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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MOHAMMAD KAZEMI, individually and on  
behalf of a class of similarly situated  
individuals,

No. C-09-5142 EMC

Plaintiff,

**ORDER RE SUPPLEMENTAL  
BRIEFING**

v.

PAYLESS SHOESOURCE, INC., *et al.*,

Defendants.

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Plaintiff's motion for final approval and related motion for attorney's fees and costs are currently set for hearing on March 23, 2012. Having reviewed the motions, the Court finds that supplemental briefing on one specific issue is necessary.

Under the parties' settlement agreement, if the amount claimed by the class members is less than \$5 million, then Payless shall make contributions to charities in an amount equal to the difference between the redemption amount and \$5 million. The cy pres contributions shall be in the form of merchandise certificates, each with a face value of \$15. The cy pres recipients shall be any tax-exempt charity designated by Payless in consultation with class counsel and approved by the Court. *See* Docket No. 53 (Sett. Agreement § 7). The Court gave this cy pres provision preliminary approval in September 2011. *See* Docket No. 76 (order).

Two months later, the Ninth Circuit decided *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011). There, the court held that "[c]y pres distributions must account for the nature of the plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the silent class members, including their geographic diversity." *Id.* at 1036. In light of *Nachshin*, the parties should


1 provide supplemental briefing as to how the cy pres provision in their settlement agreement meets  
2 the standard articulated by the Ninth Circuit therein.

3         The Court would prefer a joint supplemental brief from the parties, not to exceed ten (10)  
4 pages in length. If the parties are not able to agree upon a joint brief, then each party's brief shall  
5 not exceed five (5) pages. The supplemental brief(s) shall be filed by **March 9, 2012**. To the extent  
6 a party believes that a modification of the cy pres provision may be necessary or at least advisable  
7 based on *Nachshin*, the parties should meet and confer to determine whether they can reach  
8 agreement on a modification prior to the supplemental briefing deadline.

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IT IS SO ORDERED.

Dated: February 22, 2012

  
EDWARD M. CHEN  
United States District Judge