

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 GALINA SEEBROOK; MARIA ISABEL  
5 BELTRAN; NICOLLE DISIMONE; and  
6 KRISTEN HARTMAN,

7                                    Plaintiffs,

8                                    v.

9 THE CHILDREN'S PLACE RETAIL  
10 STORES, INC.,

11                                    Defendant.

No. C 11-837 CW

ORDER DIRECTING  
PARTIES TO FILE A  
JOINT LETTER BRIEF

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13                                    On May 14, 2013, Plaintiffs Galina Seebrook, Maria Isabel  
14 Beltran, Nicolle DiSimone, Kristen Hartman and Mario Arellano  
15 filed a motion for preliminary approval of the revised class  
16 action settlement in this case. Docket No. 65. The proposed  
17 settlement would provide both coupon and injunctive relief to  
18 class members.

19                                    On May 15, 2013, the Ninth Circuit Court of Appeals issued a  
20 ruling in In re HP Inkjet Printer Litigation, 2013 U.S. App. LEXIS  
21 9744, reversing the district court's grant of final approval to a  
22 class action settlement and award of attorneys' fees for violation  
23 of the coupon settlement provision of Class Action Fairness Act  
24 (CAFA), 28 U.S.C. § 1712. The court clarified that, under  
25 § 1712(c), which in part incorporates § 1712(a), the "general  
26 rule" is, "If a settlement gives coupon and equitable relief and  
27 the district court sets attorneys' fees based on the value of the  
28 entire settlement, and not solely on the basis of injunctive  
relief, then the district court must use the value of the coupons

1 redeemed when determining the value of the coupons part of the  
2 settlement." Id. at \*32. The court stated, "Because the  
3 settlement agreement specifies that no coupons may issue until  
4 after entry of a final judgment, it would have been impossible for  
5 the district court to calculate the redemption value of the  
6 coupons as required by § 1712(a)." Id. at \*39.

7 Under In re HP Inkjet Printer Litigation, it appears that,  
8 unless counsel bases its request for attorneys' fees solely upon  
9 the equitable relief obtained, the Court will be unable to resolve  
10 fully the issue of attorneys' fees until after the redemption  
11 period for the coupons has passed. Further, the agreement here  
12 has a similar provision to the one at issue in that case. See  
13 Stonebarger Decl., Ex. 1 (Settlement Agreement) ¶¶ 1.12, 3.12  
14 (providing that Defendant will distribute the merchandise  
15 certificates as soon as practicable, but no more than sixty days,  
16 after the "Final Settlement Date," a date that is defined to  
17 necessarily take place after the entry of judgment). However, the  
18 Settlement Agreement here also appears to allow the Court to  
19 approve or change any dates or time periods that it sets forth.  
20 Id. at ¶ 5.3. Thus, in order to comply with the dictates of In re  
21 HP Inkjet Printer Litigation, the Court is inclined to consider  
22 first the final approval of the settlement agreement but to wait  
23 to consider separately the motion for attorneys' fees until after  
24 the coupons have been distributed and the redemption period has  
25 passed.

26 The Court also notes that the parties have not changed  
27 certain terms of the settlement that the Court expressed concern  
28 with at the prior hearing, including that there is no monetary

1 recovery given directly to the class, such that the class members  
2 must conduct further business with Defendant in order to obtain  
3 any benefit; the coupons given cannot be used in conjunction with  
4 other discounts or sales, which reduces their value to the class  
5 members; and the coupons cannot be used on Defendant's website, so  
6 the class members must travel to Defendant's stores in order to  
7 use them online. Notwithstanding these concerns, the Court is  
8 inclined to find that, other than the issue under CAFA, the  
9 settlement falls within the range of possible approval as fair,  
10 adequate and reasonable, such that notice to the Class Members is  
11 appropriate, and grant Plaintiffs' motion for preliminary  
12 approval.

13       The parties shall meet and confer on the CAFA issue. Within  
14 seven days of the date of this Order, the parties shall file a  
15 joint letter brief responding to this Order. The parties shall  
16 address the issue raised by the Court under In re HP Inkjet  
17 Printer Litigation and whether the Court has the authority under  
18 the settlement agreement to make the change that it has proposed.  
19 They also may explain why that decision is not applicable to the  
20 fees motion here or suggest another possible resolution to the  
21 issue.

22       The Court notes that, because the ultimate award for  
23 attorneys' fees may be lower than the parties had anticipated  
24 during their negotiations due to the subsequent Ninth Circuit  
25 opinion, Defendant may be willing to renegotiate the recovery made  
26 available to class members to address some of the Court's concerns  
27 about the structure of this settlement. If the parties believe  
28 that further negotiation is warranted at this time, in lieu of the

1 joint letter brief addressed above, the parties may file a status  
2 report with the Court within seven days of the date of this Order  
3 providing proposed deadlines for the additional settlement  
4 discussions and for the joint letter brief or a motion for  
5 preliminary approval of a further revised settlement agreement.

6 IT IS SO ORDERED.

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8 Dated: 5/23/2013

  
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CLAUDIA WILKEN  
United States District Judge