

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFFREY REICHERT and GARY MOYER,
both individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

KEEFE COMMISSARY NETWORK, L.L.C.
d/b/a ACCESS CORRECTIONS; RAPID
INVESTMENTS, INC., d/b/a RAPID
FINANCIAL SOLUTIONS, d/b/a ACCESS
FREEDOM; and CACHE VALLEY BANK,

Defendants.

NO. 3:17-cv-05848-BHS

DECLARATION OF RICHARD E.
SPOONEMORE RE: MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT WITH
RAPID INVESTMENTS, INC. AND
CACHE VALLEY BANK

**Note on Motion Calendar:
August 22, 2023**

Richard E. Spoonemore declares under penalty of perjury and in accordance with
the laws of the State of Washington that:

1. I am one of the attorneys for Plaintiffs and Class in this action. Unless
otherwise stated, the facts in this declaration are based upon my personal knowledge.

2. The settlement with Rapid Investments, Inc. and Cache Valley Bank was
reached with the assistance of mediator Lou Peterson of Hillis Clark Martin & Peterson,
P.S. A formal all-day mediation session was originally held on January 11, 2023, which
did not result in a settlement. Mediator Peterson, however, conducted multiple follow-
up discussions with the parties which resulted in an agreement in principle being

1 reached on February 23, 2023. There were multiple offers and counteroffers proposed
2 during this lengthy mediation process.

3 3. The parties proceeded to draft a long-form settlement agreement. On
4 March 31, 2023, while these terms of the long-form agreement were still being discussed,
5 the plaintiff in an action pending in Nevada moved this Court to permit intervention to
6 object to the settlement. Dkt. No. 195. The motion was fully briefed and resolved by
7 Order of this Court on June 26, 2023. Dkt. No. 209.

8 4. The written agreement was finalized on June 14, 2023. After the agreement
9 was signed, the Defendants discovered that data previously provided to us in discovery
10 omitted information for a number of potential class members and the fees they paid.
11 Because this increased the amount of damages that were under discussion in the
12 mediation we insisted that Defendants pay an additional sum to the class based on this
13 new data. Extensive negotiations occurred between June 14 and July 27 which resulted
14 in an additional \$600,000 being made available to the class as a buffer in the event all
15 class claims could not be paid at 100%.

16 5. The settlement occurred after extensive discovery had been obtained from
17 Defendants. For purposes of negotiating the settlement amount, Class Counsel obtained
18 records from the Defendants that detailed all of the release cards issued to Class
19 Members, all of the transactions initiated by the use of a card, and all the fees associated
20 with transactions. All of these records were loaded into a database that permitted class
21 counsel to determine the number of cards issued during the class period, the number of
22 unique class members, and the total amount of fees charged to class members during the
23 class period. Class Counsel was well-positioned to negotiate a settlement and had
24 sufficient data, background, and experience to do so.

1 6. I have been involved in class action litigation for approximately thirty
2 years. Some of my class action experience was detailed in a declaration filed in support
3 of class certification. *See* Dkt. No. 71, ¶¶4, 6. As part of that litigation experience, I also
4 have extensive experience in class action claims processes including consumer class
5 actions, as well as class actions involving individuals that have been incarcerated. I
6 generally agree with the courts and commentators that estimate that a very good claims
7 return rate ranges from 5% to 8% where addresses or emails are available to provide
8 notice to a class member. The number drops rapidly where (1) addresses or emails are
9 not available, (2) the class members are transient or semi-transient, (3) the class period is
10 long, and (4) the class members have been incarcerated or otherwise interfaced with the
11 criminal justice system. The unfortunate reality is that these individuals are very
12 difficult to reach. Even if direct contact is possible, it can be difficult to have these
13 individuals submit claims even where the submission is a one-step process, such as
14 returning a postage pre-paid card, making a phone call, or clicking a link on a webpage.
15 Attached below is an excerpt from a spreadsheet that I created to estimate payouts from
16 the settlement amount using various assumptions concerning the claims rate. The
17 number of unique class members (approximately 2,877,860), total fees paid to
18 Defendants by those class members (approximately \$29,390,142.40) and average fee paid
19 by class member (approximately \$10.21) are all derived from data provided to us in
20 discovery by Defendants. The number of deliverable addresses, 650,000, is a best-case
21 estimate of the number of potentially valid addresses in the database. (Given the passage
22 of time, it is likely that this number will be lower.). With these assumptions, I have made
23 a spreadsheet that indicates the amount of money that would be claimed using various
24 assumptions on the response rate:

1	Number of Unique Class Members	2,462,680
2	Number of Addresses for Class Members	650,000
3	Number of Class Members to Receive Notice Other than Mail	1,812,680
4	Total Fees Paid by Class Members	\$29,390,142.40
5	Average Fee Charged	\$10.21
6	Total Unique Class Members	2,877,860
7	Response Rate of 10% for Class Members With Addresses (650,000 addresses estimated, 65,000 claims estimated)	65,000
8	And 3% Claims Response Rate for Class Members W/O	66,836
9	Number of Class Member Filing Claims	131,836
10	Total Amount of Fees Incurred by Class Members Filing Claims	\$1,346,043.52
	Total Amount of \$15 Awards	\$1,977,540.00

11 As indicated above, using the \$10.21 average fee charged, a blended response rate of
12 4.6% (consisting of an aggressive 10% for deliverable addresses and 3% for those who
13 get notice through other means) would permit claiming class members to receive their
14 full claim amount of \$15 (\$1,977,540) plus three times of the fees charged them by
15 Defendants ($3 \times \$1,346,043.52 = \$4,038,130.56$). This assumes counsel fees at 30%
16 (\$3,480,000), incentive awards of \$20,000 each (\$40,000), notice and administrative costs
17 of \$1.2M and prior notice expenses of \$700,000. A class member who sustained an
18 average amount of fees (\$10.21) would receive \$45.63.

19 7. Class counsel strongly supports this settlement. As detailed above, we
20 believe that it is likely that Class Members who make a claim will receive all of their fees
21 back, plus more, even after the payment of attorney fees, notice costs, administrative
22 costs and case contribution awards.

23 8. With respect to providing notice and payments to the class members, the
24 database provided by the Defendants in discovery contains both names with addresses,
25 and some names unattached to any contract information. Importantly, the data does
26 permit us to link a specific name to the fees incurred by that individual. As a result, we

1 can establish a claims process whereby class members need only verify their identity and
2 address. The amount of the claim can then be automatically calculated, and checks
3 mailed out. Class members can also object, opt-out, or comment on the settlement using
4 the same process.

5 9. I have had discussions with four firms (Epiq, who provided the original
6 class notice, BCM Group, RG2 Claims Administration and Kroll) that are able to provide
7 settlement notice and claims administration services to a nationwide class of this size. It
8 is clear that the cost of providing notice of the settlement and running the claims process
9 for over two million class members is incredibly expensive. The preliminary inquiries
10 elicited estimates well in excess of one million dollars. We expect to receive more refined
11 estimates and proposals within the next ten days. After our review of these estimates,
12 we will select a firm and propose it to the Court as the Claims Administrator for this
13 settlement. I anticipate that this work can be done within the next two weeks.

14 DATED: August 22, 2023 at Seattle, Washington.

15 /s/ Richard E. Spoonemore
16 Richard E. Spoonemore, WSBA #21833
17 Email: rick@sylaw.com
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