

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

KENNETH BARLO, individually and on behalf)
of all others similarly situated,)

Plaintiff,)

v.)

Cause No. 2:08-CV-97-PRC

WITHAM SAV-A-STOP,)

Defendant.)

PRELIMINARY APPROVAL ORDER

This matter coming before the Court on a Joint Motion for Preliminary Approval of Class Action Settlement Agreement [DE 87], filed by the parties on December 15, 2009. Having considered the papers submitted to the Court and proceedings to date, the Court **GRANTS** the Joint Motion for Preliminary Approval of Class Action Settlement Agreement [DE 87],

FINDING AS FOLLOWS:

1. The parties have reached an agreement to settle all claims in the Lawsuit;
2. For purposes of settlement only, the Court preliminarily concludes that (a) Settlement Class A, Settlement Class B and Settlement Class C (collectively referred to as the “Settlement Classes”) are ascertainable and (as defined) are both sufficiently numerous such that joinder of all members of the Settlement Classes is impracticable; (b) there exist common questions of law and fact; (c) the claims of Plaintiff Kenneth Barlo are typical of the Settlement Class Members’ claims; (d) Plaintiff Kenneth Barlo is an appropriate and adequate representative for the Settlement Classes and his attorneys, Lance A. Raphael, Stacy M. Bardo, Allison Krumhorn, Paul F. Markoff, and George P.

Galanos, are adequate and qualified to serve as Settlement Class Counsel; (e) common questions of law and fact predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is the superior method for the fair and efficient adjudication of the claims of the Settlement Class Members;

3. The proposed settlement is within the range of fairness and reasonableness and meets the requirements for preliminary approval;

4. The notice to the Settlement Classes proposed in the Class Action Settlement Agreement and Release (“Settlement Agreement”) is the best practicable notice under the circumstances, is the only notice to the Class Members that is required and such notice satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B).

THEREFORE, IT IS HEREBY ORDERED:¹

A. That all defined terms contained herein shall have the same meanings as set forth in the Settlement Agreement executed by the parties and filed with this Court;

B. That, pursuant to Fed. R. Civ. P. 23, the Settlement Agreement is preliminarily approved;

1

If the Court does not enter the Final Approval Order or if the Final Approval Order does not become Final for any reason, this Preliminary Approval Order, as well as all other documents related to the Settlement Agreement, shall be deemed null and void ab initio; such documents shall be of no force or effect whatsoever (except as provided for in paragraphs 2.6(D), 2.8 and 2.11(E) of the Settlement Agreement); such documents shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Settlement Agreement shall remain subject to the provisions of Federal Rule of Evidence 408 and any similar applicable state law(s) or rule(s) of evidence; the parties shall be returned to their respective positions in the litigation and the Settlement Agreement, any negotiations, proceedings, or documents related to the Settlement Agreement, its implementation, or its judicial approval (as well as the fact of the Settlement Agreement and any acts or documents related to the Settlement Agreement or its implementation) shall not be construed as, or deemed to be evidence of, any admission or concession by either of the parties or any other person regarding any matter, including, without limitation, the absence or presence of liability, the absence or presence of damage, or the propriety or impropriety of class treatment. Except with respect to implementation or enforcement of its terms (including the releases contained therein), the Settlement Agreement, as well as all other documents related to the Settlement Agreement, shall not be asserted or introduced into evidence in connection with any other claim or lawsuit.

C. That, for purposes of this Settlement only, the following Settlement Classes are certified pursuant to Fed. R. Civ. P. 23(b)(3):

Settlement Class A:

All persons who received a receipt for a credit or debit card purchase inside any of the following Witham Sav-A-Stop stores between December 4, 2006 and June 4, 2008: 2847 165th St., Hammond, IN; 7452 Indianapolis Blvd., Hammond, IN; or 3205 45th Ave., Highland, IN.

Settlement Class B:

All persons who made a credit or debit card purchase inside the Witham Sav-A-Stop store located at 1111 165th St., Hammond, IN, between December 4, 2006 and June 4, 2008, and who received a receipt that displayed more than the last five (5) digits of the person's credit or debit card number.

Settlement Class C:

All persons who made a credit or debit card purchase at an outside gas pump at any Witham Sav-A-Stop store between December 4, 2006 and June 4, 2008, and who received a receipt that displayed more than the last five (5) digits of the person's credit or debit card number.

D. That, for purposes of this Settlement only, Lance A. Raphael, Stacy M. Bardo, Allison A. Krumhorn, Paul F. Markoff, and George P. Galanos are hereby appointed as Settlement Class Counsel;

E. That notice be implemented pursuant to the terms of the Settlement Agreement, and that Defendant shall submit, at least five (5) business days prior to the Fairness Hearing, a declaration affirming that notice has been so given;

F. That Settlement Class Members shall have 120 days from the date of this Order to submit a claim for a Settlement Credit, the procedure for which (including the

postmark deadline) is set forth in the Notice and in Claim Form A, Claim Form B, and Claim Form C, as applicable;

G. That Settlement Class Members shall have 120 days from the date of this Order to submit a request to opt out of the proposed Settlement Agreement, the procedure for which (including the postmark deadline) is set forth in the Notice, and Settlement Class Counsel and Defendant shall have until five (5) business days prior to the Fairness Hearing to respond to objections, if any; and

H. That an **in-person** Fairness Hearing on the fairness and reasonableness of the proposed Settlement Agreement shall be held before this Court on **July 15, 2010, at 9:00 a.m.** Settlement Class Members shall have the right to submit written objections to the Settlement and/or to appear at the hearing, as provided in the Settlement Agreement and Notice.

So ORDERED this 7th day of January, 2010.

s/ Paul R. Cherry
MAGISTRATE JUDGE PAUL R. CHERRY
UNITED STATES DISTRICT COURT

cc: All counsel of record