

**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

PLAN OF ALLOCATION

I. Definitions

A. Except as provided for in this Plan of Allocation, the capitalized terms used herein shall have the meanings ascribed to them in the Settlement Stipulation.

B. “Final Individual Dollar Recovery” means the amount calculated pursuant to Parts III.F-III.G below.

C. “Participants” means Participants With Active Plan Accounts and Participants Without Active Plan Accounts.

D. “Participants With Active Plan Accounts” means Settlement Class members who have a positive balance in their Plan account at the time of distribution of the Final Individual Dollar Recovery.

E. “Participants Without Active Plan Accounts” means Settlement Class members who have no account balance in the Plan at the time of distribution of the Final Individual Dollar Recovery.

F. “Plan” means the J. C. Penney Corporation, Inc. Savings, Profit Sharing and Stock Ownership Plan.

G. “Preliminary Individual Dollar Recovery” means the amount calculated pursuant to Parts III.A-III.E below.

H. “Recordkeeper” means the administrative service provider providing recordkeeping services to the Plan.

I. “Trustee” means the Plan’s directed trustee.

II. Allocation of the Net Settlement Fund to the Settlement Class

A. Pursuant to Section 12.5 of the Settlement Stipulation, after the Effective Date of Settlement, Class Counsel shall cause the Settlement Administrator, if one is retained, or another entity, to calculate Participants’ entitlements under this Plan of Allocation. Upon the calculations being completed and reviewed by Class Counsel: (1) Class Counsel shall direct the Settlement Administrator, if one is retained, or such other entity, to provide the calculations to the Recordkeeper and Trustee; and (2) Class Counsel shall direct the disbursement of the portion of the Net Settlement Fund applicable to Participants With Active Plan Accounts to the Recordkeeper and Trustee for distribution to Participants With Active Plan Accounts.

B. Distribution of the Net Settlement Fund will be based upon each Settlement Class members’ status with respect to the Plan and Final Individual Dollar Recovery:

1. Participants With Active Plan Accounts. As promptly as possible after deposit of the Net Settlement Fund into the Plan, the Trustee shall be directed to allocate to Participants With Active Plan Accounts their Final Individual Dollar Recovery, as calculated by the Settlement Administrator, if one

is retained, or another entity, based upon the formula below. The Final Individual Dollar Recovery to each Participant With Active Plan Account shall be allocated pro-rata among the sub-accounts in each such individual's account(s) and allocated among each such individual's investment options in accordance with the existing investment elections then in effect or, if no investment elections are in effect, to the Plan's default fund. Participants With Active Plan Accounts may reallocate their Final Individual Dollar Recovery as then permitted by the Plan. The Final Individual Dollar Recovery shall be subject to the Plan provisions governing the applicable sub-accounts.

2. Participants Without Active Plan Accounts. The Settlement Administrator, if one is retained, or another entity, will notify Participants Without Active Plan Accounts of the amount of their Final Individual Dollar Recovery. At its sole discretion, J. C. Penney reserves the right to distribute separate checks or re-open these Settlement Class member Plan accounts. For class members who no longer have Plan accounts, whether J. C. Penney distributes to such class members separate checks or re-opens these Settlement Class member Plan accounts, J. C. Penney will report the tax consequences of the distributions, if necessary, to the IRS and these class members will be subject to all tax consequences for the receipt of these amounts. The Settlement Administrator, if one is retained, or such other entity, will send the notice and forms to the last known addresses of Participants Without Active Plan Accounts on file with the Plan and, if returned, will use a commercial locator service to search for a more current address for each such individual and send the notice and

forms to such address. Any funds remaining in the Net Settlement Fund after a distribution(s) (the “Forfeiture Amount”) shall be treated as if it was a check returned (“forfeiture”) to the Plan Sponsor pursuant to the Plan’s “*If You Cannot Be Located*” section¹, which provides that:

[i]f [the Plan Sponsor] make[s] a payment to you and the check is returned ... your distribution amount will be transferred to a special account ... and if you cannot be located within a reasonable time, your benefit will then be transferred to the Forfeiture Account. If you contact the plan later, you will be entitled to immediate payment of the amount previously distributed to you.”

The Plan Sponsor shall not be required to contribute more than is deposited into the Plan as forfeitures to any Participants Without Active Plan Accounts who cannot be located using a commercial locator service. Once the Plan Sponsor has contributed the Forfeiture Amount to Participants Without Active Plan Accounts who could not be located using a commercial locator service, it will have no further responsibilities under this subparagraph.

III. Calculation of Allocation

A. For each Participant, the Settlement Administrator shall determine the approximate alleged net loss (“Net Loss”): $\text{Net Loss} = A + B - C - D$, where, for each Participant’s account:

1. A = the dollar value, if any, of the balance in the J. C. Penney Common Stock Fund on the first day of the Settlement Class Period;
2. B = the dollar value, if any, of all of the purchases of interests in the J. C. Penney Common Stock Fund during the Settlement Class Period as of the time of purchase(s);

¹ Annexed hereto as **Exhibit A**. 401(k) Savings Plan Summary Plan Description, p. 48, J. C. Penny Corporation, Inc., Jan. 1, 2012.

3. C = the dollar value, if any, of all sales of interests in the J. C. Penney Common Stock Fund during the Settlement Class Period as of the time of the sale(s); and
4. D = the dollar value, if any, of the balance in the J. C. Penney Common Stock Fund remaining on the last day of the Settlement Class Period.

B. All Participants whose Net Losses are negative (that is, those who profited rather than lost money as a result of the calculations in Section III.A) will be excluded from further calculations under this Plan of Allocation and shall not receive any distribution from the Net Settlement Fund.

C. The Net Losses of the Participants as calculated in Section III.A-B above will be aggregated to yield the loss of the Plan as a whole over the Settlement Class Period (the “Plan’s Loss”).

D. The Settlement Administrator, if one is retained, or such other entity, shall calculate for Participants their “Alleged Net Loss Percentage” of the Plan’s Loss by dividing their Net Loss by the Plan’s Loss.

E. The Settlement Administrator, if one is retained, or such other entity, shall then calculate for Participants their “Preliminary Individual Dollar Recovery,” or preliminary personal share of the Net Settlement Fund, by multiplying their Alleged Net Loss Percentage by the Net Settlement Fund.

F. The Settlement Administrator, if one is retained, or such other entity, shall identify all Participants whose Preliminary Individual Dollar Recovery under Parts III.A-E above is greater than zero but less than or equal to twenty five dollars (\$25.00) (the “De Minimis Amount”). All Participants whose Preliminary Individual Dollar Recovery is less than or equal to the De Minimis Amount shall receive no distribution from the Net Settlement Fund.

G. The Settlement Administrator, if one is retained, or such other entity, shall recalculate the Alleged Net Loss Percentages of the Participants whose Preliminary Individual Dollar Recovery was greater than the De Minimis Amount by omitting from the recalculation those Participants whose Preliminary Individual Dollar Recovery was equal to or less than the De Minimis Amount, so as to arrive at each such Participant's "Final Individual Dollar Recovery." The sum of the Final Individual Dollar Recoveries must equal the Net Settlement Fund, less any reasonable withholdings for, *e.g.*, taxes due and amounts needed to prepare such tax filings, and for any anticipated expenses of distribution to Participants who no longer have active Plan accounts pursuant to Section II.B.2, above.

H. At least twenty (20) business days prior to the allocation to Participants, the Settlement Administrator, if one is retained, or such other entity, shall provide Class Counsel and Defendants' counsel the methodology used in calculating losses as described herein (or otherwise modified) as well as a sampling of the summaries, compilations, calculations, or tabulations of the claims and amounts described herein, including a complete listing setting out the dollar amount ultimately allocated to each Participant. The Settlement Administrator, if one is retained, or such other entity, shall address any timely concerns or objections before any distribution is made.

I. Within fifteen (15) business days of the Settlement Administrator, if one is retained, or such other entity, providing its summary described in the preceding paragraph, Defendants shall separately identify the Participants With Active Plan Accounts and Participants Without Active Plan Accounts, so that it can be determined whether Participants fall within Sections II.B.1 or II.B.2, above.

J. The Settlement Administrator, if one is retained, or such other entity, shall then calculate the portion of the Net Settlement Fund to be deposited into the Plan pursuant to Section II.B.1 and J. C. Penney shall transmit such funds to the Trustee. The Settlement Administrator also shall effectuate notices of distribution to Participants who fall within the scope of Section II.B.2, above. To the extent that the Settlement Administrator, if one is retained, or such other entity, determines, prior to distribution, that further reasonable withholding from the Net Settlement Fund are needed for distribution pursuant to Section II.B.2, above, the Final Individual Dollar Recovery for all Participants shall be prorated equally, but any Participant who falls below the De Minimis Amount as a result of such proration shall still be entitled to recovery hereunder.

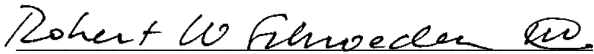
K. Nothing in this Plan of Allocation shall be applied or construed to alter or amend any of the terms of the Settlement Stipulation.

IV. Qualifications and Continuing Jurisdiction

A. In light of the manner in which the data are kept and the ease with which they may be manipulated, it may be appropriate to simplify some of the features of these calculations. Such simplifications are acceptable as long as each Participant shall receive a share of the Net Settlement Fund based approximately on the decline in the value of J. C. Penney Stock he or she held in his or her Plan account over the Settlement Class Period in comparison with the decline in value of J. C. Penney Stock held by others in the Plan. Any material changes will be presented to the Court for approval pursuant to Section IV.B below, and any unresolvable objections to the calculations of the Settlement Administrator, if one is retained, or such other entity, shall also be presented to the Court pursuant to Section IV.B below.

B. The Court will retain jurisdiction over the Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented.

SIGNED this 18th day of December, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE