

Exhibit 1

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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 ALEX PYGIN,
17 Plaintiff,
18 v.
19 BOMBAS, LLC; SHOPIFY (USA) INC.; and
20 SHOPIFY INC.,
21 Defendants.

Case No.: 4:20-cv-04412-JSW

**SETTLEMENT AGREEMENT AND
RELEASE**

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement (“Agreement”), dated as of May 20, 2021, is made and entered into by and among the following Settling Parties: (1) Plaintiff Alex Pygin (“Pygin” or “Representative Plaintiff”), individually and on behalf of the Settlement Class, and (2) Defendants Bombas, LLC (“Bombas”), Shopify (USA) Inc., and Shopify Inc. (collectively “Defendants” and, together with Plaintiff, the “Parties”), by and through their respective counsel.

RECITALS

WHEREAS, on July 1, 2020, Mr. Pygin filed a class action complaint (“Complaint”) in the United States District Court for the Northern District of California (the “Court”) entitled *Alex Pygin v. Bombas, LLC, Shopify (USA) Inc., and Shopify Inc.*, Case No. 4:20-cv-04412-JSW (the “Litigation”);

WHEREAS, the Complaint asserts claims against Defendants for: (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.*, arising from the “Security Incident,” as such term is defined in Paragraph 1.34 hereof;

WHEREAS, Defendants have denied and continue to deny (a) each and every allegation and all charges of wrongdoing or liability of any kind whatsoever asserted or which could have been asserted in this Litigation, (b) that the Representative Plaintiff in the Litigation and the class he purports to represent have suffered any damage, and (c) that the Litigation satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23. Without acknowledging any fault or liability on the part of the Defendants, the Settling Parties have agreed to enter into this Agreement as an appropriate compromise of Representative Plaintiff’s and Settlement Class Members’ claims in order to put to rest all controversy and to avoid the uncertainty, risk, and/or expense of burdensome, protracted, and costly litigation that would be involved in prosecuting and defending this Litigation. This Agreement is for settlement purposes only, and nothing in this Agreement shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by the Representative Plaintiff in this action or in any other

1 pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any
2 kind on the part of any Defendant or admission by any of the parties of the validity or lack thereof of
3 any claim, allegation, or defense asserted in this Litigation or in any other action;

4 WHEREAS, the Settling Parties exchanged informal discovery regarding the Security
5 Incident, the Representative Plaintiff's claims and Defendants' defenses; and participated in good
6 faith, arms-length settlement discussions during a day-long mediation with Martin Quinn, Esq. of
7 JAMS via videoconference on February 12, 2021, through which the material terms of a settlement
8 were negotiated and finalized;

9 WHEREAS, Class Counsel conducted a thorough examination and evaluation of the relevant
10 law and facts to assess the merits of the claims to be resolved in this Settlement and how best to serve
11 the interests of the putative class in the Litigation. Based on this investigation and the negotiations
12 described above, Class Counsel have concluded, taking into account the sharply contested issues
13 involved, the risks, uncertainty and cost of further prosecution of this Litigation, and the benefits to
14 be received by the Settlement Class pursuant to this Agreement, that a Settlement with Defendants
15 on the terms set forth in this Agreement is fair, reasonable, adequate and in the best interests of the
16 putative class;

17 WHEREAS, as part of its business operations, Bombas agrees to continue to take reasonable
18 steps to provide secure access to the e-commerce platform through which it processes credit card and
19 debit card transactions;

20 WHEREAS, this Settlement Agreement is intended to fully, finally, and forever resolve all
21 claims and causes of action asserted, or that could have been asserted, based upon the facts alleged in
22 the Complaint, against Defendants and the Released Persons, by and on behalf of the Representative
23 Plaintiff and Settlement Class Members (as defined in paragraph 1 below), and any other such actions
24 by and on behalf of any other consumers and putative classes of consumers originating, or that may
25 originate, in jurisdictions in the United States, relating to the Security Incident.

26 NOW, THEREFORE, IT IS HEREBY AGREED, by and between the Representative
27 Plaintiff, individually and on behalf of the Settlement Class, Class Counsel, and Defendants, that,

1 subject to the approval of the Court as provided for in this Agreement, the Litigation and Released
2 Claims shall be fully and finally settled, compromised and released, and the Litigation shall be
3 dismissed with prejudice, on the following terms and conditions:

4 **I. DEFINITIONS**

5 As used in this Agreement, the following terms have the meanings specified below:

6 1.1 “Agreement” or “Settlement Agreement” means this agreement.

7 1.2 “Approved Claims” means valid Settlement Claims in an amount approved by the
8 Claims Administrator or found to be valid through the Dispute Resolution Process, as set forth in this
9 Agreement.

10 1.3 “Attorneys’ Fees and Expenses Award” means the amount awarded by the Court to be
11 paid to Class Counsel from the Settlement Fund, such amount to be in full and complete satisfaction
12 of Class Counsel’s claim or request (and any request made by any other attorneys) for payment of
13 attorneys’ fees, costs, and litigation expenses.

14 1.4 “Award” means the amount remitted by the Claims Administrator out of the
15 Settlement Fund to Settlement Class Members who submit Approved Claims, as provided in Sections
16 II and VII of this Agreement.

17 1.5 “Bombas” means Bombas LLC.

18 1.6 “Claim Form” means the claim form attached hereto as Exhibit A, or a claim form
19 approved by the Court that is substantially similar to Exhibit A.

20 1.7 “Claims Administration” means the processing of Settlement Claims received from
21 Settlement Class Members and the processing of payment of Approved Claims by the Claims
22 Administrator.

23 1.8 “Claims Administrator” means Angeion Group, or such other company experienced
24 in administering class action claims generally and specifically those of the type provided for in this
25 Litigation, as may be jointly agreed upon by the Settling Parties and approved by the Court.

26 1.9 “Claims Deadline” means the deadline by which Settlement Class Members must
27

1 submit any valid Settlement Claims. The Claims Deadline shall be set by the Court in the Preliminary
2 Approval Order. The Settling Parties propose a Claims Deadline that is the 120th day after the entry
3 of the Preliminary Approval Order.

4 1.10 “Claims Period” means the time for Settlement Class Members to submit Settlement
5 Claims, running from the date of entry of the Preliminary Approval Order through the Claims
6 Deadline.

7 1.11 “Class Counsel” means M. Anderson Berry of Clayco C. Arnold, A Professional Law
8 Corp., and John A. Yanchunis of Morgan & Morgan Complex Litigation Group.

9 1.12 “Class Notice” means the notice of this Settlement that is contemplated by this
10 Agreement, and which shall include the Long Notice and Summary Notice, substantially in the form
11 attached hereto as Exhibits B and C, respectively.

12 1.13 “Class Period” means the period commencing on November 11, 2016 and continuing
13 through February 16, 2017, as set forth in the Complaint.

14 1.14 “Defendants” mean Bombas, Shopify (USA) Inc., and Shopify Inc.

15 1.15 “Dispute Resolution Process” means the process for resolving disputed Settlement
16 Claims as set forth in ¶ 7.2 of this Agreement.

17 1.16 “Effective Date” means the date on which the Final Approval Order in the Action
18 becomes “Final.”

19 1.17 “Final” means: one (1) business day after all of the following conditions have been
20 satisfied: (a) the Final Approval Order has been entered; and (b)(i) if reconsideration and/or appellate
21 review is not sought from the Final Approval Order, the expiration of the time for the filing or noticing
22 of any motion for reconsideration, appeal, petition, and/or writ; or (b)(ii) if reconsideration and/or
23 appellate review is sought from the Final Approval Order: (A) the date on which the Final Approval
24 Order is affirmed and is no longer subject to judicial review, or (B) the date on which the motion for
25 reconsideration, appeal, petition, or writ is dismissed or denied and the Final Approval Order and
26 Judgment is no longer subject to judicial review.

1 1.18 “Final Approval Hearing” means the final hearing to be conducted by the Court in
2 connection with the determination of the fairness, adequacy and reasonableness of this Agreement
3 and the proposed settlement of the Litigation.

4 1.19 “Final Approval Order” means the Court’s Final Approval Order and Judgment,
5 substantially in the form attached hereto as Exhibit D, which, among other things, approves this
6 Agreement and the Settlement as fair, adequate and reasonable and confirms the certification of the
7 Settlement Class for settlement purposes only.

8 1.20 “Objection Deadline” means 75 days after the date of entry of the Preliminary
9 Approval Order.

10 1.21 “Opt Out” means a Settlement Class Member (i) who timely submits a properly
11 completed and executed Request for Exclusion, and (ii) who does not rescind that Request for
12 Exclusion before the end of the Opt Out Period, and (iii) as to which there is not a successful challenge
13 to the Request for Exclusion.

14 1.22 “Opt Out Date” means the date by which Settlement Class Members must mail their
15 Request for Exclusion in order for that request to be excluded from the Settlement Class to be
16 effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The
17 Opt Out Date shall be 75 days after the date of entry of the Preliminary Approval Order.

18 1.23 “Opt Out Period” means the period commencing on the date of entry of the Preliminary
19 Approval Order and ending on the Opt Out Date, during which Settlement Class Members may submit
20 a timely Request for Exclusion.

21 1.24 “Out of Pocket Expenses” means unreimbursed expenses incurred as a result of the
22 Security Incident, including but not limited to: (a) payment card fees or bank fees, including card
23 reissuance fees, overdraft fees, charges related to unavailability of funds, late fees, over-limit fees,
24 and fees relating to an account being frozen or otherwise unavailable; (b) cell, internet or text charges;
25 (c) preventative costs or charges including purchasing credit monitoring, placing security or credit
26 freezes, and obtaining credit reports or credit freezes; and (d) postage costs.

1 1.25 “Person” means an individual, corporation, partnership, limited partnership, limited
2 liability company or partnership, association, joint stock company, estate, legal representative, trust,
3 unincorporated association, government or any political subdivision or agency thereof, and any
4 business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives,
5 or assignees.

6 1.26 “Personal Information” means information that is or could be used, whether on its own
7 or in combination with other information, to identify, locate, or contact a person, and further includes
8 customers’ names, email addresses, billing and shipping addresses, and payment card numbers, CVV
9 security codes, and credit card expiration dates.

10 1.27 “Preliminary Approval Order” means the Court’s order granting, among other things,
11 conditional certification of the Settlement Class, preliminary approval of this Agreement and the
12 Settlement, and approval of the form and method of Class Notice, substantially in the form attached
13 hereto as Exhibit E.

14 1.28 “Released Claims” means all claims, including but not limited to, any claim, liability,
15 right, demand, suit, matter, obligation, damage, including consequential damages, losses or costs,
16 liquidated damages, statutory damages, punitive damages, attorneys’ fees and costs, actions or causes
17 of action of every kind and description, whether in law, in equity, for administrative relief, or
18 otherwise, that the Releasing Persons had, have, or may in the future have, against Defendants and/or
19 the Released Persons that result from, arise out of, are based upon, or relate in any way to the Security
20 Incident, including but not limited to claims that were or could have been asserted in the Litigation,
21 and including further but not limited to any claims, actions, causes of action, demands, damages,
22 penalties, losses, or remedies relating to, based upon, resulting from, or arising out of (1) the alleged
23 theft, exposure, or disclosure of Settlement Class Members’ Personal Information; (2) the
24 maintenance and storage of Settlement Class Members’ Personal Information; (3) the Defendants’
25 information security policies and practices; and (4) Bombas’ notice of the Security Incident to
26 Settlement Class Members. “Released Claims” does not include the right of any Settlement Class
27 Member or any of the Released Persons to enforce the terms of the Settlement contained in this

1 Agreement, does not release any claims that are not related in any way to the Security Incident or to
2 the allegations, facts or circumstances asserted or that could have been asserted in the Litigation
3 and/or Complaint, and shall not include any claims of Settlement Class Members who have timely
4 excluded themselves from the Settlement Class.

5 1.29 “Released Persons” means Defendants and their past or present owners, parents,
6 subsidiaries, divisions, and related or affiliated entities of any nature whatsoever, whether direct or
7 indirect, as well as each of Defendants’ and these entities’ respective predecessors, successors,
8 directors, officers, shareholders, employees, servants, representatives, principals, agents, advisors,
9 consultants, vendors, partners, contractors, attorneys, insurers, reinsurers, and subrogees.

10 1.30 “Releasing Persons” means Settlement Class Members, and each of their heirs, estates,
11 trustees, principals, beneficiaries, guardians, executors, administrators, representatives, agents,
12 attorneys, partners, successors, predecessors-in-interest, and assigns and/or anyone claiming through
13 them or acting or purporting to act for them or on their behalf.

14 1.31 “Representative Plaintiff” means Alex Pygin.

15 1.32 “Request for Exclusion” means a fully completed and properly executed written
16 request that is timely delivered to the Claims Administrator by a Settlement Class Member under
17 Section V of this Agreement and is postmarked on or before the end of the Opt Out Period. For a
18 Request for Exclusion to be properly completed and executed, it must: (a) state the Settlement Class
19 Member’s full name, address and telephone number; (b) contain the Settlement Class Member’s
20 personal and original signature or the original signature of a person authorized by law to act on the
21 Settlement Class Member’s behalf with respect to a claim or right such as those asserted in the
22 Litigation, such as a trustee, guardian or person acting under a power of attorney; and (c) state
23 unequivocally the Settlement Class Member’s intent to be excluded from the Settlement. If a
24 Settlement Class Member’s Request for Exclusion covers a payment card that includes co-signers or
25 co-holders on the same payment card account, the Settlement Class Member’s Request for Exclusion
26 shall be deemed to be properly completed and executed as to that payment card only if all co-signers
27 or co-holders elect to and validly opt out in accordance with the provisions of this Paragraph. All

1 Requests for Exclusion must be submitted individually in connection with a Settlement Class
2 Member, i.e., one request is required for every Settlement Class Member seeking exclusion.

3 1.33 “Shopify” means Shopify (USA) Inc. and Shopify Inc.

4 1.34 “Security Incident” means the data security incident that Bombas disclosed on or about
5 June 3, 2020, whereby unauthorized third parties may have accessed Bombas’ customers’ Personal
6 Information that customers may have used to purchase products from Bombas’ website from
7 November 11, 2016 through February 16, 2017.

8 1.35 “Service Award” means such funds as may be awarded by the Court to the
9 Representative Plaintiff in recognition of his time, effort, and service to the Class, expended in
10 pursuing the Action and in fulfilling his obligations and responsibilities as the Representative
11 Plaintiff.

12 1.36 “Settlement” means the terms set forth in this Agreement.

13 1.37 “Settlement Claim” means a claim for settlement benefits made under the terms of this
14 Agreement.

15 1.38 “Settlement Class” means all individuals residing in the United States who made
16 purchases from the Bombas website from November 11, 2016 through February 16, 2017.

17 1.39 “Settlement Class Member(s)” means a member(s) of the Settlement Class.

18 1.40 “Settlement Fund” means Two Hundred and Twenty-Five Thousand Dollars
19 (\$225,000.00), which shall be the sole and exclusive source of all costs of the Settlement, including
20 payment to Settlement Class Members, costs of Claims Administration (not including the cost of
21 serving notices under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715), any
22 Attorneys’ Fees and Expenses Award, and any Service Award.

23 1.41 “Settling Parties” means, collectively, Defendants and Representative Plaintiff,
24 individually and on behalf of the Settlement Class.

25 1.42 “Unknown Claims” means any of the Released Claims that the Representative Plaintiff
26 (on behalf of himself and each Settlement Class Member) does not know or suspect to exist in his
27 favor as of the date of the entry of the Preliminary Approval Order that, if known by him, might have

1 affected his settlement with, and release of, the Released Persons, or might have affected his decision
2 to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling
3 Parties stipulate and agree that upon the Effective Date, the Representative Plaintiff (on behalf of
4 himself and each Settlement Class Member) expressly shall have and by operation of the Judgment
5 the Settlement Class Members shall have, released any and all Released Claims, including Unknown
6 Claims, and waived the provisions, rights, and benefits conferred by California Civil Code § 1542,
7 and also any and all provisions, rights, and benefits conferred by any law of any state, province, or
8 territory of the United States which is similar, comparable, or equivalent to California Civil Code §
9 1542, which provides:

10 A general release does not extend to claims that the creditor or releasing party does
11 not know or suspect to exist in his or her favor at the time of executing the release
12 and that, if known by him or her, would have materially affected his or her
 settlement with the debtor or released party.

13 Representative Plaintiff (on behalf of himself and each Settlement Class Member) may hereafter
14 discover facts in addition to, or different from, those that they now know or believe to be true with
15 respect to the subject matter of the Released Claims, but the Representative Plaintiff (on behalf of
16 himself and each Settlement Class Member) expressly shall have, and by operation of the Final
17 Approval Order shall have, upon the Effective Date, fully, finally and forever settled and released any
18 and all Released Claims, including Unknown Claims.

19 1.43 All time periods herein stated in terms of “days” shall be in calendar days unless
20 otherwise expressly stated.

21 **II. SETTLEMENT CONSIDERATION**

22 2.1 In consideration for the Settlement and Releases provided herein, Bombas will fund a
23 Settlement Fund in the amount of Two Hundred Twenty-Five Thousand dollars (\$225,000.00) and
24 provide the injunctive relief described in ¶ 2.5. The Settlement Fund shall be the only source of
25 payment for all costs of the Settlement, including: (a) payments to Settlement Class Members
26 submitting valid Settlement Claims; (b) costs of Claims Administration; (c) the Attorneys’ Fees and
27

1 Expenses Award, if any, to Class Counsel; and (d) the Service Award, if any, to the Representative
2 Plaintiff.

3 2.2 Settlement Class Members may make a Settlement Claim for one of two types of
4 Awards to be paid from the Settlement Fund: (i) a Basic Award; or (ii) a Reimbursement Award.
5 These Award categories are exclusive and not cumulative, and Settlement Class Members may not
6 receive more than one type of Award. If a Settlement Class Member submits a Claim Form seeking
7 more than one type of Award, the Claims Administrator shall pay the single Award of the highest
8 dollar value supported by a valid Claim Form and any required documentation. Only one Settlement
9 Claim may be submitted per Settlement Class Member, and only one Settlement Claim may be
10 submitted per credit or debit card used with Bombas during the Class Period. If more than one valid
11 claim is submitted for a single payment card, the largest valid claim filed will be processed and the
12 remaining claims will be denied as duplicative.

13 2.2.1 *Basic Award.* Every Settlement Class Member who submits an Approved
14 Claim for a Basic Award is eligible to receive a Basic Award of up to \$50.00, regardless of whether
15 he or she experienced any fraudulent or unauthorized charges on his or her credit or debit card used
16 to make a purchase from Bombas' website and regardless of whether he or she experienced any
17 identity theft as a result of the Security Incident. The amount to be paid for Basic Awards will be
18 calculated as described in ¶ 7.3 below.

19 2.2.2 *Reimbursement Award.* All Settlement Class Members who submit an
20 Approved Claim for a Reimbursement Award, with supporting documentation as noted below in
21 ¶ 2.3.1, shall be eligible to receive reimbursement of up to \$2,500.00 total for the following
22 unreimbursed expenses and losses incurred as a result of the Security Incident: (a) unauthorized
23 charges on a credit or debit card used to make a purchase from Bombas' website during the Class
24 Period; (b) up to three hours of lost time spent dealing with unauthorized charges or otherwise dealing
25 with the Security Incident, at a rate of \$20.00 per hour, but only if the time can be documented with
26 reasonable specificity by answering the questions on the Claim Form; and (c) Out of Pocket Expenses.
27

1 The amounts to be paid for Reimbursement Awards are subject to adjustment as described in ¶ 7.3
2 below.

3 2.3 Settlement Class Members seeking an Award under this Agreement must complete
4 and submit a written Claim Form to the Claims Administrator, postmarked or submitted electronically
5 in accordance with the requirements for electronic submission of a Claim Form, on or before the
6 Claims Deadline, which the Settling Parties propose shall be the 120th day after entry of the
7 Preliminary Approval Order. The Claim Form must: (a) be signed by the Settlement Class Member
8 with a statement that his or her claim is true and correct to the best of his or her belief; and (b) establish
9 that the Settlement Class Member made a purchase from the Bombas website during the Class Period
10 by: (i) submitting a receipt, bank, credit card, or other financial account statement showing such a
11 purchase or, (ii) if none of the documents in ¶ 2.3(b)(i) are available, the Settlement Class Member
12 shall attest under penalty of perjury that he or she made a purchase from the Bombas website from
13 November 11, 2016 through February 16, 2017, shall identify the approximate date of purchase, and,
14 if applicable, shall provide the last four digits of his or her credit card number (or, if the credit card
15 number is no longer available, the Settlement Class Member shall attest under penalty of perjury that
16 it is no longer available). Failure to provide supporting documentation as set forth in this Paragraph
17 and Paragraph 2.3.1 or as requested on the Claim Form or by the Claims Administrator shall result in
18 denial of a Settlement Claim.

19 2.3.1 *Supporting Documentation Required for a Reimbursement Award.* In addition
20 to the information and documentation required in ¶ 2.3, a Settlement Class Member seeking a
21 Reimbursement Award must also provide: (i) documentation sufficient to show unauthorized charges
22 that were not reimbursed or denied and all claimed losses from such charges; (ii) insofar as the
23 Settlement Class Member seeks reimbursement for time spent, a reasonably specific description of
24 time spent and tasks performed dealing with unauthorized charges or otherwise dealing with the
25 Security Incident and the tasks performed, attested to under oath; and (iii) documentation sufficient
26 to show Out of Pocket Expenses and that such expenses were primarily incurred because of, and
27 plausibly arose from, the Security Incident.

1 2.3.2 *Confidentiality of Information Submitted by Settlement Class Members.*

2 Information submitted by Settlement Class Members pursuant to this Agreement and in connection
3 with a Settlement Claim shall be deemed confidential and protected as such by the Settling Parties,
4 and the Claims Administrator.

5 2.4 Nothing in this Settlement Agreement shall be construed to provide for a double
6 payment for the same loss or injury that was reimbursed or compensated by any other source. No
7 payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such
8 amounts are not recoverable pursuant to the terms of the Settlement Agreement. Settlement Class
9 Members must exhaust all available credit monitoring insurance and identity theft insurance before
10 any Reimbursement Award will be authorized or paid.

11 2.5 Bombas agrees to continue to take reasonable steps to provide secure access to the e-
12 commerce platform through which it processes credit card and debit card transactions. The following
13 shall be considered reasonable steps within the meaning of this Agreement, which Bombas agrees to
14 maintain at least until January 1, 2023: (a) create and implement a Written Information Security
15 Policy (“WISP”) that follows applicable state cybersecurity requirements; (b) annually train
16 employees on the WISP and related data protection topics; (c) implement a strong password policy
17 to the extent technically feasible for systems that allow access to personal information; and (d)
18 implement multi-factor authentication for the e-commerce platform and elsewhere to the extent
19 technically feasible for systems that allow access to Personal Information.

20 **III. PRELIMINARY SETTLEMENT APPROVAL AND FINAL APPROVAL**

21 3.1 As soon as practicable after the execution of the Settlement Agreement, Class Counsel
22 shall submit this Settlement Agreement to the Court and file a motion for preliminary approval of the
23 Settlement with the Court requesting entry of a Preliminary Approval Order in the form attached
24 hereto as Exhibit E, or an order substantially similar to such form, which shall, *inter alia*:

- 25 (a) Stay all proceedings in the Litigation other than those related to approval of the
26 Settlement;

1 (b) Preliminarily certify the Settlement Class for settlement purposes only and
2 preliminarily approve this Agreement for purposes of issuing Notice;

3 (c) Appoint Representative Plaintiff as the Settlement Class representative for settlement
4 purposes only;

5 (d) Appoint Class Counsel as counsel of the Settlement Class, for settlement purposes
6 only;

7 (e) Approve the notice program, as set forth in Section IV herein (the “Notice Program”);

8 (f) Approve the form and contents of a long form notice (“Long Notice”) to be posted on
9 the settlement website substantially similar to the one attached hereto as Exhibit B, and a
10 Summary Notice to be emailed to Settlement Class Members (“Summary Notice”) substantially
11 similar to the one attached hereto as Exhibit C, which together shall include a fair summary of the
12 Settling Parties’ respective litigation positions, the general terms of the Settlement set forth in the
13 Settlement Agreement, instructions for how to object to or submit a Request for Exclusion from
14 the Settlement, the process and instructions for making Settlement Claims to the extent
15 contemplated herein, and the date, time and place of the Final Approval Hearing;

16 (g) Approve a Claim Form substantially similar to that attached hereto as Exhibit A;

17 (h) Appoint the Claims Administrator;

18 (i) Schedule an appropriate Opt Out Date, Objection Deadline, and other Settlement-
19 related dates and deadlines to be included in the Class Notice; and

20 (j) Schedule the Final Approval Hearing.

21 3.2 Defendants will not oppose entry of the Preliminary Approval Order so long as it is
22 substantially in the form attached to this Agreement as Exhibit E, and is otherwise consistent with
23 this Agreement.

24 3.3 Class Counsel and Defendants’ counsel shall request that the Court hold a Final
25 Approval Hearing after notice is completed and at least 35 days after the Opt Out Date, and grant
26 Final Approval of the Settlement set forth herein.

1 3.4 The proposed Final Approval Order that shall be filed with the motion for final
2 approval shall be in the form set forth in Exhibit D as agreed upon by Defendants and Class Counsel
3 and shall, among other things:

- 4 (a) Determine that the Settlement Agreement is fair, adequate, and reasonable;
- 5 (b) Finally certify the Settlement Class for settlement purposes only;
- 6 (c) Determine that the Notice Program satisfies due process requirements;
- 7 (d) Dismiss all claims in the Complaint with prejudice;
- 8 (e) Bar and enjoin any Settlement Class Members who did not timely opt out in accordance
9 with the requirements of the Agreement from asserting any of the Released Claims; and
- 10 (f) Release and forever discharge Defendants and the Released Persons from the Released
11 Claims, as provided for in this Agreement.

12 **IV. NOTICE PROGRAM**

13 4.1 No later than 10 business days after entry of the Preliminary Approval Order, Bombas
14 will provide the Claims Administrator with a Settlement Class Member list in Excel format that
15 includes, to the extent available, the name, mailing address, and email address of each Settlement
16 Class Member as reflected in Bombas' business records. The Claims Administrator shall cause notice
17 to be disseminated to the Settlement Class pursuant to the Preliminary Approval Order and the Notice
18 Program as described below, and in compliance with all applicable laws, including, but not limited
19 to, the Due Process clause of the United States Constitution and Federal Rule of Civil Procedure 23,
20 and be effectuated pursuant to the provisions set forth below, the costs of which shall be costs of
21 Claims Administration.

22 4.2 Class Notice shall be provided to the Settlement Class as follows:

23 4.2.1 Within 20 days of receiving the Settlement Class Member data from Bombas, the
24 Claims Administrator shall email the Summary Notice to Settlement Class Members. Within 10 days
25 of emailing the Summary Notice to Settlement Class Members, the Claims Administrator shall send
26 Postcard Notice via First Class U.S. Mail, postage pre-paid, to Settlement Class Members whose
27 email notice could not be delivered. Within 20 days after sending such mail, the Claims Administrator

1 shall undertake reasonable efforts to confirm the address, and to resend notice, for any Settlement
2 Class Members for which the Claims Administrator receives returned mail from the U.S. Postal
3 Service indicating that the initial mailing was not delivered.

4 4.2.2. Within 20 days of the entry of the Preliminary Approval Order, the Claims
5 Administrator shall establish a dedicated settlement website that includes this Settlement Agreement,
6 the Long Notice, the Summary Notice, and the Claim Form approved by the Court. The Claims
7 Administrator shall maintain and update the website throughout the Claims Period. The Claims
8 Administrator will also post on the settlement website copies of this Settlement Agreement, the
9 motion for final approval of the Settlement, and the motion for Attorneys' Fees and Expenses Award
10 and Service Awards. A toll-free number with interactive voice response, FAQs and an option to speak
11 to a live operator shall also be made available to address Settlement Class Members' inquiries.

12 4.3 The Notice Program shall be subject to approval by the Court as meeting the
13 requirements of Rule 23(c) of the Federal Rules of Civil Procedure.

14 4.4 The Long Notice, Summary Notice, and Claim Form approved by the Court may be
15 adjusted by the Claims Administrator, respectively, in consultation and agreement with the Settling
16 Parties, as may be reasonable and necessary and not inconsistent with such approval.

17 4.5 Before the Final Approval Hearing, counsel for the Settling Parties shall cause to be
18 filed with the Court an appropriate declaration from the Claims Administrator demonstrating
19 compliance with the Court-approved Notice Program.

20 4.6 The Notice Program shall commence within 20 days of entry of the Preliminary
21 Approval Order and shall be completed within 75 days of the Preliminary Approval Order, except as
22 otherwise specifically provided above.

23 **V. OPT OUT PROCEDURES**

24 5.1 Each Settlement Class Member wishing to exclude themselves from the Settlement
25 Class must individually sign and timely mail a written Request for Exclusion to the address designated
26 by the Claims Administrator.

27 5.2 To be effective, a Request for Exclusion must be postmarked no later than 75 days

1 after the date of entry of the Preliminary Approval Order.

2 5.3 Within 7 days after the Opt Out Date, the Claims Administrator shall provide the
3 Settling Parties with a complete and final list of all Opt Outs who have timely and validly excluded
4 themselves from the Settlement Class and, upon request, copies of all completed Requests for
5 Exclusion. Class Counsel may present to the Court the number of opt-outs (if any), no later than 14
6 days before the Final Approval Hearing, but may not provide their Personal Information (though
7 Class Counsel should alert the Court that such information is maintained by the Claims
8 Administrator), except that upon the Court's request, Class Counsel may provide the Court a list of
9 Opt Outs with all Personal Information other than names and cities and states of residence redacted.

10 5.4 All persons who Opt Out from the Settlement Class shall not receive any benefits of
11 or be bound by the terms of this Settlement Agreement. All persons falling within the definition of
12 the Settlement Class who do not Opt Out shall be bound by the terms of this Settlement Agreement
13 and the Final Approval Order entered thereon.

14 **VI. OBJECTION PROCEDURES**

15 6.1 Each Settlement Class Member who does not file a timely Request for Exclusion may
16 file a timely written notice of intent to object to the Settlement. The Class Notice shall instruct
17 Settlement Class Members who wish to object to the Settlement Agreement to send their written
18 objections only to the Court. The Class Notice shall make clear that the Court can only approve or
19 deny the Settlement Agreement and cannot change the terms. The Class Notice shall advise
20 Settlement Class Members of the deadline for submission of any objections.

21 6.2 All such notices of an intent to object to the Settlement Agreement must be written
22 and must include all of the following: (i) the case name and number (*Alex Pygin v Bombas, LLC,*
23 *Shopify (USA) Inc., and Shopify Inc.,* Case No. 4:20-cv-04412-JSW); (ii) the objector's full name,
24 address, and telephone number; (iii) a statement as to whether the objection applies only to the
25 Settlement Class Member, to a specific subset of the Settlement Class, or to the entire class; (iv) a
26 clear and detailed written statement of the grounds for the objection; and (v) the objector's signature.

1 Facially Valid, the Claims Administrator shall request additional information and give the claimant
2 30 days to cure the defect before rejecting the Settlement Claim. Such requests shall be made within
3 30 days after the Claims Deadline. In the event of unusual circumstances interfering with compliance
4 during the 30-day period, the claimant may request and, for good cause shown shall be given, a
5 reasonable extension of the 30-day deadline in which to comply; however, in no event shall the
6 deadline be extended to later than 60 days from the Effective Date. If the defect is not cured, then the
7 Settlement Claim will be deemed invalid and there shall be no obligation to pay the Settlement Claim.

8 7.2.2 Following receipt of additional information requested by the Claims
9 Administrator pursuant to ¶ 7.2.1, the Claims Administrator shall have 30 days to accept, in whole or
10 lesser amount, or reject each Settlement Claim. If after review of the Settlement Claim and all
11 documentation submitted by the claimant, the Claims Administrator determines that such a Settlement
12 Claim is Facially Valid, then the Settlement Claim shall be paid within the time period provided by
13 ¶ 7.4 to the extent that the Claims Administrator finds the Settlement Claim to be valid. If the
14 Settlement Claim remains invalid because the claimant does not provide the requested information
15 needed to complete the Claim Form and evaluate the Settlement Claim, then the Claims Administrator
16 may reject the Settlement Claim without any further action apart from providing a notice of rejection
17 of the Settlement Claim.

18 7.3 The Claims Administrator shall adjust the payment amount of all Awards as follows:

19 7.3.1 If the total dollar value of all Approved Claims at the payment amounts set
20 forth in ¶¶ 2.2.1 and 2.2.2, is less than the amount remaining in the Settlement Fund after the Claims
21 Deadline has passed and after the Attorneys' Fees and Expenses Award, the Service Awards, and the
22 Claims Administration costs have been paid in full out of the Settlement Fund, the payment amount
23 for all Approved Claims shall be increased *pro rata* among all Settlement Class Members who
24 submitted Approved Claims up to a maximum of twice the total amounts set forth in ¶¶ 2.2.1 and
25 2.2.2, notwithstanding the maximum amounts set forth in those paragraphs. By way of example, the
26 total Basic Award payment can be increased up to a maximum of \$100.00, and the Reimbursement
27 Award payment can be increased up to a maximum of \$5,000.00.

1 7.3.2 If the total dollar value of all Approved Claims at the payment amounts set
2 forth in ¶¶ 2.2.1 and 2.2.2 exceeds the amount remaining in the Settlement Fund after the Claims
3 Deadline has passed and after the Attorneys' Fees and Expenses Award and the Service Award, and
4 Claims Administration costs have been paid in full out of the Settlement Fund, the payment amount
5 for all Approved Claims shall be reduced *pro rata* among all Settlement Class Members who
6 submitted Approved Claims.

7 7.4 The \$225,000.00 Settlement Fund will be paid by Bombas to the Claims Administrator
8 within 10 business days following entry by the Court of the Preliminary Approval Order. The Claims
9 Administrator shall agree to hold the Settlement Funds in an interest-bearing account at TriState
10 Capital Bank, and administer the Settlement Funds, subject to the continuing jurisdiction of the Court
11 and from the earliest possible date, as a qualified settlement fund as defined in Treasury Regulation
12 § 1.468B-1, *et seq.* Any taxes owed by the Settlement Funds shall be paid by the Claims
13 Administrator out of the Settlement Funds. Defendants shall not have any other financial obligation
14 under the Settlement Agreement. In addition, under no circumstances will Defendants have any
15 liability for taxes or tax expenses under the Settlement Agreement.

16 7.5 The Claims Administrator will mail Award checks or send funds electronically (in an
17 electronic payment format recommended by the Claims Administrator, such as PayPal, and agreed-
18 upon by the parties) for Approved Claims within the later of 90 days after the Effective Date or 30
19 days after all disputed claims have been resolved. No distributions will be made without authorization
20 from the parties. Award checks shall be valid for a period of 180 days from issuance, and shall state,
21 in words or substance, that the check must be cashed within 180 days, after which time it will become
22 void. In the event a settlement check becomes void, the Settlement Class Member to whom that
23 settlement check was made payable will forfeit the right to payment and will not be entitled to have
24 the check reissued or to any further distribution from the Settlement Fund or to any further recourse
25 against the Released Parties, and the Settlement Agreement and Release will in all other respects be
26 fully enforceable against the Settlement Class Member. No later than 190 days from the issuance of
27

1 the Award checks, the Claims Administrator shall take all steps necessary to stop payment on any
2 Award checks that remain uncashed.

3 7.6 If there is any balance remaining in the Settlement Fund Account 90 days after the
4 Claims Administrator completes the process for stopping payment on any Award checks that remain
5 uncashed, the Settling Parties will return to the Court seeking direction as to the disposition of these
6 funds, including the selection of a *cy pres* recipient. The funds distributed pursuant to the *cy pres*
7 provision set forth in this Paragraph shall not be considered unclaimed property under the laws of
8 California or any other state.

9 7.7 No Person shall have any claim against the Claims Administrator, Defendants,
10 Defendants' counsel, Class Counsel, and/or the Representative Plaintiff based on distributions of
11 benefits to Settlement Class Members or to the *cy pres* recipient named herein, if applicable.

12 7.8 All Settlement Class Members who fail to timely submit a valid Settlement Claim for
13 any benefits hereunder within the time frames set forth herein, or such other period as may be ordered
14 by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits
15 pursuant to the Settlement set forth herein, but will in all other respects be subject to, and bound by,
16 the provisions of the Settlement Agreement, the Releases contained herein and the Final Approval
17 Order.

18 **VIII. RELEASES**

19 8.1 Upon the Effective Date, and in consideration of the Settlement benefits described
20 herein, the Releasing Persons, including each Settlement Class Member and Representative Plaintiff,
21 whether or not they received an Award, will be deemed by this Agreement and by operation of the
22 Final Approval Order to have completely, finally and unconditionally released, forever discharged
23 and acquitted the Released Persons from any and all of the Released Claims and Unknown Claims.

24 8.2 The Settlement Agreement shall be the sole and exclusive remedy for any and all
25 released claims of Settlement Class Members. Upon entry of the Final Approval Order, each member
26 of the Settlement Class, including Representative Plaintiff, shall, either directly, indirectly,
27 representatively, as a member of or on behalf of the general public, or in any capacity whatever, be

1 permanently barred from initiating, asserting, or prosecuting against any Released Person any claims
2 that are released by operation of the Settlement Agreement and the Final Approval Order.

3 8.3 Upon entry of the Final Approval Order, Defendants shall have fully, finally and
4 forever released, relinquished and discharged as against Representative Plaintiff, all claims arising
5 out of, relating to or in connection with the institution, prosecution, assertion, defense, settlement or
6 resolution of the Litigation.

7 **IX. CLASS COUNSEL’S ATTORNEYS’ FEES AND LITIGATION EXPENSES; AND**
8 **REPRESENTATIVE PLAINTIFF’S SERVICE AWARD**

9 9.1 Class Counsel shall apply to the Court for an award of reasonable Attorneys’ Fees and
10 Litigation Expenses payable solely from the Settlement Fund, in an amount not to exceed twenty-five
11 (25) percent of the Settlement Fund. Class Counsel shall also apply to the Court for reimbursement
12 of their reasonable costs and litigation expenses incurred, also payable solely from the Settlement
13 Fund. Class Counsel will apply to the Court for such approval and will serve Defendants’ counsel
14 with such application no later than 30 days prior to the Objection Deadline. Defendants shall take no
15 position with regard to Class Counsel’s application for the Attorneys’ Fees and Expenses Award if
16 the application complies with the provisions of this section.

17 9.2 Class Counsel will request from the Court a service award for Representative Plaintiff
18 in the amount of \$1,000.00, to be paid solely from the Settlement Fund. Defendants shall take no
19 position with regard to the request for a service award payment to the Representative Plaintiff if the
20 request complies with the provisions of this section.

21 9.3 The Claims Administrator shall pay the Attorneys’ Fees and Litigation Expenses
22 Award and a Service Award from the Settlement Fund to Clayeo C. Arnold, A Professional Law
23 Corp., within 10 days after the Court executes an order (or orders) awarding such Attorneys’ Fees
24 and Litigation Expenses Award and a Service Award. The Attorneys’ Fees and Litigation Expense
25 Award will be allocated by Class Counsel. In the event that the Effective Date does not occur, or the
26 Final Approval Order or the order making the Attorneys’ Fees and Litigation Expense Award is
27 reversed or modified, or the Settlement Agreement is cancelled or terminated or modified for any

1 other reason, and in the event that the Attorneys' Fees and Litigation Expense Award has been paid
2 to any extent, then Class Counsel shall, within 5 business days after receiving notice from Defendants
3 or from a court of appropriate jurisdiction, refund to the Settlement Fund, as appropriate, the amounts
4 previously paid to Class Counsel, in an amount consistent with such reversal, modification,
5 cancellation, or termination. Class Counsel, as a condition of receiving such fees and expenses,
6 hereby agree that their respective law firms are each unconditionally obligated to make such refund
7 of fees and expenses received by their respective law firms, and are subject to the jurisdiction of the
8 Court for the purpose of enforcing the provisions of this Section.

9 9.4 The finality or effectiveness of the Settlement Agreement shall not depend upon the
10 Court awarding any particular Attorneys' Fees and Litigation Expense Award or Service Award. No
11 order of the Court, or modification or reversal or appeal of any order of the Court concerning the
12 amount(s) of any attorneys' fees, costs and expenses, and/or Service Award ordered by the Court to
13 Class Counsel or Representative Plaintiff shall affect whether the Judgment is final or constitute
14 grounds for cancellation or termination of this Settlement Agreement.

15 **X. CONDITIONS OF SETTLEMENT, CANCELLATION, OR TERMINATION**

16 10.1 This Agreement is subject to and conditioned upon the occurrence of all of the
17 following events:

- 18 (a) The Court has entered a Preliminary Approval Order as provided by
19 ¶ 3.1;
- 20 (b) The Court has entered the Final Approval Order as provided by ¶ 3.4; and
- 21 (c) The Effective Date has occurred, as defined in ¶ 1.16.

22 10.2 If all of the conditions in ¶ 10.1 are not fully satisfied and the Effective Date does not
23 occur, the Settlement Agreement shall, without notice, be automatically terminated unless Class
24 Counsel and Defendants' counsel mutually agree in writing to proceed with the Settlement
25 Agreement.

26 10.3 In addition to the grounds set forth in ¶ 10.2 above, Bombas shall have the sole option
27 to withdraw from and terminate this Settlement in its entirety in the event that 15% or more of

1 Settlement Class Members submit timely and properly completed and executed Requests for
2 Exclusion by the Opt Out Date.

3 10.4 In the event of termination, this Agreement shall have no further force or effect
4 regarding the Settling Parties' rights, and the Settling Parties will be restored to their respective
5 positions in the Litigation as of February 12, 2021, and the terms and provisions of the Settlement
6 Agreement shall have no further force and effect with respect to the Settling Parties and shall not be
7 used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered
8 by the Court in accordance with the terms of Settlement Agreement shall be treated as vacated, *nunc*
9 *pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of
10 the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees,
11 costs, and expenses awarded to Settlement Class Counsel shall constitute grounds for cancellation or
12 termination of the Settlement Agreement.

13 10.5 Defendants conditionally agree and consent to certification of the Settlement Class
14 for settlement purposes only, and within the context of the Settlement Agreement only. If the
15 Settlement Agreement, for any reason, is not finally approved or is otherwise terminated,
16 Defendants reserve the right to assert any and all objections and defenses to certification of a class,
17 and neither the Settlement Agreement nor any Order or other action relating to the Settlement
18 Agreement shall be offered by any Person as evidence in support of a motion to certify a class for a
19 purpose other than this Settlement. Defendants also reserve the right to assert any and all objections
20 and defenses to the merits of the claims in the Litigation, including but not limited to personal
21 jurisdiction.

22 **XI. MISCELLANEOUS PROVISIONS**

23 11.1 The Settling Parties and their counsel agree to undertake their best efforts and mutually
24 cooperate to effectuate this Agreement and the terms of the proposed Settlement set forth herein,
25 including taking all steps and efforts contemplated by this Agreement, and any other steps and efforts
26 which may become necessary by order of the Court or otherwise. The Settling Parties further agree
27 to defend this Agreement against objections made to the Settlement or the Final Approval Order at

1 the Final Approval Hearing or in any appeal of the Final Approval Order or in any collateral attack
2 on this Agreement or Final Approval Order.

3 11.2 The Settling Parties intend this Agreement to be a final and complete resolution of all
4 disputes between them with respect to the Litigation. The Agreement compromises claims that are
5 contested and shall not be deemed an admission by any of the Parties as to the merits of any claim or
6 defense. The Settling Parties each agree that the Settlement and this Agreement were negotiated in
7 good faith and at arm's-length by the Settling Parties, and reflects a Settlement that was reached
8 voluntarily after consultation with competent legal counsel.

9 11.3 The Agreement may be amended or modified only by a written instrument signed by
10 or on behalf of all Settling Parties or their respective successors-in-interest. Amendments and
11 modifications may be made without additional notice to the Settlement Class Members unless such
12 notice is required by the Court.

13 11.4 Except as otherwise provided, this Agreement contains the entire agreement between
14 the Settling Parties, and supersedes any prior agreements or understandings between them. All terms
15 of this Agreement are contractual and not mere recitals, and shall be construed as if drafted by all
16 Settling Parties to this Agreement. The terms of this Agreement are and shall be binding upon each
17 of the Settling Parties to this Agreement, their agents, attorneys, employees, successors and assigns,
18 and upon all other Persons or entities claiming any interest in the subject matter hereof, including any
19 Settlement Class Member.

20 11.5. Defendants shall not be liable for any additional attorneys' fees and expenses of any
21 Settlement Class Members' counsel, including any potential objectors or counsel representing a
22 Settlement Class Member individually, other than what is expressly provided for in this Agreement.
23 Class Counsel agree to hold Defendants harmless from any claim regarding the division of any award
24 of Attorneys' Fees and Expenses Award to Class Counsel, and any claim that the term "Class
25 Counsel" (as defined in Paragraph 1.11 of this Agreement) fails to include any counsel, Person, or
26 firm who claims that they are entitled to a share of any Attorneys' Fees and Expenses Award to Class
27 Counsel in this lawsuit.

1 11.6. Except as required by law or any other disclosure obligations, the Parties, and the
2 Parties' counsel, shall not issue any press releases or make any postings on social media about this
3 case or the Settlement. Counsel for the Parties may identify this case, its nature, and the fact that it
4 settled on their personal or firm resumes and on their websites.

5 11.7. This Agreement shall be subject to, governed by, construed, and enforced pursuant to
6 the laws of the State of California.

7 11.8 Any individual signing this Agreement on behalf of any Person represents and
8 warrants that he or she has full authority to execute and enter into the terms and conditions of this
9 Agreement on behalf of such Person.

10 11.9 The Settling Parties and each Settlement Class Member irrevocably submit to the
11 exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating
12 to this Agreement or the applicability of the Agreement and its exhibits, but for no other purpose.
13 This Agreement shall not be construed as an admission that Shopify is appropriately subject to the
14 personal jurisdiction of this Court for purposes other than this Settlement.

15 11.10 All agreements made and orders entered during the course of Litigation relating to the
16 confidentiality of information shall survive this Agreement, including but not limited to those relating
17 to all information exchanged for purposes of mediation or under the auspices of Federal Rule of
18 Evidence 408.

19 11.11 Any notice, instruction, application for Court approval or application for Court orders
20 sought in connection with this Agreement or other document to be given by any Party to any other
21 Party shall be in writing and delivered by email, if to Defendants to the attention of Defendants'
22 counsel, or if to the Settlement Class to Class Counsel, or to other recipients as the Court may specify.

23 11.12 This Agreement may be executed by the Settling Parties or their authorized
24 representatives in one or more counterparts, each of which shall be deemed an original but all of
25 which together shall constitute one and the same instrument. Scanned signatures or signatures sent
26 by email or facsimile shall be as effective as original signatures.

1 11.13 This Settlement Agreement shall be considered to have been negotiated, executed and
2 delivered, and to be wholly performed, in the State of California, and the rights and obligations of the
3 Settlement Agreement shall be construed and enforced in accordance with, and governed by, the
4 internal, substantive laws of the State of California without giving effect to that State's choice of law
5 principles.

6 IT IS SO AGREED.

7 DATED: May 20, 2021

By: 

M. ANDERSON BERRY

M. Anderson Berry, Bar No. 262879
**CLAYEO C. ARNOLD, A PROFESSIONAL
LAW CORP.**

John A. Yanchunis, Pro Hac Vice
**MORGAN & MORGAN COMPLEX
LITIGATION GROUP**

*Counsel for Settlement Class Representatives and
the Settlement Class*

BOMBAS, LLC

18 DATED: May 20, 2021

By: 

ANNE JOHNSON PALMER

Anne Johnson Palmer, Bar No. 302235
Richard D. Batchelder, Jr., Pro Hac Vice
Edward McNicholas, Pro Hac Vice
Frances Faircloth, Pro Hac Vice

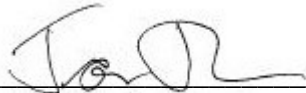
ROPES & GRAY LLP

Attorneys for Defendant BOMBAS, LLC

SHOPIFY (USA) INC. and SHOPIFY INC.

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DATED: May 19, 2021

By: 
JOSHUA A. JESSEN

GIBSON, DUNN & CRUTCHER LLP

*Attorneys for Defendants SHOPIFY (USA) INC.
AND SHOPIFY INC.*

EXHIBIT A

SETTLEMENT CLAIM FORM

This Claim Form should be filled out online or submitted by mail if you made a purchase on the Bombas, LLC (“Bombas”) website during the period commencing on November 11, 2016 and continuing through February 16, 2017.

You may receive a payment if you properly and timely complete this Claim Form, the Settlement is approved, and you are found to be eligible for a payment.

The Class Notice describes your legal rights and options. You can obtain the Class Notice and further information about the Litigation, the Settlement Agreement, and your legal rights and options on the official Settlement website **www.BombasSettlement.com** or by calling **1-800-xxx-xxxx**.

Your claim must be submitted online or postmarked by _____, 2021 to be considered for payment. You can submit your claim for a settlement award in two ways:

1. Online at **www.BombasSettlement.com** by following instructions on the “Submit a Claim” page.
2. By mail to the Claims Administrator at this address: **[INSERT CLAIMS ADMINISTRATOR ADDRESS]**.

Only one Settlement Claim may be submitted per Settlement Class Member, and only one Settlement Claim may be submitted per method of payment used at the Bombas website.

1. CLASS MEMBER INFORMATION (REQUIRED)

Name (First, MI, Last):

Address:

City: _____ State: _____ Zip Code: _____

Phone: _____ Email (if any): _____

Required: Enclose a receipt, bank or credit card statement, or other proof of purchase showing your purchase from the Bombas website. (Please redact all unrelated transactions).

[OR] If such documents are not available, complete all parts of this section:

(Check to indicate your agreement). I no longer have proof of my purchase, but I attest under penalty of perjury that I made a purchase from the Bombas website:

Approximate date of purchase: _____

Last 4 digits of credit or debit card used (if applicable): _____

(Check if card is no longer available). I attest under penalty of perjury that I no longer have the debit or credit card used and do not know or have any records showing the last 4 digits of this card.

2. PAYMENT ELIGIBILITY INFORMATION (REQUIRED)

To prepare for this section of the Claim Form, please review the Class Notice and Sections 2.1 through 2.5 of the Settlement Agreement (available at www.BombasSettlement.com) or more information on the types of awards available and rules for receiving an award.

Settlement Class Members may receive only one of the following types of awards: (1) Basic Award; or (2) Reimbursement Award. Which type of award are you making a claim for (check one)?

Basic Award (go to Section 5)

OR

Reimbursement Award (go to Section 3)

3. ADDITIONAL INFORMATION REQUIRED FROM SETTLEMENT CLASS MEMBERS SEEKING A REIMBURSEMENT AWARD.

You must complete this Section 3 if you are seeking a Reimbursement Award. Please provide as much information as possible.

Required: I attest under penalty of perjury that I experienced one or more fraudulent charges between November 11, 2016 and February 16, 2017 on a credit or debit card I used to make a purchase from the Bombas website.

Required: Such charges have not been reimbursed.

Required: I believe in good faith such charges were more likely than not the result of the security incident that affected Bombas' computer systems that was disclosed by Bombas on June 3, 2020.

The total amount of unreimbursed fraudulent charges that I am claiming is \$ _____

Examples: Fraudulent charges that were made on your credit or debit card account and that were not reversed or repaid even though you reported them to your bank or credit card company.

Required: Attach a copy of statements that show the fraudulent charges and any correspondence showing that you reported them as unauthorized. (Please redact all unrelated transactions). If you do not have any written correspondence reporting the charges, describe when and how you reported them and who you reported them to:

(Required). I have made good faith efforts to have these unauthorized charges reversed or repaid, including through my bank or credit card company, and have exhausted all available credit monitoring, identity theft insurance, or other applicable insurance policies, but have not been successful at having the charges reversed, have not received payment, and have no insurance coverage for these unauthorized charges.

(Check if applicable). I spent time dealing with these unauthorized charges and wish to be reimbursed for my time spent, up to a maximum of three (3) hours. I spent this much time (round to the nearest hour and check only one box):

1 Hour 2 Hours 3 Hours

Examples: You spent time calling customer service lines, writing letters or emails, or browsing the internet trying to get unauthorized charges reversed or reimbursed. Please note that the time it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Required: If time was spent on the telephone, online, or writing letters, in the space below, describe what you did, or attach a copy of any letters or emails that you wrote. If the time was spent trying to get unauthorized charges reversed or reimbursed, describe what you did.

If you are also seeking reimbursement for Out-of-Pocket Expenses as part of your claim for a Reimbursement Award, complete Section 4. Otherwise, go to Section 5.

4. ADDITIONAL INFORMATION REQUIRED FROM SETTLEMENT CLASS MEMBERS SEEKING REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES IN CONNECTION WITH A REIMBURSEMENT AWARD.

I attest under penalty of perjury that I am making a claim for a Reimbursement Award, and that I incurred the following Out-of-Pocket Expenses as a result of one or more unauthorized charges between November 11, 2016 and February 16, 2017 on a credit or debit card I used to make a purchase from the Bombas website.

I believe in good faith that such unauthorized charges were more likely than not the result of the security incident that affected Bombas' computer systems that was disclosed by Bombas on June 3, 2020.

Check all that apply, stating the total amount you are claiming for each category and attaching documentation of the charges as described below. Round total amounts to the nearest dollar.

Unreimbursed 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

Total amount claimed for this category: \$_____

Examples: Overdraft fees, over-limit fees, late fees, charges due to insufficient funds or interest, card reissuance fees.

Required: A copy of a bank or credit card statement or other proof of claimed fees or charges (you may redact unrelated transactions).

Cell, internet or text charges

Total amount claimed for this category: \$_____

Examples: Long distance or cell phone charges (if charged by the minute), or data charges (if charged based on the amount of data used).

Required: A copy of the bill from your telephone company, cell phone company, or internet service provider showing the claimed charges.

Costs of purchasing credit monitoring, placing security or credit freezes, and obtaining credit reports or credit freezes

Total amount claimed for this category: \$_____

Examples: The cost of purchasing a credit report or placing a credit freeze.

Required: A copy of a receipt or other proof of purchase for each credit report or credit freeze purchased or placed.

Postage costs

Total amount claimed for this category: \$_____

Examples: Postage for correspondence with your bank or credit card company about unauthorized charges. The cost of submitting this form is not included.

Required: A copy of any receipt or proof of purchase for all postage costs claimed showing date, amount and vendor.

5. CERTIFICATION

I declare under penalty of perjury under the laws of the United States and the state where this Claim Form is signed that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

I understand that all information provided on this Claim Form is subject to verification and that I may be asked to provide supplemental information by the Claims Administrator before my claim will be considered complete and valid.

Signature: _____

Print Name: _____

Date: _____

Once you've completed all applicable sections, please mail this Claim Form and all required supporting documentation to the address provided below, postmarked by _____, 2021.

[INSERT CLAIMS ADMINISTRATOR ADDRESS]

EXHIBIT B

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Attorneys for Plaintiff

**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:

SUBMIT A CLAIM FORM DEADLINE: _____	You must submit a valid claim form to receive a payment from this Settlement.
DO NOTHING	You will receive no payment and will no longer be able to sue Defendants over the claims resolved in the Settlement.
EXCLUDE YOURSELF DEADLINE: _____	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.
OBJECT DEADLINE: _____	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.
GO TO A COURT HEARING	The Final Settlement Hearing is on _____, at _:___.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.

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 **1-800-XXX-XXXX**.

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); (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 **[INSERT DATE]**. 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 Claims Administrator 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 **[INSERT TOLL-FREE NUMBER]**. 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: **[INSERT CLAIMS MAILING ADDRESS]**.

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 **[INSERT DATE]** to this address:

[INSERT REQUEST FOR EXCLUSION MAILING ADDRESS]

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 **[INSERT DATE]**.

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 [INSERT DATE] 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 and any Representative Plaintiff's Award 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 [DATE].

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:

[INSERT CONTACT INFO FOR CLAIMS ADMINISTRATOR]

DO NOT CONTACT THE COURT OR DEFENDANTS.

EXHIBIT C

IMPORTANT NOTICE FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

YOU MAY BE A CLASS MEMBER IN A PROPOSED CLASS ACTION SETTLEMENT IF YOU RESIDE IN THE UNITED STATES AND MADE A PURCHASE ON THE BOMBAS WEBSITE FROM NOVEMBER 11, 2016 THROUGH FEBRUARY 16, 2017.

The average payout is likely to be approximately \$47 per Settlement Class Member, but the amount depends upon how many people submit valid claims.

A proposed Settlement has been given preliminary approval in a 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 case is against Bombas, LLC (“Bombas”), Shopify (USA) Inc., and Shopify Inc. (collectively “Defendants”) related to 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”). The Security Incident was publicly disclosed by Bombas on or about June 3, 2020. Defendants deny all of the claims and deny that they did anything wrong.

Subject to the terms of the Settlement Agreement and the Court’s approval, Bombas will fund a \$225,000.00 Settlement Fund that will 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); (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.

Settlement Class Members can make a claim for one of two types of monetary Awards from the Settlement Fund, depending on how they were affected by the Security Incident. **If you are a Settlement Class Member and you want to receive an Award, you must complete and submit a Claim Form along with any required supporting information. Claim Forms can be found and completed on this website: www.BombasSettlement.com. The deadline to submit a Claim Form is _____.**

Settlement Class Members may also request exclusion from the Settlement or object to it. Requests for exclusion are due by _____. Settlement Class Members who do not request exclusion can object to the Settlement. Objections are due by _____.

The Court will hold a Final Settlement Approval Hearing on **[INSERT DATE]** at the United States District Court for the Northern District of California, Oakland Division, located at 1301 Clay Street, Oakland, California 94612, to decide whether to approve the Settlement. 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, consider any timely objections, and may consider Class Counsel’s request for attorneys’ fees of up to 25% of the Settlement Fund (or \$56,250.00), plus reasonable costs and expenses, and the request for service awards for the Representative Plaintiff (\$1,000.00).

The Court has appointed the following Class Counsel to represent the Settlement Class in this Lawsuit: M. Anderson Berry, Clayeo C. Arnold, A Professional Law Corporation, 865 Howe Avenue, Sacramento, CA 95825, 916-777-7777; and John A. Yanchunis, Morgan & Morgan Complex Litigation Group, 201 N. Franklin St., 7th Fl., Tampa, FL 33602, 813-223-5505.

You can find the full Class Notice, along with a full description of the proposed Settlement, related Court documents, dates and forms, and additional information on how Settlement Class Members can exclude themselves from the Settlement or object to it on this website: **www.BombasSettlement.com**, or by calling **[INSERT TOLL-FREE NUMBER]**. **DO NOT CONTACT THE COURT OR DEFENDANTS.**

EXHIBIT D

1 M. Anderson Berry (262879)
aberry@justice4you.com
2 **CLAYEO C. ARNOLD,**
A PROFESSIONAL LAW CORPORATION
3 865 Howe Avenue
Sacramento, CA 95825
4 Telephone: (916) 777-7777
Facsimile: (916) 924-1829

5
6 JOHN A. YANCHUNIS (*Pro Hac Vice*)
jyanchunis@ForThe People.com
7 **MORGAN & MORGAN**
COMPLEX LITIGATION GROUP
201 N. Franklin St., 7th Floor
8 Tampa, FL 33602
Telephone: (813) 223-5505
9 Facsimile: (813) 223-5402

10
11 *Attorneys for Plaintiff*

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

14 ALEX PYGIN,
15
16 Plaintiff,
v.
17 BOMBAS, LLC; SHOPIFY (USA) INC.; and
SHOPIFY INC.,
18
19 Defendants.

Case No.: 4:20-cv-04412-JSW

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

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1 On _____, 2021, the Court entered an order granting preliminary approval (the
2 “Preliminary Approval Order”) to the May __, 2021 Settlement Agreement and Release (“Settlement
3 Agreement”) between Plaintiff Alex Pygin, individually and on behalf of the Settlement Class (as
4 defined below) and Bombas, LLC (“Bombas”), Shopify (USA) Inc., and Shopify Inc. (collectively
5 “Defendants”).¹

6 Commencing on _____, 2021, pursuant to the notice requirements in the Settlement
7 Agreement and the Preliminary Approval Order, _____ (the “Claims Administrator”), provided
8 Notice to Settlement Class Members in compliance with Section IV of the Settlement Agreement
9 and the Notice Program, due process, and Rule 23 of the Federal Rules of Civil Procedure. The
10 notice:

11 (a) fully and accurately informed Settlement Class Members about the Litigation and the
12 existence and terms of the Settlement Agreement;

13 (b) advised Settlement Class Members of their right to request exclusion from the
14 Settlement and provided sufficient information so that Settlement Class Members were
15 able to decide whether to accept the benefits offered, opt out and pursue their own
remedies, or object to the proposed settlement;

16 (c) provided procedures for Settlement Class Members to file written objections to the
17 proposed settlement, to appear at the Final Approval Hearing, and to state objections to the
proposed settlement; and

18 (d) provided the time, date, and place of the Final Approval Hearing.

19 On _____, 2021, the Court held a Final Approval Hearing to determine whether the
20 proposed settlement is fair, reasonable and adequate and whether judgment should be entered
21 dismissing this Litigation with prejudice. The Court reviewed (a) the Motion for Final Approval
22 (the “Motion”) and all supporting materials, including but not limited to the Settlement Agreement;
23 (b) any objections filed with or presented to the Court; and (c) the Parties’ responses to any
24

25
26 _____
27 ¹ Capitalized terms used in this Final Approval Order shall have the same meaning as defined
in the Settlement Agreement unless otherwise expressly stated.

1 objections. The Court also considered the oral argument of counsel and any objectors who appeared.
2 Based on this review and the findings below, the Court finds good cause to grant the Motion.

3 **IT IS HEREBY ORDERED:**

4 1. The Court has jurisdiction over the subject matter of this Litigation, all claims raised
5 therein, and all Parties thereto, including the Settlement Class.

6 2. The Settlement Agreement is fair, reasonable, adequate and in the best interests of
7 Settlement Class Members. The Settlement Agreement was negotiated at arm's-length, in good faith
8 and without collusion, by capable and experienced counsel, with full knowledge of the facts, the
9 law, and the risks inherent in litigating the Litigation, and with the active involvement of the Parties.
10 Moreover, the Settlement Agreement confers substantial benefits on the Settlement Class Members,
11 is not contrary to the public interest, and will provide the Parties with repose from litigation. The
12 Parties faced significant risks, expense, and/or uncertainty from continued litigation of this matter,
13 which further supports the Court's conclusion that the settlement is fair, reasonable, adequate and
14 in the best interests of the Settlement Class Members.

15 3. The Court grants final approval of the Settlement Agreement in full, including but
16 not limited to the releases therein and the procedures for distribution of the Settlement Fund. All
17 Settlement Class Members who have not excluded themselves from the Settlement Class are bound
18 by this Final Approval Order and Judgment.

19 4. The Parties shall carry out their respective obligations under the Settlement
20 Agreement in accordance with its terms. The relief provided for in the Settlement Agreement shall
21 be made available to the various Settlement Class Members submitting valid Claim forms, pursuant
22 to the terms and conditions in the Settlement Agreement. The Settlement Agreement is incorporated
23 herein in its entirety as if fully set forth herein and shall have the same force and effect of an order
24 of this Court.

25 **OBJECTIONS AND REQUESTS FOR EXCLUSION**

26 5. _____ objections to the Settlement were submitted by Settlement Class Members. The
27 Court has considered all objections and finds that they do not warrant or support rejection or non-

1 approval of the Settlement. All objections are hereby overruled in all respects. All persons who did
2 not object to the Settlement in the manner set forth in the Settlement Agreement are deemed to have
3 waived any objections, including but not limited to by appeal, collateral attack, or otherwise.

4 6. Attached hereto as **Exhibit A** is a list of persons who made valid and timely requests
5 to be excluded from the Settlement and the Settlement Class (the “Opt-Out Members”). The Opt-
6 Out Members are not bound by the Settlement Agreement and this Final Approval Order and
7 Judgment and shall not be entitled to any of the benefits afforded to Settlement Class Members
8 under the Settlement Agreement.

9 **CERTIFICATION OF THE SETTLEMENT CLASS**

10 7. Solely for purposes of the Settlement Agreement and this Final Approval Order and
11 Judgment, the Court hereby certifies the following Settlement Class:

12 All individuals residing in the United States who made purchases from the Bombas
13 website from November 11, 2016 through February 16, 2017.

14 8. The Court incorporates its preliminary conclusions in the Preliminary Approval
15 Order regarding the satisfaction of Federal Rules of Civil Procedure 23(a) and 23(b). Because the
16 Settlement Class is certified solely for purposes of settlement, the Court need not address any issues
17 of manageability for litigation purposes.

18 9. The Court grants final approval to the appointment of Representative Plaintiff Alex
19 Pygin as the Settlement Class representative, and concludes that he has fairly and adequately
20 represented the Settlement Class and shall continue to do so.

21 10. The Court grants final approval to the appointment of the law firms of CLAYEO C.
22 ARNOLD, A PROFESSIONAL LAW CORPORATION, and MORGAN & MORGAN COMPLEX LITIGATION
23 GROUP as Class Counsel. Class Counsel have fairly and adequately represented the Settlement Class
24 and shall continue to do so.

25 **NOTICE TO THE CLASS**

26 11. The Court finds that the Notice Program, set forth in the Settlement Agreement and
27 effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under
28

1 the circumstances; (ii) was reasonably calculated to provide, and did provide due and sufficient
2 notice to the Settlement Class regarding the existence and nature of the Litigation, certification of
3 the Settlement Class for settlement purposes only, the existence and terms of the Settlement
4 Agreement, and the rights of Settlement Class Members to exclude themselves from the Settlement,
5 to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement
6 Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United
7 States Constitution, and all other applicable law.

8 **ATTORNEYS' FEES AND COSTS, SERVICE AWARDS**

9 12. The Court awards Class Counsel \$_____ in fees and reimbursement of
10 \$_____ in costs. The Court finds these amounts to be fair and reasonable. Payment shall
11 be made from the Settlement Fund pursuant to the procedures in paragraph 9.3 of the Settlement
12 Agreement.

13 13. The Court awards \$1,000.00 to Mr. Pygin as a service award. The Court finds this
14 amount is justified by his service to the Settlement Class. Payments shall be made from the
15 Settlement Fund pursuant to the procedures in paragraph 9.3 of the Settlement Agreement.

16 **RELEASE**

17 14. Each Settlement Class Member, including Representative Plaintiff, is: (1) deemed to
18 have completely and unconditionally released, forever discharged and acquitted Defendants and the
19 Released Persons from all claims arising out of or asserted in the Litigation and all Released Claims
20 released under the Settlement Agreement; and (2) barred and permanently enjoined from asserting,
21 instituting, or prosecuting, either directly or indirectly, these claims. The full terms of the release
22 described in this paragraph are set forth in Paragraphs 1.28-1.30 and Section 8 of the Settlement
23 Agreement and are specifically approved and incorporated herein by this reference (the "Release").
24 In addition, Representative Plaintiff and, by operation of this Final Approval Order and Judgment,
25 each Settlement Class Member is deemed to have waived (i) the provisions of California Civil Code
26 § 1542, which provides that a general release does not extend to claims that the creditor or releasing
27 party does not know or suspect to exist in his or her favor at the time of executing the release and
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1 that, if known by him or her, would have materially affected his or her settlement with the debtor or
2 released party, and (ii) any law of any state or territory of the United States that is similar,
3 comparable, or equivalent to California Civil Code § 1542.

4 15. The Settlement Agreement and this Final Approval Order and Judgment apply to all
5 claims or causes of action settled under the Settlement Agreement, and bind Representative Plaintiff
6 and all Settlement Class Members who did not properly request exclusion. The Settlement
7 Agreement and this Final Approval Order and Judgment shall have maximum res judicata, collateral
8 estoppel, and all other preclusive effect in any and all causes of action, claims for relief, suits,
9 demands, petitions, or any other challenges or allegations that arise out of or relate to the subject
10 matter of the Litigation and/or the Complaint.

11 **OTHER PROVISIONS**

12 16. The Settlement Fund, consisting of Two Hundred Twenty-Five Thousand dollars
13 (\$225,000.00), shall be used to pay all costs of the settlement, including all Awards and payments
14 to Settlement Class Members, costs of Claims Administration, the Attorneys' Fees and Expenses
15 Award to Class Counsel, and the Representative Plaintiff's Service Award.

16 17. If any money remains in the Settlement Fund after the payment of all Settlement
17 Payments to Settlement Class Members, costs of Claims Administration, the Attorneys' Fees and
18 Expenses Award to Class Counsel, and the Representative Plaintiff's Service Award, the Parties
19 shall return to the Court seeking direction as to the disposition of these funds, including the selection
20 of a *cy pres* recipient, pursuant to Paragraph 7.6 of the Settlement Agreement.

21 18. The Settlement Agreement and this Final Approval Order and Judgment, and all
22 documents, supporting materials, representations, statements and proceedings relating to the
23 Settlement, are not, and shall not be construed as, used as, or deemed evidence of, any admission
24 by or against Defendants of liability, fault, wrongdoing, or violation of any law, or of the validity or
25 certifiability for litigation purposes of the Settlement Class or any claims that were or could have
26 been asserted in the Litigation, or that Shopify Inc. is subject to the personal jurisdiction of this
27 Court for purposes other than this Settlement.

1 19. The Settlement Agreement and this Final Approval Order and Judgment, and all
2 documents, supporting materials, representations, statements and proceedings relating to the
3 Settlement shall not be offered or received into evidence, and are not admissible into evidence, in
4 any action or proceeding, except that the Settlement Agreement and this Final Approval Order and
5 Judgment may be filed in any action by any Defendant or the Settlement Class Members seeking to
6 enforce the Settlement Agreement or the Final Approval Order and Judgment.

7 20. Consistent with Section 10 of the Settlement Agreement, if the Effective Date does
8 not occur for any reason, the following will occur: (a) this Final Approval Order and Judgment and
9 all of its provisions will be vacated, including, but not limited to the Attorneys’ Fees and Expenses
10 Award and the Representative Plaintiff’s Service Award, and this Final Approval Order and
11 Judgment will not waive, release or otherwise impact the Parties’ rights or arguments in any respect;
12 and (b) the Litigation will revert to the status that existed before the Settlement Agreement’s
13 execution date, and the Parties shall be restored to their respective positions in the Litigation as if
14 the Settlement Agreement had never been entered into. No term or draft of this Settlement
15 Agreement, or any part of the Parties’ settlement discussions, negotiations, or documentation will
16 have any effect or be admissible in evidence for any purpose in the Litigation.

17 21. Without affecting the finality of this Final Approval Order and Judgment, the Court
18 will retain jurisdiction over this Litigation and the Parties with respect to the interpretation,
19 implementation and enforcement of the Settlement Agreement for all purposes.

20 22. The Court hereby dismisses the Action in its entirety with prejudice, and without fees
21 or costs except as otherwise provided for herein.

22 **NOW, THEREFORE,** the Court hereby enters judgment in this matter pursuant to Rule 58
23 of the Federal Rules of Civil Procedure.

24 **IT IS SO ORDERED:**

25

26 DATED: _____

27 JEFFREY S. WHITE
28 UNITED STATES DISTRICT COURT JUDGE

EXHIBIT E

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18 *Attorneys for Plaintiff*

19
20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22 **OAKLAND DIVISION**

23 ALEX PYGIN,

24 Plaintiff,

25 v.

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

28 Defendants.

Case No.: 4:20-cv-04412-JSW

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

1 This matter is before the Court on Plaintiff’s motion for preliminary approval of the proposed
2 class action settlement. Plaintiff, individually and on behalf of the proposed Settlement Class, and
3 Defendants have entered into a Settlement Agreement and Release, dated May __, 2021 (“Settlement
4 Agreement”) that, if approved, would settle the above-captioned litigation. Having considered the
5 motion, the Settlement Agreement together with all exhibits and attachments thereto, the record in
6 this matter, and the briefs and arguments of counsel, IT IS HEREBY ORDERED as follows:

7 1. Unless otherwise defined herein, all terms that are capitalized herein shall have the
8 same meaning ascribed to those terms in the Settlement Agreement.

9 2. The Court has jurisdiction over this litigation, Representative Plaintiff, Defendants,
10 and Settlement Class Members, and any party to any agreement that is part of or related to the
11 Settlement Agreement.

12 **PRELIMINARY APPROVAL**

13 3. The Court has reviewed the terms of the proposed Settlement Agreement, the exhibits
14 and attachments thereto, Plaintiff’s motion papers and briefs, and the declaration of counsel and the
15 Claims Administrator. Based on its review of these papers, the Court finds that the Settlement
16 Agreement appears to be the result of serious, informed, non-collusive negotiations conducted with
17 the assistance of Martin Quinn, Esq. of JAMS during a day-long mediation session on February 12,
18 2021, through which the basic terms of the settlement were negotiated and finalized. The Court
19 further observes that the Settlement Agreement is the product of an informal exchange of fact
20 discovery. The terms of the Settlement Agreement do not improperly grant preferential treatment to
21 any individual or segment of the Settlement Class and fall within the range of possible approval as
22 fair, reasonable, and adequate.

23 4. The Court therefore GRANTS preliminary approval of the Settlement Agreement and
24 all of the terms and conditions contained therein.

25 **PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

26 5. Pursuant to Federal Rule of Civil Procedure 23, the Court preliminarily certifies, for
27 settlement purposes only, the Settlement Class defined in the Settlement Agreement as follows: All
28 individuals residing in the United States who made purchases from the Bombas website from

1 November 11, 2016 through February 16, 2017.

2 6. The Court preliminarily finds that the Settlement Class satisfies the requirements of
3 Federal Rule of Civil Procedure 23(a) for settlement purposes: the Settlement Class is comprised of
4 approximately 83,000 individuals; there are questions of law or fact common to the Settlement Class;
5 the Representative Plaintiff's claims are typical of those of Settlement Class Members; and the
6 Representative Plaintiff will fairly and adequately protect the interests of the Settlement Class.

7 7. The Court preliminarily finds that the Settlement Class satisfies the requirements of
8 Federal Rule of Civil Procedure 23(b)(3) for settlement purposes: the questions of law or fact
9 common to the Settlement Class predominate over individual questions; and class action litigation is
10 superior to other available methods for the fair and efficient adjudication of this controversy.

11 8. The Court hereby appoints Alex Pygin as the Representative Plaintiff of the Settlement
12 Class.

13 9. The Court hereby appoints as Class Counsel M. Anderson Berry of CLAYEO C.
14 ARNOLD, A PROFESSIONAL CORPORATION and John A. Yanchunis of MORGAN & MORGAN COMPLEX
15 LITIGATION GROUP.

16 **NOTICE AND ADMINISTRATION**

17 10. Pursuant to the Settlement Agreement, the Parties have designated Angeion Group as
18 the Claims Administrator. Angeion Group shall perform all the duties of the Claims Administrator
19 set forth in the Settlement Agreement.

20 11. The Court finds that the Class Notice and Notice Program set forth in the Settlement
21 Agreement satisfy the requirements of due process and Rule 23 of the Federal Rules of Civil
22 Procedure and provide the best notice practicable under the circumstances. The Class Notice and
23 Notice Program are reasonably calculated to apprise Settlement Class Members of the nature of this
24 Litigation, the scope of the Settlement Class, the terms of the Settlement Agreement, the right of
25 Settlement Class Members to object to the Settlement Agreement or exclude themselves from the
26 Settlement Class and the process for doing so, and of the Final Approval Hearing. The Court therefore
27 approves the Class Notice and Notice Program and directs the Parties and the Claims Administrator

1 to proceed with providing notice to Settlement Class Members pursuant to the terms of the Settlement
2 Agreement and this Order.

3 12. The Claims Administrator shall commence the Notice Program within the time
4 required by the Settlement Agreement.

5 13. The Court also approves the Claim Form.

6 **EXCLUSION AND OBJECTIONS**

7 14. Settlement Class Members who wish to opt-out and exclude themselves from the
8 Settlement Class may do so by notifying the Claims Administrator in writing, postmarked no later
9 than _____, 2021 (75 calendar days after entry of this Order). To be valid, each request
10 for exclusion must be made in writing and: (a) state the Settlement Class Member's full name, address
11 and telephone number; (b) contain the Settlement Class Member's personal and original signature or
12 the original signature of a person authorized by law to act on the Settlement Class Member's behalf
13 with respect to a claim or right such as those asserted in the Litigation, such as a trustee, guardian or
14 person acting under a power of attorney; and (c) state unequivocally the Settlement Class Member's
15 intent to be excluded from the Settlement. If a Settlement Class Member's Request for Exclusion
16 covers a payment card that includes co-signers or co-holders on the same payment card account, the
17 Settlement Class Member's Request for Exclusion shall be deemed to be properly completed and
18 executed as to that payment card only if all co-signers or co-holders elect to and validly opt out in
19 accordance with the provisions of this Paragraph. All Requests for Exclusion must be submitted
20 individually in connection with a Settlement Class Member, *i.e.*, one request is required for every
21 Settlement Class Member seeking exclusion.

22 15. All Settlement Class Members who do not opt out and exclude themselves shall be
23 bound by the terms of the Settlement Agreement upon entry of the Final Approval Order and
24 Judgment.

25 16. Settlement Class Members who wish to object to the Settlement may do so by
26 submitting a written objection to the Court in accordance with the procedures outlined in the Class
27 Notice, postmarked no later than _____, 2021 (75 calendar days after entry of this Order).

28 Any Settlement Class Member wishing to comment on or object to the Settlement Agreement shall

1 mail the comment or objection to the Claims Administrator at [INSERT]. All such notices of an
 2 intent to object to the Settlement Agreement must be written and must include all of the following:
 3 (i) the case name and number (*Alex Pygin v Bombas, LLC, Shopify (USA) Inc., and Shopify Inc.*, Case
 4 No. 4:20-cv-04412-JSW); (ii) the objector’s full name, address, and telephone number; (iii) a
 5 statement as to whether the objection applies only to the Settlement Class Member, to a specific
 6 subset of the Settlement Class, or to the entire class; (iv) a clear and detailed written statement of the
 7 grounds for the objection; and (v) the objector’s signature.

8 17. Any Settlement Class Member who does not timely submit a written objection in
 9 accordance with these procedures and the procedures detailed in the Class Notice and Settlement
 10 Agreement shall be deemed to have waived any objection, shall not be permitted to object to the
 11 Settlement, and shall be precluded from seeking any review of the Settlement Agreement and/or the
 12 Final Approval Order by appeal or other means.

13 **FINAL APPROVAL HEARING**

14 18. The Court will hold a Final Approval Hearing on _____, 2021 in the United
 15 States District Court, Northern District of California, Oakland Division, 1301 Clay Street, Oakland,
 16 California 94612.

17 19. At the Final Approval Hearing, the Court will consider whether:
 18 (a) the Settlement is fair, reasonable, and adequate; (b) the Settlement Class should be finally
 19 certified; (c) a final judgment should be entered; (d) Class Counsel’s motion for attorneys’ fees and
 20 costs should be granted; and (e) the service award sought for Representative Plaintiff should be
 21 granted.

22 20. The Court reserves the right to continue the date of the Final Approval Hearing without
 23 further notice to Settlement Class Members.

24 **DEADLINES, INJUNCTION & TERMINATION**

Event	Date
Notice of Class Action Settlement completed as per Notice Program	
Class Counsel’s Motion for Attorneys’ Fees and Costs	
Opt-Out and Objection Deadline	
Motion for Final Approval	4

Replies in Support of Motion for Final Approval and Motion for Attorneys' Fees and Costs	
Final Approval Hearing	

21. All proceedings and deadlines in this matter, except those necessary to implement this Order and the settlement, are hereby stayed and suspended until further order of the Court.

22. All Settlement Class Members who do not validly opt out and exclude themselves are hereby enjoined from pursuing or prosecuting any of the Released Claims as set forth in the Settlement Agreement until further order of the Court.

23. In the event that the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement: (a) the Settlement Agreement and this Order shall become void, shall have no further force or effect, and shall not be used in the Litigation or any other proceedings for any purpose other than as may be necessary to enforce the terms of the Settlement Agreement that survive termination; (b) this matter will revert to the status that existed before execution of the Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the Settling Parties' settlement discussions, negotiations or documentation (including any briefs filed in support of preliminary or final approval of the settlement) shall (i) be admissible into evidence for any purpose in this Litigation or in any other action or proceeding other than as may be necessary to enforce the terms of the Settlement Agreement that survive termination, (ii) be deemed an admission or concession by any Settling Party regarding the validity of any of the Released Claims or the propriety of certifying any class against any Defendant, or (iii) be deemed an admission or concession by any Settling Party regarding the truth or falsity of any facts alleged in the Litigation or the availability or lack of availability of any defense to the Released Claims.

IT IS SO ORDERED.

Dated: _____

 JEFFREY S. WHITE
 UNITED STATES DISTRICT COURT JUDGE