

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND FINAL FAIRNESS HEARING**

**IF YOU BECAME ENROLLED IN A MEMBERSHIP PROGRAM OFFERED BY  
WEBLOYALTY.COM, PLEASE READ THIS NOTICE CAREFULLY.  
THIS NOTICE IS TO INFORM YOU OF A PROPOSED SETTLEMENT THAT MAY AFFECT  
YOUR RIGHTS.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.  
You may benefit from reading this Notice. If you wish to receive benefits under the proposed Settlement, you  
must submit a Claim Form.*

- There is a proposed Settlement of a consolidated class action lawsuit known as *In Re: Webloyalty.com, Inc. Marketing and Sales Practices Litigation*, MDL No. 07-01820-JLT, Lead Case No. 06-11620 JLT, that is pending in the U.S. District Court for the District of Massachusetts (the “Litigation”). The proposed Settlement is with Webloyalty.com, Inc. and its subsidiaries (“WLI”), Fandango, Inc. d/b/a Fandango.com, Priceline.com, Inc. d/b/a Priceline.com, Nelson Shane Garrett, individually and d/b/a Justflowers.com and Giftbasketsasap.com, Maxim O. Khokhlov, individually and d/b/a Justflowers.com and Giftbasketsasap.com, ValueClick, Inc., E-Babylon, Inc., Kraft Foods Global, Inc. and Vict. Th. Engwall & Co., Inc. d/b/a Gevalia.com (collectively, the “Defendants”) concerning consumers’ enrollment and payment for membership programs offered by WLI.
- These membership programs are known as: Reservation Rewards, Shoppers Discounts & Rewards, Members Specials, Buyer Assurance, Distinctive Privileges, PC Protection Plus, Travel Values, Travel Values Plus, Classmates Rewards, and/or Wallet Shield (the “Programs”).
- You may be included in this proposed Settlement if you became enrolled in one of these Programs in the period from September 11, 2000 through September 30, 2008 (the “Class Period”), subject to certain eligibility criteria described in this Notice.
- The Court in charge of this case still has to decide whether to give final approval to the proposed Settlement. Valid claims will be paid if the proposed Settlement is approved.

SUMMARY OF RIGHTS AND OPTIONS UNDER THE PROPOSED SETTLEMENT	
<b>SUBMIT A CLAIM</b>	The only way to get a payment. Submit your claim by mail or email (pdf.) to the Settlement Administrator no later than <b>September 2, 2009</b> .
<b>EXCLUDE YOURSELF</b>	Get no payment. This is the only option that allows you to retain a possible claim against the Defendants concerning your membership in a Program or the issues being settled now. You must exclude yourself from the Settlement Class by no later than <b>May 29, 2009</b> .
<b>COMMENT ON THE PROPOSED SETTLEMENT</b>	Write to the Court about why you support or oppose the proposed Settlement.
<b>GO TO A HEARING</b>	Ask to speak to the Court about the proposed Settlement.
<b>DO NOTHING</b>	Get no payment. You will not retain a possible claim against any of the Defendants concerning your membership in a Program or the issues being settled now.

**1. WHY YOU RECEIVED THIS NOTICE:** You received this Notice because: WLI's records show that you were enrolled in one or more of the membership Programs that this lawsuit concerns; you requested a copy of the Notice through a toll-free number; or you downloaded it through the Settlement website, [www.webmarketingsettlement.com](http://www.webmarketingsettlement.com).

**2. WHAT THIS LAWSUIT IS ABOUT:** The lawsuit alleges that the Defendants enrolled consumers in the Programs listed above in the course of online retail transactions without obtaining sufficient authorization or consent, and thereafter wrongly charged fees for membership benefits.

The Defendants assert that they have dealt with members of the Programs fairly and openly. They deny any wrongdoing and make no admission of liability by agreeing to the proposed Settlement described in this Notice. Nonetheless, the Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions described in this Notice.

**3. WHY THIS IS A CLASS ACTION:** In a class action, one or more people called "class representatives" sue on behalf of themselves and other people who have similar claims. The people together are a "class" or "class members." A court must determine if a lawsuit or a settlement should proceed as a class action. If it does proceed as a class action, there may be a trial. A trial then decides the lawsuit for everyone in the class. Sometimes, the parties may settle without a trial.

The parties have agreed to this proposed Settlement that includes consumers who became enrolled in the Programs during the Class Period, subject to certain limitations described in this Notice. The Court has preliminarily approved this proposed Settlement and will hold a hearing to decide whether it should be finally approved. (See Section 10 below). United States District Judge Joseph L. Tauro is in charge of this class action. This proposed Settlement will not become effective unless it is finally approved.

**4. CLASS COVERED BY THE PROPOSED SETTLEMENT:** You are included in the Settlement if you became enrolled in a Program during the Class Period, and:

- (a.) you did not receive a full or partial refund;
- (b.) you did not cancel your Program membership during a free trial period;
- (c.) you did not enter your debit or credit card number to pay for a Program; and
- (d.) you incurred fees for a Program membership.

You need not do anything to become part of the Class, *but you must complete and deliver to the Settlement Administrator the Claim Form in order to be eligible to receive any benefit from the Settlement.*

Excluded from the Class are: (1) residents of the United Kingdom who enrolled in a Webloyalty International, Ltd. Program, (2) consumers who received a complimentary Program membership; and (3) WLI employees who were members of a Program for purposes of fulfilling their job functions.

If you do not exclude yourself from the Class (as explained below), you will be a Settlement Class Member, and you will be bound by all proceedings, orders, and judgments entered in connection with the proposed Settlement, including the release and dismissal with prejudice described below.

The Court has appointed the following lawyers as Co-Lead Counsel to represent the Settlement Class for purposes of the proposed Settlement:

David J. George  
COUGHLIN STOIA GELLER RUDMAN  
& ROBBINS LLP  
120 E. Palmetto Park Road, Suite 500  
Boca Raton, FL 33432

Mark J. Tamblyn  
WEXLER WALLACE LLP  
455 Capitol Mall  
Suite 231  
Sacramento, CA 95814

## 5. SETTLEMENT BENEFITS

**CASH PAYMENTS:** The proposed Settlement provides for the payment of up to ten million dollars (\$10,000,000.00) to eligible consumers (the “Settlement Cash Amount”). If you did not access a Program website, you are eligible to receive, for each Program membership, (a) a payment equal to the cost of one month's membership if you were charged for one month of membership, or (b) a payment equal to the cost of two month's membership if you were charged for two or more months of membership. If you did access a Program website, you are eligible to receive, for each Program membership, a payment equal to the cost of one month's membership. Should the total claims exceed the Settlement Cash Amount, then payments to eligible consumers under this Settlement will be reduced on a proportionately equal basis. For the purpose of the Settlement, the term “access” means more than one access to a Program website after enrollment in that Program, not including any visit where a member cancels a Program membership using the cancel feature located on the website of the Program and any other action that occurred during the same day, such as obtaining a Program benefit.

**REMEDIAL RELIEF:** The proposed Settlement further provides for comprehensive changes to the enrollment page used for the Programs, along with other changes to the Programs, as follows:

Beginning no more than sixty (60) days after the proposed Settlement becomes final and ending no earlier than two (2) years after the proposed Settlement becomes final, WLI agrees to have implemented and maintained the following features and/or changes to banner advertisements displayed on a client purchase confirmation page containing hyperlink(s) to enrollment page(s), enrollment pages and/or Programs:

- (a) To not use the words “award” or “reward” when referring to an offer or solicitation to join a Program (other than in reference to the brands Reservation Rewards and Shoppers Discounts and Rewards, other Program brands, or benefits offered through a Program);
- (b) To include “See Details,” or substantially similar words in all banner advertisements displayed on a client purchase confirmation page containing hyperlink(s) to enrollment page(s);
- (c) To include on all enrollment pages the following disclosures:
  - (i) The price of the Program in at least two (2) locations in addition to the offer and billing details;
  - (ii) in any graphic depicting a coupon that includes a money-saving incentive on a consumer’s next transaction with the WLI partner, such as “Save \$10 on your next purchase” (“Coupon Graphic”), “See Billing Details” or substantially similar words;
  - (iii) proximate to any Coupon Graphic, information regarding (1) the cost of the Program, (2) the term of the free trial program, if any, and (3) method of billing;
  - (iv) proximate to any direction to proceed directly to the enrollment button where consumers enroll for a Program membership and take action (*e.g.*, “Click YES Below”), other than in a Coupon Graphic, information regarding the cost of the Program; and
  - (v) a statement that the Program is being offered by WLI.

- (d) WLI shall display the entire offer and billing details for the Programs on the enrollment page without use of a separate box that requires members to scroll through the offer and billing details and in a location proximate to where consumers enroll for a Program membership;
- (e) WLI shall display all terms contained in the offer and billing details in a font that is at least the same size as a majority of the copy size of all other text on the enrollment page, with the exclusion of header and footer text;
- (f) WLI shall ensure that information regarding the cost of the Program, billing method and cancellation of membership in a Program contained in the offer and billing details on the enrollment page are in bolded font;
- (g) WLI shall include, on all regularly scheduled emails sent to Program members thirty (30) days or more after enrollment, a toll-free telephone number that may be used to contact customer service and cancel a Program membership;
- (h) WLI shall include on all regularly scheduled emails sent to Program members thirty (30) days or more after enrollment, a link and reference to a member's billing detail so that a member can click the link to view (1) the method of payment that the member will be or is being billed for the Program and (2) the fee for the Program membership;
- (i) WLI shall include on all regularly scheduled post-enrollment emails sent to Program members a link that may be used to contact customer service and cancel a Program membership; and
- (j) For eighteen (18) months after the proposed Settlement becomes final, WLI shall send a first class mailing to every member of a Program for whom WLI has determined after the first thirty (30) days of the member's join date that WLI does not have a valid email address (a "Reminder Mailing"). A Reminder Mailing shall include the following: (1) information regarding the specific Program in which the member enrolled, including the website of the Program; (2) a toll-free telephone number and email address which the member may use to contact WLI's customer service to cancel his or her membership in the Program; (3) a method that the member may use to obtain his or her billing information; and (4) the use of word "member," "membership," or substantially similar terms to indicate that the member is enrolled in the Program. WLI shall send the Reminder Mailing at least every four (4) months from the discovery of the invalidity of the email address, to those members for whom WLI has a valid postal mail address.

The cost of Settlement notice, administration costs, and attorneys' fees, expenses and incentive awards will be paid by WLI separate and apart from the Settlement Cash Amount. These costs will in no way reduce the benefits available to Settlement Class members from the Settlement Cash Amount.

**6. HOW TO GET A PAYMENT:** To obtain a payment, you must complete and send in a Claim Form. A Claim Form is enclosed with this Notice. You can also get a Claim Form at the Settlement website, [www.webmarketingsettlement.com](http://www.webmarketingsettlement.com). You must provide the information that the Claim Form asks for, sign it, and send it to the Settlement Administrator, postmarked or emailed (in pdf. format), no later than **September 2, 2009**.

By mail to: Settlement Administrator  
c/o The Garden City Group, Inc.  
P.O. Box 9265  
Dublin, OH 43017-4665

Or by email to: [webmarketingsettlement@gardencitygroup.com](mailto:webmarketingsettlement@gardencitygroup.com)

You may submit a single Claim Form to recover for all membership Programs in which you were enrolled and seek payment. There is room on the Claim Form to make a claim for payment due to enrollment in multiple memberships.

*Important:* If you do not submit your signed Claim Form by the **September 2, 2009** deadline, you will be deemed to have waived your right to receive any payment from the Settlement.

*The Claim Form must be signed.* By signing your Claim Form, you will be confirming that the information you submit is true and accurate.

**7. ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES:** Since the Litigation began in September 2006, several law firms have devoted substantial resources and expenditures in addressing the issues raised by the lawsuit purely on a contingent basis, and these law firms have received no compensation for their services or reimbursement of their expenses. As part of the proposed Settlement, subject to Court approval, Plaintiffs' Counsel will apply for attorneys' fees and reimbursement of expenses not to exceed \$2,700,000 which WLI has agreed to pay. In addition, application will be made for an incentive award in the amount of \$2,000 for each of the named plaintiffs (called "Settlement Class Representatives") in the lawsuit. This is to recognize their initiative and effort in pursuing the matter on behalf of the Settlement Class. Any amounts approved by the Court will be paid by WLI separately from and without reducing the payments available to the Settlement Class under the proposed Settlement.

**8. RESULT IF THE COURT APPROVES THE PROPOSED SETTLEMENT:** If the Court approves the proposed Settlement, it will enter a judgment dismissing the lawsuit with prejudice, and releasing all related legal claims against the Defendants and parties related to them (the "Released Parties"). This means that Settlement Class Members will be forever barred from bringing, continuing, or being part of any other lawsuit based on their enrollment and/or membership in any of the Programs or any of the allegations in the lawsuit. If you are a Class Member and do not want to be barred from bringing, continuing, or being part of such a lawsuit, you must exclude yourself from the Class and the proposed Settlement.

The release applicable to Settlement Class Members if the Settlement is approved includes the following:

All claims (including "Unknown Claims" as defined below), demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, suspected or unsuspected, asserted or that might have been asserted, by the Settlement Class Representatives or any Settlement Class Member, who has not timely excluded himself, herself or itself, against any of the Released Parties arising out of or related to the enrollment and/or membership in any of the Programs or any of the allegations asserted in the Litigation (the "Released Claims").

"Unknown Claims" shall collectively mean all claims, demands, rights, liabilities, and causes of action of every nature and description which any Settlement Class Representatives or any Settlement Class Member does not know or suspect to exist in his or her favor at the time of the release of the Released Parties which, if known by him or her, might have affected his or her decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Settlement Class Representatives shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Order and Judgment shall have waived, the provisions, rights and benefits of California Civil Code §1542, 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 released, which if known by him or her must have materially affected his or her settlement with the debtor.**

The Settlement Class Representatives shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Final Order and Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542.

**9. YOUR OPTIONS AND DEADLINES:** If you are a Class Member, you have the following options:

- (a.) **Participate by making a claim.** To participate in the proposed Settlement, you must complete and submit a Claim Form as described above. You do not need to do anything else to participate. If you submit a valid claim on time, the Court approves the proposed Settlement, and the judgment becomes final, then a check will be mailed to you.
- (b.) **Request to be excluded.** If you wish to exclude yourself from the Settlement, you must send a letter or postcard, on or before May 29, 2009, stating:
  - Your name, address, telephone number; and
  - That you wish to be excluded from the Settlement in the lawsuit *In Re: Webloyalty.com, Inc. Marketing and Sales Practices Litigation*, MDL Case No. 07-01820, Lead Case No. 06-11620 JLT.

You must send your signed exclusion request to the Settlement Administrator, addressed as follows: **Settlement Administrator, c/o The Garden City Group, Inc., P.O. Box 9265, Dublin, OH 43017-4665**. If you submit a valid exclusion request on time, you cannot obtain a payment under the proposed Settlement. You will not be bound by the final judgment, and you will not be giving up any claims that you might have against the Defendants.

In no event shall persons who purport to request exclusion from the Settlement Class as a group, aggregate, or class involving more than one Settlement Class Member be considered valid opt-outs. Requests for exclusion that do not comply with any of the foregoing requirements will not be accepted.

If you do not properly exclude yourself, all of your claims relating to the proposed Settlement will be released and you will be barred from bringing or becoming a part of a lawsuit about those claims. You will be barred even if you do not submit a claim under the proposed Settlement. In other words, if you do nothing at all, your claims will be released, and you will not receive any compensation under the proposed Settlement.

- (c.) **Comment or Object.** If you are a Class Member and do not exclude yourself, you may comment on or object to the proposed Settlement. Objecting is not the same as excluding

yourself. If you object and the proposed Settlement is approved, you will still be bound by the final judgment and your claims will be released.

You must submit your written comment or objection as follows:

- On the first page, please include prominent reference to *In Re: Webloyalty.com, Inc. Marketing and Sales Practices Litigation*, MDL No. 07-01820, Lead Case No. 06-11620 JLT.

Your objection or comment must include:

- Your full name, address and telephone number;
- The Program(s) that you were enrolled in;
- A brief explanation of your comment or reason for objection;
- Any papers or documents that you would like to submit to support your comment or objection; and
- Your signature.

If you also wish to speak at the Fairness Hearing (described below), you must also state in your objection or comment that you intend to appear and speak at the hearing. If you do not include this statement, you will not be entitled to speak at the hearing.

You must deliver your objection or comment to the Court by mailing it to the Clerk of the Court at the address listed below, with copies to the Settlement Administrator and, at least, *one* of the Co-Lead Counsel. They must be mailed and postmarked no later than May 29, 2009. The mailing addresses for the Clerk of the Court, Co-Lead Counsel and the Settlement Administrator are as follows:

**Clerk of Court**

John Joseph Moakley United  
States Courthouse  
1 Courthouse Way, Suite 2300  
Boston, MA 02210

**Co-Lead Counsel**

Mark J. Tamblyn  
WEXLER WALLACE LLP  
455 Capitol Mall  
Suite 231  
Sacramento, CA 95814

**Co-Lead Counsel**

David J. George  
COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
120 E. Palmetto Park Road,  
Suite 500  
Boca Raton, FL 33432

**Settlement Administrator**

c/o The Garden City Group, Inc.  
P.O. Box 9265  
Dublin, OH 43017-4665

**10. FAIRNESS HEARING:** On June 30, 2009 at 12:00 p.m., a hearing will be held in Courtroom 22, 7<sup>th</sup> Floor, of the John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, 02210. The purpose of the hearing is for the Court to decide whether the proposed Settlement is fair, reasonable and adequate and should be approved. The Court will also decide whether a final judgment should be entered dismissing this lawsuit, and the amount of attorneys' fees and reimbursement of expenses and incentive awards to the Settlement Class Representatives. This hearing may be postponed without further notice.

Your attendance is not required, even if you properly mailed a written objection or comment. If you or your personal attorney still want to attend the hearing, you are welcome to do so at your expense. To speak at the hearing, you or your personal attorney must file with the Court a paper that is called a "Notice of Appearance." The Notice of Appearance must state: (1) the name and number of the lawsuit: *In Re: Webloyalty.com, Inc. Marketing and Sales Practices Litigation*, MDL No. 07-01820, Lead Case No. 06-11620 JLT; (2) that you wish to appear and speak at the Fairness Hearing; and (3) your name, address, telephone number and signature. Your Notice of Appearance must be entered on or before June 19, 2009.

The Notice of Appearance must be filed with the Court at the following address:

Clerk of Court  
John Joseph Moakley United States Courthouse  
1 Courthouse Way, Suite 2300  
Boston, MA 02210

**11. ADDITIONAL INFORMATION:** You can get more information at the Settlement website at [www.webmarketingsettlement.com](http://www.webmarketingsettlement.com). You can also view the Settlement Agreement and related legal papers, and download a Claim Form on this website.

You can also get more information by calling the Settlement Administrator toll free at **1-888-571-1765**; sending an e-mail to [webmarketingsettlement@gardencitygroup.com](mailto:webmarketingsettlement@gardencitygroup.com) or by sending a written inquiry to Co-Lead Counsel at their addresses listed above. In addition, you may look at and copy the legal documents filed with the Court at any time during regular office hours at the Office of the Clerk of Court at the address listed above. **Otherwise, please do not contact the Court.**

**Dated: February 24, 2009**

**By Order of the United States District Court  
for the District of Massachusetts**