

1 Gene J. Stonebarger, State Bar No. 209461
gstonebarger@stonebargerlaw.com
2 Richard D. Lambert, State Bar No. 251148
rlambert@stonebargerlaw.com
3 Elaine W. Yan, State Bar No. 277961
eyan@stonebargerlaw.com
4 STONEBARGER LAW, APC
75 Iron Point Circle, Suite 145
Folsom, CA 95630
5 Telephone: (916) 235-7140
6 Facsimile: (916) 235-7141

7 *Attorneys for Plaintiff Kristen Hartman*

8 *(See Signature Page for Additional Plaintiffs' Counsel)*

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

13 GALINA SEEBROOK, individually and on
14 behalf of all others similarly situated,

15 Plaintiffs,

16 v.

17 THE CHILDREN'S PLACE RETAIL
STORES, INC., a Delaware corporation,

18 Defendant.

19 MARIA ISABEL BELTRAN, an individual,
20 on behalf herself and of all others similarly
21 situated,

22 Plaintiff,

23 v.

24 THE CHILDREN'S PLACE RETAIL
STORES, INC., a Delaware Corporation; and
25 DOES 1 through 50, inclusive,

26 Defendants.

Consolidated Case No. 11-cv-00837-CW

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Filed concurrently with Class Action
Settlement Agreement; Declaration of
Gene J. Stonebarger; and Proposed Order]

Date: November 29, 2012

Time: 2:00 p.m.

Ctrm.: 2

Judge: Hon. Claudia Wilken

Related Case No. 11-cv-01664-CW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NICOLLE DiSIMONE, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

THE CHILDREN'S PLACE RETAIL STORES, INC., a Delaware corporation, and DOES 1 – 500,

Defendants.

Related Case No. 11-cv-02223-CW

KRISTEN HARTMAN, an individual, on behalf of herself and all others similarly situated,

Plaintiffs,

v.

THE CHILDREN'S PLACE RETAIL STORES, INC., a Delaware Corporation, and DOES 1 through 50, inclusive

Defendants.

Related Case No. 11-cv-02604-CW

MARIO ARELLANO, an individual, on behalf of himself and all others similarly situated,

Plaintiffs,

v.

THE CHILDREN'S PLACE RETAIL STORES, INC., a Delaware Corporation, and DOES 1 through 50, inclusive

Defendants.

Related Case No. 12-cv-00803-CW

TABLE OF CONTENTS

1

2 I. INTRODUCTION 1

3 II. PROCEDURAL HISTORY 2

4 A. The DiSimone Action 2

5 B. The Seebrook Action..... 2

6 C. The Beltran Action 3

7 D. The Hartman Action..... 3

8 E. Court's Order Relating and Consolidating the DiSimone, Seebrook,
9 Beltran and Hartman Actions..... 3

10 F. The Arellano Action 4

11 G. Settlement Negotiations 4

12 III. BASIC ELEMENTS OF THE PROPOSED SETTLEMENT..... 5

13 A. Class Benefits..... 5

14 B. Change of Practice 6

15 C. Right to Opt-Out of Receiving Marketing Communications and Remove
16 Personal Identification Information from Children's Places' Database 6

17 D. Class Notice 6

18 1. Email Notice 6

19 2. Store Notice 6

20 3. Settlement Website 7

21 E. Completing Claim Forms 7

22 F. Right to Elect Not to Participate in the Settlement..... 7

23 G. Right to Object 8

24 H. Incentive Payments to Class Representatives 8

25 I. Attorneys' Fees and Costs..... 8

26

27

28

1	J. Settlement Implementation Costs.....	9
2	IV. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD	
3	RECEIVE PRELIMINARY APPROVAL	9
4	A. The Proposed Settlement Meets All Criteria Establishing Fairness	9
5	1. Strength of Plaintiffs' Case	10
6	2. The Risk, Expense, Complexity, and Duration of Further	
7	Litigation and the Risk of Maintaining Class Action Status	
8	Through Trial.....	13
9	3. The Benefits Offered in Settlement	13
10	4. The Extent of Discovery and Stage at Which Settlement	
11	Is Reached.....	14
12	5. Experience and Views of Counsel	14
13	6. Presence of Governmental Participants	15
14	7. The Proposed Settlement Resulted from Serious, Informed	
15	and Non-Collusive Arm's-Length Negotiations	15
16	V. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED	16
17	A. The Settlement Satisfies the Requirements of Rule 23(a)	16
18	1. Numerosity.....	16
19	2. Commonality.....	16
20	3. Typicality	17
21	4. Adequacy	17
22	B. The Settlement Class Should be Certified Under Rule 23(b)(3).....	18
23	1. Common Questions Predominate Over Individual Issues	19
24	2. A Class Action is the Superior Method to Settle	
25	this Controversy.....	19
26	VI. THE PROPOSED CLASS NOTICE PROGRAM IS APPROPRIATE,	
27	AND CLASS NOTICE SHOULD BE APPROVED	20
28		

1 VII. THE PROPOSED SCHEDULE OF EVENTS 22
2 VIII. IF THE SETTLEMENT IS PRELIMINARILY APPROVED, THE
3 COURT SHOULD SCHEDULE A HEARING ON FINAL
4 SETTLEMENT APPROVAL..... 23
5 IX. CONCLUSION..... 23
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Federal Cases

Adams v. Inter-Con Sec. Sys. Inc.,
No. C-06-5428 MHP, 2007 WL 3225466 (N.D. Cal. Oct. 30, 2007)..... 16

Amchem v. Windsor, 521 U.S. 591 (1997)..... 19, 22

Class Plaintiffs v. City of Seattle, 955 F.2d 1268 (9th Cir. 1992) 10

Deposit Guar. Nat'l Bank v. Roper, 445 U.S. 326 (1980) 20

Detroit v. Grinnell Corp., 495 F.2d 448 (2nd. Cir. 1974) 13

Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974)..... 20

Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147 (1982) 21

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) passim

Hanon v. Dataproducts Corp., 976 F.2d 497 (9th Cir. 1992)..... 17

In re Compact Disc Minimum Advertised Price Antitrust Litig.,
216 F.R.D. 197 (D. Me. 2003)..... 21

In re Corrugated Container Antitrust Litig., 643 F.2d 195 (5th Cir. 1981) 14

In re Employee Benefit Plans Sec. Litig.,
No. 3-92-708, 1993 WL 330595 (D. Minn.1993) 15

In re First Alliance Mortg. Co., 471 F.3d 977 (9th Cir. 2006)..... 18

In re Immune Response Secs. Litigation,
497 F. Supp. 2nd 1166, (S.D. Cal. 2007)..... 9, 12

In re Indep. Energy Holdings PLC,
No. 00 Civ. 6689 (SAS), 2003 WL 22244676 (S.D.N.Y. Sept. 29, 2003)..... 16

In re Mego Financial Corp. Sec. Litigation, 213 F.3d [454] [(9th Cir. 2000)] 10

In re Mercury Interactive Corp. Sec. Litig., 618 F.3d 988 (9th Cir. 2010) 9

In re Warner Commc'ns Sec. Litig., 618 F. Supp. 735 (S.D.N.Y. 1985)..... 15, 16

Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.,
244 F.3d 1152 (9th Cir. 2001) 18, 19

1 *Manchaca v. Chafer*, 927 F. Supp. 962 (E.D. Tex. 1996) 16

2 *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338 (9th Cir. 1980) 21

3 *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)..... 20

4 *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523 (C.D. Cal. 2004)..... 15

5 *Officers of Justice v. Civil Service Com.*, 688 F.2d 615 (9th Cir. 1982) 13

6 *Staton v. Boeing*, 327 F.3d 938 (9th Cir. 2003) 18

7 *Stockholders of TMT Trailer Ferry, Inc. v. Anderson*,

8 390 U.S. 414, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968)..... 10

9 *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370 (9th Cir. 1993)..... 10

10 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227 (9th Cir. 1996)..... 20

11 *Wiener v. Dannon Co., Inc.*, 255 F.R.D. 658 (C.D. Cal. 2009) passim

12 *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180 (9th Cir. 2001) 20, 22

13 **State Cases**

14 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135 (2000) 13

15 *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43 (2008) 13

16 *Florez v. Linens 'N Things, Inc.*, 108 Cal. App. 4th 447 (2003)..... 10

17 *Pineda v. Williams-Sonoma Stores, Inc.*, 51 Cal. 4th 524 (2011)..... 11, 12

18 *The TJX Companies, Inc. v. Superior Court*, 163 Cal. App. 4th 80 (2008)..... 11

19 *Vasquez v. Superior Court*, 4 Cal. 3d 800 (1971)..... 20

20 *Young v. Bank of Am.*, 141 Cal. App. 3d 108 (1983)..... 10

21 **Federal Statutes**

22 28 U.S.C. § 1715(b) 15

23 **State Statutes**

24 Cal. Civ. Code § 1747.08..... passim

25 **Federal Rules**

26 Fed. R. Civ. P. 23 passim

27 ///

28

1 **Miscellaneous Authorities**

2 7A C.A. Wright, A.R. Miller, & M. Kane,

3 Federal Practice & Procedure § 1777 (2d ed. 1986)..... 18

4 Assem. Floor Analysis, 3d Reading of Assem. Bill No. 2533,

5 (1995-1996 Reg. Sess.) May 15, 1996, pp. 1-2 11

6 Dept. Consumer Affairs, Analysis of Assem. Bill No. 1316,

7 (1995-1996 Reg. Sess.) p. 1..... 11

8 Fed Prac. & Proc., § 1778 19

9 Newberg on Class Actions, § 11.41 (4th ed. 2007) 15

10 Off. of Sen. Floor Analyses, 3d Reading Analysis of Assem. Bill No. 1316,

11 (1995-1996 Reg. Sess.) July 18, 1995 11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION**

2 This is a putative class action brought by Plaintiffs Galina Seebrook, Maria Isabel
3 Beltran, Nicolle DiSimone, Kristen Hartman, and Mario Arellano ("Plaintiffs") on behalf of
4 themselves and all other consumers who purchased merchandise from stores owned and operated
5 by The Children's Place Retail Stores, Inc. ("Children's Place" or "Defendant") in California,
6 used a credit card to make an in-store purchase, and whose personal identification information,
7 including but not limited to telephone numbers and email addresses, was requested and recorded
8 by a Children's Place employee.

9 Children's Place is a retailer which owns and operates stores throughout California. This
10 action arises from Children's Place's alleged violation of the Song Beverly Credit Card Act,
11 codified as California Civil Code section 1747.08 ("Section 1747.08"), by and through its alleged
12 practice of requesting and recording personal identification information from its customers using
13 credit cards at Children's Place's retail stores in California.

14 Children's Place denies all claims of wrongdoing and asserts several affirmative defenses
15 on the grounds that it did not violate the Song-Beverly Credit Card Act or any other laws relating
16 to its alleged conduct.

17 After extensive arms-length negotiations, including a full day mediation session with the
18 Honorable Edward A. Infante (Ret.) of JAMS, Plaintiffs and Children's Place (collectively, the
19 "Parties") have entered into a Settlement Agreement and Release (the "Settlement Agreement," a
20 true and correct copy of which is filed concurrently and attached to the Declaration of Gene J.
21 Stonebarger ("Stonebarger Decl.") as **Exhibit '1'**).

22 Plaintiffs' counsel believes that the proposed settlement is fair, reasonable and adequate;
23 therefore, Plaintiffs now move the Court for an order: (1) preliminarily approving the Settlement
24 Agreement as being fair, reasonable, and adequate; (2) provisionally certifying the Class under
25 Federal Rule of Civil Procedure 23 for settlement purposes only; (3) preliminarily approving the
26 form, manner, and content of the Class Notices and Claim Form; (4) appointing Plaintiffs Galina
27 Seebrook, Maria Isabel Beltran, Nicolle DiSimone, Kristen Hartman, and Mario Arellano as the
28 Class Representatives; (5) appointing the law firms of Stonebarger Law, APC, Hoffman &

1 Lazear, Patterson Law Group, APC, Ridout & Lyon, LLP, Qualls & Workman, LLP, and the
2 Law Office of Sunil A. Brahmhatt, PLC as counsel for the Class; and (6) setting the date and
3 time of the Fairness Hearing.

4 **II. PROCEDURAL HISTORY**

5 **A. The DiSimone Action**

6 On or about February 17, 2011, Plaintiff Nicolle DiSimone filed a class action complaint
7 in the Los Angeles County Superior Court entitled *Nicolle DiSimone, individually, and on behalf*
8 *of all others similarly situated, v. The Children's Place Retail Stores, Inc., and Does 1 - 500*,
9 Case No. BC455419, in which she alleged claims on her own behalf and on behalf of all others
10 similarly situated for: (1) violations of California's Song-Beverly Credit Card Act, Civil Code
11 section 1747.08; (2) injunctive relief for violations of California Civil Code section 1747.08; and
12 (3) violations of California Business and Professions Code section 17200, *et seq.* (the "DiSimone
13 Action").

14 On or about March 28, 2011, Children's Place removed the DiSimone Action to the
15 Central District of California where it was assigned the case number CV11-02584-AHM
16 (MANx). On or about May 3, 2011, pursuant to a stipulation of the parties, the DiSimone Action
17 was transferred to the Northern District of California where it was assigned the case number 11-
18 CV-02223.

19 On or about April 14, 2011, Plaintiff DiSimone filed her first amended complaint,
20 asserting a single cause of action for violations of California Civil Code section 1747.08. On or
21 about May 2, 2011, Children's Place filed its answer to the first amended complaint.

22 **B. The Seebrook Action**

23 On or about February 23, 2011, Plaintiff Galina Seebrook filed a class action complaint
24 in the Northern District of California entitled *Galina Seebrook, individually and on behalf of all*
25 *others similarly situated, v. The Children's Place Retail Stores, Inc.*, Case No. 11-CV-00837-
26 CW, in which she alleged claims on her own behalf and on behalf of all others similarly situated
27 violations of California's Song-Beverly Credit Card Act, Civil Code section 1747.08 (the
28 "Seebrook Action"). On or about May 2, 2011, Children's Place filed its answer to the

1 complaint.

2 **C. The Beltran Action**

3 On or about March 22, 2011, Plaintiff Maria Isabel Beltran filed a class action complaint
4 in the San Francisco County Superior Court entitled *Maria Isabel Beltran, an individual, on*
5 *behalf of herself and all others similarly situated, v. The Children's Place Retail Stores, Inc., and*
6 *Does 1 through 50, inclusive*, Case No. CGC-11-508995, in which she alleged claims on her own
7 behalf and on behalf of all others similarly situated for: (1) violations of California's Song-
8 Beverly Credit Card Act, Civil Code section 1747.08; (2) common law negligence; (3) invasion
9 of privacy; and (4) unlawful intrusion (the "Beltran Action").

10 On or about April 6, 2011, Children's Place removed the Beltran Action to the U.S.
11 District Court for the Northern District of California at which time it was assigned Case No. 11-
12 CV-01664.

13 On or about May 25, 2011, Plaintiff Beltran filed a first amended complaint, asserting a
14 single cause of action for violations of California Civil Code section 1747.08. On or about June
15 27, 2011, Children's Place filed its answer to the first amended complaint.

16 **D. The Hartman Action**

17 On or about June 11, 2011, Plaintiff Kristen Hartman filed a class action complaint in the
18 Northern District of California entitled *Kristen Hartman, individually, on behalf of herself and*
19 *all others similarly situated, v. The Children's Place Retail Stores, Inc., and Does 1 through 50,*
20 *inclusive*, Case No. 11-CV-02604, in which she alleged claims on her own behalf and on behalf
21 of all others similarly situated violations of California's Song-Beverly Credit Card Act, Civil
22 Code section 1747.08 (the "Seebrook Action"). On or about August 5, 2011, Children's Place
23 filed its answer to the complaint.

24 **E. Court's Order Relating and Consolidating the DiSimone, Seebrook, Beltran**
25 **and Hartman Actions**

26 On or about June 24, 2011, the DiSimone Action, the Seebrook Action, the Beltran
27 Action, and the Hartman Action were ordered related and were consolidated under the Case No.
28 11-CV-00837-CW (the "Consolidated Action") [Doc. No. 5].

1 On or about October 4, 2011, Plaintiffs DiSimone, Seebrook, Beltran and Hartman filed a
2 consolidated complaint, asserting a single cause of action, individually and on behalf of the
3 putative class, for violations of California Civil Code section 1747.08. On or about October 20,
4 2011, Children's Place filed its answer to the consolidated complaint.

5 **F. The Arellano Action**

6 On or about December 28, 2011, Plaintiff Mario Arellano filed a class action complaint
7 in the Orange County Superior Court entitled *Mario Arellano, on behalf of a class of similarly*
8 *situated individuals, and individually, v. The Children's Place Retail Stores, Inc., and Does 1*
9 *through 25, inclusive*, Case No. 30-2011-00533597-CU-BT-CXC, in which he alleged claims on
10 his own behalf and on behalf of all others similarly situated for: (1) violations of California's
11 Song-Beverly Credit Card Act, Civil Code section 1747.08; (2) violations of California Business
12 and Professions Code section 17200, *et seq.*; and (3) invasion of privacy (the "Arellano Action").

13 On or about February 2, 2012, Children's Place removed the Arellano Action to the
14 Central District of California where it was assigned the case number SADV12-00170
15 DOC(JPRx).

16 On or about February 21, 2012, Plaintiff Arellano filed an identical complaint in the U.S.
17 District Court for the Northern District of California at which time it was assigned Case No. 12-
18 CV-00803. On or about March 1, 2012, Plaintiff Arellano filed a notice of dismissal in the
19 Central District of California dismissing that pending action without prejudice.

20 On or about July 26, 2012, the Arellano Action was related to and consolidated with the
21 Consolidated Action (Consolidated Action and Arellano Action collectively, the "Action") [Doc.
22 No. 45]. On or about July 30, 2012, Plaintiffs filed an amended consolidated complaint,
23 asserting a single cause of action, individually and on behalf of the putative class, for violations
24 of California Civil Code section 1747.08.

25 **G. Settlement Negotiations**

26 Plaintiffs engaged in formal discovery and analyzed the relevant legal issues with regards
27 to the claims in, and potential defenses to, the Action. Stonebarger Decl. at ¶3. Plaintiffs also
28 considered the uncertainties of trial and the benefits to be obtained under the proposed

1 Settlement and have considered the costs, risks, and delays associated with the continued
2 prosecution of this time-consuming litigation and the likely appeals of any rulings in favor of
3 either Plaintiffs or Defendant. *Id.* The Parties believe their respective positions in the Action are
4 meritorious. *Id.* However, due to the uncertainties and expense of protracted litigation, Plaintiffs
5 decided it is in the best interest of Plaintiffs and the Class to explore mutual resolution of the
6 Action. *Id.*

7 Accordingly, on February 27, 2012, the Parties participated in an all-day mediation
8 conducted by Hon. Edward A. Infante (Ret.) during which a settlement was reached as to all
9 material terms. *Id.* at ¶4. Judge Infante is an experienced mediator with JAMS. *Id.* The terms of
10 the settlement between the Parties are embodied in the Settlement Agreement. *Id.* at ¶2; Exh. '1'.

11 **III. BASIC ELEMENTS OF THE PROPOSED SETTLEMENT**

12 **A. Class Benefits**

13 Settlement Class Members shall be eligible to receive, at his or her election, either a
14 Merchandise Certificate for Thirty Percent (30%) off a merchandise purchase ("30% Off
15 Merchandise Certificate") at any of Children's Place's California retail stores or Ten Dollars
16 (\$10.00) off a merchandise purchase with no minimum purchase requirement ("Ten Dollar
17 Merchandise Certificate") at any of Children's Place's California retail stores, in the event this
18 Settlement receives Final Judicial Approval. The Merchandise Certificates are transferable
19 certificates and shall expire six (6) months after issuance. *See* Settlement Agreement, § 2.3.

20 Each Class Member for whom Children's Place maintains an email address will
21 automatically receive a 30% Off Merchandise Certificate by email unless he or she makes an
22 election for a Ten Dollar Merchandise Certificate within one hundred and five (105) calendar
23 days after entry of the Preliminary Approval Order. *Id.* As described more fully below, each
24 Class Member may elect to receive a Ten Dollar Merchandise Certificate by notifying Children's
25 Place of his or her election by visiting the Settlement Website.

26 Each Class Member for whom Children's Place does not maintain an email address will
27 have the opportunity to elect a 30% Off Merchandise Certificate or a Ten Dollar Merchandise
28 Certificate, but will be required to submit a Claim Form (substantially in the form attached as

1 Exhibit 'E' to the Settlement Agreement) in order to receive the benefit. *Id.*

2 **B. Change of Practice**

3 Children's Place agrees to revise certain of its policies and practices regarding the
4 collection of personal identification information. *See* Settlement Agreement, § 2.1.

5 **C. Right To Opt-Out Of Receiving Marketing Communications And Remove**
6 **Personal Identification Information From Children's Place's Database**

7 The Full Notice (Exhibit 'B' to the Settlement Agreement) will instruct Class Members on
8 how they may opt-out of receiving marketing communications from Children's Place by
9 changing the record that Children's Place maintains for Class Members such that it notes that the
10 customer will not receive future marketing communications from Children's Place, unless in the
11 future, the Class Member requests that he or she resume receiving marketing communications.
12 Additionally, Class Members may opt to have their personal identification information removed
13 from Children's Place's customer list. *See* Settlement Agreement, § 2.2.

14 **D. Class Notice**

15 The Notice of Class Action Settlement shall be provided through the following methods:

16 **1. *Email Notice***

17 Within forty-five (45) calendar days after entry of the Preliminary Approval Order,
18 Children's Place will send a Summary Email Notice (Exhibit 'D' to the Settlement Agreement)
19 via email to each Class Member for whom Children's Place has an email address (to over
20 192,000 individuals). The Summary Email Notice shall include the link to the Settlement
21 Website, and the Settlement Website shall contain the Full Class Notice (substantially in the
22 form attached as Exhibit 'B' to the Settlement Agreement), the Settlement Agreement, a Claim
23 Form which may be submitted electronically or by mail, and a means to elect which benefit the
24 Class Member chooses to receive. *See* Settlement Agreement § 3.3(c).

25 **2. *Store Notice***

26 Within forty-five (45) days after entry of the Preliminary Approval Order, Children's
27 Place shall conspicuously post, for a period of sixty (60) consecutive calendar days, the Store
28 Notice (substantially in the form attached as Exhibit 'C' to the Settlement Agreement) in

1 Children's Place California retail stores at the point-of-sale. Children's Place will also provide, in
2 a location near the Store Notice, cards for Class Members that contain language substantially
3 similar to the following:

4 *Seebrook, et al. v. The Children's Place Retail Stores, Inc.*
5 You can obtain full notice of the proposed settlement and a claim form from the Claims
6 Administrator's website at _____.

6 *See Settlement Agreement § 3.3(b).*

7 **3. Settlement Website**

8 The Settlement Website shall contain the Full Class Notice, the Settlement Agreement, a
9 Claim Form which may be submitted electronically or by mail, and a means by which the Class
10 Members may elect which benefit the Class Member chooses to receive. The Settlement
11 Website shall be maintained by the Claims Administrator and shall be activated no later than
12 forty-five (45) calendar days after entry of the Preliminary Approval Order, and shall remain
13 active for a period of sixty (60) consecutive calendar days. *See Settlement Agreement § 3.3(a).*

14 **E. Completing Claim Forms**

15 Class Members for whom Children's Place does not maintain an email address shall have
16 one hundred and five (105) calendar days from entry of the Preliminary Approval Order to
17 complete in full, sign and return to the Claims Administrator a timely Claim Form to be eligible
18 to receive a 30% Off Merchandise Certificate or a Ten Dollar Merchandise Certificate. The
19 delivery date is deemed the date: (a) the form is deposited in the U.S. Mail as evidenced by the
20 postmark, in the case of submission by U.S. mail, or (b) in the case of submission electronically
21 through the Settlement Website, the date the Claims Administrator receives the Claim Form, as
22 evidenced by the transmission receipt. Any Class Member who does not receive notice and fails
23 to submit a valid and timely Claim Form will not receive any benefits under the Settlement
24 Agreement. *See Settlement Agreement § 3.5.*

25 **F. Right to Elect Not to Participate in the Settlement**

26 Class Members may opt out of the Settlement by mailing a written request for exclusion
27 to the Claims Administrator, postmarked no later than ninety (90) calendar days after entry of the
28 Preliminary Approval Order. No later than seven (7) calendar days prior to the filing date for

1 Plaintiff's unopposed motion for the Final Approval Order and Judgment, Children's Place will
2 serve on Class Counsel a list of Class Members who have timely and validly excluded
3 themselves from the Class. *See* Settlement Agreement § 3.9.

4 **G. Right to Object**

5 Class Members have the right to object to the terms of the Settlement, Class Counsel's
6 request for attorneys' fees, and Class Representatives' Incentive Payments by filing a written
7 objection with the Court, and serving it on counsel for the Parties, not later than ninety (90)
8 calendar days after entry of the Preliminary Approval Order. *See* Settlement Agreement § 3.8.

9 **H. Incentive Payments to Class Representatives**

10 After the Parties reached an agreement as to the Class benefits, Judge Infante proposed,
11 and the Parties agreed, that Children's Place would not object to a request by Plaintiffs for the
12 Court's approval of an award of incentive payments of \$2,750.00 to each Plaintiff in recognition
13 of the risk to them as the Class representatives in commencing the Action, both financial and
14 otherwise, and the amount of time and effort spent by Plaintiffs as the Class representatives.
15 Accordingly, in the event this Settlement Agreement receives Final Judicial Approval, Children's
16 Place shall pay within fifteen (15) calendar days after the "Final Settlement Date" an incentive
17 award of \$2,750.00 each to proposed Class Representatives Galina Seebrook, Maria Isabel
18 Beltran, Nicolle DiSimone, Kristen Hartman, and Mario Arellano.¹ *See* Settlement Agreement §
19 2.4.

20 Plaintiffs will provide further supporting documentation and briefing regarding the
21 agreed upon awards for the named Plaintiffs' incentive payments in their Motion for an Award of
22 Attorneys' Fees and Costs to Class Counsel and for Incentive Awards to the Class
23 Representatives.

24 **I. Attorneys' Fees and Costs**

25 After the Parties reached an agreement as to the Class benefits, Judge Infante proposed,

26 _____
27 ¹ The term "Final Settlement Date" means the date in which either of the following events has occurred: (a) if no
28 appeal or request for review is filed or made, thirty-one (31) days after the Court enters the Final Approval Order
and Judgment, or (b) if any appeal or request for review is filed or made, the date on which Plaintiffs serve notice
that a court entered an order affirming the Final Approval Order and Judgment or denying review after exhaustion of
all appeals or the time for seeking all appeals expires.

1 and the Parties agreed, that Children's Place would not object to a request by Plaintiffs for the
2 Court's approval of an award of attorneys' fees and costs in the amount of \$335,000.00. The
3 Parties agreed that an award of attorneys' fees and costs in the amount of \$335,000.00 to Class
4 Counsel represents a fair and commensurate amount in view of the nature of the Action and the
5 risks and costs incurred. *See* Settlement Agreement § 2.5.

6 Accordingly, in the event the Parties' Settlement Agreement receives Final Judicial
7 Approval and these attorneys' fees and costs amounts are approved by this Court, Children's
8 Place shall pay within fifteen (15) calendar days after the Final Settlement Date proposed Class
9 Counsel's attorneys' fees and costs in the amount of \$335,000.00 separate and apart from any
10 benefits to the Class, in full satisfaction of any and all claims for attorneys' fees and costs arising
11 out of or relating to this Action including this Settlement. *Id.*

12 Plaintiffs will provide further supporting documentation and briefing regarding the
13 agreed upon awards for attorneys' fees and costs in their Motion for an Award of Attorneys' Fees
14 and Costs to Class Counsel and for Incentive Awards to the Class Representatives. Plaintiffs'
15 Motion for attorneys' fees will be filed prior to the objection deadline. *See In re Mercury*
16 *Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010).

17 **J. Settlement Implementation Costs**

18 Children's Place shall bear all costs of providing Class Notice in the manner set forth in
19 the Settlement Agreement and all costs associated with the administration of the Settlement.
20 Settlement Agreement § 2.6.

21 **IV. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD RECEIVE**
22 **PRELIMINARY APPROVAL**

23 **A. The Proposed Settlement Meets All Criteria Establishing Fairness.**

24 As explained by the court in *In re Immune Response Secs. Litigation*, 497 F. Supp. 2nd
25 1166, at 1169-1170 (S.D. Cal. 2007):

26 "Although Rule 23(e) is silent respecting the standard by which a proposed
27 settlement is to be evaluated, the universally applied standard is whether the
28 settlement is fundamentally fair, adequate and reasonable." *Officers for Justice*,
688 F.2d at 625; see also *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375
(9th Cir. 1993). When determining whether approval of a settlement is warranted,

1 courts consider 'several factors which may include, among others, some or all of
2 the following: [1] the strength of Plaintiffs' case; [2] the risk, expense,
3 complexity, and likely duration of further litigation; [3] the risk of maintaining
4 class action status throughout the trial; [4] the amount offered in settlement; [5]
5 the extent of discovery completed, and the stage of the proceedings; [6] the
6 experience and views of counsel; [7] the presence of a governmental participant;
7 and [8] the reaction of the class members to the proposed settlement.' *Torrissi*, 8
8 F.3d at 1375; see also *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
1998). Further, '[t]o survive appellate review, the district court must show it has
9 explored comprehensively all [fairness] factors.' *Hanlon*, 150 F.3d at 1026 (citing
10 *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v.*
11 *Anderson*, 390 U.S. 414, 434, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968)). Finally, 'the
12 settlement may not be the product of collusion among the negotiating parties.' [*In*
13 *re*] *Mego Financial Corp. Sec. Litigation*, 213 F.3d [454] at 458 [(9th Cir. 2000)]
14 (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1290 (9th Cir. 1992))."²

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. ***Strength of Plaintiffs' Case***

Plaintiffs assert that Children's Place violated California Civil Code section 1747.08 in that as part of processing its customers' credit card transactions, Children's Place requested and recorded customers' personal identification information. California Civil Code section 1747.08, its present form, states in relevant part:

(a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation which accepts credit cards for the transaction of business shall do either of the following:

(2) *Request*, or require as a condition to accepting the credit card as payment in full or in part for goods or services, *the cardholder to provide personal identification information, which the person, firm, partnership, association, or corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card transaction form or otherwise.*" Cal. Civ. Code § 1747.08(a)(2) (emphasis added).

Civil Code section 1747.08 is part of the Song-Beverly Credit Card Act, and was designed to promote consumer protection; the Act imposes fair business practices for the protection of consumers. *Florez v. Linens 'N Things, Inc.*, 108 Cal. App. 4th 447, 450 (2003) (citing *Young v. Bank of Am.*, 141 Cal. App. 3d 108 (1983)). Plaintiffs contend that Section 1747.08 was originally enacted as a response to two principal privacy concerns: first, that with increased use of computer technology, very specific and personal information about a consumer's spending habits was being made available to anyone willing to pay for it; and second, that acts of

² The guidance of Rule 23(e)(2) of the Federal Rules of Civil Procedure on the approval of a class action settlement is that it must be "fair, reasonable, and adequate."

1 harassment and violence were being committed by store clerks who obtained customers' phone
2 numbers and addresses. *Id.* at 452; *see also* Off. of Sen. Floor Analyses, 3d Reading Analysis of
3 Assem. Bill No. 1316 (1995-1996 Reg. Sess.) July 18, 1995, p. 3.

4 Additionally, Plaintiffs contend the statute was intended to keep the customer's credit
5 card number separate and apart from his or her personal information such as address, telephone
6 number, birth date, etc., in order to prevent thieves from obtaining both at the same time (*i.e.*,
7 "dumpster diving") and engaging in credit card fraud, usually over the telephone. Assem. Floor
8 Analysis, 3d Reading of Assem. Bill No. 2533 (1995-1996 Reg. Sess.) May 15, 1996, pp. 1-2.
9 When drafting 1747.08, the Legislature was well aware that anyone with access to a consumer's
10 credit card number and address could access their credit history, open credit in their name, or
11 charge something in their name. Dept. Consumer Affairs, Analysis of Assem. Bill No. 1316
12 (1995-1996 Reg. Sess.) p. 1.

13 Last year, the California Supreme Court issued its unanimous opinion in *Pineda v.*
14 *Williams-Sonoma Stores, Inc.*, 51 Cal. 4th 524 (2011), confirming that ZIP codes are "personal
15 identification information" as defined in section 1747.08. *Pineda*, 51 Cal. 4th at 524. Pursuant
16 to California Civil Code section 1747.08(e), a violator of the statute shall be liable for a civil
17 penalty of up to \$250.00 for the first violation and up to \$1,000.00 for each subsequent violation
18 of the statute. Cal. Civ. Code § 1747.08(e). Although a violator of the statute is subject to a
19 mandatory civil penalty, the amount of the civil penalty to be imposed against a Defendant is
20 discretionary. Civil penalties could be as little as a penny or the "proverbial peppercorn." *See*
21 *The TJX Companies, Inc. v. Superior Court*, 163 Cal. App. 4th 80, 86-87 (2008).

22 Children's Place denies any wrongdoing in this case. Children's Place contends that it did
23 not request customer's ZIP code information, and that any alleged requests for information by
24 Children's Place's employees, and the customers' subsequent responses, were completely
25 voluntary and made after the credit card transactions were completed; and therefore, there is no
26 liability under section 1747.08. Children's Place further contends that class certification would
27 be difficult for Plaintiffs as it argues that Plaintiffs will not be able to demonstrate commonality,
28 typicality, or superiority.

1 In determining whether the settlement is fair, the Court has to assess whether the relief
2 offered by the settlement is reasonable, in light of the claims to be released. At this stage, the
3 Court need only to conduct a *prima facie* review of the relief and notice provided by the
4 settlement to determine whether notice should be sent to the settlement class members. *In re*
5 *Immune Response*, 497 F.Supp.2d at 1172. It is simply "not appropriate for the court to attempt
6 to settle these questions of law and fact: '[T]he settlement or fairness hearing is not to be turned
7 into a trial or rehearsal for trial on the merits. Neither the trial court nor [the appellate court] is
8 to reach any ultimate conclusions on the contested issues of fact and law which underlie the
9 merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of
10 wasteful and expensive litigation that induce consensual settlements.'" *Id.* (citing *Officers of*
11 *Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir. 1982)).

12 In sum, "the merits of the underlying class claims are not a basis for upsetting the
13 settlement of a class action; the operative word is 'settlement.'" *7-Eleven Owners for Fair*
14 *Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1150 (2000). Even "[t]he fact that a
15 proposed settlement may only amount to a fraction of the potential recovery does not, in and of
16 itself, mean that the proposed settlement is grossly inadequate and should be disapproved."
17 *Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2nd. Cir. 1974).

18 Plaintiffs believe that their case is strong in light of the California Supreme Court's
19 unanimous decision in *Pineda* confirming that "requesting and recording a cardholder's [personal
20 identification information], without more, violates the [California] Credit Card Act." *Pineda*, 51
21 Cal.4th at 527-28. The outcome of this case is uncertain, however, and if Children's Place was to
22 prevail on any of its arguments, the Class would obtain little or nothing through litigation. Even
23 if Plaintiffs were to convince the Court to certify the Class after a contested motion for class
24 certification and eventually establish liability at trial, then the amount of the civil penalty to be
25 awarded (somewhere between a penny and \$1,000) would rest within the sound discretion of the
26 trial court. *Id.* at 536. As such, if Plaintiffs and the Class succeed at trial, the amount of the civil
27 penalties to be awarded by the Court is uncertain.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The Risk, Expense, Complexity, and Duration of Further Litigation and the Risk of Maintaining Class Action Status Through Trial

The settlement takes into account the risk, expense, and complexity of further litigation. Plaintiffs and the Class would have to retain additional experts to conduct forensic analysis of the recording and storage of Children's Place's customer information, as well as experts to testify to the value of the collected information. Stonebarger Decl. at ¶5.

Children's Place would vigorously oppose Plaintiffs' attempt to get a class certified and may also retain experts to defeat certification and the Class claims. *Id.*

Additional time consuming and expensive law and motion proceedings would be necessary to narrow or eliminate the claims and defenses both at the certification stage and the trial stage. The time and expense of further litigation could potentially negatively impact Children's Place's business operations and would interfere with potential Class members' opportunity to obtain benefits promptly. Accordingly, the settlement at this stage in the litigation benefits the Court and the Parties, as well as the Class. *Id.*

3. The Benefits Offered in Settlement

All Class Members for whom Children's Place maintains an email address (over 192,000 individuals), and all other Class Members who submit a timely and valid Claim Form which establishes his or her membership in the Class, will be entitled to receive a 30% Off Merchandise Certificate or a Ten Dollar Merchandise Certificate for use at any Children's Place California retail store. Such recovery to the proposed Settlement Class is *without* any risk of the Class not being certified and is without any risk that Plaintiffs will not prevail as to liability and/or penalties. While the dollar value of the settlement per Class Member may be relatively small, it must be remembered that any allegation of alleged harm may be difficult to prove. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 55 (2008) (Six dollar benefit provided by the settlement - free DVD rentals - directly addresses the harm alleged in the complaint. While the dollar value of the settlement per class member is small, Plaintiffs would have encountered considerable difficulties in trying to prove their amount.).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. The Extent of Discovery and Stage at Which Settlement Is Reached

It is *not* the law that a class action cannot be settled until the last particle of discovery has been completed and analyzed. See *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981) ("It is true that very little formal discovery was conducted and that there is no voluminous record in the case. However, the lack of such does not compel the conclusion that insufficient discovery was conducted") (emphasis omitted).

Through mutual exchange of formal discovery, Plaintiffs believe they have discovered both the evidence needed to establish their *prima facie* cases and to address the full range of contentions advanced by Children's Place. In that process, among other things, Children's Place provided Plaintiffs with information relating to its policies and practices regarding the collection of personal identification information and the approximate total number of Class Members as defined by Plaintiffs. As such, while Children's Place disagrees with Plaintiffs' assessment of the evidence produced, Children's Place agrees that counsel for each of the Parties has sufficient information to assess the strengths, weaknesses, and likely expense of taking this case to trial. Stonebarger Decl. at ¶6.

5. Experience and Views of Counsel

Plaintiffs' counsel has extensive experience litigating consumer class actions and has litigated numerous cases based upon violations of the Song-Beverly Credit Card Act. Stonebarger Decl. at ¶10, Exhs. '2'-'5'. Plaintiffs' counsel has represented millions of consumers in numerous consumer class actions asserting violations of the Song-Beverly Credit Card Act of 1971. *Id.*

Based upon Plaintiffs' counsel's substantial experience, Plaintiffs' counsel believes the present settlement is in the best interest of the Class Members due to the significant recovery to the Class members, without any risk of the Class not being certified and not prevailing as to liability and/or civil penalties. *Id.* at ¶11.

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. Presence of Governmental Participants

Although there is no governmental entity participating in this matter as of this time, full and complete notice is being provided to all appropriate state and federal authorities. Children's Place will provide such notice, which will include all appropriate information and documents required by CAFA (28 U.S.C. § 1715(b)) including: (1) all complaints and amended complaints filed in the Action, (2) the proposed Settlement Agreement, and (3) settlement notification to Class Members and benefit election procedure. As such, the fact of that notice and the opportunity governmental entities will have to take part in the final approval process weigh in favor of preliminary approval.

7. The Proposed Settlement Resulted from Serious, Informed and Non-Collusive Arm's-Length Negotiations

The requirement that a settlement be fair is designed to protect against collusion among the parties. *See Hanlon*, 150 F.3d at 1026. Typically, "[t]here is a presumption of fairness when a proposed class settlement, which was negotiated at arm's-length by counsel for the class, is presented for Court approval." *Newberg on Class Actions*, § 11.41 (4th ed. 2007); *see also Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("Great weight' is accorded to the recommendation of counsel, who are the most closely acquainted with the facts of the underlying litigation."); *In re Employee Benefit Plans Sec. Litig.*, No. 3-92-708, 1993 WL 330595, at *5 (D. Minn. June 2, 1993) ("[t]he court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement").

Here, the Parties engaged the services of the Honorable Edward A. Infante (Ret.) of JAMS, an experienced and skilled mediator, who assisted the Parties during their all-day mediation on February 27, 2012. Stonebarger Decl. ¶4. Before the mediation, Class Counsel exchanged information through formal discovery and obtained information from Children's Place relating to information necessary to evaluate the amount of civil penalties. *Id.* Thus, Plaintiffs and their counsel, who are experienced in prosecuting this type of complex class action, had "a clear view of the strengths and weaknesses" of their cases and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. *See, e.g., In re*

1 *Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985); *see also Manchaca v.*
2 *Chafer*, 927 F. Supp. 962, 967 (E.D. Tex. 1996).

3 The fact that the Settlement was facilitated by an experienced mediator confirms that it is
4 not collusive. *See, e.g., Adams v. Inter-Con Sec. Sys. Inc.*, No. C-06-5428 MHP, 2007 WL
5 3225466, at *3 (N.D. Cal. Oct. 30, 2007) ("The assistance of an experienced mediator in the
6 settlement process confirms that the settlement is non-collusive."); *In re Indep. Energy Holdings*
7 *PLC*, No. 00 Civ. 6689 (SAS), 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) ("the fact
8 that the Settlement was reached after exhaustive arm's-length negotiations, with the assistance of
9 a private mediator experienced in complex litigation, is further proof that it is fair and
10 reasonable"). Further, the nature of the subsequent negotiations between the Parties, the
11 experience of counsel in this area, and the fair result reached are all evidence of the arms-length
12 nature of the negotiations that lead to the Settlement.

13 **V. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED**

14 **A. The Settlement Satisfies the Requirements of Rule 23(a)**

15 Rule 23(a) enumerates four prerequisites for class certification: (1) numerosity; (2)
16 commonality; (3) typicality; and (4) adequacy. Plaintiffs believe that each of these requirements
17 is met.

18 **1. *Numerosity***

19 Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is
20 impracticable." Fed. R. Civ. P. 23(a); *Wiener v. Dannon Co., Inc.*, 255 F.R.D. 658, 664 (C.D.
21 Cal. 2009). Here, the numerosity requirement is readily met because joinder of absent class
22 members would be exceedingly difficult. According to Children's Place, from February 17, 2010
23 through mid-February 2012, Children's Place requested and recorded approximately 427,000
24 telephone numbers and 192,000 email addresses from credit card customers. As such, the
25 numerosity requirement is satisfied. Stonebarger Decl. at ¶7.

26 **2. *Commonality***

27 "The existence of shared legal issues with divergent factual predicates is sufficient [to
28 satisfy commonality], as is a common core of salient facts coupled with disparate legal remedies

1 within the class." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019; *In re First Alliance Mortg.*
2 *Co.*, 471 F.3d 977, 990-91 (9th Cir. 2006). The commonality requirement is construed
3 "permissively." *Hanlon*, 150 F.3d at 1019; *Wiener*, 255 F.R.D. at 664.

4 In this case, there are multiple "common issues" affecting the entire Class and Children's
5 Place's liability; mainly, whether Children's Place's conduct of requesting and recording
6 customers' personal identification information from its credit card customers violates California
7 Civil Code section 1747.08. Though the Parties dispute whether such conduct in fact constitutes
8 a violation of section 1747.08, the issue is nonetheless common amongst the Class. Stonebarger
9 Decl. at ¶8.

10 3. *Typicality*

11 Rule 23(a)(3) typicality is satisfied where the plaintiffs' claims are "reasonably
12 coextensive" with absent class members' claims; they need not be "substantially identical;"
13 *Hanlon*, 150 F.3d at 1020; *see also Wiener*, 255 F.R.D. at 665. The test for typicality "is whether
14 other members have the same or similar injury, whether the action is based on conduct which is
15 not unique to the named Plaintiffs, and whether other class members have been injured by the
16 same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).
17 Thus, "[t]he purpose of the typicality requirement is to assure that the interest of the named
18 representative aligns with the interests of the class." *Id.*

19 Plaintiffs allege that they were exposed to the same alleged unlawful policy and practice
20 of Children's Place. Specifically, Plaintiffs allege that Children's Place requested and recorded
21 their personal identification information during a credit card purchase transaction which
22 constituted a violation of section 1747.08. Importantly, Plaintiffs do not allege any claims or
23 facts unique to themselves. Thus, the requirement of typicality is satisfied. Stonebarger Decl. at
24 ¶9.

25 4. *Adequacy*

26 Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect
27 the interests of the class." Adequacy is satisfied where (i) counsel for the class is qualified and
28 competent to prosecute the action vigorously, and (ii) the interests of the proposed class

1 representatives are not antagonistic to the interests of the Class. *See, e.g., Staton v. Boeing*, 327
2 F.3d 938, 957 (9th Cir. 2003); *Hanlon*, 150 F.3d at 1020; *Weiner*, 225 F.R.D. at 667.³

3 Plaintiffs have retained counsel with significant experience in prosecuting large consumer
4 protection class actions. Stonebarger Decl. at ¶10, Exhibits '2'-'5'. Likewise, each of the
5 Plaintiffs is a member of the proposed Class and has the same interests as the Class in
6 maximizing the recovery from Children's Place. They allege that Children's Place requested and
7 recorded each of their personal identification information during a credit card purchase
8 transaction which constituted a violation of section 1747.08. Additionally, they do not allege
9 any claims or facts unique to themselves or that conflict with the claims of absent Class
10 members. Thus, Plaintiffs are adequate representatives.

11 **B. The Settlement Class Should be Certified Under Rule 23(b)(3)**

12 The Parties request that the Court, for the purposes of settlement, certify a class of the
13 following individuals under Rule 23(b)(3): "All persons who between February 17, 2010 and the
14 date of entry of the Preliminary Approval Order purchased merchandise from a California
15 Children's Place Store, used a credit card to make the purchase(s), and whose personal
16 identification information, including, but not limited to, any telephone number or email address,
17 was requested and recorded by Defendant."

18 Certification under Rule 23(b)(3) is appropriate "whenever the actual interests of the
19 parties can be served best by settling their difference in a single action." *Hanlon*, 150 F.3d at
20 1022 (quoting 7A C.A. Wright, A.R. Miller, & M. Kane, *Federal Practice & Procedure* § 1777
21 (2d ed. 1986)).

22 There are two fundamental conditions to certification under Rule 23(b)(3): (1) questions
23 of law or fact common to the members of the class predominate over any questions affecting
24 only individual members; and (2) a class action is superior to other available methods for the fair
25 and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3); *Local Joint Exec. Bd. of*

26
27 ³ Rule 23(g)(1) also requires the Court to appoint class counsel. Plaintiffs request the Court appoint the law firms of
28 Stonebarger Law, APC, Hoffman & Lazear, Patterson Law Group, APC, Ridout Lyon, LLP, Qualls & Workman,
LLP, and the Law Office of Sunil A. Brahmbhatt, PLC as Class Counsel.

1 *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162-63 (9th Cir.
2 2001); *Hanlon*, 150 F.3d at 1022; *Wiener*, 255 F.R.D. at 668. Rule 23(b)(3) encompasses those
3 cases "in which a class action would achieve economies of time, effort, and expense, and
4 promote... uniformity of decision as to persons similarly situated, without sacrificing procedural
5 fairness or bringing about other undesirable results." *Amchem v. Windsor*, 521 U.S. 591, 615
6 (1997) (citations omitted and alterations in original); *Wiener*, 255 F.R.D. at 668.

7 **1. Common Questions Predominate Over Individual Issues**

8 The Rule 23(b)(3) predominance inquiry "tests whether proposed classes are sufficiently
9 cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. "Predominance
10 is a test readily met in certain cases alleging consumer. . . fraud. . . ." *Id.* "When common
11 questions present a significant aspect of the case and they can be resolved for all members of the
12 class in a single adjudication, there is clear justification for handling the dispute on a
13 representative rather than on an individual basis." *Fed Prac. & Proc.*, § 1778; *Gen. Tel. Co. of*
14 *Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) (noting commonality and typicality tend to merge).

15 The predominance requirement is satisfied here. As discussed above, Plaintiffs allege
16 Class Members are entitled to the same legal remedies based on the same alleged wrongdoing:
17 exposure to the same alleged policy. The central issue for every claimant is whether Children's
18 Place requested and recorded customers' personal identification information in connection with
19 credit card transactions. Under these circumstances, there is sufficient basis to find that the
20 requirements of Rule 23(b)(3) are satisfied. *See Wiener*, 255 F.R.D. at 669; *Hanlon*, 150 F.3d at
21 1022.

22 **2. A Class Action is the Superior Method to Settle this Controversy**

23 Rule 23(b)(3) sets forth the relevant factors for determining whether a class action is
24 superior to other available methods for the fair and efficient adjudication of the controversy.
25 These factors include: (i) the class members' interest in individually controlling separate actions;
26 (ii) the extent and nature of any litigation concerning the controversy already begun by or against
27 class members; (iii) the desirability or undesirability of concentrating the litigation of the claims
28 in the particular forum; and (iv) the likely difficulties in managing a class action. Fed. R. Civ. P.

1 23(b)(3); see *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190-92 (9th Cir. 2001).
2 "[C]onsideration of these factors requires the court to focus on the efficiency and economy
3 elements of the class action so that cases allowed under subdivision (b)(3) are those that can be
4 adjudicated most profitably on a representative basis." *Zinser*, 253 F.3d at 1190 (citations
5 omitted); see also *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (finding
6 superiority requirement may be satisfied where granting class certification "will reduce litigation
7 costs and promote greater efficiency").

8 Application of the Rule 23(b)(3) "superiority" factors shows that a class action is the
9 preferred procedure for this Settlement. The amount of potential monetary relief to which an
10 individual class member would be entitled is not large. *Zinser*, 253 F.3d at 1191; *Wiener* 255
11 F.R.D. at 671. It is neither economically feasible, nor judicially efficient, for the hundreds of
12 thousands of Class Members to pursue their claims against Defendant on an individual basis.
13 *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-39 (1980); *Hanlon*, 150 F.3d at 1023;
14 *Vasquez v. Superior Court*, 4 Cal. 3d 800, 808 (1971). Additionally, the fact of settlement
15 eliminates any potential difficulties in managing the trial of these actions as class-actions. When
16 "confronted with a request for settlement-only class certification, a district court need not inquire
17 whether the case, if tried, would present intractable management problems . . . for the proposal is
18 that there be no trial." *Amchem*, 521 U.S. at 620.

19 **VI. THE PROPOSED CLASS NOTICE PROGRAM IS APPROPRIATE, AND CLASS**
20 **NOTICE SHOULD BE APPROVED**

21 The threshold requirement concerning the sufficiency of class notice is whether the
22 means employed to distribute the notice is reasonably calculated to apprise the class of the
23 pendency of the action, of the proposed settlement, and of the class members' rights to opt out or
24 object. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974); *Mullane v. Cent. Hanover*
25 *Bank & Trust Co.*, 339 U.S. 306, 315 (1950). The mechanics of the notice process are best left
26 to the discretion of the court, subject only to the broad "reasonableness" standards imposed by
27 due process.

28

1 In this Circuit, it has long been the case that a notice of settlement will be adjudged
2 satisfactory if it "generally describes the terms of the settlement in sufficient detail to alert those
3 with adverse viewpoints to investigate and to come forward and be heard." *Churchill*, 361 F.3d
4 at 575 (citing *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)); *Hanlon*,
5 150 F.3d at 1025 (notice should provide each absent class member with the opportunity to opt-
6 out and individually pursue any remedies that might provide a better opportunity for recovery).

7 The proposed Class Notice (the Full Class Notice, the Summary Email Notice, and the
8 Store Notice) meet these standards. See Settlement Agreement, Exhs. 'B'-'D' to Exhibit '1'
9 (collectively, the "Notice"). The Notice is written in simple, straightforward language and
10 includes: (1) basic information about the lawsuit; (2) a description of the benefits provided by the
11 Settlement; (3) an explanation of how Class Members can obtain Settlement benefits; (4) an
12 explanation of how Class Members can exercise their right to opt-out or object to the Settlement;
13 (5) an explanation that any claims against Children's Place that could have been litigated in these
14 actions will be released if the Class Member does not opt out from the Settlement; (6) the names
15 of Class Counsel and information regarding attorneys' fees and expenses and Plaintiffs' incentive
16 awards; (7) the Final Fairness Hearing date; (8) an explanation of eligibility for appearing at the
17 Final Fairness Hearing; and (9) the Settlement Website where additional information can be
18 obtained. *Id.*

19 Collectively, the Notice provides Class Members with sufficient information to make an
20 informed and intelligent decision about the Settlement. As such, they satisfy the content
21 requirements of Rule 23. See *In re Compact Disc Minimum Advertised Price Antitrust Litig.*,
22 216 F.R.D. 197, 203 (D. Me. 2003) ("notice must describe fairly, accurately and neutrally the
23 claims and parties in the litigation entitled to participate, including the right to exclude
24 themselves from the class").

25 Additionally, the proposed dissemination of Notice to Class Members satisfies all due
26 process requirements. The Settlement provides that Children's Place will provide notice to the
27 Class after preliminary approval of the Settlement by the Court. Class members will receive
28 direct Notice via email and/or through conspicuous in-store postings. See Settlement Agreement

1 § 3.3. And, the full Class Notice will be available on the Settlement Website. In sum, the
2 contents and dissemination of the proposed Class Notice constitutes the best notice practicable
3 under the circumstances and fully complies with the requirements of Rule 23.

4 **VII. THE PROPOSED SCHEDULE OF EVENTS**

5 Dates, such as the time to complete publication of the Class Notice or to opt-out or
6 object, are based on when preliminary approval of the Settlement is granted and when the
7 Fairness Hearing is set. The settlement-related dates calculated in accordance with the
8 Settlement Agreement are as follows:

EVENT	DEADLINE
Deadline for the Claims Administrator to send, via email, the Summary Email Notice	45 calendar days after the Court enters Preliminary Approval Order
Deadline for Children's Place to post the Store Notice in its retail stores and to activate Settlement Website	45 calendar days after the Court enters Preliminary Approval Order
Deadline for Children's Place to file a declaration confirming that notice to the Class has been provided in accordance with Section 3.3 of the Settlement Agreement	7 calendar days before the filing date for Plaintiffs' unopposed motion for the Final Approval Order and Judgment
Deadline for Class Counsel to file the Motion for attorneys' fees and costs, and for incentive awards to the Class Representatives	14 calendar days before Class Members' Objection Deadline
Deadline for Class Members to file and postmark objections to the settlement	90 calendar days after the Court enters Preliminary Approval Order
Deadline for Class Members to postmark requests for exclusion from the Class	90 calendar days after the Court enters Preliminary Approval Order
Deadline for Children's Place to serve a list of the persons who have excluded themselves on Class Counsel	7 calendar days before the filing date for Plaintiffs' unopposed motion for the Final Approval Order and Judgment
Deadline to file any papers in support of Final Approval of the Settlement Agreement	7 calendar days before Fairness Hearing
Fairness Hearing	At least 120 days after the Court enters the Preliminary Approval Order

26 ///

27 ///

1 **VIII. IF THE SETTLEMENT IS PRELIMINARILY APPROVED, THE COURT**
2 **SHOULD SCHEDULE A HEARING ON FINAL SETTLEMENT APPROVAL**

3 Following notice to the Class Members, a fairness hearing is to be held on the proposed
4 settlement. *See* Manual for Complex Litigation section 21.633. It is requested that the Court
5 schedule a hearing on final approval of the settlement to be held approximately 120 days after
6 entry of the Preliminary Approval Order. The hearing on the final settlement approval should be
7 scheduled now so that the date can be disclosed in the class notice. Accordingly, it is requested
8 that this Court schedule a hearing on final approval of the settlement for March 28, 2013, at 2:00
9 p.m.

9 **IX. CONCLUSION**

10 Based upon the foregoing, and because the proposed settlement is fair, reasonable, and
11 advantageous to the proposed Class Members, Plaintiffs respectfully request that the Court enter
12 an Order:

13 (1) preliminarily approving the Settlement Agreement as being fair, reasonable, and
14 adequate;

15 (2) preliminarily approving the form, manner, and content of the Full Notice, Store
16 Notice, Summary Notice, and Claim Form;

17 (3) provisionally certifying the Class under Rule 23 of the Federal Rules of Civil
18 Procedure for settlement purposes only;

19 (4) appointing Plaintiffs as the Class representatives;

20 (5) appointing the law firms of Stonebarger Law, APC, Hoffman & Lazear, Patterson
21 Law Group, APC, Ridout & Lyon, LLP, Qualls & Workman, LLP, and the Law Office of Sunil
22 A. Brahmhatt, PLC as Class Counsel; and

23 (6) setting the Final Approval Hearing on March 28, 2013, at 2:00 p.m.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: October 25, 2012

STONEBARGER LAW, APC

By: /s/ Gene J. Stonebarger
Gene J. Stonebarger
STONEBARGER LAW, APC
75 Iron Point Circle, Suite 145
Folsom, CA 95630
Telephone: (916) 235-7140
Facsimile: (916) 235-7141

Attorneys for Plaintiff Kristen Hartman

H. Tim Hoffman
Arthur W. Lazear
Chad A. Saunders
HOFFMAN & LAZEAR
4401 Eastgate Mall
San Diego, CA 92121

Attorneys for Plaintiff Galina Seebrook

James R. Patterson
PATTERSON LAW GROUP, APC
402 W. Broadway, 29th Floor
San Diego, CA 92101
Telephone: (619) 398-4760
Facsimile: (619) 756-6991

Attorneys for Plaintiff Maria Isabel Beltran

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Christopher P. Ridout
Devon M. Lyon
Caleb L H Marker
RIDOUT & LYON, LLP
555 East Ocean Blvd., Suite 500
Long Beach, CA 90802

Daniel H. Qualls
Robin G. Workman
Aviva N. Roller
QUALLS & WORKMAN, LLP
177 Post Street, Suite 900
San Francisco, CA 94108

Attorneys for Plaintiff Nicolle DiSimone

Sunil A. Brahmhatt
LAW OFFICE OF SUNIL A. BRAHMBHATT,
PLC
2700 N. Main Street, Suite 310
Santa Ana, CA 92705

Attorneys for Plaintiff Mario Arellano