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

ROSALINDA MARCHBANKS-POWELL, an
individual on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

TORRID ADMINISTRATION, INC., a
California corporation; TORRID
MERCHANDISING, INC., a California
corporation; TORRID PARENT, INC., a
Delaware corporation; TORRID LLC, a
California limited liability company; HOT
TOPIC ADMINISTRATION, INC., a
California corporation; HOT TOPIC
MERCHANDISING, INC., a California
corporation; HOT TOPIC TENNESSEE, INC.,
a California corporation; HOT TOPIC, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2020-00008179-CU-OE-NC

ASSIGNED FOR ALL PURPOSES TO
HON. TIMOTHY M. CASSERLY, DEPT. N-31

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
APPROVING FORM OF NOTICE TO
THE CLASS, CERTIFYING THE
SETTLEMENT CLASS, AND SETTING
FINAL APPROVAL HEARING**

Hearing

Date: July 2, 2021
Time: 1:30 p.m.
Dept: N-31

Date Action Filed: February 11, 2020
Trial Date: None Set

1 **RECITALS**

2 On January 27, 2021, plaintiff Rosalinda Marchbanks-Powell (the “Named Plaintiff”),
3 individually and on behalf of the Class, and Defendant entered into a class action settlement, the
4 terms and conditions of which are set forth in the parties’ Class Action Settlement Agreement
5 and Stipulation (collectively, the “Settlement” or “Settlement Agreement”). Unless otherwise
6 provided in this Order, all capitalized terms shall have the same meaning as set forth in the
7 Settlement Agreement.

8 The motion of Named Plaintiff for an order preliminarily approving the settlement of this
9 action, approving the form of notice to the class, certifying the settlement class for settlement
10 purposes, and setting a final approval hearing came on for hearing in Department N-31 of this
11 Court on July 2, 2021.

12 This Court, having fully considered Plaintiff’s Motion, the Memorandum of Points and
13 Authorities in support, the Declarations in support, the Settlement Agreement, the proposed form
14 of Class Notice, and the oral argument presented to the Court, finds that: (1) the proposed
15 settlement appears fair, reasonable and adequate, and that a final hearing should be held after
16 notice to the Class (defined below) of the proposed settlement to determine if the Settlement
17 Agreement and settlement are fair, reasonable, and adequate such that a Final Order and
18 Judgment should be entered in this action based upon the Settlement Agreement and (2) the
19 PAGA Settlement Payment is fair and adequate and the PAGA Settlement Payment should be
20 approved.

21 **THE COURT ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:**

22 **ORDER PROVISIONALLY CERTIFYING SETTLEMENT CLASS AND**
23 **APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

24 1. The Court finds that certification of the following class, for settlement purposes
25 only, is appropriate:

26 All non-exempt employees who worked for Torrid LLC at any of its retail store
27 locations in the State of California during the Class Period as defined in the
28 Settlement Agreement. The Class Period means the period beginning on February

11, 2016 and extending through the date of December 31, 2020.

2 2. The Court grants preliminary approval of the terms and conditions contained in
3 the Settlement Agreement. The Court finds that the terms of the Settlement Agreement are
4 within the range of possible approval at the final approval hearing.

5 3. The Court preliminarily finds, for settlement purposes only, that the Class meets
6 (i) the ascertainability and numerosity requirements; (ii) the commonality requirement because,
7 in the absence of class certification and settlement, each individual Class Member would have to
8 litigate core common issues of law and fact, all relating to Defendant's alleged wage-and-hour
9 violations asserted in the action; (iii) the typicality requirement because the Named Plaintiff and
10 the Class Members' claims all arise from the same alleged events and course of conduct, and are
11 based on the same legal theories; and (iv) the adequacy of representation requirement because the
12 Named Plaintiff has the same interests as all members of the Class, and they are represented by
13 experienced and competent counsel.

14 4. The Court further finds, preliminarily and for settlement purposes only, that
15 common issues predominate over individual issues in this litigation and that class treatment is
16 superior to the other means of resolving this dispute. Employing the class device here will not
17 only achieve economies of scale for Class Members with individual claims, but also conserve the
18 resources of the judicial system and preserve public confidence in the integrity of the system by
19 avoiding the waste and delay of repetitive proceedings. In addition, certifying the class will
20 prevent inconsistent adjudications of similar issues and claims.

21 5. For settlement purposes only, the Court finds that the Named Plaintiff, Rosalinda
22 Marchbanks-Powell, is an adequate representative and appoints her as such. The Court further
23 finds that David Yeremian of David Yeremian & Associates, Inc. and Emil Davtyan of Davtyan
24 Law Firm, Inc. have adequately represented the Named Plaintiff and the Class in this litigation,
25 and the Court appoints them as Class Counsel.

26 6. The Court appoints CPT Group, Inc. to perform the duties of a Settlement
27 Administrator for the purpose of issuing the Class Notice and administering the Settlement.

28 7. The Court recognizes that certification under this Order is for *settlement purposes*

1 only, and shall not constitute or be construed as a finding by the Court, or an admission on the
2 part of Defendant, that this action is appropriate for class treatment for litigation purposes. Entry
3 of this Order is without prejudice to the rights of Defendant to oppose class certification in the
4 action, should the proposed Settlement Agreement not be granted final approval.

5 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

6 8. The Court has reviewed the Settlement Agreement and the proposed Class Notice,
7 which is attached as an exhibit to the Settlement Agreement. The Court finds, on a preliminary
8 basis, that the Settlement Agreement appears to be within the range of reasonableness of a
9 settlement that could ultimately be given final approval by this Court. It appears to the Court on
10 a preliminary basis that:

11 a. The settlement amount is fair and reasonable to all Class Members when
12 balanced against the probable outcome of further litigation relating to liability and damages
13 issues;

14 b. Extensive and costly investigation and research have been conducted such
15 that counsel for the parties at this time are reasonably able to evaluate their respective positions;

16 c. Settlement at this time will avoid additional substantial costs, such as those
17 that have already been incurred by both parties, as well as avoid the delay and risks that would be
18 presented by the further prosecution of this litigation; and

19 d. The proposed settlement has been reached as the result of intensive,
20 serious, and non-collusive arm's-length negotiations.

21 9. The Court further approves the following representative group of employees as
22 governed by the Settlement Agreement with respect to the PAGA Claim: Class Members who
23 worked from March 23, 2019 through December 31, 2020.

24 10. The Court grants approval of the PAGA Settlement Payment pursuant to the terms
25 and conditions contained in the Settlement Agreement. The Court finds that the terms of the
26 PAGA settlement are fair and reasonable and approves the PAGA settlement pursuant to Labor
27 Code § 2699(1)(2).

28 11. Because a PAGA action is not a class action, Class Members may not opt out of,

1 or object to, the PAGA Settlement Payment.

2 12. If the Court does not grant final approval of the Settlement Agreement, approval
3 of the PAGA settlement will be vacated.

4 **APPROVAL OF DISTRIBUTION OF THE CLASS NOTICE**

5 **AND TIMELINE FOR SENDING CLASS NOTICE**

6 13. This Court finds that the Class Notice fairly and adequately advises the potential
7 Class Members of the terms of the Settlement and the process for the Class Members to obtain
8 the benefits available under the Settlement Agreement, as well as the right of Class Members to
9 opt out of the class, to file documentation in opposition to the proposed settlement, and to appear
10 at the settlement hearing to be conducted on the date set by the Court. The Court further finds
11 that the Class Notice and proposed distribution of such Class Notice by first-class mail to each
12 identified Class Member at their last known address comports with all constitutional
13 requirements, including those of due process under the United States and California
14 constitutions, and meets the requirements of Code of Civil Procedure § 382 and California Rules
15 of Court rule 3.766. Accordingly, good cause appearing therefore, the Court hereby approves the
16 proposed Class Notice, attached as Exhibit 1.

17 14. The Settlement Administrator shall, as soon as practicable, but no later than
18 _____, 2021 [not less than 45 days following the date of this Order], cause the Class
19 Notice to be mailed by first class mail to all known members of the Class certified by this Court
20 in this action to the most recent address in Defendant's business records for each known member
21 of the Class. The mailing of the Class Notices directed in this Order constitutes the best notice
22 practicable under the circumstances and sufficient notice to all members of the Class.

23 15. The costs of claims administration, including the cost of printing and mailing the
24 Class Notices shall be paid from the Settlement Amount. Such costs shall be withheld from the
25 Settlement Amount by the Settlement Administrator pursuant to the terms of the Settlement
26 Agreement.

27 16. Each member of the Class who wishes to be excluded from the Class must submit
28 a request to be excluded from the Settlement by the deadline set forth in the Class Notice. Any

1 Class Member who does not submit a timely request to be excluded from the Settlement
2 consistent with the terms of the Settlement Agreement shall be bound by the terms of the
3 Settlement Agreement, even if such Class Member has previously initiated or subsequently
4 initiates individual litigation against Defendant or other proceedings encompassed by the Settled
5 Claims defined in the Settlement Agreement.

6 17. If Class Members representing more than 5% of the Class timely opt out of the
7 Settlement, Defendant shall have the sole and absolute discretion to withdraw from the
8 Settlement Agreement within 15 business days after expiration of the Notice Period. Defendant
9 will provide written notice of such withdrawal to Class Counsel. In the event that Defendant
10 elects to so withdraw, the withdrawal shall have the same effect as a termination of the
11 Settlement Agreement for failure to satisfy a condition of Settlement, and the Settlement
12 Agreement shall become null and void and have no further force or effect, and the class certified
13 pursuant to this Agreement will be decertified for all purposes.

14 **OBJECTIONS TO SETTLEMENT**

15 18. Any member of the Class who has not timely elected to be excluded from the
16 Class, and who wishes to object to the fairness, reasonableness or adequacy of the Settlement
17 Agreement or the proposed settlement, or to the award of attorneys' fees and costs, shall provide
18 to the Settlement Administrator a written statement of the objection, as well as the specific
19 reasons, if any, for each objection. The Settlement Administrator will promptly transmit any
20 objections it receives to Class Counsel and Defendant's counsel.

21 19. All written objections must be signed by the Class Member or the Class Member's
22 representative and must include the information specified in the Class Notice.

23 20. A Class Member may appear either in person or through personal counsel at the
24 Final Hearing to object to the Settlement. If represented by personal counsel, the counsel will be
25 hired at the Class Member's expense.

26 21. Class Counsel and Defendant's counsel shall promptly furnish each other with
27 copies of any and all objections or written requests for exclusion that come into their possession.

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FINAL APPROVAL FAIRNESS HEARING

22. The Court grants Plaintiff's motion to set a settlement hearing for final approval of the Settlement Agreement on _____, 2021, at _____ in Department N-31 of this Court ("Final Hearing"), as set forth in the Class Notice, to determine whether the proposed settlement of this action is fair, reasonable and adequate and should be finally approved. The Court will also consider at the Final Hearing whether applications for Plaintiff's attorneys' fees and expenses and enhancement award to the Named Plaintiff should be granted and, if so, in what amounts.

23. Members of the Class who have not timely elected to be excluded from the Class and who object to the proposed Settlement may appear and present such objections at the Settlement Hearing in person or by counsel, provided that the objecting Class Member complied with the requirements to object to the Settlement. No person shall be heard, and no briefs or papers shall be received or considered, unless the requirements to object to the Settlement have been satisfied, except as this Court may permit for good cause shown.

24. Class Counsel shall file Plaintiff's memorandum of points and authorities in support of the final approval of the Settlement Agreement and their request for approval of the attorneys' fees, enhancement award, and litigation costs no later than 16 court days prior to the Final Hearing. After the Final Hearing, the Court may enter a Final Order and Final Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all Class Members.

25. All discovery and other pretrial proceedings in this action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Settlement Agreement and this Order.

26. If, for any reason, the Court does not grant final approval of the Settlement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo ante rights of the parties to the litigation as more specifically set forth in the Settlement Agreement.

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IT IS SO ORDERED.

DATED: _____, 2021

JUDGE OF THE SUPERIOR COURT

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

Kenneth J. Zielinski
kzielinski@rutan.com
Maria Z. Stearns
MStearns@rutan.com
RUTAN & TUCKER, LLP
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626

[] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

Executed on March 9, 2021, at Glendale, California.

Natalia Bermudes