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

DECLARATION OF FRANK S. HEDIN IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I, Frank S. Hedin, hereby aver, pursuant to 735 ILCS 5/1-109, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I represent Plaintiffs Ian Olsen, Adam Haney, Sharon Motley, and Memary LaRock in this action, and I submit this declaration in support of Plaintiffs' unopposed motion for final approval of the Parties' proposed class-wide Settlement, as memorialized in the Stipulation and Agreement of Settlement ("Settlement Agreement") entered into by the Parties to this Action, inclusive of its five (5) exhibits: Claim Form (Exhibit A thereto), Class Notices (Exhibits B and C thereto), proposed Final Approval Order (Exhibit D thereto), and proposed Preliminary Approval Order (Exhibit E thereto)), a true and correct copy of which is attached hereto as Exhibit 1.[1]

BACKGROUND AND EXPERIENCE

2. I am a member in good standing of the Florida Bar and the State Bar of California; the United States District Courts for the Southern District of Florida, Middle District of Florida, Northern District of California, Southern District of California, Central District of California, Eastern District of California, Eastern District of Michigan, Western District of Michigan, and

[1] Unless otherwise defined herein, capitalized words and phrases shall have the same meaning as in Section 2 ("Definitions") of the Settlement Agreement.

Western District of Wisconsin; and the United States Courts of Appeals for the Second Circuit and Seventh Circuit, and I have been admitted on a *pro hac vice* basis to appear before the Court presiding over this matter.

3. I received my Bachelor of Arts from University of Michigan in 2008 and my Juris Doctor, *magna cum laude*, from Syracuse University College of Law in 2012. From 2012 through 2013, I served as law clerk to the Honorable William Q. Hayes, United States District Judge for the Southern District of California. During my clerkship with Judge Hayes, I managed half of the Court's civil docket and drafted numerous orders and opinions at all stages of litigation in a wide range of class action matters.

4. Between late 2014 and early 2018, I worked as an attorney – first as an associate and later as a partner – at Carey Rodriguez Milian Gonya, LLP, a Miami-based boutique litigation firm. During my time at Carey Rodriguez, I formed the firm's class action litigation practice and represented both plaintiffs and defendants in consumer and data-privacy class actions and employment-related collective actions throughout the country. I also represented several indigent litigants in civil rights and housing matters on a pro bono basis. I was head of Carey Rodriguez's class action litigation practice at the time of my departure.

5. My partner David W. Hall and I founded Hedin Hall LLP in March 2018. With offices in Miami, Florida and San Francisco, California, our firm focuses on class action litigation in the data-privacy, financial services, and securities realms, and takes on as much pro bono work as we possibly can, *see, e.g., Groover v. U.S. Corrections, LLC, et al*., No. 15-cv-61902-BB (S.D. Fla.) (representing plaintiff and putative class against country's largest private prisoner extradition companies in Section 1983 civil rights action alleging violations of the Eighth Amendment).

6. I have served as class counsel or lead or co-lead plaintiffs' counsel in numerous consumer class actions and putative class actions in federal and state courts, including in Illinois. *E.g., Farnham v. Caribou Coffee Co*., No. 16-cv-295-wmc, ECF No. 98 (W.D. Wisc.) (lead class counsel in consumer data-privacy class action alleging transmission of unsolicited text messages in violation of the Telephone Consumer Protection Act ("TCPA"), resolved class-wide for $8.5

million); *Chimeno-Buzzi v. Hollister Co*., et al., No. 14-23120-CIV, 2015 WL 9269266, docket entry 155 (S.D. Fla. Dec. 18, 2015) (lead class counsel in TCPA class action involving alleged unsolicited transmission of text messages, resolved class-wide for $10 million); *Norberg v. Shutterfly, Inc.*, No. 15-cv-5351 (N.D. Ill.) (served as lead plaintiffs' counsel in class action alleging claims for violation of the Illinois Biometric Information Privacy Act ("BIPA")); *Rivera, et al. v. Google, Inc*., No. 16-cv-2714 (N.D. Ill.) (served as lead plaintiffs' counsel in class action alleging claims for violation of the Illinois BIPA); *Edwards v. Hearst Communications Inc.*., No. 15-cv-9279-AT (S.D.N.Y.) (served as co-plaintiffs' counsel in class action alleging claims for violation of the Michigan Personal Privacy Protection Act, which resolved for $50 million); *Soukhaphonh v. Hot Topic, Inc.*, No. 16-cv-5124-DMG (C.D. Cal.) (served as lead plaintiffs' counsel in TCPA class action alleging transmission of unsolicited text messages).

7. My firm and I presently serve as class counsel or lead or co-lead plaintiffs' counsel in several nationwide TCPA class actions (in addition to the instant matter) concerning allegedly unsolicited text messages. *E.g., Abe v. Hyundai Motor America, Inc.*, No. 19-cv-699-JVS (C.D. Cal.) (class action alleging transmission of unsolicited text messages in violation of the TCPA); *Lloyd, et al. v. Eaze Solutions, Inc.*, No. 18-cv-5176-JD (N.D. Cal.) (same); *Lundbom v. Schwan's Home Service, Inc.*, No. 18-cv-2187-SI (D. Or.) (same); *Hill v. Navient Solutions, LLC.*, No. 19-cv-161-GW (C.D. Cal.) (same); *Hill v. Quicken Loans, Inc.*, No. 19-cv-163-FMO (C.D. Cal.) (same); *Hansen v. LMB Mortgage Servs., Inc.*, No. 19-cv-179-KJM (E.D. Cal.) (same); *Ebanks v. Redbox Automated Retain, LLC*, No. 19-cv-4532 (N.D. Ill.) (same); *Wilson v. Redbox Automated Retain, LLC*, No. 19-cv-1993 (N.D. Ill.) (same); *Rogers v. Postmates Inc.,* No. 19-cv-61877-CMA (S.D. Fla.) (same).

8. Hedin Hall LLP also represents putative classes of consumers in various other types of data-privacy matters in state and federal courts nationwide. *E.g., Huguelet v. Maxim Inc.*, No. 19-cv-4452-ALC (S.D.N.Y.) (class action alleging disclosure of personal reading information in violation of Michigan's Preservation of Personal Privacy Act); *Kokoszki v. Playboy Enterpises, Inc.*, No. 19-cv-10302-BAF (E.D. Mich.) (same); *Forton v. TEN: Publishing Media, LLC.*, No.

19-cv-11814-JEL (E.D. Mich.) (same); *Kittle v. America's Test Kitchen LP*, No. 19-cv-11757-TGB (E.D. Mich.) (same); *Lin v. Crain Communications Inc.*, No. 19-cv-11889-VAR (E.D. Mich.) (same); *Markham v. Nat'l Geographic Partnr's LLC,* No. 19-cv-232-JTN (W.D. Mich.) (same); *Horton v. Dow Jones & Company, Inc.*., Nos. 19-527, 19-832 (2d Cir.) (same, on appeal and cross-appeal); *Rehman v. Everi Holdings, Inc., et al.,* No. 18-cv-62481 (S.D. Fla.) (class action alleging violation of Fair and Accurate Credit Transactions Act); *Jessop v. Penn Nat'l Gaming, Inc.*, No. 18-cv-01741 (M.D. Fla.) (same); *Lawrence v. South Florida Racing Assoc., LLC*, No. 18-cv-24264-RS (S.D. Fla.) (same); *Huffman v. Affinity Gaming, Inc*., No. A-18-784366-B (Nev. Dist. Ct., Clark Cnty.) (same); *Huffman v. Marnell Gaming, LLC*, No. A-18-784363-B (Nev. Dist. Ct., Clark Cnty.) (same); *Artman v. Monarch Casino & Resort, Inc.,* No. CV-18-02134 (Nev. Dist. Ct., Washoe Cnty.) (same); *Eldorado Resorts Inc. v. Monarch Casino & Resort, Inc.,* No. CV-18-02133 (Nev. Dist. Ct., Washoe Cnty.) (same).

9. Additionally, we represent consumers in class actions against financial institutions for allegedly assessing improper fees, interest, and other charges to accountholders. *E.g., Owens, et al. v. Bank of America, N.A., et al.*, No. 19-cv-20614-MGC (S.D. Fla.) (class counsel in action alleging improperly-assessed overdraft fees, $4.95 million class-wide settlement recently granted preliminary approval); *Liggio v. Apple Federal Credit Union*, No. 18-cv-1059-LO (E.D. Va.) (class counsel in action alleging improperly-assessed overdraft fees, $2.7 million class-wide settlement recently granted final approval); *Alfaro, et al. v. Bank of America, N.A., et al.*, No. 19-cv-22762-MGC (S.D. Fla.) (co-lead plaintiffs' counsel in action alleging improperly-assessed foreign transaction fees); *Key, et al. v. Bank of America, N.A., et al.*, No. 19-cv-23020-DPG (S.D. Fla.) (co-lead plaintiffs' counsel in action alleging various improperly-assessed service fees); *Wiggins, et al. v. Bank of America, N.A., et al.*, No. 19-cv-3223-EAS (S.D. Ohio) (co-lead plaintiffs' counsel in action alleging improperly-assessed overdraft fees).

10. Finally, my firm and I represent aggrieved investors in securities class actions pending in state and federal courts throughout the country. *E.g., Luczak v. Nat'l Beverage Corp*., No. 18-cv-61631-KMM (S.D. Fla.) (court-appointed counsel for class in action alleging violations

of federal securities laws, on appeal); *Hoffman v. Stephenson, et al. (In re AT&T Sec. Litig.),* Index No. 650797/2019 (N.Y. Sup. Ct., N.Y. Cnty.) (co-lead counsel for plaintiff class of investors asserting Securities Act claims arising from offering in connection with merger); *Plymouth County Retirement System v. Impinj, Inc., et al*., Index No. 650629/2019 (N.Y. Sup. Ct., N.Y. Cnty.) (co-lead counsel for plaintiff class of investors asserting Securities Act claims arising from initial and secondary public offerings); *In re Dentsply Sirona Inc. S'holders Litig.*, Index No. 155393/2018 (N.Y. Sup. Ct., N.Y. Cnty.) (counsel for plaintiff class of investors asserting Securities Act claims arising from offering in connection with merger); *In re PPDAI Grp. Sec. Litig.*, Index No. 654482/2018 (N.Y. Sup. Ct., N.Y. Cnty.) (counsel for plaintiff class of investors asserting Securities Act claims arising from initial public offering); *In re Altice USA, Inc. Sec. Litig.*, Index No. 711788/2018 (N.Y. Sup. Ct., Queens Cnty.) (counsel for plaintiff class of investors asserting Securities Act claims arising from initial public offering); *Plutte v. Sea Ltd.*, Index No. 655436/2018 (N.Y. Sup. Ct., N.Y. Cnty.) (counsel for plaintiff class of investors asserting Securities Act claims arising from initial public offering); *In re EverQuote, Inc*. *Sec. Litig*., Index No. 650907/2019 (N.Y. Sup. Ct., N.Y. Cnty.) (counsel for plaintiff class of investors asserting Securities Act claims arising from initial public offering); *In re Menlo Therapeutics Inc. Sec. Litig*., Lead Case No. 18CIV06049 (Cal. Sup. Ct., San Mateo Cnty.) (counsel for plaintiff class of investors asserting Securities Act claims arising from initial public offering); *Wolther v. Maheshwari (In re Veeco Instruments, Inc. Sec. Litig.)*, Lead Case No. 18CV329690 (Cal. Sup. Ct., Santa Clara Cnty.) (counsel for plaintiff class of investors asserting Securities Act claims arising from offering inconnection with merger).

11. Hedin Hall is well suited to continue to represent the Representative Plaintiffs and Settlement Class in this matter.

HISTORY OF THE LITIGATION

I. Pre-Filing Investigation

12. My firm and I commenced our investigation into the factual and legal issues underlying this case in March of 2018. The extensive pre-filing efforts that my firm and I

undertook included:

A. 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;

B. 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;

C. 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;

D. 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;

E. 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;

F. Consulting with technical experts 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;

G. 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;

H. 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;

I. 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;

J. Investigating ContextLogic's financial condition in order to assess the likelihood of ultimately recovering a class-wide statutory damages award from ContextLogic; and

K. 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.[2]

13. Due to these extensive information-gathering efforts, my firm and I were 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.

[2] *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).

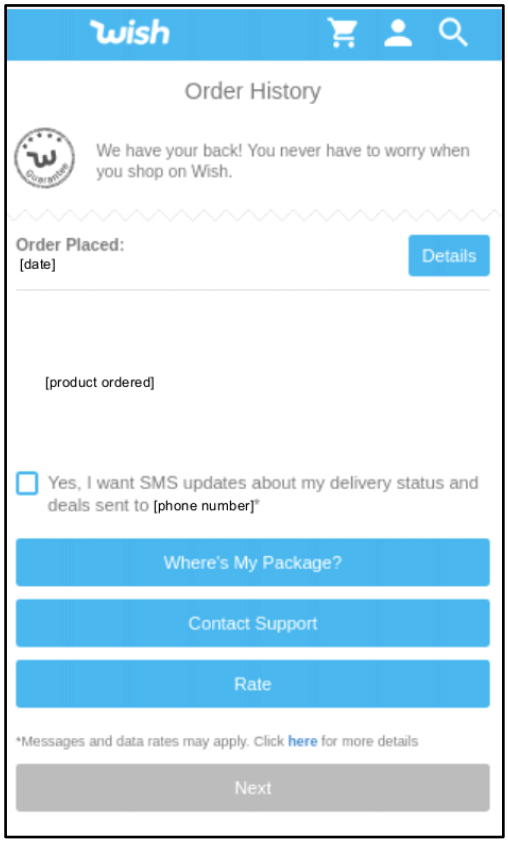
II. Prior Litigation of Plaintiff Motley's and Plaintiff LaRock's Claims in California

14. On April 6, 2018, following the extensive pre-filing investigation described above, my firm and I prepared and filed a comprehensive class action complaint in the U.S. District Court for the Northern District of California on behalf of Ms. Motley and a proposed class, initiating the action *Motley v. ContextLogic Inc.*, No. 3:18-cv-02117-JD (N.D. Cal.), which was assigned to the docket of the Honorable James Donato. The class action complaint in Ms. Motley's case alleged that ContextLogic violated the TCPA by transmitting, via an automatic telephone dialing system ("ATDS"), numerous unsolicited text messages containing promotional material to her cellular device and the cellular devices of numerous other similarly-situated consumers, without any of their prior "express written consent." (*See generally Motley*, ECF No. 1 (describing the nature of ContextLogic's Wish.com business, the text-messages that ContextLogic sent to Ms. Motley and others similarly situated, the nature and capabilities of the dialing equipment used by ContextLogic to deliver such messages, and the uniform nature of ContextLogic's failure to obtain the requisite "express written consent" of Ms. Motley and the other recipients of these messages prior to delivering them).)

15. On May 3, 2018, an individual named Evelyn Stracyznski filed a duplicative, "copy-cat" action in the U.S. District Court for the Southern District of California (*see Motley*, ECF No. 15 (notice of pendency of related action filed by Ms. Motley)), alleging the same claims for violation of the TCPA, verbatim, as those alleged by Ms. Motley (*Compare Motley*, ECF No. 1 (Ms. Motley's Complaint) *with* ECF No. 15-1 (copy of complaint filed in duplicative *Stracyznski* action, titled *Straczynski v. ContextLogic, Inc*., Case No. 18-cv-00855-L-NLS (S.D. Cal.)). On June 8, 2018, to protect the interests of the proposed class, my firm prepared and Ms. Motley filed a notice of pendency of related action in both the *Motley* action and the *Straczynski* action (as an interested third party), requesting that the two cases be deemed "related" and that the second-filed *Straczynski* action be transferred to the Northern District of California for reassignment to the docket of Judge Donato, the judge presiding over the first-filed *Motley* action. (*Motley*, ECF No. 15.) Ultimately, prior to the issuance of a decision by either the court presiding over the *Motley*

action or the court presiding over the *Stracyznski* action on whether to transfer or reassign the *Stracyznski* action, Ms. Stracyznski filed a notice of voluntary dismissal of her claims with prejudice, and without prejudice of the claims of the putative class members, in response to a motion to compel arbitration that ContextLogic filed in that action. (*See Straczynski*, ECF Nos. 10, 10-1, 10-2 (motion to compel arbitration and supporting materials filed June 8, 2018); ECF No. 15 (notice of voluntary dismissal with prejudice dated August 8, 2018).)

16. On June 18, 2018, ContextLogic filed a motion compel arbitration and dismiss Motley's California Case (*Motley*, ECF No. 17) and a supporting declaration and exhibits thereto (*id.*, ECF Nos. 17-1). In moving to compel arbitration, ContextLogic argued that Ms. Motley had assented to ContextLogic's Terms of Service (and its incorporated arbitration provision) by, inter alia, selecting a checkbox alongside a disclosure statement pertaining to "SMS updates about . . . delivery status and deals" on the "order history" page of the Wish.com platform, as depicted below:



(*Id.*, ECF No. 17-1 at 6.)

17. Prior to responding to ContextLogic's motion to compel arbitration, my firm and I expanded on our pre-filing investigative efforts by performing further research regarding certain aspects of the Wish.com sign-up and checkout flows, including by using computer emulators to emulate the way in which the Wish.com mobile app appeared at various points in the past on Android devices, reviewing and analyzing publicly-accessible SDKs for ContextLogic's Wish.com mobile application, and reviewing historical versions of the Wish.com web-based platform depicting the signup and checkout flows on various dates during the relevant time period. By reviewing prior iterations of the sign-up and check-out flows in effect on both the Wish.com website and mobile app between April 2014 and April 2018, my firm and I identified the methods ContextLogic used to acquire customers' telephone numbers. *See id.*

18. These substantial, lengthy, and expensive investigative efforts provided us the tools we needed to effectively oppose ContextLogic's bid to compel Plaintiff Motley to arbitrate her claims.

19. On July 16, 2018, plaintiff Motley filed her response in opposition to ContextLogic's motion to compel arbitration (*Motley*, ECF No. 32), along with declarations and various exhibits (*id.*, ECF Nos. 33, 34, 34-1, 34-2, 34-3). On July 23, 2018, ContextLogic filed a reply (*id.*, ECF No. 35) and a supplemental declaration (*id.*, ECF No. 35-1). Oral argument on ContextLogic's motion to compel arbitration was held on October 25, 2018.

20. While ContextLogic's motion to compel arbitration was being briefed, the Parties conferred concerning potential dispute resolution procedures to utilize in the case, and the Parties ultimately agreed to attend private mediation should the motion to compel arbitration be denied. (*Motley*, ECF Nos. 23-26 (ADR certifications and stipulations to attend mediation before private mediator).)

21. In August and September of 2018, prior to a decision on ContextLogic's motion to compel arbitration, 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 Motley's California Case (*Motley*, ECF No. 36).

22. On November 9, 2018, Judge Donato, the judge presiding over Motley's action in the Northern District of California, issued a written order denying ContextLogic's motion to compel arbitration in its entirety. *Motley v. ContextLogic, Inc.*, No. 3:18-CV-02117-JD, 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 ContextLogic's 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." *Id.* at *2 ("The parties dispute whether Motley in fact checked the box to accept text messages, but that is of no moment for the arbitration motion. 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. That question, however, is not germane to the issue of whether she agreed to arbitration. Even assuming purely for discussion that she did check the box, it would not establish a meeting of the minds on the arbitration clause.").

23. Shortly after the issuance of the court's decision denying ContextLogic's motion to compel arbitration, my firm was contacted by an individual named Memary LaRock, another consumer who, similar to Plaintiff Motley, indicated that she too had received unsolicited advertising text messages sent by ContextLogic via an ATDS. Over the next several weeks, my firm prepared another robust investigation into Ms. LaRock's allegations, including by reviewing screenshots of the messages she had received and participating in numerous phone calls with Ms. LaRock to discuss her experience as a Wish.com customer and the circumstances in which she was sent ContextLogic's text messages.

24. On November 23, 2018, ContextLogic answered Plaintiff Motley's complaint, denying any and all liability to Ms. Motley or the proposed class. (*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 the claims alleged in Plaintiff Motley's complaint, among 22 other affirmative defenses. (*See id*. at 6 (affirmative defense two, asserting that "Plaintiff's individual and class claims against ContextLogic must be dismissed because neither Plaintiff nor the absent classes have suffered an injury-in-fact, and thus they lack standing to assert or pursue the claims in the Complaint").)

25. Immediately after reviewing ContextLogic's answer to Plaintiff Motley's complaint, my firm began preparing comprehensive discovery requests to ContextLogic on behalf of Plaintiff Motley. Two days later, on November 25, 2018, plaintiff Motley served written discovery requests that my firm and I had prepared to ContextLogic, seeking discovery concerning every aspect of the merits of and issues of class certification pertaining to her claims. ContextLogic thereafter served objections and responses to Plaintiff Motley's discovery requests.

26. On November 28, 2018, after being formally retained by Plaintiff LaRock, my firm prepared and filed a class action complaint on behalf of Plaintiff LaRock in the Northern District of California, alleging individual and class-wide claims for violation of the TCPA against ContextLogic. *LaRock v. ContextLogic Inc.*, No. 18-cv-07177-JD (N.D. Cal.) (ECF No. 1).

27. On December 4, 2018, my firm prepared and filed a notice of the pendency of related actions in the *LaRock* action and a motion in the *Motley* action for the second-filed *LaRock* action to be reassigned to the docket of Judge Donato, the judge presiding over the related, first-filed *Motley* action. (*LaRock*, ECF No. 6; *Motley*, ECF No. 45.) On December 11, 2018, the court granted Plaintiff Motley's motion for the reassignment and relation of the *LaRock* action. (*Motley*, ECF No. 47.)

28. On December 26, 2018, ContextLogic issued written discovery requests to Plaintiff Motley, seeking various materials pertaining to her claims and ContextLogic's defenses thereto.

29. Plaintiffs Motley and LaRock thereafter served multiple subpoenas for documents and deposition testimony from Ms. Frost Li, a key marketing employee for ContextLogic.

30. On January 3, 2019, ContextLogic's counsel and Plaintiffs' counsel executed a stipulated protective order to govern the exchange of certain pertinent confidential action, which

the federal district court presiding over Plaintiff Motley's and Plaintiff LaRock's cases entered on January 8, 2019.

31. On January 7, 2019, following several weeks of meet-and-confers conferences between counsel for the Parties concerning deficiencies that my firm believed existed in ContextLogic's answer to Plaintiff Motley's complaint and its affirmative defenses, and on the eve of Plaintiff Motley filing a motion to strike ContextLogic's answer that my firm and I had prepared, the Parties stipulated to ContextLogic's filing of an amended answer. (*Motley*, ECF No. 49.) That stipulated request was granted the following day (*id.*, ECF No. 50), and on January 11, 2019, ContextLogic filed an amended answer to Plaintiff Motley's complaint (ECF No. 52), again denying any and all liability to Ms. Motley or the proposed class, and again asserting a lack of an "injury-in-fact" under Article III of the U.S. Constitution as an affirmative defense to the claims alleged in Plaintiff Motley's complaint, among 22 other affirmative defenses. (*See id*. at 6 (affirmative defense two, asserting that "Plaintiff's individual and class claims against ContextLogic must be dismissed because neither Plaintiff nor the absent classes have suffered an injury-in-fact, and thus they lack standing to assert or pursue the claims in the Complaint").)

32. Over the course of several weeks, my firm and I participated in multiple meet-and-confer conferences by telephone with ContextLogic's counsel concerning the Parties' respective discovery requests and responses, which ultimately facilitated an exchange of detailed and comprehensive responsive documents, electronically-stored information, and information bearing on the merits of the claims alleged by Plaintiffs as well as on issues of class certification.

33. On January 14, 2019, ContextLogic moved to compel arbitration and dismiss plaintiff LaRock's case, on substantially the same grounds as the motion ContextLogic had previously filed in Plaintiff Motley's case. (*LaRock*, ECF No. 9.) And later that same day, ContextLogic moved for judgment on the pleadings in Plaintiff Motley's case, 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). (*Motley,* ECF No. 53.)

34. Shortly thereafter, the parties agreed to attend mediation on February 28, 2019 before the Honorable Wayne R. Andersen (Ret.), a former U.S. District Court Judge for the Northern District of Illinois and JAMS mediator, in an attempt to resolve the claims alleged by Plaintiffs on a class-wide basis, after a lengthy process of negotiating the terms of the mediation.

35. Thus, on January 25, 2019, the Parties stipulated to the stay of both California Cases pending resolution of their upcoming mediation. (*Motley*, ECF No. 55; *LaRock*, ECF No. 17.)

III. Negotiations Leading to the Settlement of the Action

36. Several weeks before the February 28, 2019 mediation, ContextLogic produced to my firm several supplemental categories of documents, ESI, and information that we had required prior to mediation, including documents, electronically-stored business records, and data dictionaries pertaining to, inter alia, the adequacy of ContextLogic's evidence of consent, the size and scope of potential settlement classes, and important insurance coverage-related materials reflecting the absence of any applicable policies of insurance that might provide coverage to ContextLogic for liability in this litigation. Armed with these materials, the documents and information produced by ContextLogic during discovery, and the knowledge acquired through our comprehensive pre-filing and post-filing investigations, my firm and I 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 and the extent of potentially recoverable class-wide damages, and ContextLogic's ability to satisfy a judgment.

37. The Parties also prepared and exchanged multiple mediation statements outlining their respective settlement positions ahead of mediation, including a comprehensive 40-page, single-spaced settlement position statement that my firm and I prepared for Judge Andersen's consideration.

38. On February 28, 2019, following these extensive discussions and preliminary negotiations, my law partner David W. Hall and I attended a full-day mediation session with

ContextLogic and its counsel in Chicago, Illinois, under the supervision of Judge Andersen of JAMS.

39. After over ten (10) hours of contentious, arms'-length negotiations before Judge Andersen, and in response to a mediator's proposal made by Judge Andersen late in the evening, the Parties reached an agreement on the principal components of the proposed class-wide Settlement. The parties executed a binding term sheet setting forth the material terms of the proposed Settlement Agreement, the execution of which was conditioned upon Plaintiffs taking confirmatory discovery regarding, inter alia, the size and composition of the Settlement Class.

40. 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.[3] 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. *See Frank*, 139 S. Ct. at 1046 (vacating

[3] *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.").

final approval of class action settlement and remanding for trial or appellate court to consider the plaintiffs' Article III standing).

41. After further discussions overseen by Judge Andersen, the Parties and their respective counsel agreed that the most prudent course forward 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 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. Thus, 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.

42. Thus, after these further negotiations and discussions between the Parties, and with the assistance of Judge Andersen, the Parties executed an amendment to the term sheet executed at the end of the mediation, further memorializing the terms of the proposed class-wide settlement, including, in light of the Supreme Court's decision in *Frank v. Gaos*, provisions concerning the dismissal of Plaintiffs' cases pending in the Northern District of California and the re-filing of the claims alleged in those cases in a state-court forum for settlement approval purposes. Additionally, my firm and I negotiated a tolling agreement in connection with the dismissal and refiling of Plaintiffs' claims (also memorialized in the Parties' amendment to the term sheet) that protects the Settlement Class Members' claims from any statute of limitations-based defenses that could potentially arise in the unlikely event the Settlement does not obtain final approval upon its refiling in the Circuit Court of Cook County, Illinois.

43. On May 31, 2019, pursuant to the amended term sheet executed between the Parties following their thorough review and analysis of the *Frank* decision and their communications with Judge Andersen regarding the same, the Parties filed stipulations of dismissal without prejudice in cases pending in the Northern District of California, subject to the refiling of those claims in a consolidated complaint filed in a proper state court jurisdiction on behalf of Plaintiffs Motley and LaRock and two other individuals, Ian Olsen and Adam Haney. (*Motley,* ECF No. 62 (stipulation

of dismissal without prejudice); *LaRock*, ECF No. 24 (stipulation of dismissal without prejudice).)

44. Shortly thereafter, on June 3, 2019, plaintiffs Olsen, Haney, Motley, and LaRock (collectively hereinafter, the "Representative Plaintiffs") filed the operative consolidated Class Action Complaint (hereinafter, the "Complaint") in the Circuit Court of Cook County, Illinois, County Department of the Chancery Division (hereinafter, the "Action"). (*Olsen, et al.*, Dkt. 1.) The Complaint filed in the Action by the Representative Plaintiffs alleges substantially the same individual and class-wide TCPA claims against ContextLogic that were previously alleged by Plaintiffs Motley and LaRock in the Northern District of California. (*See generally id.*)

45. 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.

IV. Confirmatory Discovery

46. ContextLogic produced to my firm over five (5) gigabytes of voluminous business records extracted from its internal marketing database, as well as several other important categories of data necessary for my firm and I to confirm the approximate size and scope of the proposed Settlement Class contemplated by the Settlement, among other merits, class, and insurance-related details. The materials we reviewed 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.

47. My firm retained a highly-experienced and qualified expert, Colin Weir of the Boston, Massachusetts-based telecommunications consulting firm Economics & Technology, Inc. to further review and analyze this voluminous data and further verify the approximate size of the Settlement Class, the number of text messages sent to the Settlement Class, and the reliability of the methodology utilized to gather this data and compute these figures.

V. Selection of the Settlement Administrator

48. Thereafter, together with counsel for ContextLogic, my firm and I coordinated a competitive bidding process to select a Settlement Administrator, in which three (3) nationally recognized and experienced class-action settlement administration companies submitted bids to administer the various components of the Settlement's Notice Plan, including the preparation of the Class Notices, Claim Form, and Settlement Website, overseeing the Settlement Fund, processing submitted claims, and disbursement the Settlement Fund to the Settlement Class. After procuring the three estimates, the Parties reviewed and analyzed each estimate, including by performing cost comparisons and analyzing differences between the detailed notice and disbursement plans devised by each potential administrator, and obtained further follow-up information from each administrator-candidate.

49. At the conclusion of this process, the Parties agreed to engage KCC, LLC ("KCC") to administer the Settlement, as well as to provide the Parties advice concerning the mechanics of the Notice Plan and disbursement aspects of the proposed Settlement. Through a number of discussions and negotiations, my firm and I were also able to secure KCC's agreement to establish a maximum, not-to-exceed service fee for it to perform all of the work and expenses administering the Settlement in this Action.

50. The Settlement and its exhibits, the Notice Plan, and each document comprising the Notice Plan were negotiated separately through many in-person and telephonic meetings, were meticulously drafted by Class Counsel, and were the subject of exhaustive negotiations and phone calls, and multiple rounds of revisions to refine each component of the Settlement. Additionally, KCC provided meaningful input on all of the notice documents, so as to ensure these materials are comprehensive and easy to read and understand by members of the Settlement Class, and that they fully comply with due process and all requirements of Section 2-801.

51. On August 21, 2019, after having exchanged the necessary information in discovery and in advance mediation, participated in mediation and further negotiations on an arms'-length basis under the guidance of Judge Andersen of JAMS, exchanged further confirmatory discovery

concerning, *inter alia,* the size and scope of the proposed Settlement Class, and undertaken a competitive process to select a Settlement Administrator, the Parties executed the formal Settlement Agreement.

VI. Preliminary Approval of the Settlement and the Class Notice Plan

52. On September 12, 2019, Representative Plaintiffs filed the Unopposed Motion for Preliminary Approval of the Settlement.

53. On September 24, 2019, this Court granted preliminarily approval of the Settlement Agreement. In accordance with the Court's order, the Parties and the Settlement Administrator, KCC, LLC ("KCC"), began the process of effectuating the Notice Plan approved by the Court.

54. The Settlement Class has overwhelmingly approved the Settlement Agreement reached in this matter. As attested to by KCC, more than 65,000 Settlement Class Members have submitted claims to date. More importantly, there have been no objections to the Settlement Agreement or the attorneys' fees and incentive award sought.

THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

55. As described above, my firm and I conducted a thorough independent examination, investigation, and evaluation, both prior to and after commencing this litigation, into each of the many factual and legal issues relevant to the merits of Plaintiffs' claims and the defenses potentially available to ContextLogic, which enabled the Plaintiffs and my firm to meaningfully assess the strengths and weaknesses of Plaintiffs' claims and the asserted defenses, as well as the likelihood of prevailing at class certification and obtaining relief for the Settlement Class. We requested, obtained, and thoroughly reviewed, with the input and assistance of our retained expert, voluminous sets of data, documents, and information bearing on the merits of the claims and issues of class certification, both in the course of the litigation prior to engaging in settlement discussions, as well as in the context of exploring early resolution before and during mediation and in connection with the post-mediation confirmatory discovery process. After the Parties' mediation, my firm and I engaged ContextLogic's counsel in extensive additional arm's-length negotiations, through many telephone discussions and an additional in-person meeting before Judge Andersen,

to finalize and memorialize each term of the Settlement Agreement and the various exhibits incorporated therein, as well as to agree upon the precise form and content of the Settlement Website (including the web-based Claim Form on the Settlement Website) and the script for the toll-free Settlement phone number. Before and during all settlement discussions with ContextLogic's counsel, my firm and I had the benefit of all of the documents and information we needed to conduct meaningful and informed settlement negotiations on behalf of the Settlement Class. All of the Parties' settlement negotiations were conducted at an arm's-length basis and without any form of collusion. All told, Class Counsel expended over 2,000 hours of attorney time and devoted substantial other resources to the prosecution of this litigation on behalf of the Settlement Class. Additionally, Class Counsel has to date fielded over 500 telephone calls and e-mails from Settlement Class Members concerning the Settlement.

56. During the Parties' settlement discussions, ContextLogic's highly experienced counsel indicated that, had this litigation progressed, ContextLogic would have committed the substantial resources at its disposal to defending and litigating this matter at every stage of the proceedings, including through trial and appeal if necessary. In particular, my firm and I were advised that, absent the Settlement, ContextLogic would have opposed class certification on a number of potentially meritorious grounds, sought summary judgment on its affirmative defense of "express written consent," sought a decision (and appealed any adverse decision) on its motion for judgment on the pleadings on the argument that the TCPA constitutes an impermissible restriction on free speech in violation of the First Amendment, and requested a stay of the litigation pending resolution of various FCC rulemaking proceedings pertaining to the ATDS element of the statute. Many of the defenses articulated by ContextLogic during the course of our negotiations, as to both the merits of the Representative Plaintiffs' claims and certification of the Settlement Class, presented real, substantial risks of non-recovery to the Settlement Class.

57. Each of the Representative Plaintiffs provided substantial assistance to my firm and I in advance of and during the litigation, including by producing extensive records and information concerning their interactions with ContextLogic and the text messages they received to my firm to

review. The Representative Plaintiffs vigorously prosecuted the case on behalf of the Settlement Class during the litigation and assisted my firm in negotiating the proposed Settlement on behalf of the Settlement Class. Each of the Representative Plaintiffs strongly supports the Settlement and believes that it is in the best interests of the Settlement Class.

58. I, along with the other attorneys of my firm, have concluded that the Settlement Agreement reached in this matter is fair, reasonable and adequate in light of the attendant risks of protracted litigation, and warrants final approval. While I believe that the merit of Plaintiffs' claims could and would be proven at trial, I recognize the substantial risk and inherent uncertainty which continued litigation imposes on Plaintiffs and the absent Settlement Class Members. Based on the extensive investigation, discovery, and litigation that has occurred in this matter, together with years of experience prosecuting similar litigation in state and federal courts across the country, I believe that the Settlement Agreement reached in this matter is in the best interests of Plaintiffs and the other Settlement Class Members involved.

59. Class Counsel's opinion that the Settlement Agreement should be finally approved is also based on the overwhelming support for the Settlement Agreement expressed by the Settlement Class Members themselves. The fact that practically every single Class Member received direct notice and that not a single Settlement Class Member has filed a valid objection to the Settlement, together with the large number of claims already filed by the Settlement Class, further demonstrates that final approval of the Settlement Agreement is appropriate.

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

Executed this 16th day of December 2019 in Miami, Florida.

/s/ Frank S. Hedin
Frank S. Hedin