

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARCHBANKS TRUCK SERVICE, INC., *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

COMDATA NETWORK, INC., *et al.*,

Defendants.

Civil Action No. 07-1078-JKG

Consolidated Case

DECLARATION OF ERIC L. CRAMER, ESQ. IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR CLASS CERTIFICATION IN LIGHT OF SETTLEMENT, APPOINTMENT OF CLASS COUNSEL, APPROVAL OF THE FORM AND MANNER OF NOTICE TO THE SETTLEMENT CLASS AND SETTING THE FINAL SETTLEMENT SCHEDULE AND DATE FOR A FAIRNESS HEARING

I, ERIC L. CRAMER, ESQ., declare as follows:

1. I am an attorney licensed to practice in the States of Pennsylvania and New York and, among other federal courts, the U.S. District Court for the Eastern District of Pennsylvania. I am a managing shareholder of the firm Berger & Montague, P.C. in Philadelphia, where I have been engaged in, among other things, prosecuting complex antitrust matters since 1995. I am one of the Interim Co-Lead Counsel for the Plaintiffs¹ and the proposed class and have been so since its inception in 2007. I submit this declaration, subject to Federal Rule of Evidence 408, in support of Plaintiffs' unopposed motion for class certification in light of settlement, appointment of class counsel, approval of the form and manner of notice to the settlement class and setting the

¹ The Named Plaintiffs are Marchbanks Truck Service, Inc., d/b/a Bear Mountain Travel Stop; Gerald F. Krachey d/b/a Krachey's BP South; Walt Whitman Truck Stop, Inc.; and Mahwah Fuel Stop.

final settlement schedule and date for a fairness hearing. I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. This lawsuit was filed as an antitrust class action brought on behalf of independent truck stops that accept specialized payment cards, issued by Comdata Network, Inc. n/k/a Comdata, Inc. (“Comdata”), known as “Over-the Road Fleet Cards” or “OTR Fleet Cards.” OTR Fleet Cards are used by over-the-road, long-haul fleets to purchase diesel fuel and other items at truck stops. Comdata has been the leading OTR Fleet Card issuer for the period relevant to this case. Ceridian Corporation n/k/a Ceridian LLC (“Ceridian”) is Comdata’s parent. Plaintiffs allege that Defendants² engaged in conduct that allowed Comdata and Ceridian to artificially inflate Comdata’s transaction fees to a proposed class of independent Truck Stops and other Retail Fueling Facilities for more than a decade.³ Plaintiffs alleged that as a result of Defendants’ anticompetitive conduct, members of the Settlement Class paid supracompetitive transaction fees to Comdata for processing transactions involving Comdata’s OTR Fleet Cards.

3. The Parties’ settlement follows a thorough pre-filing investigation, years of active litigation, far-reaching discovery, extensive motion practice, and hard-fought negotiations. Here,

² Defendants are Comdata, Ceridian, and certain major chain truck stops, namely: (1) Pilot Travel Centers LLC and Pilot Corporation (collectively “Pilot Defendants” or “Pilot”); (2) TravelCenters of America LLC and its wholly owned subsidiaries TA Operating LLC f/k/a TA Operating Corporation d/b/a TravelCenters of America, TravelCenters of America Holding Company LLC f/k/a TravelCenters of America, Inc., and Petro Stopping Centers, L.P. (collectively, “TA Defendants” or “TA”); and (3) Love’s Travel Stops & Country Stores, Inc. (“Love’s”).

³ The “Settlement Class” is defined as all owners and operators of truck stops or other retail fueling facilities with at least one physical location in the United States that paid Merchant Transaction Fees directly to Comdata on Comdata Proprietary Transactions and that were calculated based on a percentage of the face amount of the transaction during the Settlement Class Period [which runs from March 1, 2003 to the date of the Preliminary Approval Order] with the exception of Mobile Fuelers, Wilco-Hess locations, the Pilot Defendants, the TA Defendants, and Love’s and any of the parents, subsidiaries, affiliates, franchisees or employees of any of the Defendants. *See* Settlement Agreement, ¶ 2.

discovery has run its course, thereby allowing all Parties to determine the relevant and material facts underpinning their claims and defenses and the risks and benefits of continued litigation.⁴ The Parties took or defended over 70 depositions of various fact witnesses, third parties, and experts. These depositions were conducted throughout the country. The Parties issued subpoenas to and received documents from dozens of third parties. The Parties have exchanged, and reviewed, millions of pages of documents during the course of this case. In addition, Comdata produced approximately 2.3 terabytes of transaction data that the Parties have examined extensively with the aid of expert economists and analysts. Plaintiffs retained three testimonial experts, while Defendants retained four. Each issued multiple reports and was deposed.

4. The Parties have engaged in several rounds of motion practice. Defendants moved to dismiss Plaintiffs' Second Consolidated Amended Complaint.⁵ Several Defendants moved to dismiss Plaintiffs' Third Consolidated Amended Complaint.⁶ The Court denied both sets of motions. [Dkt. 388, 487.] Ceridian moved for summary judgment [Dkt. 602], and the parties exchanged several *Daubert* motions [Dkt. 584, 585, 588, 590, 594, 595]. The Parties had also fully briefed Plaintiffs' Motion for Class Certification. [Dkt. 552, 624, 625, 628, 630, 631, 670.]

⁴ The Parties' Definitive Master Settlement Agreement ("Settlement Agreement" or "Settlement Agmt.") is attached as Exhibit "A" to Plaintiffs' Memorandum of Law in Support of Their Motion for Class Certification in Light of Settlement, Appointment of Class Counsel, Approval of the Form and Manner of Notice to the Settlement Class and Setting the Final Settlement Schedule, and Date for a Fairness Hearing (the "Plaintiffs' Memorandum").

⁵ Defendants each separately moved to dismiss the Second Consolidated Amended Complaint on May 7, 2010 [Dkt. 233, 234, 235, 237, 238].

⁶ Defendants TA, Pilot, Love's and Ceridian each separately moved to dismiss the Third Consolidated Amended Complaint on May 6, 2011 [Dkt. 410, 413, 414, 419].

5. Throughout much of the course of this litigation, the Parties engaged in good faith, arm's-length negotiations. Plaintiffs made settlement demands in 2010. Defendants rejected those demands. In the summer of 2012, Plaintiffs, Comdata, and Ceridian participated in a mediation in New York City with former United States District Judge Layn Phillips, a well-known and widely respected mediator. That mediation failed to produce any settlements. By December 2013, fact discovery had closed, briefing on Plaintiffs' Motion for Class Certification was complete, and the Court had conducted a two-day hearing on the Parties' *Daubert* motions. On December 5, 2013, Plaintiffs and all Defendants participated in settlement talks that were facilitated by Professor Eric D. Green, a mediator of nationwide renown. On December 31, 2013, following additional discussions among counsel and Professor Green's recommendations, Plaintiffs entered into a memorandum of understanding ("MOU") with Comdata and Ceridian. An additional MOU between Plaintiffs and Love's was entered into on January 3, 2014. On January 9, 2014, the Court held a settlement conference with Plaintiffs and the remaining Defendants, TA and Pilot. During that conference, the Court, counsel for Plaintiffs and counsel for TA and Pilot engaged in further discussions about settlement terms. Following that conference, the TA and Pilot Defendants and Plaintiffs agreed that the TA and Pilot Defendants, respectively, would each pay \$10 million to the Settlement Class (*i.e.*, \$20 million combined) in exchange for releases and dismissal of Plaintiffs' claims. For the following two months, all Parties exchanged several drafts of the Settlement Agreement and vigorously negotiated its terms.

6. The Settlement Agreement provides that Defendants shall collectively pay \$130 million into a fund for the Settlement Class. In addition, the Settlement Agreement provides for valuable prospective relief in the form of significant and enforceable agreements by Comdata not

to enforce or to modify certain portions of its merchant agreements—pertaining to the very provisions that Plaintiffs had challenged in the case as anticompetitive. Moreover, as part of the settlement, Comdata has also committed that it will enter into a good faith negotiation with each of the main independent Truck Stop Buying Groups regarding, *inter alia*, Comdata’s Merchant Transaction Fees. Plaintiffs believe based on the theory of the underlying case that this prospective relief, taken together, will promote competition among OTR Fleet Cards and likely lead to lower Merchant Transaction Fees for Settlement Class Members.

7. Based on my nearly twenty years of experience prosecuting antitrust class actions, the relief afforded by the Settlement Agreement in this case is extraordinary. In his expert reports, Dr. Leitzinger had estimated overcharge damages to the proposed class as a whole as ranging from approximately \$350 million to \$390 million. *See* Corrected Expert Report of Dr. Jeffrey J. Leitzinger, ECF No. 558 (June 18, 2013), ¶ 12. In connection with the settlement, Plaintiffs asked Dr. Hal Singer, an economist who submitted two reports for the Plaintiffs in the litigation focusing on the link between the challenged contractual provisions and Merchant Transaction Fees, to estimate the value of the contractual changes portion of the prospective relief. *See* Expert Declaration of Dr. Hal J. Singer, dated March 4, 2014 (the “Singer Decl.”). A copy of the Singer Decl. is attached as Exhibit “C” to Plaintiffs’ Memorandum.

8. Based on his extensive work in the case, including analyzing thousands of documents and copious data, and on a separate analysis he did for purposes of evaluating the settlement, Dr. Singer has estimated that the changes Comdata has agreed to make to the challenged portions of its contracts as part of the settlement can be conservatively valued between \$260 million and \$491 million to the Settlement Class. *See* Singer Decl., ¶¶ 3, 20-29. Adding that range of values to the substantial \$130 million cash portion of the settlement,

Plaintiffs believe the cumulative value of the settlement to Settlement Class falls somewhere between \$390 and \$621 million—*a sum that exceeds the overcharges suffered by the Settlement Class due to the conduct challenged in the case.*

9. Plaintiffs' Class Counsel and their respective firms have decades of experience in complex class action litigation, with particular expertise in antitrust litigation. The attorneys representing the Settlement Class are experienced litigators in antitrust class actions who have negotiated numerous antitrust class action settlements.⁷ Based on my own nearly two decades of relevant experience, I believe that the monetary and prospective relief provided by the Settlement Agreement is substantial, and that the Settlement Agreement is in the best interests of the Settlement Class. In addition, I believe that the proposed settlement is fair, reasonable, and adequate.

10. Plaintiffs' Class Counsel have spent over \$6.5 million in out-of-pocket expenses during the nearly seven years this case has been pending, including most prominently, expert and consulting costs, but also costs associated with computer research, data storage, travel, court reporters, and other litigation-related costs. In addition, Plaintiffs' Class Counsel have devoted more than \$44 million in attorney time at their current billing rates to investigating, litigating, and settling this matter. Plaintiffs' Class Counsel will commit further resources as necessary to bring this case to a satisfactory end.

11. Although formal notice of the settlement has not yet issued, Plaintiffs' Class Counsel and certain of the Plaintiffs have spoken to several members of the Settlement Class

⁷ See websites for Berger & Montague, P.C. (www.bermontague.com), Quinn, Emanuel, Urquhart & Sullivan, LLP (www.quinnemanuel.com), and Lief, Cabraser, Heimann & Bernstein, LLP (www.lieffcabraser.com). These websites each highlight key experience and background for the law firms and lawyers involved in this matter. Should the Court wish any further background information, Plaintiffs' Class Counsel stand ready to provide it.

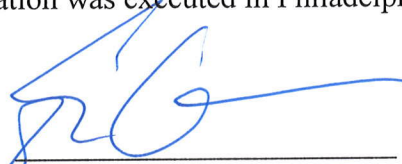
through various trade organizations in which such entities participate. These entities and persons have expressed unambiguous support for the settlement, the efforts of the Class Representatives, and Plaintiffs' Class Counsel.

12. Plaintiffs propose that Rust Consulting, Inc. ("Rust") be appointed as the Settlement Administrator to oversee the administration of the settlement, including disseminating notice to the Settlement Class, calculating each Settlement Class Member's *pro rata* share of the Net Settlement Fund, and distributing the settlement funds. Rust has over 35 years of experience in carrying out similar projects on behalf of businesses and governmental agencies. Rust has been appointed as settlement administrator in many antitrust class actions, including antitrust cases filed in this District. *See generally* the Declaration of Robin Niemiec, which is attached as Exhibit J to the Settlement Agreement. Plaintiffs have also proposed that Dr. Leitzinger and his economic consulting firm, Econ One, Inc., be appointed to work with Rust in the Settlement Administration Process, and in particular, to use their skills and knowledge gleaned from working on this case for six years to assist in both the provision of notice to the Settlement Class and the computation of the allocation amounts for each Claimant pursuant to the proposed Plan of Administration and Distribution.

13. Comdata possesses a database containing the names and addresses of all members of the Settlement Class, which information has been provided to the Plaintiffs. The members of the Settlement Class are sophisticated businesses, not individual consumers. Rust, with Econ One's assistance, will use this database to identify members of the Settlement Class to provide notice via first class mail. In addition, notice will be published in appropriate trade publications as agreed to by the Parties. Notice will also be provided via a website that will provide access to the Long Form Notice, sample Claim Forms, Orders of the Court relating to the settlement, and

such other information as Defendants and Plaintiffs' Class Counsel agree would inform the Settlement Class regarding the settlement. Together, these methods will provide the best notice practicable under the circumstances.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Philadelphia, Pennsylvania on March 4, 2014.



Eric. L. Cramer