

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

If you contracted with or through Heartland Payment Systems, Inc. for payment card processing services, you could get a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been proposed to end a class action lawsuit brought on behalf of merchants against Heartland Payment Systems, Inc. (“Heartland” or “Defendant”).¹ The lawsuit, referred to as *Rudel Corporation v. Heartland Payment Systems, Inc.*, Case No. 3:16-cv-02229-AETLHG (D.N.J.), contends on October 31, 2014 Heartland improperly increased its American Express Discount Fee in violation of the terms of its standardized agreement with merchants. Heartland denies the allegations.
- Under the settlement, if approved by the Court, Heartland will pay \$2,500,000 into a fund to be distributed to Merchants who processed with Heartland and were subject to an American Express Fee Adjustment in their October 2014 account statements. That adjustment retroactively implemented an increased American Express Discount Fee between July 1, 2014 and October 31, 2014 and set a new American Express Discount Fee for the period starting October 31, 2014.
- Eligible Merchants will receive a check. The amount of the check will differ for each Class member and will depend upon the amount of the merchant’s American Express Fee Adjustment in the October 31, 2014 statement. The Settlement includes a Plan of Allocation setting forth how each eligible class member’s payment will be calculated.
- The costs of notice and administration and, if approved by the court, the fees and expenses of the lawyers representing the class, and a service award to the class representative, will be paid from the settlement fund.
- The court has scheduled a hearing on January 16, 2018 in Trenton, New Jersey to decide whether to finally approve the settlement and other related matters.

Your legal rights are affected whether you act or don’t act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING	You will automatically be mailed a check and forfeit your right to sue Defendant for the claims being resolved by this settlement. If you do not deposit the check within 90 days of issuance, you will forfeit your right to sue Defendant for the claims being resolved by this settlement and the check will become stale.
ACCEPT THE BENEFITS OF THE SETTLEMENT	You will automatically be mailed a check and forfeit your right to sue Defendant for the claims being resolved by this settlement. The check must be deposited within 90 days.
EXCLUDE YOURSELF (ALSO CALLED OPTING OUT) FROM THE SETTLEMENT	If you ask to be excluded, you will not receive any benefits from the settlement, but you may be able to file your own lawsuit against Defendant for the same claims.
OBJECT	You may remain in the case and file an objection telling the court why you do not like the settlement or the request for attorneys’ fees, expenses, or the Case Contribution Award. If your objections are overruled, you will be bound by the settlement.

¹ In April 2016, Global Payments Inc. (“Global”) completed a merger with Heartland Payment Systems, Inc. with Heartland Payment Systems, LLC (“Heartland”) operating as the surviving entity (and as a subsidiary of Global). Heartland Payment Systems, LLC is the successor in interest by merger to Heartland Payment Systems, Inc. Plaintiff acknowledges that the conduct complained of in the Complaint occurred prior to Global’s acquisition of Heartland.

- These rights and options, and the deadlines to exercise them, are explained in this notice.
- The court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the court approves the settlement and after any appeals are resolved. Please be patient.

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BASIC INFORMATION

1. Why did I get this notice?

According to Heartland's records you contracted with Heartland for payment processing services and were charged an American Express Fee Adjustment in your October 31, 2014 account statement and/or were subject to a new American Express Discount Fee going forward from October 31, 2014.

The Court authorized this notice to inform you about the proposed settlement before the Court decides whether to approve the settlement and related relief. If the court approves the settlement and after any objections and appeals are resolved, a settlement administrator appointed by the court will mail you a check providing you with your share of the settlement benefits.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is this lawsuit about?

The case is known as *Rudel Corporation v. Heartland Payment Systems, Inc.*, Case No. 3:16-cv- 02229-AET-LHG (D.N.J.), and is pending in the United States District Court for the District of New Jersey. The merchant who sued is called the “Plaintiff,” and the company it sued, Heartland, is the “Defendant.”

Plaintiff contracted with Defendant to process payment card transactions. Plaintiff claims that on October 31, 2014 Heartland improperly increased its American Express Discount Fee in violation of the terms of its standardized agreement with merchants and subjected it to a new American Express Discount Fee going forward from October 31, 2014 without sufficient notice under the terms of the agreement. Plaintiff sued Defendant for breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. The lawsuit seeks to recover the amount of the American Express Fee Adjustment in the October 31, 2014 account statement as well as other relief. Defendant denies that it acted improperly and asserts it has no legal liability. The Court has not yet decided whether Plaintiff’s claims have merit.

3. Why is this a class action?

In a class action, one or more people or entities called “class representatives” sue on behalf of themselves and other people and entities with similar claims. All of these people and entities together are the “class” or “class members.” One court resolves the issues for all class members, except for those who exclude themselves from the class. A class action allows the claims of all class members to be more efficiently resolved than individual lawsuits and provides a remedy for class members whose individual damages on their own are not large enough to justify a lawsuit.

4. Why is there a settlement?

The court has not decided in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement. Settlements avoid the costs and uncertainty of a trial and related appeals, while providing immediate benefits to members of the settlement class. The class representative and the attorneys for the settlement class think the settlement is best for all class members. The parties arrived at the settlement after mediation and arms-length negotiations under the supervision of a retired federal judge.

WHO IS PART OF THE SETTLEMENT

5. How do I know if I am part of the settlement?

You are a member of the class and affected by the settlement if:

- You contracted with Heartland for payment processing services at any time between July 1, 2014 and October 31, 2014;
- You were subject to a new American Express Discount Fee going forward from October 31, 2014; and/or,
- You were charged an American Express Fee Adjustment in your October 2014 account statement.

If you are receiving this notice from the settlement administrator, Heartland’s records show you are a class member.

6. Are there exceptions to being included?

If you exclude yourself from the settlement, you are no longer part of the settlement class and will no longer be eligible to receive any of the settlement benefits. This process of excluding yourself is also referred to as “opting out” of the settlement.

THE SETTLEMENT BENEFITS

7. What does the settlement provide?

Heartland will pay \$2,500,000 into a settlement fund to pay: cash benefits to class members who do not exclude themselves from the settlement; the cost of notifying the class and administering the settlement; and, subject to the court’s approval, the fees and expenses of the lawyers who represent the class, and a service award to the class representative.

Class members who do not opt out will automatically receive a check in the amount to be determined by the settlement administrator, in the manner described below. Checks will be valid for 90 days and will become stale if not cashed within

90 days. The claims of class members who fail to cash their checks will be extinguished as if they had cashed their checks. Unclaimed settlement funds will revert to Heartland.

8. How much will my settlement payment be?

Class members will receive a check equal to their pro rata portion of the Net Settlement Amount. Net Settlement Amount means the Settlement Amount minus the total of (a) the amounts awarded by the Court for Class Counsel's fees and expenses; (b) the amount awarded by the Court for a Service Award to the Class Representative; (c) the total costs of notice and administration; and (d) any taxes paid or payable from the Settlement Fund. The percentage of the Net Settlement Amount each class member will receive equals the amount of the class member's American Express Fee Adjustment on its October 31, 2014 account statement divided by the total amount of the American Express Fee Adjustment on the October 31, 2014 account statements for all eligible Class members who have not excluded themselves from the Settlement.

The actual amount of your recovery will not be calculated until after final approval of the settlement and after all the necessary information is available, such as the number of class members who exclude themselves from the settlement and the amounts awarded by the court for attorneys' fees and expenses and a case contribution award.

9. When will I get the settlement benefits for which I am eligible?

The court will hold a hearing on January 16, 2018 to decide whether to approve the settlement. If the court approves the settlement, there may be appeals, which could take more than a year to resolve. Payments to class members will be made after the settlement is finally approved and any appeals or other required proceedings have been completed. Please be patient.

10. What am I giving up to get a settlement benefit or remain in the class?

Unless you exclude yourself from the settlement, you cannot sue Defendant or be part of any other lawsuit against Defendant about the issues this settlement resolves. You will also be bound by all of the court's decisions and the release contained in the settlement. The specific claims you will be giving up against Defendant are described in Section IX of the settlement agreement, which states in relevant part:

As of the Final Settlement Date, the Releasing Parties shall be deemed to have fully and irrevocably released and forever discharged Defendant and each of its present and former parents, subsidiaries, predecessors, successors and assigns, affiliates, and the present and former directors, officers, employees, agents, shareholders, members, partners, trustees, attorneys, advisors, consultants, and representatives of each of them (collectively the "Released Parties"), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that were or could have been alleged or asserted in the Action, that result from, arise out of, are based upon, or relate to Heartland's October 31, 2014 American Express Fee Adjustment and the subsequent increase of the American Express Discount Fee ("Released Claims").

Settlement Agreement at Section IX, Paragraph 53.

If you have any questions, you can talk to the lawyers representing the class, who are called "class counsel." Their names are listed below. You will not be charged to talk to class counsel. Or, you can, of course, talk to your own lawyer at your own expense if you have questions about what this means.

If you want to keep your rights to sue (or continue to sue) Defendant based on the claims this settlement resolves, you must take steps to exclude yourself from the settlement class (*see* Questions 11-13).

EXCLUDING YOURSELF FROM THE SETTLEMENT

11. How can I exclude myself from the settlement?

To exclude yourself from the settlement, or "opt out," you must send a letter by email or U.S. Mail that includes:

- The name of this proceeding (*Rudel Corporation v. Heartland Payment Systems, Inc.*);
- Your full name, position, address, and phone number;
- The words "Request for Exclusion" at the top of the document or a statement in the body of the letter requesting exclusion from the class; and
- Your signature.

Questions? Call 1-844-576-1739

You must mail or email your letter no later than **January 2, 2018** to:

Stephen J. Fearon, Jr. Squitieri & Fearon, LLP 32 East 57th Street 12th Floor New York, NY 10022 stephen@sfcasslaw.com	and	Seth J. Lapidow Backes & Hill, LLP 3131 Princeton Pike Lawrenceville, NJ 08648 Lapidow@backesandhill.com
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If you ask to be excluded, you will not get any benefits under this settlement, and you cannot object to the settlement. You will not be legally bound by anything that happens in the lawsuit. You may be able to sue (or continue to sue) Defendant in the future. You cannot both exclude yourself from the settlement and object to the settlement. If you seek to exclude yourself and object, you will be deemed to have excluded yourself.

12. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself from the settlement, you give up any right to sue Defendant for the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from this class to continue your own lawsuit. Remember, the exclusion deadline is **January 2, 2018**.

13. If I exclude myself, can I get benefits from this settlement?

No. If you exclude yourself, you will not be allocated a portion of the Net Settlement Amount and will not receive a check.

THE LAWYERS AND MERCHANT REPRESENTING YOU

14. Do I have a lawyer in the case?

Yes. The court appointed the law firm of Squitieri & Fearon, LLP to represent you and other members of the settlement class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers representing the class be paid?

You will not be asked to pay any of the lawyers' fees or expenses. The lawyers representing the class, who have not yet received any payment for their time or the expenses they have incurred, intend to ask the court to pay them up to one-third of the settlement fund to compensate them for their time and the financial risk that they took when they agreed to represent the Plaintiff and get paid only if the lawsuit is successful. In addition, the lawyers intend to ask the court to reimburse them for all of the expenses they have incurred. The court will determine the amount the lawyers will receive at the final approval hearing on January 16, 2018. Defendant has agreed not to object to this request provided the court authorizes fees of no more than one-third of the settlement fund.

16. Will the class representative get anything?

The settlement class is represented by the merchant who brought the case, Rudel Corporation, doing business as Jacala Mexican Restaurant, located in San Antonio, Texas. In addition to the benefits the class representative will receive as a member of the settlement class, class counsel intends to ask the court to pay a service award of up to \$15,000 to the class representative to compensate it for the efforts it took on behalf of the class, including bringing the case and traveling to New Jersey to give testimony in the case. Defendants have agreed not to oppose the request. The service award approved by the court will be paid from the settlement fund. The court will determine the amount of the service award at the final approval hearing on January 2, 2018.

OBJECTING TO THE SETTLEMENT

17. How do I tell the court I don't like the settlement?

If you are a settlement class member, you can object to the settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the court should not approve it. The court will consider your views. If you object to the settlement and seek to exclude yourself, you will be deemed to have excluded yourself and your objection will not be considered.

To object, you must do so in writing and serve the objection on class counsel and the lawyers for Defendant at the addresses set forth below. Your objection must include:

- The name of this proceeding (*Rudel Corporation v. Heartland Payment Systems, Inc.*, Case No. 3:16-cv-02229-AET-LHG (D.N.J.));
- Your full name, address, and phone number;
- A written statement of your objections, as well as the specific reason for each objection, and any legal or factual support you wish to bring to the court’s attention;
- The number of times you have objected to a class action settlement within the past five years, the caption of each case in which you have made such an objection, and a copy of any orders related to or ruling upon your prior objections that were issued by the trial and appellate courts in each listed case;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- Any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity;
- Any evidence or other information you wish to introduce in support of your objections;
- A statement of whether you or your counsel intends to appear and argue at the final approval hearing, and the identity of all counsel representing you who will appear at the final approval hearing;
- A list of all persons who will be called to testify at the final approval hearing in support of your objection;
- Evidence or other information showing that you are a member of the settlement class; and
- All other information specified in the Preliminary Approval Order available from Class Counsel or on PACER.

If you hire a lawyer to represent you in preparing a written objection or appearing at the final approval hearing, your lawyer must provide additional information as specified in the Preliminary Approval Order.

Mail or email the objection to these places no later than **January 2, 2018**:

Settlement Class Counsel

Stephen J. Fearon, Jr.
Raymond N. Barto
Squitieri & Fearon, LLP
32 East 57th Street
12th Floor
New York, NY 10022
Stephen@sfclasslaw.com
Raymond@sfclasslaw.com

Defense Counsel

Seth J. Lapidow
Backes & Hill, LLP
3131 Princeton Pike
Lawrenceville, NJ 08648
Lapidow@backesandhill.com
Ethan Maxwell Simon
Blank Rome LLP
301 Carnegie Center
3rd Floor
Princeton, NJ 08540
ESimon@blankrome.com

18. What’s the difference between objecting and excluding/opting out?

Objecting is simply telling the court that you don’t like something about the settlement. You can object to the benefits provided by the settlement or other terms of the settlement only if you stay in the settlement class. Excluding yourself or “opting out” is telling the court that you don’t want to be included in the settlement. If you exclude yourself, you have no basis to object to the settlement because the settlement no longer affects you.

THE COURT’S FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the settlement?

The court will hold a final approval hearing on **January 16, 2018** at **10:00 AM** in Courtroom 4W before Judge Anne E. Thompson of the United States District Court for the District of New Jersey, located at the Clarkson S. Fisher Building &

U.S. Courthouse, 402 East State Street, Trenton, NJ 08608. This hearing date and time may be moved. Please contact Class Counsel to confirm the date and time in the event it changes.

At the final approval hearing, the court will consider whether the settlement is fair, reasonable, and adequate; how much class counsel will receive for fees and expenses; whether to approve a service award to the class representative; and any other appropriate matters. If there are objections, the court also will consider them. The court will listen to people at the hearing who file in advance a timely notice of their intention to appear (*see* Question 17.). At or about the final approval hearing, the court will decide whether to approve the settlement. There is no deadline by which the court must make its decision.

20. Do I have to attend the hearing?

No. Class counsel will answer questions the court may have. You are welcome, however, to come at your own expense. If you submit a written objection, you do not have to come to the court to talk about it. As long as you submitted your written objection on time, the court will consider it. You may also pay your own lawyer to attend, but it is not necessary. If you or your own lawyer wants to speak at the hearing, you must file a notice of intention to appear and provide the other information required by the Preliminary Approval Order.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you are a settlement class member and do nothing, you will remain a part of the settlement class and will not be able to sue Defendant about the claims being resolved through the settlement. You will be mailed a check, which must be cashed within 90 days of issuance.

GETTING MORE INFORMATION

22. How do I get more information?

You may contact the settlement administrator by calling toll-free 1-844-576-1739, by contacting Class Counsel, or by writing to: Rudel v. Heartland Settlement Administrator, P.O. Box 2003, Chanhassen, MN 55317-2003.

This notice summarizes the settlement. More details are in the settlement agreement itself. Please do not contact the court with questions about the settlement.

Rudel v. Heartland
Settlement Administrator
P.O. Box 2003
Chanhassen, MN 55317-2003