

NOTICE OF CLASS ACTION SETTLEMENT

*Alexandra M. Alvarez v. Kmart Holding Corporation,  
Case No. 37-2008-00097746-CU-BT-CTL  
Superior Court of California, San Diego County*

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

*A California Superior Court authorized this notice. This is not a solicitation from a lawyer.*

- **Under the Settlement you are entitled to receive one of three awards:**
  - 1) A Cash Award, which is a check for \$10;
  - 2) a \$15 Merchandise Voucher, which is a voucher redeemable for use during a single purchase at Kmart, is good on all sale and discounted merchandise and can be used in connection with all promotions, is fully transferrable, and will expire after five (5) years from the date issued; or
  - 3) \$15 worth of Shop Your Way Rewards Points, which are points for use during any purchase at Kmart, are good on all sale and discounted merchandise and can be used in connection with all promotions, will expire after one (1) year from the date issued, and are otherwise subject to the current Shop Your Way Rewards terms and conditions.
- **Your legal rights are affected whether you act or don't act. Please read this entire notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
RECEIVE SETTLEMENT BENEFITS	<b>If you received notice of this Settlement in the mail or by email, then you are a Known Class Member. You must fully complete and timely submit a claim form to receive either the \$10 Cash Award, \$15 Merchandise Voucher, or \$15 Shop Your Way Rewards Points. If you do not submit a claim form, you will receive a pro rata share of any amount remaining in the \$21,000,000 Settlement Fund, after subtracting out all payments required under the Settlement Agreement, either in the form of Shop Your Way Rewards Points if you are a member of that program, or a Merchandise Voucher if not. If you did not receive notice of this Settlement by mail or email, you are an Unknown Class Member. You will not receive any benefits under the Settlement unless you follow the instructions set forth in this Notice and submit a claim form to receive either the \$10 Cash Award, \$15 Merchandise Voucher, or \$15 Shop Your Way Rewards Points.</b>
EXCLUDE YOURSELF	<b>Get no Settlement benefits, and be able to bring your own suit.</b>
OBJECT	<b>Tell the Court about why you don't like the Settlement.</b>
GO TO A HEARING	<b>Ask to speak in Court about the fairness of the Settlement.</b>

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Settlement benefits will become available if the Court approves the Settlement and after any appeals are finished. Please be patient.

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**BASIC INFORMATION**

**1. Why Did I Get This Notice?**

The Court ordered this notice because you have a right to know about a proposed Settlement of a class action lawsuit of which you may be a member, and about your options, before the Court decides whether to approve the Settlement.

If the Court approves it, and after any objections and appeals are resolved, if you submit a valid Claim Form, Kmart will provide you with either the Cash Award, Merchandise Voucher or Shop Your Way Rewards Points. This notice explains the lawsuit, the Settlement, your legal rights, the benefits available, who is eligible for them, and how to get them.

The Court in charge of the case is the Superior Court for the State of California, County of San Diego, and the case is entitled *Alexandra M. Alvarez v. Kmart Holding Corporation*,

Case No. 37-2008-00097746-CU-BT-CTL.

The person who sued is called the Plaintiff, and the companies she sued, Kmart Corporation and Sears Holding Corporation (“Kmart”), are called the Defendants.

## **2. What Is This Lawsuit About?**

The lawsuit claimed that Kmart violated California Civil Code section 1747.08 by requesting and recording personal identification information, in the form of ZIP codes, from its customers who paid for merchandise with a credit card at retail stores located in California. Kmart denies that it violated California Civil Code section 1747.08.

On October 22, 2015, the Parties participated in a mediation presided over by Judge Edward Infante, Ret., of JAMS – San Francisco. Following mediation, the Parties reached an agreement to settle this case fully and finally. Kmart does not admit any liability or that they have in any way violated Civil Code Section 1747.08 or any other provision of law.

Under the Settlement, Class Members are entitled to receive one of three awards:

- 1) A Cash Award, which is a check for \$10;
- 2) a \$15 Merchandise Voucher, which is a voucher redeemable for use during a single purchase at Kmart, is good on all sale and discounted merchandise and can be used in connection with all promotions, is fully transferrable, and will expire after five (5) years from the date issued; or
- 3) \$15 worth of Shop Your Way Rewards Points, which are points for use during any purchase at Kmart, are good on all sale and discounted merchandise and can be used in connection with all promotions, will expire after one (1) year from the date issued, and are otherwise subject to the current Shop Your Way Rewards terms and conditions.

## **3. Why Is This a Class Action?**

In a class action, one or more people, called Class Representatives (in this case Alexandra M. Alvarez), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who ask to be excluded from the Class. Superior Court Judge Joel Pressman is in charge of this class action.

## **4. Why Is There a Settlement?**

Both sides agreed to the Settlement. Plaintiff and her attorneys think the Settlement is best for the Class Members because it will avoid the cost and delay of appeals, and the risks inherent with continuing to litigate the claims.

### **WHO IS IN THE SETTLEMENT**

## **5. How Do I Know if I Am Part of the Settlement?**

You are part of the Settlement if:

- You used a credit card issued for consumer credit purposes to purchase goods from a Kmart retail store in the State of California during the period of time from December 10, 2007 through December 8, 2008 (“Class Period”); and
- A Kmart employee requested and recorded your ZIP code in conjunction with the credit card transaction, unless one of the following applies (“Excluded Transactions”):

- You used a credit card issued to a business;
- The information was requested in connection with a special order, delivery, cash advance or layaway, tailoring or alterations, installation, tax exempt transactions, or gift registry; or
- The transaction was a return or exchange of purchased merchandise.

### **THE SETTLEMENT BENEFITS—WHAT YOU GET**

#### **6. What Does the Settlement Provide?**

The Settlement provides for Kmart to establish a monetary fund in the amount of \$21,000,000. This monetary fund paid by Kmart will be available to satisfy: (a) Cash Awards to Class Members; (b) Merchandise Vouchers to Class Members; (c) Shop Your Way Rewards Points to Class Members; (c) the Class Representative Payment, as discussed below, approved by the Court; (d) Class Counsel Fees and Litigation Expenses Payment, as discussed below, approved by the Court; and (e) settlement administrative costs.

Under the Settlement, Class Members can elect one of three awards:

- 1) A Cash Award, which is a check for \$10;
- 2) a \$15 Merchandise Voucher, which is a voucher redeemable for use during a single purchase at Kmart, is good on all sale and discounted merchandise and can be used in connection with all promotions, is fully transferrable, and will expire after five (5) years from the date issued; or
- 3) \$15 worth of Shop Your Way Rewards Points, which are points for use during any purchase at Kmart, are good on all sale and discounted merchandise and can be used in connection with all promotions, will expire after one (1) year from the date issued, and are otherwise subject to the current Shop Your Way Rewards terms and conditions.

After all timely Claims are submitted, any remaining money from the \$21,000,000 Settlement Fund, after subtracting out all Claims benefits, Class Representative Payment, Class Counsel Fees, Class Counsel Expenses, and Administration Costs, will be distributed on a pro-rata basis to the non-claiming Known Class Members. Non-Claiming Known Class Members Who Are Shop Your Way Rewards Members shall receive their pro rata portion of the Fund Residue in the form of Shop Your Way Rewards Points. Non-Claiming Known Class Members Who Are Not Shop Your Way Rewards Members shall receive their pro rata portion of the Fund Residue in the form of a Merchandise Voucher.

### **HOW YOU CAN PARTICIPATE IN THE SETTLEMENT**

#### **7. How Can I Participate in the Settlement?**

The process to receive benefits offered under the Settlement depends on how you received notice of the Settlement.

If you received notice of this Settlement by mail or email, then Kmart records show that you are a Known Class Member. If you submit a timely claim form, you will receive your choice of a Cash Award of \$10, a \$15 Merchandise Voucher, or \$15 worth of Shop Your Way Rewards Points. If you do not submit a timely claim form, you will receive a pro rata share of the settlement fund, after the payments and distribution of awards to persons who submit a claim, in the form of either a Merchandise Voucher or Shop Your Way Rewards Points if you are already enrolled in that program.

If you did not receive notice of this Settlement in the mail or email, you must submit a timely claim form to receive any benefits offered under this Settlement. You must provide the information requested on the claim form, including the approximate date of the transaction(s) at issue, the ZIP code(s) provided during the transaction(s), and your choice of settlement benefit. If you fail to elect a benefit on an otherwise valid and timely claim form, Kmart will issue you a \$15 Merchandise Voucher.

Class Members must submit Claim Forms no later than May 16, 2016, by mail at the address below, or electronically through the settlement website at [www.KmartSettlement.com](http://www.KmartSettlement.com).

Claim Forms submitted by U.S. Mail to the Claims Administrator must be sent to the following address:

Kmart Class Action Settlement  
c/o KCC, LLC  
P.O. Box 30213  
College Station TX 77842-3213

If the Court approves the Settlement, the Claim Form will be reviewed by the Claims Administrator, and if you are eligible, you will receive your elected benefit. You can check on the progress of the Settlement by visiting the website [www.KmartSettlement.com](http://www.KmartSettlement.com).

#### **8. When Will I Receive my Settlement Benefits?**

The Court will hold a hearing on July 1, 2016, at 10:30 a.m. at San Diego Superior Court, Hall of Justice, 330 West Broadway, San Diego, CA 92101, Department 66 to decide whether to approve this Settlement. If the Court approves the Settlement, and there are no objections to the Settlement, you should receive your benefit approximately 60 days later.

There may be appeals. It is always uncertain how these appeals might be resolved, and resolving them can take time, perhaps even more than a year. You may continue to check on the progress of the Settlement by visiting the website [www.KmartSettlement.com](http://www.KmartSettlement.com).

#### **9. What Am I Giving up to Stay in the Class and Receive a Benefit?**

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Kmart and certain affiliated companies and people about the legal issues in this case if the Settlement is approved. It also means that all of the Court's orders will apply to you and legally bind you.

As part of the Settlement, all claims of the members of Settlement Class relating to the claims brought in the Action will be released. This means, for example, that all persons who do not opt-out of the Settlement will be barred from bringing any claims on their own against Kmart for violations of California Civil Code section 1747.08, even if they do not file a claim or receive a benefit.

#### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want to participate in this Settlement, but you want to keep the right to sue or continue to sue Kmart on your own about the legal issues in this case, then you must take the steps described in the next section to exclude yourself from the Settlement.

#### **10. How Do I Get out of the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail to the Claims Administrator saying that you want to be excluded from the Settlement. Be sure to include your name, address, telephone number, your signature, and refer to the case - *Alexandra M. Alvarez v. Kmart Holding*

Corporation, Case No. 37-2008-00097746-CU-BT-CTL. You must mail your exclusion request to the Claims Administrator postmarked no later than May 16, 2016 to:

Kmart Class Action Settlement  
c/o KCC, LLC  
P.O. Box 30213  
College Station TX 77842-3213

You can't exclude yourself by phone or e-mail. If you ask to be excluded, you will not receive any of the Settlement benefits, and you cannot object to the Settlement. You will also not be legally bound by anything that happens in this lawsuit. You keep your right to sue Kmart on your own.

#### **11. If I Don't Exclude Myself, Can I Sue Kmart for the Same Thing Later?**

**No.** Unless you exclude yourself, you give up the right to sue Kmart for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is May 16, 2016.

#### **12. If I Exclude Myself, Can I Get Benefits From This Settlement?**

**No.** If you exclude yourself, you cannot seek benefits under the Settlement. But, you may sue or be part of a different lawsuit against Kmart for the same claim.

### **THE LAWYERS REPRESENTING YOU**

#### **13. Do I Have a Lawyer in the Case?**

The Court has appointed the law firms of Stonebarger Law, APC and Patterson Law Group, APC to represent you and the Class. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **14. How Will the Lawyers Be Paid?**

The attorneys who brought the cases on your behalf will request attorney fees in the amount of up to \$7,000,000, and reimbursement of litigation expenses of up to \$200,000, all of which must be approved by the Court. The Class Representative will also seek compensation for her efforts in the amount of \$25,000, which must be approved by the Court. The Court may award less than these amounts. Kmart will pay the fees and expenses that the Court awards and the costs to administer the Settlement, from the settlement fund. However, the fees and costs awarded will have no impact on the benefits claimed by Class Members.

### **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the settlement or some part of it.

#### **15. How Do I Tell the Court That I Don't Like the Settlement?**

If you stay in the Class, you can object to any part of the Settlement that you don't like. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you can send a letter saying that you object to the Settlement in *Alexandra M. Alvarez v. Kmart Holding Corporation, Case No. 37-2008-00097746-CU-BT-CTL*.

Be sure to include the case name (*Alexandra M. Alvarez v. Kmart Holding Corporation*,

*Case No. 37-2008-00097746-CU-BT-CTL*) your name, address, telephone number, your signature, and the reasons you object to the Settlement. If you received notice of this Settlement by mail or email, you are a Known Class Member and your written objection must identify (1) the last four digits of the credit card used during each transaction, and (2) your ZIP code at the time of each transaction. If you did not receive notice of this Settlement by mail or email, you are an Unknown Class Member and your written objection must also identify (3) the date(s) of your credit card transaction(s) with Kmart during the class period, (4) the store location where each transaction took place, and (5) the month and year of the transaction.

Mail the objection to Class Counsel and Defense Counsel postmarked no later than May 16, 2016 at the following addresses:

James R. Patterson  
Patterson Law Group, APC  
402 W. Broadway, 29<sup>th</sup> Floor  
San Diego, CA 92101

Matthew R. Orr  
Call & Jensen  
610 Newport Center Drive  
Suite 700  
Newport Beach, CA 92660

You can also object by appearing at the Final Approval Hearing, which will be at the San Diego Superior Court on July 1, 2016, at 10:30 am, at 330 West Broadway, San Diego, CA 92101, Department 66. If you submit a written objection, you do not need to attend the hearing.

#### **16. What's the Difference Between Objecting and Excluding?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you cannot object because the case no longer affects you.

#### **THE COURT'S FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

#### **17. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court will hold a Final Approval Hearing on July 1, 2016, at 10:30 a.m. at San Diego Superior Court, Hall of Justice, 330 West Broadway, San Diego, CA 92101, Department 66, to consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will listen to people who ask to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be continued without further notice.

#### **18. Do I Have to Come to the Hearing?**

**No.** Class Counsel will answer questions the Court may have. You are welcome to come at your own expense. If you send a written objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also retain and pay your own lawyer to attend.

## **IF YOU DO NOTHING**

### **19. What Happens if I Do Nothing at all?**

If you do nothing at all, you will remain in the Class and whether or not you receive a benefit from the Settlement depends on whether you return a Claim Form and on whether you received notice of the Settlement by mail or email. For any questions as to how to claim a benefit under the Settlement, see Question 7 above: “How can I participate in the Settlement?”

If you do not exclude yourself, did not receive notice of this Settlement in the mail or email, and do not return a valid and completed claim form; you will receive no benefit from the Settlement, and you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Kmart about the legal issues in this case.

## **GETTING MORE INFORMATION**

### **20. Are There More Details About the Settlement?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can obtain a copy of the Settlement Agreement online by visiting the Claims Administrator's website at [www.KmartSettlement.com](http://www.KmartSettlement.com).

### **21. How Do I Get More Information?**

You can write to the Claims Administrator, Kmart Class Action Settlement, c/o KCC, LLC, P.O. Box 30213, College Station TX 77842-3213, or call 844-210-8092 to obtain information to help you determine whether you are a Class Member and whether you are eligible for a payment. You may also visit [www.KmartSettlement.com](http://www.KmartSettlement.com) or contact Class Counsel listed under Question 15 above, or by email at [zipcode@stonebargerlaw.com](mailto:zipcode@stonebargerlaw.com).

**DO NOT ADDRESS ANY QUESTIONS ABOUT THIS LAWSUIT TO THE CLERK OF THE COURT, THE JUDGE, COUNSEL FOR KMART, OR TO ANY KMART AGENT OR EMPLOYEE.** They are not permitted to answer your questions.