig.*, No. 06-cv-06286-RMW, slip op. (N.D. Cal. 2009) (Kaplan Decl., Exhibit 4); *In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607 (S.D. Cal. 2008).

with the court's approval."). "In deciding whether to approve a proposed settlement, the Ninth Circuit has a 'strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.'" [4] *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *9 (C.D. Cal. 2005); *see also Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). "[T]here is an overriding public interest in settling and quieting litigation," and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Browning v. Yahoo! Inc.*, 2007 U.S. Dist. LEXIS 86266, at *39 (N.D. Cal. 2007) ("public and judicial policies strongly favor settlement of class action law suits").

Moreover, the Ninth Circuit expressly recognizes that:

> [I]n making its assessment pursuant to Rule 23(e), the Court's[] "intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."

Heritage Bond, 2005 U.S. Dist. LEXIS 13555, at *10 (quoting *Officers for Justice*, 688 F.2d at 625). Recognizing that "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in [the] litigation," courts favor approval of settlements. *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995).

B. The Proposed Settlement Should Be Preliminarily Approved

Approval of a class action settlement requires two stages of judicial approval: (i) preliminary approval, followed by the distribution of notice to the class; and (ii) final approval. *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 473 (E.D. Cal.

[4] Here, as elsewhere, citations and footnotes have been omitted and emphasis has been added unless otherwise indicated.

2010) ("the approval of a class action settlement takes place in two stages"). "In the first stage of the approval process, 'the court preliminarily approve[s] the Settlement pending a fairness hearing, temporarily certifie[s] the Class…, and authorize[s] notice to be given to the Class.'" *Id*.

At this initial preliminary approval stage, the "Court need only determine whether the proposed settlement appears on its face to be fair" and "falls within the range of possible approval." *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 19674, at *15-16 (S.D. Cal. 2010); *see also Wireless Facilities*, 253 F.R.D. at 612. At this stage, however, the Court is not required to make a final determination as to whether the proposed Settlement will ultimately be found to be fair, reasonable and adequate. Rather, that evaluation is made only at the final approval stage, after notice of the proposed Settlement has been given to the members of the Class and Class Members have had an opportunity both to voice their views of the proposed Settlement and to exclude themselves from the Class. *See Williams*, 2010 U.S. Dist. LEXIS 19674, at *14-15 ("Given that some [] factors cannot be fully assessed until the Court conducts a Final Approval Hearing, 'a full fairness analysis is unnecessary at this stage.'").[5]

By his motion, Lead Plaintiff is now only requesting that the Court take the first step in the settlement review process. To this end, "[p]reliminary approval of a settlement and notice to the proposed class is appropriate: '[i]f [1] the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to

[5] In connection with final approval of the proposed Settlement, the Court will be asked to review the following factors identified by the Ninth Circuit: (1) the amount offered in Settlement; (2) the reaction of the Class Members to the proposed Settlement; (3) the strength of Lead Plaintiff's case; (4) the risk, expense, complexity, and likely duration of further litigation; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of Lead Counsel; (7) the risk of maintaining class action status throughout the trial; and (8) the absence of collusion. *Id.*; *see also Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375-76 (9th Cir. 1993) (citing *Officers for Justice*, 688 F.2d at 625).

class representatives or segments of the class, and [4] falls with the range of possible approval…."' *Williams*, 2010 U.S. Dist. LEXIS 19674, at *15.[6]

As demonstrated below, the proposed Settlement is a fair result in light of the circumstances present in this Action. Given the complexity of this litigation, the potential difficulty of proving certain elements of the Class's claims (*i.e.*, scienter), and the continued risks if the parties were to proceed to trial, the Settlement represents a favorable resolution of this Action and eliminates the risk that the Class might otherwise recover nothing. Indeed, the ever shifting landscape of Private Securities Litigation Reform Act of 1995 ("PSLRA") litigation demonstrates the risks of further litigation. *See*, *e.g.*, *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010) (affirming grant of summary judgment in PSLRA case on loss causation grounds). Accordingly, the proposed Settlement satisfies the criteria for assessing preliminary approval of a proposed settlement set forth above, and the proposed Settlement is well within the range of possible approval.

1. The Proposed Settlement Was Vigorously Negotiated and Is Supported by Experienced Counsel

Courts recognize that the opinion of experienced counsel supporting settlement after vigorous arm's-length negotiation is entitled to considerable weight. *See*, *e.g.*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981) ("the fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight"); *In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.*, 1992 U.S. Dist. LEXIS 14337, at *7 (C.D. Cal. 1992) (same). Here, counsel for the parties have been actively litigating this Action since its commencement in 2010, during which time Lead Counsel has

[6] *See also Young v. Polo Retail, LLC*, 2006 U.S. Dist. LEXIS 81077, at *12-13 (N.D. Cal. 2006) ("'If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no[] obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing.'").

conducted an extensive investigation into the alleged claims, including, *inter alia*: (i) review of hundreds of pages of documents received pursuant to a FOIA request to ICE; (ii) review of targeted confirmatory discovery; (iii) review of media and analyst reports, SEC filings, filings in related litigation and the findings of government entities; (iv) consultation with experts; (v) interviews (through investigators) with former employees; and (vi) intensive research of the law applicable to the claims and defenses thereto.

Lead Counsel engaged in a rigorous negotiation process with defense counsel, and fully considered and evaluated the fairness of the Settlement to the Class. The parties' settlement negotiations were hard-fought, and included the determined assistance of an experienced mediator. At Mr. Melnick's direction, the parties submitted comprehensive mediation statements. Counsel for all parties attended a formal settlement conference before Mr. Melnick and gave aggressive, detailed and thoughtful presentations on the perceived strengths and weaknesses of their respective cases. It was only after several weeks of intense discussions resulting in a mediator's proposal that the parties were ultimately able to reach an agreement-in-principle. Courts have recognized that "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, 2007 U.S. Dist. LEXIS 99066, at *17 (N.D. Cal. 2007).[7]

[7] *See also Morales v. Stevco*, *Inc*., 2011 U.S. Dist. LEXIS 130604, at *32 (E.D. Cal. 2011) (Granting preliminary approval because, among other things, "[t]he parties utilized an impartial mediator, and the matter was 'resolved by means of a mediator's proposal.' Thus, the agreement is the product of non-collusive conduct."); *Harris v. Vector Mktg. Corp.*, 2011 U.S. Dist. LEXIS 48878, at *25 (N.D. Cal. 2011) ("[T]he parties reached their settlement during a mediation session conducted by [a mediator], who has significant experience mediating complex civil disputes. This further suggests that the parties reached the settlement in a procedurally sound manner and that it was not the result of collusion or bad faith by the parties or counsel."); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (same); *Carter v. Anderson Merchandisers*, *LP*, 2010 U.S. Dist. LEXIS 55581, at *22 (C.D. Cal. 2010) (same).

Additionally, throughout the Action and settlement negotiations, Defendants have been vigorously represented by Skadden, Arps, Slate, Meagher & Flom LLP, O'Melveny & Myers LLP, and Simpson Thacher & Bartlett LLP. Defense counsel were therefore equally well-informed regarding the case and their representation of the Defendants was no less rigorous than Lead Counsel's representation of the Class. *See Livingston v. Toyota Motor Sales USA, Inc.*, 1995 U.S. Dist. LEXIS 21757, at *16-17 (N.D. Cal. 1995). Because the Settlement is the product of serious, informed and non-collusive negotiations among experienced counsel and a highly qualified mediator, it deserves preliminary approval. *See Weeks, et al. v. Kellogg Co., et al.*, No. 09-cv-08102-MMM-RZx, slip op. at 3-4 (C.D. Cal. 2011) (granting preliminary approval where "the parties have entered into the Stipulation in good faith, following arms-length negotiation between their respective counsel") (Kaplan Decl., Exhibit 5).

2. The Proposed Settlement Provides a Favorable Recovery for the Class

As set forth above, the Settlement provides for the cash recovery of $4,800,000 to be allocated among Class Members following deduction of Court-approved fees and expenses.[8] If the Action had continued, Lead Plaintiff and the putative Class faced numerous factual and legal obstacles and risks. To this day, Defendants adamantly deny any wrongdoing. As they did in their multiple motions to dismiss, Defendants were prepared to argue at trial that they did not act with the requisite scienter, that the statements at issue were immaterial and not misleading, that Lion Capital and the Individual Defendants were not control persons of American Apparel, and that Defendants' actions did not cause many of the Class's alleged losses,

[8] In addition, pursuant to the mediator's proposal, the parties have agreed that, following any entry of an order granting final approval to the Settlement, the Company's General Counsel and Chief Financial Officer ("CFO") will meet with Lead Plaintiff to in good faith discuss his views on the Company's retail operations. The General Counsel and CFO shall subsequently report Lead Plaintiff's positions to the Company's Chief Executive Officer and Head of Retail Operations for their review and, in their sole discretion, possible implementation.

particularly in light of the Court's dismissal of statements regarding the effects of the terminations. *See In re Charles Schwab Corp. Sec. Litig.*, 2011 U.S. Dist. LEXIS 44547, at *19 (N.D. Cal. 2011) ("[P]rosecuting these claims through trial and subsequent appeals would have involved significant risk, expense, and delay to any potential recovery…risks included proving loss causation and the falsity of the representations at issue."). Further, even if Defendants were found liable, there were significant differences between the damage calculations presented by the parties.

The Settlement's immediate benefit must therefore be compared to the real risk that the Class would recover nothing after summary judgment, trial and likely appeals, possibly years into the future. Thus, Lead Plaintiff believes that the proposed Settlement is fair and adequate given the risk and uncertainty of further litigation, and the possibility that, even if Lead Plaintiff prevailed at trial, he would not be able to obtain a judgment for the Class in an amount greater than or even equal to the proposed Settlement. *See In re Portal Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 88886, at *8 (N.D. Cal. 2007) ("[T]he risk, expense, complexity and likely duration of further litigation…favor settlement because further litigation would entail substantial risk to the class of recovering nothing. Any further litigation would likely be complex, expensive and a favorable outcome improbable. Additional consideration of increased expenses of fact and expert discovery and the inherent risks of proceeding to summary judgment, trial and appeal also support the settlement."). Given the foregoing risks and after extensive investigation and research, Lead Plaintiff and Lead Counsel have concluded that $4,800,000 is a reasonable and fair amount and represents a substantial recovery for the Class.

3. The Proposed Settlement Does Not Unjustly Favor Any Class Members

The Plan of Allocation described in the proposed Notice to the Class (Exhibit A(1) to the Stipulation) provides for distribution of the Settlement Fund (after deduction of Court-approved fees and expenses) to Class Members who have a loss on

their transactions in American Apparel common stock purchased or otherwise acquired during the Class Period (*i.e.*, November 28, 2007 through August 17, 2010, inclusive). The formula to apportion the Net Settlement Fund among Class Members is based on when they purchased, acquired and/or sold their shares of common stock, as developed by Lead Plaintiff's damages consultant.[9] This method ensures that Class Members' recoveries are based upon the relative losses they sustained. All Class Members will receive a *pro rata* distribution from the Net Settlement Fund calculated in the same manner.

The Notice to the Class also discloses that Lead Plaintiff may apply to the Court for reimbursement of his reasonable costs and expenses (including lost wages) directly relating to his representation of the Class. The reimbursement that Lead Plaintiff may seek is a proper request pursuant to the PSLRA. 15 U.S.C. §78u-4(a)(4);[10] *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming reimbursement award to class representative in securities class action).[11] Although

[9] The computation of the estimated alleged artificial inflation in the price of American Apparel common stock during the Class Period takes into account the Court's August 8, 2013 Order on Defendants' motion to dismiss the SAC, which dismissed with prejudice claims relating to Defendants' statements between June 30, 2009 and March 30, 2010. As a result of their dismissal with prejudice, it is far less likely that Lead Plaintiff could prevail on these claims. Accordingly, as reflected in the proposed Plan of Allocation set forth as Appendix A to the Notice, 10% of the total estimated artificial inflation for the period July 1, 2009 through March 30, 2010 is utilized to reflect the lesser likelihood of success on the dismissed claims.

[10] The PSLRA specifically provides for reimbursement to representative plaintiffs in securities fraud class actions. Pursuant to 15 U.S.C. §78u-4(a)(4) of the PSLRA: "The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class."

[11] *McPhail v. First Command Fin. Planning, Inc.*, 2009 U.S. Dist. LEXIS 26544, at *24-25 (S.D. Cal. 2009) (awarding reimbursement to six class representatives in amounts ranging from $923.20 to $10,422.30); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1173 (S.D. Cal. 2007) (approving $40,000 reimbursement to lead plaintiff); *In re Infospace, Inc. Sec. Litig.*, 330 F. Supp. 2d 1203, 1216 (W.D. Wash. 2004) (same).

Lead Plaintiff will share in the Net Settlement Fund in the same proportion as all Class Members, he may recover his reasonable costs and expenses incurred as a result of activities undertaken on behalf, and directly related to his representation, of the Class.

Additionally, the fees and expenses that Lead Counsel will seek in this Action – not to exceed 25% of the Settlement Amount plus out-of-pocket expenses up to $300,000, plus interest on both amounts – are reasonable. *See* 15 U.S.C. §78u-4(a)(4) & (6).[12] In complex securities litigation such as this, courts in this Circuit have routinely awarded larger or a similar percentage for attorneys' fees. *See*, *e.g.*, *Mego*, 213 F.3d at 460 (affirming award of one-third of the total recovery).[13]

4. The Stage of the Proceedings and Discovery Completed[14]

The stage of the proceedings and discovery completed are additional factors supporting the Settlement. As discussed in detail above, Lead Counsel (or its agents) engaged in extensive investigation, research, and analysis of the Class's claims, including, among other things, review of SEC filings, analyst reports, news media, findings of governmental agencies, filings in related litigation, and interviews with former American Apparel employees. Lead Plaintiff and Lead Counsel also,

[12] Lead Counsel will submit further briefing in support of its request for an award of attorneys' fees and reimbursement of expenses along with its submission for final approval of the Settlement prior to the Settlement Fairness Hearing.

[13] *Pac. Enters.*, 47 F.3d at 379 (awarding 33% of $12 million fund); *Johnson v. Aljian, et al.*, No. 03-cv-05986-DMG-PJW, slip op. at 5 (C.D. Cal. 2010) (Kaplan Decl., Exhibit 6) (awarding 33.33% of $8.1 million fund); *Jenson v. First Trust Corp.*, 2008 U.S. Dist. LEXIS 45078, at *10 (C.D. Cal. 2008) (awarding 33% of $8.5 million fund); *In re CV Therapeutics*, *Inc.*, *Sec. Litig.*, 2007 U.S. Dist. LEXIS 98244, at *2 (N.D. Cal. 2007) (awarding 30% of fund); *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, at *61 & n.14 (awarding one-third because "courts in this circuit, as well as other circuits, have awarded attorneys' fees of 30% or more in complex class actions"); *In re Informix Corp. Sec. Litig.*, 1999 WL 33456024 (N.D. Cal. 1999) (awarding 30% of fund).

[14] Although not specifically required, Lead Counsel has provided a brief analysis of this factor to aid in the Court's assessment of the proposed Settlement. This factor, in addition to all eight factors listed in n.5, will be addressed in further detail in Lead Counsel's briefing in support of final approval of the Settlement.

throughout the course of various rounds of pleadings and motions to dismiss, engaged in extensive legal research, fine-tuning and honing of the claims in this Action. As a result of this work, Lead Plaintiff's SAC was upheld as to two of the three categories of false and misleading statements alleged.

Moreover, Lead Plaintiff diligently prepared for and testified at a deposition, and through Lead Counsel pursued documents through a FOIA request to ICE, successfully utilized those documents to withstand motions to dismiss, and also engaged in confirmatory discovery in connection with the Settlement. *See Mego*, 213 F.3d at 459 (upholding the "district court's conclusion that the Plaintiffs had sufficient information to make an informed decision about the Settlement" because "'formal discovery is not a necessary ticket to the bargaining table'" and "Class Counsel conducted significant investigation, discovery and research, and presented the court with documentation supporting those services…[and] Class Counsel had worked with damages and accounting experts throughout the litigation"); *Portal Software*, 2007 U.S. Dist. LEXIS 88886, at *10-11.[15] In light of these considerations, the Settlement is reasonable and within the range of possible approval. Lead Plaintiff therefore respectfully asks the Court to grant preliminary approval of the Settlement and direct that notice be given to the Class.

C. The Proposed Settlement Class Meets the Prerequisites for Class Certification Under Rule 23

The Ninth Circuit has long recognized that class actions may be certified for the purpose of settlement only. *In re Heritage Bond Litig. v. U.S. Trust Corp.*, 546 F.3d 667, 674-75 (9th Cir. 2008) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Rule 23(a) sets forth the following four prerequisites to class

[15] *See also Cohorst v. Bre Props., Inc.*, 2012 U.S. Dist. LEXIS 5387, at *10-11 (S.D. Cal. 2012) (affirming adequacy of settlement where, "after reaching settlement of Plaintiffs' claims before a neutral mediator, Plaintiffs engaged in confirmatory discovery"); *Lo v. Oxnard European Motors, LLC*, 2011 U.S. Dist. LEXIS 144490, at *17-18 (S.D. Cal. 2011) (finding settlement to be "fair, reasonable, and adequate" where the parties conducted "'limited confirmatory discovery'").

certification: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. In addition, the class must meet one of the three requirements of Rule 23(b). *See* Rule 23; *In re UTStarcom, Inc. Sec. Litig.*, 2010 WL 1945737, at *3 (N.D. Cal. 2010) (citing *Hanlon*, 150 F.3d at 1019). The proposed Class is defined in the Stipulation as follows:

> all persons and entities who purchased or otherwise acquired the publicly traded common stock of American Apparel between November 28, 2007 and August 17, 2010, inclusive. Excluded from the Class are Defendants, the directors and officers of American Apparel and their families and affiliates. Also excluded from the Class are all persons and entities who exclude themselves from the Class by timely requesting exclusion in accordance with the requirements set forth in the Notice.

Courts routinely endorse the use of the class action device to resolve claims brought under the federal securities laws. *See*, *e.g.*, *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 642 (C.D. Cal. 2009) (citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913 (9th Cir. 1964) and *Blackie v. Barrack*, 524 F.2d 891, 903 (9th Cir. 1975)); *In re THQ, Inc. Sec. Litig.,* 2002 U.S. Dist. LEXIS 7753, at *8-9 (C.D. Cal. 2002). "[C]lass actions commonly arise in securities fraud cases as the claims of separate investors are often too small to justify individual lawsuits, making class actions the only efficient deterrent against securities fraud [and] [a]ccordingly, the Ninth Circuit and courts in this district hold a liberal view of class actions in securities litigation." *In re Adobe Sys., Inc. Sec. Litig.*, 139 F.R.D. 150, 152-53 (N.D. Cal. 1991); *see also Cooper*, 254 F.R.D. at 642 ("'The availability of the class action to redress such frauds has been consistently upheld, in large part because of the substantial role that the deterrent effect of class actions plays in accomplishing the objectives of the securities laws.'") (quoting *Blackie*, 524 F.2d at 903). This Action is no exception, and Lead Plaintiff submits that the proposed Class satisfies each of the requirements of Rules 23(a) and 23(b)(3).

1. Numerosity

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is impracticable. "'[I]mpracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Katz v. China Century Dragon Media, Inc.*, 287 F.R.D. 575, 582-83 (C.D. Cal. 2012) (citing *Harris*, 329 F.2d at 913-14). Indeed, classes consisting of 25 members have been held to be large enough to justify certification. *See Perez-Funez v. Dist. Dir., Immigration & Naturalization Serv.*, 611 F. Supp. 990, 995 (C.D. Cal. 1984); *see also In re STEC Inc.*, 2012 U.S. Dist. LEXIS 186180, at *11 (C.D. Cal. 2012) ("There is no fixed number of class members that compels or precludes class certification…."). Additionally, "'the exact size of the class need not be known so long as general knowledge and common sense indicate that the class is large.'" *Id.*; *see also Vinh Nguyen v. Radient Pharms. Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012) ("'[W]here the exact size of the proposed class is unknown, but general knowledge and common sense indicate it is large, the numerosity requirement is satisfied.'").

Here, American Apparel, which traded on the American Stock Exchange and the NYSE Amex, had more than 71 million shares of stock outstanding during the Class Period. "The Court certainly may infer that, when a corporation has millions of shares trading on a national exchange, more than 40 individuals purchased stock over the course of more than a year. It is likely that thousands of people made such purchases." *See Cooper*, 254 F.R.D. at 634. A class of this size is sufficiently numerous to make joinder impracticable. *Id.*; *see also UTStarcom*, 2010 WL 1945737, at *4; *Yamner v. Boich*, 1994 WL 514035, at *3 (N.D. Cal. 1994).

2. Commonality

Rule 23(a)(2) is satisfied where class members share at least one common question of fact or law. *Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987); *see also Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 488 (C.D. Cal. 2006) ("The commonality requirement is generally construed liberally; the

existence of only a few common legal and factual issues may satisfy the requirement."). Further, "a few factual variations among the class grievances will not defeat commonality so long as class members' claims arise from 'shared legal issues' or 'a common core of salient facts.'" *Cooper*, 254 F.R.D. at 634 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003)). Here, the common questions of fact and law include: (i) whether Defendants violated the Securities Exchange Act of 1934; (ii) whether Defendants omitted and/or misrepresented material facts; (iii) whether Defendants' statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (iv) whether Defendants knew or recklessly disregarded that their statements were false and misleading; (v) whether the price of American Apparel common stock was artificially inflated; and (vi) the extent of damage sustained by Class Members and the appropriate measure of damages. *See Cooper*, 254 F.R.D. at 635 (finding common questions of law and fact as to "whether Defendants falsely represented material facts," "whether Defendants knew that their statements were false and misleading," and "whether the price of [defendant company's] publicly traded securities was artificially inflated").

Here, there are common questions of law and fact because Defendants' alleged misconduct affected all members of the proposed Class in the same manner; *i.e.*, Defendants' false and misleading statements and omissions artificially inflated the price of American Apparel's stock. *See*, *e.g.*, *In re VeriSign, Inc. Sec. Litig.*, 2005 U.S. Dist LEXIS 10438, at *32 (N.D. Cal. 2005) ("Here, the issues common to the class – namely, the nature and extent of Defendants' alleged misrepresentations and the like – are predominant."); *In re Emulex Corp., Sec. Litig.*, 210 F.R.D. 717, 721 (C.D. Cal. 2002). Securities actions containing common questions such as the ones listed above repeatedly have been held to be prime candidates for class certification.

3. Typicality

The typicality requirement of Rule 23(a)(3) is satisfied when the claims or defenses of the proposed class representative are typical of the claims or defenses of other class members. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625, 117 S. Ct. 2231 (1997) (common-issues test readily met in securities cases); *Rivera v. Bio Engineered Supplements & Nutrition, Inc.*, 2008 U.S. Dist. LEXIS 95083, at *18 (C.D. Cal. 2008). "'[D]ifferences in the amount of damages, the size or manner of [stock] purchaser, the nature of the purchaser, and even the specific document influencing the purchase will not render a claim atypical in most securities cases.'" *In re Surebeam Corp. Sec. Litig.*, 2003 U.S. Dist. LEXIS 25022, at *18 (S.D. Cal. 2003). In other words, "'a strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences'" between the claims of the named representative and other class members. *Rivera*, 2008 U.S. Dist. LEXIS 95083, at *19; *see also West v. Circle K Stores, Inc.*, 2006 WL 1652598, at *5 (E.D. Cal. 2006).

Here, the claims of Lead Plaintiff arise from the same events or course of conduct that give rise to claims of other Class Members and are based on the same legal theory. Lead Plaintiff, like other Class Members, purchased or otherwise acquired American Apparel common stock during the Class Period at artificially inflated prices and suffered damages when Defendants' alleged misstatements and omissions were disclosed to investors, causing the price of the Company's common stock to decline. All Class Members were victims of this same alleged common course of conduct throughout the Class Period, and, as Lead Plaintiff alleges, sustained damages as a result. *Id.* Thus, the proof that Lead Plaintiff would present to establish his claims would prove the claims of the rest of the Class. Additionally, Lead Plaintiff is not subject to any unique defenses that could render him an atypical member of the Class. Therefore, Lead Counsel respectfully submits that this Court should find typicality satisfied. *See Hodges v. Akeena Solar, Inc.*, 274 F.R.D. 259, 266-67 (N.D. Cal. 2011); *Cooper*, 254 F.R.D. at 635-36.

4. Adequacy

The representative parties must satisfy Rule 23(a)'s adequacy requirement by showing that they will fairly and adequately protect the interests of the Class. The Ninth Circuit sets forth a two-prong test for Rule 23(a)(4)'s adequacy requirement: "'(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Hootkins v. Chertoff*, 2009 U.S. Dist. LEXIS 3243, at *20 (C.D. Cal. 2009) (citing *Hanlon*, 150 F.3d at 1020). As described above, Lead Plaintiff has claims that are typical of and coextensive with those of the Class. Lead Plaintiff, like all Class Members, purchased or otherwise acquired American Apparel common stock at artificially inflated prices as a result of Defendants' alleged misleading statements and/or omissions. Further, Lead Plaintiff has retained counsel highly experienced in securities class action litigation and who has successfully prosecuted many securities and other complex class actions throughout the United States. *See* Kaplan Decl., Exhibit 7. Moreover, as detailed in Section II above, Lead Plaintiff and his counsel have vigorously litigated this Action. Thus, Lead Plaintiff is an adequate representative of the Class, and his counsel is qualified, experienced and capable of prosecuting this Action, in satisfaction of Rule 23(a)(4).

5. Common Questions of Law Predominate and a Class Action Is the Superior Method of Adjudication

In addition to meeting the prerequisites of Rule 23(a), this case also satisfies Rule 23(b)(3), which requires that the proposed class representative establish that common questions of law or fact predominate over individual questions, and that a class action is superior to other available methods of adjudication. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1191 (2013); *Erica P. John Fund, Inc. v. Halliburton Co.*, 131 S. Ct. 2179, 2184 (2011).[16] "[C]ommon issues need only

[16] When certifying a class for settlement purposes only, the standards for satisfying the class certification element of "superiority" under Rule 23(b)(3) may be relaxed because the court does not need to consider the difficulties of managing the class in

predominate, not outnumber individual issues." *Butler v. Sears, Roebuck and Co.*, 727 F.3d 796, 801 (7th Cir. 2013). Further, the superiority of class actions in large securities cases is well recognized. *See Amchem Prods.*, 521 U.S. at 625 (common questions predominated in securities class action certified for settlement).

As discussed above, there are a number of common questions of law and fact that would warrant class certification here. These questions clearly predominate because Defendants' alleged conduct affected all Class Members in the same manner. *See*, *e.g.*, *Cooper*, 254 F.R.D. at 632 ("The common questions of whether misrepresentations were made and whether Defendants had the requisite scienter predominate over any individual questions of reliance and damages."). Indeed, issues relating to Defendants' liability are common to all Class Members. *Id.*; *see also In re LDK Solar Sec. Litig.*, 255 F.R.D. 519, 530 (N.D. Cal. 2009); *UTStarcom*, 2010 WL 1945737, at *9 (same); *Emulex*, 210 F.R.D. at 721 ("The predominant questions of law or fact at issue in this case are the alleged misrepresentation [sic] Defendants made during the Class Period and are common to the class.").

Falsity, materiality, scienter, and loss causation are issues that "affect investors alike," and whose proof "can be made on a class-wide basis" because they "affect[] investors in common." *Schleicher v. Wendt*, 618 F.3d 679, 682, 685, 687 (7th Cir. 2010); *see also Cooper*, 254 F.R.D. at 640-41; *Amgen*, 133 S. Ct. at 1191 ("[T]he

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any future litigation or at trial. *See*, *e.g.*, *Ybarrondo v. NCO Fin. Sys., Inc.*, 2009 WL 3612864, at *7 n.3 (S.D. Cal. 2009); *Murillo*, 266 F.R.D. at 477. Indeed, courts have certified class actions for settlement purposes even where certification was or likely would have been denied for litigation purposes. *See*, *e.g.*, *In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 116 & n.308 (S.D.N.Y. 2009) (granting preliminary approval of a settlement class that included §11 claimants who had been excluded from the litigation class on grounds of "predominance") (citing *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 194-95 (S.D.N.Y. 2005) (reasoning that the "predominance" and "manageability" concerns under Rule 23(b)(3) were intertwined and "because the litigation was no longer going to trial, manageability was no longer an issue, and the 'predominance defect [] no longer fatal'")); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 557-58 (N.D. Ga. 2007) (same); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 292-93 (E.D. Pa. 2003) (same); *Ramirez v. DeCoster*, 203 F.R.D. 30, 36-37 (D. Me. 2001) (same); *In re Diet Drugs*, 2000 WL 1222042, at *43 (E.D. Pa. 2000) (same).

materiality of [defendants'] alleged misrepresentations and omissions is a question common to all members of the class."). Likewise, here, Defendants' alleged misstatements during the Class Period "affect[ed] [all] investors alike" and proof of falsity, materiality, scienter, and causation will "be made on a class-wide basis." *Schleicher*, 618 F.3d at 685, 687; *Cooper*, 254 F.R.D. at 641. As a result, common questions of law and fact predominate.

In light of the foregoing, all of the requirements of Rule 23(a) and (b) are satisfied, and there are no issues that would prevent the Court from certifying this Class for settlement purposes, appointing Lead Plaintiff as class representative, and appointing Lead Counsel as counsel for the Class. *See*, *e.g.*, *Wahl v. Am. Sec. Ins. Co.*, 2011 U.S. Dist. LEXIS 59559, at *5-6 (N.D. Cal. 2011) (class certified for settlement purposes); *Gittin v. KCI USA, Inc.*, 2011 WL 1467360, at *1 (N.D. Cal. 2011) (same).

D. The Proposed Notice to the Class Is Adequate

Rule 23(c)(2)(B) requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *See also* Rule 23 (e)(1) ("The court must direct notice in a reasonable manner to all class members who would be bound by the propos[ed settlement]."). Moreover, notice "must 'generally describe[] the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012).[17]

Here, the parties negotiated the form of the Notice to be disseminated to all persons and entities who fall within the Class definition and whose names and addresses have been or can be identified from or through American Apparel's

[17] *See also Sandoval v. Tharaldson Emp. Mgmt., Inc.*, 2010 U.S. Dist. LEXIS 69799, at *29 (C.D. Cal. 2010) ("The notice must explain in easily understood language the nature of the action, definition of the class, class claims, issues and defenses, ability to appear through individual counsel, procedure to request exclusion, and binding nature of a class judgment."); *Immune Response*, 497 F. Supp. 2d at 1170 (same).

shareholder lists. In addition, the Claims Administrator will mail copies of the Notice to entities which commonly hold securities in "street name" as nominees for the benefit of their customers who are the beneficial purchasers of the securities.[18] The parties further propose to supplement the mailed Notice with the Summary Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys' Fees and Litigation Expenses, and Settlement Fairness Hearing ("Summary Notice") – an additional description of the Action and proposed Settlement, to be published in *Investor's Business Daily* and transmitted over *PR Newswire*.[19] Lead Counsel will also make copies of the Notice, Summary Notice, and Proof of Claim available for download *via* the website maintained by the Claims Administrator ("Website"). The Website address is set forth in the Notice and Summary Notice. In addition, the Website will provide the SAC and other important pleadings, as well as important information regarding the Action and proposed Settlement.

Further, Rule 23(h)(1) requires that "[n]otice of the motion [for attorneys' fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." The proposed Notice satisfies the requirements of Rule 23(h)(1), as it notifies Class Members that Lead Counsel will apply to the Court for attorneys' fees not to exceed 25% of the Settlement Amount and reimbursement of out-of-pocket expenses not to exceed $300,000, plus interest earned on both amounts at the same rate earned on the Settlement Fund, to be paid from the Settlement Fund.

The proposed Notice includes all of the information required by the PSLRA, as well as additional information.[20] The proposed Notice describes the proposed

[18] In connection with this motion, Lead Plaintiff also respectfully requests that the Court authorize the retention of Gilardi & Co. LLC, an experienced and diligent class action claims administrator, for the Settlement. *See* Kaplan Decl., Exhibit 8.

[19] The proposed Notice and Summary Notice are attached to the Stipulation as Exhibits A(1) and A(3).

[20] Specifically with respect to cases filed under the PSLRA, notices of settlements must state: (1) "[t]he amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis;" (2) "[i]f the parties do not agree on the average amount of damages per share that would be

Settlement and sets forth, among other things: (1) the nature, history and status of the litigation; (2) the definition of the proposed Class and who is excluded from the Class; (3) the reasons the parties have proposed the Settlement; (4) the amount of the Settlement; (5) the estimated average recovery per damaged share; (6) the Class's claims and issues; (7) the parties' disagreement over damages and liability; (8) the maximum amount of attorneys' fees and expenses that Lead Counsel intends to seek in connection with final settlement approval; (9) the maximum amount of Lead Plaintiff's request for reimbursement of Lead Plaintiff's costs and expenses (including lost wages) in connection with his representation of the Class; (10) the plan for allocating the Settlement proceeds to the Class; and (11) the date, time and place of the final settlement hearing.

Further, the proposed Notice discusses the rights Class Members have in connection with the Settlement, including: (1) the right to request exclusion from the Class and the manner for submitting a request for exclusion; (2) the right to object to the Settlement, or any aspect thereof, and the manner for filing and serving an objection; and (3) the right to participate in the Settlement and instructions on how to complete and submit a Proof of Claim to the Claims Administrator. The Notice also provides contact information for Lead Counsel and counsel for the Defendants, as well as the postal address for the Court.

As detailed above, the notice program proposed in connection with the Settlement and the form and content of the Notice, Summary Notice and Proof of Claim more than satisfy the requirements of the Federal Rules of Civil Procedure and

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recoverable if the plaintiff prevailed on each claim alleged under this chapter [], a statement from each settling party concerning the issue or issues on which the parties disagree;" (3) "a statement indicating which parties or counsel intend to make []an application [for attorneys' fees or costs], the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought;" (4) "[t]he name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members;" and (5) "[a] brief statement explaining the reasons why the parties are proposing the settlement." 15 U.S.C. §78u-4(a)(7).

the PSLRA. Moreover, courts routinely find that comparable notice procedures meet the requirements of due process, Rule 23 and the PSLRA.[21] Accordingly, in granting preliminary approval of the Settlement, Lead Plaintiff respectfully requests that the Court also approve the proposed form and method of giving notice to the Class.

V. PROPOSED SCHEDULE OF EVENTS

In connection with preliminary approval of the Settlement, the Court must also set dates for certain events (*i.e.*, mailing of the Notice and publication of the Summary Notice, filing of supporting briefs, deadlines for requesting exclusion from the Class, objecting to the Settlement, submitting claim forms and the fairness hearing). The parties suggest a schedule based on the following time intervals:

Event	**Proposed Time for Compliance**
Deadline for mailing the Notice and Proof of Claim to Class Members[22] ("Notice Date")	Twenty (20) calendar days after the entry of the Preliminary Approval Order (Preliminary Approval Order, ¶6(i))
Deadline for publishing the Summary Notice[23]	Ten (10) calendar days after the Notice Date (Preliminary Approval Order, ¶6(ii))
Deadline for filing papers in support of final settlement approval, plan of allocation, request for attorneys' fees and expenses to Lead Counsel and request for reimbursement of costs and expenses to Lead Plaintiff	Thirty-five (35) calendar days before the date scheduled for the Settlement Fairness Hearing (Preliminary Approval Order, ¶22)

[21] *See, e.g.*, *In re Portal Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 51794, at *19 (N.D. Cal. 2007) (dissemination of notice to all reasonably identifiable class members with summary notice published in *Investor's Business Daily* approved as best practical) (citing Manual for Complex Litigation (Fourth) §21.311 (2004) ("'Publication in magazines, newspapers, or trade journals may be necessary if individual class members are not identifiable after reasonable effort.'")).

[22] *See* Exhibits A(1) and A(2) to the Stipulation.

[23] *See* Exhibit A(3) to the Stipulation.

Deadline for requesting exclusion from the Class or filing an objection to the Settlement, plan of allocation, request for attorneys' fees and expenses to Lead Counsel and/or request for reimbursement of costs and expenses to Lead Plaintiff	Twenty-one (21) calendar days prior to the date of the Settlement Fairness Hearing (Preliminary Approval Order, ¶¶13-14)
Deadline for filing reply papers	Seven (7) calendar days prior to the Settlement Fairness Hearing (Preliminary Approval Order, ¶22)
Settlement Fairness Hearing	Approximately one hundred (100) calendar days following the entry of the proposed Preliminary Approval Order (Preliminary Approval Order, ¶10)
Deadline for submitting Proof of Claim and Release forms	One hundred and twenty (120) calendar days following the Notice Date (Preliminary Approval Order, ¶15)

VI. CONCLUSION

Based on the foregoing, Lead Plaintiff respectfully submits that the proposed Settlement is a fair and reasonable resolution and warrants this Court's preliminary approval. Lead Plaintiff respectfully requests that the Court enter the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice submitted herewith, which will: (i) preliminarily approve the proposed Settlement; (ii) preliminarily certify the proposed Class for settlement purposes; (iii) approve the form and manner of giving notice of the Settlement to the Class; and (iv) schedule a hearing date and time to consider final approval of the Settlement and related matters.

DATED: January 17, 2014

Respectfully submitted,

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Lead Counsel for Lead Plaintiff and the Class

PROOF OF SERVICE

I hereby certify that on January 17, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 17, 2014.

/s/ Stacey M. Kaplan
STACEY M. KAPLAN

Mailing Information for a Case 2:10-cv-06352-MMM-JCG Anthony Andrade v. American Apparel, Inc. et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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