

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ROBERTO RAMIREZ and THOMAS
IHLE,

Plaintiffs,

-against-

J.C. PENNEY CORPORATION, INC.,
MICHAEL DASTUGUE, JANET
DHILLON, KENNETH HANNAH,
MICHAEL KRAMER, RONALD
JOHNSON, and MYRON E. ULLMAN, III,

Defendants.

Civil Action No. 6:14-cv-00601-RWS-KNM

CLASS ACTION

[PROPOSED] FINAL APPROVAL ORDER

This Action came on for hearing on July 26, 2017 to determine the fairness of the settlement (the “Settlement”) presented to the Court on June 23, 2017, and the subject of this Court’s Order Granting Preliminary Approval of Class Action Settlement, Preliminarily Certifying a Class for Settlement Purposes, Approving Form and Manner of Class Notice, Preliminarily Approving Plan of Allocation, and Scheduling a Date for a Fairness Hearing (Dkt. No. 76). The issues having been duly heard and a decision having been duly reached,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

Except as otherwise defined herein, all capitalized and undefined terms used in this Order and Final Judgment shall have the same meanings as ascribed to them in the Class Action Settlement Agreement and Release, dated May 31, 2016 (the “Settlement Stipulation”) (Dkt. No. 68-1).

1. The Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class members.

2. For the sole purpose of settling and resolving the Action, the Court certified this action as a Class Action under FED. R. CIV. P. 23(a) and 23(b)(1). The Settlement Class is defined as:

All Persons who were participants in or beneficiaries of the J. C. Penney Corporation, Inc. Savings, Profit Sharing and Stock Ownership Plan (the "Plan") at any time from November 1, 2011 through Settlement Stipulation Execution Date, May 31, 2016 (the "Class Period"), and whose Plan accounts included investments in the J. C. Penney Common Stock Fund.

3. Named Plaintiffs Roberto Ramirez and Thomas Ihle are appointed as Settlement Class representatives, and Zamansky LLC is appointed as Class Counsel pursuant to FED. R. CIV. P. 23(g).

4. The Court finds for the sole purpose of settling and resolving the Action that:

(a) The Settlement Class is so numerous that it is impractical to bring all Settlement Class members before the Court individually.

(b) The class allegations, denied by Defendants, present common questions of law and/or fact, including:

(i) Whether Defendants breached fiduciary obligations to the Plan and participants by causing the Plan to offer the J. C. Penney Common Stock Fund as an investment option in the Plan at a time when the Defendants knew or should have known that it was not a prudent investment for the Plan;

(ii) Whether Defendants breached fiduciary obligations to the Plan and its participants by causing the Plan to make and maintain investments in the J. C. Penney Common Stock Fund, at such time when it was imprudent to do so;

(iii) Whether certain Defendants breached fiduciary obligations to the Plan and its participants by failing to prudently monitor other fiduciaries, such that the Plan and its participants' interests were not adequately protected and served; and

(iv) Whether as a result of the alleged fiduciary breaches engaged in by Defendants, the Plan and its participants and beneficiaries suffered losses and, if so, the proper measurement of such losses.

(c) FED. R. CIV. P. 23(a)(3) requires that the claims of proposed representative plaintiffs be typical of the claims of a proposed class. That requirement is satisfied where the claims of the proposed representative plaintiffs arise from the same alleged course of conduct that gives rise to the claims of the proposed class members, and where the claims are based on the same legal theory. In the present case, Plaintiffs allege that they were Plan participants or beneficiaries during the Class Period with Plan accounts that included investments in the J.C. Penney Common Stock Fund, that the Plan's fiduciaries treated them and all other Plan participants alike, and that Plan-wide relief is necessary and appropriate under ERISA. Under these circumstances, for purposes of the Settlement only, and subject to the foregoing, the claims asserted by Plaintiffs are sufficiently typical of the claims asserted by the Settlement Class as a whole to satisfy FED. R. CIV. P. 23(a)(3).

(d) The requirements of FED. R. CIV. P. 23(a)(4) are also satisfied. The Court is satisfied that Class Counsel are qualified, experienced, and prepared to represent the Settlement Class to the best of their abilities. For the purposes of this Settlement, the Court finds that Plaintiffs have no conflicting interests with absent members of the

Settlement Class. This finding is based, in part, on the Plan of Allocation treating all Settlement Class members identically in determining the amount to be distributed to them.

(e) The Settlement Class satisfies the requirements of FED. R. CIV. P. 23(a), and also the requirements of FED. R. CIV. P. 23(b)(1). Given the Plan-representative nature of Plaintiffs' breach of fiduciary duty claims, there is a risk that failure to certify the Settlement Class would leave future plaintiffs without relief and, there is also a risk of inconsistent dispositions that might prejudice Defendants. This case is appropriate for class certification, for the purposes of this Settlement, under FED. R. CIV. P. 23 (b)(1).

(f) The Court also has considered each of the elements required by FED. R. CIV. P. 23(g) in order to ensure that Class Counsel will fairly and adequately represent the interests of the Settlement Class. Class Counsel has done the work necessary to identify or investigate potential claims in the Action, to investigate the allegations made in the Complaint, including reviewing publicly available information, reviewing documents and materials uncovered in their investigation, and consulting with experts. Class Counsel has experience in handling class actions and claims of the type asserted in this Action. They have refined their allegations through an amended pleading. Class Counsel has also demonstrated knowledge of the applicable law. The Court concludes that Class Counsel has fairly and adequately represented the interests of the Settlement Class.

(g) The Settlement Class has received proper and adequate notice of the Settlement Stipulation, the Fairness Hearing, Class Counsel's Motion for Attorneys' Fees and Expenses and for Named Plaintiffs' Case Contribution Award, and the Plan of

Allocation, such notice having been given in accordance with the Order Granting Preliminary Approval of Class Action Settlement. Such notice included individual notice to all Settlement Class members who could be identified through reasonable efforts, as well as notice via the internet, and provided valid, due, and sufficient notice of these proceedings and of the matters set forth therein, and included information regarding the procedure for making objections. Such notice fully satisfied the requirements of FED. R. CIV. P. 23 and the requirements of due process.

(h) Defendants have complied with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

5. Pursuant to FED. R. CIV. P. 23(e), the Court hereby approves and confirms the Settlement as a fair, reasonable and adequate settlement and compromise of the Action.

6. The Court hereby approves the Settlement Stipulation and orders that the Settlement Stipulation shall be consummated and implemented in accordance with its terms and conditions.

7. The Court finds that the Settlement embodied in the Settlement Stipulation is fair, reasonable and adequate and more particularly finds:

(a) The Settlement was negotiated vigorously and at arm's length by counsel for Defendants, on the one hand, and Class Counsel on behalf of the Settlement Class, on the other;

(b) The Settlement was reached following arm's-length negotiations among counsel, all of whom were thoroughly familiar with this litigation, with the assistance of an experienced mediator. Plaintiffs and Defendants had sufficient information to evaluate the settlement value of the Action;

(c) If the Settlement had not been achieved, Plaintiffs and Defendants faced the expense, risk and uncertainty of extended litigation;

(d) The amount of the Settlement is fair, reasonable and adequate. The Settlement amount is within the range of settlement values obtained in similar cases; and

(e) At all times, Plaintiffs have acted independently of Defendants and in the interest of the Settlement Class.

8. The Plan of Allocation is approved as fair and reasonable. Defendants' Counsel shall cause the Settlement Payment to be made within ninety (90) calendar days after this Order has been entered and shall then direct distribution of the Net Settlement Fund in accordance with the Plan of Allocation and the Settlement Stipulation.

9. The Action is hereby dismissed with prejudice, each party to bear his, her, or its own fees, costs and expenses, except as expressly provided herein.

10. In the event that the Settlement Stipulation is terminated in accordance with its terms, this Final Approval Order shall be rendered null and void, *ab initio*, and shall be vacated *nunc pro tunc*, and this Action shall for all purposes with respect to the Parties revert to its status as of March 23, 2016, the day immediately prior to the date on which the Term Sheet was executed. If this Final Approval Order is rendered void, the Parties shall be afforded a reasonable opportunity to negotiate a new case management schedule.

11. This Final Approval Order shall not be construed or used as an admission, concession, or declaration of any fact or allegation included in the Complaint, or of any fault, wrongdoing, breach or liability.

12. Named Plaintiffs Roberto Ramirez and Thomas Ihle are each awarded \$_____ as a Case Contribution Award, as defined in the Settlement Stipulation, in recognition of their

contributions to this Action, to be paid from the Gross Settlement Fund in accordance with the Settlement Stipulation.

13. Attorneys' fees are awarded in the amount of \$_____, to be paid in accordance with the Settlement Stipulation. Attorneys' fees in this amount are fair and reasonable in light of the successful results achieved by Class Counsel, the monetary benefits obtained in this Action, the substantial risks associated with this Action, Class Counsel's skill and experience in class action litigation of this type, and the fee awards in comparable cases.

14. Expenses are awarded in the amount of \$ _____, to be paid from the Gross Settlement Fund in accordance with the Settlement Stipulation. Expenses incurred in this amount by Class Counsel in the course of prosecuting this action are fair and reasonable.

15. Defendants' Counsel is hereby authorized to supervise and to administer the effectuation of the Plan of Allocation by the Settlement Administrator.

16. As required by FED. R. CIV. P. 23(h)(3), the Court has considered and finds as follows in making this award of attorneys' fees and expenses:

(a) The Settlement created a Gross Settlement Fund of \$4.5 million in cash for distribution to the Settlement Class and to pay approved fees, expenses, and Case Contribution Awards, and numerous Settlement Class members will benefit from the Settlement pursuant to the Plan of Allocation;

(b) More than 55,000 copies of the Class Notice were sent to putative Settlement Class members notifying them that Class Counsel would be applying to the Court for up to 30% of the Settlement Fund in attorneys' fees and for reimbursement of their expenses;

(c) The Class Notice advised Settlement Class members that more information, including the Settlement Stipulation, would be made available on the Settlement Website. Pursuant to the Preliminary Approval Order, Class Counsel's filing in support of final approval of the Settlement, the proposed Plan of Allocation, and the Motions for Attorneys' Fees and Expenses and Case Contribution Award was posted to the Settlement Website at least two weeks prior to the deadline for Settlement Class members to serve objections thereto;

(d) _____ objections were filed opposing the terms of the Settlement, the proposed Plan of Allocation, or Class Counsel's Motions for Attorneys' Fees and Expenses and Case Contribution Award;

(e) The Action involved complex factual and legal issues, was actively prosecuted for more than one year and, in the absence of a settlement, would involve lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(f) Had Class Counsel not achieved the Settlement there would remain a significant risk that Named Plaintiffs and the class they sought to represent would recover less or nothing from Defendants; and

(g) Class Counsel's fee and expense application indicates that Class Counsel devoted over 978 hours, with a lodestar value of approximately \$781,000 to achieve the Settlement.

17. The amount of attorneys' fees and expenses awarded by the Court is fair and reasonable and consistent with such awards in similar cases.

18. The Court shall retain exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance of the Settlement Stipulation or any challenges as to the

performance, validity, interpretation, administration, enforcement or enforceability of the Notice, this Judgment, or the Settlement Stipulation or any termination of the Settlement Stipulation.