

# Exhibit B

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into this 15th day of April, 2019, by and among (1) Plaintiffs 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, for themselves and on behalf of the Settlement Class, and (2) North American Bancard, LLC, subject to Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. The Parties hereby agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment after Approval and payment of the Settlement Amount, all claims of the Settlement Class against Defendants in the action titled *T.S. Kao, Inc. d/b/a Lucky 7 Chinese Food, et al. v. North American Bancard, LLC and Global Payments Direct, Inc.*, N.D. Ga., Case No. 1:16-cv-04219-SCJ, shall be settled and compromised upon the terms and conditions contained herein. The Parties will request that the Court retain jurisdiction with regard to all matters relating to the enforcement of this Settlement.

### **I. Definitions**

In addition to any terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

1. “Action” means *T.S. Kao, Inc. d/b/a Lucky 7 Chinese Food, et al. v. North American Bancard, LLC and Global Payments Direct, Inc.*, Case No. 1:16-cv-04219-SCJ (N.D. Ga.).
2. “Allocation Formula” means the formula by which the payments Class members are eligible to receive under the Settlement are calculated. The Allocation Formula is attached as Exhibit 1 to this Agreement.

3. “Approval” means the date that the Court enters an order and judgment granting approval to the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Awards to Class Representatives. If the Court issues separate orders addressing the foregoing matters, then Approval means the date the Court enters the last of such orders.
4. “Approval Order” means the order and judgment that the Court enters upon Approval consistent with Fed. R. Civ. P. 23(e)(2). In the event that the Court issues separate orders addressing the matters constituting Approval, then Approval Order includes all such orders.
5. “Approval Hearing” means that hearing conducted by the Court pursuant to Fed. R. Civ. P. 23(e)(2) to determine whether the Settlement is fair, reasonable, and adequate.
6. “Cash Credit” means the credit that Current Customers will receive.
7. “Claims Deadline” means 90 days after the Notice Deadline.
8. “Class Counsel” means:

Kenneth S. Canfield  
Dofferyre Shields Canfield & Knowles LLC  
1355 Peachtree Street, NE, Suite 1725  
Atlanta, Georgia 30303

Adam J. Levitt  
DiCello Levitt Gutzler LLC  
Ten North Dearborn Street, Eleventh Floor  
Chicago, Illinois 60602

Amy E. Keller  
DiCello Levitt Gutzler LLC  
Ten North Dearborn Street, Eleventh Floor  
Chicago, Illinois 60602

Jonathan Palmer  
Jonathan Palmer Law Group  
4200 Northside Parkway, NW

Building One, Suite 200  
Atlanta, GA 30327

9. “Class Period” means the period from August 31, 2009, through the date that the Court directs Notice be sent to the Class pursuant to Fed. R. Civ. P. 23(e)(1).
10. “Complaint” means the consolidated amended complaint and any prior complaints or amended complaints filed in the Action or either of the cases that were consolidated in the Action.
11. “Class Representatives” means Plaintiffs 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.
12. “Court” means the United States District Court for the Northern District of Georgia.
13. “Current Customers” mean Class members that contracted with Defendant Global to process payment card transactions and are determined to be serviced by Defendant NAB as of the date the Court issues an order deeming that notice should be sent to the Class pursuant to Fed. R. Civ. P. 23(e)(1).
14. “Defendants” means North American Bancard, LLC, (“NAB”) and Global Payments Direct, Inc. (“Global”).
15. “Effective Date” means 30 days after Approval if there is no appeal, or 30 days after any appeals are resolved or otherwise terminated.
16. “Former Customers” means Settlement Class Members that are not Current Customers.
17. “Notice” means the notices of the proposed settlement that the Plaintiffs will ask the Court to preliminarily approve.
18. “Notice Deadline” means the date by which the Settlement Administrator is required to send out Notice, namely not later than 30 days after entry of the Order Directing Notice.

19. “Notice Program” means the notice plan and methods provided for in this Agreement. The Notice Program consists of: (a) a direct mail or email notice to those Settlement Class Members for which a mailing address is reasonably available; (b) notice posted on the Settlement Website; and (c) such other notice as Class Counsel and NAB believe is required by due process and Rule 23 of the Federal Rules of Civil Procedure. The Notice Program shall be carried out in substantially the manner provided in this Agreement or as otherwise agreed by the Parties and approved by the Court.
20. “Objection Deadline” means 60 days after the Notice Deadline.
21. “Opt-Out Deadline” means the same date as the Objection Deadline.
22. “Order Directing Notice” means the Court’s Order deeming that the criteria for Fed. R. Civ. P. 23(e)(1) have been met, certifying the Class for purposes of judgment on the proposed Settlement, but prior to Approval of the proposed Settlement.
23. “Parties” means Plaintiffs and NAB.
24. “Plaintiffs” means 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.
25. “Released Claims” means all claims to be released by Plaintiffs and the Class as specified in Section XII of this Agreement.
26. “Released Parties” means those entities and persons released by the releases contained in Section XII of this Agreement.
27. “Releasing Parties” means the Class Representatives and all Settlement Class Members that do not timely and properly exclude themselves from the Settlement, and each of their respective heirs, assigns, beneficiaries, and successors.

28. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.
29. “Settlement Administrator” means Angeion Group. Class Counsel and NAB may, by agreement, substitute a different Settlement Administrator, subject to Court approval. In the absence of agreement, either Class Counsel or NAB may move the Court to substitute a different Settlement Administrator, upon a showing that the responsibilities of the Settlement Administrator have not been adequately executed by the incumbent.
30. “Settlement Amount” means \$15,000,000.00. The Settlement Amount represents the maximum amount that NAB will pay or cause to be paid in cash and credits to Settlement Class Members, fees and expenses to Class Counsel, Service Awards to the Class Representatives, and the costs of notice and administering the Settlement.
31. “Settlement Class” and “Class” mean all entities and/or persons that fall within the settlement class definition set forth in this Agreement.
32. “Settlement Class Member” or “Class Member” means any entity or person included in the Settlement Class.
33. “Settlement Account” means the account to be established and maintained by the Settlement Administrator to hold the cash portion of the Settlement Amount.
34. “Settlement Website” means the website that the Settlement Administrator will establish before commencement of the Notice Program, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Notices, the order preliminarily approving this Settlement, the Claim Form, the Complaint, and such other documents as Class Counsel and NAB agree to post or that the Court orders posted on the website. These documents

shall remain on the Settlement Website at least 60 days after the Effective Date. Unless otherwise agreed, the URL of the Settlement Website will be [www.nabsettlement.com](http://www.nabsettlement.com). Settlement Class Members shall also be able to submit Claim Forms electronically through the Settlement Website.

35. “Service Award” means a payment, subject to the Court’s approval, to each Class Representative as compensation for their service on behalf of the Settlement Class.

**III. Certification of the Settlement Class**

36. For purposes of this Settlement Agreement only, Plaintiffs will seek, and NAB agrees to not oppose, certification of the following Settlement Class under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure:

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 Notice. If the Court does not certify or declines to approve the Settlement Class, as

defined above, or if the Court changes the Settlement Class composition or the terms of the Settlement in any material way not acceptable to either of the Parties, or if certification of the Settlement Class or approval of the Settlement is changed on appeal or review in any material way not acceptable to either of the Parties, each Party shall have the right to terminate the Settlement pursuant to Section XIV *infra*.

**IV. Settlement Consideration**

37. Subject to approval by the Court and in consideration of the full release and discharge of the claims discussed below, the total consideration to be paid or caused to be paid by NAB shall be \$15,000,000.00 as compensation in the form of cash or credits to the Settlement Class, inclusive of all attorneys' fees, costs, and expenses awarded to Class Counsel, and the Service Awards.

38. In addition, NAB agrees to implement the following business practices for a period beginning no later than 30 days after the Effective Date and lasting at least until 5 years from the Effective Date: (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), 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 a

price increase or addition pursuant to paragraphs (b) or (c), above, shall have 45 days from the date of any such increase or addition to terminate their Merchant Agreement without incurring any early termination fees or penalty, and the notices provided for in the preceding sub-paragraphs shall inform Class Members of their right to terminate without incurring termination fees within 45 days of the increase or addition; and (e) rather than enforce any contractual provisions requiring Class Members to pay NAB's attorneys' fees and costs in connection with any future disputes, the parties agree that, in the event that any suit or action is instituted under or in relation to any Class Member's Merchant Agreement, including without limitation to enforce any provision in the Agreement, the prevailing party in such dispute (whether a Class Member or NAB) shall be entitled to collect from the losing party all fees, costs, and expenses of enforcing any right of the prevailing party under or with respect to the Merchant Agreement, including without limitation, reasonable attorney's fees and expenses. These provisions shall not apply to any Class Member that has entered or enters into a new Merchant Agreement.

39. In addition, NAB has already modified certain of its business practices by providing more robust notices to merchants regarding fee increases and additions. These business practice changes were adopted as a result of this Action.

**V. Settlement Approval**

40. After execution of this Agreement by all Parties, Class Counsel will move the Court for an order directing that notice be sent to the Class pursuant to Fed. R. Civ. P. 23(e)(1). That motion will request that the Court, pursuant to Fed. R. Civ. P. 23(e)(1): (1) approve the terms of the Settlement as within the range of fair, adequate, and reasonable terms; (2) provisionally certify the Settlement Class pursuant to Federal Rules of Civil

Procedure 23(a), 23(b)(3), and 23(e) for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notice; (4) approve the procedures set forth in Section VIII and in the Notice Program by which Settlement Class Members may exclude themselves from the Settlement Class or object to the Settlement; (5) appoint as Class Counsel the law firms and attorneys listed in this Settlement as Settlement Class Counsel, and appoint Plaintiffs as the representatives of the Settlement Class; and (6) schedule the Approval Hearing pursuant to Fed. R. Civ. P. 23(e)(2) for a time and date mutually convenient for the Court and the Parties.

41. NAB, at its own expense, shall serve or cause to be served the notices required by the Class Action Fairness Act, 28 U.S.C. § 1715(b).

**VI. Informal Discovery**

42. Plaintiffs and NAB have engaged in meaningful informal discovery in connection with the negotiation of this Agreement and will continue to do so as needed to carry out its terms. NAB will cooperate with Class Counsel by making available to Class Counsel and the Settlement Administrator its experts, its data, and any of its information and documents reasonably necessary to identify Settlement Class Members, calculate and provide benefits, notify the Class, and to otherwise implement the Settlement.

**VII. Settlement Administrator**

43. The Settlement Administrator shall administer various aspects of the Settlement, including but not limited to providing Notice to Settlement Class Members consistent with Fed. R. Civ. P. 23(e) and overseeing and distributing benefits to the Class.
44. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include:

- a. Implementing the Notice Program required by this Agreement;
- b. Establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;
- c. Establishing and maintaining the Settlement Website;
- d. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members that call with or otherwise communicate such inquiries;
- e. Responding to any mailed Settlement Class Member inquiries;
- f. Processing all written notifications of exclusion from the Settlement Class;
- g. Providing weekly reports and, no later than ten days after the Opt-Out Deadline, a final report to Class Counsel and NAB, that summarize the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and NAB's counsel;
- h. In advance of the Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Order Directing Notice; and (ii) identifies each Settlement Class Member that timely and properly provided written notification of exclusion from the Settlement Class;
- i. Reviewing, determining the validity of, and responding to all Claims submitted by Settlement Class Members, pursuant to criteria established by this Settlement Agreement;

- j. After the Effective Date, processing and transmitting distributions to Settlement Class Members;
  - k. Upon NAB's request, and consistent with V.41. above, assisting with service of the notices required by the Class Action Fairness Act, 28 U.S.C. § 1715(b); and
  - l. Performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and NAB, including, but not limited to, verifying cash and credit payments have been distributed in accordance with this Agreement.
45. Costs associated with Notice to the Settlement Class and administration of the Settlement shall be paid out of the Settlement Amount and, if incurred and billed before the Settlement Account is established, shall be funded by NAB (and to the extent incurred and billed before the Settlement Account is established, will count towards the Settlement Amount dollar for dollar). The costs of Notice and administration shall include any fees of and reasonable expenses incurred by the Settlement Administrator and reasonable expenses charged by outside experts for the purpose of performing services relating to settlement administration, such as the identification of Settlement Class Members and calculation of benefits.
46. The Parties agree to cooperate in good faith and to coordinate with each other and the Settlement Administrator to carry out the terms of the Settlement, including, without limitation, by providing reasonably available information about Settlement Class Members.

**VIII. Notice to Settlement Class Members, Exclusions, and Objections**

47. Upon the Court's issuance of the Order Directing Notice, the Settlement Administrator

shall implement the Notice Program approved by the Court.

48. The Notice Program shall include the following components: (1) mail and/or email notice as provided below to Settlement Class Members at their current or last known address in NAB's records, or at a more current address, if that information can reasonably be obtained by the Settlement Administrator, consistent with Fed. R. Civ. P. 23(c)(2)(B); (2) notice on the Settlement Website; and (3) any other components necessary to satisfy the requirements of due process and Rule 23. Within 10 days of the Order Directing Notice, NAB shall provide to the Settlement Administrator and Class Counsel the current or last known mail and email addresses of all Settlement Class Members, delineating those who are Current Customers and those who are Former Customers. The Settlement Administrator shall compile the Settlement Class list from the information provided by NAB and Plaintiffs' experts. The method of notice will be individual email to the last known email address shown on NAB's records, a more recent email address for Former Customers obtained from a third-party provider, or, individual mail notice in the absence of a valid email address.
49. On or before the Notice Deadline, the Settlement Administrator will send the Mail Notice substantially in compliance with the form attached as Exhibit 2 to this Agreement to Current and Former Customers. If a Current or Former Customer's email address is unknown or an email is returned as undeliverable, the Settlement Administrator will mail the Notice by postcard to the Settlement Class Member in substantial compliance with the form attached as Exhibit 2 to this Agreement to the last known address shown on NAB's records. For both Current Customers and Former Customers, if a postcard is returned as undeliverable, the Settlement Administrator will use reasonable efforts to

locate a current mailing address for the Settlement Class Member and forward the Mail Notice to such address.

50. The Mail Notice, whether sent by email or postcard, will direct Settlement Class Members to the Long Form Notice, which will be posted on the Settlement Website. The email notice will have a hyperlink to the Long Form Notice. Unless another form is approved by the Court, the Long Form Notice will be substantially in compliance with Exhibit 3 to this Agreement.
51. The email and postcard notices will inform Current Customers of the estimated amount of their Cash Credit and state that Current Customers will automatically receive the Cash Credit unless they opt out of the Settlement.
52. The email and postcard notices will inform Former Customers of the amount of the estimated cash payment to which they are eligible and state Former Customers must file a claim to receive the payment. The email and postcard notices will direct Former Customers who wish to file a claim to the Settlement Website, which will have a mechanism for Former Customers to fill out a claim online or, alternatively, to download a Claim Form and return it to the Settlement Administrator electronically or by mail. The email notice will have a hyperlink to the page of the Settlement Website on which the Claim Form can be completed. Former Customers will also be informed that they can get a copy of the Claim Form by calling the Settlement Administrator. In addition, postcard notices sent to Former Customers, but not Current Customers, will be doubled-paged and folded with the notice on one page and the Claim Form, the return address, and pre-paid postage on the other, allowing a Former Customer to complete and tear off the Claim Form and return it by mail. The Claim Form is attached as Exhibit 4 to this Agreement.

53. The Long Form Notice shall describe the procedure for Settlement Class Members to opt out of the Settlement Class by notifying the Settlement Administrator, in writing, of the intent to be excluded. Such written notification must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. The written notification must identify the Settlement Class Member; 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.
54. The Long Form Notice also shall describe the procedure for Settlement Class Members to object to the Settlement or any aspect of it. Objections to the Settlement must be filed electronically with the Court or mailed to the Clerk of the Court with copies to Class Counsel, and NAB's counsel. For an objection to be considered by the Court, the objection must be received by the Court on or before the Opt-Out Deadline. In addition, for an objection to be considered by the Court, the objection must set forth (subject to approval by the Court):
  - a. the name of the Action;
  - b. the objector's full name, address, and telephone number;
  - 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 known to the objector or his counsel;
  - e. 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 objection, and a copy of

any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;

- f. 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 or fee application;
- g. the number of times in which the objector's counsel and/or 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 such objections that were issued by the trial and appellate courts in each listed case;
- h. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
- i. the identity of all counsel representing the objector who will appear at the Approval Hearing;
- j. a list of all persons who will be called to testify at the Approval Hearing in support of the objection;
- k. a statement confirming whether the objector intends to personally appear and/or testify at the Approval Hearing;
- l. at least four dates that the objector will be available to be deposed before the Approval Hearing by Class Counsel and NAB's lawyers and the location where the objector will be available;

- m. 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 sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being 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; and
  - n. the objector's signature (an attorney's signature is not sufficient).
55. Plaintiffs and NAB will work together in good faith to facilitate the Notice Program and to address any issues that arise.

**IX. Approval**

56. Plaintiffs' motion pursuant to Fed. R. Civ. P. 23(e)(1) shall include a request to the Court for a scheduled date on which the Approval Hearing will occur. The Approval Hearing shall be scheduled no earlier than 90 days after the CAFA notices are mailed to ensure compliance with 28 U.S.C § 1715.
57. At or following the Approval Hearing, the Court shall determine whether to enter the Approval Order granting approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses, and the Service Awards. The proposed Approval Order shall be in a form agreed upon by Class Counsel and NAB and will be filed with the Court before the Approval Hearing. Such proposed Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
  - b. Finally certify the Settlement Class for settlement purposes only;
  - c. Determine that the Notice Program satisfied Due Process requirements;
  - d. Dismiss the Action with prejudice;
  - e. Bar and enjoin the Releasing Parties from asserting any of the Released Claims, including during the pendency of any appeal from the Approval Order;
  - f. Release Defendants and the Released Parties from the Released Claims; and
  - g. Reserve the Court's continuing and exclusive jurisdiction over Defendants and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Agreement in accordance with its terms.
58. The parties shall prepare a final list of all members in the class and file it with the Court before the Approval Hearing.

**X. Settlement Account**

59. Within 30 days of the Effective Date, NAB shall pay or cause to be paid the sum of \$15,000,000.00 less the total amount of Cash Credits to be paid to Current Customers and any amounts previously paid by NAB for the costs of notice and administration, into an interest bearing escrow account to be maintained by the Settlement Administrator. The Settlement Account will be used to pay benefits to Class Members; the fees and expenses of Class Counsel; Service Awards; and any costs of notice and administration not paid directly by NAB.
60. The Settlement Administrator shall cause the amounts in the Settlement Account to be invested, in whole or in part, in interest-bearing short-term instruments or accounts that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof and may thereafter reinvest the interest proceeds and the principal as they mature in similar instruments,

bearing in mind the liquidity requirements of the Settlement Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs, expenses, and other required disbursements, in a timely manner. Notwithstanding the foregoing, the Settlement Administrator shall have discretion to place all, or any portion of the Settlement Account, in one or more insured, non-interest bearing accounts instead of in short term instruments if reasonably needed to be available to pay timely benefits to Class Members, fees and expenses of Class Counsel, Service Awards, or the costs of settlement administration, as provided in this Agreement. All costs or fees incurred in connection with investment of any amounts in the Settlement Account shall be paid out of the investment proceeds or the Settlement Account.

61. The Settlement Account at all times shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Account or otherwise, including any taxes or tax detriments that may be imposed upon NAB or their counsel, or Plaintiffs or Class Counsel, with respect to income earned by the Settlement Account for any period during which the Settlement Account does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Account. Neither the Parties nor their counsel shall be liable or responsible for any Taxes. The Settlement Account shall indemnify and hold Plaintiffs, Class Counsel, NAB, and its counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

62. The Settlement Account shall be used for the following purposes, to the extent such purposes are approved by the Court:
- a. Distribution of payments to the Settlement Class pursuant to Sections X and XI of this Agreement;
  - b. Payment of the Court-ordered award of Class Counsel's fees, costs, and expenses pursuant to Section XIII of this Agreement;
  - c. Payment of the Court-ordered Service Awards to the Class Representatives pursuant to Section XIII of this Agreement;
  - d. Payment of the costs of notice and administration;
  - e. Payment of all Taxes, including, without limitation, taxes owed as a result of accrued interest on the Settlement Account; and
  - f. Payment of other appropriate fees, costs, and expenses not specifically enumerated in subparagraphs (a) through (e) of this paragraph.

**XI. Distribution of the Settlement Benefits**

63. Current Customers will receive a credit on their accounts with NAB in the amount of the Cash Credit to which they are entitled under the Allocation Formula. NAB will apply this credit within 30 days of the Effective Date or, if later, within 30 days of the date NAB receives notice from the Settlement Administrator of the amount of Cash Credits that are to be distributed to the individual Current Customers. Within 15 days after the credits are applied, NAB will provide the Settlement Administrator and Class Counsel with a written statement confirming that the Cash Credits were distributed in accordance with the notice from the Settlement Administrator. If any Current Customers who are to receive a credit no longer maintain an account that can be credited, NAB will inform the

Settlement Administrator and Class Counsel within 15 days and pay or cause to be paid to the Settlement Administrator an amount in cash equal to the Cash Credits that could not be distributed. The Settlement Administrator will then distribute the appropriate amounts in cash to the affected Class Members.

64. Former Customers who are eligible to receive benefits under the Settlement by virtue of having filed a valid claim will be mailed a check drawn on the Settlement Account by the Settlement Administrator within 30 days of the Effective Date. Within 15 days after the Effective Date, the Settlement Administrator will confirm in writing that the checks were mailed in accordance with the terms of the Settlement. Payments to Former Customers may be made by some method other than check if agreed upon by the Parties and approved by the Court.
65. All cash payments to Former Customers will be made from the Settlement Account in accordance with the Allocation Formula.
66. Any monies that remain in the Settlement Account more than 120 days after the Effective Date or the last date checks were mailed, whichever is later, shall be distributed in a manner agreed upon by the Parties or, in the absence of an agreement, as determined by the Court.

**XII. Releases**

67. As of the Effective Date, the Releasing Parties shall be deemed to have fully and irrevocably released and forever discharged Defendants and each of their present and former parents, subsidiaries, predecessors, successors and assigns, affiliates, and the present and former directors, officers, employees, agents, shareholders, members, partners, trustees, attorneys, advisors, consultants, and representatives of each of them

(collectively the “Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable that were or which could have been alleged or asserted in the Action, including those that result from, arise out of, are based upon, or relate to: (a) the allegations in the Complaint, (b) the defense of this Action; (c) the acquisition or receipt of payment card processing services from or through NAB or Global; (d) the assessment or payment of card association fees, assessments, dues, costs, or any other card association charges; and (e) fees or any other charges imposed by NAB or Global. Notwithstanding the foregoing, any failure by NAB to pay or cause to pay all or any portion of the Settlement Amount after the Effective Date in breach of this Agreement will give Plaintiffs and the Class the option to seek relief either under this Settlement or to terminate this Agreement.

68. Nothing in this Agreement will release or otherwise affect: (i) any right of the Releasing Parties to contest for any reason any charge assessed by Defendants after the Order Directing Notice; or (ii) any right of an individual Settlement Class Member to recover alleged overcharges that at the time of the Order Directing Notice are the subject of an lawsuit, arbitration, or other formal proceeding between the Settlement Class Member and NAB or Global, provided that any such proceeding is documented in writing and remains unresolved.

69. Nothing in this Agreement will affect any previous decisions by NAB to provide refunds, payments, or credits related to any dispute initiated by a Settlement Class Members related to alleged overcharges by NAB. NAB agrees not to reverse any refunds,

payments, or credits related to any dispute initiated by Settlement Class Members related to alleged overcharges by NAB as a result of this Settlement.

70. The release given by the Releasing Parties is limited to payment card processing and related merchant services received by Settlement Class Members from NAB or resulting from referrals by NAB to Global or pursuant to an agreement between NAB and Global, and does not apply to services provided by Global unrelated in any way to NAB. This release is intended to cover claims by those who contracted directly with NAB for processing services or who contracted with Global as a result of being referred by NAB or pursuant to an agreement between NAB and Global. The release is not intended to affect claims against Global by those who at no time were referred by NAB to Global, but rather contracted directly with Global without being referred by NAB or pursuant to an agreement between NAB and Global or were referred to Global through an ISO or sales entity other than NAB.
71. Each of the Releasing Parties agrees to be bound by this Agreement, including by the releases contained herein, without regard to subsequent discovery of different or additional facts or subsequent changes in the law.
72. NAB shall fully and irrevocably release and forever discharge Plaintiffs, the other members of the Settlement Class, and Class Counsel (“Plaintiff Released Parties”), from and for any potential liability for: (a) payment of NAB’s attorneys’ fees and expenses incurred in defending the Action; (b) any matter or claim relating to the prosecution of this Action; and (c) any costs, fees, assessments, charges or other expenses related to payment card processing services that were provided to Settlement Class Members before January 31, 2019 that were within the scope of the consolidated amended complaint filed

by Plaintiffs in the Action on February 22, 2107 (Doc. No. 19) or that could have been the subject of a counterclaim asserted by Defendants in the Action, except for such costs, fees, assessments, charges or other expenses that as of January 31, 2019 were the subject of a lawsuit, arbitration, or formal proceeding between the Settlement Class Member and NAB or Global, provided that any such proceeding is documented in writing and remains unresolved.

73. WITHOUT LIMITING THE FOREGOING, THE RELEASING PARTIES EXPRESSLY AND IRREVOCABLY WAIVE AND RELEASE ANY AND ALL DEFENSES, RIGHTS, AND BENEFITS THEY MAY HAVE IN RELATION TO THE RELEASES BY VIRTUE OF THE PROVISIONS OF CALIFORNIA CIVIL CODE § 1542 OR SIMILAR LAW OR RULE OF ANY OTHER STATE OR JURISDICTION. CALIFORNIA CIVIL CODE § 1542 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 RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

74. In the event an appellate court reverses the Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand, then the releases contained in this Agreement will be null and void.

**XIII. Payment of Attorneys’ Fees, Costs, and Service Awards**

75. Class Counsel will apply to the Court for an award of fees and expenses and Service Awards to the Class Representatives. These amounts, as approved, will be paid from the Settlement Account.

76. NAB agrees not to take any position on Class Counsel's request for attorneys' fees and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Account. Class Counsel may request an award of fees up to one-third of the Settlement Amount and an award of that amount will be used in calculating the estimated amount of each Class Member's benefit for purposes of Notice. If the Court awards less than one-third of the Settlement Amount, the amount of the difference between the award sought by Class Counsel and the amount awarded by the Court will be distributed to Class Members *pro rata* based upon the amount each Class Member would otherwise receive under the Settlement.
77. Plaintiffs' attorneys' fees and litigation expenses, as awarded by the Court, shall be paid from the Settlement Account within 35 days of the Effective Date. Any court order that reduces the award of attorneys' fees or litigation expenses on appeal or otherwise shall not provide a basis for Plaintiffs or Class Counsel to terminate the settlement.
78. Class Counsel will ask the Court to approve a Service Award of \$5,000 to T.S. Kao, Inc. d/b/a Lucky 7 Chinese Food; and \$5,000 to The Dinner Bell Café, Inc., Bill's Pizza Palm Springs, and Bill's Grill 1, LLC. The Service Awards shall be payable solely out of the Settlement Account. The Service Awards shall be paid to the Class Representatives in addition to the benefits they are entitled to receive under this Agreement as Settlement Class Members. NAB agrees not to take any position on Class Counsel's request for the Service Awards. If the Court awards less than \$5,000 in Service Awards to each of the Class Representatives, the amount of the difference between the award sought and the amount awarded by the Court will be distributed to Class Members *pro rata* based upon the amount each Class Member would otherwise receive under the Settlement.

79. The Parties negotiated and reached agreement regarding attorneys' fees and costs and the Service Awards only after reaching agreement on all other material terms of this Settlement.

**XIV. Termination of Settlement and Other Events**

80. Either Plaintiffs or NAB may terminate this Settlement by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 14 days (or such longer time as may be agreed by the Parties) after any of the following occurrences:

- a. Plaintiffs and NAB mutually agree to termination;
- b. the Court rejects, materially modifies, materially amends, materially changes, or declines to issue Notice or approve the Settlement;
- c. an appellate court reverses the Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
- d. any court incorporates into, deletes, modifies, amends, or changes, the Order Directing Notice, Approval Order, or the Settlement in a way that the Party seeking to terminate the Settlement reasonably considers material;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement.

However, in any event, the Parties may voluntarily agree in writing to modify this Settlement Agreement in the manner necessary to obtain Court approval, in which case this Settlement will not terminate.

81. NAB also may terminate the Settlement under certain circumstances depending on the number of opt-out requests are submitted pursuant to the terms of a separate agreement

that will be submitted to the Court for in camera review. NAB must exercise this right, if at all, within 14 days of receiving from the Settlement Administrator the identity of all Settlement Class Members who have submitted valid opt-out requests.

**XV. Effect of a Termination**

82. In the event of a termination as provided above, this Agreement shall be considered null and void; all of the Parties' obligations under the Settlement shall cease to be of any force and effect (except to the extent costs of notice and claims administration have been incurred or expended in which case the costs will be borne by NAB); the Releases will be null and void; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, Plaintiffs' right to seek class certification and NAB's right to oppose class certification, and the Parties will work cooperatively to set a new schedule for the litigation of the Action.
83. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of Section XIV.
84. In the event the Settlement is terminated in accordance with the provisions of Section XIV, any discussions, offers, or negotiations associated with this Settlement, as well as information or data shared solely during settlement negotiations, shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose, without prejudice to Plaintiffs' right to seek class certification and NAB's right to oppose class certification. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

**XVI. No Admission of Liability**

85. NAB disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. NAB has agreed to enter into this Agreement and has agreed to pay or cause to be paid the Settlement Amount to avoid the further expense, risk, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of further claims.
86. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have investigated the facts and law relevant to the merits of the claims, have conducted meaningful discovery, and have conducted independent investigation of the allegations in the Complaint. Class Counsel have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.
87. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with the Settlement or this Agreement shall be deemed or construed to be an admission of the truth or falsity of any allegations, claims, or defenses heretofore made, or an acknowledgment or admission by any party of any fact, fault, liability, or wrongdoing of any kind whatsoever.
88. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an

admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal; or construed as an admission by Plaintiffs regarding the validity of any allegation or claim asserted in this action or that Plaintiffs have waived any allegation or claim asserted in the Action.

89. In addition to any other defenses Defendants may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.
90. The Parties shall in good faith endeavor to communicate the terms of the Settlement in a manner that is respectful of the fact that no final adjudication of fault was determined by a court or jury.

**XVII. Miscellaneous Provisions**

91. Gender and Plurals. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
92. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.
93. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to

do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect so long as this Settlement has not been terminated in accordance with its terms, regardless of events that may occur, or court decisions that may be issued in this case or in any other case in any court.

94. Exhibits. Each and every exhibit to this Agreement is an integral and material part of this Agreement and is incorporated herein by this reference as though fully set forth in this Agreement.
95. No Limitation on Class Counsel's Communications. Nothing in this Agreement shall limit the ability of Class Counsel to communicate orally or in writing with Settlement Class Members regarding the provisions of this Settlement and, in fact, Class Counsel are authorized to do so.
96. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.
97. Integration. This Agreement (along with the exhibits to this Agreement) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter of the Settlement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party, except as provided for in this Agreement.
98. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

99. Governing Law. The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Georgia, without regard to its principles regarding choice of law, except to the extent federal law controls the issue in dispute.
100. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through emailed scan shall be deemed an original.
101. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to the Settlement or this Agreement that cannot be resolved by negotiation and agreement. The Court shall specifically retain jurisdiction over all questions and/or disputes related to the Notice Program, the calculation and distribution of benefits to the Class, and the actions of the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.
102. Notices. All notices to Plaintiffs and Class Counsel provided for in this Agreement shall be sent by email, with a hard copy sent by overnight mail, to:
- Kenneth S. Canfield  
Dofferymyre Shields Canfield & Knowles LLC  
1355 Peachtree Street, NE, Suite 1725  
Atlanta, Georgia 30309
- Adam J. Levitt and Amy E. Keller  
DiCello Levitt Gutzler LLC  
Ten North Dearborn Street, Eleventh Floor

Chicago, Illinois 60602

All notices to NAB provided for herein shall be sent by email, with a hard copy sent by overnight mail, to:

Robert B. Remar  
Joshua P. Gunnemann  
Rogers & Hardin LLP  
2700 International Tower  
229 Peachtree Street NE  
Atlanta, Georgia 30303

The notice recipients and addresses designated above may be changed by written notice.

Upon request, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

103. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by counsel for NAB and Class Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.
104. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
105. Authority. Class Counsel (for Plaintiffs), and counsel for NAB, represent and warrant that the persons signing this Agreement on behalf of their clients have full power and authority (including, if necessary, Board of Directors approval) to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and NAB to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the

Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

106. Agreement Mutually Prepared. Neither NAB nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.
107. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that: (a) they have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.
108. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the releases contained in Section XII above, received independent legal advice with respect to the advisability of entering into this Agreement and the releases, and the legal effects of this Agreement and the releases, and fully understands the effect of this Agreement and the releases.

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FOR PLAINTIFFS:

Dated: April 15, 2019

  
\_\_\_\_\_  
Kenneth S. Canfield  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Adam J. Levitt  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Amy E. Keller  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jonathan Palmer  
*Class Counsel*

FOR NAB:

Dated: \_\_\_\_\_

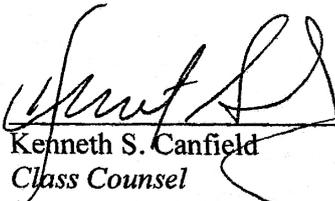
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North American Bancard LLC  
By:  
Position:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joshua P. Gunnemann  
*Counsel for NAB*

FOR PLAINTIFFS:

Dated: April 15, 2019

  
\_\_\_\_\_  
Kenneth S. Canfield  
Class Counsel

Dated: APRIL 15, 2019

  
\_\_\_\_\_  
Adam J. Levitt  
Class Counsel

Dated: \_\_\_\_\_

\_\_\_\_\_  
Amy E. Keller  
Class Counsel

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jonathan Palmer  
Class Counsel

FOR NAB:

Dated: \_\_\_\_\_

\_\_\_\_\_  
North American Bancard LLC  
By:  
Position:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joshua P. Gunnemann  
Counsel for NAB

FOR PLAINTIFFS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kenneth S. Canfield  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Adam J. Levitt  
*Class Counsel*

Dated: 4/15/2019

  
\_\_\_\_\_  
Amy E. Keller  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jonathan Palmer  
*Class Counsel*

FOR NAB:

Dated: \_\_\_\_\_

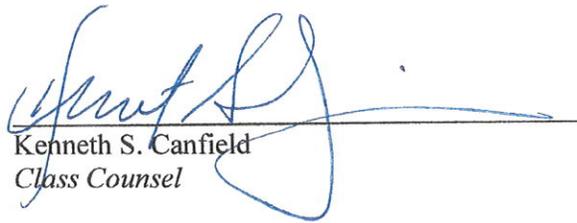
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North American Bancard LLC  
By:  
Position:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joshua P. Gunnemann  
*Counsel for NAB*

FOR PLAINTIFFS:

Dated: April 15, 2019

  
Kenneth S. Canfield  
*Class Counsel*

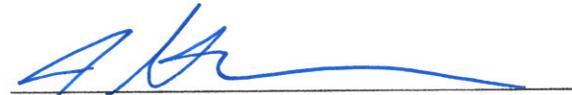
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\_\_\_\_\_  
Adam J. Levitt  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Amy E. Keller  
*Class Counsel*

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Jonathan Palmer  
*Class Counsel*

FOR NAB:

Dated: \_\_\_\_\_

\_\_\_\_\_  
North American Bancard LLC  
By:  
Position:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joshua P. Gunnemann  
*Counsel for NAB*

FOR PLAINTIFFS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kenneth S. Canfield  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Adam J. Levitt  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Amy E. Keller  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jonathan Palmer  
*Class Counsel*

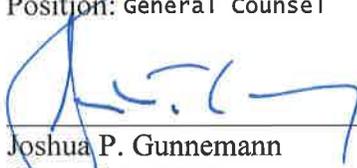
FOR NAB:

Dated: 4/15/2019

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\_\_\_\_\_  
North American Bancard LLC  
By: Robert S. Smith  
Position: General Counsel

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Joshua P. Gunnemann  
*Counsel for NAB*



# EXHIBIT 1

### **ALLOCATION FORMULA**

This is the Allocation Formula specified in Section XI of the Settlement Agreement in the matter of *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.).

*First*, the estimated amount which each class member is eligible to receive (either in the form of a statement credit for current customers or a cash payment to former customers) will be calculated by Plaintiffs' damages experts from the data produced by Defendants in connection with the litigation. The experts will determine for each class member the amounts paid during the class period for: (1) the portion of any card association access fee, base assessment, or discount fee that exceeded the amount charged in the first month of the class member's initial contract period; (2) the "regulatory" fee; (3) the monthly maintenance fee; (4) the portion of the "FANF" fee that exceeded the cost incurred by NAB in connection with the fee; and (5) the portion of each of the following fees that exceeded their cost to NAB: (a) International Acquirer Fee; (b) AMEX Non-Swiped Transaction Fee; (c) MasterCard US Acquirer Support Fee; (d) MasterCard Acceptance License Fee; (e) International Service Assessment; (f) International and Cross Border Fees; (g) Visa Data Transmission Fee; (h) AMEX Network Fee; (i) CVC2 Authorization Fee; and (j) Discover Network Access Fee. The total of these amounts for each class member is referred to as the "Potential Damage Amount."

*Second*, the Potential Damage Amount for each class member will be reduced to account for the fact that the settlement amount of \$15,000,000 is less than the potential damages at issue and to take into account the expenses of the litigation, including the expected notice and administration costs and the amount class counsel will seek for fees, expenses, and service awards. The settlement amount after payment of these litigation expenses is referred to as the

“estimated Net Settlement Amount.” To calculate that adjusted amount, the total estimated Net Settlement Amount will be divided by the total of the Potential Damage Amounts for each class member to derive the percentage by which each class member’s individual Potential Damage Amount will be reduced for purposes of determining that class member’s estimated cash benefit. However, the minimum estimated cash benefit for a class member will be \$5.00.

*Third*, after the claims process for former customers has concluded and the Court has determined the amount of attorney’s fees, expenses, and service awards, each class member’s estimated cash payment or credit will be adjusted as follows: (1) The total of the following will be calculated: (a) any benefits that are not claimed by former customers or by class members who opt-out; (b) the difference, if any, between the amounts sought by class counsel and the amounts awarded by the Court for attorney’s fees, expenses, and service awards; and (c) any difference between the actual cost of notice and administration and the amounts used to determine the estimated Net Settlement Amount. (2) That total, in turn, will be allocated to all current customers and those former customers who file claims in proportion to the size of their estimated damages amounts; provided, however, that class members whose estimated cash benefit was \$5.00 will not be included in the allocation. A class member’s final cash benefit will be equal to the estimated cash benefit plus the amount of the allocation.

# EXHIBIT 2

**If you are or were a customer of North American Bancard, LLC, you may qualify for benefits from a class action settlement. For more information, visit [www.nabsettlement.com](http://www.nabsettlement.com) or call XXX-XXX-XXXX**

You may be entitled to benefits under a class action settlement involving alleged overcharges for payment card transactions processed by North American Bancard, LLC and Global Payments Direct, Inc. The lawsuit asserts NAB and Global marked up certain fees by small amounts and charged other unauthorized fees. The settlement provides \$15 million to pay benefits to class members, fees and costs. NAB also has agreed to change certain business practices.

According to NAB's records, you are in the class and eligible to receive a minimum cash payment of approximately \$XXXXX, which may increase based on the number of customers who participate in the settlement and other factors. This amount of your payment was calculated based on the alleged overcharges that you paid. The amount you were allegedly overcharged depends on such considerations as the specific fees you were assessed, the types of transactions in which you engaged, the length of time you were an NAB customer, and your sales volume.

If you were a customer of NAB on [INSERT NOTICE DATE], you will automatically receive a credit on a future monthly invoice if the settlement is approved. If you stop being an NAB customer before the credits are distributed, you will receive a check or electronic payment.

If were an NAB customer on or after August 31, 2009, and stopped being an NAB customer before [INSERT NOTICE DATE] you must submit a claim form to get a payment. If you received this notice by postcard, the claim form is attached. You also can get the form at [www.nabsettlement.com](http://www.nabsettlement.com) or request one by calling XXX-XXX-XXXX. You must fill out the form online, submit the form electronically through the website, or mail it to the address below before [INSERT CLAIMS DEADLINE].

To exclude yourself from the settlement, you must write to the address below by [INSERT DEADLINE]. To object, you must file an objection with the court by [INSERT DEADLINE]. For complete instructions about excluding yourself or objecting, visit [www.nabsettlement.com](http://www.nabsettlement.com). If you do nothing and were not an NAB customer on [INSERT THE NOTICE DATE], you will get no benefits and won't be able to sue NAB or Global in the future.

The court will hold a hearing on [INSERT DATE OF APPROVAL HEARING] to consider whether to approve the settlement, pay the lawyers for the class up to one-third of the settlement, reimburse them for their expenses, and pay service awards totaling \$10,000 to the class representatives. You may appear at the hearing, but do not have to. The court appointed lawyers to represent you and the class, but you can hire another lawyer at your own expense.

You can get more details at [www.nabsettlement.com](http://www.nabsettlement.com), by calling XXX-XXX-XXXX, or by writing [INSERT ADDRESS].

# EXHIBIT 3

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.*

- 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.
- 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 [INSERT DATE] 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.
- 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.
- 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 [INSERT CLAIMS DEADLINE] to receive a cash payment.
- 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.
- The court has scheduled a hearing on [INSERT DATE OF APPROVAL HEARING] 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>	<p>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.</p> <p>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.</p>
<b>ACCEPT THE BENEFITS OF THE SETTLEMENT</b>	<p>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.</p> <p>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.</p>

**Questions? Call XXX-XXX-XXXX toll free, or visit [www.nabsettlement.com](http://www.nabsettlement.com)**

<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.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- 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.

**WHAT THIS NOTICE CONTAINS**

**Basic Information..... Page 3**

1. Why did I get this notice?
2. What is this lawsuit about?
3. Why is this class action?
4. Why is there a settlement?

**Who is Part of the Settlement ..... Pages 3-4**

5. How do I know if I am part of the settlement?
6. Are there exceptions to being included?

**The Settlement Benefits..... Pages 4-5**

7. What does the settlement provide?
8. How much will my cash payment or credit option be?

**How to Get a Payment ..... Pages 5-6**

9. How do I get a payment?
10. When will I get the settlement benefits for which I am eligible?
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**Questions? Call XXX-XXX-XXXX toll free, or visit [www.nabsettlement.com](http://www.nabsettlement.com)**

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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 [INSERT NOTICE DATE], 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.

**Questions? Call XXX-XXX-XXXX toll free, or visit [www.nabsettlement.com](http://www.nabsettlement.com)**

**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 [the date of the Order Directing Notice] 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, 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 [INSERT DATE] 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.

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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 calling the settlement administrator at 1-800-XXX-XXXX. 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.

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

**Questions? Call XXX-XXX-XXXX toll free, or visit [www.nabsettlement.com](http://www.nabsettlement.com)**

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 XXX-XXX-XXXX and then complete and return the claim form to the settlement administrator electronically through the website or by mail at [INSERT ADDRESS]. Former Customers must submit their claim online, send it electronically through the website, or mail it postmarked no later than [INSERT CLAIMS DEADLINE]. Late claims will not be accepted.

### 10. When will I get the settlement benefits for which I am eligible?

The court will hold a hearing on [INSERT APPROVAL HEARING DATE] 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.*);

**Questions? Call XXX-XXX-XXXX toll free, or visit [www.nabsettlement.com](http://www.nabsettlement.com)**

- 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; and
- Your signature.

You must mail your letter, postmarked no later than [INSERT OPT-OUT DEADLINE] to:

[INSERT ADDRESS]

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 opt out, 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 [INSERT OPT OUT DEADLINE].

**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 and Adam Levitt and Amy E. Keller of DiCello Levitt Gutzler LLC in Chicago, Illinois. 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 [INSERT FINAL APPROVAL HEARING DATE]. 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 intend 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

**Questions? Call XXX-XXX-XXXX toll free, or visit [www.nabsettlement.com](http://www.nabsettlement.com)**

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 [INSERT FINAL APPROVAL HEARING DATE].

## 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:

- 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);
- Your full name, address, and phone number;
- 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;
- Any evidence or other information you wish to introduce in support of your objections;
- A statement of whether you or your counsel intends to appear and argue at the final approval hearing;
- Evidence or other information showing that you are a member of the settlement class;
- Four dates before the final approval hearing when you will be available to be deposed by the lawyers for the parties; and,
- All other 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 [INSERT OBJECTION DEADLINE]:

Court	Settlement 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, Georgia 30303-3238  Adam J. Levitt Amy E. Keller DiCello Levitt Gutzler LLC Ten North Dearborn Street, Eleventh Floor Chicago, Illinois 60602	Robert B. Remar Joshua P. Gunnemann ROGERS & HARDIN LLP 2700 International Tower 229 Peachtree Street, N.E. Atlanta, GA 30303

**19. What is the difference between objecting and excluding/opting out?**

**Questions? Call XXX-XXX-XXXX toll free, or visit [www.nabsettlement.com](http://www.nabsettlement.com)**

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 [INSERT FINAL APPROVAL HEARING DATE] at [INSERT TIME] 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.nabgsettlement.com](http://www.nabgsettlement.com), from the settlement administrator by calling toll-free XXX-XXX-XXXX, or by writing to NAB Processing Settlement, c/o \_\_\_\_\_. The status of the settlement will be posted on the settlement website.

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

**Questions? Call XXX-XXX-XXXX toll free, or visit [www.nabsettlement.com](http://www.nabsettlement.com)**

# EXHIBIT 4

## CLAIM FORM

If you were a customer of North American Bancard, LLC (“NAB”) and Global Payments Direct Inc. to process payment card transactions on or after August 31, 2009 but stopped being an NAB customer before [INSERT NOTICE DATE], you are a former customer and are entitled to a cash payment if you file this claim form. The estimated amount of your payment is on the email or postcard notification of the settlement that was sent to you or can be found by calling XXX-XXX-XXXX. The final amount could increase depending on the number of former customers who participate.

To claim your payment, please sign in the space below attesting that you are an authorized representative of the class member identified on this form. If you received this notice by postcard, you can detach the claim form and return it by mail. You also can fill out this claim form online at [www.nabsettlement.com](http://www.nabsettlement.com). If you downloaded this form or obtained it from the settlement administrator, you must fill it out completely, sign it, and return it electronically either through the settlement website at [www.nabsettlement.com](http://www.nabsettlement.com) or mail the signed claim form to [INSERT ADDRESS].

**You must act by [INSERT CLAIMS DEADLINE]. If you mail the form, it must be postmarked by [INSERT CLAIMS DEADLINE]. Late claims will be rejected.**

PLEASE PROVIDE YOUR CURRENT NAME, MAILING ADDRESS, AND EMAIL ADDRESS HERE:

\_\_\_\_\_  
Merchant Name

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Date

By signing this claim form, you are affirming that you are the authorized representative of a member of the settlement class and thus are eligible to receive the benefits of the settlement.

You can get more information about the settlement, a description of the class, and your rights as a class member at [www.nabsettlement.com](http://www.nabsettlement.com) or by calling XXX-XXX-XXXX.

[INSERT ADMINISTRATION IDENTIFICATION NUMBER]