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FILED  
MAY 23 2019  
Shirley, Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO

MONICA RAEL and ALYSSA HEDRICK,  
and on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

RTW RETAILWINDS, INC., a Delaware  
corporation, NEW YORK & COMPANY  
STORES, INC., a New York corporation, and  
DOES 1-50, inclusive,

Defendants.

Case No. 37-2019-3850-CU-MC-CTL

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT AND PROVISIONAL CLASS  
CERTIFICATION**

On 5 (month) 23 (day), 2019, this Court heard Plaintiffs Monica Rael and Alyssa Hedrick’s amended motion for preliminary approval of class settlement and provisional class certification. This Court reviewed the motion, including the Settlement Agreement and Release (“Settlement Agreement”). Based on this review and the findings below, the Court finds good cause to grant the motion.<sup>1</sup>

<sup>1</sup> Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

1    **FINDINGS:**

2           1.     The Settlement Agreement appears to be the product of serious, informed, non-  
3 collusive negotiations with defendants RTW Retailwinds, Inc. and New York & Company Stores,  
4 Inc. (together, “New York & Company”) and falls within the range of possible approval as fair,  
5 reasonable and adequate.

6           2.     The Full Notice, Email Notice, Mail Notice, and Claim Form (attached to the  
7 Settlement Agreement), (a) constitute the best such forms and notice practicable under the  
8 circumstances; (b) the method for providing notice to Class Members set forth in the Agreement  
9 constitutes valid, due, and sufficient notice to all members of the Class; and (c) the notices and  
10 notice plan set forth in the Agreement comply fully with the requirements of California Code of  
11 Civil Procedure § 382, California Rules of Court 3.766 and 3.769, the California and United States  
12 Constitutions, and other applicable law.

13           3.     For settlement purposes only, the Class is so numerous that joinder of all Class  
14 Members is impracticable.

15           4.     For settlement purposes only, Plaintiffs’ claims are typical of the Class’s claims.

16           5.     For settlement purposes only, there are questions of law and fact common to the  
17 Class, which predominate over any questions affecting only individual Class Members.

18           6.     For settlement purposes only, Class Certification is superior to other available  
19 methods for the fair and efficient adjudication of the controversy.

20    **IT IS ORDERED THAT:**

21           1.     **Settlement Approval.** The Settlement Agreement, including the Full Notice, Email  
22 Notice, Mail Notice, Publication Notice, and Claim Form, attached to the Settlement Agreement as  
23 Exhibits B-F are preliminarily approved.

24           2.     **Provision of Class Notice.** New York & Company will notify Class Members of  
25 the Settlement in the manner specified under Section 3.4 of the Settlement Agreement.

26           3.     **Claim for a Voucher or Vouchers.** Class Members who do not receive direct  
27 notice via email or mail and who want to receive a Voucher under the Settlement Agreement, must  
28 accurately complete and deliver a Claim Form to the Claims Administrator, along with any required

1 supporting proofs of purchase, if necessary, no later than seventy-five (75) calendar days after  
2 Defendant, through the Claims Administrator, issues Notice to the Class. Class Members for whom  
3 New York & Company has a valid email or mailing address need not do anything to receive a  
4 Voucher.

5           **4. Objection to Settlement.** Class Members who have not submitted a timely written  
6 exclusion request pursuant to Paragraph 6 below and who want to object to the Settlement  
7 Agreement must file written objections with the Court and deliver copies to the Claims  
8 Administrator, Class Counsel, and New York & Company’s Counsel no later than seventy-five (75)  
9 calendar days after Defendant, through the Claims Administrator, issues Notice to the Class. The  
10 delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by  
11 the postmark. The objection must include: **(1)** the name and case number of the Action; **(2)** the  
12 Class Member’s full name, address, and telephone number; **(3)** the words “Notice of Objection” or  
13 “Formal Objection”; **(4)** in clear and concise terms, the legal and factual arguments supporting the  
14 objection; **(5)** facts supporting the person’s status as a Class Member (e.g., the date and location of  
15 his/her relevant purchases and description of the item(s) purchased); **(6)** the Class Member’s  
16 signature and the date; and **(7)** the following language immediately above the Class Member’s  
17 signature and date: “I declare under penalty of perjury under the laws of the State of California that  
18 the foregoing statements regarding class membership are true and correct to the best of my  
19 knowledge.” Any Class Member who submits a written objection, as described in this section, has  
20 the option to appear at the Fairness Hearing, either in person or through personal counsel hired at  
21 the Class Member’s expense, to object to the fairness, reasonableness, or adequacy of the  
22 Settlement Agreement or the proposed Settlement, or to the award of attorneys’ fees. Class  
23 Members, or their attorneys, intending to make an appearance at the Fairness Hearing, however,  
24 must include on a timely and valid objection a statement substantially similar to “Notice of  
25 Intention to Appear.” If the objecting Class Member intends to appear at the Fairness Hearing  
26 through counsel, he or she must also identify the attorney(s) representing the objector who will  
27 appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail  
28 address, and the state bar(s) to which counsel is admitted. If the objecting Class Member intends

1 to request the Court allow the Class Member to call witnesses at the Fairness Hearing, such request  
2 must be made in the Class Member's written objection, which must also contain a list of any such  
3 witnesses and a summary of each witness's expected testimony. Only Class Members who submit  
4 timely objections containing Notices of Intention to Appear may speak at the Fairness Hearing.

5 **5. Failure to Object to Settlement.** Class Members who fail to object to the  
6 Settlement Agreement in the manner specified above will: (1) be deemed to have waived their right  
7 to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a subsequent  
8 objection, intervention, appeal, or any other process) to the Settlement Agreement; and (3) not be  
9 entitled to speak at the Fairness Hearing.

10 **6. Requesting Exclusion.** Class Members who want to be excluded from the  
11 Settlement must send a signed letter or postcard to the Claims Administrator stating: (a) the name  
12 and case number of the Action; (b) the full name, address, and telephone number of the person  
13 requesting exclusion; and (c) a statement that the person does not wish to participate in the  
14 Settlement, postmarked no later than seventy-five (75) calendar days after Defendant, through the  
15 Claims Administrator, issues Notices to the Class.

16 **7. Provisional Certification.** The Class is provisionally certified as all New York &  
17 Company customers who from February 11, 2012 to the date the Court enters the Preliminary  
18 Approval Order purchased at any New York & Company retail store located in the State of  
19 California, or from June 9, 2013 to the date the Court enters the Preliminary Approval Order  
20 purchased at any New York & Company outlet store located in the State of California, one or more  
21 New York & Company branded items at a purported discount from an "Our Price" or any other  
22 reference price. Excluded from the Class are New York & Company's Counsel, New York &  
23 Company's officers, directors and employees, and the judge presiding over the Action.

24 **8. Conditional Appointment of Class Representatives and Class Counsel.**  
25 Plaintiffs Monica Rael and Alyssa Hedrick are conditionally appointed as the Class Representatives  
26 to implement the Parties' settlement in accordance with the Settlement Agreement. The law firm  
27 of Carlson Lynch LLP is conditionally appointed as Class Counsel. Plaintiffs and Class Counsel  
28 must fairly and adequately protect the Class's interests.

1           **9. Termination.** If the Settlement Agreement terminates for any reason, the following  
2 will occur: (a) Class Certification will be automatically vacated; (b) Plaintiffs will stop functioning  
3 as Class Representatives; (c) Class Counsel will stop functioning as Class Counsel; and (d) this  
4 Action will revert to its previous status in all respects as it existed immediately before the Parties  
5 executed the Settlement Agreement, including that Plaintiffs will voluntarily dismiss this action  
6 and re-file their Complaint in the United States District Court for the Southern District of California.  
7 This Order will not waive or otherwise impact the Parties' rights or arguments.

8           **10. No Admissions.** Nothing in this Order is, or may be construed as, an admission or  
9 concession on any point of fact or law by or against any Party.

10           **11. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and deadlines,  
11 are stayed and suspended until further notice from the Court, except for such actions as are  
12 necessary to implement the Settlement Agreement and this Order.

13           **13. Further Procedures.** Counsel for the Parties are hereby authorized to agree to  
14 utilize all reasonable procedures in connection with the administration of the Settlement which are  
15 not materially inconsistent with either this Order or the terms of the Agreement.

16           **14. Fairness Hearing.** On 9 (month) 27 (day), 2019, at 9:00 am,  
17 this Court will hold a Fairness Hearing to determine whether the Settlement Agreement should be  
18 finally approved as fair, reasonable, and adequate. Based on the date of this Order and the date of  
19 the Fairness Hearing, the following are the certain associated dates in this Settlement:

Event	Timing
Last day for Defendants, through KCC, to send Email Notice, Mail Notice, start operating Settlement Website, and begin to provide Publication Notice	30 days after entry of this Order.
Last day for Plaintiffs to file fee petition	75 days after entry of this Order.
Last day for Class Members to submit a Claim, request exclusion, or object to the Settlement	105 days after entry of this Order.

