

**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,

v.

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

Defendants.

CIVIL DIVISION – CLASS ACTION
The Honorable Philip A. Ignelzi

No. GD-21-009142

**PLAINTIFFS' APPLICATION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS TO
REPRESENTATIVE PLAINTIFFS**

Filed on behalf of Plaintiffs

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AWARDS TO REPRESENTATIVE PLAINTIFFS**

Plaintiffs Malinda Smidga, Ashley Popa, Matilda Dahlin, Christina Calcagno, and Brian Calvery (collectively “Plaintiffs” or “Class Representatives”) respectfully apply for: (1) approval of an award of attorneys’ fees and costs to Class Counsel’s in the combined amount of \$3,000,000; and (2) approval of service awards of \$5,000 to each of the Class Representatives.

1. Plaintiffs Smidga and Popa initiated a putative class action against BBW on August 3, 2021, in the Court of Common Pleas of Allegheny County, Pennsylvania, alleging claims for violations of FACTA. BBW sought to dismiss for lack of standing and failure to state a claim and filed Preliminary Objections, which the Court subsequently overruled. (Docs. 15, 17).

2. Plaintiff Dahlin initiated a putative class action against BBW on September 8, 2021, in the Superior Court of Santa Barbara, California, alleging claims for violations of FACTA. BBW filed a Demurrer to the *Dahlin* Complaint on November 23, 2021, seeking to

dismiss Plaintiff Dahlin's claims for lack of standing and failure to state a claim. On July 11, 2022, the Superior Court overruled BBW's Demurrer. BBW filed a Renewed Demurrer or Motion to Reconsider ("Renewed Demurrer") on December 12, 2022, based on the California Court of Appeal for the Fifth District's decision in *Limon v. Circle K Stores Inc.*, 300 Cal. Rptr. 3d 572 (Cal. App. Ct. 2022), which was fully briefed. The parties agreed to stay any ruling on Plaintiff Dahlin's class certification motion or on BBW's renewed demurrer in order to mediate.

3. Plaintiff Calcagno initiated a putative class action against VS on September 20, 2022, in the Superior Court of California, County of San Diego, alleging claims for violations of FACTA. On December 21, 2022, VS filed a Motion to Stay or Dismiss Case based on the broader action filed in Pennsylvania. The parties agreed to stay the action pending mediation.

4. Plaintiff Calvert initiated a putative class action against VS on September 20, 2022, in the Court of Common Pleas of Allegheny County, Pennsylvania, alleging claims for violations of FACTA. The parties agreed to a stay of the *Calvert* action pending the Pennsylvania Superior Court's decision in *Country Fair/Kirkland*, in light of the stay of the *Smidga* action.

5. In the litigation of each of the Named Actions above, the parties conducted substantial formal discovery and informal investigation in connection with the claims asserted in the Named Actions. The parties also engaged in substantial motions' practice.

6. On June 6, 2022, Plaintiffs Smidga and Popa filed a Motion for Class Certification, which was fully briefed by the parties. (Doc. 27). On June 22, 2022, BBW filed a Motion to Stay Proceedings and Hold Case in Abeyance based on *Budai et al. v. Kirkland Inc.*, 461 WDA 2022 and *Gennock v. Country Fair*, 462 WDA 2022. (Doc. 30). On November 28, 2022, Plaintiff Dahlin filed a Motion for Class Certification, which was fully briefed. Moreover,

Plaintiff retained experts to address certain of the class certification issues raised by Defendants in their opposition.

7. Plaintiffs Smidga, Popa, and Dahlin engaged in day-long mediation session with BBW before the Honorable Morton Denlow (Ret.) on April 25, 2022. That mediation was ultimately unsuccessful. On March 8, 2023, the Parties engaged in another mediation session before the Honorable Diane M. Welsh (Ret.), which resulted in an agreement in principle to resolve this action and the other actions brought against Defendants. (collectively, the “Named Actions”).

8. On March 24, 2024, Plaintiffs filed a Motion for Preliminary Approval and a Brief in Support of that Motion. (Doc. 46 & 47). On April 3, 2024, Plaintiffs filed an unopposed motion to file an amended complaint to include the parties in the other Named Actions. (Doc. 49). On April 9, 2024, this Court granted Preliminary Approval and Provisional Class Certification of the Class Settlement. (Doc. 51). The Court defined the class 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.

Id. By the same Order, the Court deemed Plaintiffs proper representatives of the Class and conditionally appointed the law firm of Lynch Carpenter, LLP as Settlement Class Counsel. *Id.*

9. Under the Settlement Agreement, Defendants have agreed, subject to court-approval, to pay \$3,000,000 for Class Counsel’s attorneys’ fees and to pay service awards of up to \$5,000 to each of the Class Representatives (for a total of \$25,000). These amounts are separate from and in addition to Defendants’ payments to establish a Settlement Fund for direct monetary relief in the form of the agreed-upon Vouchers to Class Members and for the actual costs of notice and settlement administration.

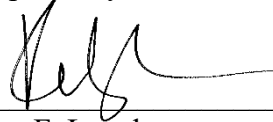
10. The relief requested herein should be considered by the Court at the scheduled fairness hearing on October 24, 2024, in conjunction with Plaintiffs' forthcoming motion for final approval of the Settlement, which will be filed on or before September 26, 2024, and subject to the Court's review of any objections filed by Class Members.

11. In further support of their motion, Plaintiffs direct the Court to their attached brief in support and the declaration of Kelly K. Iverson on behalf of Class Counsel, Lynch Carpenter.

WHEREFORE, Plaintiffs respectfully request that along with final approval of the Settlement, the Court (1) approve a combined award of \$3,000,000 to Class Counsel as attorneys' fees and reimbursement of litigation expenses; and (2) service awards of \$5,000 to the each of the Class Representatives.

Dated: June 17, 2024

Respectfully submitted,



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Attorneys for Plaintiffs and the Class

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CIVIL DIVISION – CLASS ACTION

GD No. 21-009142

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

On _____, this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) of the Settlement between Plaintiffs Malinda S. Smidga, Ashley Popa, Matilda Dahlin, Christina Calcagno, and Brian Calvert (“Plaintiffs”), on behalf of themselves and the Settlement Class, and Defendants Bath & Body Works, LLC and Victoria’s Secret Stores, LLC (“Defendants”) as memorialized in the attachment to Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement and Provisional Class Certification;

On _____, pursuant to the notice requirements set forth in the Class Action Settlement Agreement (“Settlement Agreement”)¹ and in the Preliminary Approval Order, the Settlement Class was apprised of the nature and pendency of the action, the terms of the Settlement, and their right to request exclusion, file claims, object, and/or appear at the Final Approval Hearing;

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

On _____, Plaintiffs filed their Motion for Final Approval of the Class Action Settlement (“Final Approval Motion”) and accompanying Brief and supporting exhibits, and on _____ Settlement Class Counsel filed their Application for Attorneys’ Fees, Expenses, and Service Awards and accompanying Brief and supporting exhibits (“Fee Application”);

On _____, the Court held a Final Approval Hearing to determine, *inter alia*: (1) whether the Settlement is fair, reasonable, and adequate; and (2) whether final approval should be ordered and judgment entered dismissing all claims. Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order; having heard the presentation of counsel for the Parties; having reviewed all of the submissions presented with respect to the proposed Settlement including Plaintiffs’ Final Approval Motion and supporting papers, the Settlement Agreement, any objections filed with or presented to the Court, the Parties’ responses to any objections made, and counsels’ arguments; and having been satisfied that Settlement Class Members were properly notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement, the award of attorneys’ fees, costs, including costs of settlement administration, and expenses, and the payment of service awards, this Court finds good cause to **GRANT** Plaintiffs’ Final Approval Motion and **GRANT** Class Counsel’s Application for Attorneys’ Fees and Service Awards.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class Members. The Court also has personal jurisdiction over the Parties and the Settlement Class Members. Pursuant to the Parties’ request, the Court will retain jurisdiction over this action and the Parties until final performance of the Settlement Agreement.

2. Upon review of the record, the Court hereby finds that the Settlement Agreement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class, and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays and uncertainties, including as to the outcome of continued litigation of this complex matter, which further supports the Court's finding that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members.

3. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

4. Extensive arm's-length negotiations took place, in good faith, between Class Counsel and Defendants' Counsel resulting in the Settlement Agreement, parts of which were presided over by the experienced JAMS Mediator Hon. Diane M. Welsh (Ret.).

5. The Settlement Agreement provides substantial value to the Class in the form of Vouchers. Defendants will issue one (1) Voucher worth up to \$15.00 to each Class Member who submitted a valid and timely Claim Form according to the terms and timeline stated in the Settlement Agreement and who does not timely request to be excluded from the Settlement; and one (1) Voucher worth \$5.00 to each Class Member who did not submit a valid and timely Claim Form according to the terms and timeline stated in the Settlement Agreement and made a purchase at a Victoria's Secret, PINK, or Bath & Body Works store during the Class Period using their My Bath & Body Works Rewards or Victoria's Secret Credit Card.

6. The Parties adequately performed their obligations under the Settlement Agreement.

Notice to the Class

7. The Notice Program set forth in the Settlement Agreement, and effectuated pursuant to the Preliminary Approval Order, satisfied Pa. R. Civ. P. 1712 and 1714, the constitutional requirement of due process, and any other legal requirements, having (i) fully and accurately informed Settlement Class Members about the lawsuit and Settlement; (ii) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the Settlement; (iii) provided procedures for Settlement Class Members to submit written objections to the proposed Settlement, to appear at the hearing, and to state objections to the proposed Settlement; and (iv) provided the time, date, and place of the Final Approval Hearing, thereby constituting the best notice practicable under the circumstances.

Class Certification

8. For the reasons stated in the Preliminary Approval Order, and having found nothing in any submitted objections that would disturb these previous findings, this Court finds and determines that the proposed Class, as defined below, meets all of the legal requirements for Class certification, for Settlement purposes, under Pa. R. Civ. P. 1702, 1708, 1709, 1710, and 1714.

9. For Settlement purposes only, Class Members are defined as: All consumers who made a purchase at a Victoria's Secret, PINK, or Bath & Body Works store during the Relevant Time Period (as set forth in Exhibits 1 and 2 to the Settlement Agreement) 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. 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.

Objections and Opt Outs

10. All persons who satisfy the Settlement Class definition above are "Settlement Class Members." However, persons who timely submitted valid requests for exclusion are not Class Members. The list of excluded persons is attached hereto as Exhibit 1.

11. _____ objections were filed by Settlement Class Members. The Court has considered all objections and finds the objections do not counsel against Settlement approval, and the objections are hereby overruled in all respects.

12. All persons who have not objected to the Settlement in the manner provided in the Settlement are deemed to have waived any objections to the Settlement, including but not limited to, by appeal, collateral attack, or otherwise.

Award of Attorneys' Fees, Costs, Including Costs of Settlement Administration, Expenses and Service Awards

13. The Court hereby awards Settlement Class Counsel (Lynch Carpenter, LLP) attorneys' fees and costs of \$ _____, which is fair and reasonable in light of the nature of this case, Settlement Class Counsel's experience and efforts in prosecuting this Action, and the benefits obtained for the Class. Payment shall be made pursuant to the timeline stated in Section VI(C) of the Settlement Agreement.

14. Plaintiffs Malinda S. Smidga, Ashley Popa, Matilda Dahlin, Christina Calcagno, and Brian Calvert are each awarded \$_____ as Individual Service Awards, which is fair and reasonable in light of the time and effort spent by Plaintiffs in litigating this action as the Settlement Class Representatives. Payment shall be made pursuant to the timeline stated in the Settlement Agreement.

Other Provisions

15. The Parties shall carry out their respective obligations under the Settlement Agreement.

16. Within the time period set forth in the Settlement Agreement, the relief provided for shall be made available to the Settlement Class Members pursuant to the terms and conditions of the Settlement Agreement.

17. This Order applies to all claims or causes of action settled under the Settlement Agreement, and binds all Class Members, including those who did not properly request exclusion under Paragraph 6 of the Preliminary Approval Order. This order does not bind persons who submitted timely and valid Requests for Exclusion, as identified on Exhibit 1.

18. Plaintiffs and all Class Members who did not properly request exclusion are: (a) deemed to have released and discharged Defendants from all claims arising out of or asserted in this Action and claims released under the Settlement Agreement; and (b) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of the release described in this paragraph are set forth in Section V of the Settlement Agreement and are specifically incorporated herein by this reference.

19. As of the Effective Date, the Releasing Parties, each on behalf of themselves and their respective successors, assigns, legatees, heirs, and personal representatives, shall automatically be deemed to, and shall in fact, have remised, released, and forever discharged,

waived and relinquished any and all Released Claims against any of the Released Persons. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims they may have.

20. As of the Effective Date, with respect to all Released Claims, the Named Plaintiffs and each of the other Settlement Class Members who have not submitted Successful Opt-Outs of this Settlement agree that they are expressly waiving and relinquishing any and all rights that they have or might have relating to the Released Claims under (i) California Civil Code § 1542 which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

and (ii) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Releasing Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to the Released Claims. On their own behalf and on behalf of the Releasing Parties, the Parties agree that the foregoing release and waiver shall be and remain effective in all respects, notwithstanding such different or additional facts or their discovery of those facts, and that this Settlement Agreement contemplates the extinguishment of all such Released Claims.

21. All Class Members are bound by this Final Approval Order and Judgment, and by the terms of the Settlement Agreement.

NOW, THEREFORE, the Court, finding that no reason exists for delay, hereby directs the Department of Court Records to enter this Order forthwith.

IT IS SO ORDERED this _____ day of _____, 2024.

BY THE COURT:

_____, J.


CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2024, the foregoing was served by email on the following:

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