

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CITY OF COLUMBIA, SOUTH
CAROLINA, ET AL.,

CIVIL ACTION NO. 2014-CP-10-367

Plaintiffs,

vs.

HOTELGUIDES.COM, INC., ET AL.,

Defendants.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between (i) the City of Charleston, the City of Columbia, the County of Horry, the Town of Hilton Head, the City of Isle of Palms, the City of Myrtle Beach, the City of North Charleston, and the City of North Myrtle Beach, South Carolina, (collectively, “Plaintiffs”), and (ii) Expedia, Inc., Hotels.com, L.P., Hotwire, Inc., and Egencia, LLC; Orbitz, LLC, Internetwork Publishing Corporation d/b/a Lodging.com, and Trip Network, Inc. d/b/a Cheaptickets.com (the “Expedia parties”);¹ priceline.com Incorporated (n/k/a Booking Holdings Inc.), priceline.com LLC, and Travelweb LLC (the “Priceline parties”); and TVL LP (f/k/a Travelocity.com LP) and Site59.com LLC (the “Travelocity parties”) (collectively, “Defendants”), in order to fully and finally settle and release all of Plaintiffs’ claims against Defendants through February 13, 2018 (the “Settlement Date”).

1. Within twenty (20) days of (a) the execution of this Settlement Agreement by all parties and (b) Defendants’ receipt of wire instructions and applicable W-9 Form(s)

¹ Travelscape LLC (“Travelscape”) is also included with the Expedia Parties for purposes of this Settlement Agreement. Travelscape is the merchant of record for certain of the Expedia Parties and has business licenses in Plaintiffs’ jurisdictions.

from Plaintiffs, Defendants will pay a total amount of \$4,375,000.00 to Plaintiffs ("Settlement Payment") by the method described in this paragraph. Plaintiffs acknowledge that this sum is the only consideration (except as specified in paragraph 4) to be paid by Defendants to Plaintiffs in connection with this settlement and that this consideration fully satisfies any alleged obligations of Defendants relating in any manner to the "Released Claims" defined in paragraph 2. Plaintiffs will accept the Settlement Payment wired to the IOLTA Trust Account of Thurmond Kirchner & Timbes, PA. Plaintiffs acknowledge that the Settlement Payment is a combined sum consisting of different amounts to be paid by different Defendants, and that no Defendant shall be liable for any other Defendants' portion of the Settlement Payment. Further, Plaintiffs acknowledge that the Defendants have no responsibility for the distribution of the Settlement Payment among the Plaintiffs and that responsibility falls solely on Plaintiffs and their counsel.

2. In consideration of the Settlement Payment, Plaintiffs completely and irrevocably release and forever discharge Defendants and their present, former or successor agents, legal representatives, insurers, employees, officers, directors, and shareholders, of and from any and all past, present or future causes of action, claims, demands, expenses, damages or losses, of whatever kind or nature, known or unknown, asserted or unasserted, in law or equity, which existed, accrued, arose, or is attributable to the period prior to and through the Settlement Date relating in any way to (a) Defendants' alleged failure to pay all business license fees alleged to be owed to Plaintiffs under any state or local law in South Carolina, including without limitation Sections 5-7-30 and 4-9-30 of the South Carolina Code, and any applicable penalties, fines, interest, and/or

additions to such fees (collectively, “Business License Fees”); (b) Defendants’ alleged failure to register for, obtain, or maintain business licenses in Plaintiffs’ jurisdictions; and (c) any other claims asserted, or that could have been asserted, by Plaintiffs against Defendants in the lawsuit pending in the Court of Common Pleas for Charleston County, South Carolina, Civil Action No. 2014-CP-10-367 (the “Litigation”) (collectively, the “Released Claims”).

3. Within seven (7) business days after receipt of the Settlement Payment, Plaintiffs shall cause the dismissal with prejudice of the Litigation by filing a Notice of Dismissal in the form attached hereto as Exhibit A. The dismissal with prejudice shall not be and is not a judgment on the merits of any claim brought, but is in furtherance of settlement only. Each party is to bear its own costs and attorneys’ fees.

4. With respect to future license periods after the Settlement Date (including the 2018 license year), the parties agree that the classifications/re-classifications and applicable rates set forth in Exhibit B below shall apply to the payment of Business License Fees by Defendants.² In addition, the parties agree that for future license periods after the Settlement Date Defendants shall calculate Business License Fees based on the amounts retained by Defendants plus the net rate amounts paid to hotels, but under no circumstances shall Defendants be required to include tax recovery charges, taxes, or any other government-imposed fee in the calculation and/or payment of Business License

² TVL LP (f/k/a Travelocity.com LP) represents that it ceased engaging in the types of transactions at issue in the lawsuit as of late-2013/early 2014, and that Site59.com LLC ceased operations altogether in July 2011, and, accordingly, they will not be registering or obtaining licenses or paying any amounts other than their portion of the amount set forth in Paragraph 1. Similarly, priceline.com LLC represents that effective April 1, 2014 it assumed the former operations of priceline.com Incorporated (n/k/a Booking Holdings Inc.) as they relate to the transactions at issue in the lawsuit. Thus, Bookings Holdings Inc. will not register or obtain licenses or pay any amounts in the future and priceline.com LLC will be the entity responsible for its portion of the Settlement Payment. Trip Network, Inc. (d/b/a Cheaptickets.com) represents it no longer has any business activity in the Plaintiffs’ jurisdiction as it has been integrated into Travelscape.

Fees. With respect to any 2018 Business License Fees that were paid prior to the Settlement Date and not consistent with the provisions of this paragraph 4, the Defendants shall have 60 days from the execution of the Settlement Agreement to make a catch-up payment (*i.e.*, pay any difference that would be due if the Business License Fee had been calculated pursuant to this paragraph 4). Plaintiffs agree to waive any alleged interest or penalties to any such catch-up payment. Notwithstanding any other provision to the contrary, nothing in this Agreement shall require Defendants to continue calculating/paying Business License Fees in the manner as described in this paragraph 4 in the event there is a change in applicable facts or law. Conversely, Plaintiffs do not waive but instead reserve and preserve their right to challenge and/or contest such discontinuance by any such Defendant.

5. Each Plaintiff acknowledges that: (a) it has consulted with its legal counsel about the settlement; (b) it is entering into the Settlement Agreement voluntarily and with an understanding that it is releasing all of the Released Claims against Defendants; (c) it has the authority to enter into the Settlement Agreement; (d) no other persons or entities have or have had any interest in the claims that are now being released; and (e) it has not sold, transferred, or assigned its claims to any other person or entity prior to entering the Settlement Agreement.

6. The parties acknowledge that each side takes a different view of the facts and law related to the Litigation. The parties agree that this Settlement Agreement is based on their stated desire to compromise this dispute and is not an indication that either side has expressed agreement with the other side's view of the facts or law. The parties agree that how the Settlement Agreement is described and communicated is of

importance. Except as may be required by law, Plaintiffs, and their representatives and attorneys, agree to and shall not publicize or discuss with third parties the Litigation or any terms of its settlement beyond a simple statement that the Litigation has been settled on terms mutually agreeable to the parties. By way of illustration, the foregoing prohibits Plaintiffs, and their representatives and attorneys, from posting on a Web page or Internet site any discussion of the Litigation or the settlement, or from issuing a press release or engaging in any communications or discussions with the media concerning the Litigation or the settlement, beyond a simple statement that the case has been settled on terms mutually agreeable to the parties. Nothing herein shall be construed to prevent the parties or their representatives from communicating with accountants or other advisors regarding the settlement. Defendants acknowledge that various matters concerning this Litigation and the settlement thereof may be required by law to be discussed in council or government meetings that are open to the public. Nothing contained herein shall be construed to prevent such meetings.

7. It is expressly understood that the commitments in paragraph 6 are not intended to restrict or prevent Plaintiffs, including their elected officials, from complying with their legal duties under the laws of the State of South Carolina, including, but not limited to, the South Carolina Freedom of Information Act ("FOIA"). Plaintiffs, and their attorneys, will not produce, release, or otherwise disseminate this Settlement Agreement unless ordered or compelled by a court of competent jurisdiction, or unless a proper request is made under FOIA. In the event the Settlement Agreement is requested from Plaintiffs under FOIA, the parties recognize that Plaintiffs have ten (10) working days under the state statute to respond to the requestor, and Plaintiffs affirm that they will

utilize the full ten (10) working days permitted by law to notify the person making the request of its determination. This determination must constitute the final opinion of the Plaintiffs as to the availability of the Settlement Agreement pursuant to the state law. Plaintiffs agree to notify by e-mail the following individuals within two (2) working days of receipt of a request to disclose the Settlement Agreement under FOIA, and will not object to any actions filed by Defendants to block the release of the Settlement Agreement if such objection is made prior to the expiration of the ten-day period referred to above. In the event the Settlement Agreement is the subject of a motion to compel in a court of competent jurisdiction in a matter other than a FOIA request, Plaintiffs will notify the individuals below within two (2) working days of receipt of the motion to compel, will not object to Defendants opposing such production, and will not produce the Settlement Agreement until such time as ordered to do so by the court:

Jeffrey Rossman at Freeborn & Peters LLP, 311 South Wacker Drive, Suite 3000, Chicago, Illinois 60606, Phone: (312) 360-6784, Email jrossman@freeborn.com;

Anne Marie Seibel at Bradley Arant Boult Cummings LLP, One Federal Place, 1819 Fifth Avenue North, Birmingham, Alabama 35203, Phone: (205) 521-8386, Email aseibel@bradley.com;

Brian Stagner at Kelly Hart & Hallman 201 Main Street, Suite 2500, Fort Worth, Texas 76102, Phone: (817) 878-3567, Email Brian.Stagner@kellyhart.com; and

Bradish J. Waring, Nexsen Pruet, LLC, 205 King Street, Suite 400, Charleston, South Carolina 29401, Phone: (843) 579-7802, Email Bwarling@nexsenpruet.com.

The parties and their counsel will not use this Settlement Agreement or the settlement to interfere, impede, or prejudice the other parties' position in other tax litigation.

8. The parties have agreed to enter into this Settlement Agreement in order to put to rest the uncertainty and expense of continued litigation. The parties acknowledge,

following sufficient discovery and investigation by counsel, that this settlement resolves disputed claims and that the settlement of such claims is not an admission of liability or responsibility by any party. This Settlement Agreement, as well as the terms or conditions thereof, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the parties' settlement discussions, shall not be admissible in evidence except in any action to enforce, or any litigation involving, the terms of the Settlement Agreement.

9. Each party has cooperated in the drafting and preparation of this Settlement Agreement, and it shall be construed according to the plain meaning of its language and not for or against any party.

10. This Settlement Agreement shall not be amended or revised except in a writing signed by all parties.

11. Defendants agree that all Defendants shall execute the Settlement Agreement within seven (7) business days after Defendants' receipt of the Settlement Agreement executed by Plaintiffs.

12. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all which together shall constitute one and the same instrument. A signature page to this Settlement Agreement delivered by email or facsimile shall be considered as an original signature page.

[Parties' signatures on the following 3 pages]

City of Charleston, SC

By: _____

Name: _____

Title: _____

Date: _____

City of Isle of Palms, SC

By: _____

Name: _____

Title: _____

Date: _____

City of Columbia, SC

By: _____

Name: _____

Title: _____

Date: _____

City of Myrtle Beach, SC

By: _____

Name: _____

Title: _____

Date: _____

Town of Hilton Head, SC

By: _____

Name: _____

Title: _____

Date: _____

City of North Charleston, SC

By: _____

Name: _____

Title: _____

Date: _____

County of Horry, SC

By: _____

Name: _____

Title: _____

Date: _____

City of North Myrtle Beach, SC

By: _____

Name: _____

Title: _____

Date: _____

Expedia, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Hotels.com L.P.

By: _____

Name: _____

Title: _____

Date: _____

Hotwire, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Egencia, LLC

By: _____

Name: _____

Title: _____

Date: _____

Orbitz, LLC

By: _____

Name: _____

Title: _____

Date: _____

**Trip Network, Inc. (d/b/a Cheap
Tickets.com)**

By: _____

Name: _____

Title: _____

Date: _____

**Internetwork Publishing Corp. (d/b/a
Lodging.com)**

By: _____

Name: _____

Title: _____

Date: _____

priceline.com LLC

By: _____

Name: _____

Title: _____

Date: _____

**priceline.com Incorporated (n/k/a Booking
Holdings Inc.)**

By: _____

Name: _____

Title: _____

Date: _____

Travelweb LLC

By: _____

Name: _____

Title: _____

Date: _____

TVL LP (f/k/a Travelocity.com LP)

By: TVL LLC, its General Partner

By: _____

Name: _____

Title: _____

Date: _____

Travelscape LLC

By: _____

Name: _____

Title: _____

Date: _____

Site59.com LLC

By: _____

Name: _____

Title: _____

Date: _____

[Exhibits A & B to the Settlement Agreement on the following 2 pages]

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CITY OF COLUMBIA, SOUTH
CAROLINA, ET AL.,

CIVIL ACTION NO. 2014-CP-10-367

Plaintiffs,

NOTICE OF DISMISSAL
WITH PREJUDICE

vs.

HOTELGUIDES.COM, INC., ET AL.,

Defendants.

Comes now Plaintiffs, pursuant to S.C.R.C.P. 41(a)(1) and the terms of the parties' Settlement Agreement and Release, including but not limited to the "Released Claims" defined therein, and hereby enter this notice of dismissal by stipulation, dismissing with prejudice the above referenced lawsuit, with the Court retaining jurisdiction to enforce the terms of the parties' Settlement Agreement and Release.

DATED: _____, 2018

Respectfully submitted,

W. Ronald Bonds
192 East Bay Street, Suite 302
Charleston, SC 29401
(843) 302-2055 – Telephone
Attorneys for Plaintiffs

WE CONSENT & AGREE:

Bradish J. Waring
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
(843) 577-9440 – Telephone
Attorneys for Defendants