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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KYLE CANNON, LEWIS LYONS, and
DIANNE LYONS, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

ASHBURN CORPORATION, WINES ‘TIL
SOLD OUT (WTSO.COM), and JONATHAN
H. NEWMAN,

Defendants.

Civil Action No. 16-1452(RMB)(AMD)

JOINT NOTICE OF MOTION

PLEASE TAKE NOTICE that on Monday, August 7, 2017 at 10 a.m. or upon the papers or any other date as the Court may direct, Plaintiff and Defendant shall move before the Hon. Renee Marie Bumb, U.S.D.J. at the Mitchell H. Cohen Building & U.S. Courthouse 4th & Cooper Streets, Camden, New Jersey 08101 for an Order pursuant to Fed. R. Civ. P. 23 granting preliminary approval of a class settlement and certification of a settlement class.

This Joint Motion is supported by the annexed Brief of Plaintiff, and Declaration of James E. Cecchi and the exhibits annexed thereto.

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**PLAINTIFFS' BRIEF IN SUPPORT OF JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT and CERTIFICATION OF SETTLEMENT
CLASS**

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PRELIMINARY STATEMENT

The Parties jointly move for preliminary approval of the proposed Settlement of Plaintiffs' claims. As detailed below, the proposed Settlement provides credits towards future purchases of wine from WTSO and a change in the allegedly deceptive practices that were the subject of Plaintiffs' Complaint. For the reasons set forth herein, the Settlement should be preliminarily approved.

I. BACKGROUND

A. Summary of Plaintiffs' Allegations

Plaintiffs alleged in their Complaint that Defendant Ashburn Corporation d/b/a Wines 'Til Sold Out ("Defendant" or "WTSO") operated a website (WTSO.com) through which it sold wines, and that WTSO advertised "Original Prices" and percentage discounts that, in some cases, were misleading and deceptive. The Complaint alleges that:

- some of the wines sold by WTSO were bottled exclusively for it (*see* Complaint ¶¶ 33-34);
- WTSO posted an "original price" for many of these offerings at which the wines were never sold, and stated a substantial discount off that "original price" to reach "our price," at which its wines were offered to consumers (*see* Complaint ¶¶ 2-3, 25, 28-29, 33, 58, 74, 80, 87);
- WTSO presented the wines at issue for sale at "our price" which was, in actuality, for those exclusive wines the only true price because they were never on sale elsewhere and were only offered and available on the website (*see* Complaint ¶¶ 25, 29, 33, 58, 74, 80, 87); and
- for certain other wines that are available elsewhere, WTSO at times advertised an "original price" that was greater than the price at which such wines were released and originally sold by the winery, so that the stated reduction in price was, in reality, a smaller discount than advertised because the true original price was lower than the advertised "original price" (*see* Complaint ¶¶ 2-3, 35-36, 58, 74, 80, 87).

The Complaint further alleges that as a consequence of the described marketing tactics, although consumers were led to believe that they were the recipients of a discount when they

purchased, for example, a \$32 bottle of wine for \$14.99, they received no discount or one that was a fraction of the advertised discount.

WTSO denies that it engaged in any wrongful or fraudulent activity or that it fabricated any advertised pricing. WTSO maintains that the wines it sold were of the advertised value. Further, in a Motion to Dismiss and to Strike filed on May 12, 2016, WTSO asserted legal defenses to the Complaint, arguing that Plaintiffs had failed to state a claim, and moved to strike the class action allegations.

On December 7, 2016, the Court granted in part and denied in part WTSO's motion to dismiss. The Court denied WTSO's motion to dismiss Plaintiffs' New Jersey Consumer Fraud Act claims relating to the allegedly fabricated "original prices" for wines exclusively sold by WTSO, and dismissed, with leave to amend, the claims relating to allegedly inflated "original prices" for wines offered by WTSO. The Court also denied WTSO's motion to dismiss Plaintiffs' breach of contract claims but dismissed Plaintiffs' unjust enrichment claims. The Court also dismissed Plaintiffs' New Jersey Truth-in-Consumer Contract Warranty and Notice Act claims without prejudice, with the right to replead. Finally, the Court denied without prejudice as premature WTSO's motion to strike the class allegations.

B. Settlement Negotiations and Discovery

After the Court's ruling on WTSO's motion to dismiss, the Parties agreed to attempt to resolve the case without further costly litigation. The Parties first met on January 18, 2017 to discuss settlement. Following that meeting, the Parties agreed to mediation, and subsequently selected the Honorable Dennis Cavanaugh (retired U.S. District Judge) as the mediator.

The Parties participated in an all-day mediation on March 24, 2017. Although progress was made, a settlement was not reached. The Parties continued to negotiate and an agreement in

principle was reached on April 27, 2017. At all times, the negotiations were conducted at arms' length.

Following the agreement in principle, the Parties drafted a settlement agreement (the "Settlement Agreement").¹ This was a lengthy process and involved the resolution of numerous significant issues.

Prior to execution of the Settlement Agreement, counsel for Plaintiffs conducted confirmatory discovery to ensure the accuracy of the representations made by Defendant during the settlement negotiations. Defendant provided information requested by Plaintiffs' counsel and produced witnesses for Plaintiffs' counsel to question. Counsel for Plaintiffs executed the Settlement Agreement after they were satisfied that the representations made during negotiations were true, and they determined that the Settlement was fair based on the information provided by Defendant.

II. MATERIAL TERMS OF THE SETTLEMENT

Plaintiffs seek preliminary approval of the Settlement on behalf of the following Settlement Class:

all residents of the United States who were the original purchasers of one or more Settlement Wines. Excluded from the Class are: (1) directors, officers and employees of Defendant; (2) the United States government and any agency or instrumentality thereof; (3) the judges to whom this case is assigned and any member of the judges' immediate families; and (4) Settlement Class Members who timely and validly opt to exclude themselves from the Settlement Class.

The "Settlement Wines" are all wines sold by WTSO during the Class Period, March 15, 2010 through November 1, 2016.

¹ A copy of the Settlement Agreement is attached to the Declaration of James E. Cecchi ("Cecchi Decl.") as Exhibit 1.

A. Class Benefits

The Settlement provides substantial economic benefits to the Class. The economic benefit depends upon the types of wines purchased and, if applicable, the wine's purchase price.

1. For every bottle of Settlement Wine listed on Exhibit A to the Settlement Agreement purchased for \$12.99 or less for which no prior refund was given, the Class Member will receive a Credit of \$1.75.

2. For every bottle of Settlement Wine listed on Exhibit A to the Settlement Agreement purchased during the Class Period for \$13.00 to \$18.99 for which no prior refund was given, the Class Member will receive a Credit of \$2.00.

3. For every bottle of Settlement Wine listed on Exhibit A to the Settlement Agreement purchased during the Class Period for \$19.00 or greater for which no prior refund was given, the Class Member will receive a Credit of \$2.25.

4. For every bottle of Settlement Wine listed on Exhibit B to the Settlement Agreement purchased as an individual offering (not as part of a combination package of different wines) during the Class Period for \$19.99 or less for which no prior refund was given, the Class Member will receive a Credit of \$ 0.50.

5. For every bottle of Settlement Wine listed on Exhibit B to the Settlement Agreement purchased as an individual offering (not as part of a combination package of different wines) during the Class Period for \$20.00 or greater for which no prior refund was given, the Class Member will receive a Credit of \$ 0.75.

6. For every other bottle of Settlement Wine purchased during the Class Period for which no prior refund was given, the Class Member will receive a Credit of \$ 0.20.

The total value to the Class is estimated to be approximately \$10.8 million. The foregoing Credits may be used in increments of \$2.00 per bottle of new purchases of wine from WTSO. The Credits may be used for a period of one (1) year following the date that Credits are emailed to the Class Members.

In addition to these monetary benefits, as a result of the filing of the this lawsuit, WTSO Defendant replaced the advertising term “Original Price” with the term “Comparable Price” in its offers, addressing the practice that formed the factual basis of the Complaint, which is in itself valuable to Class Members.

B. Class Notice and Claim Verification Process

Notice of the Settlement will be sent by the Claims Administrator to Class Members to the last known email address provided by the Class Members to WTSO when they made purchases of wine. If the email to the Class Member is undeliverable, the Settlement Administrator will mail a copy of the Class Notice to the Class Member by First Class mail. The Notice of Settlement describes the litigation and settlement, including benefits to the Class Members. Notice of the settlement will also be available on a dedicated website created by the Claims Administrator, and WTSO will include a link to the Settlement Website on WTSO.com. In order to receive their Credits, Class Members will need to click on a link in the email, which will ask Class Members to verify their current address and to identify any refunds they received for Settlement Wines during the Class Period. The Claims Administrator will email a code to access the Credits to all Class Members who properly complete the simple verification process.

III. LEGAL ARGUMENT

A. Preliminary Approval of the Settlement is Appropriate.

Where parties propose to resolve class action litigation through settlement, they must obtain court approval. Fed. R. Civ. P. 23(e); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 296 (3d Cir. 2011) (en banc). That said, “[c]ompromises of disputed claims are favored by the courts,” *Williams v. First Nat’l Bank*, 216 U.S. 582, 595 (1910), “particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) (“there is an overriding public interest in settling class action litigation, and it should therefore be encouraged”).

The strong judicial policy in favor of class action settlement contemplates a circumscribed role for the district courts in settlement review and approval proceedings. This policy also ties into the strong policy favoring the finality of judgments and the termination of litigation. Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts.

Ehrheart v. Verizon Wireless, 609 F.3d 590, 595 (3d Cir. 2010). The proposed Agreement here meets all the requirements for preliminary approval by this Court.

“Review of a proposed class action settlement is a two-step process: preliminary approval and a subsequent fairness hearing.” *In re Aetna UCR Litigation*, 2013 WL 4697994, at *10 (D.N.J. Aug. 30, 2013). This procedure safeguards class members’ due process rights and enables the Court to fulfill its role as the guardian of class interests. *See In re GMC*, 55 F.3d at 785; *Hanlon v. Palace Entertainment Holdings, LLC*, 2012 WL 27461, at *5 (W.D. Pa. Jan. 3, 2012) (explaining that at the preliminary approval phase, the “court must only ‘make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms’” (quoting *Manual for Complex Litigation* (Fourth), § 21.632 (2011))). “Preliminary

approval is not binding, and it is granted unless a proposed settlement is obviously deficient.” *Aetna UCR*, 2013 WL 4697994, at *10. “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *Id.*; *see also Smith v. Professional Billing & Management Services, Inc.*, 2007 WL 4191749, at *1 (D.N.J. Nov. 21, 2007); *Jones v. Commerce Bancorp Inc.*, 2007 WL 2085357, at *2 (D.N.J. July 16, 2007) (“Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient.”).

“An initial ‘presumption of fairness for the settlement is established if the court finds that: (1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.’” *In re Cendant Corp. Litigation*, 264 F.3d 201, 232 n. 18 (3d Cir. 2001)); *In re Gen. Motors Corp.*, 55 F.3d at 785. While consideration of the requirements for final approval is unnecessary at this stage, it is important to consider the final approval factors at the preliminary approval stage in order to identify any issues that could impede final approval. *Singleton v. First Student Management LLC*, 2014 WL 3865853, at *5 (D.N.J. Aug. 6, 2014). Those factors are:

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) stage of the proceedings and the amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (7) ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975). All of the relevant factors weigh in favor of the Settlement proposed here.² The proposed Agreement is fair, adequate, and reasonable. Therefore, this Court should preliminarily approve the Settlement and certify a Settlement class.

1. A Review of the Applicable Factors Favors Preliminary Approval.

This Settlement is the product of numerous arms-length negotiations, including mediation before former District Judge Dennis M. Cavanaugh. *See Rubenstein, Newberg on Class Actions* § 13:14 (5th ed. 2015) (“The primary procedural factor courts consider in determining whether to preliminarily approve a proposed settlement is whether the agreement arose out of arms-length non-collusive negotiations.”). The participation of a mediator in this case is further assurance that the settlement is the result of arms-length negotiations. *See Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *10 (D.N.J. Apr. 8, 2011) (“Participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties.”) (internal quotation marks omitted); *see also Bernhard v. TD Bank, N.A.*, 2009 WL 3233541, at *2 (D.N.J. Oct. 5, 2009) (finding that the standards for preliminary approval were met where the settlement was the product of “serious negotiation” between counsel and conducted pursuant to mediation by a retired judge); *In re Cigna Corp. Secs. Litig.*, 2007 WL 2071898, at *3 (E.D. Pa. July 13, 2007) (“[I]t is clear that negotiations for the settlement occurred at arm’s length, as the parties were assisted by a retired federal district judge who was privately retained and served as mediator.”).

The third *Girsh* factor requires the Court to “consider the ‘degree of case development that Class Counsel have accomplished prior to Settlement,’ including the type and amount of discovery already undertaken.” *In re Merck & Co., Inc. Vytarin ERISA Litigation*, 2010 WL

² It is premature to consider the second *Girsh* factor, the reaction of the class to the Settlement, since it has not yet been presented to the Class.

547613, at *7 (D.N.J. Feb. 9, 2010) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 813 (3d Cir. 1995)) “In short, under this factor the Court considers whether the amount of discovery completed in the case has permitted ‘counsel [to have] an adequate appreciation of the merits of the case before negotiating.’” *Merck ERISA*, 2010 WL 547613, at *7 (alteration in original) (quoting *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998)). This factor weighs in favor of approval of the Settlement.

As generally described above, the basic facts were well known to Plaintiffs based upon extensive (A) review of many thousands of WTSO’s wine offers over several years, including, but not limited to, comparison of these offers to the offered retail price at wineries and other retail stores, (B) research of (i) federal and state laws, rules and regulations governing the wine industry, (ii) label approvals by the federal government to determine wineries and which wines were exclusive to WTSO, (iii) purchase patterns of the offered wines, (iv) the history, location, vineyards (if applicable), and current iteration of wineries and wine-making facilities, (v) offerings by wineries and wine-making facilities, and (vi) wine publications’ information about the offered wines, including suggested retail price or release price, and (C) compilation of lists of wine names, labels and offerings by WTSO during the Class Period, including “Original Price,” WTSO’s “Our Price,” frequency of offers for listed wines, and the entity bottling the wine as well as the winery listed on the label on the back of the bottle. The Parties exchanged informal discovery during their initial settlement meeting on January 18, 2017, including information related to how WTSO sources, values, and prices its wines. Such information included how WTSO determined the advertised “Original Prices” and offered prices. Plaintiffs’ counsel provided information that it had compiled through review and research. In addition, after the

basic terms of the Settlement were agreed to, Plaintiffs engaged in confirmatory discovery by interviewing multiple members of the WTSO team regarding this information. This informal and confirmatory discovery allowed Plaintiffs to evaluate and confirm the merits of the litigation.

The fourth, fifth and sixth *Girsh* factors (risks of establishing liability, damages and maintaining the class action through trial) are appropriately considered together for purposes of preliminary approval. *Singleton*, 2014 WL 3865853, at *6. The case was settled after the Court's ruling on WTSO's Motion to Dismiss, two in-person settlement conferences (one with a retired District Court Judge), numerous telephonic settlement conferences over the course of several months, and informal discovery. WTSO's Motion to Dismiss sought to dismiss Plaintiffs' Complaint in its entirety and, in the alternative, to strike Plaintiffs' class certification. The Court, *inter alia*, denied WTSO's motion to dismiss the New Jersey Consumer Fraud Act claims and to strike Plaintiffs' class certification. WTSO has vigorously disputed any liability in this case and presented potentially meritorious defenses in its Motion to Dismiss and settlement conferences. These defenses, in addition to the Court's ruling on the Motion to Dismiss, made clear the risks in establishing liability and damages, as well as maintaining the class action through trial, in this litigation. Counsel's judgment that the settlement is fair and reasonable is entitled to great weight. See *E.E.O.C. v. Com. of Pa.*, 772 F. Supp. 217, 219-20 (M.D. Pa. 1991), *aff'd sub nom. Binker v. Com. of Pa.*, 977 F.2d 738 (3d Cir. 1992) ("[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, *taken as a whole*, is fair, reasonable and adequate to all concerned." (emphasis in original) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982));

see also Varacallo v. Mass. Mut. Life Ins. Co., 226 F.R.D. 207, 240 (D.N.J. 2005) (“Class Counsel’s approval of the Settlement also weighs in favor of the Settlement’s fairness.”); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 543 (D.N.J. 1997) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (court is “entitled to rely upon the judgment of experienced counsel for the parties”)), *aff’d*, 148 F.3d 283 (3d. Cir. 1998).

Class Counsel are experienced and well-respected attorneys in, among other fields, class action litigation, having been involved in the litigation and resolution of several of the seminal cases in the field. *See* Cecchi Decl., Exs. 2 and 3 (Firm Resumes). Their judgment that the settlement is fair and reasonable should weigh in favor of preliminary approval.

The seventh *Girsh* factor is neutral. Although WTSO may be able to withstand a greater judgment, the fact that a defendant *can* pay more does not make an otherwise reasonable settlement unreasonable. Rather, as discussed above, Plaintiffs determined through informal and confirmatory discovery that the settlement is reasonable and provides a substantial benefit to the class. *See Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *11 (D.N.J. Mar. 22, 2013) (“Plaintiffs acknowledge that ‘there is currently no indication that Volvo here would be unable to withstand a more significant judgment,’ but ‘to withhold approval of a settlement of this size because it could withstand a greater judgment would make little sense where the [settlement agreement] is within the range of reasonableness and provides substantial benefits to the Class.’”) (citing cases where settlement was approved despite defendants’ ability to withstand a greater judgment); *In re Johnson & Johnson Derivative Litig.*, 900 F. Supp. 2d 467, 484 (D.N.J. 2012) (“But even assuming there are sufficient funds to pay a greater judgment, the Third Circuit has found that a defendant’s ability to pay a larger settlement sum is not

particularly damaging to the settlement agreement's fairness as long as the other factors favor settlement") (internal quotations and citations omitted).

The final two *Girsh* factors "evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case." *Warfarin*, 391 F.3d at 538. As this Court has often explained, "according to *Girsh*, courts approving settlements should determine a range of reasonable settlements in light of the best possible recovery (the eighth *Girsh* factor) and a range in light of all the attendant risks of litigation (the ninth factor)." *In re Schering-Plough/Merck Merger Litigation*, 2010 WL 1257722, at *12 (D.N.J. March 26, 2012). To do so, a Court considers "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing . . . compared with the amount of the proposed settlement." *Warfarin*, 391 F.3d at 538 (citation omitted). Additionally, in conducting this evaluation, the Court should keep in mind "that settlement represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution and [courts should] guard against demanding to[o] large a settlement based on the court's view of the merits of the litigation." *Johnson & Johnson*, 900 F. Supp. 2d at 484-85 (alteration in original) (internal quotations and citations omitted).

Recognizing that a settlement, by definition, involves Class Members receiving less than the full value of their claims if established, courts have commonly approved settlements that provide less than the full value of the class's claims if such claims are proven. *See, e.g., Warfarin*, 391 F.3d at 538-39 (approving a 33% settlement value); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1350-51 (S.D. Fla. 2011) (approving a settlement for between 9% and 45% value); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460-

61 (S.D.N.Y. 2004) (approving a settlement that was “not rich in comparison to the vast damages Plaintiffs claim to have suffered”).

This Settlement offers substantial benefits to Class Members. Class members receive significant Credits for future purchases, the amount of which depends, in part, upon the price and classification of the purchased wines (i.e. whether the particular wine is listed on Exhibit A, Exhibit B, or neither) that Class Members purchased during the Class Period. Plaintiffs believe that these Credits are a reasonable percentage of the alleged damages suffered by Class Members, given the allegations in the Complaint regarding “Original Price” and in consideration of the risks of litigation

Finally, Class Counsel’s fee request is a reasonable one. Class Counsel have agreed to seek no more than \$1.8 million in combined attorneys’ fees and expenses. This amount reflects a reasonable percentage of the benefits conferred on the Class. They reached this agreement only after reaching agreement on all other material terms of the Settlement. The Settlement is in no way contingent upon attorneys’ fees.

A. The Settlement Class Should Be Certified.³

Courts may certify class actions for the purposes of settlement only. *See, e.g., Amchem Products v. Windsor*, 521 U.S. 591, 620 (1997). When certifying a settlement-only class, the Court “need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620. However, all of the other requirements of Rule 23 must be satisfied when satisfying a settlement class. *Id.* Plaintiffs respectfully submit that this Court should preliminarily certify the Settlement Classes under Rules 23(a) and 23(b)(3).

³ WTSO has stipulated to certification of a Settlement Class for the purposes of this settlement only, and does not join in the arguments contained in this section of the Motion.

In this case, all of the requirements of Rule 23(a) and Rule 23(b)(3) are readily met. Rule 23(a) requires that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defense of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”

1. Numerosity

Rule 23(a)(1) requires that a class be “so numerous that their joinder before the Court would be impracticable.” “[G]enerally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.” *Marcus v. BWW of North America*, 687 F.3d 583, 595 (3d Cir. 2012). Here, the Class is estimated to include many thousands of Class Members and so numerosity is satisfied. *Stewart v. Abraham*, 275 F.3d 220, 226–28 (3d Cir. 2001). *See, e.g., Elias v. Ungar’s Food Products, Inc.*, 252 F.R.D. 233, 242 (D.N.J. 2008) (numerosity satisfied with class of “at least tens of thousands” of members); *see also In re Whirlpool*, 722 F.3d at 852 (numerosity satisfied where thousands of allegedly defective washers were shipped into the state). Here, where the number of Class Members is approximately 240,000, numerosity is easily met.

2. Commonality

Rule 23(a)(2) requires a showing of the existence of “questions of law or fact common to the class.” Importantly, “Rule 23(a)(2)’s commonality requirement does not require identical claims or facts among class member[s].” *Marcus*, 687 F.3d at 597 (citation and internal

quotation marks omitted). “The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.” *Stewart*, 275 F.3d at 227 (quotation marks and emphasis omitted); *see also Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (explaining that, for commonality to be satisfied, the answer to the common question must help “drive the resolution” of the litigation) (citation and quotation marks omitted).

Applying these principles, it is evident that the commonality requirement of Rule 23(a)(2) is easily met here because Plaintiffs allege that WTSO advertised the sale of wine to every Class Member by promoting a discounted price from an “original price” that was allegedly non-existent, inflated or otherwise misleading.

3. Typicality

Rule 23(a)(3) requires that the class representatives’ claims be “typical of the claims . . . of the class.” As the Third Circuit explained:

The typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees’ interests will be fairly represented.

Baby Neal ex rel. Kanter v. Casey, 43 F.3d 48, 56-58 (3d Cir. 1994); *see also Marcus*, 687 F.3d at 598 (“If a plaintiff’s claim arises from the same event, practice or course of conduct that gives rises to the claims of the class members, factual differences will not render that claim atypical if it is based on the same legal theory as the claims of the class.”) (citation and quotation marks omitted).

Here, the typicality requirement is met because the Class Representatives suffered the same alleged injury—purchasing wine through WTSO.com where such wines were advertised with an “original price” —as the other Class Members. Additionally, New Jersey courts have

held that the New Jersey Consumer Fraud Act applies even when the alleged injury occurs outside of the state. *Kalow & Springut, LLP v. Commence Corp.*, 2012 WL 6093876 (D.N.J. Dec. 7, 2012) Furthermore, to the extent New Jersey law would not apply to all Class Members, variations in state laws do not impact the typicality analysis. *See Sullivan*, 667 F.3d at 304 (“state law variations are largely ‘irrelevant to certification of a settlement class’”) (quoting *Warfarin II*, 391 F.3d at 529). The common-law and consumer-protection claims asserted in this case “are recognized in some form in all jurisdictions and therefore available for all class members. . . . Despite possible state-by-state variations in the elements of these claims, they arise from a single course of conduct . . . and a single set of legal theories.” *In re Heartland Payment Sys, Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1055 (S.D. Tex. 2012) (internal quotation marks omitted); *see also In re Cardiazem CD Antitrust Litig.*, 218 F.R.D. 508, 519 (E.D. Mich. 2003) (finding class representatives adequate “to prosecute claims under the laws of other states”).

4. Adequacy

Rule 23(a)(4) requires that the named representatives “will fairly and adequately protect the interests of the class.” The adequacy inquiry “assures that the named plaintiffs’ claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and qualified to prosecute the claims on behalf of the entire class.” *Beck v. Maximus, Inc.*, 457 F.3d 291, 296 (3d Cir. 2006) (citation and quotation marks omitted); *see also Rubenstein, Newberg on Class Actions* § 3:54 (5th ed. 2015). Here, each plaintiff purchased wine based upon the same representations and suffered alleged injuries of the same nature, and so their interests are fully aligned with all other Class Members.

Second, class counsel must be adequate under Fed. R. Civ. P. 23(g). That requirement is satisfied here as Class Counsel have extensive experience in prosecuting complex class action cases. *See* Cecchi Decl., Exh. 2 Giskan, Solotataroff, & Anderson LLP Law Firm Resume; Exh. 3, Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. Law Firm Resume.

5. Predominance

In order to satisfy Rule 23(b)(3)’s requirement that common questions of law and fact predominate, “the predominance tests asks whether a class suit for the unitary adjudication of common issues is economical and efficient in the context of all the issues in the suit.” *Sullivan*, 667 F.3d at 297 (quoting Rubenstein, *Newberg on Class Actions* § 4:25 (4th ed. 2010)). The touchstone of predominance is whether the proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 597. The rule, however, “does *not* require a plaintiff seeking class certification to prove that every element of her claim is susceptible to classwide proof.” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1196 (2013) (internal quotation marks and alterations omitted). Rather, predominance is determined by whether “the efficiencies gained by class resolution of common issues are outweighed by individual issues.” *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 231 (D.N.J. 2005); *In re Mercedes-Benz Antitrust Litigation*, 213 F.R.D. 180, 186 (D.N.J. 2003) (predominance requires that “common issues be both numerically and qualitatively substantial in relation to the issues peculiar to individual class members”).

Common issues predominate here. The key question posed in this case—whether WTSO’s sales technique was deceptive—is a common one. If resolved in one stroke, those issues would substantially advance the litigation. Moreover, in the settlement context, to the extent New Jersey law would not apply to all Class Members, differences in state law do not

defeat predominance. *See Sullivan*, 667 F.3d at 299-302 (3d Cir. 2011) (explaining that “as long as a sufficient constellation of common issues binds class members together, variations in the sources and application of applicable laws will not foreclose class certification”) (internal quotation marks omitted). Because “the defendant’s conduct was common as to all of the class members,” common issues predominate despite “idiosyncratic differences” between state laws. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022-23 (9th Cir. 1998) (finding predominance satisfied where class members brought claims under “local variants of a generally homogenous collection of causes which include products liability, breaches of express and implied warranties, [] ‘lemon laws, [and] state consumer protection laws’”).

6. Superiority

Finally, Rule 23(b)(3) requires that a showing that a “class action is superior to other available methods for fair and efficient adjudication of the controversy.” Relevant considerations include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action. Fed. R. Civ. P. 23.

A class action suit is superior to any other form of adjudication because it provides the best way of managing and resolving the claims at issue here. The superiority requirement asks the court “to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication.” *Hegab v. Family Dollar Stores, Inc.*, 2015 WL 1021130, at *4 (D.N.J. Mar. 9, 2015) (quoting *Georgine v. Amchem Prods.*, 83 F.3d 610, 632 (3d Cir. 1996)). The class action mechanism is superior to its alternatives, particularly

with respect to settlements, because it ensures that the claims of the absent class members will be resolved efficiently. *O'Brien v. Brain Research Labs, LLC*, 2012 WL 3242365, at *9 (D.N.J. Aug. 9, 2012) (finding superiority because, *inter alia*, “denying certification would require each consumer to file suit individually at the expense of judicial economy”). Moreover, where individual claims are small, “a class action is almost automatically superior to alternative forms of adjudication[.]” Rubenstein, *Newberg on Class Actions* § 4:65 (5th ed.).

Consideration of judicial economy and prompt resolution of claims underscore the superiority of the class action in this case. By contrast, compensation resulting from litigation is highly uncertain and may not be received before lengthy, and costly, trial and appellate proceedings are complete. In addition, the Settlement obviously removes the overwhelming and redundant costs of individual trials. *See Sullivan*, 667 F.3d at 310-12.

The superiority requirement is also met here because each Class Member’s damages are likely too small to justify bringing an individual action. *See Carnegie v. Household International, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) (“The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for \$30.”).

Manageability concerns, moreover, while “by [] far, the most critical concern in determining whether a class action is a superior means of adjudication,” Rubenstein, *Newberg on Class Actions* § 4:72 (5th ed. 2015), are irrelevant in the settlement context. *See Amchem*, 521 at 620. In particular, because the class is proposed for settlement, manageability concerns presented by variances in state law do not defeat a finding of superiority. *See Sullivan*, 667 F.3d at 303-04 (“Because we are presented with a settlement class certification, we are not as concerned with formulating some prediction as to how variances in state law would play out at

trial, for the proposal is that there be no trial. As such, we simply need not inquire whether the varying state treatments of [the] claims at issue would present the type of insuperable obstacles or intractable management problems pertinent to certification of a litigation class.” (internal quotation marks, citations, and alterations omitted)). Simply put, state law variations are largely “irrelevant to certification of a settlement class.” *Warfarin II*, 391 F.3d at 529.

A. The Court Should Approve the Proposed Form and Method of Class Notice.

Before granting final approval to a class action settlement, the Court must “direct notice in a reasonable manner to all class members who would be bound” by the settlement. Fed. R. Civ. P. 23(e)(1). The notice should be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Halley v. Honeywell International, Inc.*, 2016 WL 1682943, at *17 (D.N.J. Apr. 26, 2016) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). In the class action context, the Court obtains personal jurisdiction over the absentee class members by providing proper notice of the impending class action and providing the absentees with the opportunity to be heard or the opportunity to exclude themselves from the class. *In re Insurance Brokerage Antitrust Litigation*, 282 F.R.D. 92, 109 (D.N.J. 2012) (quoting *Prudential*, 148 F.3d at 306).

The proposed notice program satisfies due process and Rule 23. As discussed above, the notice plan provides for direct, individual notice via email based on WTSO’s customer email databases. *See* Fed. R. Civ. P. 23(c)(2) (explaining that individual notice should be provided to all members who can be identified through reasonable effort). *Cf. Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950) (“[N]otice reasonably certain to reach most of those interested in objecting is likely to safeguard the interests of all, since any objection sustained

would inure to the benefit of all.”). If the email to the Class Member is undeliverable, the Settlement Administrator will mail a copy of the Class Notice to the Class Member by First Class mail. The Notice of Settlement describes the litigation and settlement, including benefits to the Class Members. Notice of the settlement will also be available on a dedicated website created by the Claims Administrator, and WTSO will include a link to the Settlement Website on WTSO.com.

The Settlement Notice itself also satisfies due process and Rule 23. *See* Ex. C, Settlement Agreement; *see also Prudential*, 148 F.3d at 328 (approving notice that “provided all of the required information concerning the class members’ rights and obligations under the settlement, detailed the procedure for opting out, entering an appearance, and filing objections, notified the [class members] that if they did not opt out of the class, they would be bound by the settlement[, and] explained the nature of the claims”).

IV. **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court

1. Preliminarily approve the Settlement;
2. Conditionally approve the Settlement Class;
3. Approve the proposed notice plan;
4. Enter the Proposed Preliminary Approval Order for notice, opt-out deadlines, objections deadlines, and dates for final approval briefing and hearing.

Dated: June 28, 2017

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO P.C.
Attorneys for Plaintiffs

By: /s/ James E. Cecchi
JAMES E. CECCHI

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KYLE CANNON, LEWIS LYONS, and
DIANNE LYONS, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

ASHBURN CORPORATION, WINES 'TIL
SOLD OUT (WTSO.COM), and JONATHAN
H. NEWMAN,

Defendants.

Civil Action No. 16-1452(RMB)(AMD)

**DECLARATION OF
JAMES E. CECCHI**

JAMES E. CECCHI, of full age, hereby declares as follows:

1. I am an attorney licensed to practice in New Jersey and am a member of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., and I am fully familiar with the facts contained herein.
2. A true and correct copy of the Settlement Agreement is annexed as Exhibit 1.
3. A true and correct copy of the firm resume of Giskan Solotaroff Anderson LLP is annexed as Exhibit 2.
4. A true and correct copy of the firm resume of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. is annexed as Exhibit 3.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ James E. Cecchi

JAMES E. CECCHI

Dated: June 28, 2017

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into by and between (1) Plaintiffs Kyle Cannon, Lewis Lyons, and Dianne Lyons (collectively “Plaintiffs”), individually and as representatives of the “Settlement Class” defined below; and (2) Defendant Ashburn Corporation d/b/a Wines Til Sold Out (WTSO.com) (“Defendant”) (collectively, the “Parties”).

I. RECITALS

This Agreement is made for the following purpose and with reference to the following facts:

Plaintiffs filed a consolidated class action complaint against Defendants Ashburn Corporation and Jonathan H. Newman on March 15, 2016 (Dkt.Entry #1) on behalf of all persons or entities residing or otherwise living in the U.S. who purchased certain, disputed wines during the period commencing March 15, 2010 and continuing thereafter. The action was filed in the United States District Court for the District of New Jersey (the “Court”) and is encaptioned *Cannon et al. v. Ashburn Corporation et al.*, Civil Action No. 16-1452 (RMB)(AMD). Plaintiffs allege that Defendant advertised “Original Prices” for wines that it sold and, in some cases, such wines had not originally been sold by the producing winery at such prices. Plaintiffs brought claims against Defendant for violations of the New Jersey Consumer Fraud Act, N.J.S.A.. § 56:8-1 *et seq.*, fraud, breach of contract, violation of the New Jersey Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14, *et seq.* (“TCCWNA”), and unjust enrichment.

On May 10, 2016, Plaintiffs voluntarily dismissed Defendant Jonathan H. Newman without prejudice and entered into an agreement to toll the statute of limitations for claims against him.

On May 12, 2016, Defendant filed a Motion to Dismiss the Complaint and to Strike Class Allegations (Dkt. Entry #14). In an Order dated December 7, 2016 (Dkt. #26), the Court granted in

part and denied in part Defendant's Motion to Dismiss the Complaint. The Court also denied Defendant's Motion to Strike the Class allegations.

After the lawsuit was filed, on or about November 2, 2016, Defendant replaced the advertising term "Original Price" with the term "Comparable Price" on the WTSO.com website and included a definition of "Comparable Price" to mean "the price at which the same or a similar wine with the same primary grape varietal and appellation or sub-appellation has been offered for sale to consumers directly by a producing winery or through retailers."

Defendant denies all wrongdoing or liability of any kind associated with the claims alleged and further contends that, for any purpose other than Settlement, class certification is not appropriate. Plaintiffs believe that the Action is meritorious. However, Class Counsel and Plaintiffs have concluded that the proposed settlement (the "Settlement") set forth in this Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class (defined herein at Section II, Par. "T") after considering the benefits to be obtained under Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex and time consuming litigation, including appellate review of multiple decisions and issues, and the likelihood of the success on the merits of the Action.

The Parties first engaged in settlement negotiations on January 18, 2017. Following this meeting, the Parties engaged in substantial factual research in order to be in a position to resolve the action. On March 24, 2017, the Parties attended a mediation before the Honorable Dennis Cavanugh (Ret.). The mediation did not result in a settlement. The Parties continued to negotiate and an agreement in principle was subsequently reached (the "Agreement in Principle").

Following the Agreement in Principle, Plaintiffs engaged in confirmatory discovery to confirm the representations made by Defendant in the negotiations.

The Parties desire to settle the Action in its entirety with respect to all claims that were or could have been alleged in the Action against Defendant (defined herein at Section II, Par. “P”). The Parties intend this to bind Defendant, Plaintiffs, and all members of the Settlement Class who do not timely opt out of the Settlement Class.

The Parties agree that the Court shall certify a nationwide class solely for the purpose of implementing the Settlement provided for in this Agreement.

As set forth more fully below, it is the intention of the Parties that this Agreement shall constitute a full and complete settlement and release of any and all claims against Defendant arising from or relating in any way to the allegations contained in any and all complaints filed in the Action.

NOW THEREFORE, in consideration of the terms, conditions and covenants herein, the undersigned agree as follows:

II. DEFINITIONS

In addition to any definitions set forth above or elsewhere in this Agreement, the following terms, as used in the Agreement, shall have the meaning set forth below:

A. The “Action” or “Lawsuit” means *Cannon v. Ashburn Corporation*, Civil Action No. 16 1452 (RMB)(AMD).

B. “Administration Expenses” means reasonable fees and expenses incurred by Settlement Administrator for the: (1) preparation and emailing of the Class Notice as set forth herein, (2) maintaining a Settlement Website and toll free informational telephone line, (3) preparation of status reports to the Parties and the Court, (4) distribution of settlement codes to Settlement Class Members who do not opt out, and (5) other costs of notice and claims administration, including cost that may be incurred by, on behalf of, or at the direction of Defendant, Class Counsel, or the Court reasonably related to defending the Agreement or the Settlement against any challenge to it or providing the Court with information related to the Notice and claims administration process.

C. “Class Counsel” means:

Oren Giskan
GISKAN SOLOTAROFF &
ANDERSON LLP
217 Centre Street, 6th Floor
New York, NY 10013

James E. Cecchi
Lindsey H. Taylor
CARELLA, BYRNE, CECCHI,
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Thomas Rosenthal
LAW OFFICES - THOMAS S.
ROSENTHAL
45 Main Street #1030
Brooklyn, NY 11201

Edward Hernstadt
HERNSTADT ATLAS PLLC
45 Main Street #1030
Brooklyn NY 11201

D. “Class Members” or “Settlement Class Members” means all members of the Settlement Class who do not exclude themselves from the Settlement Class in the manner and time prescribed by the Court in the proposed Preliminary Approval Order.

E. “Class Notice” means the proposed notices recommended by the Settlement Administrator based on state-of-the-art methods and best practices and approved by the Parties and the Court and to be sent to Settlement Class Members in accordance with Section VI of this Agreement. A copy of the proposed Class Notice is attached hereto as Exhibit “C.”

F. “Class Period” means the period from March 15, 2010 to November 1, 2016.

G. “Court” means the United States District Court for the District of New Jersey.

H. “Effective Date” means the first date that is three business days after all the following have occurred: (i) the Court has entered an order granting final approval of the Settlement in accordance with the terms of this Agreement; (ii) any challenge to the Settlement has been finally

adjudicated and rejected; and (iii) the time for any challenge or further challenge to the Settlement, whether in the Court or on appeal or on petition for certiorari, has elapsed.

I. “Fairness Hearing” means the final hearing, to be held after notice has been provided to the Settlement Class in accordance with Section VI of this Agreement, (1) to determine whether to grant final approval to (a) the certification of the Settlement Class, (b) the designation of Plaintiffs as the representatives of the Settlement Class, (c) the designation of Class Counsel as counsel for the Settlement Class, and (d) the Settlement; (2) to rule on Class Counsel’s request for an award of attorneys’ fees and reimbursement of costs and for Service Awards to Class Representatives; and (3) to consider whether to enter the Final Approval Order.

J. “FAQ” means the proposed Frequently Asked Questions and Answers form recommended by the Settlement Administrator and approved by the Parties and the Court and posted on the Settlement Administrator’s website in accordance with Section VI of this Agreement. In addition, the FAQ form will be mailed to Settlement Class Members who contact the Settlement Administrator by telephone or email. A copy of the proposed FAQ is attached hereto as Exhibit “D.”

K. “Fee Application” means the application to be filed by Class Counsel by which they will seek an award of attorneys’ fees and reimbursement of costs incurred by them in prosecuting the Action, as well as Service Awards to be paid to the Class Representatives.

L. “Final Approval Order” means the Order Granting Final Approval to the Class Action Settlement Agreement and Entry of Final Judgment, a proposed form of which order to be submitted contemporaneously with the Parties’ joint motion for final approval of the Settlement. A copy of the proposed Final Approval Order is attached hereto as Exhibit “E.”

M. “Notice Plan” means the plan to provide notice of the Settlement to Class Members using state-of-the-art methods and best practices as further set forth in Section VI and as recommended by the Settlement Administrator and approved by the Parties and the Court.

N. “Parties” means Plaintiffs and Defendant.

O. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval to Class Action Settlement. A copy of the proposed Preliminary Approval Order is attached hereto as Exhibit “F.”

P. “Released Claims” means any and all claims, allegations, actions, causes of action, administrative claims, demands, debts, damages, costs, attorneys’ fees, obligations, judgments, expenses, or liabilities, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were, or could have been, alleged in the Action or arising out of the Action against Releasees (defined below), including, without limitation, any and all claims related to or arising from Defendant’s selling, marketing and advertising of wine pricing, discounting, ratings, reviews, and/or pairing recommendations, without regard to subsequent discovery of different or additional facts or subsequent changes in the law. With respect to the “Released Claims,” Plaintiffs and the Settlement Class expressly waive any and all rights or benefits under California Civil Code Section 1542 (or any similar authority in any jurisdiction), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Q. “Releasees” means Ashburn Corporation d/b/a Wines Til Sold Out and d/b/a WTSO.com, a New Jersey corporation with its principal place of business in Pennsauken New Jersey, and each of its past, present, and/or future: parents, predecessors, subsidiaries, affiliates, officers, directors, shareholders, agents, partners, co-venturers, employees, servants, assignees, counsel,

successors, transferees or representatives. “Releasees” does not include Jonathan H. Newman, Newman Wine and Spirits, or any distributor of wines sold by Defendant.

R. “Service Award” means a reasonable payment made as set forth in Section VII.B. as compensation for efforts in pursuing the Lawsuits on behalf of the Settlement Class.

S. “Settlement Administrator” means Kurtzman Carson Consultants (“KCC”).

T. “Settlement Class” means all residents of the United States who were the original purchasers of one or more Settlement Wines. Excluded from the Class are: (1) directors, officers and employees of Defendant; (2) the United States government and any agency or instrumentality thereof; (3) the judge to whom this case is assigned and any member of the judges’ immediate family; and (4) Settlement Class Members who timely and validly opt to exclude themselves from the Settlement Class.

U. “Settlement Website” means an internet website established by the Settlement Administrator on which Class Members can, among other things, review the FAQs and other relevant court documents. In particular, the Settlement Website shall contain downloadable copies of the FAQ, Class Notice, Verification Form, and the Settlement Agreement. The FAQs will also be available from the Settlement Administrator in English and Spanish upon request. The Settlement Website shall also include information that the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings, motions and opinions, papers in support of preliminary and final approval of the Settlement, and Class Counsel’s Petition for attorneys’ fees and reimbursement of expenses and Service Awards, plus relevant orders of the Court. The URL of the Settlement Website shall be www.winesettlement.com or such other URL as the Parties may subsequently agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include Defendant’s logo or trademarks. Nothing herein shall prevent the Settlement Administrator from using the term “WTSO.com” on the Settlement Website.

Ownership of the Settlement Website URL shall be transferred to Defendant at the conclusion of the Redemption Period, defined below. All costs associated with the transfer of the URL shall be borne by Defendant. No information regarding this Action shall be posted on the URL after transfer to the Defendant.

V. “Settlement Wines” means all wines sold by Defendant during the Class Period.

W. “Verification Form” means the form described in Section IV.D. hereof to be completed by class members to receive Credits as provided for herein. A copy of the proposed Verification Form is attached hereto as Exhibit “G.”

III. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS

For the purposes of implementing this Agreement, and for no other purpose, Defendant stipulates to the conditional certification of the Settlement Class. If for any reason this Agreement should fail to remain effective, Defendant’s stipulation to certification of the Settlement Class shall be null and void, and the Parties shall return to their respective positions in the Action as those positions existed immediately before the execution of this Agreement. Defendant contends that the Action could not be certified as a class action for trial purposes under Federal Rule of Civil Procedure 23 and nothing herein shall be admissible or used for any purpose in this Action or any other action, including, but not limited to, the establishment of any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other action.

IV. CONSIDERATION OF SETTLEMENT

A. Class Members will receive credits toward future purchases of wine on WTSO.com as set forth in Section IV.B. (“Credits”) based on the Settlement Wines purchased during the Class Period as follows:

1. For every bottle of Settlement Wine listed on Exhibit “A” purchased during the Class Period for \$12.99 or less for which no prior refund was given, the Class Member will receive a Credit of \$1.75.

2. For every bottle of Settlement Wine listed on Exhibit “A” purchased during the Class Period for \$13.00 to \$18.99 for which no prior refund was given, the Class Member will receive a Credit of \$2.00.

3. For every bottle of Settlement Wine listed on Exhibit “A” purchased during the Class Period for \$19.00 or greater for which no prior refund was given, the Class Member will receive a Credit of \$2.25.

4. For every bottle of Settlement Wine listed on Exhibit “B” purchased as an individual offering (not as part of a combination package of different wines) during the Class Period for \$19.99 or less for which no prior refund was given, the Class Member will receive a Credit of \$ 0.50.

5. For every bottle of Settlement Wine listed on Exhibit “B” purchased as an individual offering (not as part of a combination package of different wines) during the Class Period for \$20.00 or greater for which no prior refund was given, the Class Member will receive a Credit of \$ 0.75.

6. For every other bottle of Settlement Wine purchased during the Class Period for which no prior refund was given, the Class Member will receive a Credit of \$ 0.20.

The total value of the Credits to be provided to the Settlement Class is approximately ten million eight hundred thousand dollars (\$10,800,000).

B. Credits will be applied against purchases of any wine the first time it is offered on WTSO.com (unless use of the Credit would result in a violation of laws relating to the sale of wine or such wine is first offered during a “Marathon” day), and on certain other wines offered on

WTSO.com, all as more fully described in Paragraph C below (“Redemption Wines”), at the rate of \$2.00 off per bottle, or for the full or remaining credit amount if less than \$2.00, for a period of one (1) year following the date the Credit codes described in Paragraph G below are emailed to the Class Members (the “Redemption Period”).

C. WTSO will ensure that, during the Redemption Period:

1. At least 700 of the “current offers” on the WTSO.com website, and at least six (6) million bottles available for purchase as “current offers,” will be Redemption Wines.
2. On a monthly basis, at least 30 of the “current offers” on the WTSO.com website, and at least 250,000 bottles available for purchase as “current offers,” will be Redemption Wines.
3. All wines (as identified by the label, varietal and vintage) offered for the first time such wine is sold as an individual offering (not as part of a combination package of different wines) as a “current offer” on the WTSO.com website shall be Redemption Wines, except that Defendant may exclude any wine (a) for which use of the Credit would result in a violation of laws relating to the sale of wine or (b) offered during “Marathon” days. At least 60% of such first time offers of domestic wine will not be for wines sold exclusively by Defendant.
4. Redemption Wines will be identifiable as such on the WTSO.com website.

At the end of the Redemption Period, Defendant will certify compliance with this paragraph.

D. The Notice described in Section VI.B., below, will include an individual Class Member ID Number and a link to the Verification Form. To be eligible to receive Credits, Class Members must submit the Verification Form to the Settlement Administrator online through the Settlement Website or by mail by December 31, 2017. The Verification Form will require the Class

Member to verify his or her current mailing address, phone number and preferred email address, to certify that such Class Member purchased at least one Settlement Wine from WTSO during the Class Period, and to verify any refunds received on account of Settlement Wines purchased within the Class Period. If a Verification Form is incomplete, the Settlement Administrator will send written notification to the Class Member that the form is rejected. The Class Member will have one more opportunity to submit a corrected completed Verification Form.

E. Class Counsel, or any partner, member, shareholder or employee of Class Counsel, and Apperson Crump, PLC, or any partner, member, shareholder or employee of Apperson Crump, PLC, who are Class Members are ineligible to receive Credits or any compensation as Class Members and any Verification Form submitted by any of them shall be deemed null, void and invalid.

F. The Settlement Administrator shall provide Defendant with all completed Verification Forms on at least a weekly basis. The Settlement Administrator shall simultaneously notify Class Counsel of the number of such completed Verification Forms, but not the confidential Class Member information contained thereon.

G. Within twenty (20) days after the Effective Date or January 15, 2018, whichever is later, Defendant shall calculate and provide to Class Counsel the total amount of Credits to be issued to Class Members and a unique non-transferrable individualized code (the "Code") shall be generated for each Class Member who has submitted a valid Verification Form that may be used on WTSO.com by the Class Member to access their Credits.

H. Thirty (30) days after the Effective Date or January 31, 2018, whichever is later, the Settlement Administrator will email each Class Member who has submitted a valid Verification Form that Class Member's Code.

I. Defendant shall maintain Class Members' ability to view their order history on WTSO.com so that they may verify the amount of Credits they receive and will provide a method by

which a Class Member may determine, prior to making any purchase, the amount of Credit which such Member has remaining and available for use. If a Class Member does not use all of his or her Credits in one transaction, the remaining Credits shall be available for future transactions within the Redemption Period.

J. If WTSO is not able to ship to both a Class Member's primary residence and business address during the Redemption Period, the Class Member may contact WTSO within 60 days of the Effective Date to request that WTSO pay that Class Member in cash 50% of the amount of the Credits received by that Class Member. WTSO shall provide the cash refund within 30 days of the request.

K. All decisions regarding notice and settlement administration shall be made jointly between Defendant and Class Counsel and neither Class Counsel nor counsel for Defendant shall communicate with the Settlement Administrator without simultaneously copying each other on each of those communications.

L. The Parties will retain KCC as Settlement Administrator. Defendant will pay for the costs of Settlement Administration, except as to any costs incurred for the preparation of documents or other activities requested solely by Plaintiffs or Class Counsel otherwise unnecessary to the administration of the settlement, which such costs shall be paid by Class Counsel.

M. The Parties agree that the Settlement Notice, FAQ, Verification Form, and Settlement Website will provide information sufficient to inform Class Members of: (1) the essential terms of this Agreement; (2) appropriate means for obtaining additional information regarding the Agreement and the Lawsuit; (3) appropriate information about the procedure for objecting to or excluding themselves from the Settlement, if they should wish to do so; (4) appropriate information about the claim verification process; and (5) an explanation of how to use the Credits provided by the Settlement. All notices and emails sent by the Settlement Administrator shall, in headings and subject lines, refer to this Settlement only as "*Cannon v. Ashburn Corporation d/b/a Wines 'Til Sold Out Class Action*

Settlement.” The Parties also agree that the dissemination of the Settlement Notice and the FAQ in the manner specified in this section satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

V. COURT APPROVAL

A. Schedule

The proposed schedule shall be incorporated into the Preliminary Approval Order.

B. Preliminary Approval

Upon full execution of this Agreement, the Parties will take all necessary steps consistent with this Settlement Agreement to have the Court issue the Preliminary Approval Order granting conditional certification of the Settlement Class, granting preliminary approval of this Agreement, and approving the forms and methods of notice to the Settlement Class set forth herein.

C. Final Approval

This Agreement is subject to and conditioned upon the entry by the Court, following a Fairness Hearing, of the Final Approval Order. The Final Approval Order shall:

1. Confirm certification of the Settlement Class;
2. Confirm the appointment of Class Counsel;
3. Confirm the appointment of the Plaintiffs and David Samuels as Class

Representatives;

4. Dismiss with prejudice the Complaint in the Action;
5. Bar and enjoin all Class Members and their heirs, assigns, beneficiaries and

successors from asserting any of the Released Claims (as defined in this Agreement);

6. Release the Releasees from the Released Claims;
7. Determine that this Agreement is fair, adequate and reasonable, and in the best

interests of the Settlement Class; and

8. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant and all Class Members, to administer, supervise, construe, and enforce this Agreement.

D. Termination

1. This Settlement may be terminated by either Party and be of no force or effect, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain Court approval, by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 10 days after any of the following occurrences:

- a. any court rejects or denies preliminary or final approval of the Settlement;
- b. any court materially modifies, or materially amends or changes, any term or condition of this Settlement, other than terms pertaining to Attorneys' Fees and Expenses and/or Service Awards;
- c. the Effective Date does not occur; or
- d. any other ground for termination provided for elsewhere in this Agreement.

2. Defendant, in its sole discretion, may terminate this Settlement, and it be of no force or effect, if the total number of people in the Settlement Class who opted out equals or exceeds a specified number or percentage, which number or percentage shall be confidential between the Parties except to the Court, which shall upon request be provided with a copy of the letter agreement for in camera review.

VI. NOTICE TO THE CLASS AND OPT-OUT AND OBJECTION RIGHTS

A. The Parties agree that the Settlement Administrator shall, as set forth in this Section VI, provide notice of the Settlement to Class Members (the “Notice Plan”). The key components of the Notice Plan are as follows:

B. Defendant shall provide to the Settlement Administrator the name, last known physical address, telephone number and email address for all Class Members (the “Class List”) no later than July 31, 2017 or twenty (20) days after the Preliminary Approval Order is entered, whichever is later. Fifteen (15) days after receipt of the Class List, the Settlement Administrator will email an electronic copy of the Class Notice to all Class Members. If the email to the Class Member is undeliverable, the Settlement Administrator shall mail a copy of the Class Notice to the Class Member by First Class mail.

C. The Class List shall be used solely for the purpose of effectuating this Agreement and for no other purpose. The Settlement Administrator (and any person retained by the Settlement Administrator) shall sign a confidentiality agreement in a form agreed to by the Parties. The confidentiality agreement will provide that the Settlement Administrator (and any person retained by the Settlement Administrator) shall treat as confidential the Class List, Settlement Wine purchasing history, and all other information concerning Settlement Class Members provided as or with the Class List, shall use the Class List or any other information provided by or on behalf of Defendant only for purposes of fulfilling the duties and responsibilities provided for under this Settlement Agreement, and shall not disclose the Class List, in whole or in part, to any person without prior written approval by Defendant.

D. Defendant or the Settlement Administrator at Defendant’s direction shall comply with the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715(b).

E. The Settlement Administrator shall also create and maintain the Settlement Website, which will become publicly-accessible upon the emailing of the Class Notice. Defendant will also maintain a link to the Settlement Website on WTSO.com during the period commencing on the day the Settlement Website becomes publicly-accessible and ending December 31, 2017. The link shall state “For information regarding the class action settlement for purchasers of wine from WTSO.com prior to November 1, 2016, click here [link].” Class Counsel may also maintain on their respective firm websites a link to the Settlement Website during the period commencing on the day the Settlement Website becomes publicly-accessible and ending December 31, 2017.

F. Class Counsel shall not refer to, utilize or rely on any of the information obtained from Defendant through the Action or the Settlement for the purpose of soliciting clients for or in connection with any other lawsuit or action, unless the Settlement is not granted final approval, in which case Class Counsel is nevertheless prohibited from referring to, utilizing or relying on any information obtained from Defendant by, through, or as a result of any settlement discussions or the implementation of this Settlement Agreement for the purpose of soliciting clients for, or in connection with, this or any other lawsuit or action. Nothing herein shall prohibit Class Counsel from utilizing information it obtained independently should the Settlement not be granted final approval.

G. All Class Members shall have the right to opt out of the class at any time during the opt-out period. The opt-out period shall run for ninety (90) days following the entry of the Preliminary Approval Order. Any Class Member who elects to opt out of the Class (i) shall not be bound by any orders or judgments entered in this Action; (ii) shall not be entitled to relief under, or be affected by, this Agreement; (iii) shall not gain any rights by virtue of this Agreement; and (iv) shall not be entitled to object to any aspect of this Agreement. Any Class Member who wishes to opt out of the Class may do so by mailing a letter to the Settlement Administrator clearly stating the Class Member’s desire to opt out. Any Class Member who has opted out and wishes to revoke his or her request for exclusion

may do so by mailing a letter to the Settlement Administrator stating clearly the desire to revoke the previous request for exclusion before the opt out deadline.

H. The Settlement Administrator shall provide Class Counsel and Defendant's counsel with copies of all completed opt-out requests on at least a weekly basis during the opt-out period.

I. Class Members may serve written objections to the Settlement, or to Class Counsel's application for Attorneys' Fees and Expenses. To be considered, any such objection must be mailed to the Clerk of the Court, with copies to Class Counsel and counsel for Defendant not later than ninety (90) days after the entry of the Preliminary Approval Order (*i.e.*, the objection must be either received by the Clerk or have a postmark within 90 days of the entry of the Preliminary Approval Order).

J. Any objections must include (i) the Class Member's full name and current address and telephone number; (ii) the identification of at least one Settlement Wine purchased; (iii) a description of all of the Class Member's objections, the specific reasons therefore, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iv) the Class Member's signature.

K. Class Members submitting objections who wish to appear either personally or through counsel at the Fairness Hearing and present their objections to the Court orally must include a written statement of intent to appear at the Fairness Hearing in the manner prescribed by the Notice. Only Class Members who specify in their objections that they intend to appear personally or through counsel at the Fairness Hearing will have the right to present their objections orally at the Fairness Hearing. Settlement Class Members who do not submit timely written objections will not be permitted to present their objections at the Fairness Hearing.

VII. CLASS REPRESENTATIVE SERVICE AWARDS

A. Each Plaintiff shall be entitled to participate in the claims procedures described above to the same extent as other Class Members.

B. Class Counsel shall petition the Court for, and Defendant shall not oppose, a Class Representative Service Award in an amount of \$2,500 to each Class Representative, up to a total of \$10,000 for all Class Representatives, in the Action, in recognition of their efforts on behalf of the Class. The Court's award of any Class Representative Service Award shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the Settlement, but declines to award a Class Representative Service Award in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties. To the extent awarded by the Court, Defendant shall pay the Class Representative Service Award, but only up to a total of \$10,000, within 30 days after the Effective Date. Payment by Defendant of the Class Representative Service Award is separate from, and in addition to, the other relief afforded to the Class Members in this Agreement.

VIII. PAYMENT OF ATTORNEYS' FEES AND COSTS

A. As part of the Settlement, Defendants have agreed to pay Plaintiffs' Counsel reasonable attorneys' fees and costs (as defined below), without reducing the amount of Credits available to Class Members or the amount of money to be paid for work performed by the Settlement Administrator, except as set forth below.

B. Class Counsel may request, and Defendant shall not oppose, an award of attorneys' fees and expenses of no more than of One Million and Eight Hundred Thousand Dollars (\$1,800,000), which is subject to the Court's approval. The payment by Defendant of the attorneys' fees and expenses is separate from and in addition to the Class Representative Service Awards and relief afforded the Class Members in this Agreement. The Court's award of any attorneys' fees and expenses shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the Settlement, but declines to award attorneys' fees and expenses in the amount requested by Class Counsel, the Agreement will nevertheless be binding on the Parties. The Parties

negotiated and reached agreement on the maximum amount of attorneys' fees and expenses only after reaching agreement on all other material terms of the Agreement, and they did so in part under the supervision and assistance of the Honorable Dennis Cavanugh (Ret.).

C. To the extent awarded by the Court, but in no event exceeding \$1,800,000, Defendant shall pay the award of attorneys' fees and expenses as follows: \$900,000 within 5 business days of the Effective Date; \$300,000 on or before the six-month anniversary of the Effective Date; \$300,000 upon the one-year anniversary of the Effective Date; and \$300,000 eighteen months after the Effective Date. Payment will be made to Giskan Solotaroff and Anderson LLP, who will allocate fees among Class Counsel.

D. Any issues relating to attorneys' fees and costs or to any Service Award are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Agreement and the Settlement. The Court's or an appellate court's failure to approve, in whole or in part, any award of attorneys' fees and costs to Class Counsel, or any Service Award, shall not affect the validity or finality of the Settlement, nor shall such non-approval be grounds for rescission of the Agreement, as such matters are not the subject of any agreement among the Parties other than as set forth above. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, litigation costs and expenses to Class Counsel in the amount sought by Class Counsel or the payment of any Service Award, the remaining provisions of this Agreement shall remain in full force and effect.

E. Defendant shall have no liability to any person other than Class Counsel claiming entitlement to any portion of the attorneys' fees and costs, and Class Counsel shall defend and indemnify Defendant against any claims, demands, liens, actions or proceedings arising out of or relating to any dispute over the distribution of the attorneys' fees and costs. Defendant will notify

Class Counsel immediately if it receives notice that any person or entity disputes the distribution of attorneys' fees and costs.

IX. NO ADMISSION OF LIABILITY

A. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with this Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever to any other party.

B. Neither the Agreement, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim made by the Settlement Class Members or Class Counsel, or of any wrongdoing or liability of the persons or entities released under this Agreement, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the persons or entities released under this Agreement, in any proceeding in any court, administrative agency or other tribunal.

C. This Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce this Agreement.

To the extent permitted by law, the Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

X. MISCELLANEOUS PROVISIONS

A. Extensions of Time

Unless otherwise ordered by the Court, the Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

B. Parties' Authority

The respective signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the respective Parties hereto to the terms and conditions hereof.

C. Nondisparagement; Communications with Customers

The Parties and their counsel agree to refrain from disparaging the other Parties, their counsel, or the Parties' business practices, products, services, representatives, agents, affiliates, or employees and will not issue press releases, contact the media, or make any public announcements (including posting or commenting in or on internet message boards, websites or blogs) concerning this Settlement. The Parties and their counsel shall jointly agree upon a statement for responding to media inquiries. The Parties and their counsel may also direct the media to the Settlement Website for information about the terms contained in this Settlement Agreement.

Nothing herein shall prevent or preclude (1) Defendant from communicating with its customers, including Settlement Class Members, in the ordinary course of business or to respond to communications by customers regarding this Settlement; (2) Class Counsel from communicating directly with Class Members regarding the Settlement; or (3) Counsel for the Parties listing this Action on their respective curricula vitae and/or websites.

C. Integration

This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements,

representations, or warranties of any kind whatsoever have been made by any party hereto, except as provided for herein.

D. Governing Law

The Agreement shall be construed in accordance with, and be governed by, the laws of New Jersey, without regard to the principles thereof regarding choice of law.

E. Gender and Plurals

As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others wherever the context so indicates.

F. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts, and a facsimile signature shall have the same effect as an original ink signature

G. Cooperation of Parties

The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any efforts that become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall take all necessary steps to assure the Court's final approval of this Agreement.

H. No Prior Assignments

Plaintiffs represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

I. Captions and Interpretations

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

J. Modification

This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the parties hereto.

K. Binding on Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

L. Execution Voluntary

This Agreement is executed voluntarily by each of the Parties without any duress or undue influences on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties.

M. Notices

All Notices to Class Counsel provided for herein shall be sent by email to Oren Giskan at ogiskan@gslawny.com with a hard copy sent to each Class Counsel by overnight mail.

All Notices to Defendant provided for herein shall be sent by email to Suzanne Schiller and James Farrell at sschiller@mankogold.com and James.Farrell@lw.com, with hard copies to be sent by overnight mail to:

Suzanne Ilene Schiller
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

James Farrell
Latham & Watkins
885 Third Avenue
New York, NY 10022-4834

The notice recipients and addresses designated above may be changed by written notice. The Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filing received as a result of the Class Notice.

N. Class Counsel Signatories

It is agreed that because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Summary Notice will advise all Class Members of the binding nature of the release and shall have the same force and effect as if this Agreement were executed by each Class Member.

O. Retention of Jurisdiction

The Court shall retain jurisdiction to resolve any future disputes arising out of the terms and conditions of this Settlement Agreement and Release. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

P. Return or Destruction of Confidential Documents

Within thirty (30) days after the Effective Date, Class Counsel will return or destroy (and certify in writing that they have destroyed) Defendant's confidential documents and Defendant will return or destroy (and certify in writing that it has destroyed) any confidential documents produced by Plaintiffs, provided however, each Party may retain copies of pleadings filed with the Court consistent with their normal document retention policies and governing professional standards.

Q. Signatures

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. By signing, Class Counsel represent and warrant that Kyle Cannon, Lewis Lyons, and Dianne Lyons have approved and agreed to be bound by this Settlement.

ON BEHALF OF PLAINTIFFS AND THE SETTLEMENT CLASS:

Dated: _____

CARELLA, BYRNE, CECCHI, OLSTEIN,
BRODY & AGNELLO, P.C.

James E. Cecchi
Class Counsel

Dated: _____

Law Offices of Thomas Rosenthal

Thomas Rosenthal
Class Counsel

Dated: _____

Hernstadt Atlas PLLC

Edward Hernstadt
Class Counsel

P. Return or Destruction of Confidential Documents

Within thirty (30) days after the Effective Date, Class Counsel will return or destroy (and certify in writing that they have destroyed) Defendant's confidential documents and Defendant will return or destroy (and certify in writing that it has destroyed) any confidential documents produced by Plaintiffs, provided however, each Party may retain copies of pleadings filed with the Court consistent with their normal document retention policies and governing professional standards.

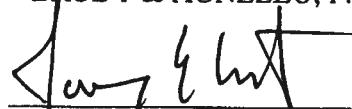
Q. Signatures

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. By signing, Class Counsel represent and warrant that Kyle Cannon, Lewis Lyons, and Dianne Lyons have approved and agreed to be bound by this Settlement.

ON BEHALF OF PLAINTIFFS AND THE SETTLEMENT CLASS:

Dated: 6/26/17

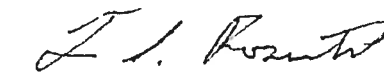
CARELLA, BYRNE, CECCHI, OLSTEIN,
BRODY & AGNELLO, P.C.



James E. Cecchi
Class Counsel

Dated: 6/26/17

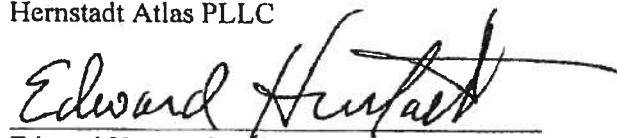
Law Offices of Thomas Rosenthal



Thomas Rosenthal
Class Counsel

Dated: 6/26/2017

Hernstadt Atlas PLLC



Edward Hernstadt
Class Counsel

Dated: 6.23.17

GISKAN, SOLOTAROFF, & ANDERSON,
LLP


Oren Giskan
Class Counsel

ON BEHALF OF DEFENDANT ASHBURN CORPORATION.

Dated: _____

Joseph Arking


Dated _____

GISKAN, SOLOTAROFF, & ANDERSON,
LLP

Oren Giskan
Class Counsel

ON BEHALF OF DEFENDANT ASHBURN CORPORATION.

Dated 1/26/17



Joseph Arking

EXHIBIT A

<u>SKU</u>	<u>LABEL</u>	<u>VARIETAL</u>	<u>RESERVE</u>	<u>DESCRIPTION</u>	<u>YEAR</u>
83017	Adler Fels Winery	Cabernet Sauvignon		Sheer, Napa Valley	2011
3296	Amusee Cellars	Cabernet Sauvignon	Reserve	Stags Leap District, by Benoit Touquette	2006
80026	Amusee Cellars	Cabernet (Sauvignon)	Reserve	Napa Valley, Yountville Crossroads Vineyard, by Reed Renaudin	2009
81045	Amusee Cellars	Cabernet	Reserve	Alexander Valley, Ridgeline Vineyard	2010
989	Amusee Cellars	Cabernet Sauvignon	Reserve	Diamond Mt. District, by Reed Renaudin	2009
2079	Amusee Cellars	Cabernet Sauvignon	Reserve	Spring Mt. District, by Reed Renaudin	2008
2373	Amusee Cellars	Cabernet Sauvignon	Reserve	Spring Mt. District, by Reed Renaudin	2009
80028	Amusee Cellars	Chardonnay	Reserve	Sangiacomo Vineyard, Carneros	2010
80113	Amusee Cellars	Chardonnay	Reserve	Russian River Valley, By Nick Goldschmidt	2010
80427	Artesa	Cabernet Franc		Alexander Valley, Ridgeline Vineyards	2008
80428	Artesa	Meritage		Ridgeline Vineyards, Alexander Valley, by Mark Beringer	2010
82329	Artesa	Cabernet	Reserve	Artisan by Artesa, Napa Valley	2010
82331	Artesa	Pinot Noir		Artisan by Artesa Winery, Carneros	2012
2478	Artesa	Pinot Noir		Moon Meadow, Carneros	2008
81733	Artesa	Cabernet Sauvignon		Artisan by Artesa, Jacqueline's Vineyard, Alexander Valley	2011
82980	Artesa	Cabernet	Reserve	Artisan by Artesa, Napa Valley, Signature Reserve	2012
80426	Austina Creek	Chardonnay		Ridgeline Vineyards, by Artesa, Napa Valley	2010
82756	Austin Creek	Chardonnay		Russian River Valley	2012
82981	Austin Creek	Pinot Noir		Carneros	2013
84263	Beau Ridge	Pinot Noir		Sonoma Coast	2014
2075	Beckley	Cabernet Franc	Reserve	Alexander Valley, Robert Young Vineyard	2008
80027	Beckley	Cabernet Sauvignon	Reserve	Napa Valley	2009
80254	Beckley	Zinfandel	Reserve	Napa Valley	2008
80409	Beckley	Red (Cabernet) Blend	Reserve	Alexander Valley, by Adam Braunstein	2010
81217	Beckley	Zinfandel	Reserve	Napa Valley	2009
81219	Beckley	Cabernet Franc	Reserve	Napa Valley	2008
82159	Beckley	Cabernet		Sonoma Valley	2012
81868	Beckley	Zinfandel	Reserve	Dry Creek	2012
82306	Beckley	Red Blend	Reserve	Napa Valley	2012
53	Bell Canyon Cellars	Syrah Blend		Estate Vineyards, Napa Valley	2007
1475	Bell Canyon Cellars	Red Blend		Estate Vineyards, Napa Valley	2008
2123	Bell Canyon Cellars	Red Blend		Estate Vineyards, Napa Valley	2009
80696	Bell Canyon Cellars	Red Blend		Estate Vineyards, Napa Valley	2010
82230	Bell Canyon Cellars	Red	Reserve	Estate Vineyards, Napa Valley	2011
82757	Bell Canyon Cellars	Red Blend	Reserve	Napa Valley	2012
82990	Bell Canyon Cellars	Red Wine	Reserve	Napa Valley, Signature Reserve	2012
83623	Bell Canyon Cellars	Red	Reserve	Signature Reserve	2012
80904	Big Ranch Vineyards	Chardonnay		Napa, by Laird Family Estates	2010
81275	Big Ranch Vineyards	Pinot Grigio		Cold Creek Ranch, Carneros, By Laird Family	2012
80886	Blockheadia	Pette Strah		Blockheadia Ringnosil, Top of the Block, Napa, Girard Winery, by Mitch i	2010
80977	Blockheadia	Pinot Noir		Ringnosil, Sonoma Coast, Top of the Block	2011
81899	Blockheadia	Pinot Noir		Sonoma Coast, Top of the Block	2012
82832	Blockheadia	Pinot Noir		Blockheadia Ringnosil, Sonoma Coast, Top of the Block	2013

83652	Camatta Creek	Cabernet Sauvignon	Paso Robles	2013
83804	Canyon Creek	Zinfandel	Dry Creek Valley, Old Vine	2013
83663	Carrel	Cabernet Sauvignon	Napa Valley	2013
82988	Castlebank	Red Wine	Napa Valley	2012
1020	Castlebank	Cabernet	Vivian's Vineyard, Dry Creek Valley	2008
1393	Castlebank	Zinfandel	Giulia's Vineyard, Dry Creek Valley, Old Vine	2009
2025	Castlebank	Cabernet Sauvignon	Vivian's Vineyard, Dry Creek Valley	2009
3466	Castlebank	Zinfandel	Giulia's Vineyard, Dry Creek Valley, Old Vine	2008
3962	Castlebank	Zinfandel	Giulia's Vineyard, Dry Creek Valley, Old Vine	2008
80408	Castlebank	Cabernet Sauvignon	Sonoma County	2008
80419	Castlebank	Cabernet Sauvignon	Vivian's Vineyard, Dry Creek Valley	2010
80627	Castlebank	Zinfandel	Giulia's Vineyard, Dry Creek Valley, Old Vine	2010
81227	Castlebank	Red Blend	Napa Valley	2008
81371	Castlebank	Sauvignon Blanc	Dry Creek Valley, By William Knuttel	2012
81677	Castlebank	Cabernet	Vivian's Vineyard, Dry Creek Valley	2011
81735	Castlebank	Zinfandel	Giulia's Vineyard, Dry Creek Valley, Old Vine	2011
82160	Castlebank	Pinot Noir	Russian River Valley, By Kenwoods Mark Stupich	2011
82507	Castlebank	Zinfandel	Dry Creek	2012
82544	Castlebank	Cabernet Sauvignon	Vivian's Vineyard, Dry Creek Valley	2012
83367	Castlebank	Zinfandel	Giulia's Vineyard, Dry Creek Valley	2012
84425	Castlebank	Cabernet Sauvignon	Vivian's Vineyard, Dry Creek Valley	2013
3350	Chronos	Cabernet Sauvignon	Vivian's Vineyard, Dry Creek Valley, Sonoma County	2014
82913	Clarus	Chardonnay	Napa Valley	2008
80171	Cosentino Winery	Pinot Noir	Carneros	2013
81898	Cosentino Winery	Pinot Noir	Sonoma Coast, Reserve Selection	2010
82833	Cosentino Winery	Pinot Noir	Carneros, Sonoma	2012
82136	Curlew Vineyards	Pinot Noir	Carneros, Reserve Selection	2013
82338	Curlew Vineyards	Pinot Noir	Russian River	2012
82993	Curlew Vineyards	Chardonnay	Napa Valley	2012
84003	Curlew Vineyards	Pinot Noir	Russian River, by John Pedroncelli	2013
84110	Curlew Vineyards	Pinot Noir	Russian River Valley	2014
81963	Daughtrey Estate	Chardonnay	Sonoma Coast	2014
80879	Dignitas	Chardonnay	Sangiacomo Vineyard, Carneros	2012
81271	Dignitas	Pinot Noir	Sonoma Coast, by David Stevens	2010
81375	Dignitas	Cabernet	Money Road Vineyard, Oakville, Napa Valley, Laird Family Estate	2011
81912	Dignitas	Pinot Noir	Oak Knoll, Sweetwater Ranch, Napa Valley	2012
82481	Dignitas	Pinot Noir	Russian River Valley, Nick Goldschmidt	2012
82809	Dignitas	Chardonnay	Williamette	2012
83661	Edwards & Chaffey Estate	Chardonnay	Sonoma Coast, by Nick Goldschmidt	2013
9	Encantado	Cabernet Sauvignon	Napa Valley	2013
1053	Encantado	Red Blend	Napa Valley	2007
2005	Encantado	Cabernet Sauvignon	You Know the Winery, Napa Valley	2009
80846	Encantado	Chardonnay	You Know the Winery, Carneros	2010
81648	Encantado	Red Blend	You Know the Winery, Napa Valley	2010
	Encantado	Chardonnay	Carneros, Napa Valley	2012

81686	Encantado	Red Blend		Carneros, Napa Valley	2011
81687	Encantado	Cabernet		Oakville, Napa Valley	2012
81690	Encantado	Cabernet	Reserve	Napa Valley	2011
82668	Encantado	Cabernet (Sauvignon)		Napa Valley	2012
82669	Encantado	Cabernet		Rutherford	2012
82670	Encantado	Cabernet	Reserve	Stags Leap	2012
83406	Encantado	Chardonnay		Carneros, Napa Valley	2014
83643	Encantado	Cabernet Sauvignon		Napa Valley	2014
83645	Encantado	Cabernet Sauvignon			2014
82710	Esoterica	Petite Sirah		Oakville	2010
2098	Goldschmidt Vineyards	Cabernet Sauvignon		Rutherford, Chavez- Leeds Vineyard, by Kent Rasmussen	2010
80188	Goldschmidt Vineyards	Cabernet Sauvignon		Vyborny Vineyard, Alexander Valley	2005
82161	Goldschmidt Vineyards	Cabernet Sauvignon		Luke, Alexander Valley	2009
82162	Goldschmidt Vineyards	Zinfandel		Sarabs Railyard Vineyard, Alexander Valley	2012
83139	Herringbone	Red Wine		Royce, Dry Creek Valley	2012
83139	Herringbone	Pinot Noir		Carneros	2013
82600	Herringbone	Red Blend		Napa Valley	2012
83197	Herringbone	Cabernet Sauvignon	Reserve	Napa Valley	2013
83043	Hillview Ranch	Meritage (Red Blend)		Sonoma County, Old Vines	2013
83236	Hunter Smith	Red Blend		Napa Valley, Mount Veeder	2013
83648	Iron Door	Cabernet Sauvignon		Special Selection, Alexander Valley	2012
84053	Iron Door	Cabernet		Alexander Valley	2013
83912	John William Vineyards	Cabernet Sauvignon		Napa Valley	2014
81903	Judge and Jury	Red Blend		Sonoma County	2012
80972	Justified	Red Meritage		Sonoma County, by Adam Braunstein	2008
2199	Kelley Creek Wines	not specified		Schneider Vineyard, Dry Creek Valley	2006
50	Kingsford Manor Winery	Chardonnay		Napa Valley	2009
246	Kingsford Manor Winery	Meritage (Red Wine)	Reserve	Napa Valley	2008
1513	Kingsford Manor Winery	Rose Wine		Napa Valley	2010
3049	Kingsford Manor Winery	Cabernet Sauvignon	(Reserve)	Napa Valley	2007
3424	Kingsford Manor Winery	Sauvignon Blanc		Napa Valley	2009
80059	Kingsford Manor Winery	(Red) Meritage	Reserve	Napa Valley	2009
80738	Kingsford Manor Winery	Sauvignon Blanc	Reserve	Napa Valley	2011
81062	Kingsford Manor Winery	Red Wine	Reserve	Napa Valley	2010
81389	Kingsford Manor Winery	Sauvignon Blanc	Reserve	Napa Valley	2012
82478	Kingsford Manor Winery	Sauvignon Blanc	Reserve	Napa Valley	2013
82720	Kingsford Manor Winery	Red Blend	Reserve	Napa Valley	2012
83655	Kingsford Manor Winery	Red Blend	Reserve	Napa Valley	2013
84341	Kingsford Manor Winery	Chardonnay		Napa Valley	2013
82864	Kunde Family Estate	Red Blend		Napa Valley	2015
80112	La Mer	Chardonnay	Reserve	Sonoma County, Judge and Jury, by Zach Long	2013
80374	La Mer	Pinot Noir		Santa Lucia Highlands, by Joseph Carr	2010
81373	La Mer	Pinot Noir		Santa Lucia Highlands	2009
81679	La Mer	Chardonnay	Reserve	Santa Maria Valley	2010
81965	La Mer	Red Blend		Russian River Valley	2012
82170	La Mer	Chardonnay		Carneros, By Joseph Carr-Kyle Laird	2012
				Truchard, Carneros	2012

82305	La Mer	Pinot Noir	Carneros	2012
82598	La Mer	Chardonnay	Carneros	2012
80798	Laird Family	Chardonnay	Red Hen Ranch, Oak Knoll, Napa Valley	2008
80799	Laird Family	Chardonnay	Cold Creek Ranch, Carneros, by Paul Hobbs	2008
82943	Landfarer	Zinfandel	Russian River Valley, By William Knuttel	2012
81689	Loyalist	Pinot Noir	Edna Valley	2012
83234	Magnolia Hill	Zinfandel	Amador County	2012
83983	Masterpiece	Zinfandel	Russian River Valley, by Windsor Oaks	2013
131	Maxwell Creek	Sauvignon Blanc	Napa Valley	2009
219	Maxwell Creek	Cabernet Sauvignon	Napa Valley	2008
1858	Maxwell Creek	Sauvignon Blanc	Napa Valley	2010
1957	Maxwell Creek	Chardonnay	Napa Valley	2010
2397	Maxwell Creek	Cabernet	Napa Valley	2009
80460	Maxwell Creek	Rose Wine	Napa Valley	2011
80854	Maxwell Creek	Chardonnay	Napa Valley	2011
81005	Maxwell Creek	Cabernet	Napa Valley	2010
81390	Maxwell Creek	Sauvignon Blanc	Napa Valley	2012
81412	Maxwell Creek	Chardonnay	Napa Valley	2012
82483	Maxwell Creek	Sauvignon Blanc	Napa Valley	2013
80319	Maxwell Creek	Sauvignon Blanc	Napa Valley	2011
82728	Maxwell Creek	Cabernet	Napa Valley	2012
82745	Maxwell Creek	Chardonnay	Napa Valley	2013
83656	Maxwell Creek	Cabernet Sauvignon	Napa Valley	2013
83736	Maxwell Creek	Cabernet Sauvignon	Reserve	2013
84424	Maxwell Creek	Cabernet Sauvignon	Reserve (Res) Long Meadow Ranch, Napa Valley	2013
83432	Mission Ines Vineyards	Pinot Noir	Napa Valley	2014
1152	Mockingbird Hill	Cabernet Sauvignon	Santa Maria Valley	2013
1853	Mockingbird Hill	Cabernet Sauvignon	Napa Valley	2007
1890	Mockingbird Hill	Chardonnay	Sonoma County, By Bill Knuttel	2008
2043	Mockingbird Hill	Chardonnay	Napa Valley	2007
2353	Mockingbird Hill	Sauvignon Blanc	Dry Creek Valley, By William Knuttel	2010
3090	Mockingbird Hill	Red Wine	Alexander Valley	2009
80025	Mockingbird Hill	Petite Sirah	Napa Valley	2006
80075	Mockingbird Hill	Pinot Noir	Truchard Vineyard, Carneros	2010
80749	Mockingbird Hill	Chardonnay	Sonoma County, by Zach Long	2010
81071	Mockingbird Hill	Chardonnay	Napa, by Mark Beringer	2010
81208	Mockingbird Hill	Pinot Noir	Oakville, Napa Valley	2008
81364	Mockingbird Hill	Chardonnay	Carneros, By Mark Beringer	2011
82726	Mockingbird Hill	Cabernet	Julie's Vineyard, Napa Valley, by Judy Matulich-Weitz	2012
82996	Mockingbird Hill	Petite Sirah	Napa Valley	2012
83182	Mockingbird Hill	Red Wine	Dry Creek Valley	2013
83354	Mockingbird Hill	Zinfandel	Oakville Napa Valley	2013
83355	Mockingbird Hill	Red Wine	Dry Creek Valley, By Jim Pedroncelli	2013
83649	Mockingbird Hill	Chardonnay	Sonoma County	2013
83665	Mockingbird Hill	Cabernet Sauvignon	Napa Valley	2014
			By Kyle Laird	2010

83667	Mockingbird Hill	Petite Verdot	Reserve	Napa Valley	2013
1567	Mockingbird Hill	Cabernet Sauvignon	Reserve	Napa Valley	2007
2106	Mockingbird Hill	Pinot Noir	Reserve	Monterey County, Arroyo Seco	2010
80101	Mockingbird Hill	Cabernet	Reserve	Sonoma County	2009
81063	Mockingbird Hill	Red Meritage	Reserve	Napa Valley	2010
81279	Mockingbird Hill	Sauvignon Blanc		Lauren's Vineyard, Oak Knoll, Napa Valley	2012
81511	Mockingbird Hill	Cabernet	Reserve	Napa Valley, By Reed Renaudin	2011
81681	Mockingbird Hill	Cabernet		Oakville, Napa Valley	2011
81817	Mockingbird Hill	Chardonnay	Reserve	Russian River Valley	2012
82385	Mockingbird Hill	Red Blend	Reserve	Sonoma	2012
82435	Mockingbird Hill	Petit Verdot			2012
82522	Mockingbird Hill	Zinfandel		Dry Creek Valley, Old Vines	2012
81397	Moffet	Cabernet		Barrel Select, Napa Valley	2011
82284	Moon Meadow	Pinot Noir		Carneros	2012
82477	Moon Meadow	Chardonnay		Caroline's Vineyard, Carneros	2012
82755	Obsidian	Pinot Noir	Reserve	Willamette	2012
83779	Obsidian	Pinot Noir	Reserve	Willamette Valley	2014
81136	Pointelle Winery	Pinot Noir		Willamette Valley	2011
83662	Pruet	Cabernet Sauvignon	Reserve	Napa Valley, Yountville	2013
84441	Pruet	Chardonnay		Napa Valley	2014
409	Ridgeline	Cabernet		Alexander Valley	2005
80425	Ridgeline	Cabernet Sauvignon		Lone Pine Vineyard, Alexander Valley	2007
80913	Ridgeline	Cabernet		Alexander Valley, 2010, by Mark Beringer	2010
81174	Ridgeline	Pinot Noir		Carneros, By Mark Beringer	2010
81366	Ridgeline	Cabernet	Reserve	Lone Pine Vineyard, Napa Valley, by Mark Beringer	2010
81368	Ridgeline	Chardonnay		Carneros, By Mark Beringer	2011
81206	Ridgeline	Cabernet		Napa Valley	2010
81261	Ridgeline	Cabernet Franc		Napa Valley, By Mark Beringer	2010
83847	Robert Storey	Pinot Noir	Reserve	Winemaker's Reserve, Napa Valley	2013
83911	Robert Storey	Cabernet Sauvignon		Napa Valley	2014
84131	Robert Storey	Cabernet Sauvignon	Reserve	Grand Reserve, Napa	2014
84510	Robert Storey	Cabernet Sauvignon	Reserve	Stags Leap District, Napa Valley	2014
113	Robert Storey	Chardonnay		Napa Valley	2008
178	Robert Storey	Cabernet		Stuhlmuller Vineyards	2007
484	Robert Storey	Pinot Noir		Sonoma Coast, By Bill Knuttel	2008
486	Robert Storey	Cabernet Blend		By Scott Peterson	2007
493	Robert Storey	Pinot Noir		Napa Valley, Sonoma Coast, by Bill Knuttel	2007
1991	Robert Storey	Cabernet Sauvignon		Napa Valley, By Bill Knuttel	2008
2086	Robert Storey	Pinot Noir		Santa Lucia Highlands, by Reed Renaudin	2009
80024	Robert Storey	Pinot Noir		Truchard Vineyards, Carneros	2010
80029	Robert Storey	Chardonnay		Alexander Valley, By Nick Goldschmidt	2010
80114	Robert Storey	Red		Alexander Valley, By Nick Goldschmidt	2010
80237	Robert Storey	Cabernet Sauvignon	Reserve	Rex Vineyard, Oakville, Napa Valley, by Kyle Laird	2009
80431	Robert Storey	Pinot Noir		Russian River Valley, By William Knuttel	2010
80624	Robert Storey	Pinot Noir	Reserve	Carneros	2009

80750	Robert Storey	Chardonnay	Napa Valley, By Mark Beringer	2010
80914	Robert Storey	Cabernet Sauvignon	Alexander Valley, By Mark Beringer	2010
81171	Robert Storey	Cabernet	Diamond Mt. District, by Kyle Laird	2007
81218	Robert Storey	Cabernet	Napa Valley, Diamond Mountain	2006
81363	Robert Storey	Chardonnay	Gabrielle's Vineyard, Oak Knoll, Napa Valley, by Judy Matulich-Weitz	2012
81365	Robert Storey	Cabernet	By Rich Salvestrin	2011
81369	Robert Storey	Pinot Noir	Russian River, William Knuttel	2011
81398	Robert Storey	Cabernet	Mandy's Vineyard, Napa Valley	2011
81477	Robert Storey	Cabernet	Kristen's Vineyard, Sonoma County, by Ty Caton	2011
81682	Robert Storey	Cabernet	Burgess Cellars, Napa Valley	2011
82168	Robert Storey	Cabernet	Calistoga	2010
82434	Robert Storey	Cabernet Sauvignon	St. Helena, Napa Valley	2010
82440	Robert Storey	Cabernet	Kristen's Vineyard, By Ty Caton	2012
82812	Robert Storey	Cabernet Sauvignon	Rutherford, By Adam Braunstein	2012
83183	Robert Storey	Cabernet	Napa Valley, By Kyle Laird	2009
83213	Robert Storey	Cabernet	Napa Valley, By Burgess Cellars	2013
83243	Robert Storey	Cabernet	By Kerry Damskey, Yountville, Napa Valley	2013
83365	Robert Storey	Cabernet Sauvignon	Spring Mountain District	2008
83368	Robert Storey	Cabernet Sauvignon	Signature Reserve, Napa Valley	2013
83439	Robert Storey	Cabernet Sauvignon	Barrel Select, Napa Valley, Nick Goldschmidt	2013
83634	Robert Storey	Cabernet Sauvignon	Stags Leap District	2013
83915	Robert Storey	Cabernet Sauvignon	Winemaker's Reserve, Napa Valley	2014
83965	Roi	Red Blend	Napa Valley	2014
83376	Rothbury Estate	Cabernet Sauvignon	Napa Valley	2013
83650	Rothbury Estate	Chardonnay	Napa Valley	2014
83928	Rowland's Winery	Pinot Noir	Carneros	2014
81216	Saddler's Peak	Zinfandel	Napa Valley	2009
81680	Saddler's Peak	Pinot Noir	Russian River Valley	2012
82433	Saddler's Peak	Red Blend	Napa Valley	2012
81688	Scatena Bros	Zinfandel	Sonoma County	2012
81388	Schug	Chardonnay	Sonoma Coast, Cuvee Elisabeth	2010
81727	Schug	Chardonnay	Napa Valley	2011
183	Shadowood	Cabernet Sauvignon	Sonoma Coast, Cuvee Elisabeth	2007
580	Shadowood	Merlot	Napa Valley	2008
80080	Shadowood	Red Wine (Blend)	Alexander Valley	2009
80089	Shadowood	Cabernet Sauvignon	Napa Valley	2009
80091	Shadowood	Cabernet Sauvignon	Howell Mountain, Napa Valley	2009
82599	Shadowood	Red Blend	Spring Mountain District, Napa Valley	2009
83021	Shadowood	Red Wine	Napa Valley	2012
83198	Shadowood	Cabernet Sauvignon	Napa Valley	2012
393	Sonoma Acres	Merlot	Napa Valley	2013
2922	Sonoma Acres	Pinot Noir	Sonoma County	2008
3074	Sonoma Acres	Sauvignon Blanc	Russian River Valley	2008
3203	Sonoma Acres	Pinot Noir	Sonoma County	2008
81721	Sonoma Acres	Pinot Noir	Russian River Valley	2009
			Kerwood Vineyards, Russian River Valley, By Mark Stupich	2011

83782	Storm Chaser	Pinot Noir	Reserve	Willamette Valley	2014
82982	Taz	Pinot Noir		Carneros	2013
80129	The Barrister	Red Wine		Sonoma County, by Zach Long	2010
80897	The Barrister	Red Blend		North Coast, By Zach Long	2011
80898	The Warden	Red Blend		Sonoma County	2011
83929	Two Tone Cellars	Pinot Noir		Carneros	2014
83373	Vintage Wine Estates	Cabernet Sauvignon		Origami, Napa Valley, by Vintage Wine Estates	2013
83374	Vintage Wine Estates	Pinot Noir		Origami, Los Carneros, by Vintage Wine Estates	2013
83375	Vintage Wine Estates	Chardonnay		Origami, Carneros, Misuko's Vineyard, by Vintage Wine Estates	2013
83983	Windsor Oaks	Zinfandel		Masterpiece, Russian River Valley	2013
82131	Winemaker's Reserve	Meritage	Reserve	J. James, Sonoma Valley	2012

EXHIBIT B

Label	Varietal	Special Designations	Year
Conundrum	White Blend	by Caymus	2010
Conundrum	Red Blend	California, By Caymus	2010
Conundrum	White Blend	California, By Caymus	2011
Conundrum	Red Blend	Proprietary, By Caymus	2011
Conundrum	White Blend	California - Rutherford	2012
Conundrum	Red Blend	Proprietary	2012
Conundrum	Red	25th Anniversary	2013
Conundrum	Red		2014
Meiomi	Pinot Noir	Belle Glos, Monterey, Santa Barbara, & Sonoma Counties	2011
Meiomi	Pinot Noir	Belle Glos	2012
Meiomi	Pinot Noir		2013
Mer Soleil	Chardonnay	Silver, Unoaked, Santa Lucia Highlands, by Caymus	2011
Mer Soleil	Chardonnay	Unoaked, by Caymus	2012
Mer Soleil	Chardonnay	Reserve, by Caymus	2012
Mer Soleil	Chardonnay	Reserve, Santa Barbara County	2012
Mer Soleil	Chardonnay	Reserve, by Caymus	2013
Mer Soleil	Chardonnay	Reserve, Santa Barbara County	2013
Mer Soleil	Chardonnay	Silver, Unoaked, Santa Lucia Highlands, by Caymus	2013
Mer Soleil	Chardonnay	Silver, Unoaked, Monterey, by Caymus	2013
Pedroncelli	Red Blend	Barrel Select, Sonoma County	2012
Pedroncelli	Red Wine	Barrel Select, Dry Creek Valley	2013
Pedroncelli	Cabernet Franc	Barrel Select, Dry Creek Valley	2013

EXHIBIT C

Notice of Class Action Settlement

Cannon v. Ashburn Corporation, Civil Action No. 16-1452 (RMB)(AMD)
United States District Court for the District of New Jersey

A settlement has been reached in a class action lawsuit against Defendant Ashburn Corporation, d/b/a “Wines ‘Til Sold Out” and d/b/a WTSO.com (hereinafter WTSO).

What is this case about?

Kyle Cannon, Lewis Lyons, and Dianne Lyons (collectively the “Plaintiffs” in this case) allege that because certain wines were not sold anywhere at the purported “Original Price,” the discount advertised by WTSO was not real, and consumers were not buying wines at a discount. The Plaintiffs further allege that WTSO offered wines that were available elsewhere but that the stated “Original Price” of some of these wines was higher than the price set by the winery itself, resulting in a greater advertised discount than would have existed had Defendant used the winery’s price for such wines.

WTSO maintains that the “Original Price” it advertised was the suggested retail price provided to it when it purchased the wine and was an accurate reflection of the value of the wine it sold. WTSO denies all liability of any kind associated with the claims alleged. WTSO further denies that class certification is appropriate for any purpose other than settlement.

The Court has not decided who is right in this case.

Who is included in the Class?

You are included in this class if you reside (or otherwise live) in the United States and purchased wine from WTSO.com at any point from March 15, 2010 to November 1, 2016 (“Class Period”).

What may I receive from this settlement?

You will receive credits to purchase wine on WTSO.com based on wine purchased during the Class Period if you complete a Verification Form as described below, as follows:

1. For every bottle of wine listed on List A [link] purchased during the Class Period for \$12.99 or less, the Class Member will receive a credit of \$1.75.
2. For every bottle of wine listed on List A purchased during the Class Period for \$13.00-\$18.99, the Class Member will receive a credit of \$2.00.

3. For every bottle of wine listed on List A purchased during the Class Period for \$19.00 or greater, the Class Member will receive a credit of \$2.25.
4. For every bottle of wine listed on List B [link] purchased during the Class Period for \$19.99 or less, the Class Member will receive a credit of \$0.50.
5. For every bottle of wine listed on Exhibit B purchased during the Class Period for \$20.00 or greater, the Class Member will receive a credit of \$0.75.
6. For every bottle of wine not listed on Exhibit A or B purchased during the Class Period, the Class Member will receive a credit of \$0.20.

You will not receive a credit for any bottle of wine for which you received a refund. Credits will be good for one year from the date you receive an email with a code for your Credits. Credits will be applied against purchases of any wine the first time it is offered on WTSO.com (with limited exceptions), and on certain other identified wines offered on WTSO.com, at the rate of \$2.00 off per bottle, or for the full or remaining credit amount if less than \$2.00. WTSO will identify on its website which wines are eligible for credit use.

Has WTSO made changes to its advertising?

After the lawsuit was filed, on or about November 2, 2016, Defendant replaced the advertising term “Original Price” with the term “Comparable Price” on the WTSO.com website and included a definition of “Comparable Price” to mean “the price at which the same or a similar wine with the same primary grape varietal and appellation or sub-appellation has been offered for sale to consumers directly by a producing winery or through retailers.”

What are my options?

1. Remain in the Class and Receive a Credit

You do not have to do anything to remain in the Class. However, if you wish to receive a credit as described above, you must complete the Verification Form [link to form]. If you received more than one Notice at different email addresses, you must complete the Verification Form for each email address that the Notice was sent to in order to obtain all of your Credits.

If the settlement is approved by the Court and you have completed the Verification Form(s), you will receive a unique non-transferable code that you may use on the WTSO.com website to access your Credits. The Verification Form for each email address at which you received a Notice must be completed and submitted no later than December 31, 2017 in order to obtain all of your Credits. If you do not complete a Verification Form for any email address at which you received a Notice, you will not obtain the Credits for purchases made under that email address. You will receive the

Code and be able to use it 30 days after the Settlement is final, or January 31, 2018, whichever is later.

If the settlement is approved by the Court and you have completed the Verification Form, you will receive a unique non-transferable code that you may use on the WTSO.com website to access your credits. The Verification Form must be completed no later than December 31, 2017. You will receive the Code and be able to use it 30 days after the Settlement is final, or January 31, 2018, whichever is later.

If you remain in the Class, you release and give up your right to file a lawsuit against WTSO and its related agents and entities relating to WTSO's selling, marketing and advertising of wine during the Class Period. The precise terms of the release are set forth in the Settlement Agreement. Unless you exclude yourself from this Settlement, as described below, you will release your claims whether or not you submit a Verification Form and receive a credit.

2. Exclude Yourself from the Settlement

If you do *not* wish to be included in the settlement, you have the right to opt out of the class.

If you decide to opt out of the Class, you:

- (i) **Will not receive any credits for the purchase of wine on WTSO.com;**
- (ii) will not be bound by any orders or judgments entered in this Action;
- (iii) will not be entitled to relief under, or be affected by, this Settlement;
- (iv) will not gain any rights by virtue of this Settlement; and
- (v) will not be entitled to object to any aspect of this Settlement.

To opt out of the Class, you must mail a letter clearly stating your desire to opt out to the Settlement Administrator by ____[90 days after preliminary approval]. If you have opted out and wish to revoke your request for exclusion from the Class, you may do so by mailing a letter stating clearly the desire to revoke the previous request for exclusion to the Settlement Administrator before the opt out deadline.

3. Object to the Settlement

If you wish to be part of the proposed Settlement but want to object to all or any part of the Settlement, you must do so by ____[90 days after preliminary approval]. **You must remain a member of the Class in order to object to any aspect of the proposed Settlement.** Objections must be filed with the Court at:

Clerk of the Court
United States District Court for the District of New Jersey
4th & Cooper Streets
Camden, NJ 08101

and mailed to the following:

Oren Giskan
Giskan Solotaroff & Anderson
217 Centre Street, 6th Floor
New York, New York 10013

Suzanne Ilene Schiller
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

Your written objection must include: Any objections must include (i) your full name and current address and telephone number; (ii) the identification of at least one wine purchased from WTSO.com; (iii) a description of all of your objections, the specific reasons for these objections, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iv) your signature.

The final approval hearing (the “Fairness Hearing”) will be on [DATE] at [TIME] p.m., at the United States District Court for the District of New Jersey, 4th and Cooper Streets, Courtroom 3D. You do not have to go to Court or hire an attorney but you may if you want to, at your own cost. The Fairness Hearing is for the Court to decide (a) whether to approve the Settlement; (b) Class counsel’s requests for attorneys’ fees and expenses; and (c) the service award for the Class representatives in this case.

If you wish to appear either personally or through counsel at the Fairness Hearing to present your objections to the Court orally you must include a written statement of intent to appear at the Fairness Hearing by _____[90 days after preliminary approval]. Only if you specify in your objections that you intend to appear personally or through counsel at the Fairness Hearing will you have the right to present your objections orally at the Fairness Hearing. If you do not submit timely written objections you will not be permitted to present your objections at the Fairness Hearing.

If you file objections but the Court approves the Settlement as proposed, you will still be eligible for your share of the settlement relief.

Who are the attorneys representing the Class?

The Court has appointed the lawyers listed below to represent you and the Class (“Class counsel”):

Oren Giskan
GISKAN SOLOTAROFF &
ANDERSON LLP
217 Centre Street, 6th Floor
New York, NY 10013

Thomas Rosenthal

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068

Edward Hernstadt

LAW OFFICES- THOMAS
ROSENTHAL
45 Main Street #1030
Brooklyn, NY 11201

HERNSTADT ATLAS PLLC
45 Main Street #1030
Brooklyn NY 11201

You do not have to hire your own lawyer but you may if you want to, at your own cost.

Will payments be made to Class Counsel or the Class Representatives?

The determination of an attorney fee award is made by the Court, which will determine a reasonable fee for the work done and the result obtained by Class counsel. Class counsel will ask the Court to award attorneys' fees and expenses of no more than \$1.8 million.

Class counsel will also seek \$2500 for each Class representative in recognition of their assistance in this litigation.

Where can I get additional information?

THIS IS ONLY A SUMMARY OF THE SETTLEMENT. For more information regarding your rights and options, you can visit the Settlement website: www.winesettlement.com or contact the Claims Administrator at:

[insert address, phone and email]

You may also contact Class Counsel at the following address:

Oren Giskan
GISKAN SOLOTAROFF & ANDERSON LLP
217 Centre Street, 6th Floor
New York, NY 10013
ogiskan@gslawny.com

EXHIBIT D

Cannon v. Ashburn Corporation d/b/a Wines 'Til Sold Out ("WTSO")

Class Action Settlement

Frequently Asked Questions

Civil Action No. 16-1452 (RMB)(AMD)
United States District Court for the District of New Jersey

A class action lawsuit is pending in the U.S. District Court for the District of New Jersey before the Honorable Renee M. Bumb, entitled *Cannon, et al. v. Ashburn Corporation, et al.*, Civil Action No. 16-1452 (RMB)(AMD). The Parties have proposed to settle the Litigation. You may be a Settlement Class Member. The Proposed Settlement may affect your legal rights. You have a number of options, which are explained in greater detail below.

1. What is this Lawsuit about?

Kyle Cannon, Lewis Lyons, and Dianne Lyons (collectively the "Plaintiffs") in this case allege that because certain wines were not sold anywhere at the purported "Original Price," the discount advertised by WTSO was not real, and consumers were not buying wines at a discount. The Plaintiffs further allege that WTSO offered wines that were available elsewhere but that the stated "Original Price" of some of these wines was higher than the price set by the winery itself, resulting in a greater advertised discount than would have existed had Defendant used the winery's price for such wines.

WTSO maintains that the "Original Price" it advertised was the suggested retail price provided to it when it purchased the wine and was an accurate reflection of the value of the wine it sold. WTSO denies all liability of any kind associated with the claims alleged. WTSO further denies that class certification is appropriate for any purpose other than settlement.

The Court has not decided who is right in this case.

2. What is a class action?

In a class action, one or more people called "Class Representatives" or "Plaintiffs" sue on behalf of other people who have similar claims. The people together are "Class Members" or "Settlement Class Members". The individual, and/or company they sued (in this case WTSO.com) is called the Defendant. One Court resolves the issues for everyone in the Settlement Class—except for those people who choose to exclude themselves from the Settlement Class. Judge Renee M. Bumb of the United States District Court for the District of New Jersey is in charge of this case and certified the lawsuit as a class action for settlement purposes only.

3. How do I know if I am part of the Settlement Class?

The Settlement Class means all residents of the United States who were the original purchasers of one or more wines from WTSO from March 15, 2010 to November 1, 2016 (referred to as the "Class Period"). Excluded from the Class are: (1) directors, officers and employees of Defendant; (2) the United States government and any agency or instrumentality thereof; (3) the judge to whom this case is assigned and any member of the judges' immediate family; and (4) Settlement Class Members who timely and validly opt to exclude themselves from the Settlement Class.

4. What does the Settlement provide?

Class Members who timely complete the Verification Form [link] will receive Credits to purchase wine on WTSO.com, as follows:

- For every bottle of Wine listed on List "A" [link] purchased during the Class Period for \$12.99 or less for which no prior refund was given, you will receive a Credit of \$1.75.
- For every bottle of Wine listed on List "A" purchased during the Class Period for \$13.00 to \$18.99 for which no prior refund was given, you will receive a Credit of \$2.00.
- For every bottle of Wine listed on List "A" purchased during the Class Period for \$19.00 or greater for which no prior refund was given, you will receive a Credit of \$2.25.
- For every bottle of Wine listed on List "B" [link] purchased as an individual offering (not as part of a combination package of different wines) during the Class Period for \$19.99 or less for which no prior refund was given, you will receive a Credit of \$ 0.50.
- For every bottle of Wine listed on List "B" purchased as an individual offering (not as part of a combination package of different wines) during the Class Period for \$20.00 or greater for which no prior refund was given, you will receive a Credit of \$ 0.75.
- For every other bottle of Wine purchased during the Class Period for which no prior refund was given, you will receive a Credit of \$ 0.20.

Defendant is required to maintain your order history on WTSO.com so that you will be able to view and verify the amount of Credits you receive.

You will not receive a Credit for any bottle of wine for which you received a refund. Credits will be good for one year from the date you receive an email with a code for your Credits. Credits will be applied against purchases of any wine the first time it is offered on WTSO.com (with limited exceptions), and on certain other wines offered on WTSO.com, at the rate of \$2.00 off per bottle, or for the full or remaining Credit amount if less than \$2.00. WTSO will identify on its website which wines are eligible for Credit use.

Unless you opt out as described below, you release and give up your right to file a lawsuit against WTSO and its related agents and entities relating to WTSO's selling, marketing and advertising of wine during the Class Period. The precise terms of the release are set forth in the Settlement Agreement. Unless you exclude yourself from this Settlement, as described below, you will release your claims whether or not you submit a Verification Form and receive a Credit.

5. How do I receive a settlement benefit?

In order to receive Credit(s), you must submit a completed Verification Form. You can find the form here: [link] You may submit the Verification Form online or by mail no later than December 31, 2017.

6. What information do I need to provide in the Claim Verification Form?

The Verification Form will require you to verify your current mailing address and any refunds you received on wines purchased within the Class Period. If the Settlement Administrator finds that your Claim

Verification Form is incomplete, you will have one more opportunity to submit a corrected completed Claim Verification Form.

7. How do I use my Credit(s)?

Once you have submitted a valid Verification Form, the Settlement Administrator will email you and non-transferrable individualized code (the "Code") that may be used on WTSO.com for a period of one (1) year from the date the Code is emailed to you by the Settlement Administrator. This is referred to as the "Redemption Period."

If you do not use all of your Credits in one transaction, they will be available to you for future transactions during the Redemption Period.

If WTSO is not able to ship to both your primary and business address during the Redemption Period, you will receive in cash 50% of the amount of Credits owed to you.

8. What if I do not want to participate in this Settlement?

All Class Members shall have the right to exclude themselves or opt out of the Settlement Class at any time during the opt-out period. The postmark deadline to opt out of the Settlement is _____.

Any Class Member who wishes to opt out of the Class may do so by mailing a letter to the Settlement Administrator. The opt out request must include: (i) Your name and address; (ii) A statement clearly indicating that your intention to opt out of the *Cannon v. Ashburn Corporation d/b/a Wines 'Til Sold Out Class Action Settlement*; and (iii) Your signature.

Mail your opt out request to the Settlement Claims Administrator at the address below postmarked no later than _____:

Kurtman Kartman Consultants
[INSERT ADDRESS]

Any Class Member who elects to opt out of the Class: (i) will not receive any Credits for the purchase of wine on WTSO.com; (ii) will not be bound by any orders or judgments entered in this Action; (iii) will not be entitled to relief under, or be affected by, this Agreement; (iv) will not gain any rights by virtue of this Agreement; and (v) will not be entitled to object to any aspect of this Agreement.

Any Class Member who has opted out and wishes to revoke his or her request for exclusion may do so by mailing a letter stating clearly the desire to revoke the previous request for exclusion to the Settlement Administrator before the _____ opt-out deadline.

9. How do I tell the Court if I do not like the Settlement?

Class Members may serve written objections to the Settlement, or to Class Counsel's application for Attorneys' Fees and Expenses.

The objection must include (i) the Class Member's full name and current address and telephone number; (ii) the identification of at least one Settlement Wine purchased; (iii) a description of all of the Class

Member's objections, the specific reasons therefore, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iv) the Class Member's signature.

Class Members submitting objections who wish to appear either personally or through counsel at the Fairness Hearing and present their objections to the Court orally must include a written statement of intent to appear at the Fairness Hearing in the manner prescribed by the Notice. Only Class Members who specify in their objections that they intend to appear personally or through counsel at the Fairness Hearing will have the right to present their objections orally at the Fairness Hearing. Settlement Class Members who do not submit timely written objections will not be permitted to present their objections at the Fairness Hearing.

To be considered, any such objection must be mailed to the Clerk of the Court, with copies to Class Counsel and counsel for WTSO not later than _____ (i.e., must be either received by the Clerk or be postmarked no later than _____).

Court	Class Counsel	Defense Counsel
United States District Court for the District of New Jersey 4 th & Cooper Streets Camden, NJ 08101	Oren Giskan GISKAN SOLOTAROFF & ANDERSON LLP 217 Centre Street, 6 th Floor New York, NY 10013	Suzanne Ilene Schiller MANKO, GOLD, KATCHER & FOX, LLP 401 City Avenue, Suite 901 Bala Cynwyd, PA 19004

10. When and where will the Court determine whether to approve the Settlement?

The Court entered an order preliminarily approving the Settlement Agreement on _____. The Court will hold a Final Approval Hearing at _____ a.m./p.m. on _____, at the United States District Court, District of New Jersey, Courtroom _____. _____.

11. What if the proposed Settlement is not approved?

If the proposed Settlement is not granted final approval, then the proposed Settlement will not become effective and will be voided, the lawsuit will proceed without further notice, and none of the agreements set forth in the Notice will be valid or enforceable.

12. Do I have a lawyer in the case?

Yes. The Court has appointed these lawyers and firms as "Class Counsel," meaning that they were appointed to represent all Class Members: Oren S. Giskan of Giskan, Solotaroff & Anderson, LLP; James E. Cecchi of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.; Thomas Rosenthal of Law Offices – Thomas Rosenthal; and Edward Hernstadt of Hernstadt Atlas PLLC.

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. Will payments be made to Class Counsel or the Class Representatives?

The determination of an attorney fee award is made by the Court, which will determine a reasonable fee for the work done and the result obtained by Class counsel. Class counsel will ask the Court to award attorneys' fees and expenses of no more than \$1.8 million.

Class counsel will also seek \$2500 for each Class representative in recognition of their assistance in this litigation.

14. How do I get more information about the Settlement?

The official terms of the proposed Settlement are in the settlement agreement. A copy of the settlement agreement, as well as other court documents and important deadline dates are located on the settlement website: www.winesettlement.com. If you have any questions regarding the settlement or the submission of the Claim Form, contact the Settlement Administrator at:

Email: [insert email address]

Phone: 1-XXX-XXX-XXXX

Mail: [INSERT ADDRESS]

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KYLE CANNON, LEWIS LYONS, AND
DIANNE LYONS, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

PLAINTIFFS,

V.

ASHBURN CORPORATION, ET AL.,

DEFENDANTS.

Civil Action No. 16-1452 (RMB)(AMD)

**FINAL APPROVAL ORDER AND
JUDGMENT**

THIS MATTER having been opened to the Court by counsel for the Plaintiffs and the Class for final approval of the proposed class action settlement (the "Settlement"), in accordance with the Settlement Agreement and Release dated [DATE] (the "Agreement") [DOCKET NO.] and on the motion for an award of attorneys' fees and costs and approval of incentive awards dated [DATE] [DOCKET NO.]; and

WHEREAS, the Court finds that it has jurisdiction over this Action and each of the Parties and all Settlement Class Members under 28 U.S.C. § 1332(d) and that venue is proper in this district; and

WHEREAS the Court finds as follows: The Settlement was entered into at arm's length by experienced counsel and only after extensive negotiations with a well-respected mediator and the Court. The Settlement is not the result of collusion. The Settlement is fair, reasonable, and adequate;

WHEREAS the Court having reviewed Plaintiffs' Counsels' submissions in support of their request for attorneys' fees, including their time summaries and hourly rates, finds that the

request for attorneys' fees is reasonable and appropriate and the hourly rates of each Lead Counsel firm is likewise reasonable and appropriate in a case of this complexity;

WHEREAS, the Court similarly finds that incentive awards to each Class Representative are fair and reasonable; and

WHEREAS, this Court conducted a hearing on [DATE] and has fully considered the record of these proceedings, the representations, arguments and recommendations of counsel, and the requirements of the governing law; and for good cause shown;

IT IS THIS day of [DATE]:

ORDERED that the Final Approval and Judgment is GRANTED, subject to the following terms and conditions:

1. The Court expressly incorporates the Agreement, including all exhibits thereto, into this Final Order and Judgment. For the purposes of this Order, the Court hereby adopts all defined terms as set forth in the Agreement.

2. The "Settlement Class" certified for the sole purpose of consummating the settlement in this Action consists of and is hereinafter defined as:

All residents of the United States who were the original purchasers of one or more wines from WTSO.com, from March 1, 2010 to November 1, 2016.
Excluded from the Class are: (1) directors, officers and employees of Defendant; (2) the United States government and any agency or instrumentality thereof; (3) the judge to whom this case is assigned and any member of the judge's immediate family; and (4) Settlement Class Members who timely and validly opt to exclude themselves from the Settlement Class.

3. The Court finds that the proposed Settlement Class meets all the applicable requirements of Fed. R. Civ. P. 23 and affirms certification of the Settlement Class.

4. The Court has reviewed the declarations filed by the Settlement Administrator. The Court finds that, to date, the Claims Administrator has fulfilled its responsibilities as set forth in the Agreement.

5. The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.

6. A list of all persons who have timely and validly requested to be excluded from the Settlement Class is annexed hereto as Exhibit A.

7. The Court finds that there have been a total of [NUMBER, IF ANY] Objections filed to the Settlement that have not been withdrawn. The Court has duly considered these Objections and none provides a basis for not approving the Settlement.

8. Based upon the Court's familiarity with the claims and parties, the Court finds that Kyle Cannon, Lewis Lyons, and Dianne Lyons adequately represent the interests of the Settlement Class and hereby appoints them as Class Representatives for the Settlement Class.

9. The Court finds that the following firms fairly and adequately represent the interests of the Settlement Class and hereby confirms them as Class Counsel pursuant to Rule 23:

Oren Giskan
GISKAN SOLOTAROFF &
ANDERSON LLP
217 Centre Street, 6th Floor
New York, NY 10013

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068

Edward Hernstadt
HERNSTADT ATLAS PLLC
45 Main Street #1030
Brooklyn NY 11201

LAW OFFICES - THOMAS S. ROSENTHAL
45 Main Street #1030
Brooklyn, NY 11201

10. The Court finds, upon review of the Settlement and consideration of the nine factors enunciated in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), that the Settlement and the proposed reimbursement program available from the Settlement are fair, reasonable and adequate. Accordingly, the Settlement is finally approved by the Court.

11. The Final Approval Order and Judgment as provided under the Agreement should be entered. Such order and judgment shall be fully binding with respect to all members of the Class and shall have res judicata, collateral estoppel, and all other preclusive effect for all of the Released Claims as set forth in the Agreement.

12. All claims set forth in the Complaint in this action are fully and finally dismissed with prejudice, and the Released Claims against Defendant are released.

13. The Settlement Administrator shall distribute to each Settlement Class Member who has not requested exclusion from the Class, timely submitted a complete, properly executed, and valid Claim Verification Form, and who are determined to be eligible to receive benefits under the Agreement, the benefits to which they are entitled.

14. Class Counsel is hereby awarded: (i) \$ _____ in attorneys' fees; and (ii) costs in the amount of \$ _____.

15. Each Class Representative is to receive an incentive award in the sum of \$ _____.

16. The awarded attorneys' fees and costs, and Class Representative incentive awards are to be paid and distributed in accordance with the Agreement.

17. The Court authorizes Giskan Solotaroff & Anderson LLP to allocate the fee and cost award among Class Counsel.

18. Each and every term and provision of the Settlement and Agreement shall be deemed incorporated into the Final Approval Order and Judgment as if expressly set forth and shall have the full force and effect of an Order of the Court.

19. The terms of this Final Approval Order and Judgment, and the Settlement and Agreement are binding on the Plaintiffs and all other Settlement Class Members, as well as their heirs, executors and administrators, successors and assigns.

20. The parties and their counsel are ordered to implement and to consummate the Settlement and Agreement according to its terms and provisions.

21. Other than as set forth herein, the parties shall bear their own costs and attorneys' fees.

22. The releases set forth in the Agreement are incorporated by reference. All Class Members, as of the Effective Date, shall be bound by the releases set forth in the Agreement whether or not they have availed themselves of the benefits of the Settlement, to wit:

All Class Members who have not opted out of the Settlement have released any and all claims, allegations, actions, causes of action, administrative claims, demands, debts, damages, costs, attorneys' fees, obligations, judgments, expenses, or liabilities, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were, or could have been, alleged in the Action or arising out of the Action against Releasees (defined in the Agreement), including, without limitation, any and all claims related to or arising from Defendant's selling, marketing and advertising of wine pricing, discounting, ratings, reviews, and/or pairing recommendations, without regard to subsequent

discovery of different or additional facts or subsequent changes in the law. With respect to these claims, Plaintiffs and the Settlement Class expressly waive any and all rights or benefits under California Civil Code Section 1542 (or any similar authority in any jurisdiction), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

23. The parties are authorized, without further approval from the Court, to agree in writing to and to adopt such amendments, modifications, and expansions of the Settlement or Agreement as are consistent with the Final Approval Order and Judgment.

24. No Settlement Class Member, either directly, representatively, or in any other capacity (other than a Settlement Class Member who validly and timely submitted a valid request for exclusion), shall commence, continue, or prosecute any action or proceeding against Defendant or any other Releasee as set forth in the Agreement in any court or tribunal asserting any of the Released Claims, and are hereby permanently enjoined from so proceeding.

25. Without affecting the finality of the Final Approval Order and Judgment, the Court shall retain continuing jurisdiction over this action, the parties and the Settlement Class, and the administration and enforcement of the Settlement and Agreement. Any disputes or controversies arising with respect to the enforcement or implementation of the Settlement or Agreement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the parties' ability to exercise their rights under Paragraph 23 above.

26. Neither the Settlement nor the Agreement, nor any of its terms and provisions, nor any of the agreements, negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

a. Offered or received as evidence of or construed as or deemed to be evidence of liability or a presumption, concession or an admission by the Defendant of the truth of any fact alleged or the validity of any claim that has been, could have been or in the future might be asserted in the Action or in any litigation, or otherwise against the Defendant, or of any proposed liability, negligence, fault, wrongdoing or otherwise of the Defendant;

b. Offered or received as evidence of or construed as or deemed to be evidence of a presumption, concession or an admission of any purported violation of law, breach of duty, liability, default, wrongdoing, fault, misrepresentation or omission in any statement, document, report or financial statement heretofore or hereafter issued, filed, approved or made by Defendant or otherwise referred to for any other reason, other than for the purpose of and in such proceeding as may be necessary for construing, terminating or enforcing the Agreement;

c. Deemed to be or used as an admission of any liability, negligence, fault or wrongdoing of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal;

d. Construed as a concession or an admission that Class Representatives or the Settlement Class Members have suffered any injury or damage; or, as an admission or concession that the consideration to be given in the Settlement represents the amount which could be or would have been awarded to the Class Representatives or the Settlement Class Members, after trial.

27. There being no just reason to delay, the Clerk is directed to enter this Final Approval Order and Judgment forthwith and designate this case as closed. The operative complaint in this action is dismissed with prejudice.

RENEE MARIE BUMB, U.S.D.J.

EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KYLE CANNON, LEWIS LYONS, AND
DIANNE LYONS, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

PLAINTIFFS,

V.

ASHBURN CORPORATION, ET AL.,

DEFENDANTS.

Civil Action No. 16-1452 (RMB)(AMD)

**ORDER PRELIMINARILY CERTIFYING
SETTLEMENT CLASS, GRANTING
PRELIMINARY
APPROVAL OF SETTLEMENT, AND
APPROVING CLASS NOTICE**

THIS MATTER having been opened to the Court by attorneys for Plaintiffs and attorneys for Defendant, by way of their joint Motion for Preliminary Approval of the proposed Settlement in the above Action;

WHEREAS, the Court having reviewed and considered the joint Motion for Preliminary Approval and supporting materials filed by Settlement Class Counsel and Defendant's Counsel, including the Settlement Agreement dated June ___, 2017; and

WHEREAS, this Court has fully considered the record and the requirements of law; and good cause appearing;

IT IS THIS ___ day of ___, 2017 ORDERED that the Settlement (including all terms of the Settlement Agreement and exhibits thereto) is hereby PRELIMINARILY APPROVED. The Court further finds and orders as follows.

1. The Court has subject matter jurisdiction under 28 U.S.C. § 1332(d), and venue is proper in this district.

2. The Court has personal jurisdiction over the Plaintiffs, Settlement Class Members, and the Defendant.

3. To the extent not otherwise defined herein, all defined terms in this order shall have the meaning assigned in the Settlement Agreement.

4. The Settlement was the result of the Parties' good-faith negotiations. The Settlement was entered into by experienced counsel and only after extensive arm's-length negotiations with the aid of an experienced federal court judge (ret.) during a mediation session. The Settlement Agreement is not the result of collusion.

5. The proceedings that occurred before the Parties reached the Settlement Agreement gave counsel opportunity to adequately assess this case's strengths and weaknesses and thus to structure the Settlement in a way that adequately accounts for those strengths and weaknesses.

6. The Settlement falls well within the range of reason. The Settlement has no obvious deficiencies. The Settlement does not unreasonably favor the Plaintiffs or any segment of the Settlement Class.

7. Because the Settlement meets the standards for preliminary approval, the Court preliminarily approves all terms of the Settlement included in the Settlement Agreement and all of its Exhibits.

8. The Court finds, for settlement purposes only, that all requirements of Fed.R.Civ.P. 23(a) and (b)(3) have been satisfied. The Court certifies a Settlement Class, as follows:

All residents of the United States who were the original purchasers of one or more wines from WTSO.com, from March 15, 2010 to November 1, 2016. Excluded from the Class are: (1) directors, officers and employees of Defendant; (2) the United States government and any agency or instrumentality thereof; (3) the judge

to whom this case is assigned and any member of the judge's immediate family; and (4) Settlement Class Members who timely and validly opt to exclude themselves from the Settlement Class.

9. The Court conditionally certifies the proposed Settlement Class, and finds that the requirements of Rule 23(a) are satisfied, for settlement purposes only, as follows:

(a) Pursuant to Fed.R.Civ.P. 23(a)(1), the members of the Settlement Class are so numerous that joinder of all members is impracticable.

(b) Pursuant to Fed.R.Civ.P. 23(a)(2) and 23(c)(1)(B), the Court determines that there are common issues of law and fact for the Settlement Class as follows:

- i. Whether Defendant used false "Original Prices" in the sale of wines on WTSO.com;
- ii. Whether Defendant violated the New Jersey Consumer Fraud Act;
- iii. Whether Defendant breached its contracts with its customers by failing to provide advertised discounts; and
- iv. Whether the Class Members suffered damages as a result of Defendant's actions.

(c) Pursuant to Fed.R.Civ.P. 23(a)(3), the claims of the Plaintiffs are typical of the claims of the Settlement Class that they represent in that the Class Representatives allege that they are purchasers of wines from WTSO.com. The Court hereby appoints the following Plaintiffs as Class Representatives for the Class: Kyle Cannon, Lewis Lyons, Dianne Lyons, and David Samuels.

(d) Pursuant to Fed.R.Civ.P. 23(a)(4), the Class Representatives will fairly and adequately protect and represent the interests of all members of the Settlement Class and the interests of the Class Representatives are not antagonistic to those of the Settlement Class. The Class Representatives are represented by counsel who are experienced and competent in the prosecution of complex class action litigation.

10. The Court further finds that the requirements of Rule 23(b)(3) are satisfied, as follows:

(a) Questions of law and fact common to the members of the Settlement Class, as described above, predominate over questions that may affect only individual members; and

(b) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

11. The Court has reviewed and finds that the content of the proposed Notice attached as Exhibit C to the Settlement Agreement and the Frequently Asked Questions and Answers (“FAQ”) attached as Exhibit D to the Settlement Agreement to be displayed, along with the Settlement Agreement and its Exhibits, on the Settlement Website satisfy the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e)(1), and Due Process and accordingly approves the Notice, the Verification Form, and the FAQs .

12. This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and the Motion for Preliminary Approval. The Court has reviewed the plan for distributing the Notice to the Settlement Class (“Notice Plan”), and finds that the Settlement Class Members will receive the best notice practicable under the circumstances. The Court specifically approves the Parties’ proposal to (a) email an electronic copy of the Notice to all Class Members; (b) send a hard copy by First Class mail to Class Members whose email was undeliverable; and (c) post a link to the Settlement Website on WTSO.com in accordance with the Settlement Agreement. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable

under the circumstances and will satisfy the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e)(1), and Due Process.

13. The Court preliminarily finds that the following counsel fairly and adequately represent the interests of the Settlement Class and hereby appoints Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Giskan, Solotaroff, & Anderson, LLP, Law Offices – Thomas S. Rosenthal, and Hernstadt Atlas PLLC, as Class Counsel for the Settlement Class.

14. The Court directs that pursuant to Fed.R.Civ.P. 23(e)(2) a hearing will be held on [DATE], to consider final approval of the Settlement (the “Final Approval Hearing” or “Fairness Hearing”) including, but not limited to, the following issues: (1) to determine whether to grant final approval to (a) the certification of the Settlement Class, (b) the designation of Plaintiffs as the representatives of the Settlement Class, (c) the designation of Class Counsel as counsel for the Settlement Class, and (d) the settlement; (2) to rule on Class Counsel’s request for an award of attorneys’ fees and reimbursement of costs and for Service Awards to Class Representatives; and (3) to consider whether to enter the Final Approval Order. The Final Approval Hearing may be adjourned by the Court and the Court may address the matters set out above, including final approval of the Settlement, without further notice to the Settlement Class other than notice that may be posted at the Court and on the Court’s and Claims Administrator’s websites.

15. Persons wishing to object to the proposed Settlement and/or be heard at the Fairness Hearing shall follow the following procedures:

(a) To object, a member of the Settlement Class, individually or through counsel, must file a written objection with the Clerk of the Court, and must also serve a copy thereof upon the following, by [DATE]:

Counsel for Plaintiffs

Oren Giskan
GISKAN SOLOTAROFF &
ANDERSON LLP
217 Centre Street, 6th Floor
New York, NY 10013

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO,
P.C.
5 Becker Farm Road
Roseland, New Jersey 07068

Counsel for Defendants

Suzanne Ilene Schiller
MANKO, GOLD, KATCHER &
FOX, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

James Farrell
LATHAM & WATKINS
885 Third Avenue
New York, NY 10022-4834

(b) Any member of the Settlement Class who files and serves a written objection by the deadline stated in Paragraph 26 of this Order containing a written statement of intent to appear at the Fairness Hearing in the manner prescribed by the Notice, may appear at the Fairness Hearing, to the extent permitted by the Court, either in person or through an attorney hired at the Settlement Class member's expense, to object to the fairness, reasonableness or adequacy of the proposed Settlement. Any attorney representing a member of one of the Settlement Class for the purpose of making objections must also file a Notice of Appearance with the Clerk, and must also serve copies by mail to the counsel listed above. Only Class Members who specify in their objections that they intend to appear personally or through counsel at the Fairness Hearing will have the right to present their objections orally at the Fairness Hearing.

(c) Any objection to the Settlement must include (i) the Class Member's full name and current address and telephone number; (ii) the identification of at least one

Settlement Wine purchased; (iii) a description of all of the Class Member's objections, the specific reasons therefore, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iv) the Class Member's signature.

16. Any Class Member who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived his, her, or its right to object to any aspect of the proposed Settlement and/or Class Counsel's motion for attorneys' fees and reimbursement of litigation expenses. Such Class Member shall forever be barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, or the requested attorneys' fees and litigation expenses, and otherwise from being heard concerning the Settlement, or the attorneys' fees and expense request in this or any other proceeding.

17. The Court appoints Kurtzman Carson Consultants ("KCC") as the Settlement Administrator. The Parties are hereby authorized to retain the Settlement Administrator to supervise and administer the Notice Procedure as well as the processing of Claims. Notice of the Settlement and the Settlement Hearing shall be given by Class Counsel as follows:

(a) Defendant shall provide to the Settlement Administrator the name, last known physical address, telephone number and email address for all Class Members (the "Class List") no later than July 31, 2017 or twenty (20) days after the Preliminary Approval Order is entered, whichever is later;

(b) Fifteen (15) days after receipt of the Class List, the Settlement Administrator will email using state-of-the-art methods and best practices for direct email an electronic copy of the Class Notice to all Class Members. If the email to the Class Member is undeliverable, the Settlement Administrator shall mail a copy of the Class

Notice to the Class Member by First Class mail;

(c) On the date upon which the Settlement Administrator emails the Class Notice, the Settlement Administrator shall make the Settlement Website, as further detailed in the Settlement Agreement, publicly accessible;

(d) On the date upon which the Settlement Administrator emails the Class Notice, Defendant shall cause to be published a link to the Settlement Website on WTSO.com as further detailed in the Settlement Agreement; and

(e) Within thirty (30) days after the emailing of the Class Notice, entry of this Order, the Settlement Administrator shall file with the Court a declaration of compliance with the notice requirements.

18. **Participation in Settlement** – Class Members who complete a Verification Form as described in the Settlement Agreement will receive Credits based on the Settlement Wines purchased during the Class Period as follows:

(a) For every bottle of wine listed on Exhibit A to the Settlement Agreement purchased during the Class Period for \$12.99 or less, for which no prior refund was given, the Class Member will receive a credit of \$1.75.

(b) For every bottle of wine listed on Exhibit A purchased during the Class Period for \$13.00-\$18.99, for which no prior refund was given, the Class Member will receive a credit of \$2.00.

(c) For every bottle of wine listed on Exhibit A purchased during the Class Period for \$19.00 or greater, for which no prior refund was given, the Class Member will receive a credit of \$2.25.

(d) For every bottle of wine listed on Exhibit B to the Settlement Agreement purchased during the Class Period for \$19.99 or less, for which no prior refund was given, the Class Member will receive a credit of \$0.50.

(e) For every bottle of wine listed on Exhibit B purchased during the Class Period for \$20.00 or greater, for which no prior refund was given, the Class Member will receive a credit of \$0.75.

(f) For every bottle of wine not listed on Exhibit A or B purchased during the Class Period, for which no prior refund was given, the Class Member will receive a credit of \$0.20.

The total value of the Credits to be provided to the Class is approximately \$10.8 million.

19. Credits will be applied against purchases of any wine the first time it is offered on WTSO.com (unless use of the Credit would result in a violation of laws relating to the sale of wine or such wine is first offered during a “Marathon” day), and on certain other wines offered on WTSO.com, all as more fully described in the Settlement Agreement, at the rate of \$2.00 off per bottle, or for the full or remaining credit amount if less than \$2.00, for a period of one (1) year following the date the Credit codes are emailed to the Class Members.

20. Class Counsel, or any partner, member, shareholder or employee of Class Counsel, and Apperson Crump, PLC, or any partner, member, shareholder or employee of Apperson Crump, PLC, who are Class Members are ineligible to receive Credits or any compensation as Class Members and any Claim Verification Form submitted by any of them shall be deemed null, void and invalid

21. Within twenty (20) days after the Effective Date or January 15, 2018, whichever is later, Defendant shall calculate and provide to Class Counsel the total amount of Credits to be issued to Class Members and a unique non-transferrable individualized code (the “Code”) shall be generated for each Class Member who has submitted a valid Verification Form that may be used on WTSO.com by the Class Member to access their Credits.

22. Thirty (30) days after the Effective Date or January 31, 2018, whichever is later, the Settlement Administrator will email each Class Member who has submitted a valid Verification Form that Class Member’s Code.

23. All Class Members shall have the right to opt out of the class at any time during the opt-out period. The opt-out period shall run for ninety (90) days following the entry of this Preliminary Approval Order. Any Class Member who elects to opt out of the Class (i) shall not be bound by any orders or judgments entered in this Action; (ii) shall not be entitled to relief under, or be affected by, this Agreement; (iii) shall not gain any rights by virtue of this Agreement; and (iv) shall not be entitled to object to any aspect of this Agreement. Any Class Member who wishes to opt out of the Class may do so by mailing a letter clearly stating the Class Member's desire to opt out to the Settlement Administrator. Any Class Member who has opted out and wishes to revoke his or her request for exclusion may do so by mailing a letter stating clearly the desire to revoke the previous request for exclusion to the Settlement Administrator before the opt out deadline.

24. Any member of the Settlement Class failing to properly and timely mail such a written notice of exclusion shall be automatically included in the Settlement Class and shall be bound by all the terms and provisions of the Settlement Agreement and the Settlement, including the Release, and Order of Final Judgment. The Court shall resolve any disputes concerning the opt-out provisions of the Settlement Agreement.

25. Upon Final Approval, all Class Members who do not opt out of the Settlement will have released any and all claims, allegations, actions, causes of action, administrative claims, demands, debts, damages, costs, attorneys' fees, obligations, judgments, expenses, or liabilities, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were, or could have been, alleged in the Action or arising out of the Action against Releasees (defined in

the Settlement Agreement), including, without limitation, any and all claims related to or arising from Defendant's selling, marketing and advertising of wine pricing, discounting, ratings, reviews, and/or pairing recommendations, without regard to subsequent discovery of different or additional facts or subsequent changes in the law. With respect to these claims, Plaintiffs and the Settlement Class expressly waive any and all rights or benefits under California Civil Code Section 1542 (or any similar authority in any jurisdiction), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

26. The following are the operative dates for the following events:

<u>EVENT</u>	<u>DATE</u>
Notice Mailed Settlement Website Accessible	August 15, 2017 or 35 days after entry of this Order, whichever is later
Affidavit of Compliance with Notice Requirements	September 14, 2017 or 65 days after entry of this Order, whichever is later
Filing Motion for Attorney Fees, Service Awards and Reimbursement of Expenses	Within 60 days after entry of this Order
Postmark/Filing Deadline for Requests for Exclusions, and Objections	Within 90 days after entry of this Order
Service/Filing Notice of Appearance at Fairness Hearing	Within 90 days after entry of this Order
Filing Reply to Objections to Settlement and/or Attorneys' Fees and Expenses	Within 105 days after entry of this Order
Filing Motion for Final Approval	Within 105 days after entry of this Order
Fairness Hearing	<hr/>

27. In the event that the Settlement does not become effective for any reason, this Preliminary Approval Order shall be rendered null and shall be vacated, and all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement. If the Settlement does not become effective, the Defendant and any other Releasees shall have retained any and all of their current defenses and arguments thereto (including but not limited to arguments that the requirements of Fed.R.Civ.P. 23(a) and (b)(3) are not satisfied for purposes of continued litigation). These actions shall thereupon revert immediately to their respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and all other related orders and papers had not been executed.

28. All other proceedings are hereby stayed until such time as the Court renders a final decision regarding approval of the proposed Settlement. No discovery with regard to the Action, or with respect to this Settlement, shall be permitted other than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with this Court's Local Rules. In addition, pending a determination on final approval of the Settlement, all Settlement Class Members are hereby barred and enjoined from commencing or prosecuting any action involving any Released Claims.

29. The Court shall retain continuing jurisdiction over the Action, the Parties and the Settlement Class, and the administration, enforcement, and interpretation of the Settlement. Any disputes or controversies arising with respect to the Settlement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the ability of the Parties to exercise their rights as described above.

RENEE MARIE BUMB, U.S.D.J.

EXHIBIT G

CLAIM VERIFICATION FORM

1. Member ID Number

My Class Member ID Number is _____

If you do not have a Class Member ID Number, contact the Settlement Administrator at
[insert contact information]

2. Verification of Name and Contact Information

A. Name, Address and Phone Number

Name: _____
First Middle Last

Address: _____
Street

City, State, Zip Code

Phone: _____

Check One:

_____ The above information is correct.

_____ The above information is incorrect or incomplete. The correct and/or additional information is:

Name: _____
First Middle Last

Address: _____
Street

City, State, Zip Code

Phone: _____

The Claims Administrator may contact you for additional verification of any new information.

B. Preferred E-Mail Address

Email: _____
Confirm Email: _____

3. Verification of Eligibility

_____ I am over the age of 21 and purchased at least one bottle of wine from WTSO.com between March 15, 2010 and November 1, 2016.

4. Verification of Refunds

Wine	Date of Refund
_____	_____
_____	_____
_____	_____
_____	_____

Check One:

_____ The above information is correct and complete.

_____ The above information is incorrect or incomplete. The correct and/or additional information is:

Wine	Date of Refund (Approx.)
_____	_____
_____	_____
_____	_____
_____	_____

I certify that the foregoing information is true and correct to the best of my information, knowledge and belief; that I am not requesting to be excluded from the Settlement Class; and that I have not submitted any other claim for the same purchases nor authorized any other person or entity to do so.

Signature: _____ Date: _____

EXHIBIT 2

GISKAN SOLOTAROFF & ANDERSON LLP

Firm Biography

Giskan Solotaroff & Anderson LLP is a firm with significant experience in complex litigation involving consumer fraud, antitrust, and employment discrimination litigation in state and federal courts, on behalf of plaintiffs and often involving class actions.

OREN GISKAN is admitted to practice in the states of New York (1993) and Illinois (1990). He received his law degree from the University of Pennsylvania in 1990 and his Bachelor of Arts from the University of Chicago in 1986.

Mr. Giskan served as lead class counsel in *In re Check Loan Litigation*, N.D. Cal. 09-md-02032 (\$100 million settlement of claims related to increase of minimum monthly credit card payments); *Cohen v. JP Morgan Chase & Co. and JP Morgan Chase Bank*, E.D.N.Y. 04-cv-4098 (settlement of deceptive claims related to charging of mortgage fee resulting in a recovery of 100% of damages for class members); *Sebrow v. Allstate Insurance Company*, E.D. N.Y., CV-07-3929 (settlement of deceptive practice claims regarding non-renewal of homeowners insurance policies), *Education Station v. Yellow Book USA*, Superior Court of New Jersey (\$70 million settlement of false advertising claims), *Danielson v. Rockford Memorial Hospital*, Circuit Court of Winnebago County Illinois, No. 01 L 139 (settlement of patient billing claims under the Illinois Consumer Fraud Act), and *Truschel v. Juno Online Inc.*, Supreme Court of the State of New York, New York County, No. 01/602486 (settlement of consumer protection claims regarding failure to provide Internet service). Prior to forming the firm of Giskan & Solotaroff in October 2002, Mr. Giskan worked for the firms of Prongay & Borderud, the Law Offices of James V. Bashian, P.C. and Zwerling, Schachter & Zwerling, LLP, in New York, New York where he was actively involved as lead counsel for plaintiffs in many securities class action lawsuits including: *Hal Bloomberg Trust v. Gencor Industries, Inc.*, M.D. Fla., 99-106- Civ-Orl; *Kaplan v. Prins Recycling Corp.*, D.N.J., 96 Civ. 2444; *In re Lady Luck Gaming Corporation Securities*

Litigation, D. Nev., CV-S-95-266-LDG (RLH); *In re American Pacific Securities Litigation*, D. Nev., CV-S-93-00576-PMP; and *In re Foodmaker/Jack-in-the-Box Securities Litigation*, W.D. Wash., No. C93-517WD. He also actively participated as one of the lead counsel in coordinated nationwide class actions against America Online Inc. regarding its deceptive billing practices. From 1990-92, Mr. Giskan was an associate with Jenner & Block in Chicago, Illinois where he focused on securities and general commercial litigation.

From 1990-92, Mr. Giskan was an associate with Jenner & Block in Chicago, Illinois where he focused on securities and general commercial litigation.

JASON L. SOLOTAROFF is admitted to practice in the State of New York. He is a 1990 graduate of Columbia Law School where he was an Editor of the Columbia Law Review and a Harlan Fiske Stone Scholar. He graduated from the Johns Hopkins University with General Honors.

Mr. Solotaroff clerked for the Hon. Eugene H. Nickerson, United States District Court for the Eastern District of New York. Following the clerkship, Mr. Solotaroff was a Staff Attorney at the Legal Aid Society, Criminal Defense Division from 1991 to 1993. In 1993, he joined the Society's Federal Defender Division. As a federal defender, Mr. Solotaroff represented clients in a wide variety of matters including complex white-collar cases. Of the nine clients he represented in criminal trials, six were acquitted and one received a partial acquittal.

Mr. Solotaroff entered private practice in 1997. Since 1997, he has devoted a substantial part of his practice to the representation of plaintiffs in class action matters. Among the cases in which he has had substantial responsibility are consumer class actions against Juno Online Inc., Lincoln Security Life Insurance of New York, Verizon Communications, American Express and antitrust class actions against Abbott Laboratories, Bristol-Myers Squibb and Astrazeneca Inc. He also represents individuals in employment discrimination and criminal defense matters.

CATHERINE E. ANDERSON is admitted to practice in the States of New York and New Jersey. She received her law degree from New York University School of Law in 1995, where she was editor of the Journal of International Law and Politics. She graduated *magna cum laude* from Colgate University in 1992, where she was elected Phi Beta Kappa. Ms. Anderson has specialized in consumer class actions and employment law.

Ms. Anderson recently has represented several lead plaintiffs in class actions challenging the force placement of insurance on homeowners, including *Hall, et al v. Bank of America, N.A.*, 12-cv-22700 (FAM)(SD FLA)(\$228 million nationwide settlement); *Montoya v. PNC Bank, N.A.*, 1:14-cv-20474 (JG)(SD FLA)(\$32.3 million nationwide settlement); and *Wilson v. Everbank, et al.*, 1:14-cv-22264(BB)(SD FLA) (\$8.75 million nationwide settlement).

Ms. Anderson also has served as lead counsel in the following notable class and collective actions which have resulted in significant settlements: *Cohen v. JP Morgan Chase & Co. and JP Morgan Chase Bank*, 04-cv-4098 (ILG) (E.D.N.Y.)((\$20 million settlement on behalf of homeowners); *Kent v. Hewlett-Packard Co.*, C-09-05341 (JF)(N.D. CA)(settlement valued at over \$2 million on behalf of consumer who purchased defective computers); *Patel, et al v. Baluchis, et al* 08-cv-9985 (RJS)(S.D.N.Y.) (\$880,000 settlement on behalf of restaurant workers for wage and hour claims); *Sebrow, et al. v. Allstate Insurance Co., et al.* 07 CV 3929 (FB)(RLM) (E.D.N.Y.) (settlement providing 100% relief to over 54,000 homeowners); *Russo v. WholeArts Foundation, Inc., et al*, Index No. 603037/03 (KM) (New York Supreme Court (providing 100% payment of outstanding bills on behalf of members of defunct health plan).

Prior to joining Giskan Solotaroff & Anderson LLP, Ms. Anderson was associated with the firm of Wolf Popper LLP, where she served as lead or co-lead counsel in the following class actions which obtained a substantial recovery for the class: *Garcia v. General Motors Corp.*, Docket No. L-4394-95, Superior Court of New Jersey, Bergen County (\$19.5 million settlement); *Whipple v. Happy Kids, Inc.*, Index No. 99-603371, IAS Part 10, Supreme Court of the State

of New York, New York County (obtaining a settlement providing, among other things, an increase of \$0.50 per share on behalf of the Happy Kids public shareholders in a revised buyout transaction); *In re Segue Software, Inc., Sec. Litig.*, C.A. 99-10891-RGS, United States District Court, District of Massachusetts (obtaining a cash settlement of \$1.25 million on behalf of a class of all persons who purchased the common stock of Segue Software, Inc. during the period July 14, 1998 through April 9, 1999); *Jonas v. Aspec Technology, Inc.*, Lead Case No. CV775037, Superior Court of the State of California (\$13 million cash settlement plus a stock component of 1.75 million shares); *In re Ugly Duckling Corp. Shareholders Derivative and Class Action*, Consolidated C.A. No. 18843, Delaware Court of Chancery, New Castle County (obtaining an increase from \$2.51 per share to \$3.53 per share cash in going private transaction on behalf of a class comprised of the Company=s minority shareholders, resulting in an aggregate cash benefit of more than \$4.7 million).

ALIAKSANDRA RAMANENKA is an associate at Giskan Solotaroff & Anderson LLP, and represents plaintiffs in employment and civil rights cases and consumer class actions, and corporations and individuals in commercial litigation. Ms. Ramanenka is a graduate of the City University of New York School of Law and is admitted to practice in the sates of New York and New Jersey.

EXHIBIT 3

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.

5 Becker Farm Road
Roseland, New Jersey 07068
Telephone No.: (973)994-1700
Telephone Fax: (973)994-1744
www.carellabyrne.com

Carella, Byrne

AN INTRODUCTION TO CARELLA, BYRNE

Carella, Byrne, Cecchi, Olstein, Brody & Agnello, with offices in Roseland, New Jersey, had its origins in a partnership created in 1976 by Charles C. Carella and others. Since then, the firm has grown from four attorneys to over 35 attorneys. In 1990, the firm merged with two others: Bozonelis and Woodward of Chatham, New Jersey, and Cecchi, Brody & Agnello, of Lyndhurst, New Jersey.

Throughout our history, our goal has not been growth for growth's sake, but to be a diversified full-service firm that offers our clients a depth of experience that is virtually unmatched. Most importantly, our growth has been a studied one: an approach which has enabled us to maintain the energy and cooperative spirit of a small practice, allowing us to respond quickly and creatively to our clients' problems.

We have significant strength in complex litigation, federal class action litigation, intellectual property, corporate, health care, public financing, environmental, labor, tax and administrative law. This level of experience offers our corporate clients very broad-based legal representation.

We have long been recognized as one of the leading New Jersey law firms, a reputation that has helped us attract a wide spectrum of clients -- from individuals to multinational corporations; from small businesses to non-profit organizations; from zoning boards to state governments.

Today, Carella, Byrne, Cecchi, Olstein, Brody & Agnello is an established and successful law firm that is ready to serve you or your organization with a breadth and depth of experience rare in a firm our size.

To help us serve our clients' promptly and in a cost effective manner, we have a full complement of law clerks, paralegals, word processors and support staff, and state-of-the-art computer and word processing systems, including optical scanners, laser printers, and Westlaw.

We are committed to quality and diversity in our practice areas. Diversity allows our firm to remain a competitive force in the legal marketplace. The firm's commitment to the highest quality of legal work walks hand-in-hand with its commitment to employ the highest quality of diverse people so that we can best serve all of the needs of our clients.

Carella, Byrne

GENERAL LITIGATION

The Carella, Byrne, Cecchi, Olstein, Brody & Agnello litigation department participates in a broad range of contested matters. We represent corporations in derivative suits and with respect to allegations of breach of federal and state securities regulations. Additionally, we represent institutions and national companies in warranty, franchise and dealer termination actions; medical malpractice defense claims; and real estate matters, including planning board, board of adjustment proceedings and fair-share housing cases.

Technical Litigation

We are uniquely staffed to handle complex technical litigation. In addition to legal training, a number of attorneys have degrees and experience in chemical, electrical, mechanical and biomedical engineering. Litigation cases involve patents, trademarks, trade secrets, copyrights, unfair competition and construction, as well as architectural and engineering malpractice.

Environmental Litigation

We handle environmental cases involving current owner liability and third-party common law claims, plus cases under federal and state statutes such as the Federal Water Pollution Control Act, ECRA, the Spill Act, the Resource Conservation Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation Liability Act of 1980 (as amended by the Superfund Amendment and Reauthorization Act of 1986), and many others. We have attorneys expertly trained in environmental matters with a background uniquely suitable to rendering appropriate advice to our corporate and individual clients.

Medical Malpractice Defense

Medical malpractice defense work is one of the busiest areas of our litigation practice. We represent a number of major health care institutions, and serve as primary defense counsel for insureds of major insurance companies. During our history, we have represented physicians, dentists, podiatrists, chiropractors, nurses, nurse midwives, and hospitals in a variety of complex litigated matters throughout the state courts.

Intellectual Property Expertise

Carella, Byrne, Cecchi, Olstein, Brody & Agnello is nationally recognized in the fields of patent, trademark, copyright, unfair competition, trade secret law and antitrust law as applied domestically and internationally. We have broad technical expertise in chemical, mechanical and electrical engineering; physics; organic chemistry; biochemistry; commercial and industrial building construction, and road and bridge construction; sewage and waste management, including toxic and hazardous waste, radwaste and environmental control. A number of our partners and associates are registered to practice before the U.S. Patent and Trademark Office.

Carella, Byrne

Our particular litigation expertise is in U.S. District Courts and Circuit Courts of Appeal in California, Illinois, Texas, New York, Pennsylvania, Florida and New Jersey, as well as the Court of Appeals for the Federal Circuit.

We also maintain close ties with associate counsel in the United Kingdom, Japan, West Germany, Canada, Italy, France, Austria, Taiwan, Korea, Australia and the Peoples Republic of China. We have controlled and/or participated in patent and other intellectual property litigation in Japan, West Germany, the United Kingdom, Canada, Australia, New Zealand and Austria.

What's more, we offer many other intellectual property services, including licensing and preparation and prosecution of patent applications around the world.

Corporate and Financial

Carella, Byrne, Cecchi, Olstein, Brody & Agnello provides all legal services involving the sale, purchase and reorganization of a business, including creation of corporations, partnerships and limited partnerships, mergers and acquisitions, public and private corporate financing, and representation in regulatory compliance cases.

Banking

We have broad experience in commercial lending matters (secured and unsecured), representing both lenders and borrowers; and have counseled banks in all aspects of operations. We have represented institutions in both state and federal regulatory compliance, and in all phases of loan work-outs and financial restructurings. Our experience also extends to commercial litigation and foreclosures.

All too often, financial institutions face breach of both secured and unsecured loan agreements. So to help our clients preserve their banking relationships with their customers, we regularly handle work-outs, no matter how simple or complex. We've handled multiparty and multistate transactions involving construction, apartment complexes, warehouse lines of credit and inventory financing.

Savings and Loan Conversions

We have helped savings and loan associations convert from mutual ownership to stock ownership. These include standard conversions, modified conversions, supervisory conversions and holding company formations. Services range from contract negotiation and completion, to regulatory authority application preparation and follow-up. And after conversion, we provide general counsel.

Mergers and Acquisitions

Our firm has counseled corporate clients on mergers and acquisitions, with a special emphasis on the acquisition or divestiture of stand-alone businesses. Clients have included large corporations filling in product lines; small, privately held corporations which are

Carella, Byrne

liquidating; and large corporate division managers involved in a management buy-out. We counsel clients on employee issues, environmental concerns, liability and contractual issues, regulatory matters and tax issues.

Creditors' Rights and Bankruptcy

Our firm provides comprehensive legal expertise for clients involved in both corporate and individual insolvencies. We have represented corporate debtors-in-possession, corporate trustees, creditors committees and secured and priority parties in reorganizations and liquidations.

We have expertise in those areas impacting on current bankruptcies including tax (including ERISA), environmental (including state and federal regulations), labor, admiralty, intellectual property, general corporate transactions and commercial and corporate litigation.

Public Finance

We are a nationally recognized Bond Counsel firm. This means that the investment community looks to us as an expert in public finance law, and that our approving legal opinions are relied on by investors as to the legality and enforceability of tax-exempt obligations.

We have served as Bond Counsel for the issuance of hundreds of millions of dollars of tax-exempt financings for municipalities and local, county and state authorities. And in this capacity, we have assisted in financing everything from the purchase of a town's computer system to the building of a resource recovery facility, to the repair of the Garden State Parkway.

In addition, we have served as underwriters' counsel and counsel to national investment banking firms, and as general counsel to companies obtaining tax-exempt loans for industrial development.

Class Action Litigation

Carella Byrne is also actively involved in the prosecution of sophisticated plaintiffs' cases involving securities fraud, consumer fraud and antitrust.

Takata Airbag Litigation

Carella Byrne was appointed as one of three firms on Plaintiffs' Steering Committee in *In re Takata Airbag Product Liability Litigation*, MDL 2599, currently pending in the U.S. District Court for the Southern District of Florida. This litigation involves claims against Takata Corporation and related companies, and several automobile manufacturers, arising from exploding airbags installed in the vehicles.

Orange Juice Litigation

Carella Byrne is Co-Lead Counsel in two similar cases, *In re Tropicana Orange Juice Marketing and Sales Practices Litigation*, MDL 2415, pending in the U.S. District Court for the

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District of New Jersey and *In Re Simply Orange Orange Juice Marketing And Sales Practices Litigation*, MDL No. 2361, pending in the U.S. District Court for the Western District of Missouri. In these cases, Plaintiffs allege that the respective manufacturers of orange juice labeled their juice as being all natural when, in fact, they added flavorings and other ingredients which were prohibited by applicable FDA regulations. These cases are ongoing.

L'Oreal Wrinkle Cream Litigation

Carella Byrne was appointed as sole Lead Counsel in *In Re: L'Oreal Wrinkle Cream Marketing Practices Litigation*, MDL 2415, pending in the U.S. District Court for the District of New Jersey. Plaintiffs in this action allege that certain L'Oreal products advertised as eliminating wrinkles when, in fact, the ingredients in the products are scientifically incapable of doing so. This litigation is ongoing.

UCR Litigation

Carella Byrne was appointed as a member of Plaintiffs' Executive Committee and Settlement Liaison Counsel in this litigation, which alleges that Aetna systematically underpaid out-of-network medical claims using the flawed Ingenix database. Generally, subscribers in health insurance plans receive reimbursement for out-of-network services based upon "usual and customary" rates for the applicable service. The Ingenix database was a database, allegedly of "usual and customary" rates for medical services which health insurers used for calculating out-of-network reimbursement. Plaintiffs allege that the health insurers which used the Ingenix database for calculating reimbursement knowingly submitted artificially low data to the database, which, they, in turn, used to pay artificially low reimbursement for out-of-network services. *In re Aetna UCR Litigation*, Master Docket No. 07-3541(SRC).

In a virtually identical case against CIGNA, Carella Byrne was appointed as Settlement Liaison Counsel. *Franco v. Connecticut General Life Insurance*, Master Docket No. 07-6039 (SRC).

Hertz Equipment Rental LDW Litigation

Carella Byrne is Co-Lead Counsel in litigation challenging Hertz Equipment Rental's loss damage waiver and environmental recovery fee. In that litigation, the plaintiffs contend that those fees violate the New Jersey Consumer Fraud Act because the loss damage waiver provides no real benefit to customers and the environmental recovery fee has nothing to do with expenses related to environmental protection. Settlement in this matter received final approval on June 20, 2013. *Davis Landscape v. Hertz Equipment Rental Corporation*, Civil Action No. 06-3830(DMC).

In re Medco/Express Scripts Merger Litigation

Carella Byrne was co-Interim Lead Counsel in this action, which challenged the \$30 billion proposed merger between Medco and Express Scripts, among the largest pharmacy benefit management companies in the country. The action challenged, among other things, the

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\$945 million break-up fee payable to Express Scripts in the event of an offer from another bidder.

The settlement in this action, which was approved in April 2012, included a \$300 million reduction in the breakup fee and certain additional disclosures in the proxy statements soliciting shareholder approval of the merger. *In re Medco/Express Scripts Merger Litigation*, Civil Action No. 11-4211(DMC).

In re Effexor Antitrust Litigation

Carella Byrne serves on the Indirect Purchaser Plaintiffs' Executive Committee, which alleges that Wyeth violated federal and state antitrust laws by fraudulently obtaining patents and filing sham patent infringement litigation to extend its monopoly on the brand-name drug Effexor XR, an anti-depressant drug which generates over \$1 billion per year in revenues. Certain claims in this action are presently on appeal. *In re Effexor XR Antitrust Litigation*, Civil Action No. 11-5661.

In Re: Schering-Plough/Enhance Securities Class Action Litigation

Carella Byrne filed the first case against Schering Corporation and was appointed to the leadership team as liaison counsel on behalf of the class in this securities fraud litigation related to misleading statements contained in public securities filings made by Schering-Plough Corporation related to the continued commercial viability of Vytorin and Zetia, while it was aware of the results of the Enhance study which questioned the effectiveness of both drugs. Settlements in this matter received final approval on October 1, 2013. *In Re: Schering-Plough/Enhance Securities Litigation*, Lead Case No. 08-397(DMC).

In re: Merck & Co. Enhance Securities Class Action Litigation

Carella Byrne has been appointed to the leadership team of the case as Liaison Counsel on behalf of the class in this securities fraud litigation related to misleading statements contained in public securities filings made by Merck & Co., Inc. related to the continued commercial viability of Vytorin and Zetia, while it was aware of the results of the Enhance study which questioned the effectiveness of both drugs. Settlements in this matter received final approval on October 1, 2013. *Genessee County Employees' Retirement System v. Merck & Co., Inc., et al*, Civil Action No. 08-2177 (DMC); *Horowitz and Hoffmans v. Merck & Co., Inc., et al*, Civil Action No. 08-2260 (DMC)

Merck/Vioxx Securities Class Action

In September 2006, Carella Byrne was appointed Co-Liaison Counsel for the class in the multi-billion dollar securities class action against Merck & Co. arising out of the withdrawal of the drug Vioxx from the market in 2004. The trial in this matter is anticipated to go forward in the Spring of 2016. *In Re: Merck & Co., Inc., Securities, Derivative & "ERISA" Litigation*, MDL No. 1658 (SRC).

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Rail Fuel Surcharge Antitrust Class Action

In May 2006 Carella Byrne, along with Quinn, Emmanuel, Urquhart Olivier & Hedges and others, filed the first nation-wide class action against the five major United States railroads alleging that they engaged in a price-fixing conspiracy through the use of inflated rail fuel surcharges, *Dust Pro, Inc. v. CSX Transportation, Inc., et. al.*, Civil Action No. 07-2251 (DMC). This significant nationwide antitrust case (involving damages in the billions) has been consolidated by the Panel on Multi District Litigation in the District of Columbia with approximately 20 other complaints filed around the nation. Carella Byrne has been appointed to the five member Executive Committee who, along with two co-lead counsel, will lead this important case forward. *In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL No. 1969 (PLF).

Schering-Plough/Merck Merger Litigation

Carella Byrne was appointed as Co-Class Counsel, out of 15 competing lawsuits, in litigation challenging the merger between Schering-Plough and Merck. As Co-Class Counsel, Carella Byrne was able to negotiate a settlement which provided for significant disclosures to shareholders for use in the vote on deciding whether to approve the merger. That settlement received final approval on April 16, 2010. *In re Schering-Plough/Merck Merger Litigation*, Civil Action No. 09-1099(DMC).

In re Vytarin/Zetia Marketing, Sales Practices and Products Liability Litigation

Carella Byrne filed the first complaint, and numerous follow up complaints, against Schering-Plough and Merck relating to their marketing of anti-cholesterol drugs Vytarin and Zetia after it was revealed that the companies had been concealing a significant study questioning the effectiveness of the drugs. The hundreds of cases filed across the nation were consolidated in the United States District Court for the District of New Jersey by the Judicial Panel for Multidistrict Litigation. Carella Byrne was appointed Co-Lead Class Counsel and achieved final approval of a \$41.5 million settlement on behalf of consumers and third-party payors. *In Re: Vytarin/Zetia Marketing, Sales Practices and Products Liability Litigation*, MDL No. 1938 (DMC).

KPMG Tax Shelter Litigation

Carella Byrne was co-counsel for the class with respect to a class action entitled *Marvin Simon, as Authorized Representative for The Marvin Simon Trust, as amended, for Palm Investors, LLC and for The Jeffrey Markman 1993 Irrevocable Trust, Marilyn Simon, Clause Harris, Ann Harris, Ben Simon, Heidi Simon, Britt Simon, Kim Fink, Amy Goldberg, Stefan Rensing, Individually and as Trustee of The S. Rensing 1999 Trust, Fitzroy Ventures, Llc, Michael Le, Individually and as Trustee of the ML Le 1999 Trust, and Mackenzie Ventures, LLC v. KPMG LLP and Sidley Austin Brown & Wood LLP*, Civil Action No. 05-3189(DMC).

The *Simon* class action involved allegations against KPMG, and the law firm of Sidley Austin Brown & Wood, stemming out of their role in the promotion of fraudulent off-shore tax

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shelters. The case settled for approximately \$200,000,000, and was approved by the United States District Court, District of New Jersey. Carella Byrne was instrumental in achieving this significant settlement over vigorous objections from certain class members. Indeed, to achieve the settlement three full days of plenary hearings were held before the District Court, where both fact witnesses and expert witnesses testified. Carella, Byrne handled all aspects of the plenary hearing.

Exxon Dealer Class Action

In 2005, Exxon and Class Counsel reached a settlement which required Exxon to pay \$1,000,070,000 into a settlement fund which would then be utilized to pay claims submitted to a Special Master by over 10,000 class members. On behalf of the State of New Jersey, Carella Byrne participated in the settlement negotiations and assisted class counsel achieve an overwhelming victory for the class.

Further, in connection with the settlement of the class' case, the Honorable Alan Gold, U.S.D.J., appointed Carella Byrne to represent the interests of 34 States as "States' Counsel", in the post-settlement claims administration process. That assignment was completed in 2013. *Allapattah Services, Inc. v. Exxon Corporation*, Case No. 91-0986-Civ-Gold.

Wachovia ERISA Class Action

Carella Byrne was Co-Lead Class Counsel on behalf of the class in *Serio, et al. v. Wachovia Securities LLC*, Civil Action No. 06-4681(DMC), which was brought on behalf of former Prudential Financial financial advisors and branch managers whose deferred compensation contributions were forfeited when they left employment with Wachovia Securities. The plaintiffs argued that the respective deferred compensation plans are, in fact, "retirement plans" under ERISA and, as a result, the employee contributions should not have been forfeited. Alternatively, the plaintiffs argued that they were constructively discharged as a result of adverse employment conditions which made it impossible for them to perform their jobs and, as a result, their accounts should not have been forfeited under the terms of the respective plans. The settlement in this matter was approved in March 2009.

In re: Mercedes-Benz Tele-Aid Contract Litigation

Carella Byrne was Co-Lead Counsel with two other firms on behalf of the class in this multidistrict litigation arising from Mercedes-Benz's continued sales of analog Tele-Aid systems in its automobiles when it knew that FCC regulations required the discontinuance of all analog cellular communications as of February 2008. In this action, *In re Mercedes-Benz Tele-Aid Contract Litigation*, MDL No. 1914(DRD), the plaintiffs allege claims for consumer fraud and breach of warranty. The District Court certified a national consumer fraud and unjust enrichment class in 2009. The settlement of this case received final approval in September 2011.

In Re Virgin Mobile USA IPO Litigation

On November 21, 2007, Carella Byrne filed the first securities class action lawsuit

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against Virgin Mobile USA alleging that Virgin created and distributed a materially false and misleading Registration Statement and Prospectus in connection with its October 2007 IPO.

On March 18, 2008, Carella Byrne and its co-counsel were appointed Co-Lead Counsel for the Class by the United States District Court for the District of New Jersey. Final approval of the \$19.5 million settlement in this matter was granted in December 2010. *In Re: Virgin Mobile USA IPO Litigation*, Lead Case No. 07-5619 (SDW).

Internet Tax Class Actions

This class action was filed in Florida of Monroe County and other Florida counties which charge occupancy taxes on hotel and motel rooms. The complaint alleges that the defendants, travel websites, paid occupancy taxes based upon on the wholesale prices they paid for hotel and motel rooms, rather than the retail prices paid by the customer. The suit seeks taxes on the difference between the wholesale and retail prices. Final approval of the \$6.5 million settlement was granted in January 2011. *The County of Monroe, Florida v. Priceline.com*, Case No. 09-10004-CIV-MOORE/SIMONTON

Johnson & Johnson

Carella Byrne is Co-Lead Counsel in an action asserting shareholder derivative claims and is liaison counsel in separate securities fraud claims relating to allegations that Johnson & Johnson undertook several massive secret recalls of products, violated anti-kickback laws, and engaged in off-label marketing products which resulted in expenses and governmental fines of hundreds of millions of dollars. *In re Johnson & Johnson Derivative Litigation*, Civil Action No. 10-2033(FLW); *Monk v. Johnson & Johnson*, Civil Action No. 10-4841(FLW)

Sprint ETF Action

Carella Byrne was appointed as Co-Class Counsel for a nationwide class of individuals who were charged an early termination fee by Sprint Nextel. The Sprint ETF action settled for \$17,500,000 in 2009 and the Court granted final approval of the settlement in this matter by way of Opinion and Order dated January 15, 2010. *Sampang, et al. v. AT&T Mobility LLC, et al.*, Civil Action No. 07-5324(JLL).

T-Mobile ETF Action

Carella Byrne was appointed as Co-Class Counsel for a nationwide class of individuals who were charged an early termination fee by T-Mobile. The Court granted final approval of the \$12,500,000 settlement in this matter by way of Opinion and Order dated September 10, 2009. *Milliron v. T-Mobile*, Civil Action No. 08-4149(JLL).

AT&T ETF Action

Carella Byrne was appointed as Co-Class Counsel for a nationwide class of individuals who were charged an early termination fee by Cingular and AT&T. The action as settled for in

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excess of \$18,000,000 in 2009 and the Court final approval of the settlement by way of Order dated October 13, 2010. *Sampang, et al. v. AT&T Mobility LLC, et al.*, Civil Action No. 07-5324(JLL).

Patent Infringement Actions

Carella Byrne is also representing numerous pharmaceutical companies in pending patent infringement actions. The majority of these actions arise under the Hatch-Waxman Act. Representative cases include: *Aventis v. Teva Pharmaceutical*, Civil Action No. 07-2454 (JAG) (Allegra); *Schering v. Ivax Corporation*, Civil Action No. 00-2931 (Claritin); *Eli Lilly and Company v. Actavis Elizabeth LLC et. al.*, Civil Action No. 07-770; *Connetics v. Agis Industries*, Civil Action No. 05-5038 (GEB) (Olux); *Merck & Co. v. Apotex*, Civil Action No. 06-5789(MLC) (Trusopt); *Janssen Pharmaceutica v. Apotex*, Civil Action No. 06-1020(DMC) (risperidone); *Cephalon v. Mylan Pharmaceuticals, et al.*, Civil Action No. 03-1394(JCL) (Provigil); *Celgene Corp. v. Barr Laboratories*, Civil Action No. 07-286(SDW)(Thalomid); *Novartis Corp., et al. v. Lupin Ltd.*, Civil Action No. 06-5954(HAA); *Savient Pharmaceuticals v. Sandoz, et al.*, Civil Action No. 0605782(PGS) (oxandrolone).

Trusteeship/Receiverships

In addition to these ongoing matters, Carella Byrne previously was appointed Trustee/Receiver by the United States District Court, District of New Jersey, in connection with securities law violations by Eddie Antar, founder of the defunct consumer electronics chain Crazy Eddie, *Securities and Exchange Commission v. Eddie Antar et al.*, Civil Action No. 89-3773 (JCL).

The Antar Receivership required Carella Byrne to work with the Securities and Exchange Commission ("SEC"), and to commence litigation in numerous foreign jurisdictions, including Switzerland, Canada, Liechtenstein and Israel, in an effort to repatriate and recover millions of dollars in illegally obtained assets which Mr. Antar had diverted from the Crazy Eddie chain.

In its capacity as Trustee/Receiver, Carella Byrne recovered over \$80,000,000, which was paid to Mr. Antar's victims. The SEC has reported that the *Antar* case represented the largest asset recovery in a contested case as of that time. The investment of the assets fully funded all expenses of the receivership and contributed a substantial amount to the settlement fund, even though the receivership extended from 1990 to 2005.

In addition to its other responsibilities Carella Byrne undertook administration of the settlement fund, including addressing tax and lien issues on behalf of the funds and harmed investors, participating in obtaining a tax exempt ruling on fund income from the New Jersey Division of Taxation, and working closely with the claims administrator and the SEC. Notably, in the claims evaluation and payment process, Carella Byrne personally reviewed and evaluated each claim for payment or denial of payment, and communicated the decisions to investors, the SEC and the Court, and appeared in response to any objection or appeal of the claims decisions, none of which was reversed or modified. Carella Byrne also oversaw the distribution process consisting of payments of thousands of checks to investors in a two-tier distribution process

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administered by the claims administrator and the bank. Finally, investor contact information was maintained and updated for future distributions in a related case.

Carella Byrne appeared for the bankruptcy trustee in *In Re Robert E. Brennan, Debtor*, Case No. 95-35502(KCF) and *Conway v. Pirates Associates et al.*, Adv. Pro. No. 98-3245(KCF). The *Brennan* matter arose out of claims by the SEC against Robert Brennan, formerly of First Jersey Securities, for securities law violations. Litigation was pursued in various domestic and foreign jurisdictions for the recovery of assets. We were successful in identifying and piercing various off-shore trusts and recovering millions of dollars for the bankruptcy estate, which was used in part to satisfy the SEC's judgment against Brennan.

Carella Byrne has also appeared either as trustee, receiver or counsel in: *Federal Trade Commission v. Oak Tree Numismatics, et al.* (D.N.J.) (control and operation of a rare coin dealer, distributions to customers, and turn-back of the enterprise to the defendants without exception); *United States v. Sheelan* (D.N.J.) (liquidation of Rule 144 restricted stock as restitution); *Harvey, Attorney General v. Clover Merchant Group et al.* (Superior Court of New Jersey, Essex County Chancery Division) (equitable receivership for fraudulent securities dealer).

Carella Byrne attorneys have also advised and represented clients with respect to numerous antitrust issues relating to restraint of trade, price fixing and monopolization, both in court and in connection with FTC investigations. Those cases include: *Biovail Corporation International v. Hoechst AG*, 49 F.Supp.2d 750 (D.N.J. 1999); *Grace Consulting, Inc. v. Geac Computer Systems, Inc. et al.*, Civil Action No. 02-1252(KSH)(D.N.J.) and *Golden Bridge Technologies v. Nokia, et al.*, Docket No. 2:05-CV-170 (E.D.Tex).

REAL ESTATE, LAND USE AND RESORT DEVELOPMENT

The Firm handles all aspects of transactions involving residential, commercial and industrial properties for both corporate and individual clients. Such transactions involve the preparation and review of real estate and financial documentation, environmental matters, land use regulations, and other related matters. Condominium transactions, including the formation of the condominium project and its approval by the regulatory authorities, and the preparation of the registration statement are included within this area.

The Firm's representation of land developers includes the preparation with the developer of Planning Board Applications, and the appearance before such Boards in connection with applications for subdivisions, variances and site plans. In this connection, the Firm works with the developer's experts in such areas as architecture, engineering, environmental, and traffic.

The Firm has been engaged in extensive litigation in real estate and related environmental matters, and has both represented and opposed major title companies in complex litigation.

Regulatory Practice

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Carella, Byrne, Cecchi, Olstein, Brody & Agnello is uniquely qualified to guide its clients through the proliferation of governmental regulation in a number of different areas of the law, from the regulation of casinos, to hospitals, from resource recovery facilities to public utilities.

Health Care Law

In order to effectively operate in today's competitive environment, hospitals and other health care delivery systems must keep pace with technological advances and changes in law and insurance. We do.

Currently we represent and advise a variety of health care clients, from rehabilitation facilities and nursing homes to general acute care hospitals. And our primary concern is to help each organization achieve workable solutions to operational problems. To accomplish this, we identify problems and then offer both short- and long-term recommendations to prevent exposure to legal and financial risks. Most importantly, we provide up-to-date knowledge in a constantly changing regulatory system.

We'll handle all legal matters relevant to operation; policy and regulatory requirement correction; risk management review; and efficient, effective management plan development. And we do it all with a sensitive approach to our clients' concerns.

We have extensive experience representing fiscally distressed hospitals in turn around situations. Our team of experts provides needed direction in the areas of affiliation, corporate restructuring, general workouts, and vendor negotiations, while overseeing crucial day-to-day financial and system operations.

Public Utilities

Our firm has a well-earned reputation for excellence in litigation and negotiation of public utility matters, with special emphasis on rate applications, alternative energy and cogeneration projects, solid waste litigation, and utility-related public issue negotiation.

In fact, we took the lead in drafting and passage of the "McEnroe Legislation" for resource recovery facilities; we have served as senior counsel in numerous cases before the Board of Public Utilities; and we have worked with major investment banks to provide financing for utility and cogeneration projects.

Environmental Law

We have a broad range of experience in guiding clients through the increasingly complex web of federal and state laws designed to clean up and preserve the environment. We offer counsel on compliance with all government statutes and regulations, as well as their application to commercial and real estate transactions. We can help businesses obtain the needed air, water and waste permits. And our litigation attorneys have extensive trial and appellate experience in a variety of cases, including toxic tort, hazardous waste, products liability, insurance law, and more.

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Tax

Our firm has sophisticated experience in New Jersey State tax matters. We represent multi-national and multi-state corporations in planning, compliance, and litigation cases involving corporate income tax, sales and use tax, and other state and local taxes, including property taxes. We also provide services in federal, corporation, partnership, individual and non-profit association tax matters. This includes providing representation before the U.S. Tax Court and Administrative offices of the IRS.

Labor Relations

Carella, Byrne, Cecchi, Olstein, Brody & Agnello handle all aspects of labor relations matters in the public and private sectors. Our labor relations practice encompasses representation of management in collective bargaining negotiations, including preparation of management's contract proposals, acting as management's chief spokesperson at negotiations, and preparation and finalization of negotiated collective bargaining agreements. In addition, we represent management in the public and private sectors in grievance, disciplinary and binding arbitration proceedings.

We also have extensive experience in handling matters before the New Jersey Public Employment Relations Commission and the National Labor Relations Board and in representing management in labor related litigation in both the state and federal courts.

Government Affairs

Recognizing the need for both adversarial and negotiation excellence in the modern government arena, Carella, Byrne, Cecchi, Olstein, Brody & Agnello has developed an extensive public issues practice. Our members have testified before Congress, State Legislatures, plus state, county and local governmental and regulatory agencies. To help us retain our leadership role, we are active in a public policy consortium -- the State Capital Law Firm Group -- working within a network of prestigious firms located in every state and throughout the world.

We first work to help our clients focus their concerns, then to develop strategies for implementing their proposals, and finally to act as their representative in every forum of public policy development.

With a strong emphasis on administrative law proceedings and municipal law, we have been successful in representing major national clients in government-related matters. This strength enables us to provide full-service public policy programs for clients, ranging from specific issue representation to integrated crisis management.

International Law

Carella, Byrne, Cecchi, Olstein, Brody & Agnello has valuable expertise in various aspects of international law.

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Areas of note include airline transportation and trademark litigation involving gray market or parallel imports. Our foreign litigation experience is in the United Kingdom, Canada, Japan, West Germany, Austria, Australia, New Zealand and Italy.

The firm has particular expertise in taking foreign discovery for use in domestic litigation under the Hague Convention as well as Consular Treatises. Additionally, we have special expertise in the international overreach of the U.S. Antitrust Laws and the international transfer of technology. To accomplish this, we maintain a close working relationship with associate counsel in many foreign countries. These firms have special competence in dealing with economic and financial issues, both in their own countries and in regional economic blocks in their region, such as the Common Market.

In connection with our intellectual property law expertise, we file and prosecute patent and trademark applications throughout the world, including the European Patent. And we handle the sale and licensing of technology and trademarks.

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PARTNERS

CHARLES C. CARELLA
CCCarella@CarellaByrne.com

CHARLES C. CARELLA has been a member of Carella, Byrne, Cecchi, Olstein, Brody & Agnello since 1976 and is Chairman of the Executive Committee. He has extensive experience in many areas of corporate practice, including mergers and acquisitions, bank finance, both state and federal administrative matters, plus environmental and solid waste matters. He has appeared on numerous occasions before the Board of Public Utilities in all forms of utility matters, and has served as a Trustee/Receiver in matters initiated by the Federal Trade Commission, Securities and Exchange Commission, the Federal District Court for the District of New Jersey and has served as Provisional Director upon appointment by the Superior Court of the State of New Jersey, Chancery Division.

Mr. Carella graduated from Fordham University with a B.S. degree in 1955 (Cum Laude) and received an LL.B. degree from Rutgers University in 1958. He was admitted to the New Jersey Bar in 1959 and the New York Bar in 1983.

He has served as an Assistant Prosecutor as well as Special Prosecutor of Essex County; Director of the New Jersey State Lottery Commission, Executive Secretary to the Governor, State of New Jersey, 1975-1976; Member of the Ethical Standards Commission for the State of New Jersey; as well as Chairman, New Jersey State Racing Commission, 1976-1980. He has served as Chief Counsel to the Passaic Valley Sewerage Commissioners.

Mr. Carella is a member of the Essex County, New Jersey State, New York State and American Bar Associations, the Association of Trial Lawyers of America, and the American Judicature Society. He is a member of the Finance Board of the Archdiocese of Newark, and a Trustee Fellow of Fordham University. He was formerly Chairman of the Board of Trustees of The University of Medicine and Dentistry of New Jersey; a member of the Board of Trustees of Robert Wood Johnson University Hospital; a member of the Board of Trustees of University Health System of New Jersey; a member of the Board of Bally Gaming International, Inc., and a member of The Board of Carteret Savings Bank.

Mr. Carella has been named to *Who's Who in American Law*.

BRENDAN T. BYRNE
BByrne@CarellaByrne.com

BRENDAN T. BYRNE graduated from Princeton University with an A.B. degree in 1949 and received an LL.B. degree from Harvard Law School in 1950.

He served as Prosecutor of Essex County, New Jersey; as President of the New Jersey Public Utility Commission; as Assignment Judge of the New Jersey Superior Court; and then as Governor of New Jersey from 1974-1982.

Mr. Byrne is a former Vice President of the National District Attorney's Association; Chairman of the National Commission on Criminal Justice Standards and Goals; Chairman,

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National Governors Association on International Trade; and trustee of Princeton University. He is an Editor of the New Jersey Law Journal and of Irish Law Reports; and former Chairman of the Princeton University Council on New Jersey Affairs and United States Marshals Foundation. He is a former member of the Board of Directors of Mack Cali Realty and Chelsea GCA.

Mr. Byrne was a member of the Board of Directors of Prudential Insurance Company of America, New Jersey Bell Telephone Company, Elizabethtown Water Company, Jamesway Corporation, Ingersoll-Rand and served as a Commissioner of the New Jersey Sports and Exposition Authority. He was litigation counsel to Carvel Corp. and Witco Corporation.

JAMES E. CECCHI
JCecchi@CarellaByrne.com

JAMES E. CECCHI is a member of the firm's executive committee and specializes in complex civil and chancery litigation in federal and state court as well as the prosecutor of complex federal class actions involving claims arising under federal securities laws, consumer protection laws and antitrust laws. Mr. Cecchi personally handled on behalf of the firm the Exxon class action litigation, Merck Securities litigation, KPMG class action litigation and is currently prosecuting securities class actions, antitrust class actions and numerous consumer fraud class actions on behalf of the firm. Mr. Cecchi joined the firm in 1994 after serving in the United States Department of Justice as an Assistant United States Attorney for the District of New Jersey. In that capacity, Mr. Cecchi participated in numerous significant criminal prosecutions involving money laundering, narcotics smuggling and violations of federal firearms laws.

Mr. Cecchi graduated from Colgate University in 1989 with honors, majoring in History and Political Science. Mr. Cecchi was Executive Editor of the Colgate News. In 1989 he graduated from Fordham University School of Law and was a member of the International Law Journal. Mr. Cecchi served as Law Clerk to the Honorable Nicholas H. Politan in the United States District Court, District of New Jersey from 1989-1991. He is a member of the Federal, New Jersey State, Essex County and Bergen County Bar Associations.

ELLIOT M. OLSTEIN
EOlstein@CarellaByrne.com

ELLIOT M. OLSTEIN, a member of the Executive Committee, has broad experience in intellectual property law including securing patent protection; licensing of technical information and patents; infringement and validity opinions; evaluating intellectual property rights for investors; and intellectual property litigation. His particular areas of expertise include chemical and biochemical inventions with particular emphasis on their medical applications.

He also has experience in corporate law and business financing, including venture capital financing, with specific emphasis on technically-oriented business.

Mr. Olstein graduated from Columbia College and Columbia School of Engineering, receiving an A.B. Degree in 1960 and a B.S.Ch.E. in 1961. He received a J.D. Degree from

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Georgetown University Law Center in 1965 and an LL.M. in taxation from New York University.

Mr. Olstein served for three years as Chairman of the Patents, Trademarks, Copyrights and Unfair Competition Section of the New Jersey Bar Association and is admitted to practice in the States of New Jersey, New York, and Virginia.

JAN ALAN BRODY JBrody@CarellaByrne.com

JAN ALAN BRODY a member of the Executive Committee, became associated with the firm of Cecchi & Politan in 1976. He became a partner in 1982 and, in 1987, the firm name was changed to Cecchi, Brody & Agnello when partner Nicholas H. Politan became a United States District Court Judge.

Mr. Brody graduated from Boston University cum laude in 1973 with an A.B. degree in political science. In 1976, he graduated Boston University Law School with a Juris Doctor degree. He has had extensive experience in complex civil and chancery litigation and has a substantial family law practice.

He is a member of the American, New Jersey State, and Bergen County Bar Associations. He has also served as counsel for the Fort Lee Planning Board and as a Standing Master appointed by the United States District Court for the District of New Jersey.

JOHN M. AGNELLO JAgnello@CarellaByrne.com

JOHN M. AGNELLO joined the firm of Cecchi and Politan in 1979. In 1983, he became a partner in the firm. In 1987, he became a name partner as the firm's name was changed to Cecchi, Brody & Agnello after Nicholas H. Politan became a U.S. District Court Judge. Cecchi, Brody and Agnello merged with Carella, Byrne in 1990 at which time Mr. Agnello became a partner in Carella, Byrne.

Mr. Agnello graduated from Stevens Institute of Technology in 1975 receiving a B.E. with Honor in mechanical engineering. In 1979, he graduated from Seton Hall University School of Law receiving a J.D., Cum Laude. He has extensive experience in complex commercial litigation with particular emphasis on environmental, insurance coverage, ERISA and construction cases. Additionally, he has a substantial labor practice representing management (both public and private) in collective bargaining negotiations, labor mediation and arbitration proceedings, as well as actions before the National Labor Relations Board and the New Jersey Public Employment Relations Commission. Mr. Agnello also represents ERISA Pension and Welfare Funds.

He is a member of the American, Federal, New Jersey State, and Bergen County Bar Associations.

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LINDSEY H. TAYLOR, specializes in complex commercial litigation in federal court. He graduated received a bachelor's degree with honors from the University of North Carolina at Chapel Hill in 1983 and a juris doctor degree in 1986. He joined Carella, Byrne, Cecchi, Olstein, Brody & Agnello as of counsel in 2002 and became a partner in 2008. He is admitted to the bars of the States of New Jersey and New York, the District of Columbia, and the United States District Courts for the District of New Jersey, Southern and Eastern Districts of New York, and the Eastern District of Michigan, the United States Courts of Appeal for the Second, Third, and Sixth Circuits, and the United States Supreme Court. Reported cases: *In re Suprema Specialties*, 285 Fed.Appx. 782 (2d Cir. 2008)(whether N.J. Affidavit of Merit Statute applied to malpractice claim brought by N.Y. bankruptcy trustee against NJ based accountants); *Thoroughbred Software International, Inc. v. Dice Corp.*, 488 F.3d 352 (6th Cir. 2007) *aff'g in part and rev'g in part* 439 F.Supp.2d 758 (E.D.Mich. 2006) *on remand* 529 F.Supp.2d 800 (E.D.Mich. 2007)(copyright infringement of computer software); *Yuen v. Bank of China*, 151 Fed.Appx. 106 (3d Cir. 2005)(whether NJ or NY law applied to oral settlement agreement); *Aetna Casualty and Surety Co. v. Aniero Concrete Co.*, 404 F.3d 566 (2d Cir. 2005)(whether construction contract was valid because of a failure to satisfy a condition precedent and remedies if there was no valid contract); *Lucent Information Management, Inc. v. Lucent Technologies, Inc.*, 186 F.3d 311 (3d Cir. 1999)(how much "use on commerce" is necessary to obtain trademark protection); *Circle Industries USA, Inc. v. Parke Construction Group, Inc.*, 183 F.3d 105 (2d Cir.) *cert. denied* 120 S.Ct. 616 (1999)(what is the citizenship for diversity purposes for corporation which has ceased doing business); *Brown v. Grabowski*, 922 F.2d 1097 (3d Cir. 1990), *cert. denied* 111 S.Ct. 2827 (1991)(civil rights claim relating to right to protection); *Hall v. AT&T Mobility*, 608 F.Supp.2d 592 (D.N.J. 2009)(enforceability of class action waiver in arbitration clause); *In re Mercedes-Benz TeleAid Contract Litigation*, 257 F.R.D. 46 (D.N.J. 2009)(class certification of 50 state consumer fraud class); *Harper v. LG Electronics, Inc.*, 595 F.Supp.2d 486 (D.N.J. 2009)(motion to dismiss consumer fraud class action); *Coppolino v. Total Call International*, 588 F.Supp.2d 594 (D.N.J. 2008)(whether prior settlement was entitled to Full Faith and Credit); *Waudby v.*

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Verizon Wireless Services LLC, 228 F.R.D. 173 (D.N.J. 2008)(motion to intervene and appointment of class counsel); *In re Gabapentin Patent Litigation*, 395 F.Supp.2d 175 (D.N.J. 2005)(motion for summary judgment in Hatch-Waxman patent infringement case); *Euro-Pro Corporation v. TriStar Products*, 172 F.Supp.2d 567 (D.N.J. 2001)(whether shape of hand-held vacuum had acquired secondary meaning for trademark protection); *Biovail Corporation International v. Hoechst AG*, 49 F.Supp.2d 750 (D.N.J. 1999)(antitrust claim related to settlement agreement to pay generic drug maker to keep product off the market); *Broadcast Music, Inc. v. 84-88 Broadway, Inc.*, 942 F.Supp. 225 (D.N.J. 1996)(copyright infringement); *Broadcast Music, Inc. v. DeGallo, Inc.*, 872 F. Supp. 167 (D.N.J. 1995)(copyright infringement); *Lifschultz Fast Freight v. Rainbow Shops*, 805 F.Supp. 1119; 784 F.Supp. 89 (S.D.N.Y. 1992)(claims relating to negotiated freight charges made in excess of published tariffs); *McGill v. Mountainside Police Dept.*, 720 F.Supp. 418 (D.N.J. 1989)(civil rights claims); *In Re Sound Radio, Inc.*, 145 B.R. 193 (Bankr., D.N.J. 1992)(motions to pay professional fees from bankruptcy estate); *In Re Prestegaard*, 139 B.R. 117 (Bankr., S.D.N.Y. 1992)(extent to which homestead exemption can avoid mortgage); *Unanue v. Rennert*, 39 A.D.2d 289, 831 N.Y.S.2d 904 (1st Dept. 2007)(appeal of *sua sponte* order); *Downs v. Yuen*, 298 A.D.2d 177, 748 N.Y.S.2d 131 (1st Dept. 2002)(enforceability of Hong Kong divorce decree under international comity); *Velazquez v. Jiminez*, 336 N.J.Super. 10 (App.Div. 2000)(whether Good Samaritan statute applies to physician responding to emergency in the hospital); *Conestoga Title Insurance Co. v. Premier Title Agency*, 328 N.J.Super. 460 (App.Div. 2000)(whether corporation can make fidelity bond claim for thefts by sole owner of corporation); *Citibank v. Errico*, 251 N.J.Super. 236 (App. Div. 1991)(whether NJ or NY law applies to deficiency judgment on defaulted mortgage). Publications: "Responding to the Complaint" in *New Jersey Federal Civil Procedure*, New Jersey Law Journal Books, 3d Ed. 2009; "Applying the CISG to International Software Transactions", *Metropolitan Corporate Counsel*, October 1999, "The Digital Millennium Copyright Act: New Protections for the Computer Age", Intellectual Property Supplement, *New Jersey Law Journal*, July 26, 1999; "Copyright Basics for Occupational Therapy Practitioners", *OT Practice*, May 1999, "Facing the New Millennium-Without Bugs", *OT Practice*, December 1998; "The Year 2000 Malpractice Bug: Waiting to Trap the Unwary Attorney", for National Legal Malpractice Conference, sponsored by ABA Standing Committee on Lawyers' Professional Liability, September 1998; "Self-Help in 2000: How a business can do its own Y2K compliance without violating copyright laws", Intellectual Property Supplement, *New Jersey Law Journal*, July 20, 1998; "State and Local Taxation of Software: A Trap for the Unwary CIO" Chief Information Officer Journal, Fall 1989. Lectures: "Intellectual Property Basics for Health Care Attorneys", 2004 Health & Hospital Law Symposium, New Jersey Institute for Continuing Legal Education, October, 15, 2004; "Hot Topics in Copyright Law", 2003 Intellectual Property Summit, New Jersey Institute For Continuing Legal Education, May 2, 2003; "The Inside Track on Copyright Law", WYNY 103.5 First Annual "Country Holiday Expo" songwriters' seminar, November 18, 1995. Practice areas: Commercial Litigation; Intellectual Property Litigation; Bankruptcy. Mr. Taylor was a merit selection to the 2005, 2008, 2009 and 2010 New Jersey "Super Lawyers".

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DONALD S. BROOKS received a B.A. degree from Columbia College and an LLB degree from Columbia University Law School. He served as a Trial Attorney with the National Labor Relations Board and immediately prior to joining Carella, Byrne, he was Senior Counsel for Merck & Co., Inc. During his twenty-seven-year career with Merck, Mr. Brooks coordinated a wide variety of general corporate work for the company, including negotiations and preparation of contracts, regulatory compliance and worldwide labor relations activities. Most recently he supervised the legal aspects of the company's worldwide technology transfer activities, including planning, negotiations and drafting licensing agreements, strategic alliances and joint as well as marketing, distribution, supply and research related agreements. Mr. Brooks has also served as a U.S. delegate to the International Labor Organization in Geneva, Switzerland. He is a member of the New Jersey and Pennsylvania Bar Association and has served as Chairman of the Corporate Law Section of the New Jersey Bar Association. Mr. Brooks is also a member of the New York Bar and has published articles on labor relations, joint ventures and training and development in corporate law departments.

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DONALD ECKLUND Donald Ecklund focuses his practice on all aspects of complex commercial disputes, environmental litigation, consumer fraud, and class action litigation. Prior to joining the firm, Donald was an associate at a prestigious New York law firm for four years where he represented clients in complex products liability litigation, as well as various environmental contamination cases and other matters. Donald has served on committees in several multi-district litigations (MDLs) involving pharmaceutical drugs and medical devices. Most recently, he has been extensively involved in class action litigation arising from deceptive sales practices and engaged in commercial litigation relating to direct broadcast satellite television.

A former law clerk for the Honorable Marina Corodemus, Mass Tort Judge for the State of New Jersey (Retired), where he focused on complex mass tort and environmental litigation, and for the Honorable Joseph C. Messina, Presiding Judge Chancery Division, General Equity Part, Superior Court of New Jersey (Retired) where he focused on business and commercial litigation, Donald brings unique insights and effective advocacy skills. Donald values the views of and input from his clients, and strives to meet their needs and obtain optimal outcomes.

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MEGAN A. NATALE graduated from Seton Hall University with a Bachelor of the Arts degree in 2007. In 2010, Ms. Natale received a Juris Doctor degree from New York Law School. In 2011, Ms. Natale joined this firm as an associate. She engages in general and complex civil litigation, with a focus on personal injury litigation, employment law, and municipal law. Ms. Natale is admitted to practice before the New Jersey State Bar and the United States District Court for the District of New Jersey.

AMANDA J. BARISICH engages in general civil litigation in state and federal court. She received a B.S. degree from Lehigh University in 2007 and Juris Doctor degree with a concentration in Intellectual Property from Seton Hall University School of Law in 2010. Prior to entering this firm, Ms. Barisich clerked for the Hon. Bernadette N. DeCastro, J.S.C. in the Civil Division of the Superior Court of New Jersey, Hudson Vicinage.

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