

GISKAN SOLOTAROFF & ANDERSON LLP
Attorneys at Law

March 12, 2018

VIA ECF

Hon. Renee Marie Bumb
United States District Court
District of New Jersey
Mitchell H. Cohen United States Courthouse
1 John F. Gerry Plaza
Camden, NJ 08101

Re: Cannon et al. v. Ashburn Corporation, et al., Case No. 1:16-cv- 01452 (RMB)(AMD)

Dear Judge Bumb,

We represent Plaintiffs in the above matter.

While we believed the original Settlement was fair and reasonable to the Class, following the Court's order of February 21, the Parties made certain changes to the Settlement Agreement. We have attached as Exhibit 1 the Amendment to the Settlement Agreement and Release.

The Amendment makes three noteworthy changes to the Settlement:

1. Lengthens the Redemption Period for Use of Credits from 12 months to 18 months to allow Class members even more time to redeem their Credits.
2. Provides that Class members who do not use all of their Credits during the Redemption period will receive a cash payment up to the amount of their unused Credits from a newly created \$500,000 cash payment fund.
3. Class Counsel will defer their attorneys' fee request until the end of the Redemption Period to allow the Court to consider the full benefits of the Settlement and has agreed to fund the cash fund through a reduction of any eventual request for fees.

The Parties will submit their papers in support of the Settlement later today per the Court's Order.

Respectfully,



Oren Giskan

AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE

This Amendment to the Revised Settlement Agreement and Release (“Amendment”) 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”).

1. Section IV.B. of the Revised Settlement Agreement is hereby amended to read as follows:

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 eighteen (18) months following the date the Credit codes described in Paragraph G below are emailed to the Class Members (the “Redemption Period”).

2. A new Section IV.N. shall be added to the Revised Settlement Agreement, as follows:

Within twelve (12) months following the Effective Date, WTSO shall place into escrow with the Settlement Administrator the sum of \$500,000 (the “Cash Fund”). The Cash Fund shall be created by WTSO consistent with its business objectives and will be funded in a manner as explained to Class Counsel.

At the conclusion of the Redemption Period, WTSO will provide the Claims Administrator with an accounting of Class Members with unused Credits in excess of \$2.00, and the Settlement Administrator shall mail checks to all such Class Members for their remaining balance, up to the total in the Cash Fund.

If the total cash due to Class Members exceeds the Cash Fund, then the monies will be distributed pro rata based on the amount of remaining Credits to the Class Members entitled to such cash payments. If the cash

payments are less than the Cash Fund, up to \$35,000 in excess shall be returned to WTSO. Any amounts over \$35,000 thereafter remaining in the Cash Fund shall be available as set forth in Amended Section VIII.B.

3. A new Section IV.O. shall be added, as follows:

WTSO agrees that it will not advertise an “Original Price” for any domestic wine that WTSO believes has not been offered for sale to consumers by any winery or retailer other than WTSO, except that WTSO may advertise an “Original Price” at which WTSO previously sold the same wine. WTSO further agrees that, if in the future it advertises an “Original Price” for any wine, it will retain written records of the source of such “Original Price” for a period of 3 years.

4. A new Section VI.L. shall be added, as follows:

Within five (5) days after the entry of an Order granting Final Approval, the Settlement Administrator will email to all Class Members for whom it has a valid email address an electronic copy of a Notice, in the form attached hereto as Exhibit A, advising the Class Members of the Final Approval and the Amended Terms as set forth herein.

If the Court does not approve the Settlement, the Settlement Administrator will email to all Class Members for whom it has a valid email address an electronic copy of a Notice, in the form attached hereto as Exhibit B, advising the Class Members that the Court has not approved of the Settlement and that no Credits will be issued.

5. Section VIII.B. is hereby amended to read as follows:

Class Counsel may request, after the Redemption Period has ended, and Defendant shall not oppose, an award of attorneys’ fees and expenses of no more than of One Million and Two Hundred Thousand Dollars (\$1,200,000) plus any amounts remaining in the Cash Fund, 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 Cavanagh (Ret.).

6. Section VIII.C. is hereby replaced with the following:

Within sixteen (16) months of the Effective Date, WTSO shall place into escrow with KCC the total sum of \$1,200,000 (the "Fee Fund"). The Fee Fund shall be created by WTSO consistent with its business objectives and will be funded in a manner as explained to Class Counsel.

Upon an award of fees by the Court, KCC shall pay the amount of the award from the Fee Fund and from any excess amounts in the Cash Fund to Giskan Solotaroff & Anderson LLP, who will allocate fees, in consultation with Carella, Byrne, among Class Counsel. If the amounts in the Fee Fund and the Cash Fund exceed the awarded fees, they shall be returned to WTSO.

- 7. The Settlement Administrator shall post this Amendment to the Settlement Agreement and the Order Granting Final Approval on the Settlement Website within two (2) days of Final Approval.
- 8. All other terms and conditions of the Settlement Agreement, to the extent not impaired by this Amendment, shall remain in full force and effect.

ON BEHALF OF PLAINTIFFS AND THE SETTLEMENT CLASS:


Dated: _____

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

James E. Cecchi
Class Counsel

Dated: 3-9-18

Law Offices of Thomas Rosenthal



Thomas Rosenthal
Class Counsel

6. Section VIII.C. is hereby replaced with the following:

Within sixteen (16) months of the Effective Date, WTSO shall place into escrow with KCC the total sum of \$1,200,000 (the "Fee Fund"). The Fee Fund shall be created by WTSO consistent with its business objectives and will be funded in a manner as explained to Class Counsel.

Upon an award of fees by the Court, KCC shall pay the amount of the award from the Fee Fund and from any excess amounts in the Cash Fund to Giskan Solotaroff & Anderson LLP, who will allocate fees, in consultation with Carella, Byrne, among Class Counsel. If the amounts in the Fee Fund and the Cash Fund exceed the awarded fees, they shall be returned to WTSO.

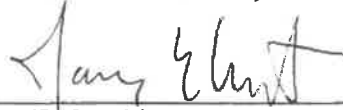
7. The Settlement Administrator shall post this Amendment to the Settlement Agreement and the Order Granting Final Approval on the Settlement Website within two (2) days of Final Approval.

8. All other terms and conditions of the Settlement Agreement, to the extent not impaired by this Amendment, shall remain in full force and effect.

ON BEHALF OF PLAINTIFFS AND THE SETTLEMENT CLASS:

Dated: 03-09-2018

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

Dated: 3-9-18

GISKAN, SOLOTAROFF & ANDERSON,
LLP



Oren Giskan
Class Counsel

ON BEHALF OF DEFENDANT ASHBURN CORPORATION.

Dated: _____

Joseph Arking

Dated: 3/9/2018

Hernstadt Atlas PLLC



Edward Hernstadt
Class Counsel

Dated: _____

GISKAN, SOLOTAROFF & ANDERSON,
LLP

Oren Giskan
Class Counsel

ON BEHALF OF DEFENDANT ASHBURN CORPORATION.

Dated: _____

Joseph Arking

Dated: _____

Hernstadt Atlas PLLC

Edward Hernstadt
Class Counsel

Dated: _____

GISKAN, SOLOTAROFF, & ANDERSON,
LLP

Oren Giskan
Class Counsel

ON BEHALF OF DEFENDANT ASHBURN CORPORATION.

Dated: 3/9/18 _____

Joseph Arking

EXHIBIT A

Notice of Final Approval 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

On _____, 2018 (the “Final Approval Date”), the United States District Court for the District of New Jersey gave Final Approval to the Class Action Settlement in *Cannon v. Ashburn Corporation*, Civil Action No. 16-1452 (RMB)(AMD) with revisions as noted below.

Background

In March of 2016, Kyle Cannon, Lewis Lyons, and Dianne Lyons (collectively, “Plaintiffs” in this case) brought suit against Ashburn Corporation, d/b/a “Wines ‘Til Sold Out” and d/b/a WTSO.com (hereinafter WTSO) alleging that WTSO advertised “Original Prices” that were either not real, or were higher than the price set by the winery itself. 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 and denies all liability of any kind associated with the claims alleged. The Court has not decided who is right in this case.

On November 16, 2017, the Court conditionally certified a settlement class consisting of individuals who 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 and preliminarily approved a Settlement Agreement which provided for, among other things, the issuance of Credits to Class Members who completed Verification Forms. The Court also directed that Notice be given to all Class Members by email and by regular mail, and set a hearing on Final Approval of the Settlement for March 19, 2018.

The full terms of the Settlement Agreement and the calculation of Credits can be found on the Settlement Website at www.winesettlement.com or by calling 866-652-8231.

Final Approval and Credit Distribution

On _____, 2018 (the “Final Approval Date”), the United States District Court for the District of New Jersey gave Final Approval to the Class Action Settlement.

If you are a Class Member and completed a Verification Form, once the Court’s Order becomes final and unappealable, you will receive a unique non-transferable code that you may use on the WTSO.com website to access your Credits as set forth in the Notice that was sent to all Class Members in December, 2017. **Class Members have until April 19, 2018 to complete Verification Forms.** If you have already completed a Verification Form, you do not need to do anything further to receive your Credits. Please note that you do not need to list your purchases from WTSO on the Verification Form. You only need to list the wines for which you have already received a refund.

In approving the Settlement, the Court also approved an Amendment to the Revised Settlement Agreement that provides for the following:

- (a) The Redemption Period for the use of Credits will be extended by six (6) months, to a total of eighteen (18) months.
- (b) A Cash Fund in the amount of \$500,000 will be established to provide cash payments to Class Members who have submitted Verification Forms and have more than \$2.00 in unused Credits. Payments will be in the amount of the unused Credits up to the amount in the Cash Fund. If the total cash due to Class Members exceeds the Cash Fund, then the monies will be distributed pro rata based on the amount of remaining Credits to the Class Members entitled to such cash payments
- (c) Class Counsel will adjourn its request for an award of attorneys' fees and expenses until after the Redemption Period has ended, and will ask the Court to award attorneys' fees and expenses of no more than \$1.2 million plus certain amounts that may remain in the Cash Fund after distribution to the Class Members, as more fully described in the Amendment to the Revised Settlement Agreement.

THIS IS ONLY A SUMMARY OF THE FINAL SETTLEMENT. For more information regarding your rights and options, you can visit the Settlement website: www.winesettlement.com or contact the Claims Administrator by calling 866-652-8231

EXHIBIT B

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

You are receiving this Notice because you are a member of the Settlement Class that was conditionally certified in *Cannon v. Ashburn Corporation*, Civil Action No. 16-1452 (RMB)(AMD).

Background

In March of 2016, Kyle Cannon, Lewis Lyons, and Dianne Lyons (collectively the “Plaintiffs” in this case) brought suit against Ashburn Corporation, d/b/a “Wines ‘Til Sold Out” and d/b/a WTSO.com (hereinafter WTSO) alleging that WTSO advertised “Original Prices” that were either not real, or were higher than the price set by the winery itself. 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 and denies all liability of any kind associated with the claims alleged. The Court has not decided who is right in this case

On November 16, 2017, the Court conditionally certified a settlement class consisting of individuals who 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 and preliminarily approved a Settlement Agreement which provided for, among other things, the issuance of Credits to Class Members who completed Verification Forms. The Court also directed that Notice be given to all Class Members by email and by regular mail, and set a hearing on Final Approval of the Settlement for March 19, 2018.

Denial of Final Approval

A hearing was held on March 19, 2018 in the United States District Court for the District of New Jersey upon the parties’ Motion for Final Approval to the Class Action Settlement. [At/Following] the hearing, the Court denied the Motion. As a result, Class Members will not receive any Credits, nor have they released any claims against the Defendant, and the lawsuit between the Plaintiffs and the Defendant will proceed.