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FILED
Clerk of the Superior Court

SEP 27 2019

By: Y. Terronez, Clerk

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN DIEGO

15 KUSHROO KHAVARIAN, on behalf of)
16 himself and all others similarly situated,)
17 individuals,)

18 Plaintiff,)

19 vs.)

20 JEROME'S FURNITURE WAREHOUSE,)
and DOES 1-100,)
21 inclusive,)

22 Defendant.)
23)
24)
25)
26)
27)

NO.: 37-2018-00065353-CU-BT-CTL

Date: September 27, 2019
Time: 1:30 PM
Dept. C-72
Judge: Hon. Timothy Taylor

Date Action Filed: Dec. 27, 2018

Trial Date: None Set

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT, APPROVAL OF
FORM NOTICE, AND
SCHEDULING OF FINAL
APPROVAL**

1 Upon consideration of Plaintiff Kushroo Khavarian’s (“Plaintiff”) Motion for Preliminary
2 Approval of Settlement, Approval of Form Notice, and Scheduling of Final Approval Hearing (the
3 “Motion”), Supplemental Memorandum, Supplemental Declarations, and the entire record herein,
4 the Court grants preliminary approval of the Settlement contained in the Parties’ September 20,
5 2019 Amended Settlement Agreement (“Settlement Agreement”), upon the terms and conditions set
6 forth in this Order. Capitalized terms and phrases in this Order shall have the same meaning they
7 have in the Settlement Agreement. The Court makes the following findings:

8 **FINDINGS OF FACT**

9 1. Plaintiff brings his Motion with the consent of Defendant Jerome’s Furniture, Inc.
10 (“Defendant”).

11 2. Plaintiff filed his complaint against Defendant on December 27, 2018 in the Superior
12 Court for the State of California, County of San Diego, alleging that Defendant breached the
13 warranty of merchantability under California’s Song-Beverly Consumer Warranty Act and was
14 unjustly enriched through its sale of bonded leather products (the “Products”) that were unfit for use
15 as furniture.

16 3. The Parties have informed the Court that they conducted an extensive and thorough
17 examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the
18 merits of the potential claims and to determine the strength of Defendant’s potential defenses in the
19 Litigation.

20 4. The Parties engaged in motion practice and discovery, where Defendant provided
21 Plaintiff with sales figures regarding the Products.

22 5. In addition, Proposed Class Counsel informed the Court that they evaluated the legal
23 landscape to determine the strength of the claims, the likelihood of success, and the parameters
24 within which courts have assessed settlements similar to the proposed Settlement.

25 6. The Parties entered into a Settlement Agreement pursuant to which they agreed to
26 settle the Litigation, subject to the approval and determination by the Court as to the fairness,

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1 reasonableness, and adequacy of the Settlement, which, if approved, will result in dismissal of the
2 Litigation with prejudice.

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

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

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

8 2. **Preliminary Class Certification for Settlement Purposes Only.** Having made the
9 findings set forth above, the Court hereby preliminarily certifies a plaintiff class for settlement
10 purposes only, pursuant to California Rule of Court section 3.769(d) and California Code of Civil
11 Procedure section 382, in accordance with the terms of the Settlement Agreement (the “Settlement
12 Class”). The Court preliminarily finds, based on the terms of the Settlement described in the
13 Settlement Agreement and for settlement purposes only, that: (a) the Settlement Class is so
14 numerous that joinder of all members is impracticable; (b) the class is ascertainable; (c) common
15 questions of law or fact predominate; (d) plaintiff’s claims are typical of the class; and (e) plaintiff
16 can adequately represent the class. If the Court does not grant final approval of the Settlement set
17 forth in the Settlement Agreement, or if the Settlement set forth in the Settlement Agreement is
18 terminated in accordance with its terms, then the Settlement Agreement, and the certification of the
19 Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the
20 Settlement Class had never been certified, without prejudice to any party’s position on the issue of
21 class certification or any other issue. Defendant retains all rights to assert that the Litigation may
22 not be certified as a class action, other than for purposes of this Settlement.

23 3. **Class Definition.** The Settlement Class is defined as all persons who purchased the
24 Products listed in Exhibit E to the Settlement Agreement between December 27, 2014 and the
25 Claims Deadline set forth below. Excluded from the Settlement Class are (a) Defendant and its
26 officers and directors; (b) all Settlement Class Members who timely and validly request exclusion
27 from the Settlement Class; (c) myself, the judge presiding over the Litigation, (d) the attorneys
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1 representing the Parties in the Litigation, (e) institutional purchasers of the Products, and (f) anyone
2 who is otherwise a member of the Settlement Class but has already, as of the Claims Deadline,
3 received a full refund for all Products purchased from Jerome's from December 27, 2014 through
4 the Claims Deadline.

5 4. **Class Representatives and Class Counsel.** The Court appoints Janine L. Pollack
6 and Michael Liskow of The Sultz Law Group P.C.; David R. Shoop and Thomas S. Alch of Shoop,
7 A Professional Law Corporation, and C. Mario Jaramillo of Access Lawyers Group as Class
8 Counsel for the Settlement Class. Plaintiff is hereby appointed as Class Representative.

9 5. **Preliminary Settlement Approval.** The Court preliminarily approves the
10 Settlement set forth in the Settlement Agreement as being within the range of possible approval as
11 fair, reasonable, and adequate, subject to final consideration at the Final Fairness Hearing provided
12 for below. Accordingly, the Settlement Agreement is sufficient to warrant sending notice to the
13 Class.

14 6. **Jurisdiction.** This Court has personal jurisdiction over Defendant because
15 Defendant is doing business in the State of California within San Diego County. Additionally,
16 venue is proper in this District pursuant to California Code of Civil Procedure § 395.

17 7. **Final Fairness Hearing.** A Final Fairness Hearing shall be held on **March 6, 2020**
18 **at 1:30 p.m.** at Department C-72 of the San Diego County Superior Court, located at 330 W.
19 Broadway, San Diego, CA 92101, to determine, among other things: (a) whether the Litigation
20 should be finally certified as a class action for settlement purposes pursuant to California Rule of
21 Court section 3.769(d) and California Code of Civil Procedure section 382; (b) whether the
22 Settlement of the Litigation should be finally approved as fair, reasonable, and adequate; (c) whether
23 the Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement;
24 (d) whether Settlement Class Members should be bound by the releases set forth in the Settlement
25 Agreement; (e) whether Settlement Class Members and related persons should be permanently
26 enjoined from pursuing lawsuits based on the transactions and occurrences at issue in the Litigation;
27 (f) whether the application of Class Counsel for an award of Attorneys' Fees and Expenses should
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1 be approved; and (g) whether the application of Plaintiff for a Service Award should be approved.
2 The submissions of the Parties in support of the Settlement, including Class Counsel's application
3 for attorneys' fees and expenses and a Service Award for Plaintiff, shall be filed with the Court no
4 later than forty-two (42) days prior to the Final Fairness Hearing, and may be supplemented no later
5 than seven (7) days prior to the Final Fairness Hearing.

6 8. Administration and Class Notice.

7 a. The Court accepts the recommendations of Proposed Class Counsel and
8 Defendant and hereby appoints Analytics Consulting LLC to serve as Claims Administrator in
9 accordance with the terms of the Settlement Agreement, and to help implement the terms of the
10 Settlement Agreement.

11 b. The proposed Class Notice, the Notice Program described in the Settlement
12 Agreement and in the Declaration of Richard W. Simmons of Analytics Consulting in Support of
13 Proposed Notice Program (the "Simmons Declaration") are hereby approved.

14 c. Within ten (10) days after the entry of the Preliminary Approval Order,
15 Defendant shall provide to the Claims Administrator a list of Settlement Class Members and details
16 of their purchases of the Products, mailing addresses, email addresses and phone numbers, to the
17 extent available (the "Class Member List").

18 d. No later than thirty (30) days from the date of the entry of this Order, the
19 Claims Administrator shall cause the Notice Plan to commence as described in the Simmons
20 Declaration. Specifically, within thirty (30) days from the date of the entry of this Order (1) the
21 Claims Administrator shall mail and email to each Settlement Class Member the Notice substantially
22 in the form attached to the Settlement Agreement as Exhibit B; and (2) Defendant shall prominently
23 post a link to the Settlement Website on the top of its home page <https://www.jeromes.com/>, and
24 will keep the link on the home page until **February 7, 2020**, the Claims Deadline.

25 e. Within seven (7) days after the Opt-Out Date (described below), the Claims
26 Administrator shall furnish to Proposed Class Counsel and to Defendant's Counsel a complete list
27 of all timely and valid requests for exclusion (the "Opt-Out List").

1 9. **Findings Concerning Notice.** The Court finds that the form, content, and method of
2 giving notice to the Class as described in paragraph 8 of this Order: (a) will constitute the best
3 practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement
4 Class Members of the pendency of the Litigation, the terms of the proposed Settlement, and their
5 rights under the proposed Settlement, including but not limited to their rights to object to or exclude
6 themselves from the proposed Settlement and other rights under the terms of the Settlement
7 Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement
8 Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements
9 of law, including but not limited to California Rule of Court 3.766(d). The Court further finds that
10 the Notice contains, *inter alia*: (a) a brief explanation of the case, including the basic contentions or
11 denials of the parties; (b) a statement that the court will exclude Settlement Class Members from the
12 Settlement Class if any Settlement Class Member so requests by the deadline to do so; (c) a
13 procedure for the Settlement Class Members to follow in requesting exclusion from the class; (d) a
14 procedure for the Settlement Class Members to follow to object to the Settlement Agreement; and
15 (e) a statement that the judgment, whether favorable or not, will bind all Settlement Class Members
16 who do not request exclusion.

17 10. **Exclusion from Settlement Class.** Any Settlement Class Member who wishes to be
18 excluded from the Class may elect to opt out of the Settlement under this Agreement. Settlement
19 Class Members who opt out of the Settlement will not release their claims for damages that accrued
20 during the Class Period. Settlement Class Members wishing to opt out of the Settlement must send
21 to the Claims Administrator by U.S. Mail a personally signed letter including their name and address
22 and providing a clear statement communicating that they elect to be excluded from the Settlement
23 Class. Any request for exclusion must be postmarked on or before the Opt-Out Date, **February 7,**
24 **2020.** Any potential Settlement Class Member who does not file a timely written request for
25 exclusion shall be bound by all subsequent proceedings, orders, and judgments, including, but not
26 limited to, the release in the Settlement Agreement, even if he or she has litigation pending or
27 subsequently initiates litigation against Defendant or other Released Persons (as defined in the
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1 Settlement Agreement) relating to the claims and transactions released in this Litigation.

2 11. **Objections and Appearances.** Any Settlement Class Member who intends to object
3 to the fairness of the Settlement must do so in writing no later than the Objection Date. Any
4 objection must be in writing, signed by the Settlement Class Member (and his or her attorney, if
5 individually represented), and filed with the Court, with a copy delivered to Proposed Class Counsel
6 and Defendant's Counsel at the addresses set forth in the Class Notice by mail and email, no later
7 than the Objection Date **February 7, 2020**. The written objection must include: (i) the objector's
8 full name, address, telephone number, and e-mail address (if any); (ii) information identifying the
9 objector as a Settlement Class Member; (iii) a written statement of all grounds for the objection,
10 accompanied by any legal support for the objection the objector believes applicable; (iv) the identity
11 of all counsel representing the objector, if any; (v) a statement whether the objector and/or their
12 counsel will appear at the Final Fairness Hearing; (vi) the objector's signature and the signature of
13 the objector's duly authorized attorney or other duly authorized representative; (vii) a list, by case
14 name, court, and docket number, of all other cases in which the objector and/or the objector's
15 counsel has filed an objection to any proposed class action settlement within the last five (5) years;
16 and (viii) a list, by case name, court, and docket number, of all other cases in which the objector's
17 counsel (on behalf of any person or entity) has filed an objection to any proposed class action
18 settlement within the last 3 years.

19 Any Settlement Class Member who files and serves a written objection, as described in the
20 preceding Section, may appear at the Final Approval Hearing, either in person or through counsel
21 hired at the Settlement Class Member's expense, to object to any aspect of the fairness,
22 reasonableness, or adequacy of this Agreement, including Attorneys' Fees and Expenses and
23 Service Awards.

24 Any Settlement Class Member who fails to comply with Section 6.1 of the Settlement
25 Agreement shall waive and forfeit any and all rights he or she may have to appear separately and/or
26 to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and
27 judgments in the Litigation, including, but not limited to, the Released Claims and the releases in
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1 Section 7 of the Agreement.

2 Proposed Class Counsel shall have the right, and Defendant shall reserve its right, to respond
3 to any objection no later than seven (7) days before the Final Approval Hearing. The Party so
4 responding shall file a copy of the response with the Court and shall serve a copy, by regular mail,
5 hand or overnight delivery, to the objecting Settlement Class Member or to the individually-hired
6 attorney for the objecting Settlement Class Member (if any).

7 12. **Termination of Settlement.** This Order shall become null and void and shall not
8 prejudice the rights of the Parties, all of whom shall be restored to their respective positions existing
9 immediately before this Court entered this Order, if: (a) the Settlement is not finally approved by
10 the Court or does not become final, pursuant to the terms of the Settlement Agreement; (b) the
11 Settlement is terminated in accordance with the Settlement Agreement; or (c) the Settlement does
12 not become effective as required by the terms of the Settlement Agreement for any other reason. In
13 such event, the Settlement and Settlement Agreement shall become null and void and be of no
14 further force and effect, and neither the Settlement Agreement nor the Court's orders, including this
15 Order, relating to the Settlement shall be used or referred to for any purpose.

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

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

5 15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the
6 Final Fairness Hearing without further written notice.

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

- 9 a. Plaintiff shall file his Motion for Final Approval of the Settlement by no later than
10 **January 24, 2020.**
- 11 b. Plaintiff shall file his Motion for Attorneys' Fees, Costs, Expenses and Service
12 Award by no later than **January 24, 2020.**
- 13 c. Settlement Class Members must file any objections to the Settlement and the Motion
14 for Attorneys' Fees, Costs, and Expenses, and the Motion for Service Award by no
15 later than **February 7, 2020.**
- 16 d. Settlement Class Members must exclude themselves, or opt-out, from the Settlement
17 by no later than **February 7, 2020.**
- 18 e. Settlement Class Members seeking a refund must complete and submit a written
19 Claim Form to the Claims Administrator postmarked on or before the Claims
20 Deadline **February 7, 2020** or submit an online Claim Form to the Claims
21 Administrator through the Settlement Website before midnight Pacific Standard
22 Time on the Claims Deadline **February 7, 2020.**
- 23 f. Proposed Class Counsel and Defendant's Counsel may respond to any objection no
24 later than **February 28, 2020.**

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g. The Final Fairness Hearing will take place on **March 6, 2020 at 1:30 p.m.** in Department C-72 of the San Diego County Superior Court, located at 330 W. Broadway, San Diego, CA 92101.

SO ORDERED this 27th day of September 2019:

Timothy B. Taylor

Honorable Timothy Taylor, Judge of the Superior Court