

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

**If you are or were a customer of North American Bankcard, LLC for payment card processing services, you could get a payment from a class action settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- J A settlement has been proposed to end a class action lawsuit brought by merchants against North American Bancard, LLC (“NAB”) and Global Payments Direct, Inc. (“Global”) (collectively “Defendants”). The lawsuit, referred to as *T.S. Kao, Inc. d/b/a Lucky 7 Chinese Food v. North American Bancard, LLC and Global Payments Direct, Inc.*, Case No. 1:16-cv-04219-SCJ (N.D. Ga.), contends Defendants overcharged for processing payment card transactions by marking up certain fees by small amounts and adding unauthorized fees. Defendants deny they overcharged merchants or did anything improper.
- J Under the settlement, if approved by the court, NAB will pay \$15,000,000 to be distributed to merchants who contracted with or through Global and received merchant services from NAB at any time from August 31, 2009 through March 31, 2019, or who were referred by NAB to Global during that period. NAB has also agreed to change certain of its business practices, waive contractual provisions requiring payment of its attorneys’ fees in cases that NAB loses, allow you to get attorneys’ fees and expenses from NAB if you prevail in a future lawsuit, and release Class Members from certain legal claims. In exchange, Class Members will release claims against NAB and the class action lawsuit will be dismissed.
- J The estimated minimum amount of your credit is shown on the email or postcard sent to you about the settlement. The amount of your credit may increase.
- J If you are a current NAB customer, you will automatically receive a cash credit on a future invoice unless you exclude yourself from the settlement. Former customers must file a valid and timely claim by **August 15, 2019** to receive a cash payment.
- J The costs of notice and administration and, if approved by the court, the fees and expenses of the lawyers representing the class and service awards to the class representatives, will be paid out of the \$15,000,000 settlement amount.
- J The court has scheduled a hearing on **August 20, 2019 at 10:00 a.m.** in Atlanta, Georgia to decide whether to finally approve the settlement and other related matters.

***Your legal rights are affected whether you act or don’t act. Read this notice carefully.***

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>DO NOTHING</b>	If you are a current customer, you will automatically receive a cash credit on a future invoice and forfeit your right to sue Defendants for the claims being resolved by this settlement.  If you are a former customer, you will receive no compensation and forfeit your right to sue Defendants for the claims being resolved by this settlement.
<b>ACCEPT THE BENEFITS OF THE SETTLEMENT</b>	If you are a current customer, you do not need to do anything to claim the cash credit. The cash credit will appear on a future invoice.  If you are a former customer, you must file a Claim Form to be eligible for a cash payment. This is the only way to receive compensation from the settlement if you are a former customer.
<b>EXCLUDE YOURSELF (ALSO CALLED OPTING OUT) FROM THE SETTLEMENT</b>	If you ask to be excluded, you will not receive any benefits from the settlement, but you may be able to file your own lawsuit against Defendants for the same claims.
<b>OBJECT</b>	You may remain in the case and file an objection telling the court why you do not like the settlement. If your objections are overruled, you will be bound by the settlement.

- J These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- J The court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the court approves the settlement and after any appeals are resolved. Please be patient.

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## BASIC INFORMATION

### 1. WHY DID I GET THIS NOTICE?

According to NAB's records, you either currently obtain payment processing services through NAB, previously received payment processing services through NAB from August 31, 2009 through March 31, 2019, or were referred by NAB to Global during that period.

The court authorized this notice to inform you about your rights and options before the court decides whether to approve the proposed settlement. If the court approves the settlement and after any objections and appeals are resolved, a Settlement Administrator appointed by the court will oversee the cash payments that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

### 2. WHAT IS THIS LAWSUIT ABOUT?

The case is known as *T.S. Kao, Inc. d/b/a Lucky 7 Chinese Food v. North American Bancard, LLC and Global Payments Direct, Inc.*, Case No. 1:16-cv-04219-SCJ and is pending in the United States District Court for the Northern District of Georgia. The four merchants who sued are called the "Plaintiffs," and the companies they sued, NAB and Global, are the "Defendants."

Plaintiffs contracted with or through Defendants to process payment card transactions. Plaintiffs claim that Defendants improperly: (1) marked up certain access fees due to card associations, base assessments, and the discount fee charged by NAB for its services; (2) charged a "regulatory" fee and a "monthly maintenance fee" that were not contractually authorized; (3) charged a "FANF" fee that exceeded the associated expense incurred by NAB; and (4) marked up certain other fees and assessments, including specifically the International Acquirer Fee; AMEX Non-Swiped Transaction Fee; MasterCard US Acquirer Support Fee; MasterCard Acceptance License Fee; International Service Assessment; International and Cross Border Fees; Visa Data Transmission Fee; AMEX Network Fee; CVC2 Authorization Fee; and Discover Network Access Fee. Plaintiffs sued Defendants for breach of contract, fraud, unjust enrichment, and money had and received. The lawsuit seeks to recover the amount that merchants were overcharged and other relief. Defendants deny that they acted improperly and assert they have no legal liability. The court has not yet decided whether Plaintiffs' claims have merit.

### 3. WHY IS THIS A CLASS ACTION?

In a class action, one or more people or entities called "class representatives" sue on behalf of themselves and others with similar claims. All of these people and entities together are the "Class" or "Class Members." One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. A class action allows the claims of all Class Members to be more efficiently resolved than individual lawsuits and provides a remedy for Class Members whose individual damages on their own are not large enough to justify a lawsuit.

### 4. WHY IS THERE A SETTLEMENT?

The court has not decided in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. Settlements avoid the costs and uncertainty of a litigation, trial and related appeals, while providing benefits to members of the Settlement Class. The class representatives and the attorneys for the Settlement Class think the Settlement is best for all Class Members.

## WHO IS PART OF THE SETTLEMENT

### 5. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

You are a member of the class and affected by the Settlement if you contracted with or through Global and received merchant services from NAB, or who were referred by NAB to Global for payment processing services, from August 31, 2009 through March 31, 2019, and were damaged as a result of being charged: (a) a card association access fee, base assessment, or discount rate or fee charged by NAB for its services that exceeded the amount charged in the first month of the initial contract period; (b) a "regulatory" fee, Monthly Maintenance Fee, or "FANF" fee; or (c) one of the following fees in an amount greater than its actual cost to NAB: International Acquirer Fee,

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AMEX Non-Swiped Transaction Fee, MasterCard US Acquirer Support Fee, MasterCard Acceptance License Fee, International Service Assessment, International and Cross Border Fees, Visa Data Transmission Fee, AMEX Network Fee, CVC2 Authorization Fee, and Discover Network Access Fee.

If you are receiving this notice from the Settlement Administrator, NAB's records show you likely are a Class Member.

## **6. ARE THERE EXCEPTIONS TO BEING INCLUDED?**

If you exclude yourself from the settlement, you are no longer part of the Settlement Class and will no longer be eligible to receive any of the settlement benefits. This process of excluding yourself is also referred to as "opting out" of the settlement.

## **THE SETTLEMENT BENEFITS**

### **7. WHAT DOES THE SETTLEMENT PROVIDE?**

NAB will pay or cause to be paid \$15,000,000 to pay settlement benefits to Class Members; the cost of notifying the class and administering the settlement; and, subject to the court's approval, the fees and expenses of the lawyers who represent the class and service awards to the class representatives.

Class Members who contracted with or through NAB to receive payment processing services and were contracted as of March 31, 2019 are considered "current customers." If you are a current customer, you will automatically receive a cash credit on a future invoice unless you terminate your contract with NAB before the date when the credits are made, in which case you will receive a check or an electronic payment. If you do nothing, you will receive the cash payment.

Class Members who are not current customers are considered "former customers." Former customers are eligible for a cash payment but must file a valid and timely claim form to get it. Any cash payments that are not claimed by former customers will be distributed to certain current customers and certain former customers who file claims *pro rata* in relation to the amount of alleged overcharges that were paid.

In addition to the cash benefits provided under the settlement, NAB has agreed to change its business practices for a period of at least five years as follows: (a) prior to increasing or adding any fees, NAB or its agent will notify all affected customers in writing at least 30 days prior to the effective date of such increase or addition; (b) for any increase or addition of fees or pricing initiated by the card brands, NAB will inform the merchant in statement messaging of the fact that the card brands are changing their pricing, describe the nature of the change, and inform the merchant that they will be responsible for any increase or additional fee; (c) for any increase or addition of fees initiated by NAB, NAB will specify in its statement messaging the fees that are to be increased or added, the amount of the increase or addition (or the methodology by which the fee will be calculated), and the date that the fee will be increased, and, when statement messaging permits such specificity, the particular merchants to be affected by the increase or addition; (d) Class Members affected by an increase or addition shall have 45 days from the date of the increase or addition to terminate their Merchant Agreement without incurring any early termination fees or penalty; (e) NAB will waive any contractual provisions requiring Class Members to pay NAB's attorneys' fees and costs in connection with any future disputes in which the Class Member prevails; and (f) in the future, both Class Members and NAB will be entitled to recover attorneys' fees and expenses if they are the prevailing party in a dispute involving a Merchant Agreement. These provisions will not apply to you if you have entered or enter into a new merchant agreement with NAB.

NAB has also agreed to release certain potential claims that it may have against Class Members relating to payment processing services.

### **8. HOW MUCH WILL MY CASH PAYMENT OR CREDIT OPTION BE?**

The estimated amount of the credit or cash payment you are eligible to receive is shown on the email or postcard that was sent to you about the settlement. You can also find out the amount by emailing the Settlement Administrator at [administrator@nabsettlement.com](mailto:administrator@nabsettlement.com). The final amount will not be calculated until all the necessary information is available, including the value of the valid claims made by former members and the amounts awarded by the court for attorneys' fees and expenses and service awards. The final amount may be larger than the estimated amount depending on the number of merchants who participate in the settlement and other factors.

Questions? Visit [www.NABSettlement.com](http://www.NABSettlement.com) or contact the Settlement Administrator toll-free at 1-855-786-5291

Current customers and former customers who file a valid and timely claim will receive a credit or cash payment calculated in the same way. The amount of alleged overcharges paid by each current and former customer will be calculated using the data relating to their payment card transactions processed by or through NAB. Then the amount of alleged overcharges paid by each Class Member will be reduced by a percentage equal to the total overcharges divided by the estimated amount of the \$15,000,000 settlement amount that will remain for distribution after payment of attorney's fees, expenses, service awards, and the costs of settlement and administration. The resulting figure represents the estimated minimum payment shown on the individual notices sent to each Class Member. Any monies that are not claimed by former customers or that result from a decision by the court to award less than the fees and expenses sought by Class Counsel and the requested service awards to the class representatives will be allocated to current customers and those former customers who file a valid and timely claim in proportion to the amount of alleged overcharges paid by those customers, except that Class Members whose estimated settlement benefit is \$5 – the minimum settlement benefit even if their actual damages may have been less – will not be included in this allocation. Each Class Member's actual cash benefit under the settlement will be equal to the estimated minimum payment plus any additional amounts allocated to that Class Member as described above. You can find out more detail about the formula by reading the Settlement Agreement at [www.NABSettlement.com](http://www.NABSettlement.com).

Your payment under the settlement depends on the amount of your alleged overcharges. Some Class Members were charged tens of thousands of dollars in challenged fees while other Class Members' alleged overcharges were quite small. The amount of your alleged overcharges was calculated based on such factors as the specific charges that you were assessed, the type of transactions in which you engaged, the length of time you were an NAB customer, and your sales volume. In many instances, the amounts by which NAB allegedly inflated charges were quite small, involving only a few basis points and, as a result, you must have processed a large number of transactions or many high dollar transactions to have been significantly impacted. Similarly, if NAB did not collect from you many of the challenged charges, or you were an NAB customer for a short period, the amount of your alleged overcharges would be minimal. The Class Members who paid the most in challenged charges – and therefore will receive the largest payments under the settlement – are those who typically had large and high dollar sales volume, were long term NAB customers, and repeatedly engaged in the types of transactions that triggered collection of the charges being challenged in the lawsuit.

## HOW TO GET A CREDIT OR CASH PAYMENT

### 9. HOW CAN I GET A CREDIT OR CASH PAYMENT?

Current customers who do not opt out of the settlement will automatically receive their cash benefit under the settlement in the form of a credit on a future invoice. It is not necessary for current customers to file a claim.

Former customers must validly complete and submit a simple Claim Form to qualify for a payment. The Claim Form asks former customers to attest that they are in the class and to provide their current contact information. If you received notice by postcard, the Claim Form is attached. You also can fill out the Claim Form at [www.NABSettlement.com](http://www.NABSettlement.com). Alternatively, you can download a Claim Form from the website or get the Claim Form by calling the Settlement Administrator at 1-855-786-5291 and then complete and return the Claim Form to the Settlement Administrator electronically through the website or by mail at NAB Processing Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. Former Customers must submit their claim online, send it electronically through the website, or mail it postmarked no later than **August 15, 2019**. Late claims will not be accepted.

### 10. WHEN WILL I GET THE SETTLEMENT BENEFIT FOR WHICH I AM ELIGIBLE?

The court will hold a hearing on **August 20, 2019 at 10:00 a.m.** to decide whether to approve the settlement. If the court approves the settlement, there may be appeals, which could take more than a year to resolve. Credits and cash payments to Class Members will be made shortly after the settlement is finally approved and any appeals or other required proceedings have been completed. You may visit [www.NABSettlement.com](http://www.NABSettlement.com) for updates on the progress of the settlement. Please be patient.

### 11. WHAT AM I GIVING UP TO GET A SETTLEMENT BENEFIT OR REMAIN IN THE CLASS?

Unless you exclude yourself from the settlement, you cannot sue Defendants or be part of any other lawsuit against Defendants about the issues this settlement resolves. You will also be bound by all of the court's decisions and the

release contained in the settlement. The specific claims you will be giving up against Defendants are described in Section XII of the Settlement Agreement. Read it carefully as it could affect any claims that you may have against NAB or Global. The Settlement Agreement is available at [www.NABSettlement.com](http://www.NABSettlement.com).

If you have any questions, you can talk to the lawyers representing the class, who are called “Class Counsel.” Their names are listed below. You will not be charged to talk to Class Counsel. Or, you can, of course, talk to your own lawyer at your own expense if you have questions about what this means.

If you want to keep your rights to sue (or continue to sue) Defendants based on the claims this settlement resolves, you must take steps to exclude yourself from the Settlement Class (*see* Questions 12-14).

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 12. HOW CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

To exclude yourself from the settlement, or “opt out,” you must send a letter by U.S. Mail that includes:

- ) The name of this proceeding (*T.S. Kao, Inc. d/b/a Lucky 7 Chinese Food v. North American Bancard, LLC and Global Payments Direct, Inc.*);
- ) Your full name, address, and phone number;
- ) The words “Request for Exclusion” at the top of the document or a statement in the body of the letter requesting exclusion from the class;
- ) Your position, title, or role with the business which receives or received payment processing services through NAB; and
- ) Your signature.

You must mail your letter, postmarked no later than **July 16, 2019** to:

CLASS ACTION OPT-OUT  
ATTN: NAB Processing Settlement  
PO Box 58220  
1500 John F. Kennedy Blvd., Suite C31  
Philadelphia, PA 19102

If you ask to be excluded, you will not get any benefits under this settlement, and you cannot object to the settlement. You will not be legally bound by anything that happens in the lawsuit. You may be able to sue (or continue to sue) Defendants in the future. You cannot both exclude yourself from the settlement and object to the settlement. If you seek to exclude yourself and object, you will be deemed to have excluded yourself.

### 13. IF I DON’T EXCLUDE MYSELF, CAN I SUE DEFENDANTS FOR THE SAME THING LATER?

No. Unless you exclude yourself from the settlement, you give up any right to sue Defendants for the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from this class to continue your own lawsuit. Remember, the exclusion deadline is **July 16, 2019**.

### 14. IF I EXCLUDE MYSELF, CAN I GET BENEFITS FROM THIS SETTLEMENT?

No. You are not eligible to receive the settlement benefits if you exclude yourself by opting out. If you are a former customer and exclude yourself, do not send in a claim form asking for a payment.

## THE LAWYERS AND MERCHANTS REPRESENTING YOU

### 15. DO I HAVE A LAWYER IN THE CASE?

Yes. The court appointed to represent you and other members of the Settlement Class the following lawyers: Ken Canfield of Doffermyre, Shields, Canfield & Knowles, LLC in Atlanta, Georgia, Adam Levitt and Amy E. Keller of DiCello Levitt Gutzler LLC in Chicago, Illinois, and Jonathan Palmer of Jonathan Palmer Law in Atlanta, Georgia. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

## 16. HOW WILL THE LAWYERS BE PAID?

You will not be asked to pay any of the lawyers' fees or expenses. The lawyers representing the class, who have not yet received any payment for their time or the expenses they have incurred, intend to ask the court to pay them up to one-third of the settlement fund to compensate them for their time and the financial risk that they took when they agreed to represent the Plaintiffs and get paid only if the lawsuit is successful. In addition, the lawyers intend to ask the court to reimburse them for all of the expenses they have incurred, which are estimated to be \$550,000. The court will determine the amount the lawyers will receive at the final approval hearing on **August 20, 2019 at 10:00 a.m.** Defendants have agreed not to take a position on the amount of fees or expenses requested by Class Counsel.

## 17. WILL THE CLASS REPRESENTATIVES GET ANYTHING?

The Settlement Class is represented by the four merchants who brought the case. In addition to the benefits the class representatives will receive as members of the Settlement Class, Class Counsel intends to ask the court to pay service awards of \$5,000 to their two owners for a total of \$10,000. These service awards will compensate them for the efforts and risk they took on behalf of the class. Among those risks was the possibility they might have to pay Defendants' attorneys' fees and expenses even if the merchants won the case, as Defendants' contracts purportedly require that they do. Defendants have agreed not to oppose the request. The service awards approved by the court will be paid from the settlement amount. The court will determine the amount of the service awards at the approval hearing on **August 20, 2019 at 10:00 a.m.**

## OBJECTING TO THE SETTLEMENT

## 18. HOW DO I TELL THE COURT I DON'T LIKE THE SETTLEMENT?

If you are a Settlement Class Member, you can object to the settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the court should not approve it. The court will consider your views. If you object to the settlement and seek to exclude yourself, you will be deemed to have excluded yourself and your objection will not be considered.

To object, you must do so in writing and serve the objection on the court, Class Counsel, and the lawyers for Defendants at the addresses set forth below. Your objection must include:

- J The name of this proceeding (*T.S. Kao, Inc. d/b/a Lucky 7 Chinese Food v. North American Bancard, LLC and Global Payments Direct, Inc.*, Case No. 1:16-cv-04219-SCJ);
- J Your full name, address, and phone number, and the name, address, and phone number of any person acting on your behalf;
- J A written statement of your objections, as well as the specific reason for each objection, and any legal or factual support you wish to bring to the court's attention;
- J The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to your objection, the fee application, or the application for service awards;
- J A statement of whether you or your counsel intends to appear and argue at the final approval hearing;
- J Evidence or other information showing that you are a member of the Settlement Class;
- J Information regarding settlements to which you and/or your counsel have objected in the last five years;
- J Four dates before the final approval hearing when you will be available to be deposed by the lawyers for the parties; and,
- J All additional information required by the Court's Order Directing Notice (available on the Settlement Website, [www.NABSettlement.com](http://www.NABSettlement.com)).

If you hire a lawyer to represent you in preparing a written objection or appearing at the final approval hearing, your lawyer must provide additional information as specified in the Order Directing Notice. Failure to comply with all of the requirements for objecting may result in your objection being stricken and waiver of any right to appeal.

File your objection electronically with the court or mail the objection to these places, postmarked no later than **July 16, 2019**:

Court	Class Counsel	Defense Counsel
Clerk of the Court USDC, Northern District of Georgia Richard B. Russell Federal Building 2211 United States Courthouse 75 Ted Turner Drive, SW Atlanta, GA 30303-3309	Ken Canfield Doffermyre Shields Canfield & Knowles LLC 1355 Peachtree Street, Suite 1725 Atlanta, GA 30303  Adam J. Levitt Amy E. Keller DiCello Levitt Gutzler LLC Ten North Dearborn Street Eleventh Floor Chicago, IL 60602  Jonathan Palmer Jonathan Palmer Law 4200 Northside Pkwy, NW Atlanta, GA 30327	Robert B. Remar Joshua P. Gunnemann ROGERS & HARDIN LLP 2700 International Tower 229 Peachtree Street, NE Atlanta, GA 30303

**19. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING/OPTING OUT?**

Objecting is simply telling the court that you don't like something about the settlement. You can object to the benefits provided by the settlement or other terms of the settlement only if you stay in the Settlement Class. Excluding yourself or "opting out" is telling the court that you don't want to be included in the settlement. If you exclude yourself, you have no basis to object to the settlement because the settlement no longer affects you.

**THE COURT'S FINAL APPROVAL HEARING**

**20. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

The court will hold an approval hearing on **August 20, 2019 at 10:00 a.m.** in Courtroom 1907 before Judge Steven C. Jones of the United States District Court for the Northern District of Georgia, located at the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309. This hearing date and time may be moved. Please refer to the Settlement Website, [www.NABSettlement.com](http://www.NABSettlement.com), for notice of any changes.

At the approval hearing, the court will consider whether the settlement is fair, reasonable, and adequate; how much Class Counsel will receive for fees and expenses; whether to approve service awards to the class representatives; and any other appropriate matters. If there are objections, the court also will consider them. The court will listen to people at the hearing who file in advance a timely notice of their intention to appear (*see* Question 18). At or after the approval hearing, the court will decide whether to approve the settlement. There is no deadline by which the court must make its decision.

**21. DO I HAVE TO ATTEND THE HEARING?**

No. Class Counsel will answer questions the court may have. You are welcome, however, to come at your own expense. If you submit a valid written objection, you do not have to come to the court to talk about it. As long as you submitted a timely and valid written objection that complies with the requirements of the court's order, the court will consider it. You may also pay your own lawyer to attend, but it is not necessary. If you or your own lawyer wants to speak at the hearing, you must file a notice of intention to appear and provide the other information required by the Order Directing Notice.

**IF YOU DO NOTHING**

**22. WHAT HAPPENS IF I DO NOTHING AT ALL?**

If you are a Settlement Class Member and do nothing, you will remain a part of the Settlement Class and will not be able to sue Defendants about the claims being resolved through the settlement. If you are a current customer,

you will automatically receive the cash credit to which you are entitled. If you are a former customer, you will receive nothing unless you file a claim.

## GETTING MORE INFORMATION

### 23. HOW DO I GET MORE INFORMATION?

This notice summarizes the settlement. More details are in the Settlement Agreement itself. You can get a copy of the Settlement Agreement at [www.NABSettlement.com](http://www.NABSettlement.com), from the Settlement Administrator by emailing [administrator@nabsettlement.com](mailto:administrator@nabsettlement.com), or by calling 1-855-786-5291, or by writing to NAB Processing Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. The status of the settlement will be posted on the Settlement Website.

*Please do not contact the court with questions about the settlement.*