

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SEAN HARTRANFT, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

TVI, INC. d/b/a SAVERS, APOGEE
RETAIL, LLC,

Defendants.

) Case No. 8:15-cv-01081-CJC-DFM

) **SETTLEMENT ORDER AND
FINAL JUDGMENT**

1 THIS MATTER came before the Court on Class Representative’s motion for
2 final approval of the proposed class settlement (the “Settlement”) and Class
3 Counsel’s application for attorneys’ fees and expenses, and incentive award to Class
4 Representative (“Fee, Expense, and Incentive Payment Application”). The Court has
5 considered all papers filed and proceedings in this matter and is fully informed
6 regarding the facts surrounding the proposed Settlement. Based upon this
7 information, the Court has determined to approve the proposed Settlement as fair,
8 reasonable, and adequate. The Court hereby enters this Settlement Order and Final
9 Judgment (“Final Judgment”), which constitutes a final adjudication on the merits of
10 all claims of the Settlement Class.

11 On April 18, 2019, this Court granted preliminary approval to the proposed
12 Settlement between Class Representative and Defendants TVI, Inc. d/b/a Savers, and
13 Apogee Retail, LLC (collectively, “Defendants”). The proposed Settlement resolves
14 all of the Settlement Class’s claims against Defendants in exchange for Defendants’
15 agreement to provide certain monetary and non-monetary consideration to Settlement
16 Class Members as set forth in the Settlement Agreement and Release (the
17 “Agreement”). On October 21, 2019, this Court held a Final Approval Hearing to
18 consider whether to grant final approval to the Settlement and to consider Class
19 Counsel’s Fee, Expense and, Incentive Payment Application. The Court heard from
20 counsel.

21 Having read, reviewed and considered the papers filed in support of final
22 approval of the Settlement, including supporting declarations; oral arguments of
23 counsel; Class Counsel’s Fee, Expense, and Incentive Payment Application; the
24 Agreement; and the pleadings, the Court finds and concludes as follows:

25 //
26 //
27 //
28 //

1 1. **Definitions.** The definitions and provisions of the Agreement are
2 incorporated in this Final Judgment as though fully set forth herein.

3 2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the
4 Agreement with respect to and over all parties to the Agreement, including Class
5 Representative and all members of the Settlement Class. That Settlement Class is as
6 certified in the Court’s Order Granting Preliminary Approval of Class Action
7 Settlement (“Preliminary Approval Order”):

8 All persons and entities to which, between and including July 1, 2011,
9 to September 30, 2015, Apogee made or attempted to make one or
10 more telephone calls to their cellular telephones regarding donation
11 solicitation on behalf of EFA.

12 The Settlement Class does not include any persons who timely and validly
13 requested exclusion from the Settlement Class. Defendants and any of their
14 affiliates or subsidiaries, and any entities in which any of such companies
15 have a controlling interest, the judges presiding in the Action, and Class
16 Counsel are also excluded from the Settlement Class.

17 3. **Settlement Approval.** The Court hereby grants final approval to the
18 Settlement and finds the Settlement is, in all respects, fair, reasonable, and adequate,
19 and in the best interests of the Settlement Class. The Court finds the Settlement is
20 within the authority of the parties and the result of extensive arm’s length
21 negotiations with the guidance of an experienced mediator.

22 4. **Class Certification.** This Court confirms the proposed Settlement Class
23 satisfies the requirements of Fed. R. Civ. P. 23, as found in the Preliminary
24 Approval Order. Accordingly, this Court makes final the conditional class
25 certification set forth in the Preliminary Approval Order.

26 5. **Exclusion from Settlement Class.** Certain members of the Settlement
27 Class have timely requested to be excluded from the Settlement Class and the
28 Settlement. Exhibit A, attached hereto, lists the Settlement Class Members who

1 timely requested exclusion from the Settlement Class. Accordingly, this Final
2 Judgment shall not bind or affect Settlement Class Members listed on Exhibit A.

3 6. ***Appointment of Class Counsel and Class Representative.*** The Court
4 confirms the appointment of the Law Offices of Douglas J. Campion, APC, Bisnar
5 Chase LLP, and the Law Offices of Michael P. Sousa, APC as Class Counsel. The
6 Court confirms the appointment of Sean Hartranft as Class Representative.

7 7. ***Objections.*** The Court has not received any objections to the
8 settlement.

9 8. ***No Admission.*** Neither this Final Judgment nor the Agreement is an
10 admission or concession by Defendants of the validity of any claims or of any
11 liability or wrongdoing or of any violation of law. This Final Judgment and the
12 Agreement do not constitute a concession and shall not be used as an admission or
13 indication of any wrongdoing, fault or omission by Defendants or any other person in
14 connection with any transaction, event or occurrence, and neither this Final
15 Judgment nor the Agreement nor any related documents in this proceeding, nor any
16 reports or accounts thereof, shall be offered or received in evidence in any civil,
17 criminal, or administrative action or proceeding, other than such proceedings as may
18 be necessary to consummate or enforce this Final Judgment, the Agreement, and all
19 releases given thereunder, or to establish the affirmative defenses of *res judicata* or
20 collateral estoppel barring the pursuit of claims released in the Agreement.

21 9. ***Dismissal with Prejudice.*** This Court hereby dismisses with prejudice
22 all claims of Settlement Class Members against Defendants within the scope of the
23 Released Claims defined by the Settlement Agreement.

24 10. ***Release.*** Class Representative, for himself and as representative of the
25 Settlement Class, and on behalf of each Settlement Class Member who has not
26 timely opted out and each of their respective agents, successors, heirs, assigns, and
27 any other person who can claim by or through them in any manner, fully, finally, and
28 forever

1 irrevocably release, relinquish, and forever discharge with prejudice all Released
2 Claims against the Released Parties.

3 11. ***Injunction Against Asserting Released Claims.*** Class Representative,
4 all Settlement Class Members, and any person or entity allegedly acting on behalf of
5 Settlement Class Members, either directly, representatively or in any other capacity,
6 are permanently enjoined from commencing or prosecuting against the Released
7 Parties any action or proceeding in any court or tribunal asserting any of the Released
8 Claims, provided, however, that this injunction shall not apply to individual claims of
9 any Settlement Class Members listed in Exhibit A who timely requested exclusion
10 from the Settlement Class. This injunction is necessary to protect and effectuate the
11 settlement, this Order, and the Court's flexibility and authority to effectuate this
12 settlement and to enter judgment when appropriate, and is ordered in aid of the
13 Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

14 12. ***General Release Acknowledgement.*** By operation of this Final
15 Judgment, Class Representative and Defendants expressly waive, and each
16 Settlement Class Member is deemed to have waived, any and all claims, rights, or
17 benefits they may have under California Civil Code § 1542 and any similar federal or
18 state law, right, rule, or legal principle that may apply. California Civil Code § 1542
19 provides as follows:

20 A general release does not extend to claims which the
21 creditor does not know or suspect to exist in his or her
22 favor at the time of executing the release, which if known
23 by him or her must have materially affected his or her
24 settlement with the debtor.

25 13. ***Class Notice.*** The Claims Administrator completed the delivery of
26 Class Notice according to the terms of the Agreement. The Class Notice given by
27 the Claims Administrator to the Settlement Class, which set forth the principal terms
28

1 of the Agreement and other matters, was the best practicable notice under the
2 circumstances. The Class Notice program prescribed by the Agreement was
3 reasonable and provided due and adequate notice of these proceedings and of the
4 matters set forth therein, including the terms of the Agreement, to all parties entitled
5 to such notice. The Class Notice given to the Settlement Class Members satisfied the
6 requirements of Federal Rule of Civil Procedure 23 and the requirements of
7 constitutional due process. The Class Notice was reasonably calculated under the
8 circumstances to apprise Settlement Class Members of the pendency of this Action,
9 all material elements of the Settlement, and their opportunity to exclude themselves
10 from, object to, or comment on the Settlement and appear at the Final Approval
11 Hearing. The Court has afforded a full opportunity to all Settlement Class Members
12 to be heard. Accordingly, the Court determines that all members of the Settlement
13 Class, except those who timely excluded themselves from the Settlement Class, are
14 bound by this Final Judgment.

15 14. ***Notifications to Appropriate Federal and State Officials.*** Within ten
16 (10) days after the filing of the proposed Agreement in this Court, Defendants
17 served a notice of the proposed Settlement upon the appropriate state official of each
18 State in which a Settlement Class Member resides and upon the Attorney General of
19 the United States. The Court finds that the notice provided by Defendants satisfied
20 the requirements of 28 U.S.C. § 1715(b) and that more than ninety (90) days have
21 elapsed since Defendants provided the required notice, as required by 28 U.S.C.
22 § 1715(d).

23 15. ***Continuing Jurisdiction.*** Without affecting the finality of this Final
24 Judgment, the Court retains continuing jurisdiction over (a) implementation of the
25 Agreement, distribution of the settlement payments, incentive award, and attorneys'
26 fees and costs contemplated by the Agreement, and processing of the claims
27 permitted by the Agreement, until each and every act agreed to be performed
28 pursuant to the Agreement has been performed, and (b) all parties to this Action and

1 members of the Settlement Class for the purpose of enforcing and administering the
2 Agreement.

3 16. ***Incentive Award.*** As an incentive payment in compensation for the
4 time, effort, and risk he undertook as representative of the Settlement Class, the
5 Court hereby awards \$5,000 to Sean Hartranft to be paid by Defendants.

6 17. ***Class Counsel Fee and Cost Award.*** The Court hereby awards
7 attorneys' fees and costs to compensate Class Counsel for their time incurred and
8 expenses advanced. The Court has concluded that: (a) Class Counsel achieved a
9 favorable result for the Settlement Class by obtaining Defendants' agreement to
10 make available to Settlement Class Members certain monetary and non-monetary
11 consideration; (b) Class Counsel devoted substantial effort to pre-and post-filing
12 investigation, legal analysis, and litigation; (c) Class Counsel prosecuted the
13 Settlement Class's claims on a contingent-fee basis, investing significant time and
14 accumulating costs with no guarantee that they would receive compensation for their
15 services or recover their expenses; (d) Class Counsel employed their knowledge of
16 and experience with class action litigation in achieving a valuable settlement for the
17 Settlement Class, in spite of Defendants' possible legal defenses and their
18 experienced and capable counsel; (e) Class Representative has reviewed the
19 Agreement and has been informed of the Fee, Expense, and Incentive Payment
20 Application and has approved; (f) the Class Notice informed Settlement Class
21 Members of Class Counsel's fee and cost request under the Agreement; and (g) Class
22 Counsel filed and posted their Fee, Expense, and Incentive Payment Application in
23 time for Settlement Class Members to make a meaningful decision whether to object
24 to it. For these reasons, the Court hereby approves Class Counsel's Fee, Expense,
25 and Incentive Payment Application and awards to Class Counsel fees and costs in
26 the total amount of \$900,000, to be paid by Defendants. All such fees are in lieu of
27 statutory or other fees that Class Representative and/or the Settlement Class might
28 otherwise have been entitled to recover.

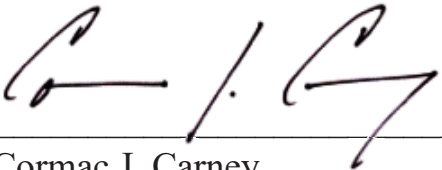
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

18. ***Payment of Claims Administrator Costs and Disbursement of Settlement Certificates, and Cash Payments to Settlement Class Members Who Submit Approved Claims.*** The Defendants shall pay to the Claims Administrator all costs and fees incurred for all costs of notice and claims administration incurred for this Action, according to the Agreement. Defendants shall also cause the Settlement Certificates to the Settlement Class Members who submit Approved Claims to be issued and honored and shall pay the payments to the Claims Administrator to fund all cash payments requested by Settlement Class Members who submit Approved Claims to be paid by the Claims Administrator in lieu of redeeming the Settlement Certificates for goods, as required by the Agreement.

19. ***Payment Timing.*** Defendants shall pay the fee and cost awards to Class Counsel and the incentive award to Class Representative, as well as monetary and non-monetary consideration due to eligible Settlement Class Members who timely filed a claim under the Agreement, in accordance with and at the times prescribed by the Agreement.

IT IS SO ORDERED.

DATED: October 21, 2019



Hon. Cormac J. Carney
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Hartranft v. TCI, Inc. & Apogee Retail, LLC

Valid and Timely Exclusion Requests

Name
AMIRIAN, JULDA
LAGANA, SILVIA
ROBINSON, MARTHA
JANBAY, MAHER
METZLER, CAROL
SALAS, ALEX
WATKINS, DIANA
BENNETT, TAYA
FRANCO, DORA
REYES, ALFREDO
SUZUKI, TADASHI
CHOURY, STEPHANIE ANN
FOLWELL, CURTIS
LUKO, DENISE
MARUYAMA, HOWARD
GETTYS, BLANCA
HERNANDEZ, EVELYN
KAEDING, LINDA
MCBEE, IMA J
GALLEGOS, PATRICIA
SMITH, MARCUS
GALINDO, FRANCISCA
NELSON, ROBERT
RODRIGUEZ, ANA
EUBANKS, BRENT
SHUM, ARIEL
GUTIERREZ, ERYCA
DONAHUE, BERNADINE
GARIDEL, GLORIA
YANG, ZHEN MEI
BRYAN, EDWARD
YOON, SUNGHOON
QUACH, ALAN
TRINH, DENNIS