

FUTTERMAN
COURT SERVICES, INC.
420 E. 54TH ST
NEW YORK, NY 10022

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At an I.A.S. Part 6 of the Supreme
Court of the State of New York,
County of Queens, at the
Courthouse, 88-11 Sutphin
Boulevard, Jamaica, New York on
the day of _____, 2005

25TH FEBRUARY

PRESENT:

Hon. Arnold N. Price,

Justice

VIVIAN RICHMAN and BEVERLY BAIDA,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

-against-

CAROL WRIGHT PROMOTIONS, INC. d/b/a CAROL
WRIGHT GIFTS, COX DIRECT, and
CAROLWRIGHTGIFTS.COM, and now known as COX
TARGET MEDIA SALES, INC., DR. LEONARD'S
HEALTHCARE CORP d/b/a CAROL WRIGHT GIFTS,
COX DIRECT, and CAROLWRIGHTGIFTS.COM, DRL
HOLDINGS INC. d/b/a CAROL WRIGHT GIFTS, COX
DIRECT, and CAROLWRIGHTGIFTS.COM, CAROL
WRIGHT GIFTS, INC. d/b/a CAROL WRIGHT GIFTS,
COX DIRECT, and CAROLWRIGHTGIFTS.COM, COX
TARGET MEDIA, INC. d/b/a CAROL WRIGHT GIFTS,
COX DIRECT, and CAROLWRIGHTGIFTS.COM,
GENESIS DIRECT FORTY-THREE, LLC d/b/a CAROL
WRIGHT GIFTS, COX DIRECT, and
CAROLWRIGHTGIFTS.COM, and PROTEAM.COM,
INC. f/k/a GENESIS DIRECT, LLC d/b/a CAROL
WRIGHT GIFTS, COX DIRECT, and
CAROLWRIGHTGIFTS.COM,

Defendants.

Index No. 26824/02

ORDER

The plaintiffs having moved the court for Certifying this case as a class action for
purposes of settling this case as against defendants Carol Wright Promotions, Inc., n/k/a Cox


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COUNTY OF QUEENS
2872

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COURT SERVICES, INC.

Target Media Sales, Inc., Carol Wright Gifts, Inc. n/k/a Cox Gifts, Inc. and Cox Target Media, Inc. (the "Cox Defendants"); preliminarily approving the Class Action Settlement Agreement with the Cox Defendants, attached to the motion papers as Exhibit A; approving the Class Action Settlement Notice forms attached to the motion papers as Exhibits B and C; approving the sending of notice of the Class Action Settlement in the manner set forth in the Class Action Settlement Agreements; scheduling a hearing for final approval of the Class Action Settlement proposed herein; and granting such other and further relief as the Court may deem just and appropriate under the circumstances, and the court having read and filed the Notice of Motion dated December 17, 2004 and the Amended Notice of Motion dated December 30, 2004, the affirmation of Brian L. Bromberg, Esq. dated December 17, 2004 and the exhibits thereto, and their having been no opposition thereto, and the matter having come on to be heard by the court on January 11, 2005, and the court having granted said motion without opposition by memorandum decision dated January 13, 2005, ^{of the} due deliberation having been had thereon,

NOW, on motion of Brian L. Bromberg, PC, attorneys for plaintiff, it is hereby ~~ORDERED~~ that said motion hereby is granted, and it is further ORDERED, that the proposed settlement with defendants Carol Wright Promotions, Inc.,

n/k/a Cox Target Media Sales, Inc., Carol Wright Gifts, Inc. n/k/a Cox Gifts, Inc. and Cox Target Media, Inc. (the "Cox Defendants") is approved in accordance with the following:

 1. Definitions. For the purposes of the settlement with the Cox Defendants, the Court hereby adopts by reference the definitions set forth in the Definitions section and throughout the Cox Settlement Agreement dated May 25, 2004, which is attached hereto as Exhibit A.

2. Certification of a Settlement Class. The Court having reviewed all papers submitted, and finds that all prerequisites required under CPLR 901 have been met, the Motion is

granted for purposes of settlement only, and the Class, as defined by the Cox Settlement Agreement, is hereby certified for settlement purposes under CPLR 902. The Class consists of all persons or entities in the United States who, after January 1, 1996 and August 8, 1998, paid the Cox Defendants a fee for what was represented as "guaranteed replacement of lost/damaged merchandise" or any similar alleged benefit. The Class does not include Class Counsel, the Cox Defendants' counsel, the officers, directors, employees or counsel of any Defendant, any state, federal foreign or local government or the immediate family members of an of these persons. The Court appoints Plaintiffs Richman and Baida to serve as representatives of the Cox Settlement Class.

Ad
JSC

3. Preliminary Approval of the Cox Settlement Agreement. The Court preliminarily approves the Settlement of the Action set forth in the Cox Settlement Agreement and Exhibits thereto as being fair, reasonable, and adequate to the Class.

4. Notice. The Court directs that notice be given to the Class as specified in the Settlement Agreement and its Exhibits. The Court finds that such notice is the most practicable method of providing notice to the Class members and is reasonably calculated to apprise the Class Members of the pendency of the Action, of their right to object or opt out of the Cox Settlement, or otherwise avail themselves of the rights created by the Cox Agreement. The Court finds that dissemination of the Notice in the manner described in the Cox Agreement constitutes the best notice practicable under the circumstances to potential Settlement Class Members and complies fully with all substantive and procedural due process rights guaranteed by the United States Constitution, and any other applicable law. No further notices to the class members are required.

5. Settlement Hearing. A Final Hearing will be held on May 3, 2005, at 9:30 AM at which time the Court will determine whether the Settlement of the Action, should be finally approved as fair, reasonable, and adequate and whether the Judgment and Order of Dismissal with Prejudice (the "Judgment") should be entered. The Court may adjourn or continue the Final Hearing without further notice to the Class.

6. Attorneys' Fees. The Court shall award attorneys' fees in accordance with the terms of the Settlement Agreement, in an amount that has been agreed to by the Cox Defendants in paragraph 11 (D) of the Cox Settlement Agreement.

7. Incentive Award. The Court shall award an incentive award to Class Representatives Richman and Baida, in accordance with the terms of the Cox Settlement Agreement, which application and amount has been agreed to by the Defendants in paragraph 11(B) of the Cox Settlement Agreement.

8. Stay of Discovery and Litigation. All discovery and other proceedings in the Action are stayed ^{pending determination of the action or} until further order of the Court, except as may be necessary to implement the settlement or comply with the terms of the Cox Settlement Agreement.

9. Injunction. Pending Final Approval, the Court hereby bars and enjoins all Class members, except those who have timely and effectively requested exclusion, from instituting, or prosecuting any action or proceeding, whether on a class or individual basis, against the Cox Defendants for liability in any way related to, arising out of, or based upon the Released Claims, as defined in the Cox Settlement Agreement.

10. Deadlines. The deadline for Class members to opt out of the Settlement will be March 19, 2005. The deadline for Class members to object to the Settlement will be April 2, 2005. The Final Hearing Date, at which hearing the Court will determine whether this settlement is fair, reasonable, and adequate, and whether a final judgment and order of dismissal should be entered in accord with the Cox Settlement Agreement, will be May 3, 2005. The Court may adjourn or continue the Final Hearing or any other date set forth in this Order without further notice to the Class.

ENTER:



Honorable Arnold N. Price, J.S.C.

05 MAR -2 PM 3:38
CLERK'S COURT
FILED

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HON. ARNOLD N. PRICE IAS TERM, PART 6

VIVIAN RICHMAN and BEVERLY BAIDA,	:	INDEX 26824/02
Individually and on behalf of all	:	NUMBER.....
Others similarly situated,	:	
	:	MOTION 5/3/05
Plaintiffs,	:	DATE.....
	:	
- against -	:	MOTION 29
	:	CAL.NUMBER.....
	:	
CAROL WRIGHT PROMOTIONS, et al.,	:	TRIAL
	:	CAL.NUMBER.....
Defendants.	:	

The following papers numbered 1 to read on this order to show cause by plaintiffs to resettle this Court's order dated February 25, 2005.

	PAPERS NUMBERED
Order to Show Cause-Affidavits - Exhibits.....	...1...
Notice of Cross Motion/Answering Affidavits-Exhibits..
Replying Affidavits.....
Other.....

Upon the foregoing papers and the record made in open court on May 3, 2005, it is ordered that this order to show cause by plaintiffs is decided, without opposition, as follows:

This Court's order dated February 25, 2005 is resettled solely to the extent that paragraph 10 of the said order is amended to read as follows:

"10. Deadlines. The deadline for Class members to opt out of the Settlement will be June 7, 2005. The deadline for Class members to object to the Settlement will be June 7, 2005. The Final Hearing Date, at which hearing the Court will determine whether this settlement is fair, reasonable, and adequate, and whether a final judgment and order of dismissal should be entered in accord with the Cox Settlement Agreement, will be July 6, 2005. The Court may adjourn or continue the Final Hearing or any other date set forth in this Order without further notice to the Class."

All other provisions of the order dated February 25, 2005 remain in full force and effect.

All notice requirements shall be effectuated by annexing a copy of this order to the order dated February 25, 2005 in the method prescribed by law.

A copy of this order is being faxed on this date to Brian L. Bromberg, P.C., the attorney of record for plaintiffs, who shall, upon receipt, serve a copy upon all attorneys of record for defendants. Although Mr. Bromberg is the only attorney of record for plaintiffs, the Court requests that he serve a copy upon Paul M. Sod, Esq. and Lance A. Raphael, Esq.

Dated: May 4, 2005



ARNOLD N. PRICE, J.S.C.