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FILED
San Francisco County Superior Court

MAR 11 2022

CLERK OF THE COURT
BY: [Signature] Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

LASH BOOST CASES

Scherr v. Rodan & Fields, LLC; Superior Court of California, County of San Bernardino, Case No. CIVDS 1723435

Gorzo, et al. v. Rodan & Fields, LLC; Superior Court of California, County of San Francisco, Case No. CGC-18-565628

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4981

Case No. CJC-18-004981

**ORDER GRANTING PRELIMINARY
APPROVAL AND PROVISIONAL
SETTLEMENT CLASS
CERTIFICATION**

1 On March 8, 2022, this Court heard Plaintiffs Lien Scherr, Caryn Gorzo, Kasey Poe, Anna
2 Dohnke, Jolene Lewis Volpe (formerly Barbara Lewis), Bobbie Joe Huling, Cynthia Whetsell, Martha
3 Merle, Teresa Gattuso, Elissa Wagner, and Dixie Williams' ("Plaintiffs") unopposed Motion for
4 Preliminary Approval of Class Settlement ("Motion") under California Rule of Court, rule 3.769(c)
5 and (d). This Court reviewed the Motion, including the revised Settlement Agreement and Release
6 ("Agreement" or "Settlement"); the Memorandum of Points and Authorities in support of the Motion;
7 the supplemental submissions filed on October 25, 2021, February 4, 2022, February 10, 2022, and
8 March 7, 2022; and all exhibits, declarations and evidence submitted in support of the Motion. Based
9 on this review and the findings below, the Court finds good cause to GRANT the Motion.

10 The Court finds:

11 A. Unless otherwise specified, defined or capitalized terms in this Preliminary Approval
12 and Provisional Settlement Class Certification Order have the same definitions and meanings as the
13 terms set forth in the Settlement Agreement attached as Exhibit 11 to the Second Persinger
14 Declaration filed on October 28, 2021.

15 B. For settlement purposes only, the Settlement Class is so numerous that joinder of all
16 Settlement Class Members is impracticable, Plaintiffs' claims are typical of the Settlement Class's
17 claims, there are questions of law and fact common to the Settlement Class, which predominate over
18 questions affecting only individual Settlement Class Members, and Settlement Class certification is
19 superior to other available methods for the fair and efficient adjudication of the controversy.

20 C. The Court finds that (a) the Full Notice, Email Notice, and Postcard Notice constitute
21 the best notice practicable under the circumstances, (b) they constitute valid, due, and sufficient notice
22 to all members of the Settlement Class, (c) the method of notice is reasonably calculated to reach a
23 substantial percentage of Settlement Class Members, and is expected to reach, at a minimum, seventy-
24 five percent of the Settlement Class; and (d) the content, form, and method of notice comply fully
25 with the requirements of California Code of Civil Procedure section 382, California Rules of Court,
26 rules 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

27 D. The Agreement falls within the range of possible final approval as fair, reasonable, and
28 adequate, and appears to be presumptively valid.

1 **IT IS HEREBY ORDERED THAT:**

2 1. **Settlement Approval.** The Agreement, which is attached as Exhibit 11 to the Second
3 Persinger Declaration filed on October 28, 2021, is preliminarily approved.

4 2. **Provisional Certification.** The Settlement Class is provisionally certified, for
5 settlement purposes only, as all current and former consumers in the United States or its territories
6 who purchased Lash Boost for personal, family, or household purposes between October 1, 2016 and
7 the date of the entry of this Order granting preliminary approval to the Settlement Agreement, (the
8 “Settlement Class Period”) excluding (a) any individuals who have pending litigation against R+F; (b)
9 any Settlement Class Members who file a timely request for exclusion; (c) any officers, directors, or
10 employees, or immediate family members of the officers, directors, or employees, of R+F or any entity
11 in which R+F has a controlling interest; (d) any person who has acted as an Independent Consultant
12 of R+F; (e) any legal counsel or employee of legal counsel for R+F; (f) any federal, state, or local
13 government entities; (g) any person who has previously released the claims encompassed in the
14 Agreement; (h) any person who returned the Product and received a refund; and (i) any judicial officers
15 presiding over the Actions and the members of their immediate family and judicial staff.

16 3. **Preliminary and Conditional Appointment of Class Representatives.** Plaintiffs
17 Lien Scherr, Caryn Gorzo, Kasey Poe, Anna Dohnke, Jolene Lewis Volpe (formerly Barbara Lewis),
18 Bobbie Joe Huling, Cynthia Whetsell, Martha Merle, Teresa Gattuso, Elissa Wagner, and Dixie
19 Williams are conditionally appointed as the Settlement Class Representatives to implement the Parties’
20 Settlement in accordance with the Agreement.

21 4. **Preliminary Appointment of Class Counsel.** Tycko & Zavareei LLP, Keller
22 Rohrback LLP, Willett & Willett, LLP, Beshada Farnese, LLP, Glancy Prongay & Murry, LLP, Gibbs
23 Law Group, LLP, and Levi & Korsinsky, LLP, and Sauder Schelkopf LLC are conditionally appointed
24 as Class Counsel for settlement purposes, with Annick M. Persinger of Tycko & Zavareei LLP and
25 Juli E. Farris of Keller Rohrback LLP are conditionally appointed as Co-Leaders of Class Counsel.
26 Plaintiffs and Class Counsel must fairly and adequately protect the Settlement Class’s interests.

27 5. **Preliminary Appointment of Settlement Administrator.** The Court approves Epiq
28 as the administrator for the notice, claims and settlement (“Settlement Administrator”) of this case.

1 6. **Provision of Class Notice.** Defendant Rodan & Fields, LLC (“R+F”), through the
2 Settlement Administrator, will notify Settlement Class Members of the Settlement in the manner and
3 within the time period specified under Section 5.2 of the Agreement. The Court hereby approves, as
4 to form and content, the Proposed Notice of Class Action Settlement (the “Full Notice”) along with
5 the Email Notice and Postcard Notice attached as Exhibits 1, 3, and 5 to the Second Persinger
6 Declaration filed March 7, 2022.

7 7. **Claim Form.** Pursuant to Section 5.3 of the Agreement and subject to the occurrence
8 of the Effective Date, to be qualified to receive payment under the Settlement, Settlement Class
9 Members must complete a valid and timely Claim Form and submit the Claim Form to the Settlement
10 Administrator no later than one-hundred twenty (180) days after entry of this Order (the “Claim Filing
11 Deadline”).

12 8. **Objection to Settlement.** Class Members who have not submitted a timely written
13 exclusion request pursuant to paragraph 9 below and who wish to object to the fairness,
14 reasonableness, or adequacy of the Agreement, may elect to object to the Agreement by sending a
15 written objection to the Settlement Administrator that (a) states the case name and number: Lash
16 Boost Cases, JCCP No. 4981 (Cal. Superior Ct., San Francisco County); (b) states the full name,
17 address, and telephone number of the Settlement Class Member making the objection; (c) contains a
18 statement that he/she objects to the Agreement and the reasons for the objections; and (d) is signed
19 by the Settlement Class Member making the objection or an authorized representative. The written
20 objection must be submitted to the Settlement Administrator either electronically through the
21 Settlement Website or by U.S. Mail. The written objection must be submitted electronically or
22 postmarked no later than 125 days after the entry of this Order (the “Objection Deadline”). The
23 Settlement Administrator must serve on Class Counsel and R+F’s Counsel a list of Settlement Class
24 Members who have objected along with the substance of those objections no later than seven (7)
25 court days prior to the filing date of Plaintiffs’ motion for final approval. If a Settlement Class Member
26 submits both an exclusion request and an objection, the exclusion request shall take precedence and
27 be considered valid and binding, and the objection shall be deemed to have been sent by mistake and
28 rejected. Any Settlement Class Member has the option to appear at the Final Approval Hearing, either

1 in person or through counsel hired at the Settlement Class Member's expense, to object to the fairness,
2 reasonableness, or adequacy of the Settlement Agreement.

3 **9. Requesting Exclusion.** Settlement Class Members who wish to be excluded from
4 the Settlement must, no later than one-hundred ten (125) days after the entry of this Order (the
5 "Exclusion Deadline"), either (a) submit a Notice of Opt-Out electronically or by postal mail, or (b)
6 send a signed letter or postcard to the Settlement Administrator. Any letter or postcard submitted in
7 lieu of a Notice of Opt-Out must include the name and case number of the *Gorzo-Scherr* Action, the
8 full name, address, and telephone number of the person requesting exclusion, and a statement that
9 he/she does not wish to participate in the Agreement. The Settlement Administrator must serve on
10 Class Counsel and R+F's Counsel a list of Settlement Class Members who have timely and validly
11 excluded themselves from the Settlement Class no later than seven (7) court days prior to the filing
12 date of Plaintiffs' motion for final approval. If a Settlement Class Member submits both a Claim Form
13 and an exclusion request, the Claim Form shall take precedence and be considered valid and binding,
14 and the exclusion request shall be deemed to have been sent by mistake and rejected.

15 **10. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and deadlines
16 in this case, including R+F's deadline for responding to Plaintiff's Second Amended Complaint, are
17 stayed and suspended until further notice from the Court, except for such actions as are necessary to
18 implement the Agreement and this Order.

19 **11. No Admission.** Nothing in this Order is, or may be construed as, an admission or
20 concession on any point of fact or law by or against any Party.

21 **12. Motion for Final Approval.** Plaintiffs shall file a motion for final approval of the
22 Settlement, Class Representative Service Payments, and attorneys' fees and costs no later than sixteen
23 (16) court days prior to the Final Approval Hearing.

24 **13. Final Approval Hearing.** On September 14, 2022, at 9:00 a.m., this Court will hold
25 a Final Approval Hearing to determine whether the Agreement should be finally approved as fair,
26 reasonable, and adequate. This Court may order the Final Approval Hearing to be postponed,
27 adjourned, or continued. If that occurs, the Parties will not be required to provide additional notice
28 to Settlement Class Members.

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IT IS SO ORDERED.

Date:

Nov. 8, 2022



Honorable Ethan P. Schulman
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On March 11, 2022, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: March 11, 2022

T. Michael Yuen, Clerk

By: _____



Ericka Larnauti, Deputy Clerk