

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

T.S. KAO, INC. d/b/a LUCKY 7
CHINESE FOOD, THE DINNER BELL
CAFÉ, INC., BILL'S PIZZA PALM
SPRINGS, and BILL'S GRILL 1 LLC,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

NORTH AMERICAN BANCARD, LLC,
and GLOBAL PAYMENTS DIRECT,
INC.

Defendants.

Case No. 1:16-CV-04219-SCJ

(Consolidated with Case No.
1:15-CV-03059-SCJ)

ORDER DIRECTING NOTICE

This matter is before the Court for consideration of whether notice of the proposed settlement reached by the parties should be issued, the proposed settlement class provisionally certified, and the proposed notice plan approved. Having reviewed the proposed settlement agreement, together with its exhibits, and based upon the relevant papers and all prior proceedings in this matter, the Court has determined the proposed settlement satisfies the criteria of Federal Rule of

Civil Procedure 23(e) such that notice of the proposed settlement to the proposed class is appropriate, the proposed settlement class should be provisionally certified, and the proposed notice plan is appropriate. Accordingly, good cause appearing in the record, **IT IS HEREBY ORDERED THAT:**

Provisional Certification of the Settlement Class

(1) The Court provisionally certifies the following settlement class:

All persons who 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 [the date of the Order Directing Notice] and who 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, 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.

Excluded from the Settlement Class are Defendants; parents or subsidiaries of any Defendant; any entity in which any Defendant has a controlling interest; Defendants’ counsel; the Court and any employees of the Court; and the legal representatives, heirs, successors, and assigns of any such excluded party. Also excluded are any persons that exclude themselves from the class in accordance with the provisions set forth in the class notice.

(2) For settlement purposes, the Court determines the proposed settlement class meets all the requirements of Rule 23(a) and (b)(3), namely that the class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the class representatives are typical of absent class members; that the class representatives will fairly and adequately protect the interests of the class, as they have no interests antagonistic to or in conflict with the class and have retained experienced and competent counsel to prosecute this matter; that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy.

(3) The Court appoints the following as representatives of the proposed settlement class: T.S. Kao, Inc. d/b/a Lucky 7 Chinese Food; The Dinner Bell Café, Inc.; Bill's Pizza Palm Springs; and Bill's Grill 1, LLC.

(4) The following lawyers are designated as settlement class counsel pursuant to Rule 23(g): Kenneth S. Canfield of Doffermyre Shields Canfield & Knowles, LLC; Adam J. Levitt of DiCello Levitt & Gutzler, LLC; Amy E. Keller of DiCello Levitt & Gutzler, LLC; and Jonathan Palmer of Jonathan Palmer Law. The Court finds that these lawyers are experienced and will adequately protect the interests of the settlement class.

Preliminary Evaluation of the Proposed Settlement

(5) Upon preliminary review, the Court finds the proposed settlement provides a recovery for the class that is within the range of what could be approved as fair, reasonable, and adequate, taking into account all of the risks, expense, and delay of continued litigation; is the result of good faith and arms-length negotiations that took place under the auspices of a prominent Atlanta mediator; is not otherwise deficient; otherwise meets the criteria for approval; and thus warrants issuance of notice to the settlement class.

(6) In making this determination, the Court has considered the substantial monetary and non-monetary benefits to the class; the specific risks faced by the class in prevailing on Plaintiffs' claims; the stage of the proceedings at which the settlement was reached; the effectiveness of the proposed method for distributing relief to the class; the proposed manner of allocating benefits to class members; and all of the other factors required under Rule 23.

Approval Hearing

(7) An approval hearing shall take place before the Court on **August 20, 2019, at 10:00 a.m. in Courtroom 1907** 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

to determine whether: (a) the proposed settlement class should be finally certified for settlement purposes pursuant to Rule 23; (b) the settlement should be approved as fair, reasonable, and adequate and, in accordance with the settlement's terms, this matter should be dismissed with prejudice; (c) class counsel's application for attorneys' fees and expenses should be approved; and (d) the application for the class representatives to receive service awards should be approved. Any other matters the Court deems necessary and appropriate will also be heard.

(8) Any settlement class member that has not timely and properly excluded itself from the settlement class in the manner described below, may appear at the approval hearing in person or through counsel and be heard, as allowed by the Court, regarding the proposed settlement; provided, however, that no class member that excluded itself from the class shall be entitled to object or otherwise appear, and, further provided, that no class member shall be heard in opposition to the settlement unless the class member complies with the requirements of this Order pertaining to objections, which are described below.

Administration

(9) Angeion Group is appointed as the settlement administrator, with responsibility for class notice and claims administration. The settlement administrator's fees, as approved by the parties, will be paid from the settlement

account pursuant to the settlement agreement.

Notice to the Class

(10) The notice program set forth in the settlement agreement and the forms of notice and claim form attached as exhibits to the settlement agreement satisfy the requirements of Federal Rule of Civil Procedure 23 and thus are approved. Non-material modifications to the exhibits may be made without further order of the Court. The settlement administrator is directed to carry out the notice program in conformance with the settlement agreement and to perform all other tasks that the settlement agreement requires.

(11) The Court finds that the form, content, and method of giving notice to the settlement class as described in the settlement agreement and exhibits: (a) constitute the best practicable notice to the settlement class; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the

notices are written in plain language, use simple terminology, and are designed to be readily understandable by settlement class members.

Exclusions from the Class

(12) Any settlement class member that wishes to be excluded from the settlement class must mail a written notification of the intent to exclude itself to the settlement administrator at the address provided in the notice, postmarked no later than **July 16, 2019** (the “opt-out deadline”). The written notification must identify the settlement class member and this action; state that the settlement class member has chosen to opt-out or exclude itself from the settlement class; and contain the name, address, position, and signature of the individual who is acting on behalf of the settlement class member.

(13) The settlement administrator shall provide the parties with copies of all opt-out notifications, and, within ten days after the opt-out deadline, a final list of all that have timely and validly excluded themselves from the settlement class. The final list of exclusions as well as a final list of those in the class should be filed with the Court before the approval hearing.

(14) Any settlement class member that does not timely and validly exclude itself from the settlement shall be bound by the terms of the settlement. If final judgment is entered, any settlement class member that has not submitted a timely,

valid written notice of exclusion from the settlement class shall be bound by all subsequent proceedings, orders, and judgments in this matter, including but not limited to the release set forth in the settlement and final judgment.

(15) All those that submit valid and timely notices of exclusion shall not be entitled to receive any benefits of the settlement.

Objections to the Settlement

(16) A settlement class member that complies with the requirements of this Order may object to the settlement, Class Counsel's request for fees and expenses, or the request for service awards to the class representatives.

(17) No settlement class member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any settlement class member shall be received and considered by the Court, unless the objection is (a) electronically filed with the Court by the objection deadline; or (b) mailed first-class postage prepaid to the clerk of court, class counsel, and defendants' counsel, at the addresses listed in the Long Form Notice available on the settlement website, and postmarked by no later than the objection deadline, as specified in the long form notice. Objections shall not exceed twenty-five (25) pages. For the objection to be considered by the Court, the objection shall set forth:

- (a) The name of this action;

(b) The name of the objector and the full name, address, email address, and telephone number of the person acting on its behalf;

(c) An explanation of the basis upon which the objector claims to be a settlement class member;

(d) All grounds for the objection, accompanied by any legal support for the objection;

(e) The identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the settlement, the fee application, or the application for service awards;

(f) The identity of all counsel representing the objector who will appear at the approval hearing;

(g) The number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such an objection, and a copy of any orders relating to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each case (or in lieu of providing copies a specific

citation to where the orders can be found on a publicly available data base such as Westlaw or Pacer);

(h) The number of times in which the objector's counsel and the counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each case (or in lieu of providing copies a specific citation to where the orders can be found on a publicly available data base such as Westlaw or Pacer);

(i) If the objector is represented by an attorney who intends to seek fees and expenses from anyone other than the objectors he or she represents, the objection should also include (i) a description of the attorney's legal background and prior experience in connection with class action litigation; (ii) the amount of fees that are or will sought by any attorney for the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees that are being or will be sought are calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours

to be spent in the future; and (v) the attorney's hourly rate;

(j) Any and all agreements, whether written or verbal, that relate to the objection, the process of objecting, or the distribution of any financial benefit that may be received as a result of the settlement or the objection between the objector or objector's counsel and any other person or entity;

(k) A description of all evidence to be presented at the approval hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;

(l) A statement confirming whether the objector intends to personally appear and/or testify at the approval hearing; and,

(m) The objector's signature on the written objection (an attorney's signature is not sufficient).

(18) In addition, any settlement class member that objects to the proposed settlement must make itself available to be deposed regarding the grounds for its objection and must provide along with its objection four dates when the objector will be available to be deposed during the period from when the objection is filed through a date twenty days before the approval hearing.

(19) Any settlement class member that fails to comply with the provisions

in this Order will waive and forfeit any and all rights it may have to object, may have its objection stricken from the record, and may lose its rights to appeal from approval of the settlement. Any such class member also shall bound by all the terms of the settlement agreement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the release in the settlement agreement if final judgment is entered.

Claims Process and Allocation Formula

(20) The settlement agreement establishes a process for providing benefits to current customers, who will automatically receive a cash credit, and former customers, who are eligible to receive a cash payment if they submit a timely, valid claim form. The Court preliminarily approves this process, including specifically the allocation formula that describes how payments will be calculated and is attached as an exhibit to the settlement agreement, and directs that the settlement administrator effectuate the claims and distribution process according to the terms of the settlement agreement.

(21) Settlement class members that are required to file a claim to receive a cash payment shall do so in accordance with the requirements and procedures specified in the notice and the claim form. If final judgment is entered, settlement class members that are required to file a claim to qualify for a cash payment,

namely former customers, but fail to submit a claim in accordance with the requirements and procedures specified in the notice and claim form, shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions of the settlement agreement, including the release included in that agreement, and the final judgment.

Termination of the Settlement and Use of this Order

(22) This Order shall become null and void and shall be without prejudice to the rights of the parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order, if the settlement is not approved by the Court or is terminated in accordance with the terms of the settlement agreement. In such event, the settlement and settlement agreement shall become null and void and be of no further force and effect, and neither the settlement agreement nor the Court's orders, including this Order, relating to the settlement shall be used or referred to for any purpose whatsoever.

(23) This Order shall be of no force or effect if final judgment is not entered or there is no effective date under the terms of the settlement agreement; shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against any

settlement class representative or any other settlement class member that its claims lack merit or that the relief requested is inappropriate, improper, or unavailable; and shall not constitute a waiver by any party of any defense or claims it may have in this litigation or in any other lawsuit.

Stay of Proceedings

(24) Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the approval hearing and issuance of final judgment, or until further order.

Continuance of Final Approval Hearing

(25) The Court reserves the right to adjourn or continue the approval hearing and related deadlines without further written notice to the settlement class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the settlement website.

Summary of Deadlines

(26) The settlement agreement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the settlement agreement and this Order include but are not limited to the following:

Notice Deadline: [30 days after entry of this Order]

Objection and Opt-Out Deadline: [60 days after the Notice Deadline]

Claims Deadline: [90 days after the Notice Deadline]

Filing Motion for Final Approval: [20 days before Approval Hearing]

Approval Hearing: [a date to be set by the Court no earlier than 110 days after the date of this Order]

IT IS SO ORDERED this 17th day of April, 2019.

s/Steve C. Jones
The Honorable Steve Jones
United States District Court Judge