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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MICHELLE MARINO, DEBORAH
ESPARZA, MONICA RAEL, and CERA
HINKEY, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

COACH, INC.,

Defendant.

CASE NO.:

1:16-cv-01122-VEC (OTW) (Lead)

Consolidated Member Case Nos.:

1:16-cv-03773-VEC (OTW)

1:16-cv-03677-VEC (OTW)

1:16-cv-05320-VEC (OTW)

**ORDER (i) GRANTING PLAINTIFFS' AMENDED UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PRELIMINARY
CERTIFICATION OF SETTLEMENT CLASS, AND APPROVAL OF NOTICE PLAN;
AND (ii) SCHEDULING FAIRNESS HEARING**

Upon consideration of Plaintiffs Michele Marino, Deborah Esparza, Monica Rael, and Cera Hinkey's ("Plaintiffs") Amended Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan (the "Motion"), the Motion hearing before this Court, and the entire record herein, the Court grants the Motion and grants preliminary approval of the Settlement contained in the Parties' Settlement Agreement ("Settlement Agreement"), upon the terms and conditions set forth in this order ("Order"). Capitalized terms and phrases in this Order shall have the same meaning ascribed to them in the Settlement Agreement. The Court makes the following findings:

FINDINGS OF FACT

1. Plaintiffs bring this Amended Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan before the Court, with the consent of Defendant Coach, Inc. (now known as Tapestry, Inc.) ("Defendant").

2. Plaintiffs filed their Amended Consolidated Class Action Complaint (Dkt. No. 70) against Defendant on September 18, 2017 (the "Action") in the United States District Court for the Southern District of New York alleging Defendant's use of the phrase "Manufacturer's Suggested Retail Price" ("MFSRP" or "MSRP") to describe the price of its outlet goods created the false impression that its outlet store Merchandise was once sold in Defendant's full-line retail stores and was of the same quality and workmanship as merchandise sold in Defendant's full-line retail stores.

3. The Parties conducted an extensive and thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the potential claims to determine the strength of both defenses and liability sought in the Action.

4. The Parties engaged in motion practice and informal discovery, where Defendant provided Plaintiffs with extensive information and documents, including sales, pricing, and profit-and-loss information.

5. In addition, Class Counsel evaluated the various state consumer protection laws, as well as the legal landscape, to determine the strength of the claims, the likelihood of success, and the parameters within which courts have assessed settlements similar to the proposed Settlement.

6. The Parties entered into a Settlement Agreement pursuant to which they agreed to settle the Action, subject to the approval and determination by the Court as to the fairness, reasonableness, and adequacy of the Settlement, which, if approved, will result in dismissal of the Action with prejudice.

7. The Court has reviewed the Settlement Agreement, including the exhibits attached thereto and all prior proceedings herein, and having found good cause based on the record,

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. **Stay of the Action.** All non-settlement-related proceedings in the Action are hereby stayed and suspended until further order of the Court.

2. **Preliminary Class Certification for Settlement Purposes Only.** Having made the findings set forth above, the Court hereby preliminarily certifies a plaintiff class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), in accordance with the terms of the Settlement Agreement (the “Settlement Class”). The Court preliminarily finds, based on the terms of the Settlement described in the Settlement Agreement and for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are issues of law and fact that are typical and common to the Settlement Class Members, and that those issues predominate over individual questions; (c) a class action on

behalf of the certified Settlement Class is superior to other available means of adjudicating this dispute; and (d) as set forth below, Plaintiffs and Class Counsel are adequate representatives of the Settlement Class. If the Court does not grant final approval of the Settlement set forth in the Settlement Agreement, or if the Settlement set forth in the Settlement Agreement is terminated in accordance with its terms, then the Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party's position on the issue of class certification or any other issue. Defendant retains all rights to assert that the Action may not be certified as a class action, other than for purposes of the Settlement.

3. **Class Definition.** "Settlement Class" or "Settlement Class Member" means all persons who, during the Class Period, purchased one or more items from COACH's Coach-branded outlet stores in the United States offered at a discount from a "MFSRP" and which contained a "MFSRP" on the tag. Excluded from the Settlement Class are: (a) the directors, officers, employees, and attorneys of COACH, its parents and subsidiaries, and any other entity in which COACH has a controlling interest; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class.

4. **Class Representatives and Class Counsel.** The Court appoints Todd Carpenter of Carlson Lynch LLP, David Cialkowski of Zimmerman Reed LLP, Jeff Ostrow of Kopelowitz Ostrow, P.A., Andrea Gold of Tycko & Zavareei LLP, and Charles Moore of Halunen Law as counsel for the Settlement Class. Michele Marino, Deborah Esparza, Monica Rael, and Cera Hinkey are hereby appointed as representatives of the Settlement Class ("Class Representatives").

5. **Preliminary Settlement Approval.** The Court preliminarily approves the Settlement set forth in the Settlement Agreement as being within the range of possible approval as fair, reasonable, and adequate, within the meaning of Rule 23 and the Class Action Fairness Act of 2005, subject to final consideration at the Fairness Hearing provided for below. Accordingly, the Settlement Agreement is sufficient to warrant sending notice to the Settlement Class.

6. **Jurisdiction.** The Court has subject-matter jurisdiction over the Action pursuant to 28 U.S.C. §§ 1332 and 1367 and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391.

7. **Fairness Hearing.** A final Fairness Hearing shall be held on February 23, 2021, at 10:30 a.m. at the United States District Court for the Southern District of New York in Courtroom 443 (the “Fairness Hearing”), to determine, among other things: (a) whether the Action should be finally certified as a class action for settlement purposes pursuant to Rule 23(a) and (b)(3); (b) whether the Settlement of the Action should be finally approved as fair, reasonable, and adequate pursuant to Rule 23(e); (c) whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) whether Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) whether Settlement Class Members and related persons should be permanently enjoined from pursuing lawsuits based on the transactions and occurrences at issue in the Action; (f) whether the application of Class Counsel for an award of Attorneys’ Fees and Expenses should be approved pursuant to Rule 23(h); and (g) whether the application of the Class Representatives for an Incentive Award should be approved. The submissions of the Parties in support of the Settlement, including Class Counsel’s application for Attorneys’ Fees and Expenses and Incentive Awards, shall be filed with the Court no later than

forty-four (44) days prior to the Fairness Hearing and may be supplemented up to seven (7) days prior to the Fairness Hearing.

8. **Administration and Class Notice.**

a. The Court accepts the recommendations of Class Counsel and Defendant, and hereby appoints Angeion Group, LLC to serve as Settlement Administrator in accordance with the terms of the Settlement Agreement, and to help implement the terms of the Settlement Agreement.

b. The Court hereby approves: (i) the amended proposed Class Notice,¹ Summary Settlement Notice, and Claim Form filed on August 17, 2020 (Dkt. 136); and (ii) the notice methodology described in the July 21, 2020 Settlement Agreement (Dkt. 134-3) and in the Declarations of Steven Weisbrot, Esq. of Angeion Group, LLC (Dkt. Nos. 134-9, 134-10 and 134-11) (the “Weisbrot Declarations”).

c. No later than thirty (30) calendar days after the entry of this Order, Defendant shall provide the Settlement Administrator with data on the Settlement Class in accordance with the Settlement Agreement and the Settlement Administrator shall cause the Notice Plan to commence as described in the Weisbrot Declarations. Specifically, the Settlement Administrator shall establish a website that will inform Settlement Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The website shall include materials agreed upon by the Parties and as further ordered by this Court.

d. Not later than thirty (30) days after the entry of this Order, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Settlement Class Members.

¹ The amended long form notice is approved except that, in item 22, any Notice of Intent to Appear must be filed with the Court and served on Class Counsel and Defendant’s Counsel no later than **February 8, 2021**.

e. The Settlement Administrator shall disseminate any remaining notice, as stated in the Settlement Agreement and the Weisbrot Declarations.

f. Not later than ten (10) calendar days before the date of the Fairness Hearing, the Settlement Administrator shall file a declaration or affidavit with the Court that: (i) includes a list of those persons who have opted out or excluded themselves from the Settlement; and (ii) attests to the proper implementation of the Notice Plan.

9. **Findings Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in paragraph 8 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

10. **Exclusion from Settlement Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class may elect to opt out of the Settlement. Settlement Class Members who opt out of the Settlement will not release their claims for damages that accrued during the Class Period. Settlement Class Members wishing to opt out of the Settlement must send to the Class Action Settlement Administrator by U.S. mail a personally signed letter including their

name and address and providing a clear statement communicating that they elect to be excluded from the Settlement Class. Any request for exclusion must be postmarked on or before the deadline for exclusions specified in this Order. Any potential Settlement Class Member who does not file a timely written request for exclusion shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the release in the Settlement Agreement, even if he or she has litigation pending or subsequently initiates litigation against Defendant or other Coach Released Persons & Entities (as defined in the Settlement Agreement) relating to the claims and transactions released in this Action.

11. **Objections and Appearances.** Any Settlement Class Member who intends to object to the fairness of the Settlement must do so in writing no later than the deadline for objections specified in this Order. Any objection must be in writing, signed by the Settlement Class Member (and his or her attorney, if individually represented), and filed with the Court, with a copy delivered to Class Counsel and Defendant's Counsel at the addresses set forth in the Class Notice, no later than the deadline for objections specified in this Order. The written objection must include: (a) a heading which refers to the Action; (b) information sufficient to identify and contact the objecting Settlement Class Member (or his or her individually hired attorney, if any); (c) a clear and concise statement of the Settlement Class Member's objection; (d) the date(s), time(s) and location(s) that the objector has purchased Merchandise offered at a discount from a "MFSRP" sold in Coach-branded outlet stores in the United States; (e) the facts supporting the objection; (f) a specific statement of the legal grounds on which the objection is based, including whether it applies only to the objector, to a specific subset of the class, or to the entire class; (g) the number of times in which the objector or his or her counsel has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption

of each case in which the objector or his or her counsel has made such objection and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case, the identity of any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (h) the number of times in which the objector's counsel or counsel's law firm have objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case; (i) any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between the objector or objector's counsel and any other person or entity; (j) a list of all persons who will be called to testify at the Fairness Hearing in support of the objection; (k) a statement confirming whether the objector intends to personally appear and/or testify at the Fairness Hearing; and (l) documents sufficient to establish the basis for the objector's standing as a Settlement Class Member, such as: (i) a declaration signed by the objector under penalty of perjury, with language similar to that included in the Claim Form attached as Exhibit A to the Settlement Agreement, that the Settlement Class Member purchased Merchandise offered at a discount from a "MFSRP" sold in Coach-branded outlet stores in the United States during the Class Period; or (ii) receipt(s) reflecting such purchase(s).²

Any Settlement Class Member who files and serves a written objection, as described in the preceding paragraph, may appear at the Fairness Hearing, either in person or through counsel hired

² The Court notes that the long form notice as currently proposed omits two of the above requirements for objections, namely subparts (a) and (l). Subpart (d) in the proposed long form notice should also be split into two subparts, as it currently contains two separate requirements. No later than **August 25, 2020**, Plaintiffs' counsel must submit a revised long form notice consistent with this Order.

at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of the Settlement, including Attorneys' Fees and Expenses and Incentive Awards. Settlement Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must serve a notice of intention to appear on the Class Counsel and Defendant's Counsel identified in the Class Notice, and file the notice of appearance with the Court, no later than fifteen (15) days before the Fairness Hearing, or as the Court may otherwise direct.

Any Settlement Class Member who fails to comply with Section VI.6.2 of the Settlement Agreement shall waive and forfeit any and all rights he or she may have to appear separately and to object, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Action, including, but not limited to, the Released Claims and the releases in Section VII of the Settlement Agreement.

Class Counsel shall have the right, and Defendant shall reserve its right, to respond to any objection no later than seven (7) days before the Fairness Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular U.S. mail, hand or overnight delivery, to the objecting Settlement Class Member or to the individually hired attorney for the objecting Settlement Class Member, to Class Counsel, and to Defendant's Counsel.

12. **Disclosures.** The Settlement Administrator, Defendant's Counsel, and Class Counsel shall promptly furnish to each other copies of all objections or written requests for exclusion that might come into their possession.

13. **Termination of Settlement.** This Order shall become null and void and shall not prejudice the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the Settlement is not finally approved by the Court or does not become final, pursuant to the terms of the Settlement

Agreement; (b) the Settlement is terminated in accordance with the Settlement Agreement; or (c) the Settlement does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose.

14. **Nationwide Stay and Preliminary Injunction.** Effective immediately, any actions or proceedings pending in any state or federal court in the United States involving the labeling or marketing of Defendant's Merchandise, except any matters necessary to implement, advance, or further approval of the Settlement Agreement or Settlement process, are stayed pending the Fairness Hearing and the issuance of a final order and judgment in this Action.

In addition, pending the Fairness Hearing and the issuance of a final order and judgment in this Action, all members of the Settlement Class and their legally authorized representatives are hereby preliminarily enjoined from demanding, threatening, filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction in the United States (defined to including both states and territories of the United States) arising out of or relating to the Merchandise or the facts and circumstances at issue in the Action.

Also, pending the Fairness Hearing and issuance of a final order and judgment in this Action, all members of the Settlement Class and their legally authorized representatives are hereby preliminarily enjoined from demanding, threatening, filing, commencing, prosecuting, or maintaining any other lawsuit on behalf of members of the Settlement Class, if such other action

is based on or relates to Defendant's Merchandise.

Under the All Writs Act, the Court finds that issuance of this nationwide stay and injunction is necessary and appropriate in aid of the Court's jurisdiction over this Action. The Court finds no bond is necessary for issuance of this injunction.

15. **Effect of Settlement Agreement and Order.** Class Counsel, on behalf of the Settlement Class, and Defendant entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. This Order shall be of no force or effect if the Settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. The Settlement Agreement, the documents relating to the Settlement Agreement, and this Order are not, and should not in any event be (a) construed, deemed, offered, or received as evidence of a presumption, concession, or admission on the part of Plaintiffs, Defendant, any member of the Settlement Class or any other person; or (b) offered or received as evidence of a presumption, concession, or admission by any person of any fault, wrongdoing, breach, or liability, or that the claims in the Action lack merit or that the relief requested is inappropriate, improper, or unavailable for any purpose in any judicial or administrative proceeding, whether in law or in equity.

16. **Retaining Jurisdiction.** This Court shall maintain continuing jurisdiction over these Settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Class. If the Settlement receives final approval, this Court shall retain jurisdiction over any action to enforce the release provisions in the Settlement Agreement.

17. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Fairness Hearing without further written notice.

The Court sets the following schedule for the Fairness Hearing and the actions which must precede it:


- a. Plaintiffs shall file their Motion for Final Approval of the Settlement by no later than January 10, 2021.
- b. Plaintiffs shall file their Motion for Attorneys' Fees, Costs, and Expenses, and Motion for Incentive Award by no later than January 10, 2021.
- c. Settlement Class Members must file any objections to the Settlement and the Motion for Attorneys' Fees, Costs, and Expenses, and the Motion for Incentive Award by no later than January 24, 2021.
- d. Settlement Class Members must exclude themselves, or opt-out, from the Settlement by no later than January 24, 2021.
- e. Settlement Class Members who intend to appear at the Fairness Hearing must file a Notice of Intention to Appear at the Fairness Hearing by no later than February 8, 2021.
- f. The Settlement Administrator shall file a declaration or affidavit with the Court that confirms the implementation of the Notice Plan pursuant to this Order by no later than February 13, 2021.
- g. Class Counsel and Defendant's Counsel shall have the right to respond to any objection by no later than February 16, 2021.
- h. The Fairness Hearing will take place on February 23, 2021, at 10:30 a.m. at the United States District Court for the Southern District of New York in Courtroom 443.³

³ The Court may reschedule or relocate the hearing by issuing an order on the public docket; such order shall be immediately posted to the settlement website.

The Clerk of Court is respectfully directed to terminate the pending consent motion for settlement in 16-cv-1122 (Dkt. 134), 16-cv-3773 (Dkt. 104), 16-cv-3677 (Dkt. 129), and 16-cv-5320 (Dkt. 94).

SO ORDERED.

Date: August 24, 2020
New York, NY



VALERIE CAPRONI
United States District Judge