

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GAIL MEDEIROS, et al.,
Plaintiffs,
vs.

Case Nos. 2:15-cv-09093-JVS-AFM
8:12-cv-00885-JVS-RNBx
14-cv-05615-JVS-RNBx

HSBC CARD SERVICES, INC. and HSBC
TECHNOLOGY & SERVICES (USA),
INC.,
Defendants.

**FINAL APPROVAL ORDER AND
JUDGMENT**

TERRY J. FANNING, et al.,
Plaintiffs,
vs.

HSBC CARD SERVICES INC. and HSBC
TECHNOLOGY & SERVICES (USA),
INC.,
Defendants.

STEFAN O. LINDGREN,
Plaintiff,
vs.

HSBC CARD SERVICES, INC. AND HSBC
TECHNOLOGY & SERVICES (USA), INC.,
Defendants.

1 The Court having held a Final Approval Hearing on October 16, 2017, notice
2 of the hearing having been duly given in accordance with this Court's Order (1)
3 Preliminarily Approving Class Action Settlement, (2) Conditionally Certifying a
4 Settlement Class, (3) Approving Notice Plan and (4) Setting Final Approval Hearing
5 (the "Preliminary Approval Order"), and having considered all matters submitted to
6 it at the Final Approval Hearing and otherwise, and finding no just reason for delay
7 in entry of this Final Approval Order and good cause appearing therefore,

8 It is hereby ORDERED, ADJUDGED AND DECREED as follows:

9 1. The Settlement Agreement and Release dated August 25, 2016,
10 including its Exhibits (the "Agreement"), and the definition of words and terms
11 contained therein, are incorporated by reference and are used hereafter. The terms
12 and definitions of this Court's Preliminary Approval Order are also incorporated by
13 reference in this Final Approval Order.

14 2. This Court has jurisdiction over the subject matter of the Actions and
15 over the Parties, including all members of the Settlement Class certified for
16 settlement purposes in this Court's Preliminary Approval Order, as follows:

17 SETTLEMENT CLASS: All persons in California who
18 received a telephone call between March 23, 2009 and May
19 1, 2012 from or on behalf of HSBC Card Services Inc. and
20 whose call was recorded or monitored by or on behalf of
HSBC Card Services Inc. or HSBC Technology & Services
(USA) Inc.

21 3. The Court hereby finds that the Agreement is the product of arm's
22 length settlement negotiations between Plaintiffs and HSBC.

23 4. The Court hereby finds and concludes that Class Notice was
24 disseminated to persons in the Settlement Class in accordance with the terms of the
25 Notice Plan and the Agreement and that the Class Notice and its dissemination were
26 in compliance with this Court's Preliminary Approval Order.

27 5. The Court further finds and concludes that the Class Notice and claims
28 submission procedures set forth in the Agreement fully satisfy Rule 23 of the Federal

1 Rules of Civil Procedure and the requirements of due process, were the best notice
2 practicable under the circumstances, provided due and sufficient individual notice to
3 all persons in the Settlement Class who could be identified through reasonable effort,
4 and support the Court's exercise of jurisdiction over the Settlement Class as
5 contemplated in the Agreement and this Final Approval Order.

6 6. The Court hereby finally approves the Agreement and finds that the
7 terms constitute, in all respects, a fair, reasonable and adequate settlement as to all
8 Settlement Class Members in accordance with Rule 23 of the Federal Rules of Civil
9 Procedure. In doing so, the Court overrules the sole objection submitted to the
10 proposed settlement. The Court concludes that the total monetary value of the
11 settlement is fair, reasonable, and adequate given the risks posed by continuing
12 litigation and the amount offered in settlement; that the plan of distribution
13 reasonably distinguishes between and compensates class members on the basis of the
14 harms suffered; that the claims process was reasonable and necessary with respect to
15 those class members who may or may not have had a telephone conversation that
16 could have been recorded; and that there is no evidence of collusion.

17 7. The Court hereby finally certifies the Settlement Class for settlement
18 purposes. The Court finds for settlement purposes that the Actions satisfy all the
19 requirements of Rule 23 of the Federal Rules of Civil Procedure, as set forth in detail
20 in the Court's Order on Preliminary Approval. The Court specifically finds that it
21 was unnecessary to divide the Class into subclasses of individuals who were called
22 on cell phones as opposed to landlines, because there is no conflict or antagonism
23 between the two groups, both of whom would have been entitled to the same
24 statutory penalty had they prevailed at trial.

25 8. The Court hereby approves the plan of distribution for the Settlement
26 Fund as set forth in the Agreement. The Claims Administrator is hereby ordered to
27 comply with the terms of the Agreement with respect to distribution of Settlement
28 Awards, the Second Distribution and disposition of any Remaining Funds thereafter.

1 Should any Remaining Funds be distributed, the Court hereby approves the Rose
2 Foundation's Consumer Privacy Rights Fund as the *cy pres* recipient.

3 9. This Court hereby dismisses these Actions, with prejudice, without costs
4 to any party, except as expressly provided for in the Agreement.

5 10. As of the Effective Date, the Plaintiffs and each and every one of the
6 Settlement Class Members unconditionally, fully and finally release and forever
7 discharge the Released Parties from the Released Claims.

8 11. Plaintiffs and each and every Settlement Class Member, and any person
9 actually or purportedly acting on behalf of Plaintiffs or any Settlement Class
10 Member, are hereby permanently barred and enjoined from commencing, instituting,
11 continuing, pursuing, maintaining, prosecuting or enforcing any Released Claims
12 (including, without limitation, in any individual, class or putative class,
13 representative or other action or proceeding), directly or indirectly, in any judicial,
14 administrative, arbitral or other forum, against the Released Parties. In the event that
15 any provision of the Agreement or this Final Approval Order is asserted by HSBC as
16 a defense in whole or in part to any claim, or otherwise asserted (including, without
17 limitation, as a basis for a stay) in any other suit, action or proceeding brought by a
18 Settlement Class Member or any person actually or purportedly acting on behalf of
19 any Settlement Class Member(s), that suit, action or other proceeding shall be
20 immediately stayed and enjoined until this Court or the court or tribunal in which the
21 claim is pending has determined any issues related to such defense or assertion.
22 Solely for purposes of such suit, action or other proceeding, to the fullest extent they
23 may effectively do so under applicable law, Plaintiffs or any Settlement Class
24 Member irrevocably waive and agree not to assert, by way of motion, as a defense or
25 otherwise, any claim or objection that they are not subject to the jurisdiction of the
26 Court, or that the Court is, in any way, an improper venue or an inconvenient forum.
27 These provisions are necessary to protect the Agreement, this Final Approval Order
28

1 and this Court's authority to effectuate the Agreement, and are ordered in aid of this
2 Court's jurisdiction and to protect its judgments.

3 12. The Agreement (including any and all exhibits attached thereto) and any
4 and all negotiations, documents, and discussions associated with it, including but not
5 limited to any confirmatory discovery, will not be deemed or construed to be an
6 admission or evidence of any violation of any statute, law, rule, regulation or
7 principle of common law or equity, or of any liability or wrongdoing by HSBC, or
8 the truth of any of the claims. Evidence relating to the Agreement, including any
9 confirmatory discovery, will not be discoverable or used, directly or indirectly, in
10 any way, whether in these Actions or in any other action or proceeding, except for
11 purposes of demonstrating, describing, implementing or enforcing the terms and
12 conditions of the Agreement, the Preliminary Approval Order and/or this Final
13 Approval Order. No agreements, documents or statements made by or entered into
14 by any Party in connection with the Settlement may be used by Plaintiffs, any person
15 in the Settlement Class, HSBC or any other person to establish any defense to and/or
16 any of the elements of class certification, whether in the Action or in any other
17 proceeding.

18 13. If for any reason whatsoever this Settlement fails to become effective
19 for any reason, the certification of the Settlement Class shall be void and the Parties
20 and these Actions will return to the status quo as it existed prior to the Agreement,
21 and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings,
22 in response to any motion seeking class certification, any motion seeking to compel
23 arbitration or otherwise asserted at any other stage of these Actions or in any other
24 proceeding. Regardless of the reason, the money remaining in the Settlement Fund
25 (including accrued interest), less expenses and taxes incurred or due and owing and
26 payable from the Settlement Fund in accordance with the Agreement, shall be
27 returned to HSBC within 15 days of the event that causes the Agreement to not
28 become effective.

