

**FILED**

**IN THE CIRCUIT COURT OF LONOKE COUNTY  
THIRD DIVISION**

2013 NOV -5 PM 2:45

**KATHY CANAMORE, on Behalf of  
Herself and All Others Similarly Situated,**

DEBORAH OGLESBY  
LONOKE CO. CLERK

BY PLAINTIFF *Muellers*

vs.

Case No. CV-2010-534

**WAL-MART STORES, INC. and  
BCBG MAX AZRIA GROUP, INC.**

**DEFENDANTS**

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**PRELIMINARY APPROVAL ORDER**

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WHEREAS Plaintiff Kathy Canamore ("Plaintiff"), on behalf of herself and on behalf of the Class, and Wal-Mart Stores, Inc. and BCBG Max Azria Group, Inc. ("Defendants"), all acting by and through their respective counsel, have agreed, subject to Court approval, to settle this Litigation upon the terms and conditions stated in the Stipulation of Settlement signed on OCTOBER 29, 2013 and filed with the Court on NOVEMBER 5 2013 (the "Settlement");

NOW, THEREFORE, based upon the Settlement and other papers on file in this action, statements of counsel, testimony presented and all other proceedings herein, it appears to the Court that a hearing should be held to determine whether the proposed settlement described in the Settlement is fair, reasonable, and adequate;

**IT IS HEREBY ORDERED THAT:**

The Settlement is hereby incorporated by reference in this Order and all terms defined in the Settlement will have the same meanings in this Order.

For purposes of determining whether the terms of the proposed settlement should be finally approved as fair, reasonable and adequate, the following Class is conditionally certified for settlement purposes only:

All persons who purchased Miley Cyrus-branded jewelry Products at Wal-Mart retail stores in the United States within the past five years immediately preceding the date of the filing of the Complaint through and including the date of the final approval of the Settlement in the Litigation. Excluded from the class are Defendants Wal-Mart and BCBG, their present and former directors, officers and employees, the judge presiding over this action and their immediate family members, and any member who timely files exclusion with the Court. Also excluded are any members who previously received refunds from Wal-Mart for Miley Cyrus-branded jewelry Products.

Plaintiff is preliminarily appointed as representative of the Class ("Class Representative"), and the following attorneys for Plaintiff are preliminarily appointed as counsel for the Settlement Class ("Class Counsel"):

Scott E. Poynter  
Emerson Poynter LLP  
The Rozelle-Murphy House  
1301 Scott Street  
Little Rock, AR 72202

J. Gerard Stranch, IV  
Branstetter Stranch & Jennings, PLLC  
227 Second Avenue North, Fourth Floor  
Nashville, TN 37201

Robert A. Jigarjian  
Jigarjian Law Office  
101 Lucas Valley Rd., Ste. 120  
San Rafael, CA 95903  
Tel: (415) 341-6660

If final approval of the proposed settlement is not granted by this Court or following any appeal, this Order, including the above description of the Settlement Class and the preliminary appointment of the Class Representative and Class Counsel, shall be automatically vacated, and this Order and the conditional class certification shall be null and void and shall be withdrawn and set aside in its entirety. If the Settlement is terminated or is disapproved, or this Order is vacated, in whole or in part by this Court, any appellate court and/or any other court of review,

the Settlement and the fact that it was entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including the "certifiability" of any class, and neither this Order, the Settlement, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Order or the Settlement, shall constitute a precedent or be admissible for any purpose in any pending or future litigation (in any jurisdiction or forum) involving any of the Parties and/or Released Parties or considered for any other purpose, including purposes of waiver or estoppel or the existence, certification or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment.

4. Garden City Group, Inc. ("Claims Administrator") is preliminarily appointed as Claims Administrator, and Claims Administrator's reasonable costs and fees shall be paid in accordance with the terms of the Settlement.

5. The Parties have prepared the Class Notice which has been provided to the Court. These materials, in conjunction with the remainder of the Class Notice plan as set forth in Paragraph 41 of the Settlement, comprise the notice campaign submitted to the Court. As set forth herein, the Court has reviewed and hereby approves the notice campaign, specifically the Class Notice, Publication Notice, and Banner Advertisement.

6. No later than seven (7) calendar days after the entry of this Order, the Claims Administrator shall provide the Class with notice of the proposed settlement, through (a) a published summary notice of the Settlement in a 1/6 page ad in the national edition of *USA Today*, to run once on a day between Monday and Thursday, (b) a banner advertisement, with a link to the project-dedicated settlement website, on a commercial website targeted at the purchasers of the Products which shall remain posted for an appropriate period consistent with

the period for Settlement Class Members' submission of claims; and (c) an Internet website with a copy of the Settlement Class Action Complaint and Class Notice on the settlement website. Upon entry of the Preliminary Approval Order, Settlement Class Counsel shall publish on its websites a summary notice of the Settlement and shall issue a press release, in a form agreed between the Parties, to PR Newswire and other major media outlets announcing the Settlement and settlement website. All such actions shall be taken as described in the Settlement.

7. Prior to the Final Approval Hearing provided for in paragraph 10, below, the Claims Administrator shall file with the Court a declaration confirming compliance with the notice campaign in accordance with the terms of this Order, describing the efforts undertaken to implement the notice campaign on or before the Final Approval Hearing, and certifying that such efforts are consistent with other similar court approved notice programs.

8. The costs of providing and confirming the dissemination of Class Notice as required by paragraphs 5-6, above, shall be borne by Defendants as agreed in the Settlement.

9. The Court preliminarily finds that the notice campaign is reasonable, constitutes the best notice practicable under the circumstances, is reasonably calculated to apprise Class Members of the pendency of the Settlement, is due, adequate, and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Arkansas Rules of Civil Procedure and the requirements of due process under the Arkansas and United States Constitutions.

10. The Court will hold a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed settlement at 9:00 A.m., on December 30, 2013, in the Third Division Circuit Courtroom, Lonoke County Courthouse, Lonoke, Arkansas. During the Final Approval Hearing, the Court will consider whether the proposed

settlement described in the Settlement, including the proposed award of attorneys' fees, costs and expenses to Class Counsel and a reasonable incentive award to the Class Representative, should be approved as fair, reasonable, and adequate, and whether the Court should enter the proposed Final Judgment approving the proposed settlement and dismissing this Action on the merits, with prejudice, and without leave to amend. Upon a showing of good cause, the Final Approval Hearing may be postponed, adjourned or rescheduled by order of the Court without further notice to the members of the Settlement Class.

11. Any Class Member who wants to exclude himself or herself from the Class and not be bound by this Agreement must do so by filing with the Court and serving upon the following a written notice to opt out of the Settlement by fourteen (14) days before the date set for the Final Approval Hearing:

Scott E. Poynter  
Emerson Poynter LLP  
The Rozelle-Murphy House  
1301 Scott Street  
Little Rock, AR 72202

Jess Askew III  
Williams & Anderson PLC  
Twenty-Second Floor  
111 Center Street  
Little Rock, AR 72201

Erica Alterwitz  
BCBG Max Azria Group, Inc.  
2761 Fruitland Avenue  
Vernon, California 90058

12. Class Members who submit timely and valid requests for exclusion in the manner set forth in the notice and the Settlement shall be excluded from the Settlement Class. Such persons shall have no rights under the proposed settlement, shall not share in any distribution of funds under the proposed settlement, and shall not be bound by the proposed settlement or by any Final Judgment approving the proposed settlement. Such persons shall retain the right to pursue a separate and independent remedy against Defendants. Any potential Class Member who does

not submit a timely, written request for exclusion will be bound by all proceedings, orders, and judgments in this Action, including the terms of the proposed settlement, if approved.

13. All members of the Settlement Class, unless and until they have timely excluded themselves from the Settlement Class pursuant to the terms established under paragraph 11, above, are enjoined from filing, commencing, prosecuting, intervening in, or participating in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims; and all members of the Settlement Class are enjoined from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any members of the Settlement Class who have not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims.

14. Class Members who do not request exclusion from the Settlement Class may object to the proposed settlement. Class Members who choose to object to the proposed settlement ("Objectors") must file objections with the Court, with copies to Settlement Class Counsel and Defendant's undersigned counsel no later than fourteen (14) days before the Final Approval Hearing. The objections must include (a) a notice of intention to appear; (b) a sworn statement by the Class Member attesting to his/her membership in the Settlement Class and the specific grounds for the objections and any reasons why the Settlement Class Member desires to appear and be heard, (c) all copies of documents that the Settlement Class Member desires the Court to consider, (d) the identity of the Class Member's counsel representing the objector and/or

who will appear at the Final Approval Hearing, (e) a list of all persons who will be called to testify by the objector at the Final Approval Hearing in support of the objection; and (f) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing. Class Members who fail to make objections in this manner will be deemed to have waived any objections and will be foreclosed from making any objections to this Agreement. Unless otherwise ordered by the Court, the Settlement Class members shall not be permitted to speak at the Final Approval Hearing unless they have submitted a timely objection. While the declaration described in (b) above is *prima facie* evidence that the objector is a member of the Settlement Class, Plaintiff and Defendants or both may take discovery regarding the matter, subject to Court Approval. Any Class Member complying with the foregoing may appear at the Final Approval Hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable Arkansas law, in opposition to the fairness, reasonableness and adequacy of the proposed settlement, and on the application for an award of attorneys' fees and costs. The right to object to the proposed settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity. If the Objector is represented by an attorney, such attorney must comply with all applicable Arkansas laws and rules for filing pleadings and documents in Arkansas Courts.

15. Class Counsel and the Parties shall have the right to respond to any objection no later than seven (7) days prior to the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for the Parties.

16. Any Class Member who does not file a timely notice of intent to object in accordance with the above paragraphs and the Settlement shall waive the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the proposed settlement. Class Members who object to the proposed settlement shall remain Class Members, and have voluntarily waived their right to pursue an independent remedy against Defendants. If their objections to the proposed settlement are overruled in whole or in part, they will be forever bound by the Judgment of the Court. Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions set forth in paragraph 11 above and in the Settlement.

17. The proposed settlement and terms of the Settlement are hereby preliminarily approved as sufficiently fair, reasonable, adequate, and in the best interest of the Class Members to warrant sending notice to the Settlement Class. However, the proposed settlement is not to be deemed an admission of liability or fault by Defendants or by any other person, or a finding of the validity of any claims asserted in the litigation of any wrongdoing or of any violation of law by Defendants, or an admission by Defendants that the Action is or should be certified as a class. The proposed settlement and any documents, attachments or other materials submitted to the Court in furtherance of said proposed settlement, shall not be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, or as an admission or concession of liability or wrongdoing of any nature on the part of either Defendant. In the event the proposed settlement is not finally approved for any reason, Defendants shall retain the right to object to the maintenance of the Action and/or any other case as a class action under Rule 23 of the Arkansas Rules of Civil Procedure or any other rule, law or



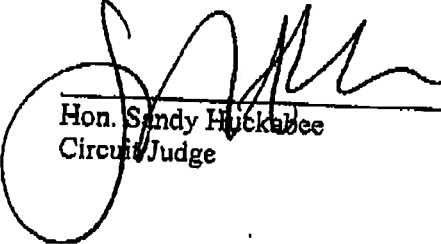
provision applicable in any state or federal court and to contest and defend the Action and/or any other case as provided in the Settlement.

19. Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without further notice to the Settlement Class.

20. It is hereby ordered that the Litigation shall be stayed pending further proceedings in connection with the effectuation of the proposed settlement

IT IS SO ORDERED.

Date: November 5, 2013

  
Hon. Sandy Huckabee  
Circuit Judge