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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Western Division**

DIANA SOUKHAPHONH, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

HOT TOPIC, INC., a California
corporation,

Defendant.

Case No. CV 16-5124-DMG (AGRx)

**ORDER GRANTING UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT [237]**

1 On May 17, 2019, Plaintiff Diana Soukhaphonh filed an Unopposed Motion
2 for Preliminary Approval of Class Action Settlement Agreement. [Doc. # 237.] On
3 July 26, 2019, the Court held a hearing on Plaintiff’s Unopposed Motion. The Court
4 has considered Plaintiffs’ Unopposed Motion, its supporting materials, the parties’
5 supplemental briefing relating thereto, and their representations at the hearing, and
6 hereby finds and orders as follows:

7 1. Unless otherwise stated, the terms and phrases in this Order shall have
8 the same meaning as ascribed to them in the Settlement Agreement found in Docket
9 Entry No. 237-1.

10 2. The Court hereby preliminarily approves the Settlement Agreement in
11 its entirety subject to the Final Approval Hearing referred to in paragraph 5 of this
12 Order.¹

13 3. This Court finds that it has jurisdiction over the subject matter of this
14 action and over all Parties to the Action.

15 4. The Court finds that, subject to the Final Approval Hearing, the
16 Settlement Agreement is fair, reasonable, and adequate, within the range of possible
17 approval, and in the best interests of the Settlement Class. The Court further finds
18 that the Settlement Agreement substantially fulfills the purposes and objectives of
19 the class action, and provides fair, reasonable, and adequate relief to the Settlement
20 Class without the risks, burdens, costs, or delay associated with continued litigation,
21 trial, and/or appeal. The Court also finds that the Settlement Agreement (a) is the
22 result of arm’s-length negotiations between experienced class action attorneys; (b)
23 is sufficient to warrant notice of the Settlement Agreement and the Final Approval
24 Hearing to be disseminated to the Settlement Class; (c) satisfies Federal Rule of
25 Civil Procedure 23 and the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715;
26 and (d) is not a finding or admission of liability by Defendant or any other person,

27 ¹ At the July 26, 2019 hearing, the parties agreed to waive a portion of Section 4.4 of the Settlement
28 Agreement that requires objecting Settlement Class Members to disclose “any and all agreements that relate to the
objection or the process of objecting—whether written or oral—between objector or the objector’s counsel and any
other person or entity.” [Doc. # 237-1 at 17.] Therefore, the Court need not—and does not—approve that provision.

1 nor a finding of the validity of any claims asserted in the Action or of any
2 wrongdoing or any violation of law.

3 **Final Approval Hearing**

4 5. The Final Approval Hearing shall be held before this Court on
5 **February 7, 2020 at 10:00 a.m.** at the United States Courthouse, 350 West 1st
6 Street, Los Angeles, CA 90012, Courtroom 8C, 8th Floor, to determine (a) whether
7 the proposed settlement of the Action on the terms and conditions provided for in
8 the Settlement Agreement is fair, reasonable, and adequate and should be given
9 final approval by the Court; (b) whether a judgment and order of dismissal with
10 prejudice should be entered; (c) whether to approve the payment of attorneys' fees,
11 costs, and expenses to Class Counsel; and (d) whether to approve the payment of
12 an incentive award to the Class Representative. The Court may adjourn the Final
13 Approval Hearing without further notice to members of the Settlement Class.

14 6. Class Counsel shall file the Motion for Attorneys' Fees and Expenses
15 and Plaintiff's Incentive Award on or before November 22, 2019. Class Counsel
16 shall file the Motion for Final Approval of the Settlement (which shall respond to
17 any Settlement Class Members' objections) on or before January 3, 2020.

18 **Certification of the Settlement Class**

19 7. For purposes of settlement only: (a) David P. Milian and Ruben
20 Conitzer of Carey Rodriguez Milian Gonya, LLP, and Robert Ahdoot of Ahdoot &
21 Wolfson, PC are appointed Class Counsel for the Settlement Class; and (b) Diana
22 Soukhaphonh is named as Class Representative. The Court finds that these
23 attorneys are competent and capable of exercising the responsibilities of Class
24 Counsel and that Plaintiff Diana Soukhaphonh will adequately protect the interests
25 of the Settlement Class defined below.

26 8. For purposes of settlement only, the Court conditionally certifies the
27 following Settlement Class as defined in the Settlement Agreement:
28

1 All Persons who received one or more text messages sent by or
2 on behalf of Defendant Hot Topic to a cellular phone between
3 August 1, 2012 and July 26, 2019.

4 Excluded from the Settlement Class are: (1) any Judge or Magistrate
5 presiding over this Action and members of their families; (2) the Defendant,
6 Defendant's subsidiaries, parent companies, successors, predecessors, and any entity
7 in which the Defendant or its parent company, if any, has a controlling interest and
8 its current or former officers, directors, agents, attorneys, and employees; (3) persons
9 who properly execute and file a valid and timely request for exclusion from the class
10 and their legal representatives, successors or assigns.

11 9. The Court finds, subject to the Final Approval Hearing referred to in
12 Paragraph 5 above, that the Settlement Agreement is fundamentally fair, adequate,
13 and reasonable, and, solely within the context of and for the purposes of settlement,
14 that the Settlement Class satisfies the requirements of Federal Rule of Civil
15 Procedure 23, specifically, that: the Settlement Class is so numerous that joinder
16 of all members is impracticable; there are questions of fact and law common to the
17 Settlement Class (*e.g.*, whether Defendant sent text messages to the Settlement
18 Class without prior consent in a manner that violated the Telephone Consumer
19 Protection Act, 47 U.S.C. § 227 ("TCPA"), and whether Plaintiff and the Settlement
20 Class members are entitled to uniform statutory damages under the TCPA); the
21 claims of the Class Representative are typical of the claims of the members of the
22 Settlement Class; the Class Representative and Class Counsel will fairly and
23 adequately protect the interests of the members of the Settlement Class; common
24 questions of law or fact predominate over questions affecting individual members;
25 and a class action is a superior method for fairly and efficiently adjudicating the
26 Action.

27 10. If the Settlement Agreement does not receive the Court's final
28 approval, or if final approval is reversed on appeal, or if the Settlement Agreement
is terminated or otherwise fails to become effective, the Court's grant of class

1 certification shall be vacated, and the Class Representative and the Settlement Class
2 will once again bear the burden of establishing the propriety of class certification.
3 In such case, neither the certification of the Settlement Class for settlement
4 purposes, nor any other act relating to the negotiation or execution of the Settlement
5 Agreement shall be considered as a factor in connection with any class certification
6 issue(s).

7 **Notice and Administration**

8 11. The Court approves, as to form, content, and distribution, the Notice
9 Plan set forth in the Settlement Agreement, including the Claim Form, the Email
10 Notice, the Mail Notice, the Settlement Website Notice, the frequently asked
11 questions used for the Settlement Website, and the script for the toll-free telephone
12 number, with the modifications approved by the Court following the July 26, 2019
13 hearing. With these approved modifications, the Court finds that the Notice is the
14 best notice practicable under the circumstances, and that the Notice complies fully
15 with the requirements of the Federal Rules of Civil Procedure. The Court also finds
16 that the Notice constitutes valid, due and sufficient notice to all persons entitled
17 thereto, and meets the requirements of Due Process. The Court further finds that
18 the Notice is reasonably calculated to, under all circumstances, reasonably apprise
19 members of the Settlement Class of the pendency of this action, the terms of the
20 Settlement Agreement, and the right to object to the settlement and to exclude
21 themselves from the Settlement Class.

22 12. The Court appoints KCC Class Action Services, LLC as Settlement
23 Administrator of the Settlement Agreement.

24 13. The Settlement Administrator is directed to publish the Settlement
25 Website Notice and the Claim Form on the Settlement Website and to send direct
26 notice via U.S. Mail and email in accordance with the deadlines provided below.
27 The Settlement Administrator shall also maintain the Settlement Website to provide
28 full information about the Settlement and allow for the filing of Claims online.

1 **Submission of Claims and Requests for Exclusion from Class**

2 14. Members of the Settlement Class who wish to receive benefits under
3 the Settlement Agreement must complete and submit a timely and valid Claim
4 Form(s) in accordance with the instructions contained therein. All Claim Forms
5 submitted via U.S. Mail must be postmarked by December 13, 2019.
6 December 13, 2019 is also the deadline by which Claim Forms must be submitted
7 online. Payments to all Settlement Class Members with Approved Claims shall be
8 made within thirty (30) days after the Effective Date, which is defined in
9 Section 1.12 of the Settlement Agreement.

10 15. Any persons falling within the definition of the Settlement Class may,
11 upon valid and timely request, exclude themselves or “opt out” from the Class. Any
12 such person may do so if, on or before the Objection/Exclusion Deadline of
13 December 13, 2019, the Settlement Class Member complies with the exclusion
14 procedures set forth in the Settlement Agreement and Notice. Any members of the
15 Class so excluded shall neither be bound by the terms of the Settlement Agreement
16 nor entitled to any of its benefits.

17 16. Any members of the Settlement Class who elect to exclude themselves
18 or “opt out” of the Settlement Agreement must file a written request with the
19 Settlement Administrator, postmarked no later than the Objection/Exclusion
20 Deadline. The request for exclusion must comply with the exclusion procedures set
21 forth in the Settlement Agreement and Notice (as modified by the Court) and
22 include the Settlement Class member’s name and address, a signature, the name and
23 number of the case, and a statement that he or she wishes to be excluded from the
24 Settlement Class for the purposes of this Settlement. Each request for exclusion
25 must be submitted individually. So called “mass” or “class” opt-outs shall not be
26 allowed.

27 17. Individuals who opt out of the Class relinquish all rights to benefits
28 under the Settlement Agreement and will not release their claims. Settlement Class
Members who fail to submit a valid and timely request for exclusion, however, shall

1 be bound by all terms of the Settlement Agreement and the Final Judgment,
2 regardless of whether they have requested exclusion from the Settlement
3 Agreement.

4 **Appearances and Objections**

5 18. At least twenty-one (21) calendar days before the Final Approval
6 Hearing, any person who falls within the definition of the Settlement Class and who
7 does not request exclusion from the Class may enter an appearance in the Action,
8 at their own expense, individually or through counsel of their own choice. Any
9 Settlement Class Member who does not enter an appearance will be represented by
10 Class Counsel.

11 19. Any members of the Settlement Class who have not timely filed a
12 request for exclusion may object to the fairness, reasonableness, or adequacy of the
13 Settlement Agreement or to a Final Judgment being entered dismissing the Action
14 with prejudice in accordance with the terms of the Settlement Agreement, or to the
15 attorneys' fees and expense reimbursement sought by Class Counsel, or to the
16 Incentive Award sought by the Class Representative. Notwithstanding the
17 foregoing, the parties have agreed to waive Section 4.4(7) of the
18 Settlement Agreement. By November 22, 2019, papers supporting the Motion for
19 Attorneys' Fees and Expenses and Plaintiff's Incentive Award shall be filed with
20 the court and posted to the Settlement Website. Members of the Settlement Class
21 may object to the fee motion on their own, or may do so through separate
22 counsel at their own expense.

23 20. To object, Settlement Class Members must sign and submit a written
24 objection which must be postmarked on or before the Objection/Exclusion Deadline
25 of December 13, 2019. To be valid, the objection must strictly comply with the
26 objection procedures set forth in the Settlement Agreement and Notice (as
27 modified), except for the procedure that was modified by Paragraph 19 above.

28 21. Members of the Class who fail to file and serve timely written
objections in compliance with the requirements of this Order and the Settlement

1 Agreement shall be deemed to have waived any objections and shall be foreclosed
 2 from making any objections (whether by appeal or otherwise) to the Settlement
 3 Agreement or to any of the subjects listed in paragraph 5, above, *i.e.*, (a) whether
 4 the proposed settlement of the Action on the terms and conditions provided for in
 5 the Settlement Agreement is fair, reasonable, and adequate and should be given
 6 final approval by the Court; (b) whether judgment and order of dismissal with
 7 prejudice should be entered; (c) whether to approve the payment of attorneys' fees
 8 and expenses to Class Counsel; and (d) whether to approve the payment of an
 9 incentive award to the Class Representative.

10 22. Based on the foregoing, the Court sets the following schedule for the
 11 Final Approval Hearing and the actions which must take place before such hearing:

Event	Date
Deadline for Publishing the Settlement Website Notice and Claim Form on the Settlement Website	August 19, 2019
Deadline for Completion of Emailed and Mailed Notices	August 23, 2019
The Parties' Joint Report re the Status of Class Notice and the Interim Claims Rate	October 22, 2019
Deadline for Counsel's Motion for Attorneys' Fees and Expenses and Plaintiff's Incentive Award	November 22, 2019

1 Deadline to Submit 2 Requests for Exclusion 3 (opting-out), Objections, 4 and Claim Forms 5 (postmark date)	December 13, 2019
6 Deadline for Filing 7 Motion for Final Approval 8 of the Settlement	January 3, 2020
9 Final Approval Hearing	February 7, 2010 at 10:00 a.m.

11 **Further Matters**

12 23. All further proceedings in the Action are ordered **STAYED** until Final
 13 Judgment or termination of the Settlement Agreement, whichever occurs earlier,
 14 except for those matters necessary to obtain and/or effectuate final approval of the
 15 Settlement Agreement. The Court **VACATES** all currently operative dates and
 16 deadlines except for those imposed by this Order.

17 24. Members of the Settlement Class shall be bound by all determinations
 18 and judgments in the Action concerning the Action and/or Settlement Agreement,
 19 whether favorable or unfavorable.

20 25. The Court retains jurisdiction to consider all further applications
 21 arising out of or connected with the Settlement Agreement. The Court may approve
 22 the Settlement, with such modifications as may be agreed to by the parties, if
 23 appropriate, without further notice to the Class.

24 26. Any Settlement Class Member who does not timely and validly submit
 25 a Claim: (a) shall be forever barred from participating in any distributions of the
 26 Settlement Fund; (b) shall be bound by the provisions of the Settlement Agreement
 27 and all proceedings, determinations, orders and judgments in the Action relating
 28 thereto, including, without limitation, the Judgment and the Releases provided for

1 therein, whether favorable or unfavorable to the Settlement Class; and (c) shall
2 forever be barred and enjoined from directly or indirectly filing, commencing,
3 instituting, prosecuting, maintaining, or intervening in any action, suit, cause of
4 action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether
5 in the United States or elsewhere, on the Settlement Class Member's own behalf or
6 in a representative capacity, that is based upon or arises out of any or all of the
7 Released Claims against any of the Defendant and the other Released Parties, as
8 more fully described in the Settlement Agreement.

9 27. If the Settlement Agreement is not approved by the Court in complete
10 accordance with its terms, each party will have the option of having the Action
11 revert to its status as if the Settlement Agreement had not been negotiated, made, or
12 filed with the Court. In such event, the parties will retain all rights as if the
13 Settlement Agreement was never agreed upon.


14 28. In the event that the Settlement Agreement is terminated pursuant to
15 the provisions of the Settlement Agreement or for any reason whatsoever the
16 approval of it does not become Final then: (i) the Settlement Agreement shall be
17 null and void, including any provision related to the award of attorneys' fees, and
18 shall have no further force and effect with respect to any party in this Action, and
19 shall not be used in this Action or in any other proceeding for any purpose; (ii) all
20 negotiations, proceedings, documents prepared, and statements made in connection
21 therewith shall be without prejudice to any person or party hereto, shall not be
22 deemed or construed to be an admission by any party of any act, matter, or
23 proposition, and shall not be used in any manner or for any purpose in any
24 subsequent proceeding in this Action or in any other action in any court or other
25 proceeding; (iii) other than as expressly preserved by the Settlement Agreement in
26 the event of its termination, the Settlement Agreement shall have no further force
27 and effect with respect to any party and shall not be used in the Action or any other
28 proceeding for any purpose; and (iv) any party may elect file a motion to effectuate
the provisions of this paragraph, and none of the non-moving parties (or their

1 counsel) shall oppose any such motion.

2 29. Nothing in this Preliminary Approval Order is, or may be construed
3 as, an admission or concession on any point of fact or law by or against Class
4 Counsel, the Class Representative, or Defendant.

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6 **IT IS SO ORDERED.**

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8 DATED: July 29, 2019

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11 DOLLY M. GEE
12 UNITED STATES DISTRICT JUDGE
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