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Southwest Inks Deal Worth Up To \$58M In Drink Coupon Suit

By **Juan Carlos Rodriguez**

Law360, New York (December 04, 2012, 4:00 PM ET) -- A class of Southwest Airlines Co. customers has agreed to a settlement with the company worth between \$29 million and \$58 million, the customers said Monday, resolving their dispute over Southwest's decision to stop accepting certain drink vouchers in 2010.

In the plaintiffs' motion for preliminary approval of the agreement, they alleged Southwest had breached a contract with consumers when it said in August 2010 that it would no longer accept vouchers without a printed expiration date, retroactively voided all previously issued vouchers and accepted vouchers issued with the purchase of a Business Select ticket on the date of ticketed travel only.

Southwest has disputed those claims, and it denied it had violated any laws as part of the agreement.

"Although both sides believe their respective positions in the action are meritorious, they have concluded that, due to the uncertainties and expense of protracted litigation, it is in the best interest of plaintiffs, the putative settlement class and Southwest to resolve this action on the terms provided in the proposed settlement agreement," the motion said.

Under the proposed agreement, each class member will receive one drink voucher to replace any received prior to Aug. 1, 2010, that was not redeemed. There is no limit or cap on the number of replacement vouchers per class member.

"Because Southwest has agreed to satisfy claims for all unredeemed vouchers, the settlement is valued — conservatively — between \$29 million (at an absolute minimum) and \$58 million," the motion said.

The motion said there were at least 5.8 million vouchers, each valued at \$5, that were never redeemed.

Southwest also agreed to include expiration dates on the post-settlement vouchers and neither retroactively invalidate them nor shorten the expiration period.

The company also said that if it decides to restrict or limit use of the the new vouchers to the day of the flight for which the ticket was purchased, it will include that information in express, conspicuous language printed on the voucher.

It additionally agreed that if it fails to include expiration dates on the vouchers, then the vouchers may be redeemed on a Southwest flight at any point in time.

The motion said the parties had been unable to reach an agreement on attorneys' fees and expenses.

"Importantly, the attorneys' fees and expenses will not be paid out of the settlement class benefits achieved by the settlement, and will not dilute or reduce the class benefits in any way," the motion said. "Rather, fees and expenses will be paid directly by Southwest, in addition to and separate from the settlement class benefits."

The settlement class includes all Southwest customers who purchased an eligible drink voucher through the purchase of a Business Select ticket or otherwise during the time period before Aug. 1, 2010, but who did not redeem the eligible drink voucher.

The Class does not include Southwest customers who obtained drink vouchers or drink coupons through the Southwest Rapid Rewards program unless those customers separately purchased, but did not redeem, vouchers through the purchase of a Business Select ticket or otherwise.

The plaintiffs are represented by Joseph J. Siprut, James M. McClintick, Aleksandra M. S. Vold and Greg M. Barbakoff of Siprut PC.

Southwest is represented by Gregg Michael McCormick, Mitesh Bansilal Shah, H. Thomas Wells Jr. and Lorrie Lizak Hargrove of Maynard Cooper & Gale PC and Michael William Drumke of Swanson Martin & Bell LLP.

The case is Levitt v. Southwest Airlines Co., case number 1:11-cv-08176, in the U.S. District Court for the Northern District of Illinois.

--Editing by Elizabeth Bowen.

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