

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

ANTHONY SALVATO, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

v.

ZALE CORPORATION, RICHARD C. MARCUS,  
MARY L. FORTE, J. GLEN ADAMS, MARY E.  
BURTON, SUE E. GOVE, JOHN B. LOWE, JR.,  
THOMAS C. SHULL, DAVID M. SZYMANSKI,  
MARK R. LENZ, GREGORY HUMENESKY,  
ERV POLZE, STEVE MASSANELLI, STEVE  
STRONG, HILARY MOLAY, and PAUL  
LOGAN,

Defendants.

Case No. 3:06-CV-1124 (SAF)  
(Consolidated with 3:06-CV-1972)

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**TO: ALL PERSONS WHO HAVE BEEN PARTICIPANTS IN THE ZALE SAVINGS AND INVESTMENT PLAN (“PLAN”) AT ANY TIME BETWEEN FEBRUARY 18, 2005 AND JULY 11, 2008, INCLUSIVE; AND, AS TO EACH SUCH PERSON HIS, HER OR ITS BENEFICIARIES, ALTERNATE PAYEES, REPRESENTATIVES AND SUCCESSORS-IN-INTEREST (“SETTLEMENT CLASS”).**

**HOWEVER, NOTWITHSTANDING THE FOREGOING, THE SETTLEMENT CLASS SHALL NOT INCLUDE ANY OF THE INDIVIDUAL DEFENDANTS (DEFINED TO INCLUDE ALL DEFENDANTS AND DISMISSED DEFENDANTS OTHER THAN ZALE CORPORATION AND THE ZALE PLAN COMMITTEE), OR ANY OF INDIVIDUAL DEFENDANTS’ IMMEDIATE FAMILY, BENEFICIARIES, ALTERNATE PAYEES, REPRESENTATIVES OR SUCCESSORS-IN-INTEREST, EXCEPT FOR IMMEDIATE FAMILY, BENEFICIARIES, ALTERNATE PAYEES, REPRESENTATIVES OR SUCCESSORS-IN-INTEREST WHO THEMSELVES ARE MEMBERS OF THE SETTLEMENT CLASS WITH RESPECT TO THEIR OWN PLAN ACCOUNTS.**

**PLEASE READ THIS NOTICE CAREFULLY.**

The Court has preliminarily approved a proposed settlement (the “Settlement”) of a class action lawsuit, *Anthony Salvato v. Zale Corporation, et al.*, Case No. 3:06-CV-1124 (SAF) (the “Action”) brought under the Employee Retirement Income Security Act (“ERISA”). The Settlement is with Zale Corporation (“Zale” or the “Company”) and certain officers and directors of the Company (collectively the “Defendants”) in the Action and would release Defendants and related parties from any claims filed against them. This Notice contains summary information with respect to the Settlement. The terms and conditions of the Settlement are set forth in a Class Action Settlement Agreement (the “Settlement Agreement”). Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement, and additional information with respect to the Action and the Settlement, is available from the Notice Administrator at Zale Corporation ERISA Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753; toll-free phone: (800) 766-3330; facsimile: (516) 931-0810; and on the Notice Administrator’s website at [www.berdonclaims.com](http://www.berdonclaims.com).

The Court has scheduled a hearing concerning final approval of the Settlement and Class Counsel's application for an award of fees and expenses. That hearing, before the Honorable Sidney A. Fitzwater, is scheduled on November 21, 2008 at 11:00 a.m. in Courtroom 1516 at the United States Courthouse, 1100 Commerce Street, Dallas, Texas 75242. If approved, the Settlement will bind you as a member of the Settlement Class.

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU NEED NOT APPEAR IN COURT, AND YOU DO NOT NEED TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>YOU CAN CHOOSE TO DO NOTHING</b>	
<b>YOU CAN OBJECT BY NOVEMBER 6, 2008</b>	You can write to the court and explain the reasons for your disapproval of the Settlement.
<b>YOU CAN GO TO A HEARING ON NOVEMBER 6, 2008</b>	You can ask to speak in court about the fairness of the Settlement by filing a Notice of Intention to Appear.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice.

The Court still has to decide whether to approve the Settlement. Actions with respect to the Plan will be taken and payments will be made to Named Plaintiffs and their counsel only if the Court approves the Settlement and that approval is upheld in the event of any appeals.

Further information regarding the litigation and this Notice may be obtained by contacting:

Plaintiffs' Counsel:

Thomas J. McKenna  
 Gainey & McKenna  
 295 Madison Avenue  
 4th Floor  
 New York, NY 10017

Jeffrey M. Norton  
 Harwood Feffer LLP  
 488 Madison Avenue  
 New York, NY 10022

Roger F. Claxton  
 Claxton & Hill  
 3131 McKinney Ave.  
 Suite 700 LB 103  
 Dallas, TX 75204-2471

## WHAT THIS NOTICE CONTAINS

	<u>Page</u>
SUMMARY OF CASE.....	4
SUMMARY OF SETTLEMENT.....	4
STATEMENT OF POTENTIAL OUTCOME OF THE ACTION .....	5
STATEMENT OF ATTORNEYS' FEES & EXPENSES SOUGHT IN THE ACTION.....	5
STATEMENT REGARDING FEES AND EXPENSES INCURRED BY THE INDEPENDENT FIDUCIARY .....	5
WHAT WILL THE PLAINTIFFS GET?.....	5
BASIC INFORMATION .....	6
Why did I get this Notice? .....	6
What is the lawsuit about? .....	6
Why is this case a class action? .....	6
Why is there a settlement? .....	6
WHO IS IN THE SETTLEMENT .....	6
How do I know whether I am part of the Settlement?.....	7
Are there exceptions to being included? .....	7
THE SETTLEMENT BENEFITS.....	7
What does the Settlement provide? .....	7
What if the Settlement is terminated? .....	7
YOU CANNOT EXCLUDE YOURSELF FROM THE SETTLEMENT .....	7
Why can't I exclude myself from the Settlement? .....	7
THE LAWYERS REPRESENTING YOU.....	8
Do I have a lawyer in the case?.....	8
How will the lawyers be paid? .....	8
OUR RIGHT TO OBJECT .....	8
How do I tell the Court that I don't like the Settlement? .....	8
THE FAIRNESS HEARING .....	8
When and where will the Court decide whether to approve the Settlement? .....	9
Do I have to come to the hearing?.....	9
May I speak at the hearing? .....	9
IF YOU DO NOTHING.....	9
What happens if I do nothing at all? .....	9
GETTING MORE INFORMATION .....	9
Are there more details about the Settlement?.....	9

## **I. SUMMARY OF CASE**

As described in more detail below and in Plaintiffs' Amended and Consolidated Class Action Complaint (the "Complaint"), this Action concerns allegations that Defendants breached fiduciary duties owed to participants and beneficiaries in the Plan during the Class Period. Defendants deny the allegations. Copies of Plaintiffs' Complaint and documents related to the Settlement are publicly available at the office of the clerk located at the United States Courthouse, 1100 Commerce Street, Dallas, Texas 75242, or from the Notice Administrator at Zale Corporation ERISA Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753; toll-free phone: (800) 766-3330; facsimile: (516) 931-0810; and on the Notice Administrator's website at [www.berdonclaims.com](http://www.berdonclaims.com).

## **II. SUMMARY OF SETTLEMENT**

Defendant Zale Corporation will implement the following changes:

The Company shall undertake to amend the Plan to close the investment fund maintained by the Plan which is invested in the Company's common stock ("Common Stock Fund") to any new investment by Plan participants, such amendment to become effective within ninety (90) days following the Effective Date of Settlement. The Plan shall provide written notice to Plan participants of such amendment no later than sixty (60) days following the Effective Date of Settlement and shall advise participants to revise any investment directive in favor of the Common Stock Fund to other Plan investment option(s). The Plan amendment shall provide that, following the effective date of the amendment described in this Section 7.4.1, any investment that would otherwise have been directed to the Common Stock Fund shall be redirected to the Plan's other investments funds and reallocated pro rata in accordance with the participant's remaining investment allocation designations then on file (but excluding any allocation to the Common Stock Fund), or as otherwise required by the Plan.

The Company shall undertake to amend the Plan to eliminate the Common Stock Fund as an investment option in the Plan, such amendment to become effective on the first business day that falls eighteen (18) months following the Effective Date of Settlement (the "Common Stock Fund Elimination Date"). At any time prior to the Common Stock Fund Elimination Date Plan participants shall be free to maintain their current investment, if any, in the Common Stock Fund or to exercise their discretion to re-direct their investment, if any, in the Common Stock Fund to other investment alternatives available under the Plan. On the Common Stock Fund Elimination Date any remaining participant investments in the Common Stock Fund will be liquidated, with the proceeds allocated: (1) where a participant has investment allocation designations on file, in accordance with such designations; or (2) where a participant has no current election of investment options on file, to the Plan's then-designated default investment option. The Company shall not permit the Common Stock Fund to be reinstated as an investment option in the Plan for contributions of any sort for a period of five (5) years from the Common Stock Fund Elimination Date.

For a period of five (5) years commencing on the Effective Date of Settlement the Company shall make matching contributions, if any, as defined in Section 1.43 of the Plan ("Matching Contributions"), contributed pursuant to Sections 3.2 and 3.5 of the Plan, exclusively in cash.

For a period of three (3) years commencing on the Effective Date of Settlement the Company shall continue to offer an education program for Plan participants, to be provided by the Plan's record keeper, or its designee, equivalent to the education program now offered by Fidelity Investments, the Plan's current record keeper.

For a period of three (3) years commencing on the Effective Date of Settlement the Company shall, using an outside advisor or advisors, conduct annual training on fiduciary duties and responsibilities for the Plan's Savings and Investment Plan Committee ("Committee") or any successor thereto, and shall provide the Committee with services of outside legal counsel for advice on fiduciary matters on an as needed basis by the Committee.

### **III. STATEMENT OF POTENTIAL OUTCOME OF THE ACTION**

Plaintiffs' Counsel believes that the claims against Defendants are well-grounded in law and fact, and that breaches of fiduciary duty under ERISA occurred in this case. However, as with any litigated case, the Settlement Class would face an uncertain outcome if the Action were to continue against Defendants in the Action. Continued litigation of the Action could result in a judgment or verdict greater or less than the recovery under the Settlement Agreement, or in no recovery at all. In evaluating the Settlement, Plaintiffs' Counsel has considered the range of possible recoveries and outcomes if the claims against Defendants were adjudicated rather than settled.

Plaintiffs' Counsel believes that this Settlement reflects a reasonable compromise in light of the range of possible outcomes. Plaintiffs' Counsel believes that the Settlement is preferable to continued litigation, and is in the best interests of the Settlement Class because the Settlement provides certainty to the Settlement Class with respect to structural changes to the Plan and those changes actually being realized substantially prior to the time that they might occur had the case been successfully litigated to a conclusion. The value of the Plan Changes set forth in the Settlement is estimated to exceed \$7,000,000.00.

Throughout this litigation, Defendants have denied and continue to deny the claims and contentions alleged by Plaintiffs. Nevertheless, Defendants have concluded that it is desirable that the Action be fully and finally settled as to them and the other Released Persons on the terms and conditions set forth in the Settlement Agreement. The Court has not ruled in favor of either side. Both sides agreed to the Settlement to insure a resolution and avoid the cost and risk of further litigation.

### **IV. STATEMENT OF ATTORNEYS' FEES AND EXPENSES SOUGHT IN THE ACTION**

Plaintiffs' Counsel in the Action will file a motion with the Court in which they will ask the Court to award them attorneys' fees and expenses equal to the balance of the Settlement Expense Fund (\$900,000) less the costs of Notice and administration costs and, to the extent approved by the Court, Case Contribution awards to the Named Plaintiffs.

### **V. STATEMENT REGARDING FEES AND EXPENSES INCURRED BY THE INDEPENDENT FIDUCIARY**

An Independent Fiduciary is evaluating the Settlement and will be asked to authorize the Settlement on behalf of the Plan. Defendants have paid the fees and expenses incurred by the Independent Fiduciary (including fees and expenses incurred by consultants, attorneys, and other professionals retained or employed by the Independent Fiduciary) in the course of evaluating and authorizing the Settlement on behalf of the Plan.

### **VI. WHAT WILL THE NAMED PLAINTIFFS GET?**

The Named Plaintiffs will request that the Court award them each a Case Contribution Award in the amount of \$10,000.00.

## **VII. BASIC INFORMATION**

### **A. Why did I get this Notice?**

You or someone in your household is or may have been a participant in the Plan. The Court ordered this Notice to be sent to you because, if you fall within that group, you have a right to know about the Settlement and about all of your options before the Court decides whether to approve the Settlement. This Notice package describes the litigation, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of these consolidated cases is the United States District Court for the Northern District of Texas. The individuals who brought this action are called “Plaintiffs,” and the people/entities they sued are called “Defendants.” The legal action that is the subject of this Notice and the Settlement is known as *Anthony Salvato v. Zale Corporation, et al.*, Case No. 3:06-CV-1124 (SAF) (the “Action”).

### **B. What is the lawsuit about?**

The Action claims that Defendants were fiduciaries of the Plan and violated fiduciary duties under ERISA that they owed to participants and beneficiaries of the Plan. In the Complaint, Plaintiffs have asserted causes of action for the losses suffered by the Plan as the result of the alleged breaches of fiduciary duty by the Defendants.

Portions of the accounts of participants in the Plan were invested in Zale stock. The Action alleges that the Plan’s fiduciaries, including certain of Zale’s current and/or former officers and directors, failed to act appropriately when the Plan’s holdings of Zale stock allegedly became an imprudent investment. Defendants deny any wrongdoing and/or that the Zale Stock Fund was an imprudent investment.

### **C. Why is this case a class action?**

In a class action, one or more plaintiffs called “Class Representatives” sue on behalf of a large number of people who have similar claims. All of the individuals on whose behalf the Class Representatives are suing are “Class Members.” One court resolves the issues for all Class Members. In its order setting the Fairness Hearing, the Court preliminarily certified the Settlement Class in the Action. The Class Representatives in the Action are the Named Plaintiffs, Anthony Salvato and Richard A. Connell.

### **D. Why is there a settlement?**

The Court has not reached any final decision in connection with Plaintiffs’ claims against Defendants. Instead, Plaintiffs and Defendants have agreed to a Settlement. In reaching the Settlement, they have avoided the cost, risks, time and disruption of prolonged litigation and trial.

Plaintiffs’ Counsel believes that the Settlement is the best option for the Settlement Class Members. The reasons they believe this to be so are described above in the section entitled “Statement of Potential Outcome of the Action.”

## **VIII. WHO IS IN THE SETTLEMENT**

### **A. How do I know whether I am part of the Settlement?**

The Court has conditionally certified that this Settlement shall proceed on behalf of everyone who, subject to certain exceptions identified below, fits the following description:

All Persons who have been participants in the Zale Savings and Investment Plan (“Plan”) at any time between February 18, 2005 to July 11, 2008, inclusive; and, as to each such Person his, her or its beneficiaries, alternate payees, Representatives and Successors-In-Interest.

**B. Are there exceptions to being included?**

All Plan participants described above are members of the Settlement Class with the exception of the Individual Defendants, Individual Dismissed Defendants, and their immediate families, beneficiaries, alternate payees, Representatives or Successors-in-Interest. The only exception to this exclusion is for Immediate Family, beneficiaries, alternate payees, Representatives or Successors-in-Interest who themselves fall within the definition of the Settlement Class with respect to their own Plan accounts.

**IX. THE SETTLEMENT BENEFITS**

**A. What does the Settlement provide?**

**Plan Changes.** As detailed above, Zale Corporation will implement certain Plan Changes following approval of the Settlement by the Court and the Settlement becoming Final under its terms.

**B. What if the Settlement is terminated?**

**There will be no changes to the Plan if the settlement is terminated.** The Settlement Agreement may be terminated on several grounds, including: (1) if the Court does not approve the Settlement or materially modifies it before such date; (2) if the Independent Fiduciary hired to evaluate the Settlement does not approve it; or (3) if the Court’s order approving the Settlement is reversed or modified on appeal. The Settlement Agreement describes other conditions in which the Settlement may be terminated. In the event any of these conditions occur, there will be no settlement payment made, and the litigation against Defendants will resume.

**X. YOU CANNOT EXCLUDE YOURSELF FROM THE SETTLEMENT**

**Why can’t I exclude myself from the Settlement?**

In some class actions, class members have the opportunity to exclude themselves from the Settlement. This is sometimes referred to as “opting out” of the Settlement. **Because of the way ERISA operates, you do not have the right to exclude yourself from the Settlement in this case.** The case was preliminarily certified under Federal Rule of Civil Procedure 23(b)(1) and/or (b)(2) as a “non-opt out” class. Breach of fiduciary duty claims must be brought by participants on behalf of the Plan, and any judgment or resolution necessarily applies to all Plan participants and beneficiaries. As such, it is not possible for any participants or beneficiaries to exclude themselves from the benefits of the Settlement. **Therefore, you will be bound by any judgments or orders that are entered in this Action, and, if the Settlement is approved, you will be deemed to have released the Defendants from any and all claims that were or could have been asserted in this case on your behalf of or behalf of the Plan or otherwise included in the release in the Settlement, other than your right to obtain the relief provided to you, if any, by the Settlement.**

Although you cannot opt out of the Settlement, you can object to the Settlement and ask the Court not to approve the Settlement. See the question below: “How do I tell the Court that I don’t like the Settlement?”

## **XI. THE LAWYERS REPRESENTING YOU**

### **A. Do I have a lawyer in the case?**

The Court has preliminarily designated Gainey & McKenna and Harwood Feffer LLP as Plaintiffs' Lead Counsel for the Settlement Class. If you want to be represented by your own lawyer, you may hire one, but only at your own expense.

### **B. How will the lawyers be paid?**

Plaintiffs' Counsel pursued this action on a contingent basis and will file a motion for an award of fees and expenses. This motion will be considered at the Fairness Hearing. Plaintiffs' Counsel will seek an award of fees and expenses in an amount equal to the balance of the Settlement Expense Fund (\$900,000) after payment of Notice and administration costs and, to the extent approved by the Court, Case Contribution awards to the Named Plaintiffs.

## **XII. YOUR RIGHT TO OBJECT**

You can tell the Court that you do not agree with the Settlement or some part of it.

### **How do I tell the Court that I don't like the Settlement?**

If you are a member of the Settlement Class, you may object to the Settlement or the application for attorneys' fees. You must provide reasons why you think the Court should not approve the Settlement or some aspect of the Settlement. To object, you must send a letter or other written filing to the Court. Be sure to include the following case caption and notation: "*Anthony Salvato v. Zale Corporation, et al.*, Case No. 3:06-CV-1124 (SAF)." In addition, your objection must also include your name, address, telephone number, signature, proof that you are a member of the Settlement Class, and the reasons why you object to the Settlement. **Mail the objection to each of the addresses identified below postmarked no later than November 6, 2008. If you fail to mail your objection by this date, the Court will not consider your objection.**

<b>FOR THE COURT</b>	<b>FOR PLAINTIFFS' COUNSEL</b>	<b>FOR DEFENSE COUNSEL</b>
Clerk of the United States District Court 1100 Commerce Street Dallas, TX 75242	GAINEY & McKENNA Thomas J. McKenna 295 Madison Avenue 4th Floor New York, NY 10017  HARWOOD FEFFER LLP Jeffrey M. Norton 488 Madison Avenue New York, NY 10022	WEIL GOTSHAL & MANGES LLP T. Ray Guy 200 Crescent Court, Suite 300 Dallas, TX 75201  STEPTOE & JOHNSON LLP Paul J. Ondrasik, Jr. Morgan D. Hodgson 1330 Connecticut Ave NW Washington, DC 20036

*Again, all papers submitted must include the case # 3:06-CV-1124 on the front page.*

## **XIII. THE FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but it is not necessary.

**A. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing to decide whether to approve the Settlement as fair, reasonable, and adequate. You may attend the Fairness Hearing, and you may ask to speak, but you do not have to attend. The Court will hold the Fairness Hearing at 11:00 a.m. on November 21, 2008 in Courtroom 1516 at the United States Courthouse, 1100 Commerce Street, Dallas, Texas 75242. At that hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the Settlement. The Court will also consider the motion for an award of attorneys' fees and expenses.

**B. Do I have to come to the hearing?**

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to voice your objection in person. As long as you mail your written objection on time, the Court will consider it when determining whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but attendance is not necessary.

**C. May I speak at the hearing?**

If you are a Settlement Class member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Anthony Salvato v. Zale Corporation, et al.*, Case No. 3:06-CV-1124 (SAF)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than November 6, 2008 and be sent to the Clerk of the Court, Plaintiffs' Counsel, and Defendants' counsel at the addresses listed above.

**XIV. IF YOU DO NOTHING**

**What happens if I do nothing at all?**

If you do nothing and you are a Settlement Class member, you will participate in the Settlement of the Action as described above in this Notice if the Settlement is approved.

**XV. GETTING MORE INFORMATION**

**Are there more details about the Settlement?**

This Notice summarizes the proposed Settlement. The complete Settlement is set forth in the Settlement Agreement. You may obtain a copy of the Settlement Agreement by making a written request to the Plaintiffs' Counsel listed on page 2 above. Copies are also publicly available at the office of the clerk located at the United States Courthouse, 1100 Commerce Street, Dallas, Texas 75242, or by request from the Notice Administrator, at Zale Corporation ERISA Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753; toll-free phone: (800) 766-3330; facsimile: (516) 931-0810; and on the Notice Administrator's website at [www.berdonclaims.com](http://www.berdonclaims.com).

Dated: September 23, 2008

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION