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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

In Re: PAYLESS SHOESOURCE, INC.  
CALIFORNIA SONG-BEVERLY  
CREDIT CARD ACT LITIGATION  
(This document relates to ALL ACTIONS)

**CLASS ACTION**

Case No. 09-MD-02022 FCD (GGH)

**FINAL ORDER APPROVING CLASS  
ACTION SETTLEMENT, AWARD OF  
ATTORNEYS' FEES & COSTS,  
INCENTIVE FEES, AND JUDGMENT**

Date: December 3, 2010  
Time: 10:00 a.m.  
Judge: Frank C. Damrell, Jr.  
Dept.: Courtroom 2

MICHAEL SWANEY, on behalf of  
himself and others similarly situated,  
  
Plaintiff,  
  
v.  
  
PAYLESS SHOESOURCE, INC., a  
Missouri corporation; and DOES 1  
through 50, inclusive,  
  
Defendants.

Case No. 08-CV-02672 FCD (GGH)

1 JESSICA R. CLARK, individually and on  
behalf of all others similarly situated,

2 Plaintiff,

3 v.

4 PAYLESS SHOESOURCE, INC.; and  
DOES 1 through 100 inclusive,

5 Defendants.

6 On December 3, 2010, this Court heard Plaintiffs Michael Swaney's and Jessica  
7 Clark's ("Plaintiffs") unopposed motion for final approval of the class action settlement.  
8 This Court reviewed the motion and the supporting papers, including the Settlement  
9 Agreement and Release ("Agreement"), and heard counsels' arguments. No objections to  
10 the class action settlement were filed or presented to the Court by any Class member. As  
11 such, based on the review of the settlement and the findings below, the Court found good  
12 cause to grant the motion.

13 **FINDINGS:**

- 14
- 15 1. The Agreement was fair, reasonable, and adequate.
  - 16 2. The parties adequately performed their obligations under the Agreement.
  - 17 3. Defendant Payless ShoeSource, Inc. ("Payless" or "Defendant") provided  
18 notice to Class members in compliance with Paragraph 3.3 of the Agreement, and the  
19 notice satisfied due process and Rule 23(e) of the Federal Rules of Civil Procedure. The  
20 notice: (i) fully and accurately informed Class members about the lawsuit and  
21 settlement; (ii) provided sufficient information so that Class members were able to  
22 decide whether to accept the benefits offered, opt out and pursue their own remedies, or  
23 object to the proposed settlement; (iii) provided procedures for Class members to file  
24 written objections to the proposed settlement, to appear at the hearing, and to state  
25 objections to the proposed settlement; and (iv) provided the time, date and place of the  
26 final fairness hearing.
  - 27 4. An award to the law firms of Stonebarger Law, APC, Harrison, Patterson  
28 & O'Connor LLP, and the Linde Law Firm ("Class Counsel") of \$ 285,000 (total) for

1 attorneys' fees and costs is fair and reasonable in light of the nature of the case, work  
2 performed, Class Counsels' experience, and the benefits obtained for the class.

3 5. An incentive award to Plaintiffs of \$ 3,500 (each) is fair and reasonable in  
4 light of Plaintiffs' risks (including financial, professional, and emotional) in commencing  
5 this action as the Class Representatives, the time and effort spent by Plaintiffs in  
6 litigating this action as the Class Representatives, and Plaintiffs' public interest service.

7 **IT IS ORDERED THAT:**

8 1. **Class Members.** The Class members are defined as:

9 All persons who between January 1, 2008 and June 21, 2010  
10 purchased merchandise from a Payless ShoeSource, Inc. store  
11 in the State of California, used a credit card to make the  
12 purchase(s), and whose personal identification information,  
including, but not limited to, any telephone number, was  
requested and recorded by Defendant.

13 2. **Binding Effect of Order.** This Order applies to all claims or causes of  
14 action settled under the Agreement, and binds all Class members, including those who  
15 did not properly request exclusion under Paragraph 7 of the Preliminary Approval of  
16 Class Settlement and Provisional Class Certification Order. For purposes of  
17 clarification, neither this Order nor the Agreement applies to the claims for relief under  
18 the Telephone Consumer Protection Act asserted in the action *Kazemi v. Payless*  
19 *Shoesource, Inc. et al.*, 09-CV-05142 MHP (N.D. Cal.), and only those claims. No  
20 person properly requested to be excluded from the settlement.

21 3. **Release.** Plaintiffs and all Class members are: (1) deemed to have  
22 released and discharged Defendant from all claims arising out of or asserted in this  
23 action and claims released under the Agreement; and (2) barred and permanently  
24 enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these  
25 claims.

26 4. **Class Relief.** Defendant will issue a single \$10 Merchandise Certificate to  
27 each Class member who submitted a valid and timely claim form as provided in the  
28 Agreement no later than twenty-five (25) calendar days after the Final Settlement Date,

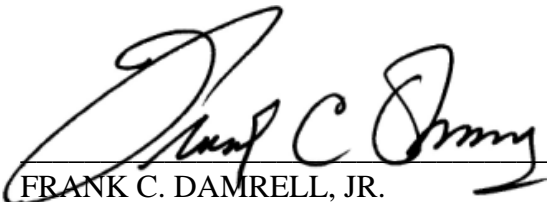
1 which is defined under Paragraph 1.12 of the Agreement.

2 5. **Attorneys' Fees and Costs.** Class Counsel are awarded \$285,000 (total).  
3 Defendant must pay Class Counsel this amount according to the manner and timeline set  
4 forth in Paragraph 2.5 of the Agreement.

5 6. **Incentive Award.** Plaintiffs Michael Swaney and Jessica Clark are  
6 awarded \$3,500 (each) as an incentive award. Defendant must pay Plaintiffs this  
7 amount according to the timeline set forth in Paragraph 2.4 of the Agreement.

8 7. **Court's Jurisdiction.** Pursuant to the parties' request, the Court will  
9 retain jurisdiction over this action and the parties until final performance of the  
10 Agreement.

11  
12 DATE: December 3, 2010

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15 FRANK C. DAMRELL, JR.  
16 UNITED STATES DISTRICT JUDGE  
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