

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this "*Agreement*") is entered into by and between plaintiff Thomas Molnar, individually and in his representative capacity ("*Plaintiff*"), and Defendants 1-800-Flowers.com, Inc., a Delaware corporation, and 800-Flowers, Inc., a New York corporation (collectively, "*Defendants*").

RECITALS

A. On or about December 21, 2007, Plaintiff filed a Complaint in the Superior Court of California for the County of Los Angeles entitled *Molnar v. 1-800-Flowers Retail Inc.*, Case Number BC382828. On or about January 1, 2008, Defendants removed the Action to the United States District Court for the Central District of California and was assigned Case Number CV-08-0542 FMC (JCx). On or about July 16, 2008, Plaintiff filed a First Amended Complaint ("FAC").

B. On or about July 29, 2008, Defendants filed their Answer and Counterclaim in response to Plaintiff's FAC. In its Answer and Counterclaim, Defendants generally and specifically denied the allegations in the complaint, any wrongdoing on behalf of Defendants, and that Plaintiff or the putative class are entitled to the relief requested or any other relief. In addition, Defendants raised several affirmative defenses and asserted a Counterclaim against Plaintiff Molnar personally.

C. On or about February 23, 2009, the Action was remanded to the Superior Court of California for the County of Los Angeles and reassigned Case Number BC382828. The civil action now pending in the Superior Court of California for the County of Los Angeles entitled, *Molnar v. 1-800-Flowers Retail Inc.*, Case Number BC382828 (and including the case previously assigned Case No. CV-08-0542 in federal court), is hereinafter referred to as the "*Action*."

D. After conducting discovery, the parties participated in a mediation. The mediation was held on September 2, 2009 and was conducted before the Hon. Edward Infante (Ret.). With the assistance of Judge Infante and the continuing efforts of the parties, a settlement was reached, subject to Court approval. Those terms are embodied in this Agreement.

E. Plaintiff and Defendants have conducted an investigation of the facts and have analyzed the relevant legal issues in regard to the claims and defenses asserted in the Action. Plaintiff and his counsel believe that the claims asserted in the FAC have merit, that Defendants' Counterclaim is without merit, and the Plaintiff has a complete defense or defenses to Defendants' Counterclaim. Defendants and their counsel believe that the causes of action asserted in the FAC are without merit, that Defendants have a complete defense or defenses thereto, and that its Counterclaim has merit. The Parties also have each looked at the uncertainties of trial and the benefits to be obtained under the proposed settlement and have considered the costs, risks, and delays associated with the continued prosecution of this litigation and the likely appeal of any rulings in favor of either Plaintiff or Defendants.

F. Accordingly, it is now the intention of the Parties and the objective of this Agreement to avoid the costs of trial and settle and dispose of, fully and completely and forever, any and all claims and causes of action in the Action.

1. **DEFINITIONS** Unless otherwise indicated above, the following shall be defined terms for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are capitalized and listed in alphabetical order:

1.1 As used herein, the term "**Action**" means the civil action now pending in the Superior Court of California for the County of Los Angeles entitled, *Molnar v. 1-800-Flowers Retail Inc.*, Case Number BC382828 (and including the case previously assigned Case No. CV-08-0542 in federal court).

1.2 As used herein, the term "**Agreement**" means this Settlement Agreement and Release, including all exhibits hereto.

1.3 As used herein, the terms "**Class**" and "**Class Members**" mean "persons residing in the United States who purchased products through Defendants' website, which website noted a "shipping charge" and which products were delivered by local florists, during the period from March 1, 2006 through February 5, 2008.

1.4 As used herein, the term "**Class Notice**" or "**Summary Class Notice**" means the legal notice of the terms of the proposed Settlement, as approved by Plaintiff's Counsel, Defendants' Counsel, and the Court, to be provided to Class Members pursuant to Section 3.2 of this Agreement. The Class Notice shall be substantially in the form attached as **Exhibit 1** hereto.

1.5 As used herein, the term "**Court**" means the Superior Court of California for the County of Los Angeles, where this Action is pending.

1.6 As used herein, the term "**Defendants**" means Defendants 1-800-Flowers.com, Inc., a Delaware corporation, and 800-Flowers, Inc., a New York corporation.

1.7 As used herein, the term "**Defendants' Counsel**" means collectively, the law firms of Kilpatrick Stockton LLP and White O'Connor Fink & Brenner LLP.

1.8 As used herein, the term "**FAC**" means the First Amended Complaint on file in the case entitled, *Molnar v. 1-800-Flowers Retail Inc.*, Case Number BC382828.

1.9 As used herein, the term "**Fairness Hearing**" means the hearing at or after which the Court will make a final decision whether to approve this Agreement as fair, reasonable and adequate.

1.10 As used herein, the term "**Final Judicial Approval**" means the date on which the time expires for appeal from or objection to an order that finally, and without further objection or appeal, approves or affirms certification of the Class for settlement purposes only and approves the Settlement.

1.11 As used herein, the term "**Final Order**" means the order finally certifying the Class for settlement purposes only and approving the Settlement.

1.12 As used herein, the term "**Full Class Notice**" means the legal notice of the terms of the proposed Settlement, as approved by Plaintiff's Counsel, Defendants' Counsel, and the Court, to be provided to Class Members pursuant to Section 3.2 of this Agreement. The Full Class Notice shall be substantially in the form attached as **Exhibit 2** hereto.

1.13 As used herein, the term "**Gift Voucher**" means a gift voucher valued at \$10.00 with the following limitations: (i) each Gift Voucher is valid for an on-line purchase at the Defendants' website located at www.1800Flowers.com; (ii) Gift Vouchers expire 6 months after Final Judicial Approval, and are not valid for redemption or delivery of products during the seven-day period preceding the following holidays: Christmas Day, Valentine's Day, and Mother's Day; (iii) Gift Vouchers are limited to one per transaction and must be used in a single transaction (*i.e.*, no change or cash of any kind will be given based on the value of the Gift Voucher) and any balance not used in the single transaction will be lost.

1.14 As used herein, the term "**Parties**" means Plaintiff and Defendants.

1.15 As used herein, the term "**Plaintiff**" means Thomas Molnar in his individual capacity and in his capacity as representative of the Class.

1.16 As used herein, the terms "**Plaintiff's Counsel**" and "**Class Counsel**" mean the law firm of Westrup Klick, LLP.

1.17 As used herein, the term "**Preliminary Approval Order**" means the order concerning notice and setting the Fairness Hearing.

1.18 As used herein, the term "**SAC**" means the Second Amended Complaint to be filed in the case entitled, *Molnar v. 1-800-Flowers Retail Inc.*, Case Number BC382828.

1.19 As used herein, the term "**Settlement**" means the settlement of this Action and related claims effectuated by this Agreement.

1.20 As used herein, the term "**Settlement Class**" means those persons who are members of the Class who have not properly and timely opted out of the Action.

1.21 As used herein, the term "**Settlement Class Member**" means any person who is included in the Settlement Class.

2. SETTLEMENT TERMS.

2.1 **Certification Of The Class.** For the purposes of settlement and the proceedings contemplated herein, the Parties stipulate and agree that the Class shall be certified in accordance with the definition contained in Section 1.3, that Plaintiff shall represent the Class for settlement purposes and shall be the Class representative, and that Plaintiff's Counsel shall be appointed as counsel for the Class.

2.2 Award To The Settlement Class. All Class Members who do not timely opt out of the settlement, shall automatically receive a Gift Voucher for each qualifying purchase that they made during the period March 1, 2006 through February 5, 2008 which Gift Voucher shall be included in the Summary Notice sent to Class Members.

2.3 Incentive Award To Plaintiff. The Parties agree that the Plaintiff, subject to the Court's approval, shall be entitled to an incentive award of \$5,000 in recognition of the risk to Plaintiff as the Class representative in commencing the lawsuit, both financial and otherwise; the amount of time and effort spent by Plaintiff as the Class representative; and for serving the public interest. Accordingly, in the event this Agreement receives Final Judicial Approval, Defendants shall pay, within ten (10) days after Final Judicial Approval, an incentive award of \$5,000 to Plaintiff separate and apart from any benefits to be paid to the Class.

2.4 Attorneys' Fees And Non-Settlement Implementation Costs. The Parties agree that Class Counsel shall be entitled to request, subject to the Court's approval, an award of attorneys' fees and costs not to exceed \$400,000. Defendants agree not to oppose such a request. Accordingly, in the event this Agreement receives Final Judicial Approval, Defendants shall pay, within ten (10) days after Final Judicial Approval, attorneys' fees and costs, as approved by the Court, in a sum not to exceed \$400,000, separate and apart from any benefits to be paid to the Class.

2.5 Settlement Implementation Costs. Defendants shall bear all costs of providing the Summary Class Notice and the Full Class Notices and setting up and maintaining a webpage in the manner prescribed in Section 3.2 of this Agreement and all costs associated with the administration of the Settlement.

2.6 Second Amended Complaint. In connection with this Agreement, the Parties stipulate that, concurrent with the filing of an application for a Preliminary Approval Order pursuant to Section 3.1 of this Agreement, Plaintiff shall file a SAC. The SAC shall be filed on behalf of Plaintiff and the Class (defined in Section 1.3 herein) and assert cause(s) of action respecting all products purchased by the Class based upon New York law, which the Parties agree shall govern their substantive claims in accordance with the Terms and Conditions of Defendants' website. The Parties further stipulate that the Action shall apply California procedural law and that the Answer filed in response to Plaintiff's FAC shall be deemed their answer to and denial of the SAC.

2.7 Except as otherwise set forth herein, the parties shall bear all of their own costs, fees and expenses relating to or arising out of the Action and/or this Settlement.

3. CLASS SETTLEMENT PROCEDURES.

3.1 Settlement Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall file an application for a Preliminary Approval Order, preliminarily approving this Agreement as fair, reasonable and adequate, approving the Full and Summary Class Notices, and setting the date and time of the Fairness Hearing. The proposed Preliminary Approval Order shall also contain language vacating the current trial date in this matter.

3.2 Class Notices. Subject to Court approval, the Parties agree that as soon as practicable after entry of the Preliminary Approval Order, a third-party administrator mutually agreed to by the Parties ("*Administrator*"), shall e-mail the Summary Class Notice to all Class Members at their e-mail addresses maintained within Defendants' database or otherwise provided to the Administrator. The Administrator shall provide the Summary Class Notice by mailing the Summary Notice by first class mail to all Class Members whose e-mail addresses are not maintained within Defendants' database to the postal addresses maintained within Defendants' database or to forwarding addresses provided in the U.S. postal database. The e-mailing or mailing of the Summary Class Notice to each Class Member shall occur no more than 12 days after the entry of the Preliminary Approval Order. The Administrator shall also maintain a website where the Full Class Notice shall be posted. The Summary Class Notice shall refer to the website wherein the Class Members may view and download the Full Class Notice. Defendants shall pay costs associated with the Class Notices and the administration of the Settlement.

3.3 Proof Of Notice. No later than seven (7) days before the Fairness Hearing, the Administrator shall file with the Court and serve upon Plaintiff's Counsel a declaration confirming that the Summary Class Notice was e-mailed or mailed by first class mail to each Class member and the Full Class Notice was made available for viewing and downloading from a webpage in accordance with Section 3.2 of this Agreement. The Administrator's Declaration shall specify sufficient information to show the reasonableness of the manner in which notice was given to Class Members.

3.4 Distribution Of Settlement Award. The Gift Voucher shall be included as part of the Summary Class Notice sent to Class Members. However, the Gift Voucher will not become valid until Final Judicial Approval.

3.5 Disputes. In the event of any dispute over the Settlement, the parties shall meet and confer in good faith for the purpose of resolving the dispute and, if the dispute cannot be resolved, the parties shall submit the dispute to Judge Infante, unless he is not available, in which case the parties shall submit the dispute to another mediator chosen by agreement of the parties, and if the dispute is not resolved by mediation, the parties shall submit the dispute to the Court.

3.6 Objections. Any Class Member who wishes to object to the Settlement must file a written objection with the Court, and serve copies on Class Counsel and Defendants' counsel, no later than 30 days following the last date the Summary Class Notice was e-mailed or mailed by first class mail. The objection must set forth, in clear and concise terms, the legal and factual arguments supporting the objection. Unless otherwise requested by the Court, Class Members shall not be entitled to speak at the final approval hearing unless they have submitted a timely written objection pursuant to this paragraph.

3.7 Exclusion From The Class. The class notices shall permit any prospective Class Member to elect not to be part of the Class and not to be bound by this Agreement, provided that the affected person mails a request for exclusion from the settlement to the Administrator no later than 30 days following the last date the Summary Class Notice was e-mailed or mailed by first class mail. The person requesting exclusion must sign the request for exclusion personally.

No later than seven (7) calendar days prior to the Fairness Hearing, the Administrator shall prepare a list of the persons who, pursuant to the class notices, have excluded themselves from the Class in a valid and timely manner, and shall deliver that list to the Court, with service on Defendants' Counsel and Class Counsel.

4. DISMISSAL OF ACTION AND RELEASES.

4.1 Approval Of This Agreement. As soon as practicable after execution of this Agreement, counsel for all Parties will jointly take all necessary and appropriate steps to secure the Court's approval of this Agreement.

4.2 Final Order. At or before the Fairness Hearing, Class Counsel shall move for the Final Order.

4.3 Effect Of Agreement If Settlement Is Not Approved. This Agreement was entered into only for the purpose of settlement. In the event that the Court does not approve the settlement, or the Final Order is not entered for any reason, then, except for this paragraph, this Agreement and actions taken pursuant to it, including the SAC, shall be deemed null, void and of no effect *ab initio*, and Plaintiff shall withdraw the SAC.

4.4 Dismissal Of The Action With Prejudice. The Court's Final Order granting approval of this Agreement shall include provisions for the dismissal of this Action with prejudice and the entry of a final judgment of dismissal. Notwithstanding the dismissal of the Action, the parties stipulate that the Court shall retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure section 664.6.

4.5 Release As To All Class Members. Effective upon the date of Final Judicial Approval, Plaintiff and each member of the Settlement Class, release Defendants, and each of their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, insurers and reinsurers, and each of their respective successors and predecessors in interest, affiliates, parents, subsidiaries (the "**Released Parties**"), from the "**Released Claims**." For purposes of this Agreement, the **Released Claims** are defined as all claims, liabilities, demands, debts, accounts, obligations, actions, and causes of action, known or unknown, suspected or unsuspected, at law or in equity, of any kind or nature whatsoever (collectively "**Claims**") that were alleged or that could have arisen out of the facts alleged in the, SAC and all predecessor complaints thereto.

4.6 General Release By All Class Members. In addition to the releases made by the Class Members set forth in Section 4.5 hereof, effective upon the date of Final Judicial Approval, the named Plaintiff and each member of the Settlement Class makes the additional following general release of all claims, known or unknown. The named Plaintiff and each member of the Settlement Class releases the Released Parties from all Claims that were alleged or that reasonably could have arisen out of the same facts alleged in the FAC, SAC, whether in tort, contract, for violation of any state or federal statute, rule or regulation, or otherwise arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution hereof. (The release set forth in this Section shall be referred to hereinafter as the "**General Release**"). The General Release includes any

unknown claims the named Plaintiff and/or each member of the Settlement Class does not know or suspect to exist in their favor at the time of the General Release, which, if known by them, might have affected their settlement with, and release of, the Released Parties or might have affected their decision not to object to this Settlement or the General Release. With respect to the General Release, the named Plaintiff and each member of the Settlement Class stipulates and agrees that, effective upon the date of Final Judicial Approval, the named Plaintiff and each member of the Settlement Class shall be deemed to have, and by operation of the Final Order shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

The named Plaintiff and each member of the Settlement Class may hereafter discover facts in addition to or different from those that are now known or believed to be true with respect to the subject matter of the General Release, but they, effective upon the date of Final Judicial Approval, shall be deemed to have, and by operation of the Final Order shall have, fully, finally, and forever settled and released any and all of the claims released pursuant to the General Release whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

4.7 Defendants' Release Of Plaintiff. Effective upon the date of Final Judicial Approval, Defendants, and their employees, officers, and directors hereby release Plaintiff from all claims, liabilities, demands, debts, accounts, obligations, actions, and causes of action, known or unknown, suspected or unsuspected, at law or in equity, of any kind or nature whatsoever that were alleged or that could have arisen out of the facts alleged in the Defendants' Counterclaim. In addition, effective upon the date of Final Judicial Approval, Defendants, and their employees, officers, and directors hereby release Plaintiff and Plaintiff's counsel from any claims of abuse of process, malicious prosecution, or any other claims arising out of the institution, prosecution, assertion, or resolution of this Action, including, but not limited to, claims for attorneys' fees, costs of suit, or sanctions of any kind.

4.8 General Release By Defendants. In addition to the releases made by the Defendants set forth in Section 4.7 hereof, effective upon the date of Final Judicial Approval, Defendants make the additional following general release of all claims, known or unknown. Defendants release the Plaintiff from all Claims that were alleged or that reasonably could have arisen out of the same facts alleged in their Counterclaim, whether in tort, contract, for violation of any state or federal statute, rule or regulation, or otherwise arising out of, relating to, or in

connection with any act or omission by or on the part of Plaintiff committed or omitted prior to the execution hereof. This General Release includes any unknown claims the Defendants do not know or suspect to exist in their favor at the time of the General Release, which, if known by them, might have affected their settlement with, and release of, Defendants or might have affected their decision not to object to this Settlement or the General Release. With respect to the General Release, Defendants stipulate and agree that, effective upon the date of Final Judicial Approval, Defendants shall be deemed to have, and by operation of the Final Order shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

Defendants may hereafter discover facts in addition to or different from those that are now known or believed to be true with respect to the subject matter of the General Release, but they, effective upon the date of Final Judicial Approval, shall be deemed to have, and by operation of the Final Order shall have, fully, finally, and forever settled and released any and all of the claims released pursuant to the General Release whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

5. ADDITIONAL PROVISIONS.

5.1 No Admission Of Liability Or Wrongdoing. This Agreement reflects the compromise and settlement of disputed claims among the Parties. Its constituent provisions, and any and all drafts, communications and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person, including Defendants, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Defendants have denied and continues to deny each of the claims and contentions alleged by Plaintiff in the Action. Defendants have repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

5.2 Fair, Adequate and Reasonable Settlement. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Class Action and have arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and

potential. This Settlement was reached after extensive negotiations, including negotiations through mediation.

5.3 Real Parties In Interest. In executing this Agreement, the Parties warrant and represent that they, including Plaintiff in his representative capacities on behalf of the Class, are the only persons having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Action, and, except as provided herein, neither said claims nor any part thereof have been assigned, granted or transferred in any way to any other person, firm or entity.

5.4 Voluntary Agreement. This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm or entity.

5.5 Binding On Successors. This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

5.6 Parties Represented By Counsel. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

5.7 Authorization. Each party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each party is fully entitled and duly authorized to give this complete and final general release and discharge.

5.8 Construction And Interpretation. Neither Party nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them.

5.9 Headings. The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement.

5.10 Exhibits. The exhibits to this Agreement are integral parts of the Agreement and Settlement and are hereby incorporated and made a part of this Agreement.

5.11 Modifications And Amendments. No amendment, change or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties.

5.12 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles. Notwithstanding the foregoing, the Parties agree that New York law will govern the parties' substantive claims in the Action, but that the Action shall apply California procedural law.

5.13 Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of her or its obligations hereunder to carry out the express intent of the Parties hereto.

5.14 Execution Date. This Agreement shall be deemed executed upon the last date of execution by all of the undersigned counsel.

5.15 Continuing Jurisdiction. The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement.

5.16 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective counsel of record, have so AGREED.

Dated: 09/30/2009

Thomas L. Molnar
THOMAS MOLNAR

Dated: _____

1-800-FLOWERS.COM, INC.
[Signature]
By: Caroline [Signature]
Its: VP - General Counsel

Dated: _____

800-FLOWERS, INC
[Signature]
By: Caroline [Signature]
Its: Corporate Secretary

APPROVED AS TO FORM:

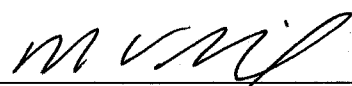
Dated: 9/30/09

KILPATRICK STOCKTON LLP

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Judith A. Powell

Dated: 9/30/09

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