

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 RACHEL HOCHSTETLER, et al.,

5 Plaintiffs,

6 v.

7 PACIFIC GATEWAY CONCESSIONS  
8 LLC,

9 Defendant.

Case No. 14-cv-04748-TEH

**ORDER GRANTING MOTIONS FOR  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT, FOR  
AWARD OF ATTORNEY'S FEES  
AND COSTS, AND FOR INCENTIVE  
PAYMENTS; JUDGMENT**

10 On October 5, 2015, Plaintiffs Rachel Hochstetler (“Hochstetler”) and Cirena  
11 Torres (“Torres”), on behalf of themselves and all others similarly situated, filed a Motion  
12 for Preliminary Approval of Class Action Settlement. Dkt. No. 37. Attached as Exhibit 1  
13 to the Motion for Preliminary Approval was the Parties’ Stipulated Settlement Agreement  
14 and Release (“Settlement” or “Agreement”).<sup>1</sup> Defendant Pacific Gateway Concessions  
15 LLC (“PGC”) did not oppose the motion. Dkt. No. 42.

16 On November 9, 2015, the Court held a hearing to discuss whether the Settlement is  
17 fair, reasonable, and adequate, as required under Federal Rule of Civil Procedure (“Rule”)  
18 23(e)(2). At the hearing, the Court ordered the parties to submit, on or before January 11,  
19 2016, supplemental briefing regarding the following aspects of their proposed Settlement:  
20 (1) the exclusion of Electronic Goods from the type of goods that may be purchased with  
21 the Gift Cards that comprise the \$800,000 Settlement Fund; (2) the limitation of one \$100  
22 Gift Card per Settlement Class member; (3) Class Notice through only the posting of a  
23 Short-Form Notice at each cash register in each of the PGC Included Stores; and (4) the  
24 charities selected to receive any residual funds from the Settlement Fund. The parties  
25 timely submitted a supplemental response, supporting declaration, and notices addressing  
26 these four concerns. Dkt. Nos. 46-49.

27  
28 <sup>1</sup> Capitalized terms in this Order shall have the same meaning as in the Agreement,  
unless indicated otherwise.

1           On February 2, 2016, the Court entered an Order granting preliminary approval of  
2 the Settlement, as partially modified by Dkt. Nos. 46-49. Dkt. No. 50. As part of the same  
3 Order, the Court approved a plan of notice to be directed to Settlement Class members and  
4 set deadlines by which Settlement Class members were to opt-out, object, or request to be  
5 heard at the final approval hearing. Dkt. No. 50, ¶¶ 10-17.

6           On May 6, 2016, Hochstetler and Torres, on behalf of themselves and on behalf of  
7 the Settlement Class, filed a Motion for Final Approval of Class Action Settlement. Dkt.  
8 No. 51. Also on May 6, 2016, Hochstetler, Torres, and Class Counsel filed a Motion for  
9 Award of Attorney’s Fees and Costs to Class Counsel and Incentive Payments to the Class  
10 Representatives. Dkt. No. 54. On June 6, 2016, the Court conducted a fairness (final  
11 approval) hearing. Dkt. No. 56.

12           Having carefully considered all submissions and arguments presented, IT IS  
13 **HEREBY ORDERED, ADJUDGED, and DECREED** that:

14           1.       The Court **GRANTS** final approval of the proposed Settlement upon the  
15 terms and conditions set forth in the Agreement (as partially modified by the Parties’  
16 supplemental agreement (Dkt. Nos. 46-49) and the Court’s Order granting preliminary  
17 approval thereof (Dkt. No. 50)).

18           2.       The Court finds that the terms of the proposed Settlement are fair, adequate,  
19 and reasonable and comply with Rule 23(e).

20           3.       The Court orders that the following Settlement Class is certified for  
21 settlement purposes only:

22                   All consumers who, at any time during the period October 24,  
23 2012 to October 23, 2014, were provided an electronically  
24 printed receipt at the point-of-sale or transaction at any store  
25 operated by PGC or its affiliates listed on Exhibit A to the  
Agreement (“PGC Included Stores”), on which receipt was  
printed the expiration date of the consumer’s credit card or  
debit card.

26           The PGC Included Stores expressly exclude the stores listed on  
27 Exhibit B to the Agreement (“PGC Excluded Stores”), as these stores used a  
28 different point-of-sale system.

1           4.       The Court finds that, for settlement purposes only, the above-defined  
2 Settlement Class meets all of the requirements for class certification. The Court further  
3 finds that, for settlement purposes only, the requirements of Rule 23(a) and 23(b)(3) are  
4 satisfied and that: (a) the Settlement Class is ascertainable; (b) the members of the  
5 Settlement Class are so numerous that joinder is impracticable; (c) there are questions of  
6 law and fact common to the Settlement Class that predominate over any individual  
7 questions; (d) the Class Representatives' claims are typical of the claims of the Settlement  
8 Class; (e) the Class Representatives and Class Counsel have fairly, adequately, reasonably  
9 and competently represented and protected the interests of the Settlement Class throughout  
10 the litigation; and (f) a class action is superior to other available methods for the fair and  
11 efficient adjudication of the controversy.

12           5.       The Court hereby APPOINTS plaintiffs Hochstetler and Torres as the Class  
13 Representatives for the Settlement Class.

14           6.       The Court hereby APPOINTS attorney Chant Yedalian of Chant & Company  
15 A Professional Law Corporation as Class Counsel for the Settlement Class.

16           7.       The Court finds that the Settlement is the product of serious, informed, non-  
17 collusive negotiations conducted at arm's-length by the Parties and with the assistance of  
18 the Court-appointed mediator David M. Bluhm, Esq. In making these findings, the Court  
19 considered, among other factors, the potential statutory damages claimed in the lawsuit on  
20 behalf of Plaintiffs and members of the Settlement Class, Defendant's potential liability,  
21 the risks of continued litigation including trial outcome, delay and potential appeals, the  
22 substantial benefits available to the Settlement Class as a result of the Settlement, and the  
23 fact that the proposed Settlement represents a compromise of the Parties' respective  
24 positions rather than the result of a finding of liability at trial. The Court further finds that  
25 the terms of the Settlement have no obvious deficiencies and do not improperly grant  
26 preferential treatment to any individual member of the Settlement Class.

27           8.       The Court finds that the notice that has been provided to Settlement Class, as  
28 well as the means by which it was provided, including the Short-Form Notice, Full Notice,

1 and Claim Form, attached as Exhibits D, E, and C, respectively, to the Agreement, all of  
2 which the Court previously approved, constitutes the best notice practicable under the  
3 circumstances and is in full compliance with the United States Constitution, the  
4 requirements of due process, and Rule 23. The Court further finds that such notice fully  
5 and accurately informed Settlement Class members of all material elements of the lawsuit  
6 and proposed class action Settlement, of each member's right to be excluded from the  
7 Settlement, and each member's right and opportunity to object to the Settlement and be  
8 heard at the fairness (final approval) hearing.

9 9. The Court finds that the manner and content of the notice of Settlement was  
10 in conformity with this Court's previous Orders.

11 10. The Court finds that zero Settlement Class members timely requested  
12 exclusion from the Settlement.

13 11. The Court finds that zero Settlement Class members timely objected to the  
14 Settlement.

15 12. The Court finds that zero Settlement Class members timely requested to  
16 appear or be heard at the final approval hearing.

17 13. All Settlement Class members who did not timely exclude themselves from  
18 the Settlement are bound by the Agreement, including the releases contained in paragraphs  
19 16 and 17 of the Agreement.

20 14. The Court hereby directs the Parties to effectuate all terms of the Settlement  
21 and the Agreement.

22 15. The Court finds that \$200,000 in fees and costs to Class Counsel is  
23 reasonable under both the percentage of the total settlement approach and, alternatively,  
24 based upon Class Counsel's lodestar. The Court finds that the \$550 hourly rate of Class  
25 Counsel Chant Yedalian is reasonable based upon his qualifications, skills, and experience.

26 16. The Court hereby APPROVES Class Counsel's request for an award of  
27 \$200,000 in reasonable attorney's fees and costs to Class Counsel Chant Yedalian of Chant  
28 & Company A Professional Law Corporation. Defendant PGC shall make payment of this

1 award to Class Counsel pursuant to the terms of the Agreement.

2 17. The Court hereby APPROVES Plaintiffs' request for awards of \$5,000 each  
3 to the Class Representatives, Hochstetler and Torres, as an incentive (service) award to  
4 compensate them for their service as the representatives of the Settlement Class.  
5 Defendant PGC shall make payment of these awards to the Class Representatives pursuant  
6 to the terms of the Agreement.

7 18. If any residual funds from the Settlement Fund remain after payments are  
8 made to the Settlement Class members through the distribution of PGC Gift Cards, any  
9 and all such residual funds will be distributed to Consumers Union of the United States.

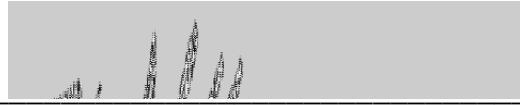
10 19. Each of the Parties is to bear its own fees and costs except as expressly  
11 provided in the Agreement or in this Order.

12 20. The Court hereby DISMISSES the Action WITH PREJUDICE in  
13 accordance with the terms of the Agreement; however, the Court shall retain continuing  
14 jurisdiction to interpret, implement, and enforce the Settlement, and all orders and  
15 judgment entered in connection therewith.

16 21. The Court directs the Clerk of the Court to enter this Order as a judgment  
17 (subject to the terms of paragraphs 19-20, above).

18  
19 **IT IS SO ORDERED.**

20  
21 Dated: 06/07/16



22 THELTON E. HENDERSON  
23 United States District Judge