

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CAROL MILLER, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

BATH SAVER, INC. and **BATH FITTER
MANUFACTURING INC.**,

Defendants.

Case No. 1:21-cv-01072-JPW

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is made and entered into by and between Representative Plaintiff Carol Miller, on behalf of herself and the Settlement Class defined herein, and Bath Saver, Inc. (“Bath Saver”) and Bath Fitter Manufacturing Inc. (“Bath Fitter”) (Bath Saver and Bath Fitter collectively, “Defendants”) to settle and compromise this action and settle, resolve, and discharge the Released Claims, as defined below, according to the terms and conditions herein.

RECITALS

WHEREAS, *Miller v. Bath Saver Inc., et al.*, No. 1:21-cv-01072-JPW, was filed on June 17, 2021, and is currently pending before the Honorable Jennifer P. Wilson of the U.S. District Court for the Middle District of Pennsylvania, alleging Defendants violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.* (“Litigation”);

WHEREAS, Defendants deny each and every one of Representative Plaintiff’s allegations of unlawful conduct, damages, and injuries in the Litigation and otherwise;

WHEREAS, based upon the investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings in the Litigation, plus the risks and uncertainties of continuing the Litigation and all factors bearing on the merits of settlement, Representative Plaintiff and Class Counsel have agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Settlement Agreement;

WHEREAS, to facilitate a resolution of the Litigation and mediate settlement discussions, the Settling Parties participated in a full day mediation in Atlanta, Georgia with mediator Hunter R. Hughes III, Esquire of Hunter ADR;

WHEREAS, the Parties understand, acknowledge and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of disputed claims, and that this Settlement Agreement is inadmissible as evidence except to enforce the terms of the Settlement Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement;

NOW THEREFORE, subject to the Final Approval Order of the Court as required herein and applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises and covenants contained herein, that all Released Claims against any Released Parties shall be settled, compromised and forever released upon the following terms and conditions.

TERMS AND CONDITIONS OF THE SETTLEMENT

1. DEFINITIONS

1.1 As used herein, the following terms have the meanings set forth below.

1.1.1 “Appeal” means a request for appellate review of any order or judgment of the Court entered in this Litigation, including but not limited to appeals as of right, discretionary

appeals, interlocutory appeals, any order reinstating an appeal, and proceedings involving writs of certiorari and/or any proceedings thereon.

1.1.2 “Approved Claim” means a claim submitted by a Settlement Class Member that: (a) is received by the Settlement Administrator or postmarked on or before the Claims Deadline; (b) is fully and truthfully completed by a Settlement Class Member with all information requested in the Claim Form, and in accordance with the directions on the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement as a valid claim eligible to receive payment from the Settlement Fund under the Agreement and the Final Approval Order and Judgment.

1.1.3 “CAFA Notice” means the notice of this Settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

1.1.4 “Claim Form” means the document to be submitted by a Claimant seeking payment pursuant to this Settlement, attached as Exhibit A.

1.1.5 “Claimant” means a Settlement Class Member who submits a Claim Form.

1.1.6 “Claims Deadline” means the date that is approximately sixty (60) days after the Notice Date.

1.1.7 “Class Counsel” means Avi R. Kaufman of Kaufman P.A. and Stefan Coleman of Coleman PLLC.

1.1.8 “Complaint” means the operative complaint in this Litigation at the time the Court enters the Preliminary Approval Order.

1.1.9 “Court” means the U.S. District Court for the Middle District of Pennsylvania.

1.1.10 “Defendants” means collectively, Bath Saver, Inc. and Bath Fitter Manufacturing Inc., as well as their past, present, and future officers, members, owners, directors, shareholders, employees, predecessors, affiliates, divisions, parents, subsidiaries, partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, alleged co-conspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of the foregoing persons.

1.1.11 “Effective Date” means the first date by which any Judgment entered pursuant to the Agreement becomes Final.

1.1.12 “Fee Award” means the amount of attorneys’ fees and reimbursement of expenses, including attorneys’ fees and expenses associated with pursuing Representative Plaintiff’s claims in this Litigation, that may be awarded by the Court and that will be paid out of the Settlement Fund.

1.1.13 “Final” means one business day following the later of the following events: (i) the expiration of the time to file a motion to alter or amend a judgment under Fed. R. Civ. P. 59(e) has passed without any such motion having been filed; (ii) the expiration of the time in which to file an Appeal of any judgment entered pursuant to this Agreement has passed without any Appeal having been taken; and (iii) the resolution of any such Appeal in a manner that does not reverse or vacate the Judgment and in a manner that permits the consummation of the Settlement substantially in accordance with the terms and conditions of this Agreement. Any proceeding or order, or any Appeal pertaining solely to any request or order regarding the Fee Award or Service Payment, will not in any way delay or preclude the Judgment from becoming Final so long as such proceeding or order, or any Appeal does not seek to increase the total amount of the Settlement Fund.

1.1.14 “Final Approval Hearing” means the final hearing, held after the Preliminary Approval Order is issued and Settlement Class Members have been given reasonable notice and an opportunity to object or to exclude themselves from the Settlement, at which the Court will determine whether to finally approve the Settlement and to enter Judgment.

1.1.15 “Final Approval Order” means an order, providing for, among other things, final approval of the Settlement.

1.1.17 “Funding Date” means twenty-one (21) business days after entry of the Preliminary Approval Order.

1.1.18 “Judgment” means the judgment to be entered by the Court pursuant to the Settlement.

1.1.19 “Mediator” means Hunter R. Hughes III, Esquire of Hunter ADR.

1.1.20 “Notice” means a document substantially in the form of Exhibit B hereto, and “Summary Notice” means a document substantially in the form of Exhibit C hereto, to be disseminated in accordance with the Preliminary Approval Order, informing Persons who fall within the Settlement Class of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement, and their options with respect thereto.

1.1.21 “Notice Date” means the last date by which the Notice is first disseminated pursuant to the Notice Plan.

1.1.22 “Notice Plan” means the proposed plan of disseminating to Settlement Class Members notice of the proposed Settlement and of the Final Approval Hearing, as approved by the Court.

1.1.23 “Opt-Out Deadline” means the date that is approximately (60) days after the Notice Date.

1.1.24 “Parties” means, collectively, Representative Plaintiff and Defendants.

1.1.25 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

1.1.26 “Preliminary Approval Order” means an order, providing for, among other things, preliminary approval of the Settlement and dissemination of the Notice to the Settlement Class according to the Notice Plan.

1.1.27 “Released Claims” means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, of every nature and description whatsoever, as of the date of the Final Approval Order, that arise out of or relate in any way to the Released Parties’ use of any telephone, any telephone or dialing equipment, or an “artificial or prerecorded voice” to contact or attempt to contact individuals and consumers including those on any national or state Do Not Call registry. This release expressly includes, but is not limited to, all claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the “TCPA”), the TCPA’s implementing regulations, 47 C.F.R. § 64.1200, et seq., the Telemarketing Sales Rule, 16 C.F.R. § 310, et seq. (the “TSR”), any corollary or state laws similar

to the TCPA and TSR, or enactment of any other statutory, regulatory or common law claim arising thereunder.

1.1.28 “Released Parties” means Defendants and each of their past, present, and future members, owners, direct and indirect parents, subsidiaries, managers, divisions, predecessors, successors, holding companies, and affiliated companies and corporations, and each of the past, present, and future directors, officers, managers, employees, contractors, general partners, limited partners, investors, controlling persons, owners, trustees, principals, agents, associates, administrators, insurers, reinsurers, shareholders, attorneys, accountants, advisors, consultants, assignors, assignees, representatives, fiduciaries, predecessors, successors, divisions, joint ventures, or related entities of those companies. The release of any third parties is limited to any actions taken on behalf of Defendants.

1.1.29 “Releasing Parties” means Representative Plaintiff and Settlement Class Members (whether or not such Settlement Class Members submit Claim Forms), and their respective assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, and employees (each solely in their respective capacity as such), and all those who claim through them or who assert claims (or could assert claims) on their behalf.

1.1.30 “Representative Plaintiff” means plaintiff Carol Miller.

1.1.31 “Service Payment” means a one-time payment to Representative Plaintiff that may be awarded by the Court and that will be paid out of the Settlement Fund.

1.1.32 “Settlement” means the settlement set forth in this Agreement.

1.1.33 “Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator in providing notice, processing claims, administering the Settlement, and

mailing checks for Approved Claims. Settlement Administration Expenses shall be paid exclusively from the Settlement Fund.

1.1.34 “Settlement Administrator” means Epiq Class Action & Claims Solutions.

1.1.35 “Settlement Class” means all persons in the United States (1) who were called by Defendants or either Defendant two or more times in a twelve-month period on a telephone number that had been registered with the National Do Not Call Registry for more than thirty days and (2) for whom (a) there is no record of having written consent to call and/or (b) a record exists of the person requesting to not be called. Excluded from the Settlement Class are (1) the Judges and Magistrate Judges presiding over the action and members of their immediate families; (2) Defendants, their parent companies, successors, predecessors, and any entities in which the Defendants or their parents have a controlling interest, and Defendants’ current and former officers, directors, agents, trustees, representatives, employees, principals, partners, joint ventures, and entities controlled by Defendants; (3) persons who properly execute and timely file a request for exclusion from the Settlement Class; and (4) the legal representatives, successors, or assigns of any such excluded person(s).

1.1.36 “Settlement Class Member” means a person who falls within the definition of the Settlement Class and who does not opt out of the Settlement.

1.1.37 “Settlement Class Period” means from June 17, 2017 through the date of the entry of the Preliminary Approval Order.

1.1.38 “Settlement Class Recovery” means the amount of the Settlement Fund available for distribution to the Settlement Class, after payment of Settlement Administration Expenses, any Service Payment to Representative Plaintiff and any Fee Award to Class Counsel.

1.1.39 “Settlement Fund” means a common fund which Defendants will cause to be created of \$1,950,000. The common fund will be non-reversionary and represent the maximum possible payment (“Maximum Payment”) from which payments for all (a) Class Members, (b) Settlement Administration Expenses, including Notice, (c) the Fee Award, and (d) the Service Payment will be made.

1.1.40 “Settling Parties” means, collectively, Defendants, Representative Plaintiff, and all Settlement Class Members.

1.1.41 The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

2. DENIAL OF WRONGDOING AND LIABILITY

2.1 Defendants deny the material factual allegations and legal claims asserted by Representative Plaintiff in the Litigation on behalf of herself and the Settlement Class Members, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Further, Defendants maintain that they have strong, meritorious defenses to the individual and class claims alleged in the Litigation and that they are prepared to vigorously defend all aspects of the Litigation if this Settlement is not approved in any material respect.

2.2 Defendants dispute that a class would be manageable or that common issues predominate over individual ones, and deny that the Litigation is properly brought on a class or representative basis, or that a class properly could be certified, other than for settlement purposes, on the claims asserted in the Litigation. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendants do not oppose and hereby agree to certification, for purposes of this Settlement only, of the Settlement Class, for settlement purposes only, pursuant

to Fed. R. Civ. P. 23(b)(3). Certification of the Settlement Class for settlement purposes only will not be deemed a concession that certification of any class in the Litigation is, or was, appropriate; nor are Defendants precluded from challenging class certification in further proceedings in the Litigation or in any other action if the Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class resulting from this Agreement will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings involving Defendants. No agreements made by or entered into by Defendants in connection with the Settlement may be used by Representative Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceeding, whether in the Litigation, or any other judicial proceeding.

2.3 This Agreement, any negotiations or proceedings related to it, the implementation of it, and any papers submitted in support of the motions for approval of it (collectively, the “Settlement Proceedings”), are not to be construed as or deemed to be evidence of any admission or concession by any of the Parties regarding liability, damages, or the appropriateness of class treatment or class certification, and are not to be offered or received in evidence in any action or proceeding for any purpose whatsoever; provided, however, that this Agreement and the Settlement Proceedings may be presented to the Court to implement or enforce this Agreement, or as may be necessary or appropriate to further the purposes sought to be achieved by this Agreement.

3. THE BENEFITS OF SETTLEMENT

3.1 Class Counsel and Representative Plaintiff recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation against

Defendants through trial and appeals. Class Counsel also has taken into account the strength of Defendants' defenses, difficulties in proving liability, the uncertain outcome and risk of the litigation, especially in complex actions such as this one, the inherent delays in such litigation, and Defendants' financial capacity. Class Counsel believes that the proposed Settlement confers substantial benefits upon the Settlement Class. Based on their evaluation of all of these factors, Representative Plaintiff and Class Counsel have determined that the Settlement is in the best interests of Representative Plaintiff and the Settlement Class.

4. SETTLEMENT TERMS

4.1 Defendants will cause to be created the Settlement Fund from which all required payments under this Settlement will be made, including payments associated with the CAFA Notice, for Approved Claims, any approved Fee Award, any approved Service Payment, and the costs of reasonable class notice and class administration. The Parties agree Defendants' maximum monetary obligation under this Agreement shall not exceed \$1,950,000 unless Defendants agree in writing otherwise. The Settlement Fund shall be placed in a non-interest-bearing escrow account before or on the Funding Date pursuant to the instructions of the Settlement Administrator but only after the Settlement Administrator provides to Defendants an executed W-9. Upon funding the Settlement Fund, Defendants and the Released Parties' payment obligations under this Agreement shall be deemed to have been fully satisfied.

4.2 The Settlement Fund shall be a Qualified Settlement Fund (QSF) under Section 468B of the Internal Revenue Code and 26 C.F.R. § 1.468B-1, established pursuant to the Preliminary Approval Order. The Settlement Administrator shall be the Administrator of the QSF.

4.3 Payment to Settlement Class Members

4.3.1 Each Settlement Class Member may submit only one Claim Form.

4.3.2 Adequate and customary procedures and standards shall be used by the Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims, including, but not limited to, verifying claimed calls with information provided by the Parties.

4.3.3 Payment shall be made to Settlement Class Members who timely submit a valid Claim Form by the Claims Deadline after any approved attorneys' fees, expenses, and costs, and costs of reasonable class Notice and Settlement Administration Expenses are deducted from the Settlement Fund.

4.3.4 Each Settlement Class Member who timely submits a valid Claim Form by the Claims Deadline shall be entitled to a single payment in an amount equivalent to his or her *pro rata* share of the Settlement Fund after any approved Fee Award, any approved Service Payment, and Settlement Administration Expenses are deducted. Each Settlement Class Member shall be entitled to receive an amount equal to the Settlement Class Recovery divided by the total number of Approved Claims.

4.3.5 Payments shall be made directly to the Settlement Class Member by the Settlement Administrator.

4.4 Defendants have taken and will continue to take reasonable steps and to initiate certain practice changes to avoid violating the TCPA and making calls to Settlement Class Members from whom they have not received an inbound inquiry (by telephone, website or other means), written consent, an order to purchase product, a request to schedule an appointment and/or any other communication or transaction that would legally allow Defendants to call regarding products and services.

5. ATTORNEYS' FEES, EXPENSES, AND COSTS AND SERVICE PAYMENT

5.1 Class Counsel shall apply to the Court for attorneys' fees and documented and reasonable expenses and costs. Class Counsel's application for fees, expenses, and costs shall be filed no later than thirty-five (35) days prior to the Opt-Out Deadline. Any Fee Award approved by the Court shall be paid solely out of the Settlement Fund and shall not increase Defendants' total financial liability with respect to this Agreement or Settlement.

5.2 If the Court approves the Settlement but declines to award a Fee Award in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties and the Settlement Class Members.

5.3 Defendants shall have no liability to Class Counsel or any other Person arising from any claim regarding the division of any award of attorneys' fees, expenses, and costs between and among Class Counsel or any other counsel who may claim entitlement to any portion of the Fee Award.

5.4 The Fee Award, if approved by the Court, shall be paid by wire transfer from the Settlement Fund within ten (10) calendar days following the Effective Date, provided that the law firm or attorney being paid has executed a Form W-9 to the Settlement Administrator. The Fee Award shall be paid from the Settlement Fund, and Defendants shall have no additional obligation to pay for attorneys' fees, costs and/or expenses of any kind.

5.5 Representative Plaintiff may apply to the Court for an award of Service Payment. Representative Plaintiff's application for a Service Payment shall be filed no later than thirty-five (35) days prior to the Opt-Out Deadline. Any Service Payment approved by the Court shall be paid solely out of the Settlement Fund and shall not increase Defendants' total financial liability with respect to this Agreement or Settlement.

5.6 If the Court approves the Settlement but declines to award a Service Payment in the amount requested by Representative Plaintiff, the Settlement will nevertheless be binding on the Parties and the Settlement Class Members.

6. ADMINISTRATION AND NOTICE

6.1 All costs and expenses of administering the Settlement and providing Notice in accordance with the Preliminary Approval Order shall be paid out of the Settlement Fund, including the cost of CAFA Notice.

6.2 Responsibilities of Settlement Administrator

6.2.1 The Settlement Administrator shall facilitate the notice process by assisting the Parties in the implementation of the Notice Plan, as well as CAFA Notice.

6.3 Class Settlement Website

6.3.1 The Settlement Administrator shall create and maintain the “Class Settlement Website,” to be activated within thirty (30) days of Preliminary Approval. The Settlement Administrator’s responsibilities shall also include securing an appropriate URL to be agreed upon by the Parties. The Class Settlement Website will contain information about the Settlement and Litigation-related documents such as the Settlement Agreement, the Notice in the form attached hereto as Exhibit B, subject to Court modification and/or approval, the Claim Form, and the Preliminary Approval Order. Settlement Class Members shall have the option to file a claim electronically using the Class Settlement Website.

6.3.2 The Class Settlement Website shall terminate (be removed from the internet) and no longer be maintained by the Settlement Administrator thirty (30) days after either (a) the Effective Date or (b) the date on which the Settlement Agreement is terminated or otherwise not approved in full if the Settlement is terminated or otherwise not approved in full.

6.3.3 All costs and expenses related to the Class Settlement Website shall be paid exclusively out of the Settlement Fund.

6.4 CAFA Notice

6.4.1 The Parties agree that the Settlement Administrator shall serve notice of the Settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

6.4.2 All costs and expenses related to the CAFA Notice shall be paid exclusively out of the Settlement Fund.

6.4.3 The Settlement Administrator shall file a certification with the Court stating the date(s) on which the CAFA Notices were sent. Each Party shall provide the other Parties with any substantive responses received in response to any CAFA Notice.

6.5 Notice Plan

6.5.1 The Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the U.S. Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

6.5.2 Defendants shall provide the telephone numbers for all Settlement Class Members and the reasonably available demographic information, including email addresses where available, for the Settlement Class Members to the Settlement Administrator within fifteen (15) calendar days after the Court enters the Preliminary Approval Order.

6.5.3 Subject to Court approval, within thirty (30) days after the Court enters the Preliminary Approval Order, the Settlement Administrator shall send direct notice substantially in

the form of the Summary Notice in Exhibit C, as modified and/or approved by the Court, via email, to the Settlement Class Members for whom Defendants identify email addresses.

6.5.4 Subject to Court approval, within thirty (30) days after the Court enters the Preliminary Approval Order, the Settlement Administrator shall send direct notice substantially in the form of the Summary Notice in Exhibit C, as modified and/or approved by the Court, via U.S. mail to the Settlement Class Members for whom Defendants identify mailing addresses or for whom mailing addresses can be identified through reasonable effort.

6.5.5 Subject to Court approval, starting thirty (30) days after the Court enters the Preliminary Approval Order, for a period of thirty (30) consecutive days, the Settlement Administrator shall cause banner ads redirecting to the Class Settlement Website to be published to Facebook accounts associated with the telephone numbers for Settlement Class Members.

7. CLAIMS PROCESS

7.1 Submission of Claims. Settlement Class Members must timely submit, by email, mail, or online at the Class Settlement Website, a valid Claim Form substantially in the form attached as Exhibit A, as modified and/or approved by the Court, by the Claims Deadline. All Claim Forms must be submitted to the Settlement Administrator, either in hard copy form, email form, or electronically via the Class Settlement Website, by the Claims Deadline. A valid Claim Form means a Claim Form containing all required information and which is signed (including electronically signed) by the Claimant and is timely submitted. Any Claim Form which is not timely submitted shall be denied. In the event a Settlement Class Member submits a Claim Form by the Claims Deadline but the Claim Form is not complete, then the Settlement Administrator shall give such Settlement Class Member a reasonable opportunity to provide any requested missing information. For any Class Member who submits a Claim Form determined by the

Settlement Administrator to be incomplete, the Settlement Administrator may mail and/or email a notice directly to such Class Member, notifying him or her of the missing information and providing him or her with an opportunity to cure. Class Members must cure incomplete claims on or before the Effective Date, unless the Parties mutually agree to extend the deadline for Class Members to cure incomplete claims.

7.2 Claims Processing. The Settlement Administrator shall apply the terms of this Settlement Agreement and the requirements set forth in the Claim Form, and any Claim Form submitted that does not meet the requirements of this Agreement is not eligible to be an Approved Claim. The Settlement Administrator also shall employ reasonable procedures to screen claims for abuse, fraud, or duplication, and shall deny Claim Forms where there is evidence of abuse, fraud, or duplication. The Settlement Administrator's decisions regarding the Settlement Class Members' eligibility for a claims payment shall be final. The Parties, the Released Parties, and their respective counsel, shall have no responsibility or liability whatsoever for the Settlement Administrator's conduct, omissions, or actions.

7.3 Payment of Claims. Within sixty (60) days after the Effective Date, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check or electronic payment to the Settlement Class Member submitting each Approved Claim, and shall mail the checks via first-class mail and email the electronic payments.

7.4 All payments to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance. All payments to Settlement Class Members who elect that their payment be transmitted to themselves via electronic means, but fail to provide sufficient or correct

information to permit such transfer, shall, after a reasonable attempt to resolve any such payment issues, relinquish their right to payment pursuant to the Agreement.

7.5 To the extent that any payment to Settlement Class Members expire or become null and void, the Settlement Administrator shall distribute the funds associated with those payments on a *pro rata* basis to Settlement Class Members who submitted an Approved Claim and who cashed their checks or received their electronic payments, if doing so is administratively and economically feasible (i.e., those Settlement Class Members would receive a second distribution of more than \$1 after costs of administration). Any remaining monies, including to the extent a second distribution is not administratively feasible, shall be delivered to the United States Treasury.

7.6 No decisions by the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Defendants as to any matter of fact, law, or evidence having any collateral effect on any Claim hereunder or in any other proceeding or before any other forum or authority. Further, such decisions shall not be submitted to or admissible in any other proceeding or before any other forum or authority.

8. RELEASES

8.1 Upon entry of the Judgment, Representative Plaintiff and each Settlement Class Member will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released Claims against the Released Parties.

8.2 After entering into this Settlement Agreement, Representative Plaintiff or Settlement Class Members may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims. Representative Plaintiff

and Settlement Class Members expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or noncontingent claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

8.3 With respect to the Released Claims, all Settlement Class Members expressly waive and relinquish any rights or benefits available to them under California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING PARTY.

8.4 Notwithstanding Section 1542 of the California Civil Code, or any other federal or state statute or rule of law of similar effect, this Settlement Agreement shall be given full force and effect according to each and all of its terms and provisions, including those related to any unknown or unsuspected claims, liabilities, demands, or causes of action which are based on, arise from, or are in any way connected with the Released Claims.

8.5 Upon entry of the Final Approval Order, Representative Plaintiff, and any Settlement Class Member who does not opt out by the Opt-Out Deadline, is hereby barred against bringing any action against any of the Released Parties for any of the Released Claims. Additionally, Representative Plaintiff and Settlement Class Members agree and covenant, and each Settlement Class member will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the Released Claims, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum.

9. APPROVAL PROCESS

9.1 Court Approval

9.1.1 Class Counsel shall submit the Agreement together with its Exhibits to the Court and request that the Court grant preliminary approval of the Settlement, issue a Preliminary Approval Order, and schedule a hearing on whether the Settlement should be granted final approval (collectively, “Motion for Preliminary Approval”).

9.1.2 In the Motion for Preliminary Approval, Class Counsel shall request that the Court allow for a period of no less than ninety (90) days between entry of the Preliminary Approval Order and the Final Approval Hearing and that the Court schedule a Final Approval Hearing for a date no less than ninety (90) days from entry of the Preliminary Approval Order.

9.1.3 The date the Motion for Preliminary Approval is filed is the date by which the Settlement shall be deemed “filed” within the meaning of 28 U.S.C. § 1715.

9.1.4 If the Motion for Preliminary Approval is granted, Class Counsel shall be responsible for asking the Court to grant final approval of the Settlement and to enter a Final Approval Order and Judgment, in accordance with the date set by the Court for the Final Approval Hearing.

9.1.5 If the Court does not enter a Preliminary Approval Order or a Final Approval Order and Judgment, or if the Final Approval Order is reversed or vacated by any court, this Agreement shall terminate and be of no force or effect, except as otherwise set forth in this Agreement, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain Court approval. If this Agreement is terminated, any portion of the Settlement Fund remaining shall promptly in response to Defendants’ request be returned to Defendants. Notwithstanding any provision of this Agreement, the Parties agree that any decision by any court

as to any Fee Award to Class Counsel or payment to Representative Plaintiff, including any decision by any court to award less than the amounts sought, shall not prevent the Agreement from becoming effective, prevent Final Judgment from being entered, or provide any grounds for termination of the Agreement or the Settlement.

9.2 Procedures for Objecting to the Settlement

9.2.1 Settlement Class Members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given final approval, subject to each of the sub-provisions contained in this section. Any objection to this Settlement Agreement, including any of its terms or provisions, must be in writing, filed with the Court or mailed to the Clerk's Office of the United States District Court for the Middle District of Pennsylvania, Harrisburg Division, 228 Walnut Street, P.O. Box 983, Harrisburg, PA 17108, by no later than the Opt-Out Deadline. Settlement Class Members may object either on their own or through an attorney hired at their own expense.

9.2.2 Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as "Objection to Class Settlement in *Miller v. Bath Saver, Inc.*, No. 1:21-cv-01072-JPW" and also shall contain the following information: (i) the objector's name, address, and telephone number; (ii) the name, address, and telephone number of any attorney for the objector with respect to the objection; and (iii) the factual basis and legal grounds for the objection, including any documents sufficient to establish the basis for his or her standing as a Settlement Class Member, including the phone number(s) at which he or she received calls covered by this Settlement. If an objecting party chooses to appear at the hearing, no later than the Opt-Out Deadline, a notice of intention to appear, either in person or through an attorney,

must be filed with the Court and list the name, address, and telephone number of the person and attorney, if any, who will appear.

9.2.3 Representative Plaintiff or Defendants or both may take discovery regarding any objector, their attorney (if applicable), and the basis of any objection, subject to Court approval.

9.2.4 By filing an objection, objectors and their counsel submit to the jurisdiction of the Court for all purposes of this Litigation and Settlement, including but not limited to subpoenas and discovery.

9.3 Right to Respond to Objections

9.3.1 Class Counsel and the Parties shall have the right, but not the obligation, 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 email or overnight delivery, to the objector (or counsel for the objector).

9.4 Opt-Outs

9.4.1 Any Settlement Class Member who does not wish to participate in this Settlement must write to the Settlement Administrator stating an intention to be “excluded” from this Settlement. This written request for exclusion must be sent via first class United States mail to the Settlement Administrator at the address set forth in the Notice and received no later than the Opt-Out Deadline. A request for exclusion must be signed by the Settlement Class Member, and must include the Settlement Class Member’s name, address, and the telephone number that allegedly received a call or calls from Defendants during the Settlement Class Period, and must clearly state that the Person wishes to be excluded from the Litigation and the Agreement. A request for exclusion that does not include all of this information, or that is sent to an address

other than that designated in the Notice, or that is not received within the time specified, shall be invalid, and the Person serving such a request shall be a member of the Settlement Class and shall be bound as a Settlement Class Member by the Court's orders in this Litigation and by this Agreement, if approved. The request for exclusion must be personally signed by the Settlement Class Member. So-called "mass" or "class" opt-outs shall not be allowed.

9.4.2 Any Person in the Settlement Class who submits a request for exclusion may not file an objection to the Settlement. If a Settlement Class Member submits a written request for exclusion, he or she shall be deemed to have complied with the terms of the opt-out procedure and shall not be bound by the Agreement if approved by the Court.

9.4.3 After Notice is disseminated and at least fifteen (15) days prior to the Final Approval Hearing, the Parties shall request and seek to obtain from the Court a Final Approval Order and Judgment, which will (among other things):

- (i) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject-matter jurisdiction to approve the Agreement, including all Exhibits thereto;
- (ii) approve the Settlement Agreement and the proposed Settlement as fair, reasonable, and adequate as to, and in the best interests of, Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have preclusive effect on all pending and future lawsuits or other proceedings maintained by or on behalf of Representative Plaintiff and the Releasing Parties (including the Settlement Class Members);
- (iii) find that the Notice and the Notice Plan implemented pursuant to the Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

- (iv) dismiss the Litigation (including all individual claims and Settlement Class Member claims asserted therein) on the merits and with prejudice, without fees or costs to any Party, except as provided in the Settlement Agreement; incorporate the releases set forth above and make those releases effective as of the date of the Final Approval Order and Judgment; and
- (v) forever discharge the Released Parties as set forth herein; permanently bar and enjoin all Settlement Class Members and Releasing Parties from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction related to the Released Claims.

10. TAXES

10.1 Qualified Settlement Fund. The Parties agree that the Escrow Account into which the Settlement Fund is deposited is intended to be and will at all times constitute a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator will timely make such elections as necessary, including if necessary, the “relation back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections must be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under § 1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It is the responsibility of the Settlement Administrator to cause the timely and proper preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

10.2 Settlement Administrator is “Administrator.” For the purpose of § 1.468B of the Code and the Treasury regulations thereunder, the Settlement Administrator must be designated as the “administrator” of the Settlement Fund. The Settlement Administrator must cause to be timely and properly filed all information and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B2(k)). Such returns must reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund will be paid out of the Settlement Fund.

10.3 Taxes Paid By Administrator. All taxes arising in connection with income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or any of the other Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, shall be paid exclusively by the Settlement Fund.

10.4 Expenses Paid from Fund. Any expenses reasonably incurred by the Settlement Administrator in carrying out the duties, including fees of tax attorneys and accountants, shall be paid exclusively from the Settlement Fund.

10.5 Responsibility for Taxes on Distribution. Any person or entity that receives a distribution from the Settlement Fund shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

10.6 Defendants Not Responsible. In no event will Defendants or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Fund to Representative Plaintiff, Settlement Class Members, Class Counsel or any other person or entity. The Settlement Class Members shall indemnify and hold Defendants and other Released Parties harmless—through the Settlement Fund— for all such taxes and tax-related expenses.

11. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION

11.1 The Effective Date of this Agreement shall be the date the Judgment has become Final.

11.2 Performance of the obligations set forth in this Agreement is subject to all of the following material conditions:

- (A) execution of this Agreement by Defendants, Representative Plaintiff, and Class Counsel;
- (B) the entering of the Preliminary Approval Order by the Court;
- (C) sending of the notices described herein;
- (D) the granting of final approval by the Court;
- (E) execution and entry of Judgment by the Court; and
- (F) the occurrence of all other circumstances necessary for the Effective Date to arise.

11.3 The Parties hereby covenant and agree to cooperate reasonably and in good faith for the purpose of achieving occurrence of the conditions set forth above, including, without limitation, timely filing of all motions, papers and evidence necessary to do so, and refraining from causing or encouraging directly or indirectly any appeal or petition for writ proceedings by third parties seeking review of any order contemplated by this Agreement. Class Counsel represent and warrant that they have authority to take all such actions required of them pursuant to this Agreement, and that by doing so they are not in breach or violation of any agreement with Representative Plaintiff or any third party.

11.4 Plaintiff and Defendants shall each have the right to unilaterally terminate this Agreement by providing written notice of his, her, their or its election to do so (“Termination Notice”) to all other Parties hereto within ten (10) business days of any of the following occurrences:

- (i) the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;

(ii) an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;

(iii) any court incorporates into, or deletes or strikes from, or modifies, amends, or changes the Preliminary Approval Order, Final Approval Order or the Settlement Agreement in a way that is material, unless such modification or amendment is accepted in writing by all Parties;

(iv) if at the conclusion of the Opt-Out Deadline more than one thousand (1,000) Settlement Class Members have opted out of the Settlement.

11.5 If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties shall be restored to their respective positions in the Litigation as of July 12, 2022. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated.

11.6 The Parties agree to request a stay of the Litigation pending approval of the Settlement.

12. MISCELLANEOUS PROVISIONS

12.1 Cooperation of the Parties. The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties agree that they will not solicit, facilitate, or assist in any way, requests for exclusions or objections by putative or actual Settlement Class Members. Class Counsel recognize that they have an obligation to

support the Settlement and to seek the Court's approval of its terms. Class Counsel shall abide by all applicable and governing ethical rules, opinions, and obligations precluding their representation of opt-outs.

12.2 Resolution of Dispute without Admission. The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement covers claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense.

12.3 Use In Subsequent Proceedings. Neither this Agreement nor the Settlement, nor any documents exchanged or information produced during discovery or otherwise, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendants; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Litigation may file this Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.4 Confidential Information. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Agreement.

12.5 Incorporation of Exhibits. Any and all Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

12.6 Modification. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

12.7 Integration. This Agreement and any Exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized in such documents. Except as otherwise provided herein, the Parties will bear their own respective costs.

12.8 Class Counsel's Authority. Class Counsel, on behalf of the Settlement Class, are expressly authorized by Representative Plaintiff to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Agreement to effectuate its terms, and are expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Settlement Class.

12.9 Parties' Authority. Each counsel or other Person executing this Agreement or any of its Exhibits on behalf of a Party hereby warrants that such Person has the full authority to do so.

12.10 Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

12.11 No Prior Assignments. Representative Plaintiff and Class Counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any Person any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

12.12 Binding on Assigns. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties and the Settlement Class Members.

12.13 Interpretation. None of the Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.

12.14 Governing Law. This Agreement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Pennsylvania without giving effect to that state's choice-of-law principles.

12.15 Headings. The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

12.16 No Waiver. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement dated as of August 25, 2022.




On Behalf of Defendant Bath Saver, Inc.

On Behalf of Defendant Bath Fitter Manufacturing Inc.



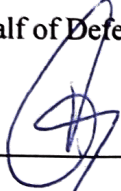
Carol Miller



On Behalf of Class Counsel

IN WITNESS WHEREOF, the Parties have executed this Agreement dated as of August 25, 2022.

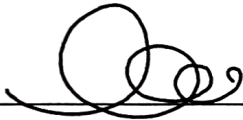
On Behalf of Defendant Bath Saver, Inc.



On Behalf of Defendant Bath Fitter Manufacturing Inc.



Carol Miller



On Behalf of Class Counsel