

IN THE STATE COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

BRIAN NOWE and
MARY ALLEN WILSON TONDEE, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

ESSEX TECHNOLOGY GROUP, LLC (d/b/a
Bargain Hunt),

Defendants.

Civil Action No. SC 2020 CV 694

Muscogee County
State Court

NOV 10 2020

Filed in Chambers
Andy Prather

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[PROPOSED] ORDER GRANTING SETTLEMENT CLASS REPRESENTATIVES'
UNCONTESTED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

Settlement Class Representatives Brian Nowe and Mary Allen Wilson Tondee ("Settlement Class Representatives") have moved the Court for preliminary approval of a proposed class action settlement with Essex Technology Group, LLC, d/b/a Bargain Hunt ("Essex" or "Defendant"), the terms and conditions of which are set forth in the Settlement Agreement filed with the Court ("Agreement").

Settlement Class Representatives contend that, by providing electronically-printed receipts with more than the last five digits of a credit card number or debit card number at the point of a sale or transaction, Defendant committed violations of state and federal law, including but not limited to the Fair and Accurate Credit Transactions Act ("FACTA"), 15 U.S.C. § 1681, *et seq.* Settlement Class Representatives seek to recover, on behalf of a class of all consumers who, at any time between August 1, 2016 and June 30, 2017, were provided an electronically-printed receipt

with more than the last 5 digits of a credit card or debit card number at the point of a sale or transaction at any Bargain Hunt store.

Defendant denies that there is any factual or legal basis for Settlement Class Representatives' allegations. Defendant denies any liability and that Settlement Class Representatives or any other members of the Settlement Class have suffered injury or are entitled to monetary or other relief. Defendant finally denies that this case should be certified as a class action, except for purposes of settlement. In that regard, Defendant specifically denies that there are questions of fact or law common to the class, that the Settlement Class Representatives are typical of consumers in the United States, and that a settlement class is an appropriate method for fairly and efficiently adjudicating the controversy; however, in the interest of settling, Defendant does not oppose Settlement Class Representatives' request to certify the Settlement Class.

Settlement Class Representatives have moved the Court for preliminary approval of a proposed class action settlement with Defendant, the terms and conditions of which are set forth in the Agreement.

The terms of the proposed notice program ("Notice Program") to Settlement Class members are outlined in the motion for preliminary approval.

As a result of the claims asserted by the Settlement Class Representatives, Defendant stopped printing more than the last five digits of the credit card or debit card number on receipts issued to customers and has taken steps to ensure all Bargain Hunt stores remain in compliance with FACTA.

In addition, Participating Claimants who submit a timely and complete Claim Form along with either: (1) the original or copy of a qualifying receipt for a purchase from Bargain Hunt during

the class period that shows more than the last 5 digits of his or her credit card or debit card number; or (2) the original or copy of a credit card or debit card statement that shows the Participating Claimant's first and last name and a purchase from Bargain Hunt during the class period, shall be awarded a single benefit of up to \$100. The maximum monetary benefit per Person is \$100, regardless of the number of Claim Forms submitted and regardless of the number of transactions during the class period.

If the total cost of the settlement would exceed the settlement cap of two million dollars and zero cents (\$2,000,000.00), then the benefit payable to each Participating Claimant shall be proportionately reduced, such that the total cost of the settlement would not exceed the settlement cap. In the event the total monetary benefits awarded to Participating Claimants is less than \$200,000, the remainder (less any amount of Settlement Administrator costs in excess of \$185,000) shall be distributed to one or more non-profit organizations approved by this Court. In the event that the total cost of notice and administration is less than \$185,000, the surplus shall be added to the \$200,000 floor referenced in this paragraph.

As part of the Agreement, Settlement Class Representatives' attorneys may apply to this Court to award them up to six-hundred-sixty-six-thousand-six-hundred-sixty-seven dollars and zero cents (\$666,667.00) to pay their attorneys' fees, and an award of costs (including court costs), expenses of up to fifteen-thousand dollars and zero cents (\$15,000). Settlement Class Representatives attorneys may also apply to this Court for payments to the Settlement Class Representatives for up to five-thousand dollars and zero cents (\$5,000.00) for each Settlement Class Representative. Such amounts must be approved by the Court, and the Court will defer any ruling on the appropriateness of such awards until the Final Approval Hearing.

Having considered all matters submitted to it at the hearing on the motion and otherwise,

including the complete record of this action, and good cause appearing therefore, the Court grants preliminary approval and hereby finds and concludes as follows:

1. The capitalized terms used in this Order shall have the same meaning as defined in the Agreement except as otherwise expressly provided.

2. The Court preliminarily approves the settlement as within the range of possible final approval and as meriting submission to the Settlement Class for its consideration. The Parties' Agreement was reached as a result of extensive arm's length negotiations between the Parties and their counsel. Thus, Settlement Class Representatives and their counsel had sufficient information to evaluate the strengths and weaknesses of the case and to conduct informed settlement discussions.

3. For purposes of the settlement only, the Court provisionally certifies the Settlement Class, which consists of all consumers who, at any time between August 1, 2016 and June 30, 2017, were provided an electronically-printed receipt with more than the last 5 digits of a credit card or debit card number at the point of a sale or transaction at any Bargain Hunt store. Excluded from the Settlement Class are: (1) all Persons who properly and timely opt out pursuant to the Agreement; and (2) the judge to whom this Action is assigned and any member of his or her immediate family.

4. The Court preliminarily finds and concludes, solely for purposes of considering this Agreement, that the requirements of O.C.G.A. § 9-11-23 are conditionally satisfied for certification of the Settlement Class. Solely for the purpose of considering this Agreement, the Court finds Settlement Class Representatives have met the requirements of O.C.G.A. § 9-11-23 for the reasons set forth in Settlement Class Representatives' Unopposed Motion for Preliminary Approval of Class Action Settlement, as well as for the reasons that follow.

- a. The Settlement Class members are too numerous to be joined in a single action;
- b. There are questions of fact or law common to the class, and the common questions predominate over any questions affecting only individual members;
- c. The Settlement Class Representatives are typical of consumers around the country in that they were all exposed to the identical risk, and, thus, their claims for violations of the FACTA statute are such that they will fairly and adequately protect the interests of the class; and
- d. A settlement class is an appropriate method for fairly and efficiently adjudicating the controversy and is superior to alternative means of resolving the claims and disputes at issue in this litigation.

5. The Court further notes that the complaint which the Settlement Class Representatives filed with this Court sets forth causes of action for a nationwide class; that Defendant does not oppose Settlement Class Representatives' request to certify a nationwide Settlement Class for the purpose of this settlement; and that, in the event final approval of the settlement is denied, or a mandate is issued reversing an award of final approval, or the settlement is otherwise terminated, the certification of the Settlement Class will be void; and that, in such event, Defendant does not waive, and instead expressly reserves, all rights to defend this Action and any other action and shall not be precluded from challenging class certification in further proceedings in the Action or in any other action.

6. The Court conditionally designates the law firms of Charles A. Gower PC, Chant & Company A Professional Law Corporation, and Wm. Dixon James, P.C. as Settlement Class Counsel and Brian Nowe and Mary Allen Wilson Tondee as Settlement Class Representatives for purposes of this settlement. The Court preliminarily finds that the Settlement Class Representatives and Settlement Class Counsel fairly and adequately represent and protect the interests of the absent Settlement Class members. The Court designates, and approves, Heffler Claims Group to serve as Settlement Administrator.

7. Because the settlement is within the range of reasonableness and possible final approval, notice shall be provided to the Settlement Class as described in Section 6 of the Agreement.

- a. The Notice Program consists of: (1) a Long Form Notice; (2) Email Notice; (3) Publication and Internet Notice; (4) Settlement Website; and a (5) Settlement Hotline.
- b. Prior to the date notice commences, the Settlement Administrator will establish the Settlement Website, which shall contain the Long Form Notice; answers to frequently asked questions; the address for the Settlement Administrator and addresses and telephone numbers for Settlement Class Counsel; the Settlement Agreement; the signed Preliminary Approval Order and publicly filed motion and accompanying papers; and a downloadable and online version of the Claim Form. The Settlement Administrator shall add to the Settlement Website other material filings by the parties or the Court regarding the settlement, including Settlement Class

Representatives' motion for attorneys' fees, costs, expenses, and/or payments to the Settlement Class Representatives, the motion for final approval, and any orders with respect to such motions.

- c. The Settlement Administrator shall cause the Publication Notice to be published in accordance with the Notice Program.
- d. The Settlement Administrator shall initiate the process of providing the online notices on websites as set forth in the Notice Program, so that overall notice of the settlement (including the Publication Notice) is reasonably calculated to apprise the Settlement Class members of the settlement.
- e. The Settlement Administrator also will receive and process Claim Forms.

8. The Court approves, as to form and content, the Claim Form and notices that are substantially similar to the forms attached as Exhibits 1-4 to the Agreement. The Claim Form and all notices are written in plain English and are easy to comprehend. The Parties shall have discretion to jointly make non-material minor revisions to the Claim Form and notices before they are made available to the Settlement Class. Responsibility for settlement administration, including, but not limited to, notice and related procedures, shall be performed by the Settlement Administrator, subject to the oversight of the Parties and this Court as described in the Agreement.

9. The Court finds that the Parties' program for providing notice to the Settlement Class is reasonably calculated to provide the best notice practicable under the circumstances to the Settlement Class, and is in full compliance with the United States Constitution, the requirements of due process, O.C.G.A. § 9-11-23, and any other applicable law. The Parties and the Settlement

Administrator shall comply with the Notice Program as set forth in the Agreement.

10. Any member of the Settlement Class who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Agreement, must submit a request to Opt-Out to the Settlement Administrator, pursuant to the instructions set forth in the Notice Program. The request must be postmarked by no later than 45 days after the commencement of Notice Program. No one shall be permitted to exercise any exclusion rights on behalf of any other Person, whether as an agent or representative of another or otherwise, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other legal authorization and no one may exclude other Persons within the Settlement Class as a group, class, or in the aggregate.

11. Any member of the Settlement Class who wants to make a claim must submit a valid Claim Form to the Settlement Administrator during the Claims Period pursuant to the instructions set forth in the Notice Program and on the Claim Form.

12. Any member of the Settlement Class who elects to be excluded shall not receive any benefits of the settlement, shall not be bound by the terms of the Settlement Agreement, and shall have no standing to object to the settlement or intervene in the Action. If the settlement is granted final approval, all Settlement Class members who do not timely submit a valid request for exclusion will be bound by the Final Approval Order and final judgment and enjoined from bringing or prosecuting any action against any of the Released Parties that challenge the settlement or otherwise assert or involve, directly or indirectly, a Released Claim.

13. Any Settlement Class member who does not submit a valid and timely request for exclusion may submit an objection to the Agreement. The written objection must satisfy the requirements described in the Notice Program. An objection must be received by the Settlement Administrator and postmarked no later than 45 days after the commencement of Notice Program

or it will be rejected.

14. Any Settlement Class member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class member's own expense. However, if the Settlement Class member wants to object to the settlement at the Final Approval Hearing (either personally or through counsel), the Settlement Class member must submit a written objection as set forth in the prior paragraph of this Order.

15. Settlement Class Representatives shall file their motion for final approval and class representative payments no later than [20 days prior to the Final Approval Hearing] and their motion for an award of attorneys' fees, costs, and expenses no later than [14 days prior to the Opt-Out Deadline]. Those motions and all supporting documentation shall simultaneously be posted to the Settlement Website.

16. This Court finds that the Settlement Class asserts both federal and state law claims alleging injury in fact caused by Defendant. This Court concludes that it has subject matter jurisdiction over the case and controversy and has the authority to enter a final judgment, following a hearing on final approval.

17. In the event that the proposed settlement is not finally approved by the Court, or in the event that the Agreement becomes null and void pursuant to its terms, this Preliminary Approval Order and all orders entered in connection herewith shall become null and void, shall be of no further force and effect.

18. This Order shall not be construed as an admission or concession by Defendant of the truth of any allegations made by the Settlement Class Representatives or of liability or fault of any kind.

19. A Final Approval Hearing shall be held before this Court at [] [].m. on [], 2020, ~~NA~~

in the N/A, to address: (a) whether the proposed settlement should be finally approved as fair, reasonable and adequate, and whether the Final Approval Order should be entered, and (b) whether Settlement Class Counsel's application for attorneys' fees, costs, and a payment to the Settlement Class Representatives should be approved.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class members, be continued by Order of the Court.

10-11-2020 16:27

IT IS SO ORDERED this ___ day of _____ 2020.



~~The Honorable []~~