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MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____, Deputy

DEBRA RAMOS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

LYNETTE FLIEGELMAN, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

THE TALBOTS, INC. and DOES 1 through
100, inclusive,

Defendants.

Case No.56-2018-00513611-CU-BT-VTA

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

Date: August 2, 2018
Time: 8:30 a.m.
Judge: Hon. Kevin DeNoce
Dept: 43
Reservation Number: 2346455

On August (month) 2 (day), 2018, this Court heard Plaintiff Lynette Fliegelman's ("Plaintiff") motion for preliminary approval of class settlement and provisional class certification under California Rule of Court 3.769(c) and (d). This Court reviewed the motion, including the Agreement of Settlement and Release (the "Agreement" or "Settlement"). Based on this review and the findings below, the Court finds good cause to GRANT the motion.

1 **FINDINGS:**

2 1. Unless otherwise specified, defined terms in this Preliminary Approval and
3 Provisional Class Certification Order have the same definition as the terms in the Agreement.

4 2. The Agreement, as amended, falls within the range of possible approval as fair,
5 reasonable and adequate.

6 3. The Court finds that (a) the Full Notice, Email Notice, Postcard Notice, and Store
7 Notice constitute the best notice practicable under the circumstances, (b) constitute valid, due,
8 and sufficient notice to all members of the Class, and (c) comply fully with the requirements of
9 California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the
10 California and United States Constitutions, and other applicable law.

11 4. For settlement purposes only, the Court finds the Class is so numerous that
12 joinder of all Class Members is impracticable, Plaintiff's claims are typical of those of the Class,
13 there are questions of law and fact common to the Class and such common questions which
14 predominate over any questions affecting only individual members of the Class, and Class
15 certification is superior to other available methods for the fair and efficient adjudication of the
16 controversy.

17 **IT IS ORDERED THAT:**

18 5. **Settlement Approval.** The Agreement of Settlement, including the Full Notice,
19 Email Notice, Postcard Notice, Store Notice, and Claim Form attached to the Agreement as
20 Exhibits B-F, is preliminarily approved.

21 6. **Provisional Certification.** The Class is provisionally certified, for settlement
22 purposes only, as follows:

23 All persons who, during the period of time beginning May 17, 2013 through the
24 date the Court enters preliminary approval, purchased one (1) or more products at
25 any Talbots outlet store, in the State of California and did not receive a refund or
credit for their purchase(s).

26 Excluded from the Class are Defendant's Counsel, Defendant's officers, directors, and
27 employees, and the judge presiding over the Action.

28 7. **Appointment of Class Representative and Class Counsel.** Plaintiff

1 Lynette Fliegelman is conditionally certified as the class representative to implement the
2 Settlement. The Law Offices of Zev B. Zysman, APC is conditionally appointed as Class
3 Counsel. The Court finds Plaintiff and Class Counsel will fairly and adequately protect the
4 interests of the Class.

5 **8. Provision of Class Notice.** Defendant The Talbots, Inc. ("Talbots" or
6 "Defendant") shall notify the Class of the Settlement in the manner specified under Section 3.3
7 of the Agreement and will pay all costs associated with claims administration and providing
8 notice.

9 **9. Objection to Settlement.** Class Members who have not submitted a timely
10 written exclusion and who desire to object to the Agreement may file a written objection with the
11 Court and serve such objection on Class Counsel and Talbots' Counsel no later than ninety (90)
12 calendar days after entry of this Order. The delivery date is deemed to be the date the objection
13 is deposited in the U.S. Mail as evidenced by the postmark. Written objections should state: (1)
14 the name and case number of the Action; (2) the Class Member's full name, address, and
15 telephone number; (3) the words "Notice of Objection" or "Formal Objection"; (4) in clear and
16 concise terms, the legal and factual arguments supporting the objection; (5) facts supporting the
17 person's status as a Class Member (e.g., either any unique identifier included by the Claims
18 Administrator in his/her notice, or the date and location of his/her relevant purchases); (6) the
19 Class Member's signature and the date; and (7) the following language immediately above the
20 Class Member's signature and date: "I declare under penalty of perjury under the laws of the
21 State of California that the foregoing statements regarding class membership are true and correct
22 to the best of my knowledge." Class Members have the option to appear at the Fairness Hearing,
23 either in person or through personal counsel hired at the Class Member's expense, to object to
24 the fairness, reasonableness, or adequacy of the Agreement, the award of attorneys' fees and
25 costs, or to the incentive award to the Class Representative. However, Class Members (with or
26 without their attorneys) intending to make an appearance at the Fairness Hearing must inform the
27 Parties and the Court no later than ninety (90) calendar days after entry of this Order by
28 providing a "Notice of Intention to Appear." Such a "Notice of Intention to Appear" must be

1 timely file and served upon the Court, Class Counsel, and Defendant's Counsel. Only Class
2 Members who file and serve timely Notices of Intention to Appear may speak at the Fairness
3 Hearing.

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

9 **11. Requesting Exclusion.** Class Members who desire to be excluded from the
10 Agreement must send a letter or postcard to the Claims Administrator stating: (a) the name and
11 case number of the Action; (b) the full name, address, and telephone number of the person
12 requesting exclusion; and (c) a statement that he/she does not wish to participate in the
13 Agreement, postmarked no later than ninety (90) calendar days after entry of this Order. If a
14 Class Member submits a Claim Form and a request for exclusion, the request for exclusion will
15 be deemed invalid.

16 **12. Claim Form.** Except for Class Members who received direct notice under
17 Section 3.3(b) or (c) of the Agreement, Class Members must submit a complete and valid Claim
18 Form no later than ninety (90) calendar days after entry of this Order in order to be included in
19 the distribution of the Merchandise Credits.

20 **13. Termination.** If the Agreement terminates for any reason, the following will
21 occur: (a) this Order and all of its provisions will be vacated, including, but not limited to,
22 vacating conditional certification of the Class, conditional appointment of Plaintiff as class
23 representative, and conditional appointment of Plaintiff's Counsel as Class Counsel; (b) the
24 Action will revert to the status that existed before the Plaintiff filed her motion for approval of
25 the Preliminary Approval Order; and (c) no term or draft of the Agreement, or any part of the
26 Parties' settlement discussions, negotiations or documentation will have any effect or be
27 admissible into evidence for any purpose in the Action or any other proceeding. This Order will
28 not waive or otherwise impact the Parties' rights or arguments.

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

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

6 **16. Fairness Hearing.** On 11/16/18 at 9 AM, this Court will hold a Fairness
7 Hearing to determine whether the Agreement should be finally approved as fair, reasonable, and
8 adequate. All papers supporting Plaintiff's request for attorneys' fees and costs, and Class
9 Representative's incentive award must be filed no later than fourteen (14) calendar days before
10 the deadline for Class Members to object to the Agreement. All papers supporting final approval
11 of the Agreement must be filed no later than fourteen (14) calendar days before the Fairness
12 Hearing. All papers in response to any objection must be filed no later than seven (7) calendar
13 days before the Fairness Hearing. Based on the date of this Order and the date of the Fairness
14 Hearing, the following are the certain associated dates in this Agreement:

Event	Timing	Date
Last day for Defendant, through the Claims Administrator, to send Email Notice and Postcard Notice, start operating Settlement Website & begin to provide Store Notice	30 days after entry of this Order	9/1/18
Last day for Plaintiff to file fee petition	76 days after entry of this Order	10/17/18
Last day for Class Members to file a claim, request exclusion or object to the Agreement	90 days after entry of this Order	11/1/18
Last day for Parties to file briefs in support of the Final Order and Judgment	14 days before Fairness Hearing	11/2/18
Last day for Parties, individually or jointly, to file a response to any objection	7 days before Fairness Hearing	11/9/18

26 This Court may order the Fairness Hearing to be postponed, adjourned, or
27 continued. If that occurs, the updated hearing date shall be posted on the Settlement Website
28

1 but, other than the website posting, Talbots will not be required to provide any additional notice
2 to Class Members.
3

4 **IT IS SO ORDERED.**

5
6 Dated: 8/2/18



JUDGE OF THE SUPERIOR COURT

KEVIN G. DENOCE