CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IAN OLSEN; ADAM HANEY; SHARON MOTLEY; and MEMARY LAROCK, individually and on behalf of all others similarly situated, Plaintiffs, v. CONTEXTLOGIC INC., Defendant.	Case No. 2019CH06737 Calendar: 6 Hon. Celia G. Gamrath

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT & INCORPORATED MEMORANDUM OF LAW

Dated: December 16, 2019

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Representative Plaintiffs Ian Olsen, Adam Haney, Sharon Motley, and Memary LaRock respectfully move on an unopposed basis for final approval of the class-wide Settlement Agreement entered into between the Parties to this Action, a true and correct copy of which is attached as Exhibit 1 to the Declaration of Frank S. Hedin ("Hedin Decl.") filed concurrently herewith.[1]

INTRODUCTION

The Settlement achieved by the Representative Plaintiffs and Class Counsel in this matter has been met with overwhelming approval by the Settlement Class. To date, over 65,000 Settlement Class Members have submitted claims, and not a single Class Member has objected to the Settlement. Given the size of this Settlement and the large number of "professional objectors" who seek out such settlements to lodge objections (in TCPA settlements in particular), the fact that there are no objections is a testament to the fairness, the adequacy, and the strength of this Settlement.

Indeed, the positive reaction from the Settlement Class is not surprising given the excellent result produced by the Settlement. The Settlement establishes a non-reversionary $16,000,000.00 Settlement Fund to compensate Settlement Class Members and to cover administration expenses, a Fee Award to Class Counsel, and Service Awards to the Representative Plaintiffs for their efforts in obtaining this excellent result for the Settlement Class. In addition to the $16 million common fund, the Settlement provides wide-ranging injunctive relief to all Settlement Class Members.

The Settlement achieved in this case is particularly strong given the significant risks of non-recovery for the Settlement Class if litigation had proceeded. Specifically, in this litigation Defendant ContextLogic Inc. ("ContextLogic") raised significant defenses to the claims asserted by the Representative Plaintiffs, including whether Plaintiffs and the members of the Settlement Class consented to receive the text messages at issue under the Telephone Consumer Protection Act, 47 U.S.C. §227 (the "TCPA"), whether ContextLogic's dialing system constituted an

[1] Unless otherwise defined herein, all capitalized terms have the same force, meaning and effect as ascribed in Section 2 ("Definitions") of the Settlement Agreement.

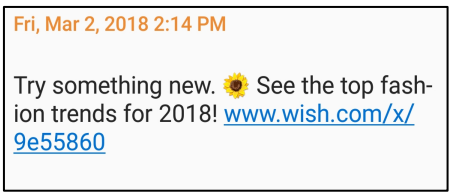
"automatic telephone dialing system" ("ATDS") under the TCPA, whether the TCPA constitutes an impermissible restriction on free speech in violation of the First Amendment, whether the Settlement Class could be certified on a contested basis, and whether a class-wide judgment for the Settlement Class would have violated due process. Accordingly, winning class certification and then prevailing on the merits on behalf of the Settlement Class was far from certain, and there was a real possibility that Settlement Class Members would have received no compensation whatsoever absent the Settlement.

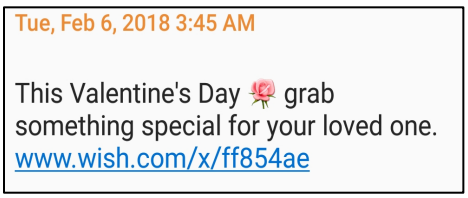
Because the Settlement reached in this matter is fair, adequate, and reasonable, has been overwhelmingly approved by the Settlement Class Members, and will result in a significant cash recovery to the Settlement Class, the Court should grant final approval of the Settlement and approve the unopposed request for attorney's fees, expenses, Incentive Awards, and *cy pres* awards previously sought in the November 19, 2019 motion filed by the Representative Plaintiffs and Class Counsel.

BACKGROUND

I. Nature of the Action[2]

As alleged in the Complaint, ContextLogic owns and operates several web and app-based e-commerce businesses, including its flagship marketplace Wish.com. Compl. ¶ 8. To build its business and market and sell products, ContextLogic transmits text-message advertisements to its customers, examples of which (received by the Representative Plaintiffs) are depicted below:





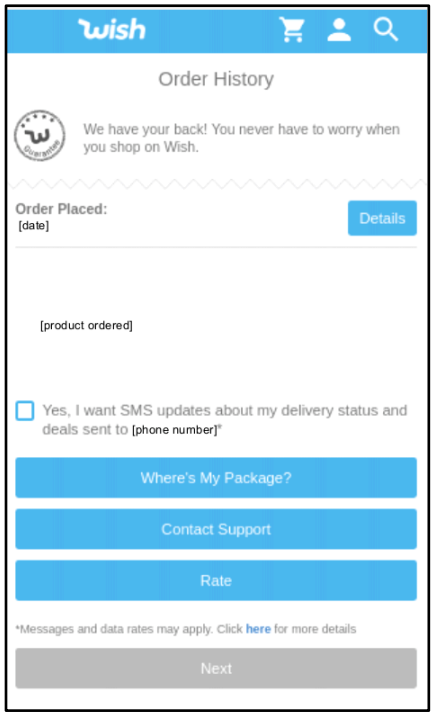
Id. ¶¶ 16-17.

Transmitted on the Short Messages Service ("SMS") platform, ContextLogic's text messages are sent for "telemarketing purposes" and constitute "advertisements" as defined by 47

[2] This section includes allegations from Plaintiffs' Complaint.

C.F.R. 64.1200(f). *Id.* ¶ 26. ContextLogic uses various telephone numbers to send its text messages, including the five-digit short-code number "89293" and the 10-digit long-code number "855-894-7420". *Id.* ¶ 20. The Complaint alleges that ContextLogic transmits its text messages to consumers using an ATDS within the meaning of the TCPA, 47 U.S.C. § 227(b)(1)(A). *Id.* ¶ 22. ContextLogic disputes that it has used an ATDS.

Up until April 26, 2018, ContextLogic sent text-message advertisements to its customers, including those who, while reviewing the status of a prior order on the "order history" screen of ContextLogic's platform, checked the box shown alongside the disclosure statement shown in the screenshot below:



See Motley v. ContextLogic Inc., No. 18-cv-2117 (N.D. Cal.), ECF No. 17-1 at 6 (stating "Yes, I want SMS updates about my delivery status and deals sent to [phone number]*").

ContextLogic's business records reveal that each of the Representative Plaintiffs and Settlement Class Members began receiving ContextLogic's text-message advertisements after they had checked the box on the foregoing screen of the Wish.com platform.

The Representative Plaintiffs contend that, by checking the box on the "order history" screen shown above, they did not provide ContextLogic with TCPA-compliant "express written consent" to send them advertisements and that ContextLogic therefore violated the TCPA when it sent autodialed "advertising" text messages to them and the other Settlement Class Members. *See* Compl. ¶ 27. Specifically, the Representative Plaintiffs contend that the disclosure statement alongside the checkbox depicted above does not strictly comply with the TCPA's regulatory provisions governing "express written consent," which require, inter alia, that consumers receive a notice that "clearly and conspicuously" discloses that an ATDS will be used to transmit "advertising" and/or "telemarketing" messages to their mobile numbers, and that consent to receive such messages is not a condition of purchasing goods or services. *See* 47 C.F.R. § 64.1200(f)(8).

ContextLogic rejects this theory and contends that the Representative Plaintiffs' claims are without merit. Throughout this litigation, ContextLogic has maintained, among other things, that the disclosure statement shown in the screenshot above complied with the TCPA's requirements for obtaining "express written consent" because, among other reasons, the asterisk at the end of the disclosure statement (". . . sent to [phone number]*") corresponds to the following statement:

> *Messages and data rates may apply. Click here for more details

See Motley, ECF No. 17-1 at 6. Clicking the "here" hyperlink "for more details" would have directed a consumer to the "Terms of Service" webpage, which stated in pertinent part:

> **What if I want to receive Wish mobile text alerts or opt-out?**
>
> If you would like to enroll to receive mobile texts and alerts about Wish products and services, you may sign up to do so on the checkout page for purchasing a product through Wish by providing your consent to receive recurring autodialed marketing texts from or on behalf of us at the mobile number you've provided to opt-in. You understand that consent is not a condition of purchase. Message and data rates may apply. If you would like to be removed from the Wish text list, you can follow the instructions provided in those messages or otherwise reply STOP to any Wish alert. If you have any questions, you may reply HELP to any Wish alert or contact customer care at support@wish.com.

Motley, ECF No. 17-1 at 11. According to ContextLogic, the foregoing set of disclosure statements, and the manner in which they were presented, complied with the TCPA's "express written consent" framework, such that all of the Representative Plaintiffs and Settlement Class

Members provided ContextLogic their "express written consent" to receive text-message advertisements when they checked the box on the "order history" screen shown above. As such, ContextLogic disputes that the subject text messages were sent on an "unsolicited" basis and violated the TCPA.

Thus, absent the Settlement, the outcome of this litigation would turn on whether an ATDS was used, and whether or not a consumer, by checking the box on the "order history" screen shown above, has manifested his or her "express written consent" within the meaning of the TCPA.

II. Pre-Filing Investigation

Beginning in March 2018, Plaintiffs' counsel conducted a comprehensive pre-filing investigation concerning every aspect of the factual and legal issues underlying the claims alleged in this matter. Hedin Decl. ¶ 12; Declaration of David W. Hall ("Hall Decl.") ¶ 12; Declaration of Eugene Y. Turin ("Turin Decl.") ¶ 9. These extensive pre-filing efforts included:

- Researching the nature of ContextLogic's business, including its online marketplaces operated at Wish.com and other sub-domains thereto, as well as the company's SMS text message marketing practices;
- Interviewing dozens of recipients of ContextLogic's text messages about their use of the Wish.com platform and the text messages they received from ContextLogic, and inspecting and analyzing these consumers' text-message transmission histories, the screenshots of text messages that they received from ContextLogic (extracted from their devices), and various other records reflecting their interactions with ContextLogic;
- Researching changes in ContextLogic's business practices over the pertinent period of time, including reviewing comments and public statements from ContextLogic executives concerning the company's marketing practices (and changes in those practices over the course of the statutory period), historical postings from consumers on social media and online complaint websites concerning their receipt of ContextLogic's text messages, and hundreds of screenshots posted by these consumers depicting the text messages they received from ContextLogic over the statutory period;

- Inspecting various publicly accessible APIs available on developer pages of ContextLogic's website and other company-maintained websites, and analyzing the methods employed by ContextLogic and the merchants that utilize its APIs to transmit SMS text messages to consumers during the applicable statutory period;
- Analyzing data and instructional documentation pertaining to various potentially relevant data files and code repositories and packages on ContextLogic's publicly accessible Github.com page, including Python modules and PHP SDKs for Wish.com merchants that pertain to mobile marketing;
- Performing research and analysis regarding ContextLogic's text messages and text-message transmission systems, and the short-code and long-code telephone numbers used to deliver ContextLogic's text messages to consumers;
- Performing an in-depth analysis of the various versions of the ContextLogic Privacy Policy, Terms of Service, and other publicly accessible documents available on ContextLogic's websites at various times during the statutory period;
- Researching the relevant law and examining the pertinent facts to assess the merits of potential TCPA claims against ContextLogic and defenses that ContextLogic might assert thereto, including any potential grounds for ContextLogic to seek to compel its customers to arbitrate such disputes;
- Surveying federal court dockets in prior actions against ContextLogic alleging violations of the TCPA, and carefully analyzing the court filings in those actions and the defenses raised by ContextLogic to both the merits of the claims alleged and to class certification;
- Investigating ContextLogic's financial condition in order to assess the likelihood of ultimately recovering a class-wide statutory damages award from ContextLogic; and
- Reviewing numerous FCC declaratory rulings and orders in effect during the statutory period, as well as then-pending FCC rulemaking proceedings and comment periods pertaining thereto, in order to gauge the likelihood of such proceedings being held

applicable to claims for violation of the TCPA against ContextLogic.[3]

Hedin Decl. ¶ 12; Hall Decl. ¶ 12.

As a result of this thorough pre-filing investigation, Plaintiffs' counsel was able to develop multiple potentially viable theories of liability for TCPA claims against ContextLogic, analyze the legal issues relevant to the merits of claims under each such theory, assess the likelihood of ContextLogic successfully compelling such claims to arbitration, and ultimately prepare complaints against ContextLogic aimed at maximizing the likelihood of certifying a class and recovering meaningful class-wide relief. Hedin Decl. ¶ 13.

III. Litigation in Federal District Court

On April 6, 2018, Plaintiff Motley filed a class action complaint against ContextLogic in the U.S. District Court for the Northern District of California, alleging that ContextLogic had violated the TCPA by transmitting unsolicited telemarketing text messages via an ATDS to her and numerous other consumers across the country. Hedin Decl. ¶ 14 (citing *Motley*, ECF No. 1).

On June 18, 2018, ContextLogic moved to compel Plaintiff Motley to arbitrate her claims, on the grounds that she had assented to ContextLogic's Terms of Service (and its incorporated arbitration provision) by enrolling in ContextLogic's Wish.com service and by checking a checkbox on the "order history" screen of the Wish.com mobile application. *See* Hedin Decl. ¶ 16 (citing *Motley*, ECF No. 17-1 at 6). Prior to responding to ContextLogic's motion to compel arbitration, Plaintiff's counsel expanded on their pre-filing investigative efforts by thoroughly researching certain aspects of the Wish.com sign-up and checkout flows utilized by consumers on ContextLogic's Wish.com mobile SDKs and web-based platforms during the relevant time period. *See id.* ¶ 17. On July 16, 2018, Plaintiff Motley filed her response in opposition to ContextLogic's

[3] *See, e.g.*, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015); *Petition for Reconsideration of Great Lakes Higher Education Corp.; Nelnet, Inc.*; *Pennsylvania Higher Education Assistance Agency; and the Student Loan Servicing Alliance*, CG Docket No. 02-278 (filed Dec. 16, 2016).

motion to compel arbitration, and on July 23, 2018, ContextLogic filed its reply. *Id*. ¶ 19. Oral argument on the motion was held on October 25, 2018. *Id.*; Hall Decl. ¶ 19.[4]

On November 9, 2018, the Honorable James Donato, the judge presiding over Plaintiff Motley's action, issued a written order denying ContextLogic's motion to compel Plaintiff Motley to arbitration. Hedin Decl. ¶ 22 (citing *Motley v. ContextLogic, Inc.*, No. 18-cv-02117, 2018 WL 5906079 (N.D. Cal. Nov. 9, 2018)). Although the court held that ContextLogic had failed to demonstrate the existence of a contract to arbitrate even if Plaintiff Motley had checked the box pertaining to text messages on the "order history" page of its Wish.com platform, the court also stated that, "[i]f the evidence ultimately shows that Motley agreed to receive the messages, a good argument might be made that she is not well-positioned to bring a TCPA claim." *Motley*, 2018 WL 5906079, at *2.

On November 23, 2018, ContextLogic answered Plaintiff Motley's complaint, denying any and all liability to Plaintiff Motley or the proposed class. Hedin Decl. ¶ 24 (citing *Motley*, ECF No. 44). ContextLogic's answer asserted a lack of an "injury-in-fact" under Article III of the U.S. Constitution as an affirmative defense to Plaintiff Motley's claims, among 22 other affirmative defenses. *Id.* ¶ 24 (citing *Motley*, ECF No. 44 at 6 (affirmative defense No. 2)).

On November 28, 2018, Plaintiff LaRock filed a class action complaint against ContextLogic in the Northern District of California, alleging individual and class-wide claims for violation of the TCPA similar to those previously alleged by Plaintiff Motley. (*LaRock*, ECF No. 1; *see also* Hedin Decl. ¶ 26.)

Over the next two months, Plaintiffs served comprehensive written discovery requests to ContextLogic, seeking materials relevant to the merits of Plaintiffs' claims and class certification. Hedin Decl. ¶ 25. Likewise, ContextLogic served written discovery requests to Plaintiffs. *Id.* ¶

[4] While the motion to compel arbitration was being briefed, the Parties exchanged initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1); engaged in preliminary discussions concerning each side's production of discoverable documents and information relevant to the merits of Ms. Motley's claims and ContextLogic's defenses thereto, as well as to issues of class certification; and prepared and filed a joint case management statement in Plaintiff Motley's case. *See* Hedin Decl. ¶ 21 (citing *Motley*, ECF No. 36).

28. Plaintiffs also served multiple subpoenas for documents and deposition testimony to key marketing personnel for ContextLogic. Hedin Decl. ¶ 29. After further back-and-forth, including many meet-and-confer calls and e-mails, the Parties exchanged wide-ranging categories of responsive documents, electronically stored data, and information with one another, concerning every aspect of the cases. *See id.* ¶¶ 30, 32.

On January 11, 2019, following weeks of meet-and-confers between the Parties over the adequacy of ContextLogic's answer and affirmative defenses to Plaintiff Motley's complaint, ContextLogic filed an amended answer (*Motley*, ECF No. 52). Hedin Decl. ¶ 31. Although the amended answer contained more detailed responses to certain allegations, ContextLogic again denied any and all liability to Plaintiff Motley or the proposed class, and again asserted a lack of an "injury-in-fact" under Article III of the U.S. Constitution as an affirmative defense to Plaintiff Motley's claims, among 22 other affirmative defenses. *Id.* (citing *Motley,* ECF No. 52 at 6 (affirmative defense No. 2)).

On January 14, 2019, ContextLogic moved to compel Plaintiff LaRock to arbitrate her claims (*LaRock*, ECF No. 9), on substantially the same grounds as previously raised in support of its motion to compel arbitration of Plaintiff Motley's claims. Hedin Decl. ¶ 33. Later that same day, ContextLogic also moved for judgment on the pleadings in Plaintiff Motley's case (*Motley,* ECF No. 53) on the grounds that the TCPA constitutes a constitutionally impermissible restriction on free speech in violation of the First Amendment to the U.S. Constitution, or, alternatively, to stay Plaintiff Motley's action pending resolution of an appeal pending before the U.S. Court of Appeals for the Ninth Circuit in *Gallion v. Charter Commc'ns, Inc.*, No. 18-55667 (9th Cir. Mar. 8, 2018). Hedin Decl. ¶ 33.

Shortly thereafter, the Parties agreed to explore potential resolutions to this litigation at a mediation before Judge Andersen, a JAMS mediator and former U.S. District Court Judge for the Northern District of Illinois, on February 28, 2019 in Chicago, Illinois. *See* Hedin Decl. ¶ 34. Plaintiffs' counsel negotiated certain parameters and terms for the mediation, including an agreement from ContextLogic to produce additional important documents, ESI, and information

to Plaintiffs in advance of the mediation. *See* Hedin Decl. ¶¶ 36, 34. On January 25, 2019, the Parties stipulated to stay both cases pending the completion of mediation. *Id.* ¶ 35 (citing *Motley*, ECF No. 55; *LaRock*, ECF No. 17).

IV. Settlement Negotiations

Several weeks before the mediation, ContextLogic produced various agreed-upon categories of supplemental materials to Plaintiffs' counsel, including business records and ESI pertaining to the merits of Plaintiffs' claims and ContextLogic's defenses (including issues of potential consent), issues of class certification, the size and scope of potential settlement classes, and the insurance coverage situation (which reflected the absence of any applicable policies of insurance), as well as data dictionaries sufficient to give meaning to these materials. *See id*. ¶ 36.

Armed with these materials, the information produced by ContextLogic during discovery, and the knowledge acquired through counsel's comprehensive pre-filing and post-filing investigations, Plaintiffs and their counsel were able to intelligently assess the strengths and weaknesses of the Settlement Class's claims and ContextLogic's defenses, the likelihood of prevailing at class certification, the size of the Settlement Class, the extent of potentially recoverable class-wide damages, and ContextLogic's ability to satisfy a judgment. *See id*. The Parties subsequently prepared and exchanged mediation statements detailing their respective views of the case and positions on settlement prior to the mediation. *Id*. ¶ 37. Plaintiffs' counsel also separately prepared a detailed 40-page, single-spaced statement for Judge Andersen's consideration. *Id*.

On February 28, 2019, the Parties attended a full day of mediation under the supervision of Judge Andersen of JAMS in Chicago, Illinois. *Id*. ¶ 38. After over ten (10) hours of contentious, arm's-length negotiations, and in response to a proposal made by Judge Andersen late in the evening, the Parties reached an agreement on the principal components of the proposed class-wide Settlement. *Id*. ¶ 39. The Parties executed a binding term sheet that would later be memorialized in the Settlement Agreement, the execution of which was conditioned upon negotiations over the

remaining terms and confirmatory discovery regarding the size and composition of the Settlement Class, among other important details. *Id*.

On March 31, 2019, as the Parties were engaged in confirmatory discovery, the U.S. Supreme Court issued its decision in *Frank v. Gaos*, 139 S. Ct. 1041 (2019), which vacated a federal district court's approval of a class action settlement and remanded for the district court to consider the plaintiffs' standing under Article III of the U.S. Constitution and thus its own subject-matter jurisdiction.[5] Hedin Decl. ¶ 40. With the continued assistance of Judge Andersen, the Parties carefully studied the decision in *Frank* and assessed its potential impact on Plaintiffs' claims, which were pending in federal court in California at the time. After carefully considering the nature of the claims alleged in this litigation, thoroughly reviewing certain aspects of the Northern District of California's order denying ContextLogic's motion to compel arbitration of Plaintiff Motley's claims (*see, e.g., Motley*, ECF No. 43 at 5 (remarking that "[i]f the evidence ultimately shows that Motley agreed to receive the messages, a good argument might be made that she is not well-positioned to bring a TCPA claim")), and analyzing ContextLogic's records reflecting the Plaintiffs' and Settlement Class Members' interactions on the Wish.com platform prior to the transmission of the text messages in question, the Parties had significant concerns regarding a federal court's ability to exercise subject-matter jurisdiction over these claims, including for purposes of approving the Parties' proposed Settlement. Hedin Decl. ¶ 40 (citing *Frank*, 139 S. Ct. at 1046 (vacating final approval of class action settlement and remanding for trial or appellate court to consider the plaintiffs' Article III standing)).

After further discussions overseen by Judge Andersen, counsel for the Parties agreed that the most prudent course forward for each of their respective clients – and, most of all, for the members of the Settlement Class – was to seek approval of the Settlement in a state-court forum unconstrained by the jurisdictional limitations of Article III of the U.S. Constitution, where it could

[5] *See Frank*, 139 S. Ct. at 1046 ("We have an obligation to assure ourselves of litigants' standing under Article III. That obligation extends to court approval of proposed class action settlements. A court is powerless to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing").

be ensured that the presiding court has jurisdiction to approve the proposed Settlement and authorize the prompt disbursement of its substantial benefits to the members of the Settlement Class. Hedin Decl. ¶ 41. The Parties executed an amendment to the term sheet previously executed at mediation to include, inter alia, an agreement to dismiss and re-file the litigation in this state-court forum. *Id*.[6]

Thus, on May 31, 2019, the Parties filed stipulations of dismissal without prejudice in Plaintiffs' cases pending in the Northern District of California. *Id.* ¶ 43 (citing *Motley,* ECF No. 62 (stipulation of dismissal without prejudice); *LaRock*, ECF No. 24 (stipulation of dismissal without prejudice)).[7] And on June 3, 2019, Representative Plaintiffs Olsen, Haney, Motley, and LaRock initiated this Action by filing the operative consolidated Class Action Complaint (hereinafter, the "Complaint") in the Circuit Court of Cook County, Illinois, County Department of the Chancery Division, alleging the same claims against ContextLogic as previously alleged in the actions in the Northern District of California. *Id.* ¶ 44.

On July 2, 2019, the Parties filed an executed waiver of service form in the Action pursuant to Illinois Code of Civil Procedure Section 2-213 to afford sufficient time for the Parties to complete the confirmatory discovery process, select a Settlement Administrator, and prepare the formal Settlement Agreement. *Id.* ¶ 45.

V. Confirmatory Discovery

Prior to executing the Settlement Agreement, ContextLogic produced to Plaintiffs' counsel over five (5) gigabytes of voluminous business records extracted from its internal databases, as well as several other important categories of data necessary for Plaintiffs' counsel to confirm the

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[6] ContextLogic directed the allegedly unauthorized text messages to a substantial number of Illinois residents, including residents of Cook County, and including specifically Plaintiffs Olsen and Haney.

[7] In connection with the dismissal and refiling of these claims, Plaintiffs' counsel negotiated a tolling agreement (also memorialized in the Parties' amendment to the term sheet) to protect the Settlement Class Members' claims from any statute of limitations or repose-based defenses that could potentially arise in the unlikely event that the Settlement does not obtain final approval upon the Action's refiling in state court. Hedin Decl. ¶ 42.

approximate size and scope of the proposed Settlement Class contemplated by the Settlement, among other merits, class, and insurance-related details. *Id.* ¶ 46. The materials reviewed by Plaintiffs' counsel during this confirmatory process included, inter alia, database extracts reflecting the identities of (and contact information for) individuals who potentially fall within the proposed Settlement Class, the dates on which such individuals checked the box on the "order history" screen of ContextLogic's web or mobile-based platforms, and the range of dates on which text messages were sent to these individuals. *Id.*

To assist in this process, Plaintiffs' counsel retained an experienced and highly qualified expert, Colin B. Weir of the Boston, Massachusetts-based telecommunications consulting firm Economics & Technology, Inc., to analyze ContextLogic's database. Plaintiffs' counsel and Mr. Weir were able to verify and confirm the scope of the Settlement Class and the reliability of both the underlying data and the methodology utilized to analyze it. *Id.* ¶ 47.

VI. Settlement Administrator Selection

Thereafter, the Parties held a competitive bidding process in which three (3) nationally recognized class-action settlement administration companies submitted bids to administer the Settlement. *Id.* ¶ 48. After reviewing and comparing costs among the three proposals, and obtaining further follow-up information from each potential administrator, the Parties agreed to engage KCC, LLC ("KCC") to administer the Settlement. *Id.* ¶ 49. Plaintiff's counsel worked with ContextLogic's counsel and KCC to ensure that all notice-related materials comply with due process and applicable law and are easily understood by Settlement Class Members. *Id.* ¶ 50.

On August 21, 2019, after completing confirmatory discovery, selecting a Settlement Administrator, and negotiating the remaining details of the proposed Settlement, the Parties executed the Settlement Agreement. *Id.* ¶ 51.

TERMS OF THE SETTLEMENT

A copy of the Settlement Agreement is attached as Exhibit 1 to the Hedin Decl. (filed concurrently herewith), the key terms of which are summarized as follows:

I. Settlement Class Definition

The Settlement Class that the Court provisionally certified at preliminary approval is defined as follows:

> All persons within the United States who, between April 6, 2014 and the Preliminary Approval Date, used or subscribed to a wireless or cellular service and were sent one or more text message(s) from ContextLogic Inc. or text messages related to a ContextLogic Inc. e-commerce market place promoting the sale of goods or services by ContextLogic Inc. or an affiliate, subsidiary, or agent of ContextLogic Inc.

Settlement Agreement § 2.1.46.[8]

II. Monetary Relief

ContextLogic has agreed to pay cash in the amount of $16,000,000.00, on a non-reversionary basis, to establish the Settlement Fund for the benefit of Settlement Class Members. The Settlement Fund will be used to pay all Settlement costs, including all Settlement Shares to Settlement Class Members, all Settlement Administration Costs to KCC, a Fee Award to Class Counsel, and Service Awards to the Representative Plaintiffs, and will be in full satisfaction of all of ContextLogic's monetary obligations under the Settlement and Settlement Agreement. Settlement Agreement § 4.1.

After Settlement Administration Costs and any Fee Award and Service Awards have been paid from the Settlement Fund, each Settlement Class Member who submits a valid claim will receive a pro rata Settlement Share from the remainder of the Settlement Fund.[9] *Id.* § 4.2.1; *see*

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[8] The following are excluded from the Settlement Class: (1) any trial judge and other judicial officers who may preside over this case; (2) the Mediator; (3) ContextLogic, as well as any parent, subsidiary, affiliate or control person of ContextLogic, and the officers, directors, agents, servants or employees of ContextLogic; (4) any of the Released Parties; (5) any Settlement Class Member who has timely submitted a Request for Exclusion by the Opt-Out Deadline; (6) any person or entity who has previously given a valid release of the claims asserted in the Action; (7) Plaintiffs' Counsel; and (8) any person for whom ContextLogic has a record demonstrating that the person elected on or after April 26, 2018 to receive automated advertising or marketing text messages from ContextLogic Inc. and that the first of any such message(s) sent by ContextLogic Inc. to such person occurred after such election was made. Settlement Agreement § 2.1.45.

[9] Any uncashed or undeliverable check funds will be deposited into the Wish.com accounts of those Settlement Class Members who failed to cash the Benefit Checks delivered to them or could not be delivered Benefit Checks. *See* Settlement Agreement § 4.2.4 (concerning

also id. § 4.2.2-4.2.8 (timing of and process for payment distribution). Settlement Class Members have until February 25, 2020 to submit Claim Forms. As things currently stand, each of the 65,797 Settlement Class Members who have submitted claims will receive a Settlement Share of approximately $140 if the Settlement is granted final approval and the requested Fee Award and Service Awards are approved. Additionally, two legal aid societies in the greater Chicago area, as selected by the Court, will each receive a *cy pres* award of $200,000 ($400,000 in total) to use in furtherance of their charitable purpose. No portion of the $16 million Settlement Fund will revert back to ContextLogic. *Id.* § 4.2.7.

Further, ContextLogic has agreed to provide an additional voucher good for $10.00 off any purchase of goods of $20.00 or more on a ContextLogic marketplace to each Approved Claimant who elects to receive their Settlement Share by direct deposit as Wish Cash into their Wish.com account – on top of the Settlement Class Member's pro rata Settlement Share from the $16 million fund. *Id.* § 4.2.1. Of the 65,797 Class Members who have submitted claims to date, 3,416 have elected to receive their Settlement Share via Wish Cash and will thus also receive the $10.00 off voucher.

III. Non-Monetary Relief

Finally, ContextLogic has agreed to implement and maintain changes to its practices going forward, to ensure compliance with the TCPA. Settlement Agreement § 12.1. Specifically, ContextLogic has agreed to implement the following policies, procedures, and changes in its business practices as of the Preliminary Approval Date:

- Institute mandatory TCPA compliance training programs for all key marketing personnel at the company;
- Implement and maintain adequate oversight procedures to help ensure that the company's text-message marketing personnel remain compliant with the TCPA in the future;

undeliverable check funds); *id.* § 4.2.5 (concerning uncashed check funds). No Settlement Shares will revert back to ContextLogic. *Id.* § 4.2.7.

- Conduct quarterly reviews of such marketing personnel to ensure their ongoing compliance with the TCPA; and
- Make enhancements to its text-message delivery systems (and to ensure that its vendors do the same) in order to prevent any transmissions of text messages via an "automatic telephone dialing system" unless the recipients have provided the requisite level of consent.

Settlement Agreement § 12.1.

IV. Notice Plan and Claims Process

ContextLogic has paid from the Settlement Fund all Settlement Administration Costs. *See* Settlement Agreement §§ 6.1-6.2. As directed by the Preliminary Approval Order, on October 24, 2019 KCC completed sending notice by e-mail and U.S. postal mail to all Settlement Class Members. Settlement Agreement § 6.5.3; Preliminary Approval Order at ¶ 25; Declaration of Carla Peak, Vice President of Legal Notification Services for KCC ("Peak Decl.") ¶¶ 4-6; *see also id.,* Exs. A-B (e-mail notice and postal notice packet), Ex. C (long-form notice) & Ex. D (Spanish long form notice). KCC has also established the website, www.wishtcpasettlement.com, which has to-date received over 192,0000 unique web sessions, Peak Decl. ¶ 7, and the Settlement telephone hotline, which has to-date received over 8,000 calls, *id.* ¶ 8. The Settlement Website provides information about the Settlement and make case-related documents available for download, such as the Settlement Agreement, Long-Form Notice, Claim Form, Preliminary Approval Order, and the Fee and Cost Application and Application for Service Awards. *Id.* ¶ 7. Settlement Class Members are also able to file claims electronically on a straightforward, easy-to-understand web-based form on the Settlement Website; on this form, each Settlement Class Member is able to select the method of payment for their Settlement Share – either by Benefit Check or Wish Cash – and provide the address to which their Benefit Check should be sent or the e-mail address associated with the ContextLogic account into which their Wish Cash Benefit should be deposited. *Id.*; *see also id.*, Ex. E.

Attesting to the quality of the notice program negotiated and developed by Class Counsel, to date 65,797 class members have already filed claims, with almost two months remaining in the

claims period.[10] *Id.* at ¶ 9. Critically, to date no Settlement Class Members have objected to the Settlement.[11] *Id.* at ¶ 11.

V. Service Awards, Fee Award, and *Cy Pres* Distribution

ContextLogic has agreed to pay from the Settlement Fund all Court-approved Service Awards to the Representative Plaintiffs and Fee Award to Class Counsel. Settlement Agreement §§ 5.1-5.2. The amounts of any Service and Fee Awards were not part of the Parties' negotiation of the terms of the Settlement or Settlement Agreement. *Id.* §§ 5.1-5.2.

On November 19, 2019, Representative Plaintiffs and Class Counsel submitted a motion requesting Service Awards of $5,000 to each of the four Representative Plaintiffs ($20,000 in total) and a Fee Award to Class Counsel of 37.5% of the Settlement Fund (or $6,000,000). Critically, and as proposed by the Court at the preliminary approval hearing and described in detail in the Motion for Fee Award and Service Awards, Class Counsel have decided to forgo seeking a fee award of 40% of the Settlement Fund (as initially contemplated), and instead request that the Court designate $400,000 (i.e., 2.5%) of the Settlement Fund as *cy pres* relief to be split equally between two worthy legal-aid recipients in the greater Chicago area of the Court's choosing ($200,000 to each recipient).

The motion for Service Awards and a Fee Award was posted to the Settlement Website for Settlement Class Members to review immediately after it was filed. No Settlement Class Member has objected to the requested Service Awards or Fee Award.

VI. Release

Upon the Court's entry of the Final Approval Order and Judgment, the Representative Plaintiffs and all Settlement Class Members who have not excluded themselves will have fully,

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[10] Additionally, Class Counsel have to date personally fielded over 500 calls and e-mails from Settlement Class Members concerning the Settlement. (Hedin Decl. at ¶ 55; Hall Decl. ¶ 55.)

[11] KCC received 99 requests for exclusion from the Settlement. Ninety-two of the 99 exclusion requests were sent to KCC by the Lemberg Law LLC, a plaintiffs' law firm which sought out potential class members to exclude themselves through a website specifically designed for this purpose. The Parties reserve their rights to challenge the propriety of these requests for exclusion, as appropriate, in advance of the final approval hearing.

finally, and forever released, relinquished, and discharged ContextLogic and the other Released Parties from the Released Claims, i.e., all claims arising from or relating to text messages by, from, and/or on behalf of ContextLogic. *See* Settlement Agreement §§ 2.1.38-2.1.39, 8.1.

CLASS ACTION SETTLEMENT APPROVAL PROCESS

Strong judicial and public policies favor the settlement of complex class action litigation, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *Lebanon Chiropractic Clinic, P.C. v. Liberty Mut. Ins. Co.*, 2016 IL App (5th) 150111-U, ¶ 41; *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996); *see also* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002) (collecting cases) (hereinafter *Newberg*).

Courts review proposed class action settlements using a well-established two-step process. *Newberg* § 11.25, at 38-39; *see e.g.*, *Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009); *GMAC Mortgage Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38–39; *Armstrong v. Board of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*; *see e.g.*, *Lebanon*, 2016 IL App (5th) 150111-U, ¶ 11. Once the Court finds the settlement proposal is "within the range of possible approval," the notice is disseminated to the class and the case proceeds to the second step in the review process: the final approval hearing. *Newberg*, § 11.25, at 38–39.

Representative Plaintiffs are presently at the second step of this two-step process.

ARGUMENT

Upon final approval, the Settlement reached in this matter will provide Settlement Class Members with substantial financial compensation and non-monetary relief that they otherwise would not, or could not, have pursued – an estimated $140.00 to each Settlement Class Member. In addition, thanks to the Notice Program implemented by the Parties, Settlement Class Members

across the country were informed of their rights under the Settlement and have until February 25, 2020 to submit claims. Because the Settlement reached by the Parties is fair, reasonable, and provides adequate compensation to the Settlement Class, and because the Notice Program effectively notified class members of their rights under the Settlement Agreement, this Settlement warrants final approval by the Court.

I. The Notice Program Successfully Informed Settlement Class Members of the Settlement and About Their Rights Under the Settlement

Because class actions by their nature involve a single class representative acting on behalf of a larger class of consumers, critical to any class action settlement is that such class members are effectively informed of the settlement and their rights and options thereunder. Accordingly, "[a]fter determining that a lawsuit may proceed on a class-wide basis, through settlement or otherwise, a court may order such notice as it deems necessary to protect the interests of the class." 735 ILCS 5/2-803.

As directed by the Court in its Preliminary Approval Order, the Notice Program was implemented on October 24, 2019. Upon implementation, email notice and postcards were sent directly to all potential Class Members. Additionally, the Settlement Website contained all of the information related to the Settlement, including key dates and deadlines (*i.e.*, claims deadline, objection deadline, final approval hearing date and time, etc.), all relevant court documents (*i.e.*, the Motion for Preliminary Approval, Preliminary Approval Order, and Motion for Service Awards and Fee Award), contact information for Class Counsel and Defendant's counsel, detailed instructions for filing requests for exclusion and objections, and most importantly, an easily accessible online claims form that Settlement Class Members could use to submit their claim directly on the Settlement Website.

The Notice Program implemented by the Parties has resulted in Settlement Class Members submitting 65,797 claim forms. Accordingly, given the large number of claims submitted and the significant number of individuals who visited the Settlement Website (over 192,000) and called the Settlement telephone hotline (over 8,000), there is little doubt that the Notice Plan implemented

by the Parties was more than sufficient to notify the Settlement Class Members of the Settlement and their rights and options thereunder, and satisfied due process considerations.

II. The Settlement Should Be Finally Approved

Final approval of the Settlement is warranted here, not only because Settlement Class Members were sufficiently notified of their rights and options under the Settlement (and have declined to file any objections), but also because the Settlement itself meets all of the relevant criteria necessary for final approval.

There is a strong judicial and public policy favoring the settlement of class action litigation, and such a settlement should be approved by the Court after inquiry into whether the settlement is "fair, reasonable, and adequate." *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *Lebanon Chiropractic Clinic, P.C. v. Liberty Mut. Ins. Co.*, 2016 IL App (5th) 150111-U, ¶ 41; *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996). In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Armstrong*, 616 F.2d at 314. "Although this standard and the factors used to measure it are ultimately questions for the fairness hearing that comes after a court finds that a proposed settlement is within approval range, a more summary version of the same inquiry takes place at the preliminary phase." *Kessler v. Am. Resorts Int'l*, 2007 U.S. Dist. LEXIS 84450, at *17 (N.D. Ill. Nov. 14, 2007) (citing *Armstrong*, 616 F.2d at 314).[12] Of these considerations, the first is most important. *Steinberg* v. *Sys. Software*

[12] Because Section 2-801 is modeled after Federal Rule of Civil Procedure 23, "federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois." *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005).

Assocs., Inc., 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

In this case, as the Court has already found in granting preliminary approval of the Settlement, all eight factors weigh in favor of finding the Settlement fair, reasonable, and adequate, warranting its final approval.

A. The Settlement Provides Substantial Relief

The first and most important factor in evaluating the fairness of a proposed class action settlement is the strength of the plaintiff's case on the merits balanced against the relief obtained in the settlement. *See City of Chicago*, 206 Ill. App. 3d at 972; *see also Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Am. Int'l Grp., Inc. et al., v. ACE INA Holdings, et al.*, Nos. 07-cv-2898, 09-cv-2026, 2012 U.S. Dist. LEXIS 25265, at *17 (N.D. Ill. Feb. 28, 2012); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). In analyzing this factor, courts recognize that settlement is "an amalgam of delicate balancing, gross approximations and rough justice," *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982), such that "the question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court." *Lane,* 696 F.3d at 819.

In this case, the amount offered by the Settlement – a guaranteed $16 million in cash to the Settlement Class, plus the additional voucher relief available to the Settlement Class – is substantial. The Settlement also provides robust injunctive relief for the benefit all Settlement Class Members, even those who do not submit claims.

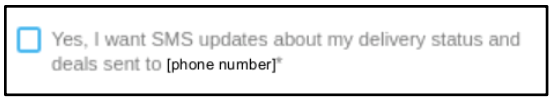
The estimated per-claimant relief provided by the Settlement – approximately $140.00 given the number of claims submitted to date – compares more than favorably with per-claimant recoveries in prior settlements in similar TCPA cases. *See, e.g., In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 786 (N.D. Ill. 2015) (approving TCPA class action settlement providing $34.60 cash to each settlement class member); *Kolinek v. Walgreen, Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015) (approving TCPA class action settlement providing approximately

$30.00 cash to each settlement class member); *Garret*, *et al. v. Sharps Compliance, Inc.*, Case No. 10-cv- 04030 (N.D. Ill. Feb. 23, 2012) (approving TCPA class action settlement providing between $27.42 and $28.51 cash to each settlement class member); *Soukhaphonh v. Hot Topic, Inc.*, No. 16-cv-5124, ECF Nos. 253 & 244 at 2 (C.D. Cal. July 26, 2019) (approving TCPA class action settlement providing approximately $2.44 to $6.17 per settlement class member); *Hashw v. Dept. Stores Nat'l Bank*, 182 F. Supp. 3d 935, 940-43 (D. Minn. 2016) (approving TCPA class action settlement providing $33.20 cash to each settlement class member); *Adams v. AllianceOne Receivables Mgmt., Inc.*, No. 08-cv-00248 (S.D. Cal. Sept. 28, 2012) (approving TCPA class action settlement providing approximately $40.00 cash to each settlement class member); *Manouchehri v. Styles for Less, Inc.*, Case No. 14-cv-2521, 2016 WL 3387473, at *2, 5 (S.D. Cal. June 20, 2016) (approving TCPA class action settlement providing approximately $10.00 cash or $15.00 voucher to each settlement class member); *Kazemi v. Payless Shoesource, Inc.*, No. 09-cv-05142 (N.D. Cal. Apr. 2, 2012) (approving TCPA class action settlement providing $25.00 voucher to each settlement class member); *Rose et al. v. Bank of America Corp*., No. 11-cv-02390 (N.D. Cal. 2014) (approving TCPA class action settlement providing approximately $20.00 to $40.00 to each settlement class member); *In re Jiffy Lube Int'l, Inc. Text Spam Litig.*, No. 11-md-02261 (S.D. Cal. 2013) (approving TCPA class action settlement providing $20.00 voucher that could be redeemed for $15.00 cash to each settlement class member); *Estrada v. iYogi, Inc.,* No. 13–cv-01989, 2015 WL 5895942, at *7 (E.D. Cal. Oct. 6, 2015) (approving TCPA class action settlement providing approximately $40.00 cash to each settlement class member); *Cubbage v. Talbots, Inc.*, No. 09-cv-00911 (W.D. Wash. Nov. 5, 2012) (approving TCPA class action settlement providing approximately $40.00 cash or $80.00 voucher to each settlement class member); *Arthur v. Sallie Mae, Inc.*, No. 10-cv-00198 (W.D. Wash. Sept. 17, 2012) (approving TCPA class action settlement providing approximately $20.00 to $40.00 cash to each settlement class member).

The reasonableness of the relief provided by the Settlement is further underscored by the many substantial risks of total non-recovery that continued litigation would have posed absent the

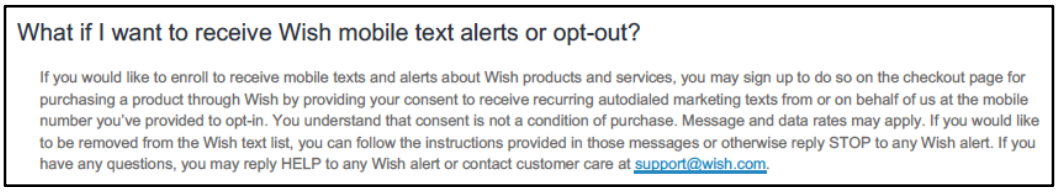
Settlement. *See Smith v. CRST Van Expedited, Inc.*, No. 10-cv-1116, 2013 WL 163293, at *3 (S.D. Cal. Jan. 14, 2013) (where "the settlement avoids the risks of extreme results on either end, *i.e.,* complete or no recovery . . . it is plainly reasonable for the parties at this stage to find that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication," such that "[t]hese factors support approval").

First, through its highly qualified and experienced counsel, ContextLogic indicated to Plaintiffs' counsel that, had the case not settled, it would have moved for summary judgment on its "express written consent" defense. Notably, ContextLogic produced business records in discovery showing that the Plaintiffs and Settlement Class Members had all checked the box shown below on the "order history" screen of ContextLogic's web or app-based platform:



Hedin Decl. ¶ 56. ContextLogic contends that the statement appearing alongside the box complied with the TCPA's "express written consent" disclosure requirements, especially because the asterisk at the end of the disclosure statement (". . . sent to [phone number]*") corresponded to the following statement on the "order history" screen:

Motley, ECF No. 17-1 at 6. Had the Representative Plaintiffs and Settlement Class Members clicked the "here" hyperlink "for more details," as shown in the above screenshot, they would have been directed to the "Terms of Service" webpage, which stated in pertinent part:



Id., ECF No. 17-1 at 11. Thus, had this litigation continued, ContextLogic would have argued that the foregoing statement, which contained the requisite language for purposes of obtaining "express

written consent" under the TCPA, was incorporated within the disclosure statement alongside the checkbox on the "order history" screen of the Wish.com platform, by way of the asterisk and the webpage accessible via the hyperlink that corresponded to the asterisk – and that ContextLogic therefore obtained the prior "express written consent" of the Representative Plaintiffs and Settlement Class Members when they checked the box. Had the court agreed – and it certainly could have – ContextLogic would have prevailed on its affirmative "express written consent" defense and the Settlement Class would have recovered nothing. *Cf., e.g., Motley*, 2018 WL 5906079 *2 ("If the evidence ultimately shows that Motley agreed to receive the messages, a good argument might be made that she is not well-positioned to bring a TCPA claim"). Given the relative strength of ContextLogic's "express written consent" defense, the Settlement achieved in this case is simply an outstanding result for the Settlement Class.

Second, another of the Parties' primary disagreements in this case concerned the meaning of the term "automatic telephone dialing system," an issue which the Ninth Circuit (where this litigation was pending prior to its re-filing in this Court for settlement purposes) recently resolved in *Marks v. Crunch of San Diego*, 904 F.3d 1041 (9th Cir. 2018), but which the FCC appears likely to weigh in on with an agency decision or rulemaking in the near future. *See, e.g., Public Notice on Interpretation of the Telephone Consumer Protection Act* (CG Docket No. 18-152; CG Docket No. 02-278). Any FCC decision interpreting the definition of ATDS would likely trump *Marks* and control on the issue. So while the Representative Plaintiffs firmly believe that ContextLogic's text messages were sent using technology that qualifies as an ATDS under the current, post-*Marks* meaning of the term (had this litigation continued in the Northern District of California), there is nonetheless a substantial risk that the FCC will issue an interpretation of the term narrow enough to exempt ContextLogic's technology, leaving the Representative Plaintiffs and Settlement Class Members without causes of action under the TCPA and entitled to no relief.

Third, the Parties disagree whether the Settlement Class could be certified on a contested motion for class certification. During the litigation and the Parties' settlement discussions, ContextLogic steadfastly maintained, inter alia, that individual issues among Settlement Class

members would predominate and preclude class certification. For example, ContextLogic indicated that it would have opposed a contested motion for class certification by arguing that Settlement Class Members cannot be reliably identified in its records, and that variations across the content and context of its text messages present certain individualized issues among Settlement Class Members. While Plaintiffs disagree and believe the Settlement Class is well-suited for certification, including on a contested basis, the federal district court previously presiding over this litigation could easily have disagreed and denied class certification on any number of grounds.

Fourth, even if Representative Plaintiffs were to win class certification, there would remain a risk of losing a jury trial. And even assuming they prevailed at trial, any judgment or order granting class certification could be reversed on appeal and, even if they were not, any class-wide award "would most surely bankrupt the prospective judgment debtor," *see In re Capital One*, 80 F. Supp. 3d at 790. A pyrrhic victory for the Settlement Class at trial would be in no one's interest.

Finally, even assuming ContextLogic *could* satisfy a class-wide judgment in this case – which, given the estimated size of the Settlement Class, would amount to at least several billions of dollars in the aggregate, measured at $500.00 (or $1,500.00 if trebled) per violation – any such judgment would likely be reduced on due process grounds. In *Golan v. Veritas Entm't, LLC*, No. 14-cv-00069, 2017 WL 3923162 (E.D. Mo. Sept. 7, 2017), for example, a class of TCPA plaintiffs won a judgment at trial for $1.6 billion ($500.00 for each of approximately 3.2 million violations), only to have the trial court remit the award to $32 million – or approximately $10.00 per violation – on the grounds that the $1.6 billion awarded by the jury was so annihilative as to violate the Due Process clause of the U.S. Constitution. *See Golan*, 2017 WL 3923162, at *2-3. The trial court's decision in *Golan* was recently affirmed, in its entirety, by the U.S. Court of Appeals for the Eight Circuit. *Golan v. FreeEats.com, Inc*., No. 17-cv-3156, 2019 WL 3118582 (8th Cir. July 16, 2019). In this case, each claiming Settlement Class Member is currently projected to receive approximately $140 from the Settlement (as well as an additional $10-off voucher if an election is made to receive payment directly into a Wish.com account) – which is many times greater than the $10.00 ultimately recovered for each violation in *Golan*, after years of uncertain litigation and

a total victory for the class at trial. The possibility of the same outcome here, even if the Settlement Class were to prevail at trial years from now, further underscores the reasonableness of the immediate, certain, and meaningful relief provided by the Settlement.

Accordingly, the first and most important factor weighs heavily in favor of granting final approval of the Settlement. *See In re Tableware Antitrust Litig*., 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007) (approval warranted where a settlement is free of "obvious deficiencies" and within range of approval).

B. A Class-Wide Judgment Would be Annihilative, Whereas the Settlement Provides Substantial Relief to the Settlement Class

The second factor considers ContextLogic's ability to satisfy a judgment at trial. *See City of Chicago*, 206 Ill. App. 3d at 972. Although ContextLogic operates a profitable business, very few businesses could satisfy a judgment for billions of dollars – which, in Plaintiffs' view, is the amount potentially at stake on a class wide basis at trial in this case.

However, as agreed to in the Settlement Agreement, ContextLogic has established a $16 million Settlement Fund which will be used to pay out all valid claims submitted, and provide the Service Awards, Fee Award, and *cy pres* distributions petitioned for by Class Counsel and the Representative Plaintiffs, as well as KCC's expenses in implementing the Notice Program. (Ex. A, ¶ 3.)

Accordingly, the second factor weighs in favor of granting final approval.

C. Continued Litigation Would Be Complex, Costly, and Lengthy

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *See City of Chicago*, 206 Ill. App. 3d at 972; *see also Nat'l Rural Telecommc'ns Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("The Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation").

This would be lengthy and very expensive litigation if it were to continue, involving extensive motion practice, including, inter alia, a motion for class certification (and possibly a motion for decertification), motions for summary judgment, and various pretrial motions, as well as the retention of additional experts, preparation of expert reports, and conducting expert depositions. *See Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) ("[C]lass action suits have a well-deserved reputation as being most complex"). The case would probably not go to trial for over a year. And even if Settlement Class Members recovered a judgment at trial in excess of the $16 million in cash provided by the Settlement, post-trial motions and the appellate process would deprive them of any recovery for years, and possibly forever in the event of a reversal.

Rather than embarking on years of protracted and uncertain litigation, Plaintiffs and their counsel negotiated a Settlement that provides immediate, certain, and *meaningful* relief to all Settlement Class members. *See DIRECTV, Inc*., 221 F.R.D. at 526. Accordingly, the third factor weighs in favor of granting final approval to the Settlement. *See City of Chicago*, 206 Ill. App. 3d at 972; *see also Borcea v. Carnival Corp*., 238 F.R.D. 664, 674 (S.D. Fla. 2006) (noting "[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush").

D. There is no Opposition to the Settlement

Looking at the fourth and sixth *Korshak* factors – as they are "closely related," *Korshak*, 206 Ill. App. 3d at 973 – it is clear that final approval of the Settlement is not only in the best interest of the Parties, but is also overwhelmingly supported by the Settlement Class Members themselves. Even though the Notice Plan implemented by the Parties reached over 90% of *all* Settlement Class Members, and resulted in hundreds of thousands of visits to the Settlement Website and thousands of calls to the Settlement telephone hotline, there is not a single objection to the Settlement and no Settlement Class Members have articulated any complaints regarding the relief provided by the Settlement or Class Counsel's Motion for Service Awards and Fee Award.

The lack of objectors challenging the Settlement is particularly noteworthy and strongly supports a finding that the Settlement is "fair and reasonable." *Am. Civil Liberties Union v. United States Gen. Servs. Admin*., 235 F. Supp. 2d 816, 819 (N.D. Ill. 2002); *see also In re Mexico Money*

Transfer Litig., 164 F.Supp.2d 1002, 1021 (N.D. Ill. 2000) (granting final approval of settlements and finding the fact that "99.9% of class members have neither opted out nor filed objections to the proposed settlements . . . is strong circumstantial evidence in favor of the settlements"). This is especially the case given the frequency with which "professional objectors" seek out such settlements and file generic objections even where there is no legitimate basis. *See In re Initial Pub. Offering Sec. Litig.*, 728 F. Supp. 2d 289, 295 n.37 (S.D.N.Y. 2010) (collecting authorities and noting that "[r]epeat objectors to class action settlements can make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements" and that "courts are increasingly weary of professional objectors: some of [which are] obviously canned objections filed by professional objectors") (internal citations omitted).

Accordingly, the fourth and sixth factors weigh in favor of granting final approval of the Settlement.

E. The Settlement Was Negotiated Free of any Collusion

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *City of Chicago*, 206 Ill. App. 3d at 972.

Where a proposed class settlement is the result of contentious, arm's-length negotiations before an experienced mediator, the settlement may be presumed fair and reasonable and entered into without any form collusion. *See Newberg*, § 11.42; *see also Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 31 (no collusion where settlement agreement was reached as a result of "an arms-length negotiation entered into after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator"); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21 (approval warranted where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'").

Such is the case here. The Settlement was achieved after a year and a half of contentious litigation, robust pre-filing and post-filing investigations, a comprehensive exchange of discovery, and arm's-length negotiations overseen by Judge Andersen. Hedin Decl. ¶¶ 12-45, 55-58. Even after reaching an agreement in principle, the Parties engage in further back-and-forth negotiations

for several more months regarding confirmatory discovery, unresolved terms of the Settlement, the form of the Class Notice and attendant documents, and the appearance and functionality of the web-based form for submitting Claim Forms on the Settlement Website. *See id.* ¶¶ 46-51, 55.

Because the Settlement is thus the product of contentious, lengthy, and collusion-free negotiations between the Parties, *see id.* ¶¶ 55, the fifth factor weighs in favor of granting final approval of the Settlement.

F. Competent Counsel Strongly Endorse the Settlement

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Courts rely on affidavits in assessing proposed class counsel's qualifications under this factor. *Id.*

Class Counsel, Frank S. Hedin and David W. Hall of Hedin Hall LLP and Eugene Y. Turin of McGuire Law, P.C., have extensive experience in complex class action litigation, including serving as class counsel in similar TCPA class actions concerning the transmission of allegedly unsolicited text message advertisements. *See* Hedin Decl. ¶¶ 4-10; Hall Decl. ¶¶ 4-10; Turin Decl. ¶¶ 3-5.

Plaintiffs' counsel strongly endorse the Settlement, which they believe is in the best interest of the Settlement Class. *See* Hedin Decl. ¶¶ 58-59; Hall Decl. ¶¶ 58-59; Turin Decl. ¶¶ 13-14. As explained by Plaintiffs' counsel, due to the defenses that ContextLogic had indicated it would raise if the case proceeded – and the resources that ContextLogic had committed to defending the case through trial and appeal – numerous risks of total non-recovery would loom over this case absent the Settlement. *See* Hedin Decl. ¶ 56. In light of the substantial benefits provided by the Settlement – including an immediate payment from the $16 million all-cash common fund to each Settlement Class Member who submits a simple Claim Form, without the need to await for the litigation and subsequent appeals to run their course – Class Counsel consider the Settlement an excellent outcome for the Settlement Class. *See* Hedin Decl. ¶¶ 58-59; Hall Decl. ¶¶ 58-59; Turin Decl. ¶¶ 13-14.

Accordingly, the seventh factor weighs in favor of granting final approval of the Settlement. *See GMAC*, 236 Ill. App. 3d at 497 (experienced and competent counsel's support for a proposed class settlement weighs in favor of approving the settlement); *Bellinghausen v. Tractor Supply Co*., 306 F.R.D. 245, 257 (N.D. Cal. 2015) ("The trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties"); *see also, e.g., Smith*, 2013 WL 163293, at *3 (finding "class counsel's endorsement weighs in favor of final approval" given counsel's "experience and understanding of the strengths and weaknesses of cases such as this").

G. The Settlement is the Product of Extensive Litigation and Discovery

The eighth and final factor considers the stage of the proceedings and the amount of discovery that has been completed at the time the settlement is reached. *City of Chicago*, 206 Ill. App. 3d at 972; *Lane,* 696 F.3d at 819.

Prior to commencing this litigation, Plaintiffs' counsel conducted a wide-ranging investigation into every aspect of the case. *See* Hedin Decl. ¶ 12. During the litigation, the Parties collectively prepared and filed three complaints and answers; briefing on motions to compel arbitration, motions for judgment on the pleadings, and motions to stay; stipulated discovery and pretrial proposals, confidentiality orders, comprehensive pre-mediation briefs, among numerous other materials. *See generally* ¶¶ 14-45. The Parties engaged in formal discovery over the course of several months prior to entering into the proposed Settlement Agreement. *See id.* ¶¶ 25-36, 45-47. Armed with this information, Plaintiffs and their counsel had "a clear view of the strengths and weaknesses" of the case, *see In re Warner Commc'ns Sec. Litig*., 618 F. Supp. 735, 745 (S.D.N.Y. 1985), *aff'd* 798 F.2d 35 (2d Cir. 1986), and were in a strong position to negotiate a fair, reasonable, and adequate settlement on behalf of the Settlement Class, at mediation and beyond. *See* Hedin Decl. ¶ 36.

Settlement negotiations were also hard fought. The parties engaged in over ten hours of contentious, arm's-length negotiations before Judge Andersen in Chicago, Illinois. Hedin Decl. ¶ 36-39. In the late evening of the mediation, and in connection with a mediator's proposal, the Parties agreed upon the principal terms of the proposed Settlement, subject to further negotiations

over remaining terms, confirmatory discovery, and the selection of a third-party settlement administrator. *See id.* ¶ 39.

Negotiations over the remaining terms continued for several months, and the final Agreement was not executed until Class Counsel had obtained further discovery to confirm, inter alia, the size and scope of the Settlement Class. *See id.* ¶¶ 40-47. Plaintiffs' counsel obtained over five (5) gigabytes of electronically stored information, spanning millions of pages in printed form, reflecting the identities of Settlement Class Members and the text messages they received. *See* Hedin Decl. ¶ 46. Class Counsel retained a highly qualified expert to review and analyze this ESI, ascertain the meaning of certain data fields, and confirm the accuracy of the approximate number of unique individuals who received one or more of ContextLogic's text messages during the period of time in question. *See id.* ¶ 47. Where, as here, a proposed settlement is the product of arm's-length negotiations between experienced counsel after significant discovery has occurred, the Court may presume the settlement to be fair, adequate, and reasonable. *See Rodriguez v. W. Publishing*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution"); *Newberg* § 11.41 (proposed class settlement may be presumed fair if it "is the product of arm's length negotiations, sufficient discovery has been taken to allow the parties and the court to act intelligently, and counsel involved are competent and experienced").

Accordingly, the eighth and final factor also weighs in favor of granting final approval of the Settlement.

III. The Unopposed Motion for Service Awards and Fee Award Should be Approved

Because no objections were filed in opposition to the Representative Plaintiffs' and Class Counsel's Motion for Service Awards and Fee Award, and because all factors in favor of granting final approval of the Settlement have been met, the Court should also approve the requested Service Awards to the Representative Plaintiffs, the Fee Award to Class Counsel, and the *cy pres* distributions to two legal aid societies in the greater Chicago area.

The Motion for Service Awards and Fee Award was filed on November 19, 2019, a full 20 days before the December 9, 2019 deadline for objections and exclusion requests. In addition, the Class Notice was sent to all Settlement Class Members even before the Motion for Service Awards and Fee Award was filed and fully informed the Settlement Class Members of the maximum amount of the Service Awards and Fee Award that Class Counsel and the Representative Plaintiffs would seek. Accordingly, Settlement Class Members had ample opportunity to consider the merits of the Motion for Service Awards and Fee Award. However, no valid objections to the Motion for Service Awards and Fee Award have been brought, and no Settlement Class Members even informally expressed any dissatisfaction with the Service Awards or the Fee Award sought by the Class Counsel and the Representative Plaintiffs. The lack of any opposition is not surprising, since, as discussed above, this Settlement provides substantial cash benefits to the Settlement Class and will result in significant changes to ContextLogic's text messaging operation going forward.

For the reasons stated in the unopposed Motion for Service Awards and Fee Award, and because no Settlement Class Member has voiced any opposition or objection to the requested Fee Award or Service Awards, Representative Plaintiffs and Class Counsel respectfully request that this Court approve the requested and Service Awards and Fee Award.

CONCLUSION

For the reasons stated above and in the unopposed Motion for Service Awards and Fee Award, the Representative Plaintiffs respectfully request that the Court enter an Order granting final approval of the Settlement and approving the requested Service Awards and Fee Award. A proposed Final Order and Judgment is attached hereto as Exhibit A.

Dated: December 16, 2019

Respectfully submitted,

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