

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

**NATHAN FOOTE and KENNETH
LALLY, on behalf of themselves and
others similarly situated;**

Plaintiffs,

vs.

**POWER CARD INTERNATIONAL,
INC., d/b/a KMLNET,**

Defendant.

CIVIL ACTION NO. CV-2000-1074

FINAL ORDER AND JUDGMENT

A fairness hearing was held before this Court on February 19, 2002 and February 22, 2002, pursuant to the Court's Preliminary Order of October 1, 2001 (the "Preliminary Order"). The purpose of the Fairness Hearing was to determine whether this Court should approve a proposed settlement ("Settlement") of this action as fair, reasonable, and adequate. The Court was also presented with a request from Class Counsel for attorney's fees and expenses related to notice, supported by affidavits, and for incentive awards to the named Class Representatives Foote and Lally. Class Counsel filed and/or submitted affidavits in support of the Proposed Settlement, with attached evidence.

The Court is presented with a request by all parties for approval of the Settlement upon the terms and conditions of the Settlement Agreement previously filed and submitted to the Court on October 1, 2001, which was executed by all parties.

The respective parties appeared at the Fairness Hearing by their attorneys of record. The Court received and considered arguments, testimony, and evidence in

The respective parties appeared at the Fairness Hearing by their attorneys of record. The Court received and considered arguments, testimony, and evidence in connection with the proposed Settlement of the action. The attorneys for the respective parties were heard, and an opportunity to be heard was given to all of the persons requesting to be heard in accordance with the Preliminary Order. No objector appeared at the Fairness Hearing, either personally or through counsel. Only one written objection was received. The stated ground for this objection was that the objector purchased an internet mall outside the class period. The Court notes that all settlement funds are derived from debits for purchases of malls within the prescribed period, and thus overrules this objection. The Court has considered the proposed Settlement, and all other matters of record in this action.

Based upon the record, it is therefore, **ORDERED, ADJUDGED AND DECREED** as follows:

1. For purposes of considering, approving and effectuating the Settlement, as amended, and to fairly and adequately protect the interests of the members of the Class, this Court hereby orders and confirms that this action is to be maintained as a class action pursuant to Alabama Rules of Civil Procedure 23(b)(3), on behalf of a plaintiff class consisting of:

SUBCLASS DIVISION A-1 represented by Plaintiff Kenneth Lally:

All persons or other entities who purchased only one internet shopping mall

from PCI, such purchase having been made on the KM.Net Internet during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:01 a.m. CST, and resulting in that person's or entity's bank account being electronically debited on or after March 22, 2000, in the amount of the purchase price;

SUBCLASS DIVISION A-2 represented by Plaintiff Nathan Foote:

All persons or other entities who, irrespective of the total number of their purchases of internet shopping malls from PCI, purchased two or more Internet shopping malls on the KM.Net Internet during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:01 a.m. CST, resulting in that person's or entity's bank account being electronically debited on or after March 22, 2000, in the amount of the purchase price of such mall(s).

2. The Court's Preliminary Order is incorporated herein by reference. The Findings and Conclusions set forth in the Preliminary Order are hereby reaffirmed, and made final. Pursuant to the Preliminary Order, and this Order, the Class Action Certification pursuant to Rule 23(b)(3) is hereby reaffirmed, incorporated herein by reference, and made final.

3. The Court finds, only for purposes of this settlement, that the numerosity, typicality, commonality and adequacy requirements of Rule 23(a) are satisfied, and that in accordance with Rule 23(b)(3), common issues of fact and law predominate and make certification of settlement class superior to other available methods.

4. The Court finds that Class Representatives Foote and Lally, identified as the Named Plaintiffs in this action, and Class Counsel, as identified in the Settlement

Agreement for the Class, have fairly and adequately represented and protected the interests of the absent Class Members.

5. The Court hereby grants its final approval of the Settlement Agreement, and finds that the Settlement is fair, reasonable, and adequate to the Class Members.

6. The Court gives its final approval, as being in compliance with the due process rights and other rights of Class Members, to the plan of notice set forth in Paragraph numbered 3 of the Settlement Agreement, and the contents of the Notice of Proposed Settlement of Class Action and Fairness Hearing ("Notice"), submitted to the Court contemporaneously with the Settlement Agreement. Plaintiffs sent a copy of the Notice containing directions for obtaining a Claim Form to all Class Members to their last known address by first class mail and by electronic mail, with a proper return address, in compliance with the Preliminary Order. For Class Members whose addresses were unknown to Plaintiffs, or for whom the Notice and Claim Form was returned without a forwarding address, Plaintiffs and Intervenor caused a notice to be published on the Michigan Attorney General's website with a downloadable claim form. The form of the notice was that submitted by the Parties on October 1, 2001, which form was approved by the Court in its Preliminary Order. The Court hereby gives final approval to the form of the notice mailed, and to the form of the Claim Form.

7. The Court finds that the provision of the Notice to all persons in the Class by first class mail and by electronic mail who were identified through reasonable effort,

and the publication of the Notice on the Michigan's Attorney General's website constituted the best notice of the Fairness Hearing, the proposed Settlement, the application for fees and expenses, and other matters set forth in the Notice, as is practicable under the circumstances, and that such mailings and publication constitutes valid, due and sufficient notice to all persons in the Class, and complies fully with the requirements of Rule 23 of the Alabama Rules of Civil Procedure, the Constitution of the United States, and any other applicable law.

8. The Court further finds that the Notice informed Class Members of the right to opt out or exclude themselves from the Class Settlement. Class Members who desired to be excluded were given specific instructions on how and when to do so. Plaintiffs received not only claims of Class Members, but also Class Members' requests to exclude themselves from the Settlement. Plaintiffs have submitted the documents submitted by the Class Members who timely opted out (hereinafter these Class Members shall be referred to as "Opt-Outs"). These former Class Members shall be excluded from the Class, and thus, are not entitled to receive any of the benefits of the Class Settlement and will not be bound by the release provisions of the Settlement.

9. All members of the Class who did not request timely exclusion in the manner set forth in this Order and the Preliminary Order, shall be members of the Settlement Class and shall be bound by the Settlement Agreement and this Final Order and Judgment. Any untimely opt-out who seeks an excusable neglect exclusion must do

so from this Court. This Court retains jurisdiction over this matter to make any excusable neglect determination. Untimely opt-outs will not be granted an excusable neglect exclusion without significant cause shown.

10. Any person in the Class who objected to the Settlement, to Class Counsel's application for attorney's fees, costs and expenses, or to the proposed Final Order and Judgment had the right to appear and be heard at the Fairness Hearing. Under the Preliminary Order, any such person needed to file a written notice of intention to appear, file copies of any papers in support of the objections with the Class Counsel and the Clerk of this Court, and serve such notice of their intention to object and copies of all supporting papers, postmarked no later than forty-five (45) days after the date of mailing of the Post Card Notice, i.e., forty-five (45) days from December 10, 2001. Only one objection was received, as previously addressed at page 2 of this Order.

No valid and timely notices of intention to appear, with supporting papers, were filed and delivered. The Court is fully satisfied that class counsel have adequately represented the class and that the settlement of the class claims is a reasonable one.

11. Any Class Member who wished to participate in the Settlement fund had to sign and return a valid and timely Claim Form in accordance with the instructions contained therein, on or before January 25, 2002. The Court gives its final approval to this Claim Form procedure. Any Class Member who did not request exclusion in the manner set forth in Paragraph 11 of the Preliminary Order, and who did not submit a

valid and timely claim Form, is not entitled to participate in the Settlement fund, but nonetheless shall be barred and enjoined from asserting any of the Released Claims against the Defendants, shall conclusively be deemed to have released any and all such claims as against the Defendants or the parties described in paragraph 12 below, and shall be subject to and bound by the provisions of the Settlement Agreement and the Final Order and Judgment.

12. The Plaintiff's Claims released by the Settlement are described as follows:

All claims of the Plaintiffs Foote and Lally and the claims of the members of SubClass A-1 and A-2 as represented by each against PCI are dismissed on the merits with prejudice. Power Card International, d/b/a KM.Net, as predecessors and successors, parents, affiliates, subsidiaries, divisions, licensees, reinsurers, instrumentalities, agents, assignors, assignees, transferors, transferees, stockholders, and their present and former directors, officers, employees, agents, servants, loaned agents, loaned servants, servicers and servicing agents, attorneys and any other person, firm, corporation, as well as the Columbia Bank, a state chartered bank organized under the laws of the State of Maryland with its principal office in Columbia, Maryland, Network 1 Financial Corporation, a Virginia corporation with its principal office located in McLean, Virginia, EFTNET corporation, a Virginia corporation with its principal office located in McLean, Virginia, Merchant Commerce, Inc., a California corporation with its principal office located in Los Angeles, California, and all financial institutions in the United States at which bank

accounts were electronically debited on or after March 22, 2000 in connection with KM.Net internet activity, including without limitation West Side Auto Employees Federal Credit Union, a federally chartered credit union with its principal place of business located in Flint, Michigan, Central Bank & Trust Company, a state chartered bank with its principal place of business located in Lexington, Kentucky, Citizens Bank, a state chartered bank with its principal place of business located in Flint, Michigan, Charter One Bank, FSB, a federal savings association with its principal place of business located in Cleveland, Ohio, and their respective predecessors and successors, parents, affiliates, subsidiaries, divisions, licensees, reinsurers, instrumentalities, agents, assignors, assignees, transferors, transferees, stockholders, present and former directors, officers, employees, agents, servants, loaned agents, loaned servants, servicers, servicing agents, attorneys, and/or any other person, firm, corporation or other entity of any type or description are hereby released and discharged from and against any and all causes of action, claims, damages, equitable, legal and administrative relief, interest, demands or rights, whether based on federal, state or local statute of ordinance, regulation, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiffs Foote and Lally for any SubClass Member in this action or in any other court action arising from or relating to electronic debiting of such Class Members' bank accounts on or after March 22, 2000 in the amount of the purchase price of Internet Shopping Malls bought from PCI on the internet during

the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000 at 2:00 a.m. CST.

13. Counsel for Plaintiffs and Class Representatives Foote and Lally are each hereby awarded the sum of \$175,000.00 for their fees and expenses, save cost of notice, which sum the Court finds to be fair and reasonable. These amounts are to be paid to Class Counsel Daniell, Upton, Perry & Morris, P. C. and Johnstone, Adams, Bailey, Gordon & Harris, LLC, in accordance with the terms of the Settlement Agreement.

14. Plaintiff and Class Representative Foote and Lally are each awarded \$2,500, which amounts are to be paid in accordance with the terms of the Settlement Agreement.

15. Daniell, Upton, Perry & Morris, P. C. is additionally awarded \$7,242.67 upon its petition for reimbursement of expenses incurred with respect to notice. Johnstone, Adams, Bailey, Gordon & Harris, LLC is additionally awarded \$2,012.00 upon its petition for reimbursement of expenses incurred with respect to notice. These awards shall be paid in accordance with the Settlement Agreement.

16. Consistent with this Order, and subject to this Court's retention of jurisdiction to enforce this Order and the Settlement, all claims asserted in this action, and all claims which have been or could have been asserted (by intervention or otherwise) by or on behalf of any Class Member relating to this action or the "Plaintiffs' Claims" (as defined in the Settlement Agreement) are dismissed in their entirety on the merits, with

prejudice. The Plaintiffs and Class Members hereby **RELEASE** all Defendants and Discharged Parties, as that term is defined in the Settlement Agreement, from all claims, disputes, actions, causes of action, suits, demands, damages, and liabilities, based upon any legal or equitable theory, right of action or otherwise (whether arising under federal, state or local law or regulation, or common law), foreseen or unforeseen, known or unknown, matured or unmatured, accrued or unaccrued, which were or could be asserted by or on behalf of any Class Members, whether brought by a Class Member or by someone representing a Class Member, which the Plaintiffs and the Class Members ever had, or now have, or could have had prior to the last day that a Class Member could opt out of the Settlement, based upon, in connection with, arising out of, or which directly or indirectly related to the Plaintiffs' Claims as defined in the Settlement Agreement.

17. Named Plaintiffs, each and all Class Members who did not timely opt out, and any other person representing the interests of or seeking relief on behalf of Class Members who did not timely opt out, are hereby permanently **ENJOINED**, precluded, and barred from filing, initiating, asserting, maintaining, pursuing, or continuing or participating as a litigant (by intervention or otherwise) in any action, whether an individual lawsuit or class action, in any court, asserting any of the claims dismissed herein or any of the Plaintiffs' Claims as defined in the Settlement Agreement, or any claim released in ¶12 above. Any person found in contempt of this injunction will be subject to sanctions. Defendant and the parties released shall be entitled to

reimbursement of their attorneys' fees incurred as a result of seeking the compliance of a Class Member in violation of this injunction.

18. This Court reserves and maintains continuous jurisdiction over Defendant, and members of the Class, with respect to all matters relating to the Settlement or the consummation of the Settlement; the validity of the Settlement; the construction and enforcement of the Settlement in any orders entered pursuant thereto; in any disputes which may arise between Class Members with respect to the persons entitled to receive the proceeds of any amounts payable to Class Members under the Settlement Agreement; and the entry and enforcement of this **FINAL JUDGMENT** and the order contained herein, including modification of this Final Judgment; to tax court costs, and all other matters pertaining to the Settlement or its implementation and enforcement.

19. Neither this Final Order nor the Settlement Agreement are to be construed as admissions or concessions by Defendant or the parties released herein of any fault, omission, liability or wrongdoing. The final approval of the Settlement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims of the Plaintiffs and Class Members, or as to the defenses of Defendant.

DONE THIS 22nd day of February, 2002.



ROBERT WILTERS
Baldwin County Circuit Court Judge
One Courthouse Square
Bay Minette, AL 36507

CIRCUIT COURT
BALDWIN COUNTY, AL
FILED
FEB 22 2002
JACKIE N. CALHOUN
CIRCUIT COURT CLERK