
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

SHARON HUBBARD, Individually and On §
Behalf of All Others Similarly Situated, §

Plaintiff, §

versus §

CIVIL ACTION NO. 1:07-CV-044

A-1 LEASING, LLC, and §
BOND CORPORATION, §

Defendants. §

ORDER PRELIMINARILY CERTIFYING CLASS FOR SETTLEMENT PURPOSES ONLY, APPOINTING LEAD COUNSEL FOR THE CLASS, DIRECTING ISSUANCE OF CLASS NOTICE TO THE CLASS, AND SCHEDULING FAIRNESS HEARING

On this day, came on to be heard, the parties’ Joint Motion for Preliminary Approval of Stipulation of Settlement and Entry of Hearing Order (#98) filed by Sharon Hubbard (“Plaintiff”) and Defendants A-1 Leasing, LLC (“A-1”), and Bond Corporation (“Bond”) (collectively, the “A-1 Defendants”).

WHEREAS on January 24, 2007, the following action was filed by Plaintiff, Civil Action No. 1:07-CV-044 in the United States District Court for the Eastern District of Texas, Beaumont Division, and styled *Sharon Hubbard, Individually and on Behalf of All Others Similarly Situated v. USA Merchant Systems, Inc., d/b/a USA Card Services, Inc., d/b/a StartUp Essentials, A-1 Leasing, LLC, and Bond Corporation*, alleging causes of action for various violations of the Texas Deceptive Trade Practices Act and Texas Business & Commerce Code § 35.53.

WHEREAS the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because this matter is brought as a class action; the amount in controversy exceeds \$5,000,000.00,

exclusive of interest and costs; and, on information and belief, at least one member of the class is a citizen of a state that is different from any defendant in this action.

WHEREAS the parties engaged in extensive written discovery, exchanging tens of thousands of pages of documents among themselves, as well as third party discovery, informal discovery, and depositions of Robert DeVleiger, Robert Harris, Brad Oliver, Kevin DeVoto, and William Carroll.

WHEREAS the parties engaged in motion practice concerning the appropriate scope and extent of discovery.

WHEREAS, pursuant to this Court's Order dated April 8, 2008, the parties held a mediation before Greg Thompson on April 29, 2008. Although no settlement was reached at that time, Plaintiff, A-1, and Bond continued to negotiate. After extensive negotiation, the parties entered into a Stipulation of Settlement, dated June 3, 2008 (together with exhibits thereto, the "Settlement Agreement"), in which the parties have agreed upon a settlement subject to the determination of the Court as to the fairness, reasonableness, and adequacy of the settlement, which, if approved, will result in the dismissal of all claims against the A-1 Defendants with prejudice.

WHEREAS the Court has carefully reviewed the Settlement Agreement, pleadings on file, and the parties' motion in support of the Settlement Agreement.

WHEREAS the Court has determined that it would be in the best interests of the parties and the proposed class to conduct hearings and other proceedings regarding the Settlement Agreement.

WHEREAS, on May 30, 2008, the Court severed Plaintiff's claims against the A-1 Defendants for purposes of giving notice of, conducting hearings on, and if approved, entering a final judgment as to the Settlement Agreement.

After reviewing the proposed settlement, proposed notice, the oral and written arguments, and the submissions of the parties, the Court is of the opinion that the settlement should be preliminarily approved and the class preliminarily certified for settlement purposes only, and that a hearing should be set for final determination of the fairness of the settlement and certification of the class for settlement purposes.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court finds that the prerequisites of Federal Rule of Civil Procedure 23 have been satisfied and that a class should be preliminarily certified for settlement purposes only. The class shall consist of all persons who were solicited by any of USA Merchant Systems, Inc., d/b/a USA Card Services, Inc., Startup Essentials and National Business Advisers; James One GP, LLC; James One Holdings, L.P., d/b/a USA Card Services, Inc., Startup Essentials, National Business Advisers, and Startup Essentials, LLC; Startup Essentials, L.L.C.; James One Merchant Solutions, L.P., d/b/a National Business Advisers and James One; or Robert Harris and entered into a lease with A-1 and/or Bond ("the Class"). The Court directs that, for the sole purpose of settlement, and without adjudication on the merits, this lawsuit shall proceed as a class action on behalf of the Class.

2. Plaintiff Sharon Hubbard is designated as representative of the Class for the purpose of seeking approval of the settlement. The law firm of Hubbard & Biederman, LLP, is hereby designated as lead counsel for the Class, and the Ferguson Firm is appointed liaison counsel.

3. The Settlement Agreement is preliminarily approved as fair, reasonable, and in the best interests of the Class, subject to the right of any Class Member to challenge the Settlement Agreement and to show cause, if any exists, why a Final Order and Judgment dismissing this lawsuit (based on the Settlement Agreement) should not be entered after due and adequate notice to the Class and a Fairness Hearing as ordered herein.

4. The Court finds that: (i) the proposed settlement resulted from extensive arm's length negotiation and was concluded only after Plaintiff's counsel had conducted extensive discovery, and (ii) the proposed settlement evidenced by the Settlement Agreement is sufficient to warrant (a) notice thereof to the members of the Class and (b) a full hearing on the settlement.

5. The Fairness Hearing will be held on August 11, 2008, at 2:00 p.m. to determine: (i) whether the proposed Class should be finally certified for settlement purposes; (ii) whether the settlement should be approved as fair, reasonable, and adequate and in the best interest of the Class; (iii) whether the lawsuit should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (iv) whether Class Members should be bound by the Release set forth in the Settlement Agreement; (v) whether Class Members should be subject to a permanent injunction that, among other things, bars Class Members from filing, commencing, prosecuting, or intervening in, or participating as class members in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances related thereto, in this lawsuit; and (vi) whether the request of Plaintiff's counsel for an award of attorneys' fees and expenses, and for an incentive award to Plaintiff, should be approved. The parties' supplemental submissions in support of the settlement, fee, and incentive award shall be filed with the Court by

August 4, 2008. The parties' responses, if any, to any objections or appearances filed pursuant to paragraphs 14-15 of this Order shall be filed with the Court by August 4, 2008.

6. No later than June 16, 2008, the A-1 Defendants shall send the notice and the accompanying materials substantially in the form filed with this Court as Exhibit B to the Settlement Agreement (the "Class Notice") by first-class mail, postage prepaid, to each Class Member's last known or most current address, as confirmed by a National Change of Address to be conducted pursuant to the provisions of the Settlement Agreement.

7. No later than July 30, 2008, the A-1 Defendants shall file with the Court a proof of mailing of the Class Notice.

8. Having considered, among other factors, (i) the various methods by which notice to members of the Class might be given and (ii) the stake of each member of the Class, the Court finds that notice given in the form and manner provided in this Order is the best practicable notice and is reasonably calculated, under the circumstances, to apprise members of the Class (a) of the pendency of this lawsuit, (b) of their right to exclude themselves from the proposed settlement, (c) that any judgment, whether favorable or not, will include all Class Members who have not been excluded, and (d) that any Class Member who has not been excluded may object to the settlement and, if he or she desires, enter an appearance either personally or through counsel. The Court further notes that the Class Notice provided in the Settlement Agreement is written in simple English and is readily understandable by members of the Class. In sum, the Court finds that the Class Notice is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to be provided with notice, and that it meets the requirements of due process, the Federal Rules of Civil Procedure, and the Rules of the Court.

9. The A-1 Defendants, in consultation with lead counsel, will administer and implement the terms of the proposed settlement by (i) mailing the Class Notice and (ii) carrying out such other responsibilities as are provided for in the Settlement Agreement or may be agreed to by the parties in this lawsuit.

10. Any member of the Class who wishes to be excluded from the Class may request exclusion by sending a written request for exclusion to the Clerk of the Court care of the A-1 Defendants, with copies to lead counsel and defense counsel, by first-class mail, postage prepaid, to the following addresses:

Class Settlement
c/o A-1 Leasing, LLC
P.O. Box 7166
Grand Rapids, Michigan 49510-7166

Stephen L. Hubbard
HUBBARD & BIEDERMAN, LLP
1601 Elm Street, Suite 1995
Dallas, Texas 75201

Steven M. Zager
AKIN GUMP STRAUSS HAUER & FELD LLP
1111 Louisiana Street, 44th Floor
Houston, Texas 77002-5200

11. The request for exclusion must include: (i) the name and caption of this lawsuit; (ii) the Class Member's full name, current address, and telephone number; (iii) a clear statement of intention to be excluded from the Class; and (iv) the Class Member's signature.

12. Any exclusion request must be postmarked no later than July 23, 2008. If the proposed settlement is approved, any member of the Class who has not submitted an appropriate, timely, written request for exclusion from the Class shall be bound by all subsequent proceedings, orders, and judgments in this lawsuit, even if he or she has pending or subsequently initiates

litigation encompassed by the Class Members' Release against the A-1 Defendants (or any of them) relating to the claims released in the Settlement Agreement.

13. Any Class Member who has not been excluded from the Class and who complies with the requirements of this paragraph may object to any aspect of the proposed settlement and/or the award of attorneys' fees and expenses and/or Plaintiff's incentive award, either on his or her own or through an attorney hired at his or her expense. Any Class Member who wishes to object to the proposed settlement must file with the Clerk of the Court, U.S. District Court, 300 Willow Street, Suite 104, Beaumont, TX 77701, with copies to lead counsel and defense counsel at the addresses specified above, a written statement of objection. Such statement shall include: (i) the name of this lawsuit; (ii) the Class Member's full name, current address, and telephone number; (iii) the basis for the objection, including all documents on which the objection is based, a list of all persons who will be called to testify in support of the objection, and a statement of all grounds for the objection accompanied by any legal support for such objection; (iv) a statement whether the Class Member intends to appear at the Fairness Hearing scheduled by the Court; (v) if the Class Member intends to appear at the Fairness Hearing through counsel and the identity of all attorneys representing the objector who will appear at the Fairness Hearing; and (vi) the Class Member's signature.

14. Objections will be considered by the Court only if they are received by the Court and all counsel no later than July 23, 2008. Any Class Member who does not timely file and serve a written objection pursuant to the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the settlement, and any objection that is not timely or validly made shall be barred.

15. Any Class Member who files and serves a timely and valid written objection may appear at the Fairness Hearing either in person or through counsel retained at the Class Member's expense. Class Members and/or their attorneys intending to appear at the Fairness Hearing must deliver to lead counsel for the Class and defense counsel and file with the Court, at the addresses specified above, no later than July 23, 2008, a notice of intention to appear, setting forth the case number, and the name, address, and telephone number of the Class Member (and, if applicable, the name of the Class Member's attorney). Any Class Member who does not timely and validly file and serve a notice of intention to appear pursuant to the terms of this paragraph shall not be permitted to appear, except for good cause.

16. Pending final determination of whether the settlement should be approved, and in aid of the Court's jurisdiction to implement and enforce the proposed settlement, the Plaintiffs, all members of the Class, and anyone who acts or purports to act on their behalf shall not institute or prosecute any action, and are hereby enjoined from instituting or prosecuting any action, that asserts Released Claims against any Released Party through the Effective Date of the Settlement Agreement, as those terms are defined in the Settlement Agreement.

17. Lead counsel for the Class shall make available to any Class Member during regular business hours, at the Class Member's expense, the documents exchanged by the parties during discovery in this lawsuit, and deposition transcripts and attached exhibits generated in this lawsuit. These documents shall be made available for review only at the offices of Hubbard & Biederman LLP. If a Class Member hires an attorney to represent him or her in connection with the review of such documents, the attorney must file a notice of appearance as specified above.

18. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the proposed settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement. In such event, the proposed settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, shall be used or referred to for any purpose whatsoever.

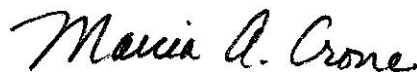
19. This Order shall be of no force or effect if the settlement does not become final, and shall not be construed or used as an admission, concession, or declaration by or against the A-1 Defendants or Plaintiff or Class Members of the validity of any claim or any actual or potential fault, wrongdoing, or liability whatsoever.

20. The Court reserves the right to approve the Settlement Agreement with such modifications as may be agreed by the parties and without requiring further notice to the Class Members.

21. The Court retains exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the enforcement of the Settlement Agreement.

IT IS SO ORDERED.

SIGNED at Beaumont, Texas, this 6th day of June, 2008.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE