

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ROBERTO RAMIREZ and THOMAS
IHLE,

Plaintiffs,

-against-

J.C. PENNEY CORPORATION, INC.,
MICHAEL DASTUGUE, JANET
DHILLON, KENNETH HANNAH,
MICHAEL KRAMER, RONALD
JOHNSON, and MYRON E. ULLMAN, III,

Defendants.

Civil Action No. 6:14-cv-00601-RWS-KNM

CLASS ACTION

**DECLARATION OF SAMUEL E. BONDEROFF IN SUPPORT OF
(1) UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT,
CERTIFICATION OF SETTLEMENT CLASS AND APPROVAL OF
PLAN OF ALLOCATION, AND (2) MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION AND
ADMINISTRATION EXPENSES, AND CASE CONTRIBUTION AWARDS**

I, Samuel E. Bonderoff, hereby make this Declaration pursuant to 28 U.S.C. § 1746:

1. I, Samuel E. Bonderoff, am a partner at the law firm of Zamansky LLC (“Zamansky”) and have served as counsel for Plaintiffs in this litigation. Our firm has considerable experience in litigating complex class actions, including actions like the ERISA action now before the Court. A list of relevant matters is set forth in our firm resume, a true and correct copy of which is attached as Exhibit 1.

2. The Court may wish to consider Exhibit 1 in assessing, among other things, whether to approve the proposed Settlement in this case, including in assessing the adequacy of representation requirement under Rule 23(a)(3), the experience of Class Counsel under Rule 23(g), and in weighing counsel’s opinion of the Settlement for final approval purposes.

3. I make this Declaration in support of Plaintiffs' (1) Unopposed Motion for Final Approval of Proposed Settlement, Certification of Settlement Class and Approval of the Plan of Allocation, and (2) Motion for an Award of Attorneys' Fees, Reimbursement of Litigation and Administration Expenses, and Case Contribution Awards. There has been no collusion or complicity of any kind in connection with the negotiations for, or the agreement to, settlement of this class action. All settlement negotiations in this case were conducted at arms' length by adverse, represented parties. Most of the settlement discussions took place as part of the mediation process conducted by Robert A. Meyer of JAMS.

INVESTIGATION AND LITIGATION

4. Plaintiffs Roberto Ramirez and Thomas Ihle ("Named Plaintiffs") brought this action on behalf of themselves and all other Persons who were participants in or beneficiaries of the J. C. Penney Corporation, Inc. Savings, Profit Sharing and Stock Ownership Plan (the "Plan") at any time from November 1, 2011, through May 31, 2016 (the "Class Period"), and whose Plan accounts included investments in the J.C. Penney Common Stock Fund (the Settlement Class"). Zamansky undertook representation of Named Plaintiffs and the Settlement Class on a wholly contingent-fee basis, expending our time and resources with no guarantee of compensation.

5. Prior to filing Named Plaintiffs' initial and amended complaints, Zamansky extensively investigated the facts at issue in this litigation. My firm reviewed thousands of pages of documents, including Plan governing documents and materials, Securities and Exchange Commission filings, Department of Labor filings, public statements, news articles and publications. Named Plaintiffs filed a Consolidated Complaint on August 25, 2014, which Defendants moved to dismiss on November 7, 2014.

6. Defendants' motion to dismiss was denied on September 29, 2015. On January 8, 2016, the Court ordered the Parties to pursue nonbinding mediation. Prior to the mediation order, and in accordance with the controlling discovery orders, the Parties had already begun substantial discovery efforts. When the mediation was scheduled, the Parties narrowed their focus on discovery to facilitate settlement negotiations.

7. In January 2016, the Parties agreed to a well-known, respected and experienced mediator, Robert A. Meyer of JAMS (the "Mediator").

8. On February 23, 2016 and March 18, 2016, in anticipation of mediation, Defendants produced what would be, if printed, in excess of 100,000 pages of trade data and detailed Plan records, which Plaintiffs' counsel, together with experts, used to estimate what damages would be based on (1) potential periods of imprudence and (2) what alternative investment would be used to measure damages during that period. These data were sufficient to calculate hypothetical damages for theoretical breach periods.

9. The Mediator conducted an in-person mediation with the Parties on March 24, 2016, in Dallas, Texas, which proved successful. The mediation day, which commenced at 9:00 a.m. and continued until approximately 7:30pm, resulted in the Parties executing a Term Sheet setting forth the material terms of the Settlement. Extensive negotiations over the remaining terms of the Settlement Stipulation continued until May 31, 2016, when the initial Settlement stipulation was executed.

10. In light of the above discovery, thorough factual investigations and our comprehensive understanding of the law and legal experience, we believe the Settlement is not only fair and reasonable, but that it represents a favorable result for the Plan and the Settlement Class considering the risks of litigation and the likelihood of potential outcomes that could result

if Plaintiffs were to pursue their claims to judgment. These factors are discussed in greater detail in the Memorandum requesting final approval of the Settlement concurrently filed herewith.

11. I believe that the Settlement terms in this Action are fair, reasonable and adequate. I also note that, upon reaching an agreement in principle which led to the Settlement, the Parties continued to negotiate the terms of the Settlement for a considerable amount of time. Additionally, I believe that, given the nature of the claims pursued, the legal uncertainties facing Class Counsel, the highly skilled and experienced legal team representing the Defendants, and, most important, the excellent results achieved, the requested fee and reimbursement of expenses are reasonable.

12. Our firm has conferred with Plaintiffs Roberto Ramirez and Thomas Ihle, and they each support the proposed Settlement.

THE SETTLEMENT

13. The Amended Class Action Settlement Agreement and Release (the “Stipulation”), executed by the parties on May 31, 2016, provides for a \$4.5 million cash payment to be made to an escrow account for the benefit of the Plan.

14. The Settlement, along with all relief sought in the Motions, is being reviewed by an independent fiduciary (the “Independent Fiduciary”). If the Independent Fiduciary does not approve of the Settlement, or objects to any aspect of the Motions, including the Plan of Allocation, the Court will be notified unless Defendants waive their rights with respect to the same.

SETTLEMENT ADMINISTRATION

15. Pursuant to the Court’s January 3, 2017 Order Granting Preliminary Approval of Class Action Settlement (the “Preliminary Approval Order”), Defendants’ Counsel retained Rust Consulting, Inc. (“Rust Consulting”) as the Settlement Administrator and to supervise and administer effectuation of the Notice Plan by the Settlement Administrator. *See* Dkt. No. 76 at ¶

7. Rust Consulting effectuated individual notice of the Settlement on February 13 and May 10, 2016, and publication notice of the settlement on February 13, 2017 in *USA Today*. Additionally, Rust Consulting launched a dedicated settlement website, www.jcperisaaclassaction.com, which has allowed Settlement Class members to access the Notice documents, Consolidated Complaint, Stipulation, and Preliminary Approval Order. Further details on the Notice process are set forth in the Declaration of Abigail Schwartz of Rust Consulting, a true and correct copy of which is attached as Exhibit 2.

16. As set forth in the Declaration of Madeline C. Rea (of Proskauer, counsel for Defendants), a true and correct copy of which is attached as Exhibit 3, Defendants have complied with the Class Action Fairness Act.

ATTORNEYS' FEES AND EXPENSES

17. Zamansky was directly involved in all aspects of this litigation as described above. The total number of hours spent by Zamansky attorneys working on the Action to date is 964.01. The total dollar value of Zamansky's time is \$775,903.50, based on the hourly rates regularly charged by Zamansky to its hourly fee paying clients. These rates have been routinely approved by courts that have awarded attorneys' fees to Zamansky in class action cases.

a. Set forth below is the amount of time spent by Zamansky attorneys in connection with the Action, as reflected on the contemporaneous records of the firm. This time does not include time spent on attorneys' fee matters. This time also excludes 2.17 hours of para-professional time reflected on the contemporaneous records of the firm, which would add to the figures below:

<u>Attorney</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Lodestar</u>
Jacob H. Zamansky	329.50	\$950.00	\$313,025.00
Samuel E. Bonderoff	188.52	\$850.00	\$160,242.00
Edward H. Glenn, Jr.	191.14	\$850.00	\$162,469.00
Justin Sauerwald	254.85	\$550.00	\$140,167.50
Total:	964.01		\$775,903.50

a. In addition to the lodestar reflected above, Zamansky retained as local counsel Forman Law Firm, P.C. (“Forman”) located at 117 E. Houston, Tyler, Texas 75702. Set forth below is the amount of time spent by Forman attorney Bryan Forman in connection with the Action, as reflected on the contemporaneous records of the Forman firm. This time does not include time spent on attorneys’ fee matters. This time also excludes 0.50 hours of para-professional time reflected on the contemporaneous records of the Forman firm, which would add to the figures below:

<u>Attorney</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Lodestar</u>
Bryan Forman	14.50	\$375.00	\$5,437.50
Total:	14.50		\$5,437.50

b. In addition to the lodestars reflected above, based upon prior analogous settlements, Zamansky will be required to spend substantial additional time administering the settlement, working with the claims administrator, and fielding questions from Plan Participants about distributions.

c. Zamansky has incurred a total of \$46,462.41 in reasonable, customary and necessary expenses in connection with the prosecution of the Action from inception through the date hereof, which have not been reimbursed. The expenses incurred by Zamansky in this litigation are reflected in our firm’s books and records prepared from expense vouchers, check records, and other source materials and are an accurate recordation of the expenses incurred. These expenses are broken down as follows.

<u>Expense Description</u>	<u>Cumulative Total</u>
JAMS (Mediation Fees)	\$5,775.00
Lexis, CourtLink, and PACER	\$3,533.62
In-Office Copying	\$717.54
Court Filing Fees	\$720.45
Damages Expert Fee	\$29,821.25
Federal Express Overnight Delivery	\$90.51
Travel	\$5,804.04
TOTAL:	\$46,462.41

18. The combined lodestar of Plaintiffs’ Counsel is \$781,341.00, reflecting 978.51 hours of work.

19. The total costs and expenses of all Plaintiffs’ Counsel incurred in this Action from inception through the date hereof which have not been reimbursed is \$46,462.41.

CASE CONTRIBUTION AWARDS FOR NAMED PLAINTIFFS

20. Plaintiffs respectfully request that the Court grant a Case Contribution Award of \$5,000 each to Roberto Ramirez and Thomas Ihle. Attached hereto is a true and correct copy of the:

- a. Declaration of Roberto Ramirez in Support of Plaintiffs’ Motions for (1) Final Approval, and (2) Award of Attorneys’ Fees, Reimbursement of Expenses and Case Contribution Awards as Exhibit 4;
- b. Declaration of Thomas Ihle in Support of Plaintiffs’ Motions for (1) Final Approval, and (2) Award of Attorneys’ Fees, Reimbursement of Expenses and Case Contribution Awards as Exhibit 5;

21. Exhibits 4-5 are collectively referred to herein as the “Named Plaintiffs’ Declarations.”

22. As demonstrated by the Named Plaintiffs' Declarations, the Named Plaintiffs expended substantial effort and significant time prosecuting this action over the last several years. The Named Plaintiffs stepped forward and pursued the Class's interests by filing suit on behalf of the members of the Settlement Class and on behalf of the Plan, undertaking the responsibilities attendant with serving as class representatives, and undertaking certain risks as outlined in the memorandum in support of the Fee and Expenses Motion.

23. Specifically, each of the Named Plaintiffs searched their files for relevant records, obtained copies of documents concerning the Plan and provided information to counsel to assist in the preparation and litigation of this case. Further, Class Counsel provided the Named Plaintiffs with all material filings, related documents and correspondence describing the progress in the case. The Named Plaintiffs also helped make strategic decisions, including negotiation and approval of the Settlement terms. In short, the Named Plaintiffs were extremely active in the case, and devoted a substantial amount of time and energy in assisting in the successful prosecution of this litigation.

I declare under penalty of perjury that the forgoing is true and correct.

Executed: June 23, 2017

/s/ Samuel E. Bonderoff
Samuel E. Bonderoff