

**IN THE STATE COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA**

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

Plaintiffs,

v.

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

Defendants.

Civil Action No. SC 2020 CV 694

**[PROPOSED] FINAL APPROVAL OF THE SETTLEMENT AGREEMENT; FINAL
JUDGMENT; AWARD OF SETTLEMENT CLASS COUNSEL'S FEES, EXPENSES,
AND SETTLEMENT CLASS REPRESENTATIVES' INCENTIVE AWARDS;**

WHEREAS, on November 10, 2020, this Court entered a Preliminary Approval Order that conditionally certified pursuant to O.C.G.A. § 9-11-23, for settlement purposes only, a Settlement Class consisting of:

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

WHEREAS, this Court finds that the papers presented in connection with the final approval hearing are detailed and sufficient to rule on final approval, attorneys' fees and expenses, and incentive awards; and

WHEREAS, this Court, having heard from Settlement Class Counsel on behalf of the Settlement Class, and from Defendant’s counsel, and having reviewed all other arguments and submissions presented by all interested persons and entities with respect to the settlement and the Settlement Class Counsel’s attorneys’ fees and expenses and incentive awards to the Settlement Class Representatives;

WHEREAS, this Court, having previously determined that the Settlement Class asserts both federal and state law claims alleging injury in fact caused by Defendant; and

WHEREAS, unless specifically defined herein, all capitalized terms used herein have the meanings set forth and defined in the Settlement Agreement, it is hereby

ORDERED, ADJUDGED, DECREED, AND FOUND THAT:

1. This cause arises out of Settlement Class Representatives’ allegations that Defendant committed violations of state and federal law, including but not limited to the Fair and Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. § 1681, *et seq.*, by providing electronically-printed receipts with more than the last five digits of a credit card number or debit card number at the point of sale or transaction.

2. Defendant denies that there is any factual or legal basis for Settlement Class Representatives’ allegations. Defendant denies any liability and that Settlement Class Representatives or any other members of the Settlement Class have suffered injury or are entitled to monetary or other relief. Defendant finally denies that this case should be certified as a class action, except for purposes of settlement.

3. After extensive arm’s-length settlement negotiations, the Parties agreed to settle this matter.

4. The Settlement Agreement provides substantial and meaningful relief to the Settlement Class, including affirmative relief that requires Defendant to continue refraining from printing more than the last five digits of the credit card and debit card numbers on printed receipts issued to customers, as well as monetary benefits to the Settlement Class.

5. The Settlement Agreement provides for a settlement under which Participating Claimants can make claims to receive monetary benefits.

6. The Settlement Class as provided in the Preliminary Approval Order is unconditionally certified pursuant to O.C.G.A. § 9-11-23. The prerequisites for a class action under O.C.G.A. § 9-11-23 have been satisfied in that (a) the members of the Settlement Class are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class, and the common questions predominate over any questions affecting only individual members; (c) the claims of Settlement Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) Settlement Class Representatives have and will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

7. For purposes of the nonmonetary benefits specified in Section 11 of the Agreement, the prerequisites for a class action under O.C.G.A. § 9-11-23 have been satisfied in that (a) the members of the Settlement Class is so numerous that joinder of all member thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Settlement Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) Settlement Class Representatives have and will fairly and adequately represent the interests of the Settlement Class; and (e) Defendant has acted or refused to act on

grounds generally applicable to the class, thereby making appropriate final injunctive or declaratory relief with respect to the class as a whole.

8. This Court previously concluded, and again finds, that it has subject matter jurisdiction over the case and controversy and has the authority to enter this final judgment.

9. The following are appointed as Settlement Class Representatives of the Settlement Class: Brian Nowe and Mary Allen Wilson Tondee.

10. The Court confirms its appointment of the following as Settlement Class Counsel: Charles Austin Gower, Jr. and Shaun Patrick O'Hara of Charles A. Gower PC, Chant Yedalian of Chant & Company A Professional Law Corporation, and William Dixon James of Wm. Dixon James, P.C.

11. The settlement, as set forth in the Settlement Agreement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class members, and is approved in all respects in accordance with O.C.G.A. § 9-11-23.

12. The settlement was negotiated at arm's-length by experienced counsel who were fully informed of the facts and circumstances of the Action and of the strengths and weaknesses of their respective positions. The settlement was reached after the Parties engaged in extensive negotiations. Settlement Class Counsel and Defendant's counsel are therefore well positioned to evaluate the benefits of the settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

13. Notice to the members of the Settlement Class has been provided as directed by this Court in the Preliminary Approval Order, and such notice having constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and

providing notice to the members of the Settlement Class, has satisfied the requirements of due process, O.C.G.A. § 9-11-23, and all other applicable laws.

14. The settlement shall not be deemed to constitute an admission or finding of liability or wrongdoing on the part of Defendant, Settlement Class Representatives, or any of the Settlement Class members, Released Parties, or any additional Released Parties.

15. Upon the Final Effective Date, Settlement Class Representatives, each Settlement Class member, and each Releasing Party shall be deemed to have, and by operation of this Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Settled Claims against the Released Parties in the manner(s) set forth in Section 13 of the Settlement Agreement.

16. Upon the Final Effective Date, Settlement Class Representatives, each Settlement Class member, and each Releasing Party shall be permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Settled Claims.

17. Settlement Class Representative incentive awards are hereby awarded to the following Settlement Class Representatives in the amount of five-thousand dollars and zero cents (\$5,000.00) each: Brian Nowe and Mary Allen Wilson Tondee, paid pursuant to the terms of the Agreement, as compensation for their efforts in bringing the Action and achieving the benefits of the settlement on behalf of the Settlement Class.

18. Settlement Class Counsel are hereby awarded (a) attorneys' fees in the amount of six-hundred-sixty-six-thousand—six-hundred-sixty-seven dollars and zero cents (\$666,667.00) and (b) reimbursement of their reasonable expenses in the amount of six-thousand—one-hundred-twelve dollars and eighty cents (\$6,112.80). These fees and reimbursement of expenses shall be

paid pursuant to the terms of the Agreement, and are to be allocated among Class Counsel according to Class Counsel's existing agreement with one another.

19. The Court finds that the amounts of attorneys' fees and reimbursable expenses awarded to Settlement Class Counsel are fair and reasonable. In making its award of attorneys' fees and reimbursement of expenses, in the amounts described in paragraph 18 above, the court has considered and finds as follows:

- a. The settlement has provided significant relief to the Settlement Class.
- b. Defendant's implementation of a written company policy to ensure all Bargain Hunt stores remain in compliance with FACTA was a negotiated, material term of the settlement.
- c. The Notice Program constituted the best notice practicable to Settlement Class members consistent with the requirements of due process.
- d. The settlement provides a fair opportunity for all members of the Settlement Class to submit a Claim and be compensated. The Notice Program combined with the length of the Claims Period provides ample opportunity for any Settlement Class member who desires to submit a claim to do so.
- e. By providing this opportunity for compensation Settlement Class Counsel have demonstrated that they have represented the Settlement Class well. Settlement Class Counsel have conducted the litigation and achieved the settlement with skill, perseverance, and diligent advocacy on behalf of Settlement Class Representatives and the Settlement Class as a whole.

- f. This matter involves complex factual and legal issues and, in the absence of the settlement, would involve further lengthy proceedings and uncertain resolution of such issues.
- g. Had the settlement not been achieved, there would remain a significant risk that the Settlement Class may have recovered less or nothing from Defendant, and that any recovery would have been significantly delayed.
- h. Settlement Class counsel possess and successfully utilized the skills and expertise required to prosecute this matter and achieve settlement. The Court also considered and finds that the experience, reputation, and ability of Settlement Class Counsel contributed to the success of achieving settlement, and the benefits conferred as a result of the settlement, including the monetary benefits and the change of conduct and implementation of a FACTA compliance policy by Defendant. The Court also considered and finds that Settlement Class Counsel's fees were always contingent, and Settlement Class Counsel undertook substantial risk by prosecuting this matter, including the substantial risk of non-payment.

20. During the claims period there were a total of 3,267 claims received from Settlement Class members, of which 579 were duplicates. After adjusting for duplicates, there were 2,688 unique claims received from Settlement Class members during the claims period. Defendant has agreed that all of these 2,688 claims will be paid as part of the Settlement. To the extent that there are any uncashed payments that remain after the 120-day void period, any such residual funds will be distributed to the non-profit organization J. Barnett Woodruff (South) Boys & Girls Club. Defendant and additional Released Parties shall not be liable for any additional fees

or expenses for Settlement Class Counsel or counsel of any Settlement Class Representatives in connection with the Action, beyond those expressly provided in the Settlement Agreement.

21. The Court hereby directs the Settlement Administrator, Defendant and Plaintiffs to effectuate all terms of the settlement and Agreement.

22. By reason of the settlement, and approval hereof, there is no just reason for delay and the Court hereby enters this Final Order and Judgment as a final judgment.

23. Jurisdiction is reserved by this Court, without affecting the finality of this Final Approval Order and Judgment, over:

- a. Effectuating the settlement and the terms of the Agreement, including the payment of Settlement Class Counsel's attorneys' fees and reimbursement of expenses, including any interest accrued thereon;
- b. Supervising any remaining aspects of the administration of the settlement;
- c. Determining whether, in the event an appeal is taken from any aspect of this Final Approval Order and Judgment, notice should be given at the appellant's expense to some or all Settlement Class members apprising of the pendency of the appeal and such other matters as the Court may order;
- d. Enforcing and administering the Settlement Agreement and the settlement, including the release executed in connection therewith, and the provisions of this Final Approval Order and Judgment;
- e. Adjudicating any disputes that arise under the Settlement Agreement; and
- f. Any other matters related or ancillary to the foregoing.

SO ORDERED, ADJUDGED, AND DECREED.

Dated: _____

The Honorable Andy Prather