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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

ALEX PYGIN,

Plaintiff,

v.

BOMBAS LLC; SHOPIFY (USA) INC.;
and SHOPIFY INC.,

Defendants.

Case No.: 3:20-cv-04412-JSW

**NOTICE OF PENDENCY OF CLASS
ACTION, PROPOSED SETTLEMENT AND
HEARING**

THIS IS A COURT-AUTHORIZED NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT THAT MAY AFFECT YOUR RIGHTS. IT IS NOT A NOTICE OF A LAWSUIT AGAINST YOU OR A SOLICITATION FROM A LAWYER. PLEASE READ THIS NOTICE CAREFULLY.

To: All individuals residing in the United States who made purchases on the Bombas website from November 11, 2016 through February 16, 2017 (the “Settlement Class Members”).

A proposed Settlement has been reached in a class action lawsuit against Bombas LLC (“Bombas”), Shopify (USA) Inc., and Shopify Inc. (collectively “Defendants”). The lawsuit asserted claims against Defendants arising out of or related to a security incident that affected Bombas’ computer systems from the period commencing on November 11, 2016 and continuing through February 16, 2017 (the “Security Incident”). Defendants deny all of the claims and deny that they did anything wrong.

The Settlement includes all individuals residing in the United States who made purchases on the Bombas website from November 11, 2016 through February 16, 2017 (“Settlement Class Members”).

The Settlement offers payments to Settlement Class Members who were potentially affected by the Security Incident. The amount paid will depend upon how many people submit valid claims, but assuming an average claims rate, the payout is likely to be approximately \$47.00 per Settlement Class Member.

If you are a Settlement Class Member, your options are:

<p>SUBMIT A CLAIM FORM</p> <p>DEADLINE: NOVEMBER 9, 2021</p>	<p>You must submit a valid claim form to receive a payment from this Settlement.</p>
<p>DO NOTHING</p>	<p>You will receive no payment and will no longer be able to sue Defendants over the claims resolved in the Settlement.</p>
<p>EXCLUDE YOURSELF</p> <p>DEADLINE: OCTOBER 12, 2021</p>	<p>Get out of the lawsuit. Get no payment. Keep your right to sue separately with your own lawyer. Exclusion instructions are provided in this notice.</p>
<p>OBJECT</p> <p>DEADLINE: OCTOBER 12, 2021</p>	<p>If you do not exclude yourself, you may write to the Court to comment on or detail why you do not like the Settlement by following the instructions in this notice. The Court may reject your objection. You must still file a claim if you desire any monetary relief under the Settlement.</p>
<p>GO TO A COURT HEARING</p>	<p>The Final Settlement Hearing is on November 19, 2021, at 9:00 a.m. If you or your attorney go to the Hearing it will be at your own expense. You do not need to attend the hearing to receive payment.</p>

The Court must give final approval to the settlement before it takes effect, but has not yet done so. No payments will be made until after the court gives final approval and any appeals are resolved.

Please review this notice carefully. You can learn more about the Settlement by visiting www.BombasSettlement.com or by calling 1-844-963-2773.

Further Information about this Notice and the Lawsuit

1. *Why was this Notice issued?*

You received this notice because you may be a Settlement Class Member able to receive payment from a proposed settlement of the class action lawsuit *Alex Pygin v. Bombas LLC, Shopify (USA) Inc., and Shopify Inc.*, United States District Court, Northern District of California, Case No. 4:20-cv-04412-JSW (the “Lawsuit”). The Court overseeing the Lawsuit authorized this Notice to advise Settlement Class Members about the proposed Settlement that will affect their legal rights. The Notice explains certain legal rights and options you have in connection with that Settlement.

2. *What is the Lawsuit about?*

The Lawsuit is a proposed class action lawsuit brought on behalf of U.S. residents whose Personal Information may have been accessed and/or compromised by unauthorized individuals as part of the Security Incident. Bombas could not rule out the possibility that the Security Incident could have resulted in the potential exposure of payment card data of customers who used a credit or debit card to make a purchase from the Bombas website. The potentially-exposed information may include customers’ names, address, and payment card data.

The Lawsuit claims Defendants are legally responsible for the Security Incident and asserts various legal claims, including (1) negligence; (2) negligence *per se*, (3) invasion of privacy, (4) declaratory relief; and (5) violation of the California Unfair Competition Law, California Business & Professions Code § 17200, *et seq.* Defendants deny these claims and deny they did anything wrong.

3. *Why is the Lawsuit a class action?*

In a class action, one or more representative plaintiffs bring a lawsuit on behalf of others who have similar claims. Together, all of these people are the “class” and each individually is a “class member.” There is one Representative Plaintiff in this case: Alex Pygin. The class in this case is referred to in this Notice as the “Settlement Class.”

4. *Why is there a Settlement?*

The Representative Plaintiff in the Lawsuit, through his attorneys, investigated the facts and law relating to the issues in the Lawsuit. The Representative Plaintiff and Class Counsel believe that the settlement is fair, reasonable, and adequate and will provide substantial benefits to the Settlement Class. The Court has not decided whether the Representative Plaintiff’s claims or Defendants’ defenses have any merit, and it will not do so if the proposed settlement is approved. By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid claims will receive compensation. The Settlement does not mean that Defendants did anything wrong, or that the Representative Plaintiff and the Settlement Class would or would not win the case if it were to go to trial.

Terms of the Proposed Settlement

5. *Who is in the Settlement Class?*

The Settlement Class is defined by the Court as all individuals residing in the United States who made purchases on Bombas' website from November 11, 2016 through February 16, 2017.

6. *What are the terms of the Settlement?*

The proposed Settlement would create a Settlement Fund of \$225,000.00 that would be used to pay all costs of the settlement, including: (i) payments to Settlement Class Members who submit valid claims; (ii) costs of Claims Administration (\$40,364.00); (iii) any attorneys' fees and costs awarded by the Court to Class Counsel (\$56,250.00 plus costs of approximately \$10,000.00); and (iv) any service award to the Representative Plaintiff awarded by the Court (\$1,000.00). The Settlement also releases all claims of Settlement Class Members against Defendants arising out of or related to the Security Incident, as detailed in the Settlement Agreement.

7. *What claims are Settlement Class Members giving up under the Settlement?*

Settlement Class Members who do not validly exclude themselves from the Settlement will be bound by the Settlement Agreement and any final judgment entered by the Court, and will give up their right to sue Defendants for the claims being resolved by the Settlement. The claims that Settlement Class Members are releasing are described in Section 1.28 of the Settlement Agreement and the persons and entities being released from those claims are described in Sections 1.29 and 1.30 of the Settlement Agreement. Section VIII of the Settlement Agreement explains when such releases will occur.

Payments to Settlement Class Members

8. *What kind of payments can Settlement Class Members receive?*

Settlement Class Members who submit valid claims and all required documentation may receive one of two types of payments to be paid from the Settlement Fund: (1) a Basic Award; or (2) a Reimbursement Award. Settlement Class Members may receive only one Award. Depending on how many valid claims are submitted, the amount of each Award may be adjusted upward or downward proportionally among Settlement Class Members submitting valid claims, as explained further below in Question 11. Only one Settlement Claim may be submitted per Settlement Class Member and method of payment.

9. *What is a Basic Award?*

Every Settlement Class Member is eligible to receive a Basic Award of up to \$50.00, regardless of whether he or she experienced any unauthorized charges on a credit or debit card used to make a purchase from Bombas. Settlement Class Members seeking a Basic Award must provide the

information and documents required on the Claim Form. The amount paid as a Basic Award is subject to upward or downward adjustment as described below in Question 11.

10. What is a Reimbursement Award?

Settlement Class Members who, at any time between November 11, 2016 through February 16, 2017, experienced unauthorized charges on their credit or debit cards that were not denied or reimbursed, which charges the Settlement Class Member believes in good faith were more likely than not caused by the Security Incident, are eligible to receive a Reimbursement Award of up to \$2,500.00 as reimbursement for: (i) those unreimbursed, unauthorized charges, (ii) up to three hours of lost time spent dealing with unauthorized charges or the Security Incident, at a rate of \$20.00 per hour, and (iii) the following types of out of pocket expenses arising out of or related to the Security Incident:

- unreimbursed expenses arising out of or related to the Security Incident, including but not limited to payment card fees or bank fees, including card reissuance fees, overdraft fees, charges related to unavailability of funds, late fees, over-limit fees, and fees relating to an account being frozen or otherwise unavailable;
- cell, internet or text charges arising out of or related to the Security Incident;
- preventative costs or charges arising out of or related to the Security Incident including purchasing credit monitoring, placing security or credit freezes, and obtaining credit reports or credit freezes; and
- postage costs arising out of or related to the Security Incident.

No other types of expenses will be reimbursed and you cannot recover for emotional distress. Claimants must exhaust all available credit monitoring insurance and identity theft insurance before seeking a Reimbursement Award. Settlement Class Members seeking a Reimbursement Award must provide the information and documents required on the Claim Form. The amount paid as a Reimbursement Award is subject to upward or downward adjustment as described below in Question 11.

11. When and how will the amount of Settlement Payments be adjusted?

The amounts paid for all Basic Awards and Reimbursement Awards will be adjusted upward or downward from the amounts listed in Questions 9-10 above depending on how many Settlement Class Members submit valid claims.

If the total dollar value of all valid claims is less than the amount of money available in the Settlement Fund for payment of Settlement Class Member claims at the amounts listed above in response to Questions 9-10, the amount of payment for Basic Awards and Reimbursement Awards will be adjusted upward proportionally among all valid claims, up to a maximum of twice the dollar amounts listed in Questions 9-10 (e.g., Basic Awards may be adjusted up to \$100.00).

If the total dollar value of all valid claims is more than the amount of money available in the Settlement Fund for payment of Settlement Class Member claims at the amounts listed above in response to Questions 9-10, the amount of payment for Basic Awards and Reimbursement Awards will be adjusted downward proportionally among all valid claims.

12. *What happens after all claims are processed and there are funds remaining?*

If there are any funds remaining after all valid claims are processed and the time to cash any payment checks has passed, those funds shall be distributed as directed by the Court, including potential distribution to a charitable organization. No remaining funds will be returned to Defendants.

Your Options as a Settlement Class Member

13. *If I am a Settlement Class Member, what options do I have?*

If you are a Settlement Class Member, you do not have to do anything to remain in the Settlement. However, if you wish to seek a Settlement Award, you **must** complete and submit a Claim Form postmarked or submitted online by **November 9, 2021**. You may submit a Claim Form online at **www.BombasSettlement.com**.

If you do not want to give up your right to sue Defendants about the Security Incident or the issues raised in this case, you must exclude yourself (or “opt out”) from the Settlement Class. See Question 17 below for instructions on how to exclude yourself.

If you object to the settlement, you must remain a Settlement Class Member (*i.e.*, you may not also exclude yourself from the Settlement Class by opting out) and file a written objection in this case with the Court at the address in Question 20 below. If you object, you must still submit a claim if you want any monetary relief.

14. *What happens if I do nothing?*

If you do nothing, you will get no Settlement Award from this Settlement. Unless you exclude yourself, after the Settlement is granted final approval and the judgment becomes final, you will be bound by the judgment and you will never be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants related to the claims released by the Settlement.

15. *How do I submit a claim?*

You may complete the Claim Form online at **www.BombasSettlement.com**. You may also obtain a paper Claim Form by downloading it at **www.BombasSettlement.com** or by calling the claims administrator at **844-963-2773**. If you choose to complete a paper Claim Form you may either submit the completed and signed Claim Form and any supporting materials electronically at **www.BombasSettlement.com** or mail them to:

Bombas Settlement Claims Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

16. Who decides my Settlement claim and how do they do it?

The Claims Administrator will initially decide whether a Claim Form is complete and valid and includes all required documentation. The Claims Administrator may require additional information from any claimant. Failure to timely provide all required information will invalidate a claim and it will not be paid.

17. How do I exclude myself from the Settlement?

You must make a signed written request that (i) says you wish to exclude yourself from the Settlement Class in this Lawsuit, and (ii) includes your name, address and phone number. You must deliver your request by **October 12, 2021** to this address:

Bombas Settlement Claims Administrator
Attn: Exclusion
P.O. Box 58220
Philadelphia, PA 19102

18. If I exclude myself, can I receive any payment from this Settlement?

No. If you exclude yourself, you will not be entitled to any Award. However, you will also not be bound by any judgment in this Lawsuit.

19. If I do not exclude myself, can I sue Defendants for the Security Incident later?

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form requesting a payment.

20. How do I object to the settlement?

All Settlement Class Members who do not request exclusion from the Settlement Class have the right to object to the settlement or any part of it. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing and it and any supporting papers must be submitted to the Court either by mailing it to the Class Action Clerk, United States District

Court for the Northern District of California, Oakland Division, located at 1301 Clay Street, Oakland, California 94612, or by filing it in person at any location of the United States District Court for the Northern District of California. Objections must be filed or postmarked no later than **October 12, 2021**.

To be considered by the Court, your objection must list the name of this Lawsuit, *Alex Pygin v. Bombas LLC, Shopify (USA) Inc., and Shopify Inc.*, and the case number, 4:20-cv-04412-JSW, and include all of the following information: (i) the objector's full name, address, and telephone number; (ii) a statement as to whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire class; (iii) a clear and detailed written statement of the grounds for the objection; and (iv) the objector's signature.

If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

Court Approval of the Settlement

21. *How, when and where will the Court decide whether to approve the Settlement?*

The Court will hold a Final Settlement Approval Hearing to decide whether to approve the Settlement. That hearing is scheduled for **November 19, 2021, at 9:00 A.M. PST**, at United States District Court, Northern District of California, Oakland Division, located at 1301 Clay Street, Oakland, California 94612. Please visit the Court's website at <https://cand.uscourts.gov/> for current Court Operations and Safety Protocols information. At the Final Settlement Approval Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have properly requested to speak at the hearing. The Court may also consider Class Counsel's request for attorneys' fees and costs, and the request for a service award for the Representative Plaintiff. After the hearing, the Court will decide whether to approve the Settlement.

It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check www.BombasSettlement.com or by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> to confirm the schedule if you wish to attend.

22. *Do I have to attend the hearing?*

No. You do not need to attend the hearing unless you object to the settlement and wish to appear in person. It is not necessary to appear in person to make an objection; the Court will consider any written objections properly submitted according to the instructions in Question 20.

You or your own lawyer are welcome to attend the hearing at your expense, but are not required to do so.

23. What happens if the Court approves the Settlement?

If the Court approves the Settlement and no appeal is taken, the Settlement Fund will be funded. The Claims Administrator will pay any Attorney Fees' and Costs Award, any Representative Plaintiff's Award, and costs of Claims Administration from the Settlement Fund. Then, within the later of 90 days after the Effective Date or 30 days after all disputed claims have been resolved, the Claims Administrator will send Settlement Payments to Settlement Class Members who submitted timely and valid Settlement Claims. No distributions will be made without authorization from the parties.

If any appeal is taken, it is possible the Settlement could be disapproved on appeal.

24. What happens if the Court does not approve the Settlement?

If the Court does not approve the Settlement, no Settlement Fund will be created, there will be no Settlement Payments to Settlement Class Members, Class Counsel or the Representative Plaintiff, and the case will proceed as if no Settlement had been attempted.

Lawyers for the Settlement Class and Defendants

25. Who represents the Settlement Class?

The Court has appointed the following Class Counsel to represent the Settlement Class and Settlement Class Members in this Lawsuit:

M. Anderson Berry
Clayco C. Arnold, A Professional Law Corporation
865 Howe Avenue
Sacramento, CA 95825
916-777-7777

John A. Yanchunis
Morgan & Morgan Complex Litigation Group
201 N. Franklin St., 7th Floor
Tampa, FL 33602
813-223-5505

Settlement Class Members will not be charged for the services of Class Counsel; Class Counsel will be paid out of the Settlement Fund, subject to Court approval. However, you may hire your own attorney at your own expense to advise you in this matter or represent you in making an objection or appearing at the final settlement approval hearing.

26. *How will the lawyers for the Settlement Class be paid?*

Class Counsel will request the Court's approval of an award for attorneys' fees up to 25% of the Settlement Fund (or \$56,250.00), plus reasonable costs and expenses, which shall be paid from the Settlement Fund. Class Counsel will also request approval of a service award of \$1,000.00 to Mr. Pygin, which shall also be paid from the Settlement Fund. A copy of Class Counsel's request for attorneys' fees, costs and expenses, and service awards will be available at www.BombasSettlement.com on or around **September 7, 2021**.

27. *Who represents Defendants in the Lawsuit?*

Defendants are represented by the following lawyers:

Anne Johnson Palmer
Ropes & Gray LLP
Three Embarcadero Center
San Francisco, CA 94111
415.315.6300

Attorneys for Defendant Bombas LLC

Joshua A. Jessen
Gibson, Dunn & Crutcher LLP
3161 Michelson Drive
Irvine, CA 92612
949.451.4114

Attorneys for Defendants Shopify (USA) Inc. and Shopify Inc.

For Further Information

28. *What if I want further information or have questions?*

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at www.BombasSettlement.com, by contacting Class Counsel at the phone numbers provided in response to Question 25 above, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Oakland Division, 1301 Clay Street, Oakland, California 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Angeion Group will act as the Claims Administrator for the Settlement. You can contact the Claims Administrator at:

Bombas Settlement Claims Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

DO NOT CONTACT THE COURT OR DEFENDANTS.