

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

<b>PATRICE DOWELL,</b>	:	: <b>CASE NO. 09 CH 18760</b>
<b>Individually and on Behalf of Those</b>	:	
<b>Similarly Situated</b>	:	<b>JUDGE JAMES R. EPSTEIN</b>
	:	
<b>Plaintiffs,</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>ASHLEY FURNITURE</b>	:	
<b>INDUSTRIES, INC., et al.</b>	:	
	:	
<b>Defendants.</b>	:	
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**ORDER OF PRELIMINARY CLASS CERTIFICATION  
AND APPROVAL OF SETTLEMENT AGREEMENT**

Plaintiff Patrice Dowell (“Dowell”) and Defendants Ashley Furniture Industries, Inc. (“Ashley Furniture”) and Ashley HomeStores, Ltd. (“Ashley HomeStores”) (Ashley Furniture and Ashley HomeStores hereinafter collectively “Ashley”) have filed a Joint Motion For Preliminary Approval of Settlement Agreement, Approving Notice and Setting a Fairness Hearing (the “Joint Motion”) as provided for in the Settlement Agreement between Dowell and Ashley dated September 29th, 2009 (“Settlement Agreement”) (all defined terms used herein shall have the same meaning as set forth in the Settlement Agreement). The Joint Motion also seeks to establish a schedule for this Court to determine whether the settlement should be approved. The Court having considered the papers filed before it, heard the argument of counsel, considered the Settlement Agreement and the exhibits attached thereto, and after due deliberation and being otherwise advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Court may, consistent with the requirements of due process, exercise personal jurisdiction over each member of the Settlement Class after notice to the Settlement Class. Implementation of the terms of the Settlement Agreement – including, but not limited to, the terms concerning Class Notice, requests for exclusion from the Settlement Class and objections to the Settlement – will satisfy the due process rights and the requirements under Illinois law regarding absent members of the Settlement Class, including those who reside outside the forum.

2. Solely for the purposes of this settlement, the Court hereby *conditionally* certifies the Settlement Class in accordance with 735 ILCS 5/2-801 and 735 ILCS 5/2-802 and in doing so hereby incorporates by reference all of the terms of the Settlement Agreement, which is attached as Exhibit A to this Order. This action will proceed as a class action under 735 ILCS 5/2-801 and 735 ILCS 5/2-802 solely for the purpose of resolving the claims of the Settlement Class. The Settlement Class is defined as follows:

All consumers who purchased products from a licensed ASHLEY FURNITURE HOMESTORE® retail furniture store during the period beginning on September 3, 2008 and concluding on September 29, 2008 (the “Class Period”) in a dollar amount which qualified them to participate in the Gas Redemption Promotion. Excluded from the Class are officers, directors and employees of Ashley Furniture Industries, Inc., Ashley HomeStores, Ltd., licensed ASHLEY FURNITURE HOMESTORE® retail furniture stores, their affiliates, subsidiaries, parents, franchisees, or licensees, and members of their immediate families, as well as Class Counsel and the judge handling this matter.

3. Subject to the conditions set forth in paragraph 2 above, and subject to section V of the Settlement Agreement, the Court finds, as to the Settlement Class defined in paragraph 2 above, that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) common questions of law and fact predominate over any questions affecting only individual members; (c) the claims and defenses of the Class Representatives are typical of the claims and defenses of the Settlement Class; (d) the Class Representative and Class Counsel will fairly and adequately protect the interests of the Settlement Class; (e) inconsistent adjudications with

respect to individual members of the Settlement Class would establish incompatible standards of conduct for Ashley; (f) Ashley is alleged to have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making relief appropriate with respect to the Settlement Class as a whole; (g) the questions of law or fact common to the claims of the representatives and the claims of each member of the Settlement Class predominate over any questions of law or fact affecting only individual members of the Settlement Class; and (h) the settlement class procedure is superior to other available methods for the fair and efficient adjudication of the claims against Ashley.

4. The Court appoints Patrice Dowell to serve as Class Representative.

5. The Court appoints Scott C. Frost and Alan J. Statman of Statman, Harris & Eyrich, LLC, 441 Vine Street, Suite 3700, Cincinnati, Ohio 45202 to serve as Class Counsel.

6. The Court preliminarily finds that the terms and conditions of the Settlement as provided for in the Settlement Agreement and the exhibits thereto and the acts taken to date pursuant to those terms and conditions are fair, reasonable, and adequate, and that the Settlement Agreement was entered in good faith after arms-length negotiations. The Court hereby preliminarily approves the terms and conditions of the Settlement Agreement (including the releases attached thereto) pursuant to 735 ILCS 5/2-806.

7. The Court approves the proposed forms of Notice (attached as Exhibits A and J to the Settlement Agreement) as fair, adequate, reasonable, consistent with the requirements of 735 ILCS 5/2-803 and due process and sufficient to protect the interests of the Settlement Class.

8. The process of notifying the Settlement Class of the Settlement as set forth in Section X of the Settlement Agreement shall begin as soon as practical following entry of this

Preliminary Approval Order (the “Notice Date”) and shall be completed within fifteen (15) days thereafter.

9. On the Notice Date, Ashley or the Claims Administrator shall implement a website and a toll free telephone number for Class Members to obtain the a copy of the Class Notice and Proof of Claim. A copy of the Class Notice and Proof of Claim will be posted on the settlement website.

10. The Settlement Class shall be notified of the Settlement via U.S. Mail (the “Class Notice”). The Class Notice contains all material information necessary to inform Class Members about the settlement and how to file a claim. In addition, the Class Notice refers Class Members to a website which shall contain the necessary details of the Settlement. Copies of the Class Notice are attached to the Settlement Agreement as Exhibits A and J.

11. Ashley shall identify a website, which shall contain relevant documentation relating to the Settlement for the Settlement Classes and a method for Settlement Class Members to obtain all necessary details about the settlement, including notices of hearing dates and deadlines and forms for filing a claim. Ashley shall also provide a toll-free telephone number that Class Members may call to obtain information regarding filing claims.

12. Beginning on the Notice Date, Class Members for whom Ashley has reliable contact information shall be notified of the Settlement via U.S. mail. Ashley believes it can reasonably identify or contact substantially all of the individual Settlement Class Members, making individual notice practical. Copies of the Class Notice to be sent via U.S. mail are attached to the Settlement Agreement as Exhibits A and J.

13. Ashley reserves the right to include sales/and or promotional materials in the mailing of notice to Class Members.

14. Ashley shall, prior to the date of the Fairness Hearing, file with the Court before the Fairness Hearing an affidavit establishing that notice has been provided to the Settlement Class in compliance with the Preliminary Approval Order.

15. The Court approves the Proof of Claim form, which is attached as Exhibit E to the Settlement Agreement.

16. To participate in the Settlement, Class Members will be required to submit, within one hundred twenty (120) days of the of the Notice Date of the Settlement, a Proof of Claim form to the designated Claims Administrator that contains certain information, including, but not limited to, the Class Member's name, address, and information from his or her sales receipt. All Settlement Class Members shall be subject to this deadline, including those Settlement Class Members who file objections or intervene. The filing of objections to the settlement shall not toll or otherwise extend this deadline.

17. Incomplete, inaccurate or otherwise insufficient Proof of Claim forms shall result in a denial of the claim. Proof of Claim forms shall be individually completed by each Settlement Class Member; mass produced, copied or multiple forms using the same names or addresses or seeking more Settlement Benefits than permitted under the terms of the Settlement may be considered fraudulent. Proof of Claim Forms that the Claims Administrator determine in its sole discretion to be falsified or fraudulent shall be denied.

18. All Settlement Class Members who wish to opt out of the Settlement Class pursuant to 735 ILCS 5/2-804, and thereby preserve their claims, if any, against Ashley, must elect not to accept the Settlement Benefits and must mail a request for exclusion to the Claims Administrator and the Clerk of the Court, post-marked not later than 1/19/10, which is ten (10) days before the Fairness Hearing on 1/29, 2010. In order to be effective, the opt-out

request must be timely mailed, must be clearly identified as a "Request for Exclusion from the Ashley Settlement Class," and must set forth the name, address, and a telephone number of the individual requesting exclusion, as specified in the Class Notice. Requests for exclusion shall be deemed to have been made in each and every capacity in which the individual requesting exclusion is lawfully acting.

19. Any putative Settlement Class Member who has properly and timely requested exclusion from the Settlement Class shall retain the right to prosecute claims for damages, if any. Such excluded Settlement Class Member shall not be entitled to Settlement Benefits and shall not be entitled to appear in this case or object to the Settlement. Any Settlement Class Member who does not timely and properly file a written request for exclusion shall be bound by all terms of the Settlement, and all subsequent proceedings, court orders, and judgments in this case, and shall be eligible to receive Settlement Benefits.

20. Any Settlement Class Member who has not opted out pursuant to paragraph 18 above may object to the Settlement, as provided in 735 ILCS 5/2-804. In order to exercise this right, a Settlement Class Member must file written objections with the Clerk of the Court and serve same upon Class Counsel and counsel for Ashley by 1/19/10 which is ten (10) days before the Fairness Hearing on 1/29, 2010. Any such objection must include: the following materials: (1) Evidence, in the form of a Proof of Claim or other satisfactory evidence, that the person objecting is a member of the Class; (2) A short statement of the basis for the objection; and (3) Whether the person objecting intends to (A) appear at the Fairness Hearing, and if so, (B) a description of any documents or witnesses, if any, that person intends to offer as evidence at the Fairness Hearing. These materials must be both filed with the Court and delivered to the attorneys for Plaintiff and Ashley no later than ten (10) days before the Fairness Hearing.

21. This Court will hold a Fairness Hearing on 1/29, 2010 at 1:30 PM, to determine whether: (a) to certify the Settlement Class, for purposes of this settlement only, under 735 ILCS 5/2-801 and 735 ILCS 2-802; (b) to approve the settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class Members of the Settlement Class; (c) to enter an order finding that the Settlement Agreement was entered in good faith; (d) to enter an order of dismissal of the Complaint with prejudice and without costs as to Ashley effective on the Effective Date of the Settlement; (e) to approve the releases of claims to the extent specified in the Settlement Agreement and exhibits thereto; (f) to rule upon Class Counsel's application for an award of attorneys' fees and for separate fees for the Class Representative; and (g) to rule on such other matters as the Court may deem appropriate.

22. No person shall be entitled in any way to contest the approval of the terms and conditions of this Settlement Agreement or the judgment to be entered thereon, except by filing and serving written objections in accordance with the provisions of paragraph 20 above, and any Class Member who fails to opt out or object in the manner prescribed in paragraph 18 shall be deemed to have waived, and shall be foreclosed forever from raising any objections to the settlement or asserting claims arising out of, relating to, or based in whole or part on any of the facts or matters alleged, or which could have been alleged, or which were otherwise at issue in this case.

23. If the Court approves the settlement following the Fairness Hearing, it shall enter a Final Judgment and Order.

24. If the Court does not approve the settlement in all material respects by a final non-appealable order for any reason, the Settlement Agreement and any party to the Settlement elects

to terminate it in accordance with its terms, or the Settlement Agreement does not become effective for any reason whatsoever, then:

(a) the Settlement Agreement (except for those provisions relating to contingencies in the event that the settlement does not become effective) and any actions taken or to be taken in connection therewith are terminated, become void, and have no further force and effect; and

(b) all parties thereto shall be restored to their respective positions immediately prior to its execution, subject to the provisions of section XV of the Settlement Agreement.

25. If the Settlement is terminated or otherwise does not become effective for any reason, then the Settlement Class certification shall automatically be vacated without the need for further order by the Court. The Settlement Agreement shall not be offered, received, or construed as an admission of any kind, Plaintiff may pursue all available claims and relief, and Ashley shall have the right to object to the maintenance of this action and to oppose any motion for class certification upon any grounds, and the right to interpose all other motions or defenses it may have.

26. Pending final approval of the Settlement by the Court and entry of the Final Judgment and Order, all proceedings in this lawsuit, including all discovery, are stayed, except to the extent such proceedings are required by the terms of the Settlement Agreement. Ashley is relieved of any obligation to respond to the Complaint in this action.

27. The parties shall maintain the confidentiality of the names and addresses of Ashley's customers and other confidential personal or business information used or disclosed in

the course of this Settlement or class administration pursuant to Section XVII of the Settlement Agreement.

DONE AND ORDERED, in the Circuit Court of Cook County, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Circuit Judge

Copies to:

All Counsel of Record

