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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

Case No. 16CV39854

CHRIS HARRIS, individually and on behalf of all other similarly situated persons,

Plaintiff,

vs.

MT. HOOD MEADOWS OREG., LLC.,
an Oregon limited liability company,

Defendant.

STIPULATED ORDER CERTIFYING CLASS ACTION

Under ORCP 32C(1), after carefully reviewing the evidence and argument presented in the joint motion to certify and approve class settlement filed January 10, 2017, the Court finds that under the circumstances of this case, joinder of all class members is impracticable and unnecessary for the purposes of settlement because each member has already received all they could realistically hope to recover if the case proceeded to trial, the claims of each class member under ORS 646.638 are identical, all questions of law and fact are common to the class, and the members of the class maintain no interest in individually controlling the prosecution of

1
2 separate actions because the proposed settlement equally provides maximum relief
3 to each member.

4 Further, class settlement will eliminate the need for continued litigation or
5 individual settlements, provide defendant finality in the form of a full release of all
6 claims by the class, and avoid the risk of inconsistent rulings or varying injunctions
7 that could occur if the litigation continued on individual bases. The Court also finds
8 that Multnomah County Circuit Court is the most desirable forum to resolve this
9 controversy because all class members are located in Oregon, no other litigation
10 related to this case exists, and no additional cases are expected to be filed, as the
11 filing fee alone would exceed maximum statutory damages, and defendant has
12 agreed to tender complete relief to each member and reimburse reasonable fees and
13 costs to class counsel. Attorneys Michael Fuller and Robert Le have experience
14 handling class action litigation and consumer protection cases and are qualified and
15 competent to act as class counsel in this action.
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20 Based on these factual findings, and each class member having been given
21 notice and opportunity to be heard, and the Court having received no responses or
22 objections,
23

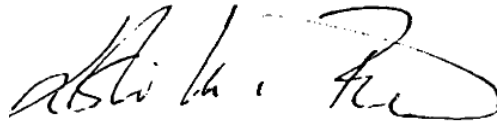
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1
2 **IT IS ORDERED** that this case is certified as a class action.

3
4 **IT IS ORDERED** that attorneys Michael Fuller and Robert Le are approved
5 as class counsel.
6

7
8 Signed: 1/20/2017 10:46 AM

9
10 

11
12

Circuit Court Judge Leslie Roberts

13 Presented and stipulated to by:

14
15 /s/ Michael Fuller
16 **Michael Fuller, OSB No. 09357**
17 Lead Trial Attorney for Plaintiff
18 Olsen Daines PC
19 US Bancorp Tower
20 111 SW 5th Ave., Suite 3150
21 Portland, Oregon 97204
22 michael@underdoglawyer.com
23 Direct 503-201-4570

24 Stipulated to by:

25 /s/ Brad C. Stanford
26 **Brad C. Stanford, OSB No. 854119**
27 Of Attorneys for Defendant
28 bstanford@fwlaw.com
Phone 503-228-6044

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CERTIFICATE OF READINESS

This proposed order or judgment is ready for judicial signature in compliance with UTCR 5.100 because:

1. [X] Each party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.

January 10, 2017

/s/ Michael Fuller

Michael Fuller, OSB No. 09357

Lead Trial Attorney for Plaintiff

Olsen Daines PC

US Bancorp Tower

111 SW 5th Ave., Suite 3150

Portland, Oregon 97204

michael@underdoglawyer.com

Direct 503-201-4570

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4 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**
5 **FOR MULTNOMAH COUNTY**

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7 **CHRIS HARRIS**, individually and on
8 behalf of all other similarly situated
9 persons,

10 Plaintiff,

11 vs.

12 **MT. HOOD MEADOWS OREG., LLC.**,
13 an Oregon limited liability company,

14 Defendant.

Case No. 16CV39854

**JOINT MOTION TO CERTIFY AND
APPROVE CLASS SETTLEMENT**

Oral Argument: Requested
Estimated Time: 30 Minutes
Court Reporting: Requested

15
16 **UTCR 5.050 STATEMENT**

17 This is a joint motion and the parties do not expect discussion with the Court
18 to exceed 30 minutes. The parties request official court reporting services.
19

20 **CASE BACKGROUND**

21 **1. Google Ad Campaign**

22 In November 2016, defendant advertised its value passes on Google Ads,
23 resulting in a price discrepancy of \$120.00 to 18 Oregon consumers. Fuller decl. ¶ 2.
24

25 **2. Complaint**

26 On November 27, 2016, plaintiff filed a complaint against defendant seeking
27 equitable relief, and fees and costs under ORS 646.638. Complaint ¶ 21.
28

JOINT MOTION TO CERTIFY AND APPROVE CLASS SETTLEMENT

– Page 1 of 7

1
2 **3. ORCP 32H Notice**

3 On December 2, 2016, plaintiff sent defendant an ORCP 32H notice offering
4 to settle if defendant provided refunds to the class and reimbursed class counsel's
5 fees and costs. Fuller decl. ¶ 3.
6

7 **4. ORCP 32I Compliance**

8 As a result of plaintiff's complaint, defendant stopped its ad campaign and
9 paid maximum statutory damages of \$200.00 to each class member under ORS
10 646.638. Tragethon decl. ¶ 8.
11

12 **MOTION #1 – MOTION TO CERTIFY CLASS**

13 A trial court's determination that an action may settle as a class action "is
14 largely a decision of judicial administration" and "the trial court is customarily
15 granted wide latitude" in making such decisions. See, e.g., *Pearson v. Philip Morris,*
16 *Inc.*, 358 Or 88, 107 (2015).
17

18 **1. The Court should approve this joint motion for class action**
19 **settlement, as all ORCP 32A requirements are met.**

20 Each of the requirements for class settlement under ORCP 32A are met.
21 Under the proposed settlement, all potential class members have been paid or will
22 receive maximum statutory damages, and defendant's compliance with ORCP 32I
23 bars any further claim for class damages. Fuller decl. ¶ 4.
24

25 ORCP 32A(1) is met because joinder of all 18 class members is impracticable
26 and unnecessary for the purposes of settlement – each member has already received
27 all they could realistically hope to recover if the case proceeded to trial. *Id.* at 5.
28

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2 ORCP 32A(2) and (3) are met because the claims of each class member under
3 ORS 646.638 are identical, and all questions of law and fact are common to the class,
4 which allowed defendant to promptly and equally provide maximum relief to each
5 member. *Id.* at 6.

7 Finally, ORCP 32A(4) is met because as a result of the class representative's
8 complaint, each class member recovered maximum statutory damages without
9 having to incur any litigation costs or risks. *Id.* at 7. ORCP 32A(5) is inapplicable
10 because plaintiff timely provided ORCP 32H notice and defendant timely complied
11 with ORCP 32I. *Id.* at 3. Attorneys Michael Fuller and Robert Le have experience
12 handling class action litigation and consumer protection cases and are qualified and
13 competent, and have vigorously prosecuted this litigation, and their interests are not
14 antagonistic or in conflict with the interests of the class. *Id.* at 8.

17 Based on this evidence, the Court should find that all ORCP 32A requirements
18 for certification of class settlement are met.

20 **2. ORCP 32B is satisfied because settlement as a class action is
21 superior to continued litigation or individual settlements.**

22 After each class member has been given notice and had an opportunity to
23 respond, the parties should be allowed resolve this dispute through class settlement,
24 without the need for further litigation expenses or additional individual actions.

25 Class settlement is superior to any other available method to resolve this
26 controversy because it would provide fair, maximum compensation to each class
27 member, eliminate the need for continued litigation or individual settlements, and
28

1
2 provide defendant finality in the form of a full release of all claims by the class. Fuller
3 decl. ¶ 9. Further, maintaining settlement of this case as a class avoids the risk of
4 inconsistent rulings or varying injunctions that could occur if the litigation continued
5 on individual bases. *Id.* at 10. The proposed settlement will ensure equal relief to all
6 class members. *Id.* Finally, no individual class member has any interest or benefit
7 in prosecuting this dispute outside of this class action because the proposed
8 settlement provides for maximum statutory damages without any litigation risks or
9 costs. *Id.* at 11.

12 This Court is the most desirable forum to resolve this controversy because all
13 class members are located in Oregon. *Id.* at 12. The parties are aware of no other
14 litigation related to this case, and expect no additional cases to be filed, as the filing
15 fee alone would exceed maximum statutory damages, and defendant has agreed to
16 tender complete relief to each member. *Id.* Under these circumstances, after giving
17 each class member notice and opportunity to be heard, this Court should certify this
18 settlement as a class action and appoint class counsel through entry of the attached
19 proposed order.

22 **MOTION #2 – MOTION TO APPROVE CLASS SETTLEMENT**

23 Under ORCP 32F, the parties intend to deliver the attached notice of
24 settlement, along with a copy of this motion and all attachments, to each class
25 member. The attached notice contains all information required by ORCP 32, and
26 allows 30 days for any class member to file a response.
27
28

1
2 Under ORCP 32E and L, after each class member has received notice and has
3 been given an opportunity to respond, the parties request that the Court approve the
4 following settlement terms:
5

6
7 **A.** Each class member shall receive a single payment of \$200.000 from
8 defendant, representing maximum statutory damages available under
9 ORS 646.638.
10

11 **B.** Class representative Chris Harris shall receive an additional incentive
12 payment of \$200.00 from defendant.

13 **C.** Class counsel shall receive payment of reasonable fees and costs in the
14 amount of \$7,500.00 from defendant under ORS 646.638.
15

16 **D.** Each class member shall release defendant from all claims related to this
17 controversy.
18

19 **E.** Defendant denies all liability and agrees to settle only to avoid continued
20 litigation expenses.
21

22 As of the date of this motion, class counsel's costs total \$1,172.00, and class
23 counsel's rates and time incurred is as follows:
24

Attorney	Billable Rate	Billable Hours
Michael Fuller	\$385 per hour	46.9 hours
Robert Le	\$385 per hour	12.5 hours

1
2 In lieu of incurring additional time and expense in a prove up hearing, the
3 parties have agreed that class counsel shall discount its billable hours down to 19.4
4 hours total, and defendant shall reimburse class counsel \$7,500.00 for all fees and
5 costs incurred in this case (including fees incurred after the date of this motion.
6
7 Fuller decl. ¶ 8; Robert Le decl.

8 **CONCLUSION**

9
10 For the reasons above, after all class members receive notice and have an
11 opportunity to respond, this Court should enter the attached proposed order and
12 judgment certifying and approving this class action settlement.
13

14 January 10, 2017

15 **RESPECTFULLY FILED,**

16 /s/ Michael Fuller
17 **Michael Fuller, OSB No. 09357**
18 Lead Trial Attorney for Plaintiff
19 Olsen Daines PC
20 US Bancorp Tower
21 111 SW 5th Ave., Suite 3150
22 Portland, Oregon 97204
23 michael@underdoglawyer.com
24 Direct 503-201-4570

25 **STIPULATED TO BY:**

26 /s/ Brad C. Stanford
27 **Brad C. Stanford, OSB No. 854119**
28 Of Attorneys for Defendant
bstanford@fwlaw.com
Phone 503-228-6044

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CERTIFICATE OF SERVICE

I declare and certify that on the date below I caused a copy of this document to be delivered to defendant at the following address:

**Mt. Hood Meadows Oreg., LLC
c/o attorney Brad Stanford
121 SW Morrison, Suite 600
Portland, Oregon 97204
bstanford@fwwlaw.com**

January 10, 2017

/s/ Michael Fuller
Michael Fuller, OSB No. 09357
Lead Trial Attorney for Plaintiff
Olsen Daines PC
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

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5 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
6 FOR MULTNOMAH COUNTY

7 Case No. 16CV39854

8 **CHRIS HARRIS**, individually and on
9 behalf of all other similarly situated
10 persons,

11 Plaintiff,

12 vs.

13 **MT. HOOD MEADOWS OREG., LLC.**,
14 an Oregon limited liability company,

15 Defendant.

**DECLARATION OF MICHAEL
FULLER**

**IN SUPPORT OF JOINT MOTION
TO CERTIFY AND APPROVE
CLASS SETTLEMENT**

16
17 **DECLARATION**

18 I, Michael Fuller, declare the following under penalty of perjury:

- 19
20
21 **1.** I know the facts I am testifying about based on my personal knowledge.
22
23 **2.** In November 2016, defendant advertised its value passes on Google Ads,
24 resulting in a price discrepancy of \$120.00 to 18 Oregon consumers.
25
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1
2 **3.** On December 2, 2016, plaintiff sent defendant an ORCP 32H notice offering
3 to settle if defendant provided refunds to the class and reimbursed class
4 counsel's fees and costs.
5

6
7 **4.** Under the proposed settlement, all potential class members have been paid or
8 will receive maximum statutory damages, and defendant's compliance with
9 ORCP 32I bars any further claim for class damages.
10

11
12 **5.** Joinder of all 18 class members is impracticable and unnecessary for the
13 purposes of settlement – each member has already received all they could
14 realistically hope to recover if the case proceeded to trial.
15

16
17 **6.** The claims of each class member under ORS 646.638 are identical, and all
18 questions of law and fact are common to the class, which allowed defendant
19 to promptly and equally provide maximum relief to each member.
20

21
22 **7.** As a result of the class representative's complaint, each class member
23 recovered maximum statutory damages without having to incur any litigation
24 costs or risks.
25

26
27 **8.** I'm a partner at Olsen Daines PC, chair of the OSB consumer law section, and
28 an adjunct professor of consumer law at Lewis & Clark Law School. I have

1
2 experience handling class action litigation and consumer protection cases
3 (16CV27621, 3:15-cv-00629-SI, 15-03163-rld, etc.) and I am qualified and
4 competent, and have vigorously prosecuted this litigation, and my interests
5 are not antagonistic or in conflict with the interests of the class. I'm regularly
6 paid my advertised rate of \$385 per hour for consumer litigation. See, e.g., 16-
7 62244-tmr7, Doc. #15; 15-61942-tmr7, Doc. #27; 16-31931-pcm13, Doc. #30,
8 etc. In lieu of incurring additional time and expense in a prove up hearing, the
9 parties have agreed that class counsel shall discount its billable hours down
10 to 19.4 hours total from 59.4 hours, and defendant shall reimburse class
11 counsel \$7,500.00 for all fees and costs incurred in this case (including fees
12 incurred after the date of this motion).
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17 **9.** Class settlement is superior to any other available method to resolve this
18 controversy because it would provide fair, maximum compensation to each
19 class member, eliminate the need for continued litigation or individual
20 settlements, and provide defendant finality in the form of a full release of all
21 claims by the class.
22

23
24
25 **10.** Maintaining settlement of this case as a class avoids the risk of inconsistent
26 rulings or varying injunctions that could occur if the litigation continued on
27 individual bases. The proposed settlement will ensure equal relief to all class
28 members.

1
2
3 **11.**No individual class member has any interest or benefit in prosecuting this
4 dispute outside of this class action because the proposed settlement provides
5 for maximum statutory damages without any litigation risks or costs.
6

7
8 **12.**This Court is the most desirable forum to resolve this controversy because all
9 class members are located in Oregon. The parties are aware of no other
10 litigation related to this case, and expect no additional cases to be filed, as the
11 filing fee alone would exceed maximum statutory damages, and defendant has
12 agreed to tender complete relief to each member.
13
14

15
16 **13.**I declare under penalty of perjury that this declaration is true and correct and
17 is made for use as evidence in court.
18
19

20 January 10, 2017
21

22 /s/ Michael Fuller
23 **Michael Fuller, OSB No. 09357**
24 Lead Trial Attorney for Plaintiff
25 Olsen Daines PC
26 US Bancorp Tower
27 111 SW 5th Ave., Suite 3150
28 Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

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4 IN THE CIRCUIT COURT OF OREGON
5 FOR MULTNOMAH COUNTY
6

7 CHRIS HARRIS, individually and on behalf
8 of all other similarly situation persons,

9 Plaintiff,

10 vs.

11 MT. HOOD MEADOWS OREG.,LLC., an
12 Oregon limited liability company

13 Defendant.

Case No. 16CV39854

DECLARATION OF ROBERT LE IN
SUPPORT OF JOINT MOTION TO
CERTIFY AND APPROVE CLASS
SETTLEMENT

14 1. My name is Robert Le and my firm represents Chris Harris and other similarly situated
15 persons. I am the owner of the Law Offices of Robert Le, a plaintiff's contingency fee only law
16 firm in Portland. I make this declaration on personal knowledge and in support of Joint Motion
17 to Certify and Approve Class Settlement.

18 2. I am admitted to practice in the state courts of Oregon and the United States District
19 Court of Oregon. I have been practicing law for almost eight years. I earned my JD at Lewis and
20 Clark College of Law. I was admitted to the Oregon State Bar in 2009 and to the United States
21 District Court for the District of Oregon in 2010. I started the law firm of Robert Le, Attorney
22 P.C. My practice centers around personal injury litigation, consumer law, and plaintiff's work in
23 general. My hourly rate is \$385.00, which is well within the guidelines set forth in the 2012
24 economic survey as discussed below. I have experience trying and litigating consumer matters.
25

1 3. I have worked with Michael Fuller with the Olsen Daines firm on several cases over the
2 years involving consumer protection and class actions.

3 4. I have reviewed the Declaration of Michael Fuller. The statements in the declaration are
4 consistent with this case.

5 5. Our firm keeps track of all litigation expenses and litigation costs that are incurred on
6 behalf of clients. These are not overhead costs, rather they are third-party costs that must be paid
7 when incurred to advance our clients' cases. These expenses are billed directly to the client and
8 are not part of our attorney fees or our hourly rates charged. However, there is no guarantee the
9 client will reimburse us. When we advance these litigation expenses, they are billed to the client.
10 The client is responsible for these expenses whether the case is won or lost.

11
12 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST
13 OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND IT IS MADE FOR USE AS
14 EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

15
16 DATED this 9 day of January 2017.

17
18 ROBERT LE ATTORNEY P.C.

19 /s/ Robert Le
20 Robert Le, OSB No. 094167
21 Of Attorneys for Plaintiff
22
23
24
25

January 10, 2017

Class Member
Address line 1
Address line 2

Notice of Proposed Class Action Settlement

Harris et al. v. Mt. Hood Meadows Oreg., LLC
Multnomah County Circuit Court Case No. 16CV39854

To Whom It May Concern:

You're receiving this notice because you are one of 18 people who purchased a Mt. Hood Meadows value pass in November 2016. In doing so, you may have relied on an advertisement that specified a different price for this product. As part of a proposed class action settlement, you have been mailed, or will shortly receive, a check for \$200.00 representing maximum statutory damages under ORS 646.638.

A motion to certify class and approve settlement is attached. If you want to join the class action, accept the settlement, and release all claims against Mt. Hood Meadows Oreg., LLC, nothing further is required of you. You have the right to respond to the motion, signify whether you consider the representation fair and adequate, to intervene and present claims or defenses or otherwise to come into the action, or to be excluded from the class. If you want to respond to the motion or otherwise object to the settlement, you must file your response or objection with the Multnomah County Circuit Court, and deliver a copy of your response or objection in writing **within 30 days** to:

Olsen Daines PC
US Bancorp Tower
111 SW 5th Ave, Suite 3150
Portland, Oregon 97204

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at <http://www.oregonstatebar.org> or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.