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**F I L E D**  
Clerk of the Superior Court  
**MAR 18 2016**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

ALEXANDRA M. ALVAREZ, on behalf of  
herself and all others similarly situated,  
  
Plaintiff,  
  
vs.  
  
KMART HOLDING CORPORATION, a  
Delaware corporation; KMART  
CORPORATION, a Michigan corporation;  
and DOES 2 through 50, inclusive,  
  
Defendants.

Case No. 37-2008-00097746-CU-BT-CTL  
  
**CLASS ACTION**  
  
**~~[PROPOSED]~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**  
  
*Complaint filed: December 10, 2008*

On March 18, 2016, this Court heard Plaintiff Alexandra M. Alvarez's unopposed motion for preliminary approval of class action settlement under California Rule of Court 3.769(c) and (d). This Court reviewed the motion, including the Settlement Agreement. Based on this review and the findings below, the Court finds good cause to GRANT the motion.

**FINDINGS:**

1. Unless otherwise specified, defined terms in this Order Granting Preliminary Approval of Class Action Settlement have the same definition as the terms in the Settlement Agreement.

1           2.     The Settlement Agreement falls within the range of possible approval as fair,  
2 reasonable and adequate.

3           3.     The Court finds that (a) the Full Class Notice, Summary Notice, In-Store Notice  
4 and Summary Published Notice, attached as Exhibits A, B, C and D to the Settlement  
5 Agreement, respectively, constitute the best notice practicable under the circumstances, (b) the  
6 method for providing notice to the Class members set forth in the Settlement Agreement  
7 constitutes valid, due, and sufficient notice to all members of the Class, and (c) the notices and  
8 notice plan set forth in the Settlement Agreement comply fully with the requirements of  
9 California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the  
10 California and United States Constitutions, and other applicable law.

11           4.     The Class certified in this action on January 3, 2014, and as modified for settlement  
12 purposes herein, is so numerous that joinder of all Class Members is impracticable, Plaintiff's  
13 claims are typical of the Class' claims, there are questions of law and fact common to the Class,  
14 which predominate over any questions affecting only individual Class Members, and Class  
15 certification is superior to other available methods for the fair and efficient resolution by  
16 settlement of the controversy. Plaintiff Alexandra M. Alvarez remains certified as the class  
17 representative; and Stonebarger Law, APC and Patterson Law Group, APC remain as Class  
18 Counsel.

19 **IT IS ORDERED THAT:**

20           1.     **Settlement Approval.** The Settlement Agreement, the Full Class Notice,  
21 Summary Notice, In-Store Notice and Summary Published Notice, attached as Exhibits A, B, C  
22 and D to the Settlement Agreement, respectively, are preliminarily approved.

23           2.     **Modification of the Class Definition.** The definition of the Class previously  
24 certified in this action on January 3, 2014 is hereby modified for settlement purposes pursuant to  
25 California Rules of Court, Rules 3.764 and 3.769(d), to include the following individuals:

26                   All persons from whom Kmart requested and recorded a ZIP code in conjunction  
27                   with a credit card purchase transaction in a California Kmart retail store during  
28                   the period of time from December 10, 2007 through December 8, 2008.

1 Excluded from the Class are: (a) officers and directors of Kmart and its corporate parents,  
2 subsidiaries, affiliates, or any entity in which Kmart has a controlling interest, and the legal  
3 representatives, successors, or assignees of any such excluded persons or entities; and (b) the  
4 Court. The following transactions do not qualify an individual as a Class Member: (a) any  
5 specific transaction wherein a credit card issued to a business was used; (b) any specific  
6 transaction that involved a special purpose incidental but related to the transaction, and that  
7 required personal identification information, including but not limited shipping, delivery,  
8 servicing, cash advance or layaway, tailoring or alterations, installation, tax exempt transactions,  
9 gift registry, or special orders; and (c) any specific transaction that involved returns or exchanges  
10 of purchased merchandise.

11 **3. Appointment of Claims Administrator.** KCC, LLC is hereby appointed as the  
12 Claims Administrator for this case.

13 **4. Provision of Class Notice.** The Settlement Administrator will notify Class  
14 Members of the Settlement in the manner specified under Section III(E)(2) of the Settlement  
15 Agreement. Defendant will pay all costs associated with settlement administration and providing  
16 notice to Class Members.

17 **5. Objection to Settlement.** Class Members who have not submitted a timely  
18 written exclusion request pursuant to paragraph 7 below and who want to object to the  
19 Settlement Agreement may appear at the Final Approval Hearing, either in person or through  
20 personal counsel hired at the Class Member's expense. Objecting Class Members may also  
21 serve a written objection on the Settlement Administrator no later than forty-five (45) calendar  
22 days after notice is sent. Written objections must state: (1) the name of the Action, "*Alexandra M.*  
23 *Alvarez v. Kmart Holding Corporation, Case No. 37-2008-00097746-CU-BT-CTL*"; (2) the full  
24 name, address, email address, and telephone number of the person objecting; (3) the last four digits  
25 of the credit card used during each transaction, and (4) the Class Member's ZIP code at the time  
26 of each transaction. A written objection from any Unknown Class Member must also identify (5)  
27 the date(s) of the Class Member's credit card transaction(s) with Kmart during the class period,  
28 (6) the store location where each transaction took place, and (7) the month and year of the



<b>SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO</b>	<b>COURT USE ONLY</b>
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): James R. Patterson, Esq. (SBN: 211102)                      Tel: (619) 756-6990 PATTERSON LAW GROUP    Fax: (619) 756-6991 402 West Broadway, 29 <sup>th</sup> Floor San Diego, CA 92101	
SHORT CASE TITLE Alvarez v. Kmart Holding Corporation, et al	JUDGE: JOEL M. PRESSMAN DEPT: 66
ATTORNEYS FOR PLAINTIFF Alexandra M. Alvarez	Case No. 37-2008-00097746-CU-NP-CTL

**PROOF OF SERVICE**

I, the undersigned, say: I am over 18 years of age, employed in the County of San Diego, California, in which the within-mentioned service occurred; and that I am not a party to the subject cause. My business address is 402 West Broadway, 29<sup>th</sup> Floor, San Diego, California 92101.

On March 18, 2016, I caused the following document(s) to be served:

**NOTICE OF ENTRY OF ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

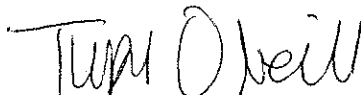
to each addressee(s) named herein and addressed as follows:

Matthew R. Orr Scott R. Hatch CALL, JENSEN & FERRELL 610 Newport Center Drive, Ste. 700 Newport Beach, CA 92660 Tel: 949-717-3000/ Fax: 949-717-3100 <a href="mailto:morr@calljensen.com">morr@calljensen.com</a> <a href="mailto:shatch@calljensen.com">shatch@calljensen.com</a>	<i>Attorneys for Defendant KMART HOLDING CORPORATION</i>
David F. McDowell MORRISON & FOERSTER LLP 707 Wilshire Blvd. Suite 6000 Los Angeles, Ca 90017 Tel: 213-892-5200/ Fax: 213-892-5454 <a href="mailto:DMcDowell@mof.com">DMcDowell@mof.com</a>	<i>Attorneys for Defendant KMART HOLDING CORPORATION</i>
Gene J. Stonebarger STONEBARGER LAW 75 Iron Point Circle, Suite 145 Folsom, CA 95630 Tel: 916-235-7140/ Fax: 916- 235-7141 <a href="mailto:gstonebarger@stonebargerlaw.com">gstonebarger@stonebargerlaw.com</a>	<i>Attorneys for Plaintiff and the Class</i>

( XX ) **BY MAIL.** I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a.

- ( ) BY FAX. I faxed a copy of the document(s) to the person at the fax number(s) listed in the addressee(s). The telephone number of the sending party facsimile machine was 619.756.6991. The transmission was reported as complete and without error. No error was reported by the fax machine that I used.
- ( ) BY PERSONAL SERVICE. Cal Express Messenger Service hand-delivered said document(s) to the addressee(s) designated pursuant to Code of Civil Procedure §1011.
- ( **XX** ) BY ELECTRONIC MAIL TRANSMISSION: A PDF format copy of such document(s) was sent by via e-mail or electronic mail transmission to each such person at the e-mail address listed above. The transmission was reported as complete and without error.
- ( ) BY OVERNIGHT MAIL. I caused such envelope to be delivered via overnight delivery addressed to the addressee(s) designated. Such envelope was deposited for delivery with Federal Express this same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Executed on March 18, 2016.

  
\_\_\_\_\_  
Tupu O'Neill