

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

DANIELLE WOOTEN,)
MURTYDELL BARNES,)
MISTY EWING,)
BETTY KING,)
NYCOLE PRICE,)
KIM RICHARD,)
ROSETTA SMITH,)
LORITA THOMPSON,)
Individually, and as)
Class Representatives,)
Plaintiffs,)
vs.) Case No. 99-0990-CV-W-3-ECF
DILLARD'S INC. d/b/a DILLARD'S)
DEPARTMENT STORES, INC.,)
Defendant)

ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Following months of negotiations among counsel for the parties to this action, during which period the parties used the service of a Court-appointed mediator to facilitate their settlement discussions, the Plaintiffs, individually and as Class Representatives, and Defendant Dillard's, Inc. ("Dillard's") have entered into a Stipulation and Settlement Agreement, including Exhibits thereto, dated July 5, 2001, and an Addendum to Stipulation and Settlement Agreement, including Exhibits thereto, dated July 31, 2001 (collectively referred to herein as the "Settlement Agreement"), all subject to the Court's approval and determination of the fairness, reasonableness and adequacy of the settlement. If approved, the settlement would result in the dismissal of the action with prejudice.

Pursuant to the terms of the Settlement Agreement, the following has occurred:

(a) Plaintiffs have moved the Court to certify a class for settlement purposes (the "Settlement Class"), to consist of:

All African-Americans who were employed by Dillard's in any of the following stores: Bannister Mall, Columbia, Independence Center, Indian Springs, Jefferson City, Mall of the Great Plains, Manhattan, Metro North, Mission Mall, Oak Park Mall, St. Joseph, Springfield, Topeka, and/or Ward Parkway (the "Class Stores"), at any time from October 13, 1994 to January 31, 2001. The Class does not include persons who have previously entered into a written settlement agreement releasing the claims released herein.

Defendant has stipulated to the proposed certification of the Settlement Class for settlement purposes only; and

(b) Plaintiffs and Defendant have asked the Court to preliminarily approve the terms of the Settlement Agreement, including the form of notices to be mailed to members of the Settlement Class and to be published.

The Court has reviewed and considered the terms of the Settlement Agreement, plaintiffs' motion to certify the class for settlement purposes, and the parties' joint motion for preliminary approval of the Settlement Agreement.

NOW, UPON THE APPLICATION OF THE PARTIES HERETO, IT IS HEREBY ORDERED AS FOLLOWS:

1. **Preliminary Approval of Settlement Agreement.** The terms of the Settlement Agreement are preliminarily approved, subject to final consideration thereof at the Settlement Hearing described in paragraph 13 of this Order. The Court finds that the Settlement Agreement is the product of arms-length negotiations between counsel for the parties and was concluded after each of the parties had reasonable opportunity to explore the factual and legal bases of the claims and defenses asserted in the action. The Court further concludes that the Settlement Agreement is sufficiently fair, reasonable and adequate to warrant sending notice of the action and the settlement thereof to the Class and to schedule a full hearing on the merits of the proposed settlement.

2. **Preliminary Class Certification.** This action is preliminarily certified as a class action on behalf of the Settlement Class, as defined in the Settlement Agreement, under subparagraphs (a) and (b)(3) of Rule 23, solely for the purpose of considering and acting on the proposed settlement. For settlement purposes only, this action shall be maintained as a class action on behalf of the following Settlement Class:

All African-Americans who were employed by Dillard's in any of the following stores: Bannister Mall, Columbia, Independence Center, Indian Springs, Jefferson City, Mall of the Great Plains, Manhattan, Metro North, Mission Mall, Oak Park Mall, St. Joseph, Springfield, Topeka, and/or Ward Parkway, at any time from October 13, 1994, to January 31, 2001. The Class does not include persons who have previously entered into a written settlement agreement releasing the claims released herein.

3. **Class Representatives.** The Court designates for settlement purposes the following individuals as Class Representatives in this case: Danielle Wooten, Murtydell Barnes, Misty Ewing, Betty King, Nycole Price, Kim Richard, Rosetta Smith, and Lorita Thompson.

4. **Class Counsel.** The Court designates for settlement purposes the following attorneys and law firms as counsel to represent the Settlement Class in this action:

KLAMANN & HUBBARD, P.A.
John M. Klamann
Dirk L. Hubbard
7101 College Blvd., Suite 120
Overland Park, KS 66210
Telephone: (913) 327-7600
Telecopier: (913) 327-7800

SHAMBERG, JOHNSON & BERGMAN, CHARTERED
Lynn Johnson
Stephen R. Bough
4551 W. 107 Street, Suite 355
Overland Park, KS 66207
Telephone: (913) 642-0600
Telecopier: (913) 642-9629

SANDERS, SIMPSON, FLETCHER, & SMITH, P.C.
Michael R. Fletcher
Dan Craig
1125 Grand Ave., Suite 1400
Kansas City, MO 64106
Telephone: (816) 471-6444
Telecopier:(816) 471-6664

THE POPHAM LAW FIRM
Dennis Egan
Bert S. Braud
323 West 8th Street
Suite 200
Kansas City, MO 64105
Telephone: (816) 221-2288
Telecopier: (816) 221-3999

MARGOLIN LAW FIRM
James S. Margolin
4520 Madison Avenue, Suite 220
Kansas City, MO 64111
(816) 753-3838
(816) 753-3842 (fax)

5. **Settlement Administrator.** Class Counsel are authorized to retain Rust Consulting, Inc. or comparable class action settlement administrator as the Settlement Administrator in this action to act pursuant to the terms of the Settlement Agreement.

6. **Findings.** Based upon the pleadings and the information and materials submitted in support of plaintiffs' motion to certify the Settlement Class for settlement purposes only, the Court finds as follows:

- (a) The Class Representatives will fairly and adequately represent the Settlement Class;
- (b) Class Counsel collectively are experienced trial lawyers with class action experience and may reasonably be expected to fairly and adequately represent and protect the interests of the Settlement Class;

- (c) The Class consists of approximately three thousand individuals and their identity may be ascertained by Class Counsel from Dillard's records;
- (d) The Settlement Class, as conditionally certified herein for settlement purposes only, meets the numerosity, commonality, typicality and preponderance requirements of Fed. R. Civ. P. 23;
- (e) Certification of the Settlement Class for settlement purposes only is superior to other available methods for the fair and efficient adjudication of the controversy; and
- (f) The Notices attached as Exhibits B and C to the Settlement Agreement are reasonably calculated to apprise Members of the Settlement Class of each of the following: (1) the pendency of the action and the terms of the Settlement Agreement; (2) the right of Members of the Settlement Class to object to the proposed settlement or request exclusion from the Settlement Class; (3) the procedures for Settlement Class Members to request exclusion from the Settlement Class or to object to the terms of the proposed settlement; (4) that any judgment, whether favorable or not, will bind all Settlement Class Members who do not request exclusion in accordance with the procedures set forth in the Notice; and (5) that any Settlement Class Member who does not request exclusion may object to the settlement. The mailing and publication of Notice as provided herein is the best practicable notice under the circumstances, and comports with due process, the Federal Rules of Civil Procedure, and the United States Constitution.

7. **Notice.** (a) The Settlement Administrator shall, on or before August 31, 2001, send a copy of the Notice, in the form attached as Exhibit B to the Settlement Agreement, to each Member of the Settlement Class identified on the Verified List of employees provided to Class Counsel by Dillard's, by first class mail, postage prepaid, addressed to each such Settlement Class Member's last known mailing address. The

Notice shall be mailed in envelopes bearing the return address “Clerk for the United States District Court for the Western District of Missouri, P.O. Box ____” and stating “Please Forward.” Class Counsel shall make reasonable efforts to ensure that each Settlement Class Member receives a copy of the Notice. Within five (5) days after mailing of the Notice, Class Counsel shall supply Dillard’s with information relating to the mailing of Notice to the Settlement Class in accordance with the Settlement Agreement.

(b) As soon as practicable after August 31, 2001, the Settlement Administrator and/or Class Counsel shall use best efforts to cause to be published in the *Kansas City Star* a summary Notice in the form attached as Exhibit C to the Settlement Agreement.

(c) Class Counsel and/or the Settlement Administrator shall rent a post office box in the name of the Clerk of the District Court for the return of undeliverable notices, for the receipt of opt-out forms and written disputes concerning employment duration, and for the receipt of written objections to the Settlement. No later than 7 days after the deadlines set out in paragraph 11, the Settlement Administrator shall provide to Counsel for Dillard’s copies of all written objections, all written disputes of employment duration, and all opt-out requests. A list of all Settlement Class Members who have properly and timely opted out of the Class shall be filed with the District Court under seal prior to the Settlement Hearing.

8. On or before August 31, 2001, Class Counsel shall file and serve their applications for attorneys’ fees and litigation costs and expenses, and special awards to the Class Representatives.

9. On or before October 15, 2001, Class Counsel or the Settlement Administrator shall file and serve an affidavit detailing the efforts made to provide Notice to all Members of the Settlement Class and advising of the status of those efforts.

10. Pending the hearing for final approval of the Settlement, the parties and their counsel shall use their best efforts to comply in all respects with the terms and conditions set forth in the Settlement Agreement.

11. **Opt Outs.**

(a) Settlement Class Members who wish to be excluded from the Settlement Class must make a written request mailed to the Clerk of the District Court of the Western District of Missouri, at the address arranged by Class Counsel as described in paragraph 7(c), above, with a copy to Class Counsel addressed to Dirk Hubbard, Klamann & Hubbard, P.A., 7101 College Blvd., Suite 120, Overland Park, Kansas and a copy to Counsel for Dillard's addressed to Michael P. Burke, Bryan Cave LLP, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102. In order to be valid, any requests to be excluded from the Settlement Class must contain the name and number of this case, be signed by the person who wishes to be excluded from the Settlement Class, state that the person wishes to be excluded from the Settlement Class, and be postmarked on or before October 1, 2001. Any Class Member who fails to comply with the provisions of this paragraph shall waive and forfeit any and all rights he or she may have to be excluded from the Settlement Class and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments in this action.

(b) **Objectors.** Settlement Class Members who wish to object to the Settlement or to the applications of Class Counsel for fees, costs and expenses, and/or special awards must do so in writing bearing the name and number of the action, and mailed to the Clerk of the District Court of the Western District of Missouri, at , at the address arranged by Class Counsel as described in paragraph 7(c), above, with copy to Class Counsel addressed to Dirk Hubbard, Klamann & Hubbard, P.A., 7101 College Blvd., Suite 120, Overland Park, Kansas 66210 and a copy to Counsel for Dillard's addressed to Michael P. Burke, Bryan Cave LLP, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102. In order to be acted on, any objection to the Settlement Agreement or to the applications of Class Counsel must be postmarked on or before October 1, 2001. Any Settlement Class Member who files and serves a

written objection, as described above, may appear at the final approval hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to the proposed Settlement, or to the award of attorney's fees, costs and expenses and/or special awards; provided, however, that Settlement Class Members or their attorneys intending to make an appearance at the final approval hearing must mail to the Court and to Class Counsel and Counsel for Dillard's, postmarked no later than October 1, 2001, a notice of intention to appear at the final approval hearing. Any objection to the Settlement or to the applications of Class Counsel which is not made in conformity with these requirements shall be null and void. Any Class Member who fails to comply with the provisions of this paragraph shall waive and forfeit any and all rights he or she may have to appear separately and to object, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments in this action.

12. **Preliminary Injunction.** All Settlement Class Members who have not timely and properly elected to be excluded from the Class are hereby preliminarily enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this action and/or the Compromised Claims (as that term is defined in the Settlement Agreement). In addition, all other persons, their agents, servants, and attorneys who receive actual notice of the Order by personal service or otherwise are hereby preliminarily enjoined from filing, commencing, prosecuting or maintaining any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who have not timely and properly elected to be excluded from the Settlement Class, if such other class action is based on or relates to any of the claims and causes of action, or the facts and circumstances relating thereto, in this action and/or the Compromised Claims (as that term is defined

in the Settlement Agreement). The Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's jurisdiction over this action.

13. **Hearing.** A hearing (the "Settlement Hearing") shall be held on November 30, 2001, at 1:00 p.m. to determine the fairness, reasonableness, and adequacy of the Settlement, whether the Settlement should be finally approved, whether the Settlement Class should be finally certified for settlement purposes, whether an injunction should be entered against Settlement Class Members who do not opt out, whether Class Counsel's applications for attorneys' fees, litigation costs and expenses and special awards to Class Representatives should be approved, and whether the action should be dismissed with prejudice. At that time or as soon thereafter as practicable, the Court will consider and rule upon all objections, if any, to the proposed settlement, any pending disputes as to settlement allocations, and any pending applications for award of attorneys' fees, litigation costs and expenses, and special awards to Class Representatives. The Settlement Hearing may be postponed, adjourned or continued by the Court without further notice to the Settlement Class.

14. All proceedings in this action other than such as may be necessary to carry out the terms and conditions of the Settlement Agreement or the responsibilities incidental thereto are stayed and suspended until further Order of this Court.

15. Upon consummation and approval of the settlement provided for in the Settlement Agreement, the Settlement Agreement and each and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force and effect of an Order of this Court.

16. If the settlement is terminated for any reason whatsoever, the Settlement Agreement and all proceedings had in connection therewith shall be without prejudice to the *status quo ante* of the parties to the action, the parties shall stand in the same position as to every issue of fact and law (including whether a class may be certified) as they did on the date of execution of the Settlement Agreement as though the

Settlement Agreement had never been entered into and this Order had never been issued, and this Order and any other Order(s) issued pursuant to the Settlement Agreement shall be vacated and of no further force and effect.

IT IS SO ORDERED.

DATE: July 31, 2001

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT