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FILED
Clerk of the Superior Court

APR 07 2023

By: M. Abasamra
J. Hernandez, Deputy

MAH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

TONI ZIEROLD, BRIAN TRIMBLE, and
KEN WITT, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

THE BRADFORD EXCHANGE, LTD.,
an Illinois corporation; HAMMACHER,
SCHLEMMER & CO., INC., a New York
corporation; and DOES 2-50, inclusive,

Defendants.

CASE NO. 37-2022-00009703-CU-BT-CTL

CLASS ACTION

PROPOSED ORDER GRANTING
MOTION FOR (1) FINAL APPROVAL OF
SETTLEMENT; (2) AWARD OF
ATTORNEYS' FEES AND LITIGATION
EXPENSES; (3) SERVICE AWARDS;
AND (4) APPROVAL OF *CY PRES*
RECIPIENTS; AND ENTERING
JUDGMENT

[IMAGED FILE]

1 Pending before the Court is the Motion for (1) Final Approval of Settlement; (2) Award of
2 Attorneys' Fees and Litigation Expenses; (3) Service Awards; and (4) Approval of *Cy Pres*
3 Recipients ("Motion for Final Approval") relating to the settlement between Toni Zierold, Brian
4 Trimble, and Ken Witt ("Plaintiffs") and The Bradford Exchange, LTD and Hammacher,
5 Schlemmer & Co., Inc. ("Defendants").

6 WHEREAS, on October 7, 2022, this Court entered an order granting Plaintiffs' motion
7 for preliminary approval of the Settlement (ROA# 33);

8 WHEREAS, counsel for the Parties appeared before this Court on April 7, 2023, at which
9 time Plaintiffs requested final approval of the Settlement and Class Counsel requested the other
10 relief set forth in the Motion for Final Approval; and

11 WHEREAS, due and adequate notice of the Settlement having been given pursuant to the
12 Preliminary Approval Order and the Agreement, and the Court having considered all papers filed
13 and proceedings had herein, and good cause appearing,

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

15 1. All terms and phrases in this Final Approval Order and Judgment ("Order") shall
16 have the same meanings ascribed to them in the Settlement Agreement (ROA# 24 Ex. 1), unless
17 otherwise noted.

18 2. The Court finds and determines that the notice procedure implemented in this
19 Action provides for the best notice practicable under the circumstances, and that such notice
20 procedure satisfies the requirements of California Rules of Court, rule 3.769, and due process.

21 3. The Court finds and determines that, having been properly notified of the
22 Settlement, no Class Member has objected to any aspect of the Settlement.

23 4. The Court finds and determines that the terms of the Settlement are fair, reasonable,
24 and adequate. The Court further finds and determines that settlement of the Action at this time will
25 avoid substantial additional costs by all Parties, as well as the delay and risks that would be
26 presented by the further prosecution of the Action. The Court hereby grants final approval of the
27 Settlement, approves the Agreement and each of the terms set forth therein, and directs the Parties
28 to effectuate and consummate the Settlement's terms as set forth in the Agreement and this Order.

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5. The Class is defined as follows:

All California residents who, between March 14, 2018 and October 7, 2022, were both (i) enrolled in either the Bradford Rewards program or the Hammacher Rewards program and (ii) charged at least one membership fee for such program. Excluded from the Class are all employees of Bradford and Hammacher, all employees of Plaintiffs' counsel, and the judicial officers to whom this case is assigned.

6. The Court finds and determines that no Class Members requested to be excluded from the Settlement.

7. The Court grants Class Counsel's motion for an award of attorneys' fees in the amount of \$180,500, plus reimbursement of litigation expenses in the amount of \$28,753.95. The Court finds that the attorneys' fees are justified as a percentage of the class recovery under the common fund doctrine and under the lodestar/multiplier approach; that the fee award is warranted in light of the time Class Counsel invested in the case, the risk Class Counsel undertook in prosecuting the Action on a contingency basis, the results achieved, the novelty of the legal issues, and the skill with which Class Counsel presented Plaintiffs' claims; and the litigation expenses were reasonably incurred in the prosecution of the litigation. These amounts shall be paid from the Settlement Amount in accordance with the Settlement Agreement.

8. The Court grants the request for service awards in the amount of \$5,000 each to Toni Zierold, Brian Trimble, and Ken Witt. The Court finds that these payments are justified in light of the time spent, the risk undertaken, and the recovery obtained in representing the interests of the Class and assisting Class Counsel. These amounts shall be paid from the Settlement Amount in accordance with the Settlement Agreement.

9. The Court finds that the fees and expenses of the Settlement Administrator, CPT Group, Inc., in the amount of \$52,000, are fair and reasonable. Such payment shall be made from the Settlement Amount in accordance with the Settlement Agreement.

10. The Settlement Administrator shall proceed with payment of the attorneys' fees, litigation expenses, service awards, and distribution to the Participating Class Members, in accordance with the Settlement Agreement and this Order.

1 11. The Court approves as the *cy pres* recipients Consumer Federation of California
2 and San Francisco Consumer Action, each to receive 50% any residual settlement funds due to
3 uncashed settlement checks or payments. The Settlement Administrator is ordered to pay any *cy*
4 *pres* amounts pursuant to the terms of the Settlement Agreement.

5 12. Plaintiffs and all Class Members are bound by the terms of the Settlement
6 Agreement, including its Release, and this Final Approval Order and Judgment. Pursuant to
7 Section IX of the Settlement Agreement, immediately upon entry of this Judgment, all of the
8 claims to be released by Plaintiffs and Class Members shall be released.

9 13. To provide notice to the Class pursuant to California Rules of Court, rule 3.771(b),
10 the Parties are ordered to cause a copy of this Final Approval Order and Judgment to be posted by
11 the Settlement Administrator on the Settlement Website.

12 14. Without affecting the finality of this Final Approval Order and Judgment, pursuant
13 to California Code of Civil Procedure section 664.6 and California Rules of Court, rule 3.769(h),
14 this Court retains continuing jurisdiction over the subject matter of the Action, the Class
15 Representatives, the Settlement Class Members, and the Defendants to administer the matters set
16 forth in the Settlement Agreement and implement and enforce the Settlement Agreement and this
17 Order and Judgment.

18 15. This Final Approval Order and Judgment shall constitute a final judgment that is
19 binding on the Parties and the Settlement Class Members. The Clerk is directed to promptly enter
20 this Order and Judgment on the register of actions.

21 IT IS SO ORDERED.

22 DATED: 4-7, 2023

JAMES A. MANGIONE

Hon. James A. Mangione
Judge of the Superior Court

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