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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TESSIBLE “SKYLER” FOSTER;  
MARIE SCOTT; and KRISTA  
BAUMBACH, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

800-FLOWERS, INC.,

Defendants.

Case No. 2:23-cv-07441-AB-PVC

**ORDER GRANTING PLAINTIFFS’  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT**

Before the Court is Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement pursuant to Federal Rule of Civil Procedure 23(e). (“Motion,” Dkt. No. 55.) No opposition was filed. The Court held a hearing on September 27, 2024. For the following reasons, Plaintiff’s Motion is **GRANTED**.

The Court **HEREBY ORDERS**:

**A. Provisional Approval and Certification of the Settlement Class and Appointment of Class Counsel and Class Representatives**

1. Unless otherwise defined herein, all capitalized terms in this Order shall have the meanings ascribed to them in the Settlement Agreement.

2. The Court has conducted a preliminary assessment of the fairness,

1 reasonably, and adequacy of the Settlement as set forth in the Settlement  
2 Agreement. Based on this preliminary evaluation, the Court preliminarily finds that the  
3 proposed Settlement of \$1,200,00.00 is fair, reasonable and adequate to warrant  
4 providing notice to the Settlement Class. The Court therefore grants Preliminary  
5 Approval of the Settlement.

6 3. Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of  
7 Civil Procedure and for purposes of the Settlement only, the Court hereby  
8 provisionally certifies this action as a class action on behalf of the following  
9 Settlement Class:

10 All Persons who purchased Celebrations Passport in  
11 California on or after September 7, 2019, through May  
12 31, 2022, and who incurred at least one automatic  
13 renewal charge for Celebrations Passport that was not fully  
14 refunded.<sup>1</sup>

15 4. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby  
16 finds that, for purposes of the Settlement, the Plaintiffs Tessible “Skyler” Foster,  
17 Marie Scott, and Krista Baumbach are members of the Settlement Class and  
18 that, for Settlement purposes only, they satisfy the requirement that they will  
19 adequately represent the interests of the Settlement Class Members. The Court  
20 hereby appoints Plaintiffs Tessible “Skyler” Foster, Marie Scott, and Krista  
21 Baumbach as class representatives of the Settlement Class, who may obtain  
22 reasonable service awards of \$2,500 each.

23 5. Having considered the factors set forth in Federal Rule of Civil  
24 Procedure 23(g)(1) and having reviewed the submissions of Plaintiffs’ counsel, the

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25 <sup>1</sup> As set forth in the Settlement Agreement, specifically excluded from the  
26 Settlement Class are the following Persons: (a) 800-Flowers, Inc., the Released  
27 Persons and their employees, officers, directors, agents, and representatives, and their  
28 immediate family members; (b) Class Counsel; (c) The Court, the Court’s immediate  
family members, and Court staff; and (d) The mediator, Jill Sperber, Esq. of Judicate  
West.

1 Court finds that the Plaintiffs' counsel, Frank S. Hedin of Hedin LLP, will fairly  
2 and adequately represent the interests of the Settlement Class. Accordingly, the Court  
3 hereby appoints Frank S. Hedin of Hedin LLP as Class Counsel to represent the  
4 Settlement Class. The Court preliminarily approves Class Counsel's abilities to  
5 request attorneys' fees, costs and expenses, including an award of attorney's fees up  
6 to \$300,000 (25% of the Gross Settlement Amount), and reasonable costs up to  
7 \$14,000.

8 **B. The Final Approval Hearing**

9 6. Pursuant to Federal Rule of Civil Procedure Rule 23(e), the Court  
10 will hold a Final Approval Hearing on January 31, 2025 at 1:30 p.m. to consider the  
11 fairness, reasonableness and adequacy of the Settlement and whether it should be  
12 finally approved by the Court, and to determine the reasonableness of Class  
13 Counsel's requested Attorneys' Fee Award and the class representatives'  
14 requested Service Awards.

15 7. No later than January 17, 2024, which is fourteen (14) Days before  
16 the Final Approval Hearing, the Parties must file any papers in support of Final  
17 Approval of the Settlement and respond to any written objections.

18 **C. Objecting to the Settlement**

19 8. Any Settlement Class Member who intends to object to any aspect of  
20 the Settlement, including a request for Attorneys' Fee Award to Class Counsel, or  
21 Service Awards to the class representatives, must do so on or before the Opt-Out and  
22 Objection Date set forth below, in the manner and pursuant to the requirements set  
23 forth in the Settlement Agreement and the Class Notice.

24 9. Any responses by the Parties to timely-filed objections shall be  
25 included in the Motion for Final Approval briefing.

26 **D. Requesting Exclusion from the Settlement Class**

27 10. Any member of the Settlement Class who wishes to exclude himself  
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1 or herself from the Settlement Class must submit an appropriate, timely request  
2 for exclusion, postmarked or submitted electronically no later than the Opt-Out  
3 and Objection Date in compliance with the provisions of the Settlement Agreement,  
4 or as the Court may otherwise direct, to the Settlement Administrator at the address  
5 on the Class Notice. Any Settlement Class Member who does not submit a timely,  
6 written request for exclusion from the Settlement Class (i.e., becomes an Opt-Out)  
7 will be bound by all proceedings, orders and judgments in the Litigation.

8 11. Any Settlement Class Member who does not become an Opt-Out and  
9 who wishes to object to the fairness, reasonableness or adequacy of the Settlement  
10 or the requested Attorneys' Fee Award or Service Awards must timely file with or  
11 mail to the Court, by no later than the Opt-Out and Objection Date, an objection  
12 which complies with the requirements set forth in Paragraph 116 of the Settlement  
13 Agreement and as set forth in the Class Notice.

14 **E. Settlement Class Notice Program**

15 12. Pursuant to the Settlement Agreement, Kroll Settlement  
16 Administration, LLC ("Kroll") is hereby appointed as Settlement Administrator and  
17 shall be required to perform all the duties of the Settlement Administrator as set forth  
18 in the Settlement Agreement and this Order, at a reasonable fee not to exceed  
19 \$89,400.

20 13. The Court approves the Class Notices accompanying the  
21 Settlement Agreement and directs the Settlement Administrator to disseminate the  
22 Class Notice in accordance with the Settlement Class Notice Program.

23 14. The Court finds that the Settlement Class Notice Program set forth in  
24 the declaration of Andrea R. Dudinsky of Kroll: (i) is the best practicable notice;  
25 (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class  
26 of the pendency of the Action and of their right to object to or to exclude themselves  
27 from the proposed Settlement; (iii) is reasonable and constitutes due, adequate and  
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1 sufficient notice to all Persons entitled to receive Class Notice; and (iv) meets all  
2 requirements of applicable law.

3 15. In addition to electronic means, the Settlement Administrator  
4 shall establish a post office box in its name to be used for receiving requests for  
5 exclusion and any other communications, and providing that only the Settlement  
6 Administrator, Class Counsel, Defense Counsel, the Court, the Clerk of the Court and  
7 their designated agents shall have access to this post office box, except as  
8 otherwise provided in the Settlement Agreement.

9 16. The Settlement Administrator is ordered to cause the Class Notice to be  
10 disseminated to Settlement Class members on or before thirty (30) Days from the date  
11 of this Order and shall constitute the “Notice Date” pursuant to the Settlement  
12 Agreement and for purposes of this Order.

13 17. The Settlement Administrator shall provide the Opt-Out List to Class  
14 Counsel and Defense Counsel no later than seven (7) Days after the Opt-Out and  
15 Objection Date and shall then file with the Court the Opt-Out List with an affidavit  
16 attesting to the completeness and accuracy thereof no later than seven (7) Days before  
17 the Final Approval Hearing.

18 18. The Settlement Administrator shall also file proof of compliance with the  
19 Settlement Class Notice Program no later than seven (7) Days before the Final  
20 Approval Hearing.

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22 **F. Miscellaneous Provisions**

23 19. Settlement Class Members are preliminarily enjoined, unless and  
24 until they have timely and properly excluded themselves from the Settlement  
25 Class, from (i) filing, commencing, prosecuting, intervening in or participating  
26 as plaintiff, claimant, or class member in any other lawsuit or  
27 administrative, regulatory, arbitration, or other proceeding in any jurisdiction based  
28 on, relating to, or arising out of the claims and causes of action or the facts and

1 circumstances giving rise to the Action and/or the Released Claims; (ii) filing,  
2 commencing, participating in, or prosecuting a lawsuit or administrative,  
3 regulatory, arbitration, or other proceeding as a class action on behalf of any  
4 Settlement Class Member who has not timely excluded themselves (including by  
5 seeking to amend a pending complaint to include class allegations or seeking  
6 class certification in a pending action), based on, relating to, or arising out of the  
7 claims and causes of action or the facts and circumstances giving rise to the Action  
8 and/or the Released Claims; and (iii) attempting to effect opt-outs of a class of  
9 individuals in any lawsuit or administrative, regulatory, arbitration, or other  
10 proceeding based on, relating to, or arising out of the claims and causes of action or  
11 the facts and circumstances giving rise to the Action and/or the Released Claims.  
12 This is not intended to prevent members of the Settlement Class from participating in  
13 any action or investigation initiated by a state or federal agency.

14 20. Counsel is hereby authorized to use all reasonable procedures in  
15 connection with approval and administration of the Settlement that are not  
16 materially inconsistent with this Order or the Settlement Agreement, including  
17 making, without further approval of the Court, insubstantial changes to the form or  
18 content of the Class Notices and other exhibits that they jointly agree are  
19 reasonable and necessary. The Court reserves the right to approve the Settlement  
20 Agreement with such modifications, if any, as may be agreed to by the Parties without  
21 further notice to the Settlement Class Members.

22 21. Accordingly, the following are the deadlines by which certain events  
23 must occur:

<b>Deadline to Mail Notice</b>	October 23, 2024
<b>Deadline to File Fee Motion</b>	December 2, 2024
<b>Deadline for Opt-Outs and Objections</b>	December 23, 2024

<b>Deadline to Provide Opt-Out List to Counsel</b>	December 30, 2024
<b>Deadline for Parties and Settlement Administrator to file the following: (1) Opt-Out List; (2) Proof of CAFA Notice and Class Notice; (3) Motion for Final Approval, including responses to any Objections</b>	January 24, 2025
<b>Final Approval and Fairness Hearing</b>	January 31, 2025

**IT IS SO ORDERED.**

Dated: October 3, 2024



HONORABLE ANDRÉ BIROTTE JR.  
UNITED STATES DISTRICT COURT JUDGE

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