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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No. CV 09-05142 MHP

MOHAMMAD KAZEMI,

Plaintiff,

v.

PAYLESS SHOESOURCE, et al.,

Defendants.

**MEMORANDUM & ORDER****Re: Supplemental Briefing Order**

Following the hearing held on Monday, April 25, 2011, the court orders the parties to submit supplemental briefing addressing the following issues:

1. Both parties shall explain why members of the putative class, as described in Count 1 of the Complaint, should not be expressly notified in the proposed settlement that individual class members who opt out of the proposed settlement may pursue an action in small claims court pursuant to 47 U.S.C. 227(b)(3).
2. Defendants shall explain why, as argued at the hearing, members of the putative sub-class, as described in Count 2 of the Complaint, would be unlikely to prevail on a claim brought pursuant to 47 U.S.C. 227(c)(5), in order to explain for the court defendants' contention at the hearing that express notification of such alternative recovery is properly excluded from the proposed settlement.
3. Both parties shall explain why the proposed settlement's reliance on merchandise certificates does not render it a coupon settlement subject to the provisions of 28 U.S.C. § 1712.


1 4. If the court should determine based on the parties' submission that the proposed settlement is  
2 in fact a coupon settlement under CAFA, both parties shall explain how, based on the submissions  
3 provided to the court to date, the court may "mak[e] a written finding that[] the settlement is fair,  
4 reasonable, and adequate for class members." 28 U.S.C. § 1712(e).

5 5. Plaintiff Kazemi shall file a declaration detailing his history of Payless purchases, online, in-  
6 store or otherwise, including the purchase of shoelaces to which the parties briefly refer in their  
7 Motion for Preliminary Approval of Class Action Settlement.

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9 The parties shall limit their submissions to fifteen (15) pages or less and shall file their submissions  
10 simultaneously within ten (10) calendar days of the filing date of this order.

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12 IT IS SO ORDERED.

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14 Dated:  May 6, 2011

  
15 MARILYN HALL PATEL  
16 United States District Court Judge  
17 Northern District of California  
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