

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CUSTOM HAIR DESIGNS BY SANDY, LLC,)
and SKIP’S PRECISION WELDING, LLC, on)
behalf of themselves and all others similarly)
situated,)
))
Plaintiffs,)
))
v.) CASE NO. 8:17-cv-00310-JFB-CPZ
))
CENTRAL PAYMENT CO., LLC,)
))
Defendant.)

DECLARATION OF HUNTER HUGHES

1. My name is Hunter Hughes and I was retained by the parties to this action to serve as mediator. At counsel for Plaintiffs’ request, and with the consent of Defendant’s counsel, I submit this declaration in support of the motions for final approval and attorneys’ fees. I have not received any compensation for providing this declaration. The only compensation I have received is for my service as a mediator in this case, which was shared equally by the parties.

2. I received my B.A. and J.D. degrees with honors from the University of Virginia and have practiced law for over 40 years. I have been lead trial counsel in hundreds of cases, including dozens of nationwide class and mass actions. I am admitted to practice in the Northern, Middle, and Southern Districts of Georgia, the Fifth, Sixth, Eighth, Ninth, and Eleventh Circuit Courts of Appeal, and the United States Supreme Court.

3. I now work as a mediator, arbitrator, and special master. My principal office is in Atlanta, but my practice as a neutral extends to cases pending across the United States.

4. I am a Distinguished Fellow in the American College of Civil Trial Mediators and have been selected for inclusion in multiple editions of Woodward/White’s “Best Lawyers in

America,” Chambers’ USA “America’s Leading Lawyers for Business,” “Who’s Who in American Law, Law & Politics,” Atlanta Magazine’s Top 10 and Top 100 “Georgia Super Lawyers Top 10 and Top 100,” and Georgia Trend’s “Legal Elite.”

5. I have served as a neutral in scores of national class, collective, and mass actions (including mediating the Morgan Stanley, Smith Barney, FedEx, Abercrombie, Viacom, Disney, NBC, Time Warner, Coca-Cola, Home Depot, Publix, Boeing, Wal-Mart, Dell, Xerox, Lowe’s, Cigna, Lockheed, Credit Suisse, Mutual of Omaha, General Dynamics, Boeing, Bechtel, Intrawest, AXA, and Allscripts class and collective action cases).

6. I have written numerous articles and publications, including “How Our Subconscious Bias Impacts the Negotiations,” American Journal of Mediation; Chapter 26, “Mediating Class Actions: How Mediators Operate and What They Want,” How ADR Works, BNA Books; and “Class Actions in Arbitrations,” A Treatise Project of the American Bar Association Labor and Employment Law Section.

7. I am an Adjunct Professor at the University of Virginia Law School and also have been a speaker throughout the country at several hundred seminars and conferences on various topics, including trial practice, alternate dispute resolution, settlement strategies, damages, negotiations skills, and a wide range of substantive matters.

8. In or about March of 2020, shortly after the Court entered an order certifying the Class and denying Defendant’s motion for summary judgment, the parties retained me to mediate this case.

9. I had previously mediated multiple similar class cases seeking redress for “excessive” payment processing fees, including *Champs Sports Bar & Grill Co. v. Mercury Payment Sys., LLC* (N.D. Ga.), *Al’s Pals Pet Care v. Woodforest Nat’l Bank* (S.D. Tex.), and *Alghadeer Bakery & Market, LLC v. Worldpay US, Inc.* (N.D. Ga.). Each of these cases was settled following my

assistance and I have been informed that such settlements ultimately received final court approval.

10. The initial mediation session in this case was held on April 9, 2020, via Zoom. During this session, the parties engaged in extensive arms' length negotiations. I was actively involved during this process. The negotiations were not the product of collusion but rather were hotly contested and hard fought.

11. At the end of the session, the parties remained far apart in their negotiations. To attempt to keep the discussions going, I made a mediator's bracket proposal and gave the parties a week to accept. If both parties accepted, negotiations would continue. If both parties did not accept, the parties would refocus their efforts on active litigation. Both parties did not accept and my involvement ceased for the time being.

12. In or about October of 2021, after more than a year of additional litigation, the parties reached back out to me and I began a series of ex parte communications with each party's counsel to discuss the framework (and likely ballpark) of a potential settlement. Following these discussions, which occurred toward the end of 2021, I thought there was enough interest on both sides that there was a reasonable possibility of settlement. The parties thereafter agreed to hold a second mediation session.

13. This mediation session occurred on January 7, 2022, via Zoom. Again, the parties engaged in arms' length negotiations. I was actively involved during this process. The negotiations were not the product of collusion but rather were quite contentious.

14. By the end of the session, the parties seemed to be in general agreement on the structure of a settlement (with current customer class members being paid automatically and

former customer class members filing claims). This mirrored the structure of the settlements I had previously negotiated in the payment processing class cases noted above.

15. However, after much back-and-forth, the parties were unable to reach agreement on the amount of monetary relief to be provided to the Class. At this point I declared an impasse but encouraged the parties to continue talking amongst themselves prior to trial.

16. I was pleased to learn that the parties ultimately agreed to all terms of a class settlement a few weeks later. I believe the terms that were eventually reached (with CPAY paying up to \$84 million – and no less than \$58.8 million – to the Class) not only represent a fair compromise of this difficult dispute, but reveal that both parties compromised significantly after the second mediation.

17. During the mediations, the parties focused on the structure of the settlement as well as the amount of the settlement to be provided to the Class. There was no discussion on terms such as attorneys' fees, litigation expenses, notice and administration costs, and service awards.

18. I estimate that I have mediated several hundred class and collective action settlements that have addressed the amount of fees class counsel would receive. In my experience, more than 75% of these settlements I have been affiliated with provided for fees of one-third of the class fund. The remaining such cases have had fee awards as high as 40% of the fund down to approximately 20%.

19. The amount of fees that class counsel seek in this matter – one-third of the \$84 million settlement amount – is consistent with results of other class and collective actions settlements I have mediated throughout the country, including in the Eighth Circuit.

I declare under penalty of perjury that the foregoing facts are based on my personal knowledge and are true and correct.

May 2, 2022
Date



Hunter Hughes