

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

BRUCE DEATON, *et al.*, on Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

v.

HOTWIRE, INC., and DOES 1 through 100,

Defendants.

Case No.: CGC-05-437631

UNLIMITED CIVIL CASE

**NOTICE OF PENDENCY OF CLASS ACTION AND
PROPOSED SETTLEMENT**

Judge: Hon. Richard A. Kramer
Dept.:304

NOTICE TO PERSONS WHO PURCHASED A HOTEL RESERVATION ON WWW.HOTWIRE.COM

FROM JANUARY 10, 2001 TO MAY 2, 2005

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

You are a member of a court-certified class if, between January 10, 2001 and May 2, 2005, you (a) were a resident of the United States, and (b) contacted Hotwire through its website (www.hotwire.com) in order to reserve hotel accommodations that were not part of a package arrangement as defined below, and (c) received a price quote for such accommodations from Hotwire that specified a price for the accommodations plus an additional charge for "taxes and fees" or "taxes/fees," and (d) paid Hotwire for the accommodations plus the "taxes and fees" or "taxes/fees." A "package arrangement" is a reservation that includes hotel accommodations plus any other element of travel (such as airline tickets or a rental car) when the price for the hotel accommodations is not separately stated. You are not a member of the Certified Class, even if you meet all of these criteria, if you are an employee or agent of Hotwire, Inc.; are the Honorable Richard A. Kramer or a member of his family; or are a governmental entity.

A proposed settlement has been reached in a lawsuit in which Plaintiff alleges that Hotwire did not properly disclose the nature and amounts of taxes and/or fees charged to customers who made hotel reservations at the Hotwire Website. Hotwire has denied and continues to deny each and all of Plaintiff's claims. The Court has not made a decision on the merits.

The purpose of this notice is to inform you of the proposed settlement, and of a hearing to consider the settlement to be held on October 23, 2009, at 10:30 a.m., before the Honorable Richard A. Kramer, Department 304, San Francisco Superior Court. This notice will inform you how to participate in the settlement; how to object to it if you wish; and how to get more information. (Capitalized terms not defined in this notice have the meanings assigned to them in the Settlement Agreement, available on this website www.hoteltaxandfeesettlement.com.)

A. Description of the Lawsuit

From January 10, through February 17, 2005, Bruce Deaton, Jana Sneddon and Ashley Salisbury filed complaints against Hotwire in the Superior Court of California, City and County of San Francisco, Case Nos. CGC-05-437631, CGC-05-437701, and CGC-05-438781. The complaints generally alleged claims for, *inter alia*, unfair business practices under California Business and Professions Code sections 17200, *et seq.*; conversion; and imposition of a constructive trust.

On March 7, 2005, Hotwire removed the actions to the United States District Court for the Northern District of California. On July 1, 2005, the actions were remanded to the Superior Court of California, City and County of San Francisco. On August 8, 2005, the Court ordered that the actions be consolidated and that the consolidated case be titled "*Deaton, et al. v. Hotwire, Inc.*"

On February 17, 2006, Plaintiff filed a first amended complaint further alleging a breach of contract and a violation of the California Consumers Legal Remedies Act, California Civil Code, section 1770, *et seq.* In her first amended complaint, Plaintiff alleges that Hotwire did not properly disclose on its website the nature and amounts of taxes and/or fees charged to customers who made hotel reservations through the Hotwire Website. Plaintiff further alleges that Hotwire added charges to each purchase for "taxes and fees" or "taxes/fees" that were neither taxes (paid to the government) nor fees (for Hotwire's services rendered), but rather variable amounts designed to disguise the true cost of the room paid by Hotwire. Plaintiff also alleges that, despite Hotwire's promise in the "Payments" section of its Terms of Use Agreement that all taxes and fees would be "posted" on Hotwire's website, some of the "fees" it charged were not included in the "Taxes and Fees" line item displayed to customers, but instead were hidden in the "Rate per night" line.

Bruce Deaton dismissed his complaint without prejudice on February 23, 2007. This dismissal did not impair or affect the continuation of this Litigation.

On March 15, 2007, the Court granted Plaintiff's motion for class certification, appointing Plaintiff Ashley Salisbury ("Salisbury") to represent the Certified Class.

Jana Sneddon, who was not appointed class representative, reached a separate individual settlement of her complaint with Hotwire. No compensation is being paid to Plaintiff's attorneys in connection with that settlement.

Hotwire has denied and continues to deny the allegations made in Plaintiff's complaints and denies any and all liability with respect to the facts alleged therein, and denies that anyone has suffered damage or is entitled to any relief whatsoever. The Court has not decided whether Plaintiff or Hotwire is correct.

B. The Class Members

The Court has certified a class (the "Certified Class") consisting of all persons who between January 10, 2001 and May 2, 2005 (i) were residents of the United States, and (ii) contacted Hotwire, Inc. through its website at www.hotwire.com in order to reserve hotel accommodations that were not part of a package arrangement as defined below, and (iii) received a price quote for such accommodations from Hotwire, Inc. that specified a price for the accommodations plus an additional charge for "taxes and fees" or "taxes/fees," and (iv) paid Hotwire, Inc. for the accommodations plus the "taxes and fees" or "taxes/fees." For the purpose of the Certified Class, a "package arrangement" is a reservation that includes hotel accommodations plus any other element of travel (such as airline tickets or a rental car), where the price for the hotel accommodations is not separately stated.

“Persons” are natural persons, partnerships and corporations. Excluded from the Certified Class are Hotwire, Inc. and its employees and agents, the Honorable Richard A. Kramer and his family, all governmental entities, and all persons who timely request exclusion from the Certified Class.

If you fit within this definition, you will be considered a member of the Certified Class (“Class Member”), unless you request to be excluded.

C. Description of Settlement

1. Changed Practices

For two years following the Effective Date, Hotwire shall, by virtue of this Agreement, undertake as follows:

(a) Certain sections of the Hotwire Terms of Use, following certain revisions negotiated as part of this settlement, shall state as follows:

Payment

All prices and amounts shown on this Site are in U.S. Dollars (USD), unless otherwise noted. If a User submits a Hotwire Request for airline tickets, hotel rooms or other services, the User agrees that the total cost shown to the customer will automatically be charged to the credit card submitted by the User. The total cost shown will include all taxes, charges, surcharges, shipping/handling and Hotwire Request resubmission or other fees. Such amounts will be posted on this Site but will not be separately itemized. Rather, all tax recovery charges, fees, charges, surcharges, shipping/handling and Hotwire Request resubmission or other fees will be presented together as “Tax Recovery Charges and Fees.”

You agree that your credit card will be charged for the full cost of your reservation upon submitting your booking request. The cost of your airline ticket booking is the total of: the indicated price per ticket which includes a tax recovery charge plus an additional amount for our service fees, including a booking fee. The cost of your hotel booking is the total of: the indicated nightly room rate multiplied by the number of days in your reservation, plus an additional amount for the tax recovery charges and our service fees. The cost of your rental car booking is the total of: the indicated rental rate multiplied by the number of days in your reservation, plus an additional amount for the tax recovery charges and our service fees. The cost of your package booking is the total of: the indicated price per person multiplied by the number of travelers, plus an additional amount for the tax recovery charges and our service fees. The tax recovery charge is assessed to recover the amount we pay to the vendor in connection with your reservation, including sales and use, occupancy, room tax, excise tax, value added and other similar taxes, etc., and the balance of the additional amount is a fee we charge in connection with the handling of your reservation. Our service fee varies based on the amount and location of your reservation and can include variable fees and may be rounded up to the nearest dollar. Additionally, the tax recovery charge is assessed on the nightly room rate that we pay to the vendor for the hotel room reservation, which may be less than the nightly room rate charged to the User.

We are not the vendor collecting and remitting said tax to the applicable tax authorities. The vendors bill all applicable taxes to us and we remit such taxes directly to the vendor. We are not a co-vendor associated with the vendor with whom we book or reserve our customers' travel arrangements. Taxability and the appropriate tax rate vary greatly by location. Our actual tax cost paid to the vendor may vary from the tax recovery charge, depending upon the rates, taxability, etc. in effect at the time of the actual use of the airline ticket, hotel, rental car, etc. customer.

(b) Certain of Hotwire's frequently asked questions on the Hotwire Website, following certain revisions negotiated as part of this settlement, shall state as follows:

Are there any hidden charges, like taxes and fees, in your rates?

With hotel reservations, the search results will show the base price (*i.e.*, the nightly room rate before taxes and booking fees). On the next page -- before you make any commitment to book -- you will see the total price including all taxes and booking fees.

Please note that the nightly room rate charged to you may be higher than the amount Hotwire pays to the vendor. Tax recovery charges are assessed only on the portion of the nightly room rate that Hotwire pays to the vendor for the hotel room reservation.

In addition, please note that each hotel may also have its own charges - for example, parking, resort fees, convention fees, and energy charges. You will be required to pay any such fees directly to the hotel (usually at check-out time). Once you book a hotel reservation, we recommend that you contact your hotel directly to inquire about any additional charges.

Does Hotwire guarantee the lowest hotel rate?

Yes. We've negotiated such incredible hotel Hotwire Hot Rates that we have a Low-Price Guarantee. Within 48 hours of booking, if you find a lower price for your entire stay for an equivalent room type in the same hotel on the same dates, we'll give you double the difference. The Low-Price Guarantee only pertains to the room rate exclusive of tax recovery charges and fees.

The lower rate must be available for booking; some sites display rates that are not actually available when you try to book. We do not guarantee that the total amount you pay Hotwire will be lower than the total amount you might pay elsewhere, factoring in tax recovery charges and fees. Only one refund under the Low-Price Guarantee will be granted per household per six-week period. View the Low-Price Guarantee Terms and Conditions for more information.

What is the Low-Price Guarantee?

We work with our US and international hotel partners to get the best hotel rates. And we're sure they're the lowest prices you'll find.

Within 48 hours of booking, if you find a lower average nightly rate for the same:

Hotel

Travel dates

Room type

we'll pay you double the difference between the rates.

Things to know:

The Low-Price Guarantee applies only to hotels booked on Hotwire.com.

The lower rate you find must be available. Some sites display rates that are not actually available when you try to book.

Only one refund under the Low-Price Guarantee terms will be granted per household per six-week period.

This Low-Price Guarantee only pertains to the nightly room rate exclusive of tax recovery charges and fees. We do not guarantee that the total amount you pay Hotwire will be lower than the total amount you might pay elsewhere, factoring in tax recovery charges and fees.

Low-Price Guarantee: How it works

Getting your refund is quick and hassle-free. To submit a Low-Price Guarantee refund request:

Visit the My Account section on Hotwire.

After you've logged into your account, find the hotel booking eligible for a refund. On the booking detail page, click the link in the Low-Price Guarantee box near the top of the page.

Complete the request form, and submit the form.

Once we receive your request, we will confirm the availability of the lower rate you found. After verifying the lower rate, we will issue a refund in an amount equal to double the difference between your Hotwire average nightly rate and the lower average nightly rate. Expect your credit within 10 business days. The credit will be issued to the card you used for your Hotwire booking.

Rates that are not available to the general public (including but not limited to AARP, AAA, group rates, corporate rates, and convention rates) are not eligible for the Guarantee. For further details, please see the Low-Price Guarantee Terms and Conditions.

Low-Price Guarantee: Terms and Conditions

The Hotwire Low-Price Guarantee is available to anyone who books one or more room nights from Hotwire. We will give you double the price difference if you find a lower total nightly rate for the same hotel and the same dates (based upon average cost for entire timeframe of hotel stay, excluding taxes, tax recovery charges and fees) from another source within 48 hours of your Hotwire booking.

To submit a Low-Price Guarantee refund request, go to the “My Account” section. After you’ve logged into your account, find the hotel booking eligible for the refund. On the booking detail page, click on the link in the Low-Price Guarantee box near the top of the page.

After you submit your request, you will know the outcome within three business days. If Hotwire can confirm the availability of the lower rate, your request will be approved, and Hotwire will issue you a refund in an amount equal to two times the difference between your stay’s total Hotwire rate and the other lower rate. If Hotwire cannot validate the lower rate, your request will be denied. If a refund is issued, your original reservation will not be cancelled. All refunds will be made within ten business days after Hotwire confirms the availability of the lower rate. A credit will be issued to the card used for the Hotwire hotel booking.

Only one refund under the Low-Price Guarantee will be granted per household per six-week period.

In order to verify the other rate’s availability, Hotwire may request additional information from you including, without limitation, the URL address reflecting the lower price or the name of the hotel representative that quoted the lower rate, and/or your address or contact information in order to confirm the availability of a refund during a given six-week period.

The Low-Price Guarantee applies only to non-qualified rates available to the general public in the same hotel, on the same dates and for equivalent room types as the booking you made on Hotwire. The Low-Price Guarantee does not apply to membership or corporate rates or special discounted rates including AAA, AARP, employee, military, government or convention rates. The Low-Price Guarantee also does not apply to rates made available on Hotwire after your booking. Employees (including their families and persons residing in the same household) of Hotwire hotel partners are not eligible.

Hotwire reserves the right to modify the Terms and Conditions applicable to the Low-Price Guarantee on a prospective basis at any time and without notice.

Hotwire shall make the final determination regarding your refund eligibility and the availability of a lower rate.

In no event shall you receive refunds under the Low-Price Guarantee in excess of \$1,000 per calendar year.

Hotwire shall not be liable for the payment of any refunds under the Low-Price Guarantee with respect to rates loaded in error by Hotwire or the hotel or any printing, typographical, administrative or technological errors in any materials relating to the Low-Price Guarantee.

In the event of any dispute regarding the Low-Price Guarantee, the decisions of Hotwire shall be final and binding on all parties.

Void where prohibited by law.

(c) Hotwire may, at its discretion and in good faith, modify the text set forth in the two previous subsections to make it consistent with any changes to its business practices, to increase its clarity, or to comply with a legal obligation or court order.

2. Class Benefit

Every Class Member shall have the right to submit a claim for additional settlement benefits. To make a claim, a Class Member shall, on this Settlement website, provide confirmation under penalty of perjury, that between January 10, 2001 and May 2, 2005, while residing in the United States, he, she, or it is a Class Member and made and paid for a non-Package hotel reservation on the Hotwire Website. The Class Member shall also provide his, her or its name, current mailing address, and current email address, and any other email address(es) and names used by the Class Member to make such transactions on the Hotwire Website.

Class Members who submit claims will be entitled to receive, for each Qualifying Hotel Reservation, either (a) a refund, in cash, of 25% of the total amount of Service Fees paid, or (b) a credit, in HotDollar Credits, equal to 65% of the amount of Service Fees paid for each Qualifying Reservation. Class Members may make one claim for each Qualifying Reservation. A "Qualifying Reservation" is any reservation for one or more hotel stays, other than a Package Reservation, as to which a Class Member contacted Hotwire through the Hotwire Website and received a price quote for such accommodations from Hotwire that specified a price for the accommodations plus an additional charge for "taxes and fees" or "taxes/fees" and as to which the Class Member paid Hotwire for the accommodations plus the "taxes and fees" or "taxes/fees" during the Class Period. "Service Fees" means, for any Qualifying Reservation, the total amount displayed in a line item on the website as "taxes and fees" or "taxes/fees" and charged to the customer, less the amount that Hotwire estimated, at the time the Qualifying Reservation was made, that Hotwire would pay to the hotel supplier for payment to governmental authorities.

All HotDollar Credits paid as part of the Settlement shall be usable for a period of one year from the date of their delivery.

Hotwire has agreed to pay \$5,490,000 ("Settlement Amount") to cover all claims, notice and administrative expenses related to the settlement ("Administrative Expenses"), an incentive award to the named Plaintiff ("Incentive Award"), and attorneys' fees and expenses for Plaintiff's Counsel ("Attorneys' Fees and Expenses"). If, after payment of Administrative Expenses, Incentive Awards, and Attorneys' Fees and Expenses, the total value of the valid claims exceeds the balance of the Settlement Amount, then payment of each valid claim will be reduced pro rata. Any balance of the Settlement Amount after payment of all Administrative Expenses, Incentive Awards, Attorneys' Fees and Expenses and claims shall revert to Hotwire.

3. Award to Plaintiff's Counsel and Incentive Awards

Under the terms of the settlement, Plaintiff's Counsel will apply to the Court for an award from the Settlement Amount of Attorneys' Fees and Expenses and the Incentive Award to the Plaintiff. The Incentive Award, for the time and effort undertaken in and risks of pursuing this Litigation, will not exceed \$5,000. The total paid from the Settlement Fund for Attorneys' Fees and Expenses, Incentive Awards, and Administrative Expenses shall not exceed \$2,095,000.

4. Releases

Under the terms of the settlement, Plaintiff has agreed to dismiss the Litigation in its entirety, including the claims of the Class Members, with prejudice, which dismissal will be incorporated into a final judgment approving the settlement. All Class Members who have not excluded themselves will be bound by the final judgment entered by the Court. All claims of Class Members, which were or could have been asserted in the Litigation, based upon the facts alleged in the Litigation, will be released as provided in the Settlement Agreement, and Class Members will be forever barred from seeking other or further relief on such claims.

D. Reasons for Settlement and Expected Recovery

After reviewing the evidence produced in discovery and considering the risks of further litigation, Plaintiff and her counsel have concluded that it is in the best interests of the Certified Class to enter into this settlement. Plaintiff believes that, in the best case scenario, the average recovery per Qualifying Reservation would be approximately \$34.00. Plaintiff acknowledges, however, that the amount recovered per Qualifying Reservation could be only, on average, approximately \$5.00. Defendant contends that even if Plaintiff succeeds on all claims, the average recovery per Qualifying Reservation would be far lower than \$34.00, and that Plaintiff is not likely to recover anything.

Plaintiff and her counsel have also concluded that there is a possibility that, in the absence of settlement, Class Members will recover nothing. There are, for example, questions whether Plaintiff or any Class Members lost money or property and suffered injury-in-fact as a result of the alleged wrongdoing. Hotwire asserts that the total amounts it collected from Class Members, including all room rates, taxes and fees, were less than Class Members would have paid had they made the reservations elsewhere, and that such fees were collected for services rendered. Furthermore, there are questions about whether reasonable persons were likely to be deceived into thinking, as Plaintiff alleges, that the "Taxes and Fees" line included only fixed amounts for governmental charges and Hotwire's services, rather than additional variable amounts for Hotwire's profits, or that the "Rate per night" was the amount actually remitted to the hotels, rather than a combination of the amount remitted to the hotels and Hotwire's mark-up. There also are questions as to whether Plaintiff can prove, as she alleges, that Hotwire breached its promise to "post" all fees to its website by including those fees within the Rate per night rather than itemizing them separately or including them in the "Taxes and Fees" line. Even if liability could be proven on any of these theories, there are additional questions as to the amounts of restitution or damages, if any, to which the Certified Class as a whole or any Class Member would be entitled.

In light of the risks of continued litigation, Plaintiff and her counsel believe that the recovery obtained in this Settlement adequately compensates Class Members for the harm they allegedly suffered. Class Members will be entitled to recover, for each Qualifying Reservation, a Cash Refund equal to 25% of the Service Fees paid, or a HotDollar Credit equal to 65% of the Service Fees Paid. This means that a Class Member who makes a claim can recover, on average, approximately \$2.75 in cash or \$7.15 in HotDollar Credits for each Qualifying Reservation. The amount recovered by each Class Member will be lower if the value of all claims is larger than the agreed-upon

amounts that can be paid in the settlement after payment of Administrative Costs, Attorneys' Fees and Expenses, and the Incentive Award. In that case, each Cash Refund and HotDollar Credit will be reduced pro rata.¹

In addition, the Class Members receive intangible benefits of the agreement that Hotwire will make changes to its Hotwire Terms of Use agreement and frequently asked questions regarding the manner in which it disclose its practices.

E. Right to Object

Any Class Members who object to the settlement and who have not excluded themselves from the settlement may file written objections with the Court. You may file these objections on your own or through counsel retained at your own expense. **Any such objections or requests for any other relief must be filed with the Clerk of the Court and served on one of Plaintiff's Counsel and Hotwire, at the addresses set out below, on or before September 25, 2009.**

All objections or requests for any other relief must state the objector's name, address and telephone number, shall provide documentation or statements under penalty of perjury sufficient to establish membership in the Certified Class, and shall provide a detailed written statement of each objection asserted, including all grounds for the objection and any request to appear and be heard at the final approval hearing. Objections must be filed with the Clerk of the Court, San Francisco Superior Court, 400 McAllister Street, San Francisco, CA 94102, with copies sent to Seth A. Safier, Esq., Gutride Safier LLP, P.O. Box 460286, San Francisco, CA 94146-0286 (counsel for Plaintiff); and James P. Karen, Esq., Jones Day, 2727 N. Harwood Street, Dallas, TX 75201 (counsel for Hotwire, Inc.).

F. Right to Exclude Yourself From ("Opt Out" of) the Settlement

If you do not wish to be a member of the Certified Class, you must exclude yourself online by completing the form <Request for Exclusion> on or before September 25, 2009. If you choose to exclude yourself from the Certified Class, you will not be affected by the Litigation, and you will not be able to object, seek other relief or participate in the settlement. However, if you make a timely objection to the settlement, and your objection is overruled, you may opt out of the settlement within seven days thereafter.

¹ In the event of a pro rata reduction, the minimum amount that would be paid to each Class Member cannot be determined until it is known how many claims are made and the ratio of those who choose the Cash Refund to those who choose the HotDollar Credit. The following example demonstrates how the pro rata reduction is designed to work. Assuming that each person who made a non-Package hotel reservation during the Class Period certifies membership in the Certified Class and files a Valid Claim for all email addresses used at the Hotwire Website, and further assuming that all such persons request a Cash Refund, then Plaintiff and Plaintiff's Counsel estimate that each Class Member will receive cash equal to approximately 11.5% of the Service Fees he or she paid. Similarly, if the same people make claims and each of them chooses the HotDollar Credit, then each Class Member will receive HotDollar Credits equal to approximately 11.5% of the Service Fees he or she paid. But if the same people make claims and some choose the Cash Refund while others choose the HotDollar Credit, the amount paid to each Class Member will vary depending on the total amount of Service Fees that were paid by those who chose the Cash Refund and the total amount of Service Fees that were paid by those who chose the HotDollar Credit. For example, if Class Members who had paid half of all the Service Fees chose HotDollar Credits, and the other Class Members chose Cash Refunds, then the Class Members who chose HotDollar Credits would receive HotDollar Credits equal to approximately 16.25% of the Service Fees they paid, and those who chose Cash Refunds would receive cash equal to approximately 6.25% of the Service Fees they paid. As the value of claims for HotDollar Credits increases in proportion to the value of claims for Cash Refunds (because more people make such claims or the persons who make such claims incurred a greater percentage of the Service Fees), the recovery by each Class Member decreases. Similarly, as the value of claims for Cash Refunds increases in proportion to the value of claims for HotDollar Credits (because more people make such claims or the persons who make such claims incurred a greater percentage of the Service Fees), the recovery by each Class Member increases.

Any Class Member who fails to properly or timely file or serve any of the requested information and/or documents required to object to the settlement, request other relief or be excluded, will be forever precluded from doing so.

G. Court Hearing and Final Approval

The proposed Settlement Agreement is subject to Court approval. On October 23, 2009, at 10:30 a.m., in Department 304, San Francisco Superior Court, 400 McAllister Street, San Francisco, CA 94102, a hearing will be held on whether the proposed settlement should be approved as fair, reasonable and adequate.

If you file a proper, timely written objection and have not requested exclusion, you may appear at the hearing in person or through an attorney retained at your own expense. **If you wish to appear at the hearing to object to the settlement or to seek other relief, you must notify the Court and counsel for Plaintiff and counsel for Hotwire of your intention to do so, in your written objection or other appropriate motion. You may not appear at the hearing to object or to request additional relief unless you have filed a written objection or other appropriate motion by the deadline.**

H. Examination of Papers

You may inspect many of the documents connected with this case on this Settlement Website. Other papers filed in this lawsuit, to the extent they are publicly available and not filed or lodged under seal, are available at the office of the Clerk of the Superior Court, 400 McAllister Street, San Francisco, CA 94102, during its regular business hours.

I. Additional Information

Do not call or contact the Court or Hotwire, Inc. concerning this notice, the settlement, or the lawsuit. If you have questions, contact your own attorney, or, if you would like more information about this notice or the case, you may contact:

The Claims Administrator:

Rust Consulting, Inc.
PO Box 2213
Faribault, MN 55021-1713

or

Plaintiff's Counsel:

Seth Safier, Esq.
Gutride Safier LLP
P.O. Box 460286
San Francisco, CA 94146-0286