

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

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|--------------------------------------|---|---------------------------|
| SHERHONDA GOLDEN, DENISE |) | |
| VALENCIA, Individually and on behalf |) | |
| of similarly situated persons, |) | |
| |) | |
| Plaintiffs, |) | No. 17PH-CV01741 |
| v. |) | |
| |) | Hon. William Earle Hickle |
| CONTEXTLOGIC INC., d/b/a |) | |
| WISH.COM, |) | |
| |) | |
| Defendant. |) | |

PLAINTIFF’S SUGGESTIONS IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Plaintiffs Sherhonda Golden (“Golden”) and Denise Valencia (“Valencia”) (together, “Plaintiffs”), individually and as Class Representatives, as well as Randall Robello and Melissa Claybaugh as Class Representatives, on Behalf of All Similarly Situated Persons and a proposed Settlement Class, respectfully requests that the Court preliminarily approve the class action Settlement that is described in detail in the *Class Action Settlement Agreement* and exhibits attached thereto and filed contemporaneously herewith; grant certification of the proposed Settlement Class for the purposes of the Settlement; approve the provision of Notice to the Settlement Class; and appoint the Plaintiffs as Class Representatives and their counsel as Class Counsel.¹

At this preliminary approval stage, the Court need only review the proposed settlement to determine whether it is within the permissible “range of possible judicial approval” and thus, whether the notice to the class and the scheduling of the formal fairness hearing is appropriate. (See FEDERAL JUDICIAL CENTER, MANUAL FOR COMPLEX LITIGATION, § 21.632 (4th ed. 2004);

¹ Capitalized terms used herein but not defined herein shall have the meaning ascribed to such terms in the Settlement Agreement.

4 WILLIAM B. RUBENSTEIN ET AL., NEWBERG ON CLASS ACTIONS § 11:25 (4th ed. 2002); *see also State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 377 (Mo. Ct. App. 1997) (stating that the purpose of a preliminary approval hearing is for the court to make a “preliminary examination of the record before it and make a preliminary determination as to whether it appears that a settlement class should be tentatively certified.”)

I. BACKGROUND OF THE LITIGATION

This case arises out of Plaintiffs’ allegations that Defendant ContextLogic Inc. d/b/a Wish.com (“Defendant” or “Wish.com”) engaged in conduct known as “false former pricing” and/or “false discount pricing.” This means that Wish.com allegedly falsely advertises inflated “original” prices, “sale” prices that are really more like true regular prices, and corresponding false price discounts for products available on Wish.com.

This Settlement is a product of nearly a year of investigation by Plaintiffs’ counsel, which began in or about February 2017, informal and formal discovery, and approximately six months’ worth of negotiations with counsel for Defendant. After investigating the alleged wrongdoing thoroughly throughout the winter and spring of 2017, Plaintiff Valencia sent a demand letter to Defendant on June 6, 2017, and since then, the parties have engaged in intensive settlement discussions, which required mediation and substantial further negotiation following the mediation. Ultimately, the discussions and negotiations resulted in the Settlement Agreement. Plaintiffs’ Original Class Action Petition was filed on October 6, 2017, and since then, Plaintiffs have served formal discovery on Defendant.

II. NATURE OF THE SETTLEMENT

As explained in the proposed settlement, Defendant Wish.com has agreed to provide both monetary and substantial prospective relief that will correct the issue identified in the Petition.

Wish.com has agreed to a three-tiered structure for monetary relief to class members, under which Wish.com will provide cash benefits to Settlement Class Members who timely file Claims by the Claims Deadline, which shall be May 1, 2018. Wish.com will provide this monetary benefit without a cap on its gross potential pay-out. If every Settlement Class Member makes a valid claim, then Wish.com will pay every Settlement Class Member. Wish.com will simply refund consumers for portions of their purchases pursuant to the three-tier structure set forth in the Settlement Agreement and described below. With a class size number of approximately 22 million persons, the potential value of the Settlement could exceed \$100 million.

Regarding prospective relief, Wish.com has agreed that it will make clear and conspicuous disclosures to consumers regarding any “strikethrough” pricing on Wish.com and will set guidelines with the merchants that sell items on Wish.com about pricing practices. Thus, Wish.com has agreed to correct the alleged wrongdoing on the front end by making clear disclosures to consumers, and on the back end by working with its merchants.

Because of the tremendous value of both the monetary relief and the prospective relief, this Settlement represents a wonderful outcome for the Settlement Class and all future buyers on Wish.com.

III. MATERIAL TERMS OF THE SETTLEMENT

The key terms of the Settlement Agreement are detailed below.

A. Definitions

1. Section II. (2.46) of the Settlement Agreement defines the “Settlement Class” as: all Persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all Persons who purchased or acquired the Product for resale; (b) Wish.com and its

employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely Opt-Out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof) and (e) the judge(s) to whom this Action is assigned and any members of his, her, or their immediate families.

2. Section XII (12.2) of the Settlement Agreement defines “Released Claims” as follows: The Releasing Parties hereby fully release and forever discharge the Released Parties from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, asserted or unasserted, claims, demands, liabilities, rights, debts, obligations, liens, contracts, agreements, judgments, actions, suits, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, penalties, fees, attorneys’ fees, and/or obligations of any nature whatsoever (including “Unknown Claims” as defined below), whether in law or in equity, accrued or unaccrued, existing now or arising in the future, whether direct, individual, representative, or class, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, relating in any way to any conduct prior to the date of the Settlement and that: a) is or are based on any act, omission, inadequacy,

misstatement, representation, harm, matter, cause, or event; b) involves legal claims that have been asserted in the Action or could have been asserted in the Action; or c) involves legal claims about the Products or the advertising, marketing, promotion, labeling, purchase, sale, distribution, design, testing, manufacture, application, use, performance, warranting, packaging, or Labeling of the Products during the Class Period. The Parties acknowledge and agree that personal injury claims are not part of any of the facts alleged by Class Representatives in this Action and that personal injury claims are not included within the Released Claims.

3. Section II (2.42) of the Settlement Agreement defines “Released Parties” as follows: Wish.com and its direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, holding entities, past and present affiliates, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, or other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns. For the avoidance of doubt, Released Parties shall include all retailers, distributors, sellers and resellers of Products.

B. The Requested Settlement Class

The Parties stipulate to and request the certification of the Class defined in the Settlement Agreement for settlement purposes only, pursuant to Rules 52.08(a), (b)(2) and (b)(3) of the Missouri Rules of Civil Procedure. “Among current applications of Rule 23(b)(3), the ‘settlement only’ class has become a stock device.” *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 377 (Mo. Ct. App. 1997), quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). *Amchem* specifically approved of the use of a temporary settlement class in order to facilitate settlement. *Id.*

C. Monetary Relief

The Settlement Agreement provides that Wish.com will pay or cause to be paid, by cash benefits, all Valid Claims based on one of the three Tiers the Settlement Class Member elects. The monetary relief shall be administered by the Settlement Administrator.

Tier 1 requires no proof of claim or proof of purchase—all valid Tier 1 claimants will receive a cash benefit of \$3.00. This number is based on Wish.com’s representations that the average price of an item purchased on Wish.com is approximately \$6.00. This means that all Tier 1 claimants will get back an average 50% of their single-item purchase price—without even providing proof of purchase. If all 22 million eligible Settlement Class Members make valid Tier 1 claims, then Wish.com will have to pay out approximately \$66 million to Class Members with no reduction for attorneys’ fees or costs, or settlement administration fee.

Tier 2 claimants will be eligible to receive up \$10.00 by providing a valid proof of claim. The proof of claim requires Tier 2 claimants to provide proof of the price of a single item purchased from and advertised on Wish.com, as well as documentation of the same item advertised elsewhere with a lower “regular” price. Alternatively, Tier 2 claimants can provide an

attestation as to why they could not provide the requisite proof of claim, and the Claims Administrator will evaluate the attestation.

Tier 3 claimants will be eligible to claim up to \$20.00 by providing a valid proof of claim. This works just like Tier 2, except that Tier 3 is designed for purchasers of multiple items, and no alternative attestation will be accepted.

D. Non-Monetary Relief

In addition to the payments described above, Defendant Wish.com will also provide the following relief: No later than January 31, 2018, regardless of whether or not the Final Approval Order has been entered by that date, Wish.com shall make clear and conspicuous disclosures to consumers advising them of the identity of the seller of an item and the nature of any strikethrough price displayed. Wish.com also will provide clear and conspicuous instructions to sellers regarding the circumstances under which they may offer an item on the Wish marketplace with a strikethrough price. Prior to making these changes, Wish.com shall provide copies of the changes to Plaintiff's counsel and give Plaintiff's counsel a reasonable opportunity to comment or object to them.

E. Notice

The Settlement Agreement provides for direct email Settlement Notice, a Settlement Website, and telephonic support of the notice campaign. The full cost of notice and administration and effectuation of the Settlement shall be paid by Defendant separate and apart from any monies paid to Settlement Class Members.

F. Objectors

The Settlement Agreement provides mechanisms by which members of the Class may opt out of, or object to, the proposed settlement. Any Settlement Class Member who intends to

object to the Settlement must do so on or before March 2, 2018 (the “Objection Deadline”). In order to be valid, objections must be received on or before March 2, 2018. Objections postmarked on March 2, 2018, but not received until a later date will not be valid. In order to object, the Settlement Class Member must file with the Clerk of the Court, and provide a copy to the Settlement Administrator, Class Counsel, and Defendant’s counsel, a document that includes:

- a) The case name and number, *Golden, et al. v. ContextLogic Inc.*, Case No. 17PH-CV01741 (Phelps Circuit Court, MO.)
- b) The name, address, telephone number, and, if available, the email address of the Person objecting;
- c) The name and address of the lawyer(s), if any, who is representing the Person objecting in making the Objection or who may be entitled to compensation in connection with the Objection;
- d) A detailed statement of Objection(s), including the grounds for those Objection(s);
- e) Copies of any papers, briefs, or other documents upon which the Objection is based;
- f) A statement of whether the Person objecting intends to appear at the Final Approval Hearing, either with or without counsel;
- g) The identity of all counsel (if any) who will appear on behalf of the Person objecting at the Final Approval Hearing and all Persons (if any) who will be called to testify in support of the Objection;
- h) A statement of his/her membership in the Settlement Class, including all information required by the Claim Form;
- i) The signature of the Person objecting, in addition to the signature of any attorney representing the Person objecting in connection with the Objection; and
- j) A detailed list of any other objection by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous

five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. This information is requested in order to assist the Court in determining whether the Objection is made by a professional objector seeking financial consideration for their efforts. Failing to provide this information will not affect the validity of the Objection, but may result in the Court presuming that the Objection is made by a professional objector.

G. Requests for Exclusion

Any Settlement Class Member may Opt-Out or request to be excluded from the Settlement Class. A Settlement Class Member who wishes to Opt-Out of the Settlement Class must do so on or before March 2, 2018 (the “Opt-Out Deadline”). In order to Opt-Out, a Settlement Class Member must mail to the Settlement Administrator a request to Opt-Out that is received no later than the Opt-Out Deadline. Requests for Exclusion that are postmarked on March 2, 2018 but not received until after the Opt-Out Deadline will be considered invalid and of no effect. The Opt-Out request must contain the requestor’s name, address, the words “I wish to be excluded from the *Golden v. ContextLogic* Class Action,” and signature.

H. Service Awards

Class Counsel shall also submit to the Court an Application seeking Class Representative Service Awards. If approved by the Court, this award shall be payable to Class Representatives up to a maximum total amount of three thousand dollars (\$3,000) for each of the four Class Representatives, to compensate each of the Class Representatives for their efforts in bringing the Action and achieving the benefits of this Settlement on behalf of the Settlement Class.

I. Attorneys’ Fees

Class Counsel will submit to the Court an application seeking a Fee and Expense Award, and will include the requested amount in the Settlement Notice on the Settlement website so that there will be absolute transparency to the Class. The Fee and Expense Award shall be paid

separate and apart from the Settlement, and shall not take away from or otherwise reduce the monetary relief available to the Settlement Class. Court approval of the Fee and Expense Award will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's Application for a Fee and Expense Award, the remainder of the terms of this Agreement shall remain in effect. In addition, no interest will accrue on such amounts at any time.

J. Release

Upon the entry of a final order approving this settlement and following the expiration of the time for appeal or the entry of a decision on such appeal, the Class Representatives and each and every member of the Settlement Class who has not timely filed a request to be excluded from the Settlement Class will release and forever discharge Wish.com as further explained in the attached Settlement Agreement.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask that the Court grant preliminary approval of the proposed Settlement Agreement and enter the proposed order separately submitted herewith (a copy of which is attached as Exhibit C to the Settlement Agreement), and grant such further relief as the Court deems reasonable and just.

Date: December 12, 2017

Respectfully Submitted,

Plaintiffs Sherhonda Golden and Denise Valencia,
Individually, and on Behalf of Classes of Similarly Situated
Individuals,

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Attorneys for Plaintiffs and the Putative Class

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing was served on the following named parties by the Court's electronic filing system on this 12th day of December, 2017.

By: s/ David L. Steelman
David L. Steelman