

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE MICHAELS STORES, INC. ZIP CODE
LITIGATION

THIS DOCUMENT RELATES TO: ALL ACTIONS

Civil Action No. 1:11-10920-WGY
(Consolidated with Civil Action No.
13-1-608-WGY)

~~PROPOSED~~ ^{WGY} ORDER APPROVING PLAINTIFFS' UNCONTESTED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

THIS CAUSE is before the Court on Plaintiffs' Uncontested Motion for Preliminary Approval of Class Action Settlement. Having reviewed the Motion, the Memorandum of Law, the Settlement Agreement, the Declaration of D. Greg Blankinship, the Declaration of Jeffrey I. Carton, and the record in this case, and for good cause shown:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Preliminary Approval of Settlement Agreement

1. The Court finds for the purposes of preliminary approval that the proposed settlement, as set forth in the Parties' Settlement Agreement, is fair, reasonable, adequate, and in the best interests of the Class. The Court further finds that the Settlement was entered into at arm's length by highly experienced counsel. The Court therefore preliminarily approves the proposed Settlement.

Class Certification

2. The Court conditionally certifies, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), two Settlement Subclasses defined as:

(1) All known Michaels customers who, from May 23, 2007 through the date of entry of the Preliminary Approval Order, conducted a consumer credit card and/or debit card purchase transaction at a Michaels retail store in Massachusetts and from whom Michaels requested and recorded the customer's personal

identification information, including but not limited to, a ZIP code, and obtained the customer's mailing address solely by the ZIP code append.

(2) All known Michaels customers who, from May 23, 2007 through the date of entry of the Preliminary Approval Order, conducted a consumer credit card and/or debit card purchase transaction at a Michaels retail store in Massachusetts and from whom Michaels requested and recorded the customer's personal identification information, including but not limited to, a ZIP code, and obtained the customer's mailing address from a source other than the ZIP code append.

Excluded from the Settlement Class are Defendant; any parent, subsidiary, or affiliate of Defendant; any entity in which Defendant has or had a controlling interest, or which Defendant otherwise controls or controlled; and any officer, director, employee, legal representative, predecessor, successor, or assignee of Defendant.

3. Pursuant to the Settlement Agreement, and for Settlement purposes only, the Court finds as to the Settlement Class that:

- (a) the Class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the Class;
- (c) the claims of the named Plaintiffs are typical of the claims of the Class;
- (d) the named Plaintiffs will fairly and adequately protect the interests of the Class;
- (e) questions of law and fact common to class members predominate over any questions affecting only individual Class members; and,
- (f) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. The Court appoints Plaintiffs Melissa Tyler and Susan D'Esposito as the Representatives of the Settlement Classes.

5. The Court appoints D. Greg Blankinship, Todd S. Garber , Jeffrey I. Carton and Robert J. Berg, and the law firm of Meiselman, Packman, Nealon, Scialabba & Baker P.C. and Denlea & Carton LLP as Class Counsel to the Settlement Class.

Settlement Administration

6. The Court approves the Parties' discretion to select a Settlement Administrator, with the responsibilities set forth in the Settlement Agreement.

Notice To Potential Class Members

7. The Court approves the form and content of the proposed Long Form Notice and Summary Notice, and approves the Parties' proposal to distribute the Summary Notice by U.S. Mail and the Long Form Notice via the Internet, as set forth in the Settlement Agreement. The Court finds that such forms fairly and adequately (i) describe the nature of the Action and the Class's claims, issues, and defenses involved therein; (ii) set forth the definition of the proposed Class; (iii) describe the terms and effect of the Settlement Agreement and of the Settlement; (iv) inform the Class of the binding effect of the proposed Settlement on members of the Class; (v) give notice to the Class of the time and place of the Fairness Hearing; and (vi) notify the members of the Class of their right to appear through an attorney and/or to request exclusion from the Class, including a description of the time and manner of requesting exclusion or objecting to any of the relief requested. The Court further finds that the Parties' proposal regarding class notice to potential class members constitutes the best notice practicable under the circumstances, and complies fully with the notice requirements of due process and Fed. R. Civ. P. 23.

8. Defendant or the Settlement Administrator will distribute and post the Notices on the Settlement Administrator's website no later than forty-five (45) calendar days after the entry of this Order.

9. No later than fifteen (15) calendar days before the Fairness Hearing, the Settlement Administrator and/or Michaels will file with the Court and serve upon Plaintiffs' Counsel a declaration confirming that the Notices have been provided in accordance with this Order.

Exclusion from the Class

10. Class members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons request exclusion from the Class in a timely and proper manner, as hereinafter provided. To be excluded from the proposed settlement, Class members must mail a request for exclusion from the Class to the Settlement Administrator, within forty-five (45) calendar days after the Summary Notice is distributed. The request for exclusion must be personally signed by the Class member requesting exclusion. So-called "mass" or "class" opt outs shall not be permitted. The request must include the Class member's full name, current mailing address, phone number, signature, and a statement substantially to the effect that: "I want to be excluded from the settlement class in IN RE MICHAELS INC. ZIP CODE LITIGATION to be considered. To be considered valid, a request for exclusion must set forth all of this information and must be timely received.

Appearance and Objections at Fairness Hearing

11. Any member of the Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement or to any term of the Settlement Agreement, may file an objection within forty-five (45) calendar days after the Summary Notice is distributed. To object, a Class

member mail a written objection to the Settlement Administrator, with copies timely sent to Class Counsel and Michaels Counsel at the addresses set forth in the Notices. To be considered a valid objection, the objection must include the Class member's complete name together with his or her telephone number, residence address (address and telephone number may be redacted in the copy of the objection filed with the Court), and such other information as may be necessary to permit Michaels and Class Counsel to verify that the objector is a Class Member. Further, any written objection must include a statement that the Class member falls within the definition of the Class, the express statement "I object to the settlement in IN RE MICHAELS INC. ZIP CODE LITIGATION" and a statement setting forth, in clear and concise terms, the legal and factual arguments supporting the objection. If the objector wishes to appear at the Final Approval hearing, the written objection must also state that fact. Any member of the Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising any objection to the Settlement, and any untimely objection shall be barred.

Stay of Proceedings

13. All discovery and pretrial proceedings in this Action are stayed and suspended until further order of this Court.

Fairness Hearing

12. The Court will hold a Final Approval Hearing (also known as a "Fairness Hearing") at 2 p.m. on May 20, 2014 in Courtroom 18, 5th Floor of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210, to consider the fairness, reasonableness and adequacy of the Settlement Agreement, the entry of a Final Order and Judgment in the case, any petition for attorneys' fees, costs and

reimbursement of expenses made by Class Counsel, Incentive Awards to named Plaintiffs, and any other related matters that are brought to the attention of the Court in a timely fashion.

13. Any member of the Class who has not filed a Request for Exclusion may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlement Agreement; provided, however, that no person shall be heard in opposition to the Settlement Agreement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless, that person files an objection in accordance with the deadlines above.

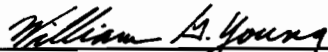
14. The date and time of the Fairness Hearing shall be set forth in the Notice but shall be subject to adjournment by the Court without further notice to the members of the Class other than which may be posted on the Court's Electronic Case Filing (ECF) system or the website created pursuant to the Settlement Agreement, as set forth in the Summary Notice.

15. If Final Approval of the Settlement is not granted, or if the Settlement is terminated for any reason, the Settlement and all proceedings had in connection therewith shall be without prejudice to the parties rights and the parties shall return to the *status quo ante*, and all Orders issued pursuant to the Settlement and Preliminary and Final Approval process shall be vacated. In such event, the Settlement Agreement and all negotiations concerning it shall not be used or referred to in this action for any purpose whatsoever.

Dated: Boston, Massachusetts

Feb 12, 2014

SO ORDERED:



Honorable William G. Young
United States District Court Judge