

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,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068

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.

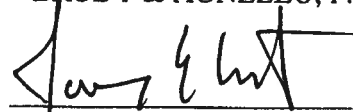
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ON BEHALF OF PLAINTIFFS AND THE SETTLEMENT CLASS:

Dated: 6/26/17

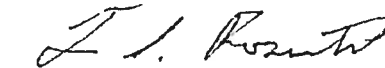
CARELLA, BYRNE, CECCHI, OLSTEIN,
BRODY & AGNELLO, P.C.



James E. Cecchi
Class Counsel

Dated: 6/26/17

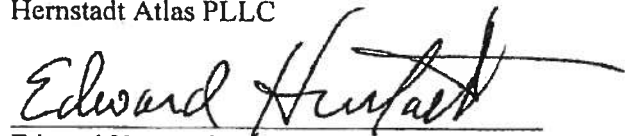
Law Offices of Thomas Rosenthal



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