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Superior Court of California
County of Los Angeles

JUN 14 2019

Sherri R. Carter, Executive Officer/Clerk
By: Stephanie Chung, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JUSTIN LOVELACE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

GLOBAL PAYMENTS, INC. D/B/A/
HEARTLAND ECSI, and DOES 1-10,

Defendant.

Case No. BC682608

Class Action

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT, CONDITIONALLY
CERTIFYING CLASS, AND
APPOINTING CLASS COUNSEL**

Case Assigned for All Purposes to
~~Hon. Yvette M. Palazuelos~~

DANIEL J. BUCKLEY

1 WHEREAS, plaintiff Justin Lovelace (the “Settlement Class Representative”) and
2 defendant Educational Computer Systems, Inc. d/b/a Heartland ECSI, erroneously sued as Global
3 Payments Inc. d/b/a Heartland ECSI (“Heartland”), have agreed, subject to Court approval after
4 notice and a hearing, to settle this action upon the terms and conditions set forth in the Amended
5 Settlement Agreement (the “Agreement”) lodged with this Court; and

6 WHEREAS, for purposes of this Order, capitalized terms shall have the meaning ascribed
7 to them in the Agreement.

8 NOW, THEREFORE, based upon this Court’s review of the Agreement and all of the files,
9 records, and proceedings herein, and it appearing to the Court, upon preliminary examination, that
10 the Agreement and settlement appear fair, reasonable, and adequate, and within the range of
11 possible approval, and that a hearing should and will be held after notice to the Settlement Class
12 (as described in Paragraph 6 below) to confirm that the Agreement and settlement are fair,
13 reasonable and adequate and to determine whether the settlement should be approved and final
14 judgment entered in this action based upon the Agreement;

15 **IT IS HEREBY ORDERED THAT:**

16 1. **Preliminary Approval of Proposed Settlement.** The Agreement, including all
17 exhibits thereto, is preliminarily approved as fair, reasonable, and adequate and within the range of
18 possible approval. The Court finds that: (a) the Agreement resulted from extensive arm’s length
19 negotiations; and (b) the Agreement is sufficient to warrant notice thereof to Settlement Class
20 Members and a full hearing on the approval of the Settlement.

21 2. **Class Certification for Settlement Purposes.** Pursuant to California Code of
22 Civil Procedure Section 382 and California Civil Code Section 1781, the Court conditionally
23 certifies, for settlement purposes only, the following Settlement Class:

24 All Persons who paid a fee to Educational Computer Systems, Inc. d/b/a Heartland ECSI
25 for making an online payment between November 6, 2013 and December 31, 2018 and
26 who provided a California billing address when making the payment.

27 In connection with this conditional certification, the Court makes the following preliminary
28 findings:

1 Agreement and Class Counsel's application for an award of attorneys' fees and costs and incentive
2 award for the Settlement Class Representative and plaintiff Justin Lovelace (the "Fee
3 Application") shall be filed with the Court in accordance with the schedule set forth in Paragraph
4 1.1 below. The Settlement Hearing may be postponed, adjourned, or continued by order of the
5 Court without further notice to the Settlement Class. After the Settlement Hearing, the Court may
6 enter a settlement order and final judgment in accordance with the Agreement that will adjudicate
7 the rights of the Settlement Class Members with respect to the claims being settled.

8 **6. Class Notice.** Class Notice shall be provided by the Settlement Administrator
9 within forty (40) Days following entry of this Order (the "Notice Deadline"). Within fourteen (14)
10 Days after entry of this Order, Heartland shall provide the Settlement Administrator with the
11 Settlement Class List in a format reasonably requested by the Settlement Administrator.

12 **(a) E-Mailed Notice.** No later than ten (10) Days prior to the Notice Deadline,
13 the Settlement Administrator shall e-mail the E-Mailed Notice substantially in the form appended
14 to the Agreement as Exhibit C to all Settlement Class Members for whom an e-mail address was
15 provided. A reminder e-mail of the E-Mailed Notice shall be sent at least 7 Days after the Notice
16 Deadline. In providing the foregoing e-mail notice, the Settlement Administrator shall seek to
17 maximize the chances of messages being received and opened by sending e-mails on dates the
18 Settlement Administrator believes are optimal, by using sending methods likely to avoid spam
19 filters (such as sending e-mails in small batches), and by updating addresses on the Settlement
20 Class List using methods customary in the settlement administration industry, provided that such
21 methods are cost-effective and reasonable under the circumstances.

22 **(b) Mailed Notice.** No later than the Notice Deadline, the Settlement
23 Administrator shall mail the Mailed Notice substantially in the form appended to the Agreement
24 as Exhibit C to all Settlement Class Members for whom no e-mail address was provided, and to all
25 Settlement Class Members for whom the Settlement Administrator received a bounce back for the
26 E-Mailed Notice. The Settlement Administrator shall seek to maximize the effectiveness of the
27 mailing by conducting a National Change of Address search to update mailing addresses before
28 mailing. The Settlement Administrator shall promptly send Mailed Notices to any forwarding

1 addresses provided on mail returned to sender.

2 **(c) Internet Notice.** The Settlement Administrator shall establish an Internet
3 website for communications with Class Members. The website prominently shall display the
4 Internet Notice substantially in the form appended to the Agreement as Exhibit B. The website
5 shall also make available this Agreement, the toll-free number for the Settlement Administrator,
6 contact information for Class Counsel, and any other materials the Parties agree in writing to
7 include. The settlement website shall be made accessible by the date the E-Mailed Notice is e-
8 mailed, and shall remain accessible until the Judgment becomes Final and the Net Settlement
9 Amount has been fully distributed.

10 **7. Findings Concerning Class Notice.** The Court finds that the foregoing form of
11 class notice and the manner of its dissemination is the best practicable notice under the
12 circumstances and is reasonably calculated, under all the circumstances, to apprise Settlement
13 Class Members of the pendency of this action and their right to object to or exclude themselves
14 from the Settlement Class. The Court further finds that the class notice program is reasonable,
15 that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice and
16 that it meets the requirements of due process, California Rules of Court, rule 3.769, and California
17 Civil Code Section 1781.

18 **8. Exclusion from Settlement Class.** Each Settlement Class Member who wishes to
19 be excluded from the Settlement Class and follows the procedures set forth in this Paragraph shall
20 be excluded. Any potential member of the Settlement Class must mail a written request for
21 exclusion to: Settlement Administrator, P.O. Box 404110, Louisville, KY 40233-4110. All such
22 written requests must be postmarked by October 6, 2019. The exclusion request must:
23 (i) be signed by the class member; (ii) include the full name, address, and (if known) Heartland
24 account number(s) of the Person(s) requesting exclusion; and (iii) include a request to be excluded
25 from the Settlement Class in *Lovelace v. Global Payments, Inc.* No request for exclusion will be
26 valid unless all of this information is included, except for the Heartland account number.

27 **9.** All persons who properly make requests for exclusion from the Settlement Class
28 shall not be Settlement Class Members and shall have no rights with respect to the settlement,

1 should it be approved.

2 **10. Objections and Appearances.**

3 (a) **Written Objections.** Any potential member of the Settlement Class who
4 has not timely submitted a written request for exclusion from the Settlement Class, and thus is a
5 Settlement Class Member, may object to the fairness, reasonableness, or adequacy of the
6 Settlement or the Fee Application. Settlement Class Members may do so either on their own or
7 through counsel hired at their own expense. Any Settlement Class Member who wishes to object
8 to the Settlement or the Fee Application should mail a written objection to: Settlement
9 Administrator, P.O. Box 404110, Louisville, KY 40233-4110. All such written objections must be
10 postmarked by _____, 2019. Within one (1) Day of receipt, the Settlement
11 Administrator shall e-mail copies of any written objections to Class Counsel and counsel for
12 Heartland. Class Counsel shall collect and file the written objections with the Court concurrently
13 with the motion for final approval of the Settlement.

14 (b) **Appearance at Settlement Hearing.** Any Settlement Class Member who
15 submitted a written objection to the Settlement or the Fee Application may (but does not have to)
16 attend the Settlement Hearing and present his or her objections to the Court. Settlement Class
17 Members may attend the hearing even if they did not file a written objection. If any Settlement
18 Class Member appears at the Final Approval Hearing without having timely provided a written
19 objection to the Settlement Administrator, such Settlement Class Member shall provide his or her
20 full name, address, and Heartland account number, if known, to the Parties during the hearing.
21 The Court shall continue the Final Approval Hearing to allow the Parties to determine whether the
22 objector is a Settlement Class Member and respond in writing to the objection.

23 **11. Further Papers in Support of Settlement and Fee Application.** The Fee
24 Application shall be filed with the Court on or before October 6, 2019. Any motions in
25 support of final approval of the Settlement and any responses to written objections shall be filed
26 with the Court on or before October 11, 2019.

27 **12. Effect of Failure to Approve the Agreement.** In the event the Settlement is not
28 approved by the Court, or for any reason the parties fail to obtain a Final Judgment as

1 contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any
2 reason, then the following shall apply:

3 (a) All orders and findings entered in connection with the Agreement shall
4 become null and void and have no further force and effect, shall not be used or referred to for any
5 purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

6 (b) The conditional certification of the Settlement Class pursuant to this Order
7 shall be vacated automatically and void; no doctrine of waiver, estoppel or preclusion shall be
8 asserted in any litigated certification proceedings in the Action; and the Agreement and its
9 existence shall be inadmissible to establish any fact relevant to class certification or any alleged
10 liability of Heartland for the matters alleged in the Actions or for any other purpose;

11 (c) Nothing contained in this Order is, or may be construed as, any admission
12 or concession by or against Heartland or the Settlement Class Representative on any point of fact
13 or law; and

14 (d) Neither the terms of the Agreement nor any publicly disseminated
15 information regarding the Settlement, including, without limitation, the Class Notice, court filings,
16 orders or public statements, may be used as evidence for any purpose whatsoever. In addition,
17 neither the fact of, nor any documents relating to, Heartland's termination of the Settlement, any
18 failure of the Court to approve the Settlement or any objections or interventions may be used as
19 evidence for any purpose whatsoever.

20 **13. Stay of Proceedings.** All proceedings in this action are stayed until further order
21 of the Court, except as may be necessary to implement the Settlement or comply with the terms of
22 the Settlement. Pending determination of whether the Settlement should be granted final approval,
23 no party shall pursue in this Action any claims or defenses otherwise available to them in the
24 Action, and no Settlement Class Member, either directly, on a representative basis or in any other
25 capacity, will commence or prosecute against any of the Released Parties any action or proceeding
26 asserting any of the Released Claims.

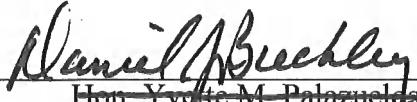
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IT IS SO ORDERED.

Dated: June 14, 2019



~~Hon. Yvette M. Palazuelos~~
Judge of the Superior Court
DANIEL J. BUCKLEY