**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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| AL'S PALS PET CARE, LLC, DeFABIO SPINE AND SPORTS REHAB, LLC, JULIE RUDIGER, INC., MENA STONE & LANDSCAPING SUPPLIES, LLC, TULSA ART CENTER, LLC, BAN-A-PEST EXTERMINATION CO., INC., FLEETWOOD CHIROPRACTIC & REHABILITATION, PC, and BAYLEY PRODUCTS, INC., individually and on behalf of all others similarly situated, | § | |
| Plaintiffs, | § | CIVIL ACTION NO. |
| v. | § | 4:17-CV-3852 |
| WOODFOREST NATIONAL BANK, N.A., MERCHANTS' CHOICE PAYMENT SOLUTIONS, and PAYSAFE PAYMENT PROCESSING SOLUTIONS LLC, | § | |
| Defendants. | § | |

**SUPPLEMENTAL JOINT DECLARATION OF**
**E. ADAM WEBB AND MATTHEW C. KLASE**

1. We are lead counsel for Plaintiffs and the Settlement Class in the above-referenced matter and submit this joint declaration in support of the Motion for Final Approval of Class Settlement and Motion for Attorneys' Fees, Expenses, and Service Awards, and as a supplement to the joint declaration we previously filed with the Court.[1] Dkt. 39. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. Our first involvement in this case began well over a year ago when we began investigating potential legal claims against MCPS with several of the named Plaintiffs. Plaintiffs Julie

[1] All capitalized defined terms used herein have the same meanings ascribed in the Settlement Agreement.

Rudiger, Mena Stone, and Tulsa Art Center were adamant during interviews that they had been tricked into doing business with MCPS by deceptive representations made by MCPS agents during cold calls.

3. We undertook a detailed investigation to confirm these allegations, which included interviewing industry practitioners who had accused MCPS of similar misconduct, scouring internet message boards and other sources for similar complaints, searching for transcripts of the allegedly deceptive cold calls, and reviewing related government investigations of MCPS.

4. We reviewed Plaintiffs' Merchant Applications to assess whether Plaintiffs were charged fees that were not contemplated in their Applications and whether Defendants' fee modifications were allowed by the multitude of self-serving exculpatory provisions in the Parties' contracts and, if so, the enforceability of such provisions.

5. This was not an easy task given the number of parties that have a hand in setting and imposing charges for accepting card transactions, as well as the limited amount of information provided to Plaintiffs on their monthly statements.

6. We obtained as many Applications and statements as we could in an attempt to establish patterns of fee exploitations across Defendants' customer base.

7. The case involved difficult factual issues. For example, it is very difficult to identify – let alone establish liability based upon – the overcharge practices that lie at the heart of the Action. We had to decipher a complex industry that defies transparency; comprehend perplexing billing practices; and analyze voluminous documents and data that covered a five year period.

8. Moreover, the case presented novel legal issues, such as the enforceability and applicability of the contractual provisions that Defendants included in their form contracts in an attempt to exculpate themselves from overbilling. Even if Plaintiffs could prove they satisfied these

contractual provisions, the question then became whether the Plaintiffs' satisfaction was sufficient for all class members or just themselves. This is an unsettled issue under Texas law.

9. Other difficult legal issues included whether the fraudulent inducement claims presented individual reliance issues that could defeat certification, whether Defendants had sufficient records and information to allow the class members to be ascertained and individual damages calculated, and whether a nationwide contract class comprised of more than 100,000 merchants could be managed and certified.

10. The uncovering of Defendants' purported overbilling and positioning of this case for class certification and a victory on the merits presented risky challenges most law firms are simply not able to meet. Indeed, we believe this is the first case brought against Defendants for the practices at issue here, despite the fact that merchant websites have for years included numerous complaints about such practices.

11. We entered into contingent fee agreements with the Plaintiffs providing for payment of one third to forty percent of any recovery (depending on the stage of the case when resolution was achieved). As a result, had we not achieved a recovery, we would have received nothing.

12. Moreover, we would have suffered a substantial out-of-pocket loss because we were to advance all the litigation expenses, which easily could have amounted to hundreds of thousands of dollars. Uncompensated expenditures of such magnitude can severely damage or destroy small firms like ours.

13. In preparing to negotiate the Settlement, we relied upon our experience litigating similar legal issues in prior and current cases and the knowledge of the legal precedent governing such issues.

14. This extensive knowledge, as well as our investigation, informal discovery, and briefing allowed us to better understand the merits of this Action and damages of the Settlement Class, prepared us for the mediation, and successfully positioned us to engage in vigorous, arms-length negotiations under the direction of Mr. Hughes.

15. We were under a time crunch in preparing for the mediation. Defendants produced the 8,000 pages of documents and hundreds of thousands of lines of data on June 13, 2018, which left us just over a month to digest that information and effectively prepare for the long-scheduled mediation on July 18, 2018. We worked tirelessly with co-counsel and Plaintiffs' expert Art Olsen during this time period to review, process, organize, and interpret this information so we could be fully prepared for the mediation, even finishing our review early so Defendants could have time to review and process the results in advance.

16. The Parties have no agreements amongst themselves in connection with the Settlement other than those specifically articulated in the Agreement.

17. We have spent an enormous amount of time on this case. This work included extensive pre-suit investigation; communications with clients and other MCPS merchants; finding and interviewing knowledgeable industry personnel and experts and former MCPS insiders; preparing complaints, motions, and responses to opposing motions; researching the potential arbitration issue raised by Defendants; negotiating case management orders and similar documents; researching and drafting voluminous mediation briefs (on issues as varied as the viability of fraud and contract claims in light of the facts as well as explaining exactly how the Rule 23 certification elements could be satisfied); exchanging extensive informal liability and damages discovery and working with experts to analyze hundreds of thousands of lines of data;

mediating, negotiating, and drafting the Settlement; and preparing the preliminary approval papers.

18. Since Preliminary Approval was issued, we have worked on a near daily basis with counsel for Defendants and employees of Epiq – the appointed Settlement Administrator – to ensure that all Settlement Class members were provided Notice in accordance with the Notice Program and the Court's Preliminary Approval Order.

19. For instance, we (1) worked with Epiq and Defendants to ensure the class list included all necessary data points and information to provide Notice and calculate awards pursuant to the Allocation Formula and was timely provided by Defendants; (2) assisted in negotiating and finalizing an escrow agreement for the establishment of the Settlement Fund; (3) edited the email, postcard, and long form Notices, the Claim Form, and the content of the Settlement Website and telephone line scripts; (4) ensured the Settlement Fund was timely funded; (5) ensured Notice was timely sent; (6) assisted Epiq and Defendants in resolving the mistake in the class list that caused Notice to be sent not only to all Settlement Class members but also some non-Settlement Class members; (7) answered questions from many Settlement Class members via telephone and email; (8) monitored the undeliverables and claims response; and (9) sent out tens-of-thousands of emails to Former Customer Settlement Class Members reminding them to file claims.

20. We have also prepared and will file a motion for Final Approval of Class Settlement and will appear at the Final Approval Hearing.

21. Each of the above-described efforts was essential to achieving and effectuating the Settlement.

22. If the Settlement is approved, our work will continue past the Final Approval Hearing and not conclude until all claims are paid and the Settlement fully consummated. This process will necessitate many hours of additional work answering questions from Settlement Class members, overseeing cash distributions, ensuring Defendants follow through on making agreed-upon contract and practice changes, etc.

23. Throughout the litigation, Defendants were represented by Behn Dayanim and K. Whitner, two attorneys from Paul Hastings LLP who have considerable experience defending class actions. They were highly skilled adversaries and their diligent, inventive representation of Defendants makes the Settlement all the more impressive.

24. If we had not taken on this case, we would have been able to spend significant time on other matters. Although this is true whenever lawyers handle multistate class actions requiring large amounts of time, ours is a small firm with only four attorneys. Over the last year, we have turned down multiple cases because of the time and attention that this case required.

25. Distribution of the Settlement Fund to the Settlement Class members will be made directly in cash. Indeed, Current Customers who are still with Defendants when it is time to distribute the Settlement will receive their payments by electronic funds transfer (or credit against amounts otherwise owed on their statement), while Current Customers that leave Defendants between Preliminary Approval and distribution and all Former Customers that submit Claim Forms will be mailed checks. Settlement ¶ 66. Given that very recent address information is available to the latter group of Settlement Class members, it is likely that the overwhelming percentage of mailed checks will actually be received and cashed by such merchants. Under the circumstances, we believe this to be the best method of distribution possible.

26. Additionally, to make it as easy as possible on Former Customers to receive their payments, the Parties (1) designed a very simple Claim Form that is extremely easy to complete and (2) provided multiple options for submission – U.S. Mail and electronic submission through the Settlement Website.

27. As of December 19, 2018, no objections have been filed in the case, nor have we received notice that any Settlement Class Members intend to object to the Settlement. To date, all feedback from Settlement Class Members who have contacted us concerning the Settlement has been positive.

28. Last week, we began to send reminder emails to Former Customers who have not yet filed claims. We will continue to do so periodically until the March 4, 2019, claims deadline. We expect these reminders will serve to increase the response rate significantly.

29. We request a fee of one third of the $15 million common fund, or $5 million. No effort has been made to include the value of Defendants' contract and practice changes, but such changes will undoubtedly save the Settlement Class millions of additional dollars.

30. We request reimbursement for a total of $27,340.50 in litigation expenses. The requested sum corresponds to specific out-of-pocket expenses incurred while prosecuting and settling the Action and includes expert witness fees, mediator fees, travel costs, and necessary administrative expenses (i.e., filing and service fees, PACER charges, copies, postage, delivery fees, etc.). All such expenses are reasonable and necessary for the furtherance of this Action.

31. We enthusiastically support $10,000 Service Awards for each of the eight named Plaintiffs/Class Representatives to be paid from the Settlement Fund. Not only did these merchants devote substantial time to this litigation (such as by contacting us, submitting to interviews, forwarding relevant documents, participating in conferences, and keeping themselves abreast of

the proceedings), they exposed themselves to substantial risk that they could have been held liable for Defendants' legal fees and expenses, regardless of the outcome, if provisions in their merchant agreements were enforced. But for the Class Representatives' service and willingness to bear this risk, other Settlement Class members would have received nothing.

32. We declare under penalty of perjury that the foregoing is true and correct to the best of our knowledge, information, and belief.

Executed this 19th day of December, 2018, at Atlanta, Georgia.

*/s/ E. Adam Webb*
E. Adam Webb

*/s/ Matthew C. Klase*
Matthew C. Klase