

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA**

MALINDA S. SMIDGA, ASHLEY POPA,
MATILDA DAHLIN, CHRISTINA
CALCAGNO, and BRIAN CALVERT,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

BATH & BODY WORKS, LLC, and
VICTORIA'S SECRET STORES, LLC,

Defendants.

GD No. 21-009142

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

And now this ____ day of _____, 2023, upon review of Plaintiffs Malinda S. Smidga, Ashley Popa, Matilda Dahlin, Christina Calcagno, and Brian Calvert's ("Plaintiffs") unopposed motion for preliminary approval of class settlement and provisional class certification, it is hereby ORDERED, ADJUDGED, and DECREED:

1. The Court has reviewed the Parties' proposed Settlement Agreement and Exhibits attached thereto and Plaintiffs' unopposed motion and brief in support of preliminary approval.¹
2. For purposes of this class settlement, the Court has jurisdiction over the subject matter of this action, and personal jurisdiction over all parties to the litigation, including all Settlement Class Members.

¹ Capitalized terms in this Order, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement.

Reasonableness of the Proposed Settlement

3. The Court finds that (i) the proposed Settlement resulted from extensive and good-faith negotiations at arms' length; (ii) the proposed Settlement was concluded after extensive discovery and litigation; and (iii) the terms of the proposed Settlement as evidenced by the Settlement Agreement appear to be sufficiently fair, reasonable, and adequate in light of the risks, delays, and expenses of further litigation, warranting the sending of notice and the scheduling of a final fairness hearing.

4. The Court finds that the proposed Settlement Agreement provides sufficient compensation to Settlement Class Members and creates an equitable claims process that will allow Settlement Class Members the opportunity to share in the Settlement compensation provided.

5. To receive one (1) Voucher worth up to \$15.00, an eligible Class Member shall timely submit a complete, valid and sufficient Claim Form, no later than sixty (60) days after Notice Begins. A Settlement Class Member that made a qualifying purchase at both Defendants' stores is eligible to make a claim for one (1) Voucher per Defendant. If an eligible Class Member does not submit a Valid Claim Form and either used My Bath & Body Works Rewards or a Victoria's Secret Credit Card in connection with the purchase from which they received the receipt making them a member of the Settlement Class, he or she shall receive a \$5.00 "click to claim" Voucher.

6. The maximum consideration distributed to Settlement Class Members under the Settlement Agreement shall not exceed fifteen million dollars (\$15,000,000). If more than \$15,000,000 in Vouchers are claimed, the Settlement Administrator shall distribute Vouchers on

a pro rata basis, reducing the value of the Vouchers as necessary in order to comply with the \$15,000,000 maximum consideration. The pro rata reduction in value shall first be applied to Vouchers valued up to \$15 before any pro rata reduction in the “click to claim” Vouchers valued up to \$5.

Provisional Certification of Settlement Class

7. The Settlement Class is provisionally certified as a class of all consumers who made a purchase at a Victoria’s Secret, PINK, or Bath & Body Works store during the Relevant Time Period and were provided a printed receipt at the point of sale that displayed more than the last five digits of their credit card or debit card number.

8. The Settlement Class excludes all individuals who, prior to the execution of this Settlement Agreement, commenced separate litigation or arbitration involving the Fair and Accurate Credit Transactions Act against any Defendant, regardless of the present status of such proceeding or any future developments therein. The Settlement Class also does not include any person who timely excludes themselves from the Settlement Class, the trial judge presiding over the Named Actions or any member of the judge’s immediate family, Defendants, as well as any parent, subsidiary, affiliate, officers, or directors of Defendants, Class Counsel, and any heirs, assigns and successors of any of the above persons or organizations in their capacity as such.

9. For settlement purposes, the Settlement Class is so numerous that joinder of all Class Members is impracticable.

10. For settlement purposes, Plaintiffs’ claims are typical of the Settlement Class’s claims.

11. For settlement purposes, there are questions of law and fact common to the Settlement Class, which predominate over any questions affecting only individual Class Members.

12. For settlement purposes, certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy.

13. Plaintiffs Malinda S. Smidga, Ashley Popa, Matilda Dahlin, Christina Calcagno, and Brian Calvert are conditionally certified as the Settlement Class Representatives to implement the Parties' settlement in accordance with the Settlement Agreement.

14. The law firm of Lynch Carpenter, LLP is conditionally appointed as Settlement Class Counsel.

15. Plaintiffs and Settlement Class Counsel must fairly and adequately protect the Settlement Class's interests.

Appointment of Settlement Administrator and Approval of Notice Plan and Form of Notice

16. The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Settlement and exhibits: (a) constitute the best practicable notice to the Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Pa. R. Civ. P. 1712 and 1714, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notices are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members.

17. The Parties and Settlement Administrator are authorized to make non-material modifications to the notices, such as proofing and formatting alterations, without further Order from this Court.

18. KCC LLC is approved as the Settlement Administrator. The Settlement Administrator is directed to carry out the notice plan in conformance with Section III of the Settlement Agreement and to perform all other tasks that the Settlement Agreement requires, including the creation of a Qualified Settlement Fund.

19. Defendants will pay all costs associated with claims administration and providing notice to Class Members.

20. The Claims Administrator shall make available an electronic copy of this preliminary approval Order in a prominent location on the Settlement Website.

21. Counsel for the Parties are hereby authorized to agree to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

22. The Settlement Administrator shall review all submitted Claim Forms for completeness, legibility, validity, accuracy, and timeliness. The Settlement Administrator may employ adequate and reasonable procedures and standards to prevent the approval of duplicate and/or fraudulent Claims. The Settlement Administrator may contact any Claimant to request additional information and documentation, including, but not limited to, information and documentation sufficient to allow the Settlement Administrator to: (a) verify that the information set forth in or attached to a Claim Form is accurate and the Claimant is a Settlement Class Member; and (b) determine the validity of any Claim and/or whether any Claim is duplicative or fraudulent. Any disputes related to whether a particular Class Member has submitted a Valid

Claim Form shall first attempt to be resolved between the parties and the Settlement Administrator. If those efforts are not successful, any remaining disputes shall be submitted to the Court.

Opting Out from the Class

23. Any Class Member who wishes to be excluded from the Class must mail a written notification of their intent to exclude himself or herself from the Settlement to the Settlement Administrator at the address provided in the Notice, postmarked no later than forty-five (45) days after Notice Begins. and sent via first class postage pre-paid United States mail. The written request for exclusion must include the name of this Litigation or a decipherable approximation; the full name, address, and telephone number of the Settlement Class Member or the name, address, telephone number, relationship, and signature of any individual who is acting on behalf of a deceased or incapacitated Settlement Class Member; and the words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement.

24. Any Settlement Class Member who submits a valid and timely notice of their intent to Opt-Out of the Settlement shall not receive any benefits of or be bound by the terms of the Settlement Agreement.

25. Any Settlement Class Member that does not timely and validly Opt-Out from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Class Member that has not submitted a timely, valid written request to Opt-Out (in accordance with the requirements of the Settlement Agreement) shall be bound by all subsequent proceedings, orders and judgments in this matter, the Settlement, including but not limited to the releases set forth in the Settlement Agreement, and the Final Approval Order and Judgment.

Objections to the Settlement

26. Settlement Class Members who have not submitted a timely written Opt-Out request and who want to object to the Settlement Agreement must file written objections with the Court, with copies delivered to the Settlement Administrator no later than 45 days after Notice Begins.. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. It shall be the objector's responsibility to ensure receipt of any objection by the Settlement Administrator on or before the deadline.

27. An objection must include: (i) set forth the Settlement Class Member's full name, current address, and telephone number; (ii) contain the Settlement Class Member's original signature or the signature of counsel for the Settlement Class Member; (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth a statement of the legal and factual basis for the Objection; (iv) contain facts supporting the person's status as a Settlement Class Member; (v) include copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; and (vi) include the following language immediately above the Class Member's signature and date: "I declare under penalty of perjury that the factual statements asserted herein are true and correct to the best of my knowledge and belief."

28. Any Settlement Class Member who submits a written objection, as described in this section, has the option to 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 fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees. Settlement Class Members, or their attorneys, intending to make an appearance at the Final Approval Hearing, however, must include on a timely and valid objection

a statement substantially similar to “Notice of Intention to Appear.” If the objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, email address, and the state bar(s) to which counsel is admitted. If the objecting Settlement Class Member intends to request the Court allow the Settlement Class Member to call witnesses at the Final Approval Hearing, such request must be made in the Settlement Class Member’s written objection, which must also contain a list of any such witnesses and a summary of each witness’s expected testimony. Only Settlement Class Members who submit timely objections containing Notices of Intention to Appear or their counsel may speak at the Final Approval Hearing.

29. Class Members who fail to timely object to the Settlement Agreement in the manner specified above will: (a) be deemed to have waived their right to object to the Settlement Agreement; (b) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement; and (c) not be entitled to speak at the Final Approval Hearing.

Termination of the Settlement and Use of this Order

30. If the Settlement Agreement terminates for any reason, the following will occur: (a) Class Certification will be automatically vacated; (b) Plaintiffs will stop functioning as Settlement Class Representatives; (c) Settlement Class Counsel will stop functioning as Settlement Class Counsel; and (d) this Action will revert to its previous status in all respects as it existed immediately before the Parties executed the Settlement Agreement, with the exception of Plaintiffs’ filing of the Complaint. This Order will not waive or otherwise impact the Parties’ rights or arguments.

31. If the Settlement is not finally approved or there is no Effective Date under the terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against any Settlement Class Representative or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable; and shall not constitute a waiver by any party of any defense or claims it may have in this Litigation or in any other lawsuit.

Stay of Proceedings

32. Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

Continuance of Final Approval Hearing

33. The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

Final Approval Hearing and Filing Deadlines

34. A Fairness Hearing will be held on the _____ day of _____, 2024, before Judge _____ of the Court of Common Pleas of Allegheny County, Pennsylvania, City-County Building, 414 Grant Street, Pittsburgh, PA 15219, to determine, among other things, whether: (a) the Settlement should be finally approved as fair, reasonable and adequate; (b) Settlement Class Members should be bound by the releases set forth in the Settlement

Agreement; (c) the proposed Final Approval Order and Judgment should be entered; (d) the application of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses should be approved; and (e) the application for a Service Award to the Settlement Class Representative should be approved. Any other matters the Court deems necessary and appropriate will also be addressed at the hearing to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate.

35. Settlement Class Counsel shall file their Motion for Final Approval at least 28 days before the Final Approval Hearing.

36. Settlement Class Counsel shall submit their application for fees, costs, and expenses and the application for Service Awards at least 14 days before the Objection Deadline.

37. Objectors, if any, shall file any response to Class Counsel's motions no later than 14 days before the Final Approval Hearing.

38. By no later than 7 days prior to the Final Approval Hearing, replies shall be filed to any filings by Objectors, if any.

39. Based on the date of this Order and the date of the Fairness Hearing, the following are the certain associated dates in this Settlement:

Event	Timing
Notice Begins. On or before this date, the Settlement Administrator shall establish the Settlement website; distribute all direct notice emails; distribute all press releases; and begin running digital media ads	40 calendar days after entry of this Order
Settlement Class Counsel to submit any Petition for Attorneys' Fees and Service Awards	71 calendar days after entry of this Order, and no less than 14 days before the last day for Settlement Class Members to Opt-Out or Object to the Settlement
Last day for Settlement Class Members to Opt-Out or Object to the Settlement	85 calendar days after entry of this Order

Last day for Settlement Class Members to file a claim	100 calendar days after entry of this Order
Motion for Final Approval to be filed	28 days before Fairness Hearing
Objectors' Responses, if any, to Motion for Final Approval and/or Petition for Attorneys' Fees and Service Awards	14 days before Fairness Hearing
Replies to any motions filed by any Objectors	7 days before Fairness Hearing

IT IS SO ORDERED:

_____, J.