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November 16, 2007

The Honorable William G. Young
United States District Court
District of Massachusetts
1 Courthouse Way
Boston, MA 02210

RE: *In re TJX Companies Retail Security Breach Litigation*
Civil Action No. 07-10162

Dear Judge Young:

I submit this letter, on behalf of the Office of the Massachusetts Attorney General and the multi-state group investigating the TJX security breach (participating Attorneys General are referenced on the cc line below), pursuant to the 28 U.S.C. § 1715, to comment on a component of the consumer class action settlement filed by the parties in the above-titled case. Specifically, this Office and the Offices of the undersigned States object to the characterization in the proposed settlement of the TJX Special Event (see, IV., 2.3 of the Settlement Agreement, filed September 21, 2007) (hereinafter "Special Event") as a benefit of the settlement. We are unaware of precedent in which a Special Event, or any type of sale open to the general public, has been deemed a benefit of a class action settlement, and this court should avoid that precedent. We believe this aspect of the proposed settlement demeans the class action process, which can be used as a meaningful tool to protect consumers. Please note, however, that in commenting on this particular aspect of the proposed settlement agreement, we do not suggest our approval of the settlement's other terms.

We are not suggesting that TJX cannot, or should not, hold a sale as a goodwill gesture to its customers, including customers who may have been impacted by the TJX security breach. But the Special Event should not qualify as a class benefit relevant to the determination of whether the settlement agreement is procedurally and substantively fair, adequate, and reasonable. *See* 28 USC § 1712(e).

The Special Event is nothing more than a retail sale, which would primarily benefit the defendant, TJX Companies. If deemed a benefit to the class, the retail sale also presumably would benefit class action counsel, whose fees would be impacted by a

The Honorable William G. Young

November 16, 2007

Page 2

nominally higher valued settlement. It is unclear what benefit, if any, the class gains from a retail sale that is open to the general public. TJX should not inure the good will of this court or the public for a sale that enhances its bottom line, nor should the class's attorneys reap large fees for an unquantifiable and dubious benefit.

Though the benefits of a retail sale fall far short of the questionable benefits of a coupon-based settlement, if this Court were inclined to consider a Special Event as a benefit to the class, it should hold the Special Event to at least the heightened scrutiny due to coupons or vouchers under the Class Action Fairness Act of 2005, Pub. L. 109-2 Stat. 4 (codified in various sections of title 28 of the United States Code).

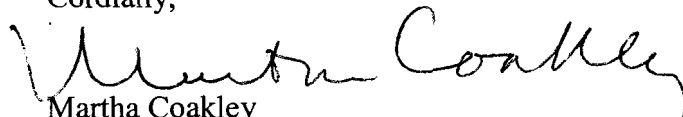
Like coupons, the real value of a Special Event open to all members of the public is difficult, if not impossible, to ascertain. As such, where a settlement implements a Special Event, "the fairness of the settlement *should be seriously questioned* by the reviewing court where the attorneys' fees demand is disproportionate to the level of tangible, non-speculative benefit to the class members." S. Rep. 109-14, at 31 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 32 (emphasis added). Congress has required heightened judicial scrutiny of coupon-based settlements due to its concern that in many cases "counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value." Pub. L. 109-2, § 2(a)(3)(A); *Kearns v. Ford Motor Co.*, No. CV 05-5644, 2005 WL 3967998, at *1 (N.D. Cal. Nov. 21, 2005); *See Synfuel Tech., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (noting that for many consumers, "the right to receive a discount [or coupon] will be worthless") (quoting Geoffrey P. Miller & Lori S. Singer, *Nonpecuniary Class Action Settlements*, 60 LAW & CONTEMP. PROBS. 97, 108 (1997)); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 221 (D. Me. 2003) ("[A] settlement is not fair where all the cash goes to expenses and lawyers, and the members receive only discounts of dubious value.") (footnote omitted); *Buchet v. ITT Consumer Fin. Corp.*, 845 F. Supp. 684, 696 (D. Minn. 1994), *amended by* 858 F. Supp. 944 (proposed coupon settlement rejected after court found that coupon redemption rates in similar cases were so low that the certificates in this case offered no real value to the class).

Here, class action counsel anticipates receiving fees of \$6.5 million, based, at least in part, on an unquantifiable benefit to the class from the Special Event. This represents a tremendous amount of money to the extent it is linked to the Special Event, or vouchers. We, therefore, urge this Court to reject the Special Event as a benefit of the settlement or, at the very least, subject the Special Event to heightened scrutiny before approval.

The Honorable William G. Young
November 16, 2007
Page 3

We appreciate the Court's consideration of the issues raised in this letter.

Cordially,


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Massachusetts Attorney General

CC:

The Honorable Dustin McDaniel
Arkansas Attorney General

The Honorable Richard Blumenthal
Connecticut Attorney General

The Honorable Lisa Madigan
Illinois Attorney General

The Honorable Anne Milgram
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