

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F I
Clerk of P.

AUG 7 2007

BY G. CERVANTES, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

VINCENT FINCH, an individual, on
behalf of himself, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

LAMPS PLUS, INC., a California
Corporation,

Defendant.

Case No. GIC 875385

CLASS ACTION

**~~[PROPOSED]~~
ORDER APPROVING AMENDMENT
TO SETTLEMENT AGREEMENT**

Date: August 7, 2007

Time: 8:30 a.m.

Judge: Hon. John S. Meyer

Dept: 61

Action Filed: November 9, 2006

Settlement Class Certified July 17, 2007

Trial Date: November 9, 2007

WHEREAS the Court, having read and considered the *ex parte* application
of defendant Lamps Plus, Inc. ("LPI"), the parties' Stipulation seeking to amend the
original class action Settlement Agreement dated July 9, 2007, filed concurrently herewith,
and GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED,
ADJUDGED AND DECREED as follows:

1 1. The Court hereby approves, *nunc pro tunc* to July 17, 2007, the parties'
2 Stipulation to amend the Settlement Agreement dated July 9, 2007, filed concurrently
3 herewith, which Settlement Agreement was originally approved by Order of this Court
4 dated July 17, 2007.

5 2. Section VI. ¶ 18. of the original Settlement Agreement dated July 9, 2007 is
6 hereby deleted in its entirety and is replaced and superseded by the new Section VI. ¶ 18,
7 set forth below:

8 "Settlement Class" means those consumers in California who were
9 requested and/or required by LPI to provide Personal Identification
10 Information in connection with a credit card transaction in violation of
11 California Civil Code Section 1747.08; provided, however, that the
12 following persons shall be excluded from the Settlement Class: (i) LPI and
13 all agents, attorneys, retailers and employees of LPI; (ii) all members of the
14 California Judiciary sitting in judgment of the Action; and (iii) all Class
15 Counsel and their employees. In the event that the settlement does not
16 achieve Final Approval, the Settlement shall be of no force or effect and the
17 Parties agree to return to the status quo ante as of the date preceding this
18 Agreement.

19 3. Section I. ¶ A. of the original Settlement Agreement dated July 9, 2007 is
20 hereby deleted in its entirety and is replaced and superseded by the new Section I. ¶ A., set
21 forth below:

22 "In the Action, Plaintiff asserts claims for violation of California Business
23 and Professions Code Section 17200, et seq., California Civil Code
24 Section 1747.08, California Civil Code Section 1770 et seq., for himself and
25 an alleged class of California consumers who were requested and/or required
26 by LPI to provide Personal Identification Information in connection with a
27 credit card transaction at one of LPI's retail stores."

28 4. Exhibit 5 to the original Settlement Agreement dated July 9, 2007, the
[Proposed] Final Judgment and Order of Dismissal with Prejudice, is hereby deleted in its
entirety and is replaced and superseded by the [Proposed] Final Judgment and Order of
Dismissal with Prejudice attached hereto as Exhibit 5 and incorporated herein.

 5. Section VI. ¶ 16. of the original Settlement Agreement dated July 9, 2007 is
hereby deleted in its entirety and is replaced and superseded by the new Section VI. ¶ 16,
set forth below:

1 "Released Claims" means any and all claims, actions, demands, causes of
2 action, suits, liens, debts, obligations, damages, penalties, statutory penalties,
3 rights or liabilities, of any nature and description whatsoever, known or
4 unknown, present or future, concealed or hidden, liquidated or unliquidated,
5 fixed or contingent, anticipated or unanticipated, whether in tort, contract,
6 law, equity or otherwise, that have been, could have been or might in the
7 future be asserted by Plaintiff or the Settlement Class Members or any of
8 their respective heirs, executors, administrators, predecessors, successors,
9 assigns, agents and/or representatives arising out of any facts asserted in the
10 Action against the Released Parties (as hereafter defined) and based upon the
11 facts and circumstances giving rise to the Action. Released Claims include,
12 but are not limited to, all claimed or unclaimed penalties, statutory penalties,
13 compensatory damages, consequential damages, incidental damages,
14 punitive and exemplary damages, restitution, interest, costs and fees arising
15 out of any of the claims asserted or that could have been asserted in the
16 Action and based upon the facts and circumstances giving rise to the Action.
17 Excluded from the Released Claims are: (a) claims relating to or arising out
18 of any alleged product defect; (b) claims related to or arising out of any
19 alleged product warranty; and (c) claims otherwise unrelated to or not arising
20 out of any requirement or request by LPI for consumers to provide Personal
21 Identification Information in connection with a credit card transaction in
22 violation of California Civil Code § 1747.08(a). In addition, nothing in this
23 Agreement shall be deemed a release of the Parties' respective rights and
24 obligations under this Agreement.

25 6. The Court directs plaintiff's counsel to post the parties' Settlement
26 Agreement, as hereby amended, on its website at www.bamlawca.com along with this
27 Order and any other relevant orders of this Court.

28 **IT IS SO ORDERED.**

Dated: 8-7-07

JOHN S. MEYER

THE HONORABLE JOHN S. MEYER
JUDGE OF THE SUPERIOR COURT
COUNTY OF SAN DIEGO
STATE OF CALIFORNIA

Exhibit 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

VINCENT FINCH, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

LAMPS PLUS, INC., a California Corporation,

Defendant.

Case No. GIC 875385

CLASS ACTION

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Date: _____
Time: _____

Action Filed: November 9, 2006

Judge: Hon. John S. Meyer
Dept: 61

This matter having come before the Court for hearing, pursuant to the order of this Court dated July 17, 2007, on the application of the parties for final approval of the settlement set forth in the Settlement Agreement dated as of April 9, 2007 ("Agreement"). Due and adequate notice having been given to the Class as required in said order, and the Court having considered all papers filed and proceedings conducted in this action and otherwise being fully informed and good cause appearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Exhibit 5

1 1. This Judgment incorporates by reference the definitions in the Agreement,
2 and all terms used herein shall have the same meanings as set forth in the Agreement.

3 2. For purposes of the Action, the Court has subject matter and personal
4 jurisdiction over the Parties, including all Settlement Class Members.

5 3. Pursuant to California Code of Civil Procedure Section 382, Rule 3.769 of
6 the California Rules of Court and due process, the Court hereby finally approves the
7 settlement set forth in the Agreement and finds that such settlement is, in all respects, fair,
8 reasonable and adequate to the Settlement Class. The Court further finds that the
9 Agreement and settlement set forth therein were entered into in good faith following arms
10 length negotiations and is non-collusive.

11 4. The Settlement Class consists of the following:

12 Those consumers in California who were requested and/or
13 required by Defendant Lamps Plus, Inc. ("LPI") to provide
14 personal identification information in connection with a credit
15 card transaction in violation of California Civil Code Section
16 1747.08(a) between November 9, 2002 and July 17, 2007.

16 5. Excluded from the settlement are those persons who have submitted valid
17 and timely requests for exclusion. Previously filed is a list of all persons who have opted
18 out of the settlement. Every person in the Settlement Class who did not opt out is a
19 Settlement Class Member.

20 6. With respect to the Settlement Class Members, the Court finds and concludes
21 that: (a) the Settlement Class Members are so numerous that joinder of all Settlement
22 Class Members in the Action is impracticable; (b) there are questions of law and fact
23 common to the Settlement Class Members that predominate over any individual questions;
24 (c) the claims of Plaintiff are typical of the claims of the Settlement Class Members; (d)
25 Plaintiff and Class Counsel have fairly and adequately represented and protected the
26 interests of the Settlement Class Members; and (e) a class action is superior to other
27 available methods for the fair and efficient adjudication of the controversy.

28

1 7. This action is hereby dismissed with prejudice as to Plaintiff and all
2 Settlement Class Members. Upon approval of the settlement and entry of this Judgment
3 and Order, Plaintiff and each Settlement Class Member shall be deemed to have, and by
4 operation of this Judgment and Order, shall have fully and finally released any and all
5 Released Claims as to the Released Parties.

6 8. In aid to this Court's jurisdiction to implement and enforce the settlement,
7 Plaintiffs and all Settlement Class Members and all persons purporting to act on behalf of
8 Settlement Class Members are enjoined, directly, on a representative basis or in any other
9 capacity, from commencing or prosecuting any action, arbitration or proceeding in any
10 court, arbitral forum or tribunal against the Released Parties asserting any of the Released
11 Claims.

12 9. The Court finds that the Summary Notice and Detailed Notice provided to
13 the Settlement Class Members were the best notice practicable under the circumstances of
14 these proceedings and of the matters set forth therein, and that the Summary Notice and
15 Detailed Notice fully satisfy the requirements of California Code of Civil Procedure
16 Section 382, Rule 3.769 of the California Rules of Court, due process and any other
17 applicable laws.

18 10. Any court order regarding the application for Class Counsel's attorneys' fees
19 and Plaintiffs' incentive fee shall in no way disturb or affect this Judgment and Order and
20 shall be considered separate from this Judgment and Order.

21 11. As of July 17, 2007 (the date of Preliminary Approval), LPI shall be
22 enjoined from further requests of any Personal Identification Information, other than a zip
23 code, during a credit card transaction and from the use of pre-printed forms containing
24 spaces for the entry of any Personal Identification Information during a credit card
25 transaction, however, this injunction shall not apply to LPI's requests for Personal
26 Identification Information in connection with a return of merchandise as such requests are
27 reasonable and proper under Civil Code section 1747.08(c)(4) of the Song-Beverly Credit
28 Card Act of 1971, as reasonably required for a special purpose incidental to the return of

1 merchandise, that purpose being loss prevention, fraud, and theft. In connection with any
2 such information obtained by LPI in connection with a return of merchandise, LPI may
3 only use such information for loss prevention, fraud, and theft purposes, and LPI is further
4 enjoined from maintaining any such information in a manner that is not secure, from
5 allowing access to or use of such information except for the purposes stated herein, from
6 selling, using, or distributing the information except for the purposes stated herein, and
7 from maintaining the information for a period of time in excess of 12 months after the last
8 day of the month the information was initially obtained at the time of the return
9 transaction.

10 12. Without affecting the finality of this Judgment and Order in any way, this
11 Court hereby retains continuing jurisdiction over, inter alia: (a) interpretation,
12 implementation and enforcement of the settlement and the payments to be made under the
13 settlement; (b) the hearing and determination of applications for Class Counsel's attorneys'
14 fees and costs and Plaintiff's incentive award; and (c) the enforcement and administration
15 of the Agreement.

16 13. Within 80 days after the Effective Date, or, if later, 80 days after the last day
17 for submitting Claim Forms pursuant to the Preliminary Approval Order, the Claims
18 Administrator shall file with the Court a declaration attesting that the payments pursuant to
19 the Agreement have been made.

20 14. The Parties shall bear their own attorneys' fees and costs, except as
21 otherwise provided in the Agreement and this Judgment and Order awarding Attorneys'
22 Fees and Costs.

23
24
25
26
27
28

Dated: _____

THE HONORABLE JOHN S. MEYER,
JUDGE OF THE SUPERIOR COURT
FOR THE COUNTY OF SAN DIEGO
STATE OF CALIFORNIA