

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

MAX STORY, *et al.*, *on behalf of themselves
and all others similarly situated*,

Plaintiffs,

v.

HEARTLAND PAYMENT SYSTEMS, LLC,

Defendant.

No. 3:19-cv-724-TJC-JBT

STIPULATION AND AGREEMENT OF SETTLEMENT

This Settlement Agreement is entered on March 31, 2025 by and among Plaintiffs Max Story and Nancy Murrey-Settle, through their counsel; and Defendant Heartland Payment Systems, LLC (together with Plaintiffs, the “Settling Parties”).

RECITALS

WHEREAS, on May 14, 2019, Plaintiff Story filed a Class Action Complaint against Defendant in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida involving claims related to the payment of Program Fees in connection with Defendant’s MySchoolBucks service;

WHEREAS, on June 17, 2019, Defendant removed the Action to the United States District Court for the Middle District of Florida, where it was designated case number 3:19-cv-724, and assigned to United States District Judge Timothy J. Corrigan.

WHEREAS, following several rounds of pleading and briefing, the Third Amended Class Action Complaint, which survived dismissal in part, alleged that Defendant, in charging Program Fees, violated the New Jersey Consumer Fraud Act and breached its contracts with Plaintiffs.

WHEREAS, on March 31, 2022, Defendant answered the Third Amended Class Action Complaint.

WHEREAS, the Settling Parties engaged in extensive discovery and related motion practice, including production by Defendant of nearly 12,600 documents, production by Plaintiffs of 740 documents, responses to several sets of written discovery requests including interrogatories and requests for admission, depositions of twelve (12) fact witnesses, including two (2) depositions of Plaintiffs, service of eight (8) expert reports, and six (6) expert depositions;

WHEREAS, after completing fact and expert discovery, the Parties fully briefed Plaintiffs' motion for class certification, Defendant's motion for summary judgment, and Defendant's motions to exclude the testimony of Plaintiffs' experts Mark Webster and Jackie Chorn.

WHEREAS, the Court heard the class certification, summary judgment, and *Daubert* motions on July 17, 2024.

WHEREAS, the Settling Parties participated in arms'-length negotiations during an in-person mediation with the Mediator Hunter Hughes in San Diego, CA on November 8, 2024, but did not reach an agreement on settlement.

WHEREAS, after the in-person mediation, the Settling Parties continued to participate in arm's length negotiations via phone and email under the supervision of Mr. Hughes, who ultimately made his own proposal to resolve this Action for the Parties to take or leave.

WHEREAS, on November 26, 2024, the Settling Parties reached an agreement in principle on the terms of a class settlement of this action by accepting Mr. Hughes's proposal.

WHEREAS, Class Counsel conducted an exhaustive investigation and evaluation of the facts and law related to Plaintiffs' claims in order to determine how best to serve the interests of the Plaintiffs and the Class;

WHEREAS, while Plaintiffs and Class Counsel believe that the Action and the claims of Plaintiffs and the other Class members have merit, they recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Action against Defendant through trial and any appeals and the value of providing timely benefits to the Class;

WHEREAS, Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, including Defendant's opposition to class certification and motion for summary judgment.

WHEREAS, Plaintiffs and Class Counsel believe the proposed Settlement confers substantial benefits on the Class;

WHEREAS, based on their evaluation of the above factors, Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of the Class and represents a fair, reasonable, and adequate resolution of the Action;

WHEREAS, Defendant denies the claims in the Action, denies all allegations of wrongdoing, fault, liability or damage of any kind to Plaintiffs or the Class, denies that it acted improperly, or wrongfully in any way, and believes that the Action is without merit;

WHEREAS, Defendant further denies that Plaintiffs' claims are appropriate for class treatment; and

WHEREAS, Defendant nevertheless recognizes and acknowledges the expense and length of continued proceedings that would be necessary to defend the Action through trial and any appeals, and in agreeing to enter this Settlement has taken into account the uncertainties of further litigation, as well as the difficulties and delays inherent in such litigation;

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED, by and among the Settling Parties, subject to the approval of the Court, that the Action and the Released Claims shall be fully and finally compromised, settled, and released, and that the Action shall be dismissed with prejudice as set forth herein subject to and upon the terms and conditions described below.

I. DEFINITIONS

A. Action

“Action” means *Story et al. v. Heartland Payment Systems, LLC*, No. 3:19-cv-724 (M.D. Fla.).

B. Attorneys’ Fees and Costs

“Attorneys’ Fees and Costs” means such funds as may be awarded by the Court to compensate attorneys for work in conferring benefits upon the Class under this Settlement Agreement.

C. Class

“Class” means, for the purposes of settlement only:

All natural persons who enrolled in MySchoolBucks, and paid Program Fees to Heartland on credit or debit card “Meals” transactions between June 18, 2013 and July 31, 2019, except those whose last transaction occurred before January 1, 2015.

D. Class Member

“Class Member” means a member of the Class.

E. Class Notice

“Class Notice” means the notice of Settlement that will be provided to the Class.

F. Class Period

“Class Period” means June 18, 2013 to July 31, 2019, inclusive.

G. Class Counsel

“Class Counsel” means Jason L. Lichtman, Janet Varnell, Brian Warwick, Lisa R. Considine, and David J. DiSabato.

H. Court

“Court” means the United States District Court for the Middle District of Florida.

I. Defendant

“Defendant” means Heartland Payment Systems, LLC (“HPS”).

J. Defendant’s Counsel

“Defendant’s Counsel” means David Balser, Laura Harris, and Peter Starr of King & Spalding, LLP.

K. Effective Date

“Effective Date” means seven (7) calendar days after (1) the Court enters the Final Order and Judgment and (2) all appellate rights with respect to said Final Order and Judgment have expired or been exhausted in such a manner as to affirm the Final Order and Judgment.

L. Email Notice

“Email Notice” means the notice to be emailed to the Settlement Class.

M. Escrow Account

“Escrow Account” means the bank account established to hold the Settlement Fund.

N. Fairness Hearing

“Fairness Hearing” means the final hearing, held after the Preliminary Approval Order is issued, in which the Court will determine whether this Settlement Agreement should be approved as fair, reasonable, and adequate, and whether the proposed Final Approval Order and Final Judgment should be entered, and if so, the amount of Attorneys’ Fees and Costs to be awarded to Class Counsel.

O. Final Approval Order

“Final Order and Judgment” means a final order entered by the Court after the Fairness Hearing, granting approval of the Settlement.

P. Final Judgment

Final Judgment means a final judgment entered by the Court after the Fairness Hearing, and constituting an immediately appealable final judgment under Federal Rule of Civil Procedure 58 and 28 U.S.C. § 1291.

Q. Heartland

“Heartland” means Defendant Heartland Payment Systems, LLC.

R. Long Form Notice

“Long Form Notice” means the notice that will be posted to the Settlement Website.

S. Meals

“Meals” refers to the MySchoolBucks product that permits Class Members to deposit money into their children’s school lunch accounts. “Meals” is distinct from MySchoolBucks “Store.”

T. Mediator

“Mediator” refers to Hunter Hughes.

U. MySchoolBucks

“MySchoolBucks” means the service Heartland offers permitting Class Members to, among other things, deposit money into their children’s school lunch accounts for Meals.

V. Net Settlement Fund

“Net Settlement Fund” means the Settlement Fund less the Settlement Fees and Expenses and Attorney’ Fees and Costs.

W. New Jersey Action

“New Jersey Action” means *Mazzei et al. v. Heartland Payment Systems, LLC*, No. 1:20-cv-14929 (D.N.J.).

X. Plaintiffs

“Plaintiffs” means Max Story and Nancy Murrey-Settle.

Y. Opt Out

“Opt Out” means a member of the Settlement Class who properly and timely submits a request for exclusion from the Settlement Class.

Z. Opt Out List

“Opt Out List” means the list compiled by the Settlement Administrator identifying those members of the Settlement Class who properly and timely submit a request for exclusion from the Settlement Class.

AA. Preliminary Approval Order

“Preliminary Approval Order” means the order the Class Counsel will request to be entered by the Court preliminarily approving the Settlement, substantially in the same form as **Exhibit 1** to this Settlement Agreement.

BB. Program Fee

“Program Fee” means the fee HPS charged to parents each time they used MySchoolBucks to deposit money into their children’s school lunch accounts.

CC. Store

“Store” means the MySchoolBucks product that permits Class Members to make discrete purchases. “Store” is distinct from “Meals.”

DD. Released Claims

“Released Claims” means any and all claims, liabilities, rights, actions, causes of action, demands, damages, costs, suits, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, as well as any and all claims for treble damages, penalties, interest, attorneys’ fees, costs, or expenses that were or could have been alleged or asserted in the Action arising from, related to, connected with, or involving the payment of Program Fees during the Class Period, as alleged, included, or described in the Third Amended Class Action Complaint. However, “Released Claims” does not include: claims arising from Program Fees paid outside of the Class Period; claims arising from any fees or payments made to Defendant other than Program Fees; claims arising from transactions involving any product offered by Defendant other than Meals, including but not limited to Store; claims against Parties other than Defendant; or any claims for personal injury (as distinguished from claims for purely economic loss).

EE. Released Parties

“Released Parties” means Defendant Heartland Payment Systems, LLC and each of its past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, principals, divisions, stockholders, bondholders, shareholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, licensees, agents, insurers, co-insurers, re-insurers, underwriters, attorneys, administrators, and advisors.

FF. Settlement

“Settlement” means the settlement contemplated by this Stipulation and Agreement of Settlement.

GG. Settlement Administrator

“Settlement Administrator” means Eisner Advisory Group LLC, which has been selected by the Settling Parties and which the Class Counsel will ask the Court to appoint to administer Class Notice, administer the Settlement in accordance with this Settlement Agreement, and engage in any other tasks directed by the Court or jointly by Class Counsel and Defendant’s Counsel.

HH. Settlement Agreement

“Settlement Agreement” means this Stipulation and Agreement of Settlement.

II. Settlement Class

“Settlement Class” means Plaintiffs and all members of the Class who are not Opt Outs.

JJ. Settlement Fees and Expenses

“Settlement Fees and Expenses” means the authorized costs and expenses incurred by the Settlement Administrator in providing Class Notice in accordance with this Settlement Agreement and the anticipated Preliminary Approval Order and all authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement Agreement.

KK. Settlement Fund

“Settlement Fund” means the \$18,250,000 common fund, which will be used to pay Settlement Fees and Expenses, any Attorneys’ Fees and Costs ordered by the Court, and all payments to be paid to members of the Settlement Class under this Agreement.

LL. Short Form Notice

“Short Form Notice” means the notice to be mailed to the Settlement Class.

MM. Third Amended Class Action Complaint

The “Third Amended Class Action Complaint” is the pleading filed in the Action on March 8, 2021, as modified by the Court’s March 4, 2022 order on Defendant’s Motion to Dismiss Plaintiffs’ Third Amended Complaint.

NN. Other capitalized terms used in this Settlement Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in the Settlement Agreement.

OO. All terms defined in this Settlement Agreement have the definition asserted herein solely for the purposes of this Settlement Agreement.

PP. The terms “he or she” and “his or her” include “it” or “its” where applicable.

QQ. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

II. PROPOSED CLASS FOR SETTLEMENT PURPOSES

A. Certification of Class For Settlement Purposes

Pursuant to Fed. R. Civ. P. 23(e), the Settling Parties agree to the entry of an order, certifying, for settlement purposes only, the following Class:

All natural persons who enrolled in MySchoolBucks, and paid Program Fees to Heartland on credit or debit card “Meals” transactions between June 18, 2013 and July 31, 2019, except those whose last transaction occurred before January 1, 2015.

B. Class Counsel

Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, Class Counsel ask the Court to enter an order appointing Plaintiffs as representatives of the Class, appointing Class Counsel as counsel for the Class pursuant to Fed. R. Civ. P. 23(g), and finding that the Plaintiffs and Class Counsel are appropriate representatives of the Class.

III. SETTLEMENT CONSIDERATION AND COMPENSATION

A. Defendant Payments

In consideration of the Release provided for in Section VII and the dismissal of the Action and the New Jersey Action with prejudice (as set forth in Section VI(D)–(E)), and subject to the limits specified in this Section, Defendant agrees to make an all-inclusive common fund payment of \$18,250,000 (the “Settlement Amount”).

Within thirty (30) days of entry of the Preliminary Approval Order, Defendant shall make an initial payment to the Escrow Account for the costs of Class Notice and other Settlement Fees and Expenses.

Within thirty (30) days after final approval, Defendant shall make a payment in an amount equivalent to any Attorneys’ Fees and Costs awarded by the Court, not to exceed \$5,475,000, into the Escrow Account.

Within thirty (30) days after the Effective Date, Defendant shall make a final payment consisting of the balance of the \$18,250,000 Settlement Amount, less any amounts already paid for Class Notice and Settlement Fees and Expenses and Attorneys’ Fees and Costs, into the Escrow Account.

B. Payments to Class Members

Class Members may submit a claim for a share of the Net Settlement Fund. Individual payments will be calculated pro rata based on (1) the total amount of Program Fees paid by the Class Member during the Class Period and (2) the amount of the Net Settlement Fund available to distribute. No individual payments will be made until after the Effective Date.

IV. ADMINISTRATION OF THE SETTLEMENT

A. Establishment and Administration of the Settlement Fund as a Qualified Settlement Fund

The Settlement Fund shall be held in escrow in the Escrow Account by the Settlement Administrator with a bank (the “Bank”) to be chosen by Class Counsel and subject to approval by Defendant, which approval shall not be unreasonably withheld. The Settlement Fund shall be established as a Qualified Settlement Fund (“QSF”) within the meaning of Treasury Regulation Section 1.468B-1, under an order to be entered by the Court establishing a QSF. After the Settlement Fund has been paid into the Escrow Account, the Parties and the Settlement Administrator agree to treat the Settlement Fund as a QSF within the meaning of Treas. Reg. § 1.468B-1. All provisions of this Settlement shall be interpreted in a manner that is consistent with the Settlement Fund being a QSF within the meaning of Treasury Regulation § 1.468B-1.

1. The Bank

The Settlement Fund shall be held at the Bank, which financial institution shall be responsible for any and all investment-related decisions, following the Settlement Administrator’s investment policy for fiduciaries, which is based on safety of principal, no bank balance sheet exposure, and zero sweep accounts for distributions to Plaintiffs once authorized. The Bank shall be responsible for the issuance of any checks and/or wire transfers from the Settlement Fund once authorized. Fees and costs for all service related to the Fund shall not exceed \$10,000 except by agreement of the Parties.

2. Settlement Fund, Distributions, And Expenses

No portion of the Settlement Fund shall be made available to the Settlement Class except as specifically set forth in this Settlement Agreement. Until such time as the Settlement Fund is distributed, the Settlement Class shall not possess any rights to demand or receive any portion of

the monies or the escrowed monies or to mortgage, pledge, or encumber the same in any manner. To the extent possible, the terms of the Settlement Agreement shall be construed so as to prevent Plaintiffs from being in constructive receipt, as determined under federal income tax principles, of the Settlement Fund. All expenses incurred in administering the Settlement Fund, including without limitation, the fees and expenses of the Bank and Settlement Administrator, shall be paid from the Settlement Fund.

If this Settlement Agreement does not for any reason become final or effective or is otherwise rescinded, withdrawn, or abrogated before the Effective Date, then all amounts that have been paid by Defendant into the Escrow Account shall be returned to Defendant.

3. Administrator of the Settlement Fund

For the purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.468B as promulgated thereunder, the “administrator” shall be the Settlement Administrator or its successors. The Settlement Administrator shall have the authority to conduct any and all activities necessary to administer the Settlement Fund. The Settlement Administrator shall submit personally to the jurisdiction of the Court. The Settlement Administrator shall be indemnified and held harmless by Plaintiffs and the Settlement Class from any claims made by any alleged lien holder or other person or entity that attempts to assert a right of payment, reimbursement, or garnishment against the Settlement Fund.

4. QSF-Related Duties of the Settlement Administrator

The Settlement Administrator shall timely and properly file, or cause to be filed, all federal, state, or local tax returns and information returns (together, “Tax Returns”) necessary or advisable with respect to the earnings on the funds deposited in the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such Tax Returns shall be consistent

with this subparagraph and in all events shall reflect that all taxes (including any estimated taxes, earnings, or penalties) on the income earned on the funds deposited in the Settlement Fund shall be paid out of such funds as provided herein.

In all events, Defendant and Defendant's Counsel shall have no liability or responsibility whatsoever for the taxes or the filing of any Tax Return or other document with the Internal Revenue Service or any other state or local taxing authority. Defendant and Defendant's Counsel shall have no liability or responsibility for the taxes of the Settlement Fund nor the filing of any Tax Returns or other documents with the Internal Revenue Service or any other taxing authority, nor any expenses associated therewith.

Taxes with respect to the Settlement Fund shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid, or caused to be paid, by the Settlement Administrator out of the Settlement Fund without prior order from the Court or approval by Defendant. The Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to the Settlement Class any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)(2)). The Parties agree to cooperate with each other, and their tax attorneys and accountants to the extent reasonably necessary, to carry out these provisions.

The Settlement Administrator shall obtain a Federal Taxpayer Identification Number for the Settlement Fund upon the execution of an order by the Court establishing the Settlement Fund. The Settlement Administrator is authorized, upon final distribution of all monies paid into the Settlement Fund, to take appropriate steps to wind down the Settlement Fund and thereafter the Settlement Administrator is discharged from any further responsibility with respect to the Settlement Fund.

Following its payment of the Settlement Fund, Defendant shall have no responsibility, financial obligation, or liability whatsoever with respect to investment of Settlement Fund Account funds, payment of federal, state, and local income, employment, unemployment, excise, and any other taxes, penalties, interest, or other charges related to taxes imposed on the Settlement Fund Account or its disbursements, payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the Settlement Fund Account.

B. Duties of the Settlement Administrator

Promptly after Preliminary Approval, the Parties will direct the Settlement Administrator to issue Class Notice, receive and appropriately respond to all claims submitted by a member of the Settlement Class, and to otherwise administer the Settlement. The Settlement Administrator will: (1) assign personnel to manage the settlement implementation process, including Class Notice; (2) establish a toll-free telephone number that members of the Class may call to obtain information; (3) establish a mailing address to which members of the Settlement Class can send claims for reimbursement; and (4) create a Settlement Website containing information about the Settlement, including claim forms for download or electronic submission. All costs and expenses related to the administration of the Settlement, unless paid directly to the Settlement Administrator by Defendant, will be deducted from the Settlement Fund. Defendant shall have no liability of any kind for any acts or omissions of the Settlement Administrator in the performance of its duties.

C. Notice To Members of The Settlement Class

The cost of Class Notice and other Settlement Fees and Expenses, as agreed to by the Settling Parties, will be paid from the Settlement Fund.

1. Components and Timing of Class Notice

Class Notice will be accomplished through a combination of the Short Form Notice, Email Notice, notice through the Settlement Website, and Long Form Notice, each of which is described below, as specified in the anticipated Preliminary Approval Order and this Settlement Agreement and in order to comply with all applicable laws, including Fed. R. Civ. P. 23 and the Due Process Clause of the United States Constitution.

As soon as practicable after the Preliminary Approval Order, the Settlement Administrator will obtain the name, last known address, email address, and total Program Fees paid during the Class Period of each potential member of the Settlement Class, to the extent such information is reasonably available in Defendant's records. Defendant agrees to commit reasonable, good faith efforts to providing the most complete data possible.

Thereafter, the Settlement Administrator shall substantially complete initial dissemination of notice in the manner described below with the intention of substantially completing initial notice within eight weeks after the entry of the Preliminary Approval Order. Settlement Class Member contact information shall be used only to effectuate this Settlement, and not for any other purpose.

a. Email Notice

The Settlement Administrator shall send the Email Notice by email to members of the Settlement Class for whom an email address was located.

b. Short Form Notice

The Settlement Administrator shall send the Short Form Notices by First Class U.S. Mail, proper postage prepaid, to members of the Settlement Class for whom the Settlement Administrator cannot locate email addresses, or for whom Email Notice is bounced back. In addition, the Settlement Administrator shall: (a) re-mail any notices returned by the United States

Postal Service with a forwarding address as soon as practicable; and (b) by itself or using one or more address research firms, as soon as practicable following receipt of any returned notices that do not include a forwarding address, research such returned mail for more accurate addresses and promptly mail copies of the applicable notice to any more accurate addresses so found.

c. Settlement Website and Long Form Notice

The Settlement Administrator shall establish a Settlement Website that will inform members of the Settlement Class of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The Settlement Website shall include, in .pdf format, the Long Form Notice.

The Settlement Administrator will send, via First Class U.S. Mail, the Long Form Notice to Settlement Class Members who request it.

2. Class Action Fairness Act Notice

Defendant is responsible for ensuring compliance with the attorney general notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715, by, within ten (10) days after the motion for Preliminary Approval is filed, providing notice of this proposed Settlement, as well as all other documents required by the Class Action Fairness Act, to the Attorney General of the United States, and to the attorneys general of each state or territory in which a Class Member may reside. Defendant shall have the option of retaining the Settlement Administrator to provide Class Action Fairness Act Notice.

D. Submission of Claims

To obtain compensation under Section III, a member of the Settlement Class must submit a timely claim to the Settlement Administrator.

1. Deadline to Submit Claims

The Settlement Administrator will not review or pay any claims for monetary compensation submitted by a member of the Settlement Class more than ninety (90) calendar days after entry of the Preliminary Approval Order. The Settling Parties reserve the right to jointly move the Court to permit late-filed claims.

2. Method of Submitting Claims

All claims must be submitted through the Settlement Website.

3. Content of and Support for Claims

Because Defendant possesses most of the information necessary to identify and calculate valid claims, the information Settlement Class Members need to provide is minimal. A Class Member need only confirm that they are a Class Member, that they desire to submit a claim in the Settlement, and their selected manner of receiving payment.

4. Form of Payment

The only form of payment will be electronic payment facilitated by the Settlement Administrator.

5. Rejected Claims

The Settlement Administrator may reject any claim that it determines, in its discretion, to be invalid. The Settlement Administrator may investigate any claim, including by requesting from the member of the Settlement Class documentation to determine whether the claim is valid. If the Settlement Administrator rejects a claim on this basis, it will advise the member of the Settlement Class who submitted the claim of the reason(s) for the rejection. If a claim is rejected due to missing information or documentation, the Settlement Administrator will give the member of the Settlement Class thirty (30) days to resubmit that claim along with additional information, so long

as the claim was originally submitted by the deadline to submit the claim. The Settlement Administrator will copy Class Counsel and Defendant's Counsel on all rejected claims. Unless Class Counsel and Defendant's Counsel agree otherwise for any given claim, the Settlement Administrator has final authority to determine whether a claim should be rejected on this basis.

6. Potentially Fraudulent Claims

The Settlement Administrator will reject any claim that it determines, using state-of-the-art techniques, shows indicia of fraud. Before calculating and transmitting payment to Class Members, the Settlement Administrator will send to Class Counsel and Defendant's Counsel a report on claims deemed to demonstrate indicia of fraud, including the number of claims so identified, the identity of the claimants, the techniques the Settlement Administrator employed to detect fraud, and the Settlement Administrator's basis for concluding that the identified claims should be rejected.

V. ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

A. Attorneys' Fees and Costs

All Attorneys' Fees and Costs shall be paid out of the Settlement Fund in an amount to be awarded by the Court. Class Counsel will apply to the Court on behalf of themselves and other counsel for members of the Class for an award of Attorneys' Fees and Costs. The Parties have not discussed and Defendant has not taken any position on Class Counsel's anticipated application.¹ The Administrator shall disburse the amount of Attorneys' Fees and Costs awarded by the Court to Class Counsel promptly after Defendant's funding of the Escrow Account, and all such amounts will be paid from the Settlement Fund. If the Settlement Agreement does not for any reason

¹ For avoidance of doubt, Defendant may oppose all or part of Class Counsel's Fee and Cost application should it ultimately wish to do so.

become final or effective or is otherwise rescinded, withdrawn, or abrogated before the Effective Date, or if the amount of Attorneys' Fees and Costs is for any reason reduced by Order of the Court, Class Counsel shall make an appropriate refund or repayment of such funds to the Escrow Account within thirty (30) days. Jason L. Lichtman shall have the authority to determine and make an allocation of Attorneys' Fees and Costs to any counsel representing any member of the Class who claims an entitlement to share in any fees or costs approved by the Court. Any disputes regarding such allocation shall be resolved by the Court and shall not be considered a basis for withdrawal from the settlement. Defendant and Defendant's Counsel shall have no liability for any disputes regarding the allocation of Attorneys' Fees and Costs among Class Counsel and any other counsel representing any member of the Class, and Class Counsel or any other counsel representing any member of the Class shall indemnify Defendant and Defendant's Counsel to the extent Defendant or Defendant's Counsel incurs costs related to any such disputes unless Defendant voluntarily involves itself in such disputes. Class Counsel and any other counsel representing any member of the Class shall likewise indemnify Defendant and Defendant's Counsel to the extent any disputes arise regarding taxation of any proceeds of Attorneys' Fees and Costs.

B. Service Awards for Plaintiffs

Should the Eleventh Circuit or the Supreme Court modify existing law on class representative service awards, Class Counsel shall have the right to apply to the Court for service awards for Plaintiffs, in recognition for the their work on behalf of the class, subject to limitations imposed by the Federal Rules of Civil Procedure and the schedule for seeking approval of this Settlement.

Should such a change in the law occur before the deadline to file an award of Attorneys' Fees and Costs, Class Counsel may apply for such service awards from the Court, payable from the Settlement Fund.

Should such a change in the law occur after the deadline to file an award of Attorneys' Fees and Costs, Class Counsel may apply for such service awards from the Court, payable from any awarded Attorneys' Fees and Costs.

Should such a change in the law occur after the entry of the Final Order and Judgment Class Counsel may apply for such Service Awards from the Court through a motion filed under Fed. R. Civ. P. 59(e) or 60(b)(6), if such a motion is otherwise permissible under the Federal Rules of Civil Procedure. Such a motion will seek no other relief from the Final Order and Judgment than the authorization to pay service awards from any awarded Attorneys' Fees and Costs.

The Class Notice will inform the Settlement Class of the possibility that Class Counsel may seek service awards for Plaintiffs, and of the amounts of such awards that may be sought.

VI. SETTLEMENT APPROVAL PROCESS

A. Preliminary Approval of Settlement

Promptly after execution of the Settlement Agreement, Class Counsel will present the Settlement Agreement to the Court, along with a motion requesting that the Court issue a Preliminary Approval Order substantially in the form attached as **Exhibit 1**, which will include, among other things:

- A finding that the Court will likely be able to approve the Settlement under Fed. R. Civ. P. 23(e)(2);
- A finding that the Court will likely be able to certify the Class for settlement purposes;
- Approval of the Class Notice;

- A direction that each potential member of the Class who wishes to be excluded from the Settlement Class must respond to the Class Notice in writing in accordance with the instructions set forth in the Class Notice and that their responses must be received by the date set forth in the Preliminary Approval Order;
- A finding that the Class Notice constitutes the best practicable notice under the circumstances, including individual notice to all Class Members who can be identified with reasonable effort, and constitutes valid, due, and sufficient notice to Class Members in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution;
- A direction that any Class Member who does not properly and timely request exclusion from the Class will be bound by the Final Approval Order and Final Judgment;
- The scheduling of a Fairness Hearing;
- A direction that the Settlement Administrator shall provide the Opt Out List to the Court and to Defendant's Counsel and Class Counsel no less than twenty-one (21) days before the Fairness Hearing. If further requests for exclusion be received after that date, the Settlement Administrator shall provide an updated Opt Out List no later than nine (9) days after providing the first Opt Out List;
- A direction that Class Counsel shall file a motion for Attorneys' Fees and Costs at least thirty (30) days prior to the date set forth in the Preliminary Approval Order as the deadline for the objections, and any supplemental brief in support of final approval of the Settlement Agreement no later than seven (7) days prior to the Fairness Hearing;
- A direction that any member of the Settlement Class who wishes to object to the proposed Settlement, the proposed Final Approval Order and Final Judgment, or the motion for Attorneys' Fees and Costs must file and serve such objections no later than the date set forth in the Preliminary Approval Order, which shall be approximately twenty-four (24) days before the Fairness Hearing, together with copies of all papers in support of his or her position.

B. Response to Notice

1. Objections to Settlement

Any member of the Settlement Class who intends to object to this Settlement Agreement or the Settlement contained therein must, by the date specified in the Preliminary Approval Order

and recited in the Class Notice, file any such objection with the Court, and provide copies of the objection, by U.S. Mail, FedEx, UPS, or email to:

Jason L. Lichtman
Sarah D. Zandi
Lieff Cabraser Heiman & Bernstein, LLP
250 Hudson St., 8th Floor
New York, NY 10013
jlichtman@lchb.com
szandi@lchb.com

and

Peter Starr
King & Spalding LLP
1180 Peachtree St. NE
Suite 1600
Atlanta, GA 30303
pstarr@kslaw.com

Any objection to the Settlement Agreement must be individually and personally signed by the member of the Settlement Class submitting it. If the member of the Settlement Class is represented by counsel, the objection must also be signed by such counsel. Any objection must include:

- The case name and number of the Action;
- The objecting member of the Settlement Class's full name, address, and telephone number;
- Affirmation that the objector is a member of the Settlement Class;
- A written statement of all grounds for the objection, accompanied by any legal support for the objection, and a statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- Copies of any papers, briefs, or other documents upon which the objection is based;
- The name, address, email address, and telephone number of every attorney representing or assisting the objector; and

- A statement indicating whether the objector or his or her counsel intends to appear at the Fairness Hearing and, if so, a list of all persons, if any, who will be called to testify in support of the objection.

Any Class Member who fails to object to the Settlement in the manner described in this Agreement, or who otherwise fails to comply with the requirements of this Section shall be foreclosed from seeking any adjudication or review of the Settlement by appeal or otherwise.

2. Request for Exclusion

Any Class Member who wishes to be excluded from the Class and to become an Opt Out must submit a request for exclusion to the Settlement Administrator at the address specified in the Class Notice by the date specified in the anticipated Preliminary Approval Order and recited in the Class Notice. To be effective, the request for exclusion must be sent via First Class U.S. Mail to the address specified in the Class Notice and:

- Include the Class Member's full name, address, and telephone number;
- Affirm that the person is a member of the Settlement Class;
- Explicitly and unambiguously state his, her, or its desire to be excluded from the Settlement Class in *Story et al. v. Heartland Payment Systems, LLC*, No. 3:19-cv-724 (M.D. Fla.); and
- Be individually and personally signed by the Class Member.

Any Class Member who fails to submit a timely and complete request for exclusion sent to the proper address shall be subject to and bound by this Settlement and every order or judgment entered pursuant to this Settlement. Any purported request for exclusion or other communication sent to such address that is unclear or internally inconsistent with respect to the Class Member's desire to be excluded from the Settlement Class will be deemed invalid unless determined otherwise by the Court. Requests for exclusion can only be submitted on behalf of a particular Class Member. For example, mass opt outs and class requests for exclusion that are not signed by

each Class Member in the manner described above shall not be permitted. Requests for Exclusion signed only by counsel or other representative shall also not be permitted.

Any communications from Class Members (whether styled as an exclusion request, an objection, or a comment) as to which it is not readily apparent that the Class Member meant to exclude himself, herself, or itself from the Class will be evaluated jointly by Class Counsel and Defendant's Counsel, who will make a good faith evaluation, if possible, of the Class Member's intentions. Any uncertainties about whether a Class Member is requesting exclusion from the Settlement Class will ultimately be resolved by the Court.

The Settlement Administrator will maintain a list of all Opt Outs. The Settlement Administrator shall report the names and addresses of all such entities and natural persons requesting exclusion—the Opt Out List—to the Court, Class Counsel, and Defendant's Counsel no less than twenty-one days prior to the Fairness Hearing, and the Settling Parties will request that the Court attach this Opt Out List as an exhibit to the Final Order and Judgment.

C. Fairness Hearing

On the date set forth in the anticipated Preliminary Approval Order, a Fairness Hearing will be held at which the Court will: (1) decide whether to approve the Settlement Agreement as fair, reasonable, and adequate; (2) decide whether to approve Class Counsel's motion for Attorneys' Fees and Costs; and (3) decide whether to certify the Settlement Class. The Settling Parties will request that the Court hold the Fairness Hearing approximately twenty-four (24) days after the deadline for submitting objections and requests for exclusion.

D. Final Approval Order and Final Judgment

If the Court grants final approval to this Settlement Agreement, Class Counsel will request that the Court issue a Final Approval Order and Final Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) and ordering the following:

- Certifying the Settlement Class;
- Approving the Settlement as fair, reasonable, and adequate as it applies to the Settlement Class;
- Declaring the Settlement to be binding on the Settling Parties and Settlement Class;
- Dismissing on the merits and with prejudice the Action;
- Forever discharging the Released Parties from all Released Claims;
- Indicating the amount of Attorneys' Fees and Costs to be awarded to Class Counsel; and
- Providing that all Class Members who did not Opt Out be permanently enjoined from commencing or prosecuting any action, suit, proceeding, claim, or cause of action asserting the Released Claims in any court or before any tribunal.

E. Dismissal of New Jersey Action

Within five (5) days after the Effective Date, Class Counsel shall cause the New Jersey Action to be dismissed with prejudice, with each party to bear its own fees and costs, under Federal Rule of Civil Procedure 41(a)(1)(A)(i).

F. Withdrawal From Settlement**1. Withdrawal Rights of Any of the Settling Parties**

Any of the Settling Parties shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if any of the following occurs:

a. Any objections to the proposed Settlement are sustained and such objection results in Court-ordered changes to the Settlement Agreement that the withdrawing party, in its sole discretion, deems to be material;

b. Any attorney general is allowed to intervene in the action and such intervention results in Court-ordered changes to the Settlement Agreement that the withdrawing party, in its sole discretion, deems to be material;

c. The preliminary or final approval of the Settlement Agreement is not obtained without modification to the proposed preliminary approval order attached as **Exhibit 1** to this Settlement Agreement or the proposed final order to be filed in support of final approval, and any modification to such orders requested or stated by the Court as a condition for approval is not agreed to by the withdrawing party;

d. Entry of the Final Order and Judgment described in this Settlement Agreement is reversed or modified by an appellate court in a manner that the withdrawing party, in its sole discretion, deems to be material.

Defendant may also terminate the Settlement if opt-out requests are submitted by five (5) percent or more of the individuals that, absent a request for exclusion, would be Class Members. Defendant must exercise this right, if at all, within fourteen (14) days of receiving from the Settlement Administrator the identity of all individuals who have submitted valid requests for exclusion.

For the purposes of this Section, any reduction in the amount of Attorneys' Fees and Costs requested shall not be deemed a material change to the Settlement Agreement.

2. Procedures for Withdrawal

The Settling Parties must follow the following procedures in order to withdraw from the Settlement: To withdraw from the Settlement Agreement, the withdrawing party must provide written notice of withdrawal to the other party's lead counsel and to the Court.

In the event either party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Action, and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Settling Parties, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law, and shall not be admitted into evidence or otherwise used in any manner for any purpose, and all parties to the Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court. Without limiting the foregoing, this Settlement Agreement and the fact of the Settlement shall not be used or relied upon in this or any other proceeding as evidence of the suitability of Plaintiffs' claims, or any claims related to Program Fees, for class treatment under Fed. R. Civ. P. 23 or any other rule or statute. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

VII. RELEASED CLAIMS

The Settling Parties agree to the following Release, which shall take effect upon the Effective Date:

A. Release

In consideration of the Settlement, Plaintiffs and each member of the Settlement Class, on behalf of themselves and any other legal or natural persons who may claim by, through, or under them, agree to fully, finally, and forever release, relinquish, acquit, and discharge any and all Released Claims against the Released Parties.

In connection with this Settlement Agreement, Plaintiffs and members of the Settlement Class acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action or the Release. Nevertheless, it is the intention of Class Counsel, Plaintiffs, and the members of the Settlement Class in executing this Settlement Agreement to fully, finally, and forever settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Action.

Plaintiffs expressly understand and acknowledge, and all Plaintiffs and members of the Settlement Class will be deemed by the Final Order and Judgment to acknowledge and waive, Section 1542 of the Civil Code of the State of California, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs and members of the Settlement Class expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent to Section 1542, to the fullest extent they may lawfully waive such

rights. The Settling Parties acknowledge that the acknowledgment and waiver of Plaintiffs' and the Settlement Class Members' rights under Section 1542 and other similar state statutes is a material aspect of the Settlement.

Defendants release Plaintiffs and Class Counsel from any potential claims, counter-claims, or other relief (including the ability to seek a bill of costs under the Federal Rules of Civil Procedure) arising from the Action or the New Jersey Action, including any potential liability for payment of Defendant's attorneys' fees and expenses incurred in defending the Action or the New Jersey Action.

B. Representations and Warranties

Class Counsel represent and warrant that the persons they represent are the sole and exclusive owners of all claims that they are releasing under this Settlement Agreement. Class Counsel further represent and warrant that the persons they represent have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned, or encumbered any right, title, interest, or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds, or value under the Action and that Plaintiffs and Settlement Class Members are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds, or values under the Action.

Without in any way limiting its scope, and, except to the extent otherwise specified in the Settlement Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, attorneys' liens, costs, expert fees, consultant fees, interest, litigation fees or costs, or any other fees, costs, and/or disbursements incurred by any attorneys, Class Counsel, Plaintiffs, or the Settlement Class who claim to have provided assistance or legal services to the

Class or any member of the Class relating in any way to the Action or the New Jersey Action or the claims asserted in this Action or the New Jersey Action.

Plaintiffs and Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Approval Order and Final Judgment entered by the Court.

VIII. MISCELLANEOUS PROVISIONS

A. Effect of Exhibit

The exhibit to this Settlement Agreement is an integral part of the Settlement and is expressly incorporated and made a part of this Settlement Agreement.

B. No Admission

This Settlement Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or any admissions by Defendant of any claim or allegation made in any action or proceeding against Defendant. Nor shall it constitute, or be construed as, any admission or concession by Defendant that the Court's orders in the Action are correctly decided. This Settlement Agreement shall not be offered or be admissible in evidence against Defendant or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Defendant disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind and, except for purposes of this Settlement, disputes that this case is properly maintained as a class action. Defendant has agreed to enter into this Agreement and pay an amount up to the Settlement Amount to avoid the further expense, risk, and distraction of

burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded, if applicable, as a full and complete defense to, and may be used as the basis for an injunction against, if applicable, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

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. Both Parties and their counsel agree that they will not issue a press release regarding this Settlement, but are free to respond to any press inquiries, if any, or otherwise disclose the existence and terms of the Settlement on their firm websites or in submissions to courts or other adjudicative bodies in connection with later attempts to be designated as class counsel. In the event of any disclosure by either Party or its counsel or affiliates, as contemplated by this paragraph, comment regarding this Settlement shall be consistent with the terms of the Settlement Agreement, including that the Settlement does not constitute an admission of liability or responsibility, will not embellish the terms of the Settlement, and will otherwise not criticize or disparage the opposing Party or its counsel. By way of example, description of the settlement as an excellent result for the class shall not be considered disparagement of Heartland or its counsel.

C. Entire Agreement

This Settlement Agreement represents the entire agreement and understanding among the Settling Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Settlement Agreement. The Settling Parties acknowledge,

stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of any provisions of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of the Settlement Agreement is sought.

D. Counterparts

This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

E. Arm's-Length Negotiations

The Settling Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length, and under the supervision of a mediator, Hunter Hughes. All terms, conditions, and exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Settling Parties in entering into this Settlement Agreement. All Settling Parties, through counsel, have participated in the drafting of this agreement and it is not to be construed in favor of or against any of the Settling Parties.

F. Dispute Resolution

Any dispute, challenge, question, or the like relating to this Settlement Agreement (other than those which this Settlement Agreement provides shall be resolved otherwise) shall be raised first with the Mediator and, if not resolved by agreement, heard only by this Court.

G. Continuing Jurisdiction

The Court shall retain continuing and exclusive jurisdiction over the parties to this Settlement Agreement, including all Class Members, for the purpose of the administration and enforcement of this Settlement Agreement.

H. Choice of Law

This Settlement Agreement and any amendments thereto shall be governed by and interpreted according to the law of the State of Florida notwithstanding its conflict of law provisions.

I. Binding Effect of Settlement Agreement

This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their representatives, heirs, successors, and assigns.

J. Nullification

In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions only if Defendant and Class Counsel mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

K. Extensions of Time

The Settling Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further notice to Class Members (subject to Court approval as to Court dates).

L. Cooperation

The Settling Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use their best

efforts to effect the prompt consummation of this Settlement Agreement and the proposed Settlement.

M. Service or Notice

Whenever, under the terms of this Settlement Agreement, a person is required to provide service or written notice to Defendant or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Settling Parties in writing:

As to Plaintiffs:

Jason L. Lichtman
Sarah D. Zandi
**LIEFF CABRASER HEIMANN &
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Brian Warwick
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Class Counsel

As to Defendant:

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Laura Harris
KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036
Tel: (212) 790-5360
lharris@kslaw.com

N. Authority to Execute Settlement Agreement

Each counsel or other person executing this Settlement Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.