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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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LAUREN CHAIKIN, an individual, on
behalf of herself and all others similarly
situated,

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Plaintiff,

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vs.

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LULULEMON USA INC., a Nevada
Corporation, LULULEMON
ATHLETICA INC., a Delaware
Corporation, and DOES 1 through 50,
inclusive,

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Defendants.

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Currently pending before the Court is Plaintiffs' unopposed Motion for Final Approval of Class Action Settlement, (Dkt. No. 29), and Plaintiffs' Motion for Attorneys' Fees and Incentive Award. (Dkt. No. 28.) After consideration of the Parties' briefs and supporting declarations, the Court GRANTS Final Approval of the Settlement and GRANTS Plaintiffs' Motion for Attorney's Fees and an Incentive Award for named Plaintiff Lauren Chaikin.

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PROCEDURAL HISTORY

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As set forth in the settlement agreement between the parties, Plaintiff Lauren Chaikin filed a County of San Diego Superior Court Complaint against Defendants

1 lululemon USA, Inc. and lululemon Athletica, Inc. (collectively, “Defendants”) on
2 or about August 10, 2012. (Dkt. No. 1 Ex. A; see also Dkt. No. 24-3 at 2.) Plaintiff
3 alleged violations of the Song-Beverly Credit Card Act, Cal. Civil Code § 1747.08,
4 negligence, invasion of privacy, and unlawful intrusion. On October 19, 2012,
5 Defendants filed a motion to dismiss the Complaint. (Dkt. No. 6.) On November 9,
6 2012, Plaintiff filed an Amended Complaint. (Dkt. No. 8.) Plaintiff alleges
7 Defendants requested and recorded zip codes from their credit card customers in
8 California.

9 On November 6, 2013, the Court entered an Order preliminarily approving
10 the Parties’ class action settlement; certifying the settlement class; appointing class
11 representatives and class counsel; approving the Parties’ notice plan; and setting a
12 final approval hearing for Friday, March 14 at 1:30 p.m. (Dkt. No. 25,
13 “Preliminary Approval Order.”)

14 The Court has reviewed and considered: (1) the terms and conditions of the
15 proposed Settlement as set forth in the Settlement Agreement, (Dkt. No. 24-3); (2)
16 the memorandum in support of the motion for an award of attorneys’ fees, costs,
17 expenses, as well as a named plaintiff incentive award, (Dkt. No. 28); (3) the
18 points and authorities submitted by Plaintiffs in support of the motion for final
19 approval of the settlement, (Dkt. No. 29); (4) the declarations and exhibits
20 submitted in support of said motions; (5) the entire record of this proceeding,
21 including but not limited to the points and authorities, declarations, and exhibits
22 submitted in support of preliminary approval of the settlement, (Dkt. No. 24); (6)
23 the notice plan providing notice to the Class; (7) the proceedings at the Final
24 Approval Hearing; (8) the absence of any objections or exclusions from the
25 Settlement; (9) this Court’s experiences and observations while presiding over this
26 matter, and the Court’s file herein; and (10) the relevant law.

27 Based on these considerations and the Court’s findings of fact and
28 conclusions of law as set forth in the Preliminary Approval Order, the Court enters

1 the following FINDINGS and CONCLUSIONS:

2 A. The Court has subject-matter jurisdiction over this Action and all acts
3 within this Action, and over all the parties to this Action, including all members of
4 the Class.

5 B. The Class provisionally certified in the Preliminary Approval Order
6 has been appropriately certified for settlement purposes. Class Counsel and the
7 Class Representative have fairly and adequately represented the Class for purposes
8 of entering into and implementing the Settlement.

9 C. The notice to putative Class Members was comprised of emailed
10 notice to all Class Members who provided an email address to Defendants and
11 steps taken to provide notice to unknown Class Members. The Court finds that this
12 notice (i) constituted the best notice practicable under the circumstances, (ii)
13 constituted notice that was reasonably calculated, under the circumstances, to
14 apprise the putative Class Members of the pendency of the Action, and of their
15 right to object and to appear at the Final Approval Hearing or to exclude
16 themselves from the Settlement, (iii) was reasonable and constituted due, adequate,
17 and sufficient notice to all persons entitled to be provided with notice, and (iv)
18 fully complied with due process principles and Federal Rule of Civil Procedure 23.

19 D. The Court has held a Final Approval Hearing to consider the fairness,
20 reasonableness, and adequacy of the Settlement and has been advised that there
21 have been no objections to the Settlement.

22 E. The Settlement is the product of good faith, arm's-length negotiations
23 between the Class Representative and Class Counsel, on the one hand, and
24 Defendant and its counsel, on the other hand, before the Honorable William C.
25 Pate, a neutral mediator. (See Dkt. No. 29-2 ¶ 3.) The Court has found no evidence
26 of collusion or other conflicts of interest between Plaintiff, Class Counsel, and the
27 Class. In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir.
28 2011).

1 F. The Settlement, as provided for in the Settlement Agreement, is in all
2 respects fair, reasonable, adequate, and proper, and in the best interest of the Class.
3 In reaching this conclusion, the Court considered a number of factors, including:
4 [1] the strength of Plaintiffs' case; [2] the risk, expense, complexity, and likely
5 duration of further litigation; [3] the risk of maintaining class action status
6 throughout the trial; [4] the amount offered in settlement; [5] the extent of
7 discovery completed, and the stage of the proceedings; [6] the experience and
8 views of counsel; [7] the presence of a governmental participant; and [8] the
9 reaction of the class members to the proposed settlement. See *Torrison v. Tucson*
10 *Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

11 In particular, Plaintiffs and Class Counsel maintain that this action and the
12 claims asserted therein are meritorious and that Plaintiffs and the Class have the
13 evidence to establish a case against Defendants. (Dkt. No. 29-1 at 9.) However,
14 Defendants deny any wrongdoing and argue that the voluntary nature of their
15 customers' provision of information is a valid affirmative defense to Plaintiffs'
16 claims. (*Id.* at 10.) The Parties acknowledge that protracted litigation over their
17 respective legal positions will entail substantial risk for both sides; expense;
18 uncertainty; and delays. (*Id.*)

19 Based on the stage of litigation reached concerning relevant legal issues and
20 the parties' exchange of information through their voluntary discovery process,
21 Plaintiffs and Defendants were fully informed of the legal bases for the claims and
22 defenses herein, and capable of balancing the risks of continued litigation and the
23 benefits of the Settlement. Class Counsel and Defendants' Counsel are highly
24 experienced civil litigation lawyers and are capable of properly assessing the risks,
25 expenses, and duration of continued litigation.

26 In addition, although the settlement involves credit vouchers rather than a
27 cash distribution, Defendants will provide \$25.00 vouchers to 3,509 class members
28 under the Settlement Agreement. (*Id.* at 2.) Redemption of the credit vouchers will

1 require no additional purchase, and the credit vouchers will be valid for six
2 months. In addition, the Settlement affords injunctive relief to the Class.
3 Defendants have agreed to comply with the provisions of California Civil Code
4 section 1747.08 in its California retail stores and to refrain from collecting personal
5 identification information except for reasons specifically exempted from section
6 1747.08. (Id.)

7 The Court has considered the realistic range of outcomes in this matter,
8 including the amount Plaintiff might receive if she prevailed at trial, the strengths
9 and weaknesses of the case, the novelty and number of the complex legal issues
10 involved, and the risk that Plaintiff and the Class would receive less than the
11 Settlement relief, or nothing, at trial. The relief offered by the Settlement is fair,
12 reasonable, and adequate in view of these factors.

13 G. No putative Class Members elected to opt out of the Settlement and
14 the Class. As such, all Class Members (as permanently certified below) shall be
15 subject to all of the provisions of the Settlement, the Settlement Agreement, this
16 Order, and final Judgment to be entered by the Clerk of the Court.

17 On the basis of the foregoing findings and conclusions, as well as the
18 submissions and proceedings referred to above, NOW THEREFORE, IT IS
19 HEREBY ORDERED, ADJUDGED, AND DECREED:

20 **Certification of Class and Approval of Settlement**

21 1. The Settlement and the Settlement Agreement are hereby approved as
22 fair, reasonable, adequate, and in the best interests of the Class, and the
23 requirements of due process and Federal Rule of Civil Procedure 23 have been
24 satisfied. The parties are ordered and directed to comply with the terms and
25 provisions of the Settlement Agreement.

26 2. The Court having found that each of the elements of Federal Rules of
27 Civil Procedure 23(a) and 23(b)(3) are satisfied, for purposes of settlement only,
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1 the Class is permanently certified pursuant to Federal Rule of Civil Procedure 23,
2 on behalf of the following persons:

3 All persons who used a credit card to purchase merchandise at
4 one of the Affected Locations during the applicable Class
5 Period, and from whom Defendants requested and recorded
6 their ZIP code.

7 The term "Affected Locations" means the select lululemon showrooms in
8 California where ZIP codes were inadvertently collected by Defendants during the
9 applicable Class Period, specifically, Carmel (now closed), Lake Tahoe, Los Gatos
10 (now closed), San Diego, and Sherman Oaks (now closed).

11 The "Class Period" is specific to the location of the lululemon showroom at
12 which the credit card transaction occurred, and means the following: (a) August
13 10, 2011, to August 16, 2012, for credit card transactions at the Carmel, Lake
14 Tahoe, Los Gatos, and Sherman Oaks showrooms; or (b) August 10, 2011, to
15 December 20, 2012, for credit card transactions at the San Diego showroom only.

16 Excluded from the Settlement Class are all persons who used a debit card,
17 business credit card or a prepaid credit card to purchase merchandise; all persons
18 who only engaged in a transaction that involved shipping, delivery, return or
19 servicing of the purchased merchandise, or for special orders; all persons who opt-
20 out of the settlement in a timely and correct manner; Defendants, its subsidiaries,
21 affiliates, successors, assigns, any entity in which Defendants have a controlling
22 interest and all of their respective officers, directors, and employees; counsel of
23 record and their respective law firms for either of the Parties; and the presiding
24 judge in the Action, his family members and relatives.

25 3. The Court readopts and incorporates herein by reference its
26 preliminary conclusions as to the satisfaction of Rules 23(a) and (b)(3) set forth in
27 the Preliminary Approval Order and notes again that because this certification of
28 the Class is in connection with the Settlement rather than litigation, the Court need

1 not address any issues of manageability that may be presented by certification of
2 the class proposed in the Settlement.

3 4. For purposes of Settlement only, the named Plaintiff is certified as
4 representative of the Class and Class Counsel is appointed counsel to the Class.
5 The Court concludes that Class Counsel and the Class Representative have fairly
6 and adequately represented the Class with respect to the Settlement and the
7 Settlement Agreement.

8 5. Notwithstanding the certification of the foregoing Class and
9 appointment of the Class Representative for purposes of effecting the Settlement, if
10 this Order is reversed on appeal or the Settlement Agreement is terminated or is
11 not consummated for any reason, the foregoing certification of the Class and
12 appointment of the Class Representative shall be void and of no further effect, and
13 the parties to the proposed Settlement shall be returned to the status each occupied
14 before entry of this Order without prejudice to any legal argument that any of the
15 parties to the Settlement Agreement might have asserted but for the Settlement
16 Agreement.

17 **Release and Injunctions Against Released Claims**

18 6. The Settlement Class, and each Settlement Class Member and
19 Plaintiff, on behalf of themselves, their family members, agents, employees,
20 representatives, attorneys, prior attorneys, insurers, reinsurers, successors, assigns,
21 and heirs, do hereby fully release, relieve, acquit, remise and discharge
22 Defendants, their predecessors, successors, parent companies, subsidiaries, assigns,
23 managing agents, partners, partnership, officers, directors, affiliated and related
24 entities, attorneys, insurance carriers, reinsurance carriers, agents, shareholders,
25 servants, employees, representatives, and all persons, firms, associations, and/or
26 corporations connected with each of them without limitation, from and against the
27 Subject Claims and any claim, demand, obligation, action, cause of action, costs,
28 expenses, losses or liability, for damages and injuries arising out of or related in

1 any way to the causes of action and/or claims that have been alleged and/or could
2 have been alleged based on the facts alleged in the Action, whether in law or
3 equity, known or unknown, whether real, personal, economic, or otherwise,
4 including claims for attorneys' fees and other damages in connection with the
5 Subject Claims.

6 The "Subject Claims" include all claims against Defendants, whether known
7 or unknown, relating to the subject matter of this Action, alleged caused by
8 Defendants, including those claims and causes of action set forth in the Complaint
9 or Operative Complaint filed in the Action.

10 7. The Settlement Class, each Settlement Class Member, and Plaintiff,
11 and each of them, hereby knowingly and voluntarily waive and relinquish all rights
12 and benefits afforded by Section 1542 of the California Civil Code relating to the
13 Subject Claims, and by any comparable state or federal statute, law, right, or rule
14 which may be applicable hereto. Section 1542 provides:

15 A GENERAL RELEASE DOES NOT EXTEND TO
16 CLAIMS WHICH THE CREDITOR DOES NOT
17 KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
18 THE TIME OF EXECUTING THE RELEASE, WHICH
19 IF KNOWN BY HIM MUST HAVE MATERIALLY
20 AFFECTED HIS SETTLEMENT WITH THE
21 DEBTOR.

22 **Applications for Attorneys' Fees, Costs, and Expenses and**
23 **Representative Plaintiff Incentive Award**

24 8. The Court has reviewed the application for an award of fees, costs,
25 and expenses submitted by Class Counsel and the exhibits, memoranda of law, and
26 other materials submitted in support of that application. The Court recognizes that
27 Defendants have not opposed the application for an award of attorneys' fees and
28 costs of \$155,000.00 to be paid by Defendants. This agreement is in addition to
the other relief to be provided to Class Members under the Agreement.

1 The Court notes that “coupon” settlements generally require increased
2 judicial scrutiny under the Class Action Fairness Act (“CAFA”). In re HP Inkjet
3 Printer Litig., 716 F.3d 1173, 1178 (9th Cir. 2013) (citing CAFA, 28 U.S.C. §
4 1712(e)). However, CAFA does not define what constitutes a “coupon.” See 28
5 U.S.C. § 1711 (defining various other terms). Although courts have often blurred
6 the distinction between “coupons” and “vouchers,” the Court adopts the approach
7 of the line of federal district court cases distinguishing credit vouchers, which
8 require no additional purchase to redeem and therefore operate like cash, from
9 coupons, which provide a discount or subsidy from a larger purchase and thus fall
10 under the restrictions of section 1712(e). See Foos v. Ann, Inc., No. 11cv2794
11 L(MDD), 2013 WL 5352969 *2 (S.D. Cal. Sept. 24, 2013) (Lorenz, J.) (“The
12 distinction between a coupon and a voucher is that a coupon is a discount on
13 merchandise or services offered by the defendant and a voucher provides for free
14 merchandise or services.”) (emphasis in original); Seebrook v. Children’s Place
15 Retail Stores, Inc., No. C 11-837 CW, 2013 WL 6326487 (N.D. Cal. Dec. 4, 2013)
16 (finding a \$10.00 certificate was not a coupon because much of the merchandise at
17 defendant’s stores was priced for purchase at ten dollars or less and class members
18 did not need to spend money to realize the settlement benefit). Accordingly, the
19 Court does not view this settlement as a “coupon settlement” requiring the
20 application of 28 U.S.C. § 1712.

21 In addition, the settlement at issue includes injunctive relief, requiring
22 Defendants’ continued compliance with California Civil Code section 1747.08. In
23 class actions that provide for injunctive relief, courts frequently use a “lodestar”
24 calculation because there is no way to gauge the net value or any percentage of the
25 settlement. “The ‘lodestar’ is calculated by multiplying the number of hours the
26 prevailing party reasonably expended on the litigation by a reasonable hourly rate.”
27 Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996); see also Blum v.
28 Stenson, 465 U.S. 886, 897 (1984) (The lodestar calculation begins with the

1 multiplication of the number of hours reasonably expended by a reasonable hourly
2 rate.). After computing the “lodestar,” the district court may then adjust the figure
3 upward or downward taking into consideration twelve “reasonableness” factors:
4 (1) the time and labor required, (2) the novelty and difficulty of the questions
5 involved, (3) the skill requisite to perform the legal service properly, (4) the
6 preclusion of other employment by the attorney due to acceptance of the case, (5)
7 the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations
8 imposed by the client or the circumstances, (8) the amount involved and the results
9 obtained, (9) the experience, reputation, and ability of the attorneys, (10) the
10 “undesirability” of the case, (11) the nature and length of the professional
11 relationship with the client, and (12) awards in similar cases. Morales, 96 F.3d at
12 363 n. 8 (quoting Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir.
13 1975)). The hours expended and the rate should be supported by adequate
14 documentation and other evidence; thus, attorneys working on cases where a
15 lodestar may be employed should keep records and time sheets documenting their
16 work and time spent. Hensley v. Eckerhart, 461 U.S. 424 (1983). However, trial
17 courts may use “rough” estimations, so long as they apply the correct standard. Fox
18 v. Vice, 131 S. Ct. 2205, 2216 (2011).

19 Here, Plaintiff’s counsel calculated their lodestar using current billing rates
20 for the five attorneys who worked on this case: \$650.00 per hour for 77.4 hours for
21 Gene J. Stonebarger of Stonebarger Law; \$500.00 per hour for 1.1 hours for
22 Richard D. Lambert of Stonebarger Law; \$350.00 per hour for 47.7 hours for
23 Elaine W. Yan of Stonebarger Law; \$650.00 per hour for 31 hours for James R.
24 Patterson from Patterson Law Group, APC; and \$500.00 per hour for 124 hours for
25 Brian J. Lawler of Pilot Law, P.C. Plaintiff’s counsel asserts the requested rates are
26 reasonable and supports this contention by providing substantial authority that
27 similar hourly rates have been approved by both California state and federal courts.
28 (Dkt. No. 28-2 ¶ 7.) Having reviewed the declarations and legal authorities

1 in evidence in any action or proceeding, or be used in any way as an admission or
2 concession or evidence of any liability or wrongdoing of any nature or that
3 Plaintiff, any Class Member, or any other person has suffered any damage;
4 provided, however, that the Settlement Agreement, this Order, and the final
5 Judgment to be entered thereon may be filed in any action by Defendants or Class
6 Members seeking to enforce the Settlement Agreement or the final Judgment by
7 injunctive or other relief, or to assert defenses including, but not limited to, res
8 judicata, collateral estoppel, release, good faith settlement, or any theory of claim
9 preclusion or issue preclusion or similar defense or counterclaim. The Settlement
10 Agreement's terms shall be forever binding on, and shall have res judicata and
11 preclusive effect in, all pending and future actions or other proceedings as to
12 Subject Claims and other prohibitions set forth in this Order that are maintained
13 by, or on behalf of, the Class Members or any other person subject to the
14 provisions of this Order.

15 11. In the event that the Settlement Agreement does not become effective
16 or is canceled or terminated in accordance with the terms and provisions of the
17 Settlement Agreement, then this Order and the final Judgment shall be rendered
18 null and void and be vacated and all orders entered in connection therewith by this
19 Court shall be rendered null and void.

20 **Dismissal; Continuing Jurisdiction**

21 12. The Action and the claims alleged therein are hereby ordered
22 dismissed on the merits and with prejudice, without an award of attorneys' fees or
23 costs to any party except as provided in this Order.

24 13. Without in any way affecting the finality of this Order and the final
25 Judgment, this Court hereby retains jurisdiction as to all matters relating to the
26 interpretation, administration, and consummation of the Settlement Agreement.

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1 **CONCLUSION AND ORDER**

2 Based on the foregoing, it is hereby ORDERED that:

3 1) The unopposed motion for attorney's fees, (Dkt. No. 28), is **GRANTED**.

4 The Court awards \$155,000.00 to Class Counsel and \$3,000.00 to Named
5 Plaintiff Lauren Chaikin;

6 2) The unopposed motion for final approval of class action, (Dkt. No. 29), is
7 **GRANTED**;

8 3) This action, including all individual and Class claims resolved in it, is
9 **DISMISSED WITH PREJUDICE**, without an award of attorneys' fees,
10 costs, litigation expenses, or incentive payments to any party except as
11 provided in this Final Approval Order. The Clerk of Court is directed to
12 enter **FINAL JUDGMENT** accordingly.

13 **IT IS SO ORDERED.**

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15 Dated: March 14, 2014

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17 HON. GONZALO P. CURIEL
18 UNITED STATES DISTRICT JUDGE
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