

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

SHERHONDA GOLDEN, DENISE)
VALENCIA, Individually and on behalf)
of similarly situated persons,)
)
Plaintiffs,)
v.)
)
CONTEXTLOGIC INC., d/b/a)
WISH.COM,)
)
Defendant.)

No. 17PH-CV01741

Hon. William Earl Hickle

FILED
MAY 25 2018
SUE BROWN
CIRCUIT CLERK
PHELPS COUNTY, MO.

**FINAL APPROVAL OF THE SETTLEMENT AGREEMENT; FINAL JUDGMENT;
AWARD OF ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE
INCENTIVE AWARDS; AND ORDER OF DISMISSAL WITH PREJUDICE**

WHEREAS, on December 12, 2017, this Court entered a Preliminary Approval Order;

WHEREAS, on March 8, 2018, this Court entered a modified Preliminary Approval

Order that:

- a. conditionally certified, for settlement purposes only, pursuant to Mo. R. Civ. P. 52.08, a class consisting of "All persons in the United States of America between June 6, 2013 and the date of Preliminary Approval (December 12, 2017) who purchased one or more products at a discount off of the stated 'original' or 'regular' price, and who have not received a refund or credit for their purchases. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendant has a controlling interest, to include but not limited to, its legal representatives, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three

years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

- b. appointed David L. Steelman and Stephen F. Gaunt, Steelman, Gaunt & Horsefield, and Scott A. Kamber and Michael Aschenbrener of KamberLaw, LLC as counsel to the Settlement Class;
- c. preliminarily approved the Settlement, pursuant to Mo. R. Civ. P. 52.08(b)(3);
- d. set a hearing to take place, before this Court (the “Final Approval Hearing”), upon notice to members of the Settlement Class, to determine whether:
 - 1. the requirements for certification of the Settlement Class have been met;
 - 2. the proposed settlement of the Action in accordance with the terms set forth in the Settlement Agreement, including as part of the Settlement the payment of Plaintiffs’ Class Counsel’s attorneys’ fees and reimbursement of Plaintiffs’ Class Counsel’s expenses, as well as any incentive awards to the Class Representatives, should be approved as fair, reasonable, and adequate; and,
 - 3. the Judgment approving the Settlement and dismissing the Action on the merits and with prejudice against Plaintiff and Settlement Class Members should be entered;
- e. approved the Claim Form and set the Claims Deadline;
- f. designated KCC Class Action Services, LLC (“KCC”) as the Settlement Administrator and instructed KCC to perform the following functions, as set forth in the Settlement Agreement:

1. process requests for exclusion from the Settlement in accordance with Section IX of the Settlement Agreement;
 2. process objections to the Settlement in accordance with Section IX of the Settlement Agreement;
 3. process Claim Forms in accordance with Section V of the Settlement Agreement;
before disseminating the Direct Email Notice, establish the Settlement Website, which Settlement Class Members can visit to read and obtain additional information regarding the Settlement, including submission of claims; and
 4. set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.
- g. prescribed the method and period of time for providing notice to members of the Settlement Class of the certification of the Settlement Class; the Settlement; Plaintiff's counsel's application for an award of attorneys' fees and reimbursement of expenses; and the Final Approval Hearing;
- h. found that such notice to the members of the Settlement Class as described in the Settlement Agreement: *(i)* is the best notice practicable to members of the Settlement Class; *(ii)* is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, conditional certification of the Settlement Class, the proposed Settlement, and the rights of members of the Settlement Class to object to the Settlement; to request exclusion

from the Settlement Class; and the application of Plaintiffs' counsel for an award of attorneys' fees and reimbursement of expenses; **(iii)** is reasonable and constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice; and **(iv)** meets all applicable requirements of law including, but not limited to, Mo. R. Civ. P. 52.08(b)(3);

- i. prescribed the method and period of time during which members of the Settlement Class may file requests to be excluded from the Settlement Class;
- j. provided that, whether or not the Effective Date occurs, any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by any and all judgments and settlements entered or approved by this Court, whether favorable or unfavorable to the Settlement Class; and
- k. prescribed the method and periods of time during which members of the Settlement Class may serve written objections to the Settlement and/or the application for an award of attorneys' fees and/or reimbursement of expenses by Class Counsel; and

WHEREAS, this Court has received one withdrawn notice that a class member intends to appear at the Final Approval Hearing, one remaining objection to the Settlement is pending for the Court to consider, which it will do herein below, and this Court finds that the papers are detailed and sufficient to rule on Plaintiffs' motion for final approval; and

WHEREAS, this Court, having heard from Class Counsel on behalf of the Settlement Class, and from Defendant's counsel, and having reviewed all other arguments and submissions

presented by all interested persons and entities with respect to the Settlement and the application of Plaintiffs' counsel for an award of attorneys' fees and reimbursement of expenses; and,

WHEREAS, all capitalized terms used herein have the meanings set forth and defined in the Settlement Agreement, it is hereby

ORDERED, ADJUDGED, DECREED, AND FOUND THAT:

1. This case arises out of Plaintiffs' allegations that Defendant Wish.com engaged in what is known as "false former pricing."

2. Plaintiff's Petition included claims for violations of the Missouri Merchandising Practices Act, unjust enrichment, California's Consumers Legal Remedies Act, California's Unfair Competition Law, and California's False Advertising Law.

3. After extensive settlement negotiations, including formal mediation, the Parties agreed to settle this case.

4. The Settlement Agreement provides substantial and meaningful relief to the Settlement Class, including injunctive relief that requires a change of the allegedly misleading pricing practices, as well as monetary benefits to the Settlement Class without a cap on the gross potential payout.

5. The Settlement Agreement provides for a claims-made settlement under which Settlement Class Members, including those with and without proofs of claim, can make claims to receive monetary benefits for purchasing the Products.

6. The Settlement Agreement and Preliminary Approval Orders establish a Claims Period that commenced in late December 2017 and continues through August 1, 2018.

7. The Settlement Class as provided in the Preliminary Approval Order is unconditionally certified pursuant to Mo. R. Civ. P. 52.08(b)(3). The prerequisites for a class

action under Rule 52.08(b)(3) have been satisfied in that: (a) the members of the Settlement Class are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs have and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

8. For purposes of the injunctive relief specified in Section 5.1 of the Settlement Agreement, the prerequisites for a class action under Rule 52.08(b)(2) have been satisfied in that: (a) the number members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs have and will fairly and adequately represent the interests of the Settlement Class; and (e) the Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory relief with respect to the class as a whole.

9. The following are appointed as Class Representatives of the Settlement Class: Sherhonda Golden; Denise Valencia; Randall Robello; and, Melissa Claybaugh.

10. The Court confirms the following as Class Counsel: David L. Steelman and Stephen F. Gaunt of Steelman, Gaunt & Horsefield; and Scott A. Kamber and Michael Aschenbrener of KamberLaw, LLC.

11. The Settlement, as set forth in the Settlement Agreement, is in all respects fair, reasonable, and adequate, is in the best interests of the Settlement Class Members, and is approved in all respects in accordance with Rules 52.08(b)(2) and (b)(3).

12. The Settlement was negotiated at arms'-length by experienced counsel who were fully informed of the facts and circumstances of the action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties engaged in extensive negotiations and formal mediation. Class Counsel and Defendant's Counsel are therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

13. Notice to the members of the Settlement Class required by Mo. R. Civ. P. 52.08(b)(3) has been provided as directed by this Court in the Preliminary Approval Order, and such notice having constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the members of the Settlement Class, and satisfied the requirements of the Missouri Rules of Civil Procedure, and all other applicable laws.

14. Plaintiffs and Defendant are directed to promptly consummate the Settlement in accordance with the Settlement Agreement and all of its terms.

15. The Settlement shall not be deemed to constitute an admission or finding of liability or wrongdoing on the part of the Defendant, Plaintiffs, or any of the Settlement Class Members, or Released Parties.

16. The Action is hereby dismissed, with prejudice, on the merits, as against the Plaintiffs and all members of the Settlement Class, on the terms and conditions set forth in the

Settlement Agreement, and without costs to any party except as provided herein and in the Settlement Agreement.

17. Upon the Effective Date, Plaintiffs, each Settlement Class Member, and each Releasing Party shall be deemed to have, and by operation of this Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties in the manner(s) set forth in Section XII of the Settlement Agreement.

18. Upon the Effective Date, Plaintiffs, each Settlement Class Member, and each Releasing Party shall be permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims.

19. A Service Award is hereby awarded to the following Class Representative(s) in the amount of \$3,000 each: Sherhonda Golden; Denise Valencia; Randall Robello; and, Melissa Claybaugh. Class Counsel shall pay these Service Awards to the Class Representatives following payment of this amount by Defendant as compensation for their efforts in bringing the Action and achieving the benefits of the Settlement on behalf of the Settlement Class.

20. Class Counsel are hereby awarded (i) attorneys' fees and (ii) reimbursement of their reasonable expenses in the amount of \$1,825,000. Such amounts are to be paid by Defendant within twenty (20) days after entry of this Order to Class Counsel by depositing the funds by wire exchange into an account to be identified by Class Counsel. Class Counsel shall provide to Defendant in a timely manner all information necessary to enable Defendant to make the payment in the time required.

21. The award of attorneys' fees to Class Counsel shall be allocated among Class Counsel in a fashion that, in the opinion of Class Counsel, fairly compensates them for their

respective contributions in the prosecution of the Action. In making its award of attorneys' fees and reimbursement of expenses, in the amounts described in paragraph 20, above, the Court has considered and finds as follows:

- a. The Settlement has provided significant relief to the Settlement Class.
- b. Defendant's adoption of substantial changes to their pricing practices were a negotiated, material term of Settlement.
- c. The Settlement Notice constituted the best notice practicable to Settlement Class members. There were only two objections to the Settlement, one of which was non-substantive and frivolous as it does not even reference the alleged pricing misrepresentations, but instead contends the suit is "frivolous" because Wish.com refunded Objector Askelin the difference between the price she paid for an item on Wish.com and a lower price she found on the same item elsewhere. This "objection" has nothing to do with the allegations of the complaint or the substance of the settlement and is thus frivolous. Objector Askelin also did not provide notice of an intent to appear at the Final Approval Hearing. Both for the frivolous nature of the objection and for the lack of providing notice of intent to appear, the Court need not hold a hearing on the objection. The Court hereby overrules Askelin's objection. The only other objection was withdrawn. Furthermore, only four class members opted out of the Settlement. Tens of millions of class members received direct notice. This positive reaction by the Class demonstrates the strength of the Settlement.
- d. Class Counsel have conducted the litigation and achieved the Settlement

with skill, perseverance, and diligent advocacy on behalf of Plaintiffs and the Settlement Class as a whole.

- e. The Action involves complex factual and legal issues and, in the absence of Settlement, would involve further lengthy proceedings and uncertain resolution of such issues.
- f. Had the Settlement not been achieved, there would remain a significant risk that the Settlement Class may have recovered less or nothing from the Defendant, and that any recovery would have been significantly delayed which would have resulted in the continued exposure of Settlement Class members' to the challenged representations.
- g. The amount of attorneys' fees and reimbursable expenses awarded to Class counsel is fair and reasonable, given the results of the Settlement, which are substantial, given there are approximately 30 million Class Members, all of whom have the ability to claim \$3, \$10, or \$20, and no cap on the gross potential payout. Setting aside the \$10 and \$20 tiers, for the sake of argument, the total value of the Settlement is approximately \$90 million. Using the more conservative \$90 million valuation, the requested attorneys' fees and costs of \$1.83 million represents only 2% of the value of the Settlement. Given the skills required to prosecute this case, the experience, reputation, and ability of Class Counsel, the fact that the fees were always contingent, and that the fee is not disproportionately excessive in light of the benefits conferred on the Members of the Settlement Class. Moreover, the amount awarded is within the norms in

class action cases in the state of Missouri.

22. The Defendant and the Released Parties shall not be liable for any additional fees or expenses for Class Counsel or counsel of any Plaintiffs or Settlement Class Member in connection with the Action, beyond those expressly provided in the Settlement Agreement.

23. By reason of the Settlement, and approval hereof, there is no just reason for delay and this Final Order and Judgment shall be deemed a final judgment pursuant to Rule 74 of the Missouri Rules of Civil Procedure.


24. Jurisdiction is reserved, without affecting the finality of this Final Approval Order and Judgment, over:

- a. Effectuating the Settlement and the terms of the Settlement Agreement, including the payment of Plaintiffs' counsel's attorneys' fees and reimbursement of expenses, including any interest accrued thereon;
- b. Supervising all aspects of the administration of the Settlement;
- c. Determining whether, in the event an appeal is taken from any aspect of this Final Approval Order and Judgment, notice should be given at the appellant's expense to some or all Settlement Class Members apprising them of the pendency of the appeal and such other matters as the Court may order;
- d. Enforcing and administering the Settlement Agreement and the Settlement including any releases executed in connection therewith, and the provisions of this Final Approval Order and Judgment;
- e. Adjudicating any disputes that arise under the Settlement Agreement; and
- f. Any other matters related or ancillary to the foregoing.

25. The above-captioned Action is dismissed in its entirety with prejudice.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: 5-25-18



JUDGE OF THE CIRCUIT COURT