

## **Notice of Class Action Settlement**

*Cannon v. Ashburn Corporation*, Civil Action No. 16-1452 (RMB)(AMD)

United States District Court for the District of New Jersey

A settlement has been reached in a class action lawsuit against Defendant Ashburn Corporation, d/b/a “Wines ‘Til Sold Out” and d/b/a WTSO.com (hereinafter WTSO).

### **What is this case about?**

Kyle Cannon, Lewis Lyons, and Dianne Lyons (collectively the “Plaintiffs” in this case) allege that because certain wines were not sold anywhere at the purported “Original Price,” the discount advertised by WTSO was not real, and consumers were not buying wines at a discount. The Plaintiffs further allege that WTSO offered wines that were available elsewhere but that the stated “Original Price” of some of these wines was higher than the price set by the winery itself, resulting in a greater advertised discount than would have existed had Defendant used the winery’s price for such wines.

WTSO maintains that the “Original Price” it advertised was the suggested retail price provided to it when it purchased the wine and was an accurate reflection of the value of the wine it sold. WTSO denies all liability of any kind associated with the claims alleged. WTSO further denies that class certification is appropriate for any purpose other than settlement.

The Court has not decided who is right in this case.

### **Who is included in the Class?**

You are included in this class if you reside (or otherwise live) in the United States and purchased wine from WTSO.com at any point from March 15, 2010 to November 1, 2016 (“Class Period”).

### **What may I receive from this settlement?**

You will receive credits to purchase wine on WTSO.com based on wine purchased during the Class Period if you complete a Verification Form as described below, as follows:

1. For every bottle of wine listed on [Exhibit A](#) purchased during the Class Period for \$12.99 or less, the Class Member will receive a credit of \$1.75.
2. For every bottle of wine listed on Exhibit A purchased during the Class Period for \$13.00-\$18.99, the Class Member will receive a credit of \$2.00.
3. For every bottle of wine listed on Exhibit A purchased during the Class Period for \$19.00 or greater, the Class Member will receive a credit of \$2.25.
4. For every bottle of wine listed on [Exhibit B](#) purchased during the Class Period for \$19.99 or less, the Class Member will receive a credit of \$0.50.
5. For every bottle of wine listed on Exhibit B purchased during the Class Period for \$20.00 or greater, the Class Member will receive a credit of \$0.75.
6. For every bottle of wine not listed on Exhibit A or B purchased during the Class Period, the Class Member will receive a credit of \$0.20.

You will not receive a credit for any bottle of wine for which you received a refund. Credits will be good for one year from the date you receive an email with a code for your Credits. Credits will be applied against purchases of any wine the first time it is offered on WTSO.com (with limited exceptions), and on certain other identified wines offered on WTSO.com, at the rate of \$2.00 off per bottle, or for the full or remaining credit amount if less than \$2.00. WTSO will identify on its website which wines are eligible for credit use.

### **Has WTSO made changes to its advertising?**

After the lawsuit was filed, on or about November 2, 2016, Defendant replaced the advertising term “Original Price” with the term “Comparable Price” on the WTSO.com website and included a definition of “Comparable Price” to mean “the price at which the same or a similar wine with the same primary grape varietal and appellation or sub-appellation has been offered for sale to consumers directly by a producing winery or through retailers.”

### **What are my options?**

#### **1. Remain in the Class and Receive a Credit**

You do not have to do anything to remain in the Class. However, if you wish to receive a credit as described above, you must complete the [Verification Form](#). If you received more than one Notice at different email addresses, you must complete the Verification Form for each email address that the Notice was sent to in order to obtain all of your Credits.

If the settlement is approved by the Court and you have completed the Verification Form(s), you will receive a unique non-transferable code that you may use on the WTSO.com website to access your Credits. The Verification Form for each email address at which you received a Notice must be completed and submitted no later than **April 19, 2018** in order to obtain all of your Credits. If you do not complete a Verification Form for any email address at which you received a Notice, you will not obtain the Credits for purchases made under that email address. You will receive the Code and be able to use it 40 days after the Settlement is final.

If you remain in the Class, you release and give up your right to file a lawsuit against WTSO and its related agents and entities relating to WTSO’s selling, marketing and advertising of wine during the Class Period. The precise terms of the release are set forth in the Settlement Agreement. Unless you exclude yourself from this Settlement, as described below, you will release your claims whether or not you submit a Verification Form and receive a credit.

#### **2. Exclude Yourself from the Settlement**

If you do *not* wish to be included in the settlement, you have the right to opt out of the class.

If you decide to opt out of the Class, you:

- (i) **Will not receive any credits for the purchase of wine on WTSO.com;**
- (ii) will not be bound by any orders or judgments entered in this Action;
- (iii) will not be entitled to relief under, or be affected by, this Settlement;

- (iv) will not gain any rights by virtue of this Settlement; and
- (v) will not be entitled to object to any aspect of this Settlement.

To opt out of the Class, you must mail a letter clearly stating your desire to opt out to the Settlement Administrator by **February 16, 2018**. If you have opted out and wish to revoke your request for exclusion from the Class, you may do so by mailing a letter stating clearly the desire to revoke the previous request for exclusion to the Settlement Administrator before the opt out deadline at Cannon v. Ashburn Corporation d/b/a Wines ‘Til Sold Out Class Action Settlement, P.O. Box 404041, Louisville, KY 40233-4041.

### 3. Object to the Settlement

If you wish to be part of the proposed Settlement but want to object to all or any part of the Settlement, you must do so by **February 16, 2018**. **You must remain a member of the Class in order to object to any aspect of the proposed Settlement.** Objections must be filed with the Court at:

Clerk of the Court  
United States District Court for the District of New Jersey  
4<sup>th</sup> & Cooper Streets  
Camden, NJ 08101

*and* mailed to the following:

Oren Giskan  
Giskan Solotaroff & Anderson  
217 Centre Street, 6<sup>th</sup> Floor  
New York, New York 10013

Suzanne Ilene Schiller  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004

**Your written objection must include:** Any objections must include (i) your full name and current address and telephone number; (ii) the identification of at least one wine purchased from WTSO.com; (iii) a description of all of your objections, the specific reasons for these objections, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iv) your signature.

The final approval hearing (the “Fairness Hearing”) will be on **March 19, 2018** at 10:00a.m., at the United States District Court for the District of New Jersey, 4th and Cooper Streets, Courtroom 3D. You do not have to go to Court or hire an attorney but you may if you want to, at your own cost. The Fairness Hearing is for the Court to decide (a) whether to approve the Settlement; (b) Class counsel’s requests for attorneys’ fees and expenses; and (c) the service award for the Class representatives in this case.

If you wish to appear either personally or through counsel at the Fairness Hearing to present your objections to the Court orally you must include a written statement of intent to appear at the Fairness Hearing by **February 16, 2018**. Only if you specify in your objections that you intend to appear personally or through counsel at the Fairness Hearing will you have the right to present your objections orally at the Fairness Hearing. If you do not submit timely written objections you will not be permitted to present your objections at the Fairness Hearing.

If you file objections but the Court approves the Settlement as proposed, you will still be eligible for your share of the settlement relief.

**Who are the attorneys representing the Class?**

The Court has appointed the lawyers listed below to represent you and the Class (“Class counsel”):

Oren Giskan  
GISKAN SOLOTAROFF &  
ANDERSON LLP  
217 Centre Street, 6<sup>th</sup> Floor  
New York, NY 10013

James E. Cecchi  
CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO, P.C.  
5 Becker Farm Road  
Roseland, NJ 07068

Thomas Rosenthal  
LAW OFFICES- THOMAS  
ROSENTHAL  
45 Main Street #1030  
Brooklyn, NY 11201

Edward Hernstadt  
HERNSTADT ATLAS PLLC  
45 Main Street #1030  
Brooklyn, NY 11201

You do not have to hire your own lawyer but you may if you want to, at your own cost.

**Will payments be made to Class Counsel or the Class Representatives?**

The determination of an attorney fee award is made by the Court, which will determine a reasonable fee for the work done and the result obtained by Class counsel. Class counsel will ask the Court to award attorneys’ fees and expenses of no more than \$1.7 million.

Class counsel will also seek \$2,500 for each Class Representative in recognition of their assistance in this litigation.

**Where can I get additional information?**

THIS IS ONLY A SUMMARY OF THE SETTLEMENT. For more information regarding your rights and options, you can visit the Settlement website: [www.winesettlement.com](http://www.winesettlement.com) or contact the Settlement Administrator at:

Cannon v. Ashburn Corporation d/b/a Wines  
‘Til Sold Out Class Action Settlement  
P.O. Box 404041  
Louisville, KY 40233-4041

You may also contact Class Counsel at the following address:

Oren Giskan  
GISKAN SOLOTAROFF & ANDERSON LLP  
217 Centre Street, 6<sup>th</sup> Floor  
New York, NY 10013  
ogiskan@gsllawny.com