

HON. MARSHA J. PECHMAN

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HEATHER HALEY, as an individual and as a representative of the classes,

Plaintiff,

v.

TALENTWISE, INC. f/k/a TALENTWISE SOLUTIONS, LLC f/k/a INTELIOUS SCREENING SOLUTIONS, LLC,

Defendant.

NO. 13-cv-01915-MJP

FINAL JUDGMENT AND ORDER APPROVING PARTIAL CLASS ACTION SETTLEMENT AND DISMISSING CLAIMS OF SETTLEMENT CLASS MEMBERS WITH PREJUDICE

This matter came before the Court for hearing on June 5, 2015. The Court, having considered the Motions for Preliminary Approval and Final Approval and the declarations in support thereof, the Settlement Agreement (the "Agreement"), any objections and comments received regarding the proposed settlement, the record in the above captioned action (the "Action"), the evidence presented, and the arguments and authorities presented by counsel, and for good cause appearing,

1 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

2 1. The Court, for purposes of this Final Judgment and Order Approving Settlement
3 and Dismissing Claims of Settlement Class Members with Prejudice (“Final Judgment”), adopts
4 the capitalized terms and their definitions set forth in the Agreement.

5 2. The Court has jurisdiction over the subject matter of the Action, the Class
6 Representatives, the Settlement Class Members, and Defendants.

7 3. The Court finds that the notice to the Class of the pendency of the Action and of
8 this settlement constituted the best notice practicable under the circumstances to all Persons
9 within the definition of the Settlement Classes, and fully complied with the requirements of due
10 process and of all applicable statutes and laws.

11 4. The Court hereby finds and concludes that the notice provided by TalentWise to
12 the appropriate state and federal officials pursuant to the Class Action Fairness Act of 2005, 28
13 U.S.C. § 1715, fully satisfied the requirements of that statute.

14 5. The Court hereby finds that the Settlement Agreement is the product of arm’s
15 length settlement negotiations among Plaintiff, Class Counsel and TalentWise.

16 6. The Court hereby adopts and approves the Agreement and the settlement terms
17 contained therein and finds that it is in all respects fair, reasonable, adequate, just, and in
18 compliance with all applicable requirements of the United States Constitution (including the Due
19 Process Clause) and all other applicable laws, and in the best interest of the parties and the
20 Settlement Class.

21 7. The Court finds that the Parties dispute the merits of the claims and the
22 appropriateness for trying the claims on a class basis. The case involves complex issues of fact
23 and law and the settlement terms reflect the inherent uncertainty of litigation and the challenges
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1 of establishing liability in a complex case brought under Federal Rule 23. Any objections have
2 been considered and are hereby overruled. Accordingly, the Court directs the parties and their
3 counsel to implement and consummate the settlement in accordance with the terms and
4 conditions of all portions of the Agreement.

5 8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby
6 finally certifies the Settlement Classes, except for the individuals listed in Attachment A hereto,
7 consisting of:

8 **Obsolete Information Settlement Class**

9 All Persons located within the United States who, at any time from October 24,
10 2011 to the date of the preliminary approval were the subject of a TalentWise
11 employment screening report that included a record of non-conviction that
12 predated the date of the report by more than seven years.

13 **Alleged Duplicate Reporting Settlement Class**

14 All Persons located within the United States who, at any time from October 24,
15 2011 to the date of preliminary approval were the subject of a TalentWise
16 employment screening report that included a criminal record with a date that is
17 within three days (before or after) of the date of a department of motor vehicle
18 record of violation contained in the same report.

19 The Settlement Classes as certified satisfy all the requirements of Rule 23 and United States
20 Constitution, and any other applicable law as more fully set forth in the Court's Preliminary
21 Approval Order, which is incorporated into this Final Judgment by this reference.

- 22 9. In certifying this Action as a class action, the Court hereby finds that:
- 23 (a) the members of the Settlement Class are so numerous that joinder of all
24 Settlement Class Members in this Action is impracticable;
- (b) there are questions of law and fact common to the members of the Settlement
Class;
- (c) the claims of the Named Plaintiffs are typical of the claims or defenses of the
Settlement Class;

- 1 (d) the questions of law and fact common to members of the Settlement Class
2 predominate over any questions affecting only individual members of the
3 Settlement Class;
- 4 (e) a class action was and is superior to other available methods for the fair and
5 efficient adjudication of the controversy, considering, inter alia: (i) the interests
6 of members of the Settlement Class in individually controlling the prosecution or
7 defense of separate actions; (ii) the extent and nature of any litigation concerning
8 the controversy already commenced by or against members of the Settlement
9 Class; (iii) the desirability or undesirability of prosecuting the litigation of these
10 claims in this particular forum; and (iv) the difficulties likely to be encountered in
11 the management of the class action; and
- 12 (f) the Named Plaintiff and Class Counsel have fairly and adequately protected the
13 interests of the Settlement Class.

14 **SETTLEMENT CONSIDERATION**

15 10. Defendant and Plaintiff are hereby ordered to comply with the terms and
16 conditions contained in the Settlement Agreement, which is incorporated by reference herein and
17 attached hereto as Attachment B.

18 **APPLICABILITY**

19 11. The provisions of this Final Judgment are applicable to and binding upon and
20 inure to the benefit of each party to the Action (including each Settlement Class Member and
21 each of Defendant's successors and assigns).

1 12. All Persons who are included within the definition of either of the Settlement
2 Classes and who did not properly file requests for exclusion are therefore bound by this Final
3 Judgment and by the Settlement Agreement.

4 13. As of the Effective Date, the Settlement Class members, including Plaintiff
5 (collectively, the “Releasing Parties”), release Defendant and the “Released Parties”, from the
6 “Released Claims.” For purposes of this Settlement Agreement, the “Released Claims” are
7 defined as:

8 (1) All claims, actions, demands, causes of action, suits, obligations, and damages,
9 rights or liabilities, of any nature and description whatsoever, that were asserted or could
10 have been asserted in the Complaint. In addition to releasing all claims for statutory
11 damages under the FCRA relating to the claims asserted, Plaintiffs and the Class
12 Members release all claims for compensatory damages, damages for emotional distress,
13 damages for physical injury, damages for reputational injury, consequential damages,
14 incidental damages, attorney’s fees, punitive and exemplary damages that were asserted
15 in the Complaint or could have been asserted; and

16 (2) The Releasing Parties stipulate and agree that, upon the Effective Date, the
17 Releasing Parties shall be deemed to have, and by operation of the entry of the Final
18 Approval Order and Judgment shall have, expressly waived and relinquished, to the
19 fullest extent permitted by law, the provisions, rights and benefits conferred by Section
20 1542 of the California Civil Code, or any other similar provision under federal or state
21 law, or principle of common law which is similar, comparable, or equivalent to Section
22 1542, which section provides:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR

1 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
2 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
3 THE DEBTOR.

4 The Releasing Parties may hereafter discover facts in addition to or different from those they
5 now know or believe to be true with respect to the Released Claims, but upon the Effective Date,
6 shall be deemed to have, and by operation of the entry of the Final Approval Order and Judgment
7 shall have, fully, finally, and forever settled and released any and all of the Released Claims,
8 whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now
9 exist, or heretofore have existed, upon any theory of law or equity now existing or coming into
10 existence in the future, including, but not limited to, conduct that is negligent, intentional, with or
11 without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery
12 or existence of such different or additional facts.

13 14. As of the Effective Date, by operation of the entry of the Final Approval Order
14 and Judgment, each Settlement Class member who does not file a valid Request for Exclusion,
15 thereby becoming a Settlement Class member, automatically, upon final approval of the
16 Settlement, shall be held to have fully released, waived, relinquished and discharged the
17 Released Parties from the Released Claims, to the fullest extent permitted by law, and shall be
18 enjoined from continuing, instituting or prosecuting any legal proceeding against the Released
19 Parties relating in any way whatsoever to the Released Claims.

20 15. The Releasing Parties stipulate and agree that upon the Court's final approval of
21 this Settlement Agreement, the Claims in the Case shall be dismissed with prejudice. The
22 Releasing Parties, on behalf of themselves and their respective assigns, agree not to sue or
23 otherwise make a claim against any of the Released Parties that is in any way related to the
24 Released Claims. Attachment A to this Final Judgment contains a list setting forth the name of

1 each Person who timely submitted a request for exclusion from the Settlement Class in
2 compliance with the procedures set forth in the Preliminary Approval Order. The Persons so
3 identified shall not be entitled to benefits from the settlement nor bound by this Final Judgment.

4 **ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

5 **AND SERVICE AWARD**

6 1. The Court approves Class Counsel's application for up to \$500,000 in attorneys'
7 fees and costs, and for a service award to the Named Plaintiff in the amount of \$8,000.
8 However, due to a discrepancy in the amounts stated in the class notice and the amounts which
9 would be distributed in light of this fee award, and at the request of Class Counsel, the Court
10 orders that \$110,152.00 of this amount be held back from the initial Attorneys' Fees and
11 Expenses distribution to Class Counsel and instead be distributed to the Class. This will result in
12 the amounts sent to Class to be the amounts set forth in the class notice with \$59 to Alleged
13 Obsolete Information Settlement Class members and \$30 to Alleged Duplicative Reporting
14 Settlement Class members. Once the check cashing deadline has passed, if there are amounts
15 remaining in the settlement fund due to uncashed checks, Class Counsel shall be entitled to be
16 paid up to \$110,152.00 from such remaining amounts. Any amounts remaining in addition to
17 that amount shall be distributed to the parties' designated *cy pres* recipients as set forth in the
18 Settlement Agreement.

19 2. The Court hereby dismisses this Action and all claims with prejudice, without
20 costs to any party, except as expressly provided for in the Settlement Agreement.

21 3. Finding that there is no just reason for delay, the Court orders that this Final
22 Approval Order and Judgment shall constitute a final judgment pursuant to Rule 54 of the
23 Federal Rules of Civil Procedure that is binding on the parties and the Settlement Class. The
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1 Clerk of the Court is directed to enter this Order on the docket forthwith.

2 **GENERAL PROVISIONS**

3 16. The provisions of this Final Judgment are entered as a result of a voluntary
4 agreement of the parties. The Settlement Agreement and this Final Judgment are not intended to,
5 and shall not be construed as any admission, express or implied, of any fault, liability or
6 wrongdoing by Defendant, or of the accuracy of any of the allegations in the Complaint.

7 17. All terms, provisions, obligations and rights as contained in the Settlement
8 Agreement are hereby incorporated into this Final Judgment and the parties are ordered to
9 perform their obligations thereunder, including, but not limited to, the full release of claims.

10 18. Jurisdiction is retained by this Court for matters arising out of the Settlement
11 Agreement except as expressly stated therein.

12 **IT IS SO ORDERED.**

13 DATED: June 16th, 2015.

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16 Marsha J. Pechman
17 Chief United States District Judge

18 APPROVED AS TO FORM:

19 CALFO HARRIGAN LEYH & EAKES LLP NICHOLS KASTER, PLLP

20 /s/Tyler L. Farmer
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