

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

APRIL NGUYEN, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

OUTERWALL, INC., *et al.*,

Defendants.

Civil Action No. 16-cv-00611

BRETT BOYER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

OUTERWALL, INC., *et al.*,

Defendants.

Civil Action No. 17-cv-00853

ORDER GRANTING PRELIMINARY APPROVAL; CERTIFYING THE  
SETTLEMENT CLASS; ISSUING A SCHEDULING ORDER REGARDING CLASS  
ACTION SETTLEMENT; AND DIRECTING NOTICE TO THE CLASS

The Court has been advised that the parties to this action, April Nguyen and Brett Boyer (hereinafter referred to collectively as ‘Plaintiffs’ or ‘Class Representatives’), individually and on behalf of the Settlement Class Members and Defendant Outerwall Inc., (now known as Coinstar, LLC, ‘Coinstar’) have agreed, subject to Court approval, to settle the above-captioned lawsuits upon the terms and conditions set forth in the parties’ Settlement Agreement which was attached to the Declaration of Gerald D. Wells, III (hereinafter referred to as the ‘Agreement’). The parties have applied to this Court through a joint motion for an order (1) certifying the proposed class for settlement purposes only, (2) granting preliminary approval of the Agreement resolving all claims in the above-captioned matter, (3) directing notice to the

settlement class, and (4) setting a fairness hearing;

NOW, THEREFORE, based upon the Agreement and all of the records and proceedings herein, and it appearing to the Court that upon preliminary examination the Agreement appears fair, reasonable and adequate, and that a hearing should and will be held to confirm that the Agreement and settlement are fair, reasonable and adequate; whether to grant class certification for purposes of settlement only; and to determine whether a Final Order should be entered in this Lawsuit;

AND the Court, having reviewed Plaintiff's Motion for Preliminary Approval and supporting documentation, makes a preliminary determination that the Class may be certified under Fed. R. Civ. P. 23 for settlement purposes;

IT IS HEREBY ORDERED:

1. The Court deeming that the definitions set forth in the Agreement are hereby incorporated by reference herein this Order (with capitalized terms as set forth in the Agreement).

2. The Motion for Preliminary Approval of the Agreement is granted. All pending deadlines are hereby vacated.

3. The Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto.

4. "Settlement Class Members" – Pursuant to Fed. R. Civ. P. 23(b)(1) and/or (b)(2), the Court has made a preliminary determination of certification, for settlement purposes only, as a class action on behalf of the following class of individuals (hereinafter referred to as the "Settlement Class Members"):

All Legally Blind individuals who attempted but were unable

to access or who were deterred from accessing those products or services available at Coinstar Kiosks in all 50 states and the District of Columbia during the time period starting on February 8, 2014 for all states and the District of Columbia excluding California and February 8, 2013 in California and continuing through the entry of this order.

5. Preliminary Determination on Class Certification – The Court preliminarily determines that the Lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23 for settlement purposes only, namely:<sup>1</sup>

- A. The class is so numerous that joinder of all members is impracticable;
- B. The claims of the Representative Plaintiffs are typical of those of the other members of the Class;
- C. There are questions of fact and law that are common to all members of the Class which predominate over any questions affecting only individual members;
- D. The Class Representative will fairly and adequately protect the interests of the Class and has retained Class Counsel experienced in consumer class action litigation who have and will continue to adequately represent the Class;
- E. Class treatment of these claims will prevent inconsistent or varying adjudications with respect to individual class members and/or adjudication of an individual class member's claim is, effectively, dispositive of the interests of other members of the class; and
- F. Relief is appropriate with respect to the class as a whole for the purposes of settlement.

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<sup>1</sup> Certification of the Settlement Class shall be solely for settlement purposes and without prejudice in the event that the Agreement is not finally approved by this Court or otherwise does not take effect. Certification of the Settlement Class shall be vacated and shall have no effect in the event that the Agreement is not finally approved by this Court or otherwise does not take effect.

6. “California Sub-Class Members” - Pursuant to Fed. R. Civ. P. 23(b)(3), the Court has made a preliminary determination of certification, for settlement purposes only, as a class action on behalf of the following class of individuals (hereinafter referred to as the “California Sub-Class”):

All Legally Blind individuals who attempted, but were unable to access or who were deterred from accessing those products or services available at Coinstar Kiosks in California during the time period February 8, 2013 and continuing through the entry of this order.

7. Preliminary Determination on Class Certification of the California Sub-Class – The Court preliminarily determines that the Lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23 for the California Sub-Class for purposes of settlement only, namely:<sup>2</sup>

A. The California Sub-Class is so numerous that joinder of all members is impracticable;

B. The claims of the Representative Plaintiff Brett Boyer are typical of those of the other members of the California Sub-Class;

C. There are questions of fact and law that are common to all members of the California Sub-Class which predominate over any questions affecting only individual members;

D. The Class Representative Brett Boyer will fairly and adequately protect the interests of the California Sub-Class and has retained Class Counsel experienced in

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<sup>2</sup> Certification of the California Sub-Class shall be solely for settlement purposes and without prejudice in the event that the Agreement is not finally approved by this Court or otherwise does not take effect. Certification of the California Sub-Class shall be vacated and shall have no effect in the event that the Agreement is not finally approved by this Court or otherwise does not take effect.

consumer class action litigation who have and will continue to adequately represent the California Sub-Class;

E. Questions of law or fact common to members of the California Sub-Class predominate over any questions affecting only individual members; and

F. Class treatment of these claims is superior to other available methods for the fair and efficient adjudication of this controversy and will be efficient and manageable, thereby achieving judicial economy.

8. The Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Agreement, appears in all respects to be fundamentally fair, reasonable, adequate, and in the best interests of the Settlement Class Members, in light of the benefits to the Settlement Class Members; the strength and weakness of the Plaintiffs' case; the complexity, expense and probable duration of further litigation; and the risk and delay inherent in possible appeals.

9. With respect to the California Sub-Class, the Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Agreement, also appears in all respects to be fundamentally fair, reasonable, adequate, and in the best interests of the California Sub-Class, in light of the benefits to the California Sub-Class; the strength and weakness of the Plaintiff Boyer's claims; the complexity, expense and probable duration of further litigation; and the risk and delay inherent in possible appeals..

10. "Representative Plaintiffs" and "Settlement Class Counsel" Appointment – Pursuant to Fed. R. Civ. P. 23, Plaintiff April Nguyen and Brett Boyer are preliminarily appointed as the Representative Plaintiffs for the Settlement Class Members and the law firms of Connolly Wells & Gray, LLP and Kalikhman & Rayz, LLC are preliminarily appointed as



counsel for the Settlement Class Members (hereinafter referred to as “Settlement Class Counsel”). Plaintiff Brett Boyer is also preliminarily appointed as the Representative Plaintiff for the California Sub-Class and Settlement Class Counsel are preliminarily appointed as counsel for the California Sub-Class.

11. “Notice” – The Court approves the form and substance of the notice of proposed class action settlement, attached to the Agreement as Exhibits A to F. The proposed form and method for notifying the Settlement Class Members, including California Sub-Class, of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B), Fed. R. Civ. P. 23(e) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights. Settlement Services, Inc. (“SSI”), is appointed as the Claims Administrator. In accordance with the Agreement, SSI shall cause notice to be effectuated as set forth in Section 10 of the Agreement.

12. “California Settlement Fund” – In order to receive a portion of the California Settlement Fund, as described in the Agreement at Section 11, California Sub-Class Members must complete and return the Claim Form to the Settlement Administrator, received by December 1, 2017.

13. “Opt-Outs”/”Exclusions” – Any California Sub-Class Member who desires to be excluded from the California Sub-Class must send a written request for exclusion to the Claims Administrator in accordance with the procedure set forth in the Agreement in Section 11. To be effective, the written request for exclusion shall, at minimum, contain the following language or words to the same effect: *“I hereby exercise my right to Opt-Out of the damages portion of the class action lawsuit known as Nguyen v. Outerwall, case no. 5:16-cv-*

00611. *By Opting Out, I understand that I will not be awarded any statutory damages from this lawsuit but that I am preserving any rights I would otherwise have to sue Coinstar for damages*” in accordance with Section 11.10 of the Agreement. Any Settlement Class Member who submits a valid and timely request for exclusion shall not be bound by the terms of the Agreement.

14. “Objections” – Any Settlement Class Member who intends to object to the fairness of the Settlement must file a written objection with the Clerk of this Court by December 1, 2017 (which is at least 60 days from the first publication date in the Braille Monitor or Braille Forum of class notice). In any written objection, the Settlement Class Member must set forth his or her full name, address, and signature, along with a statement of the reasons for his or her objection. Any Settlement Class Member who does not file a valid and timely objection to the settlement shall be barred from objecting. Only such objecting Settlement Class Members shall have the right, and only if they expressly seek it in their objection, to present objections orally at the Fairness Hearing. Responses by Coinstar and Class Counsel to any timely-filed objections shall be made no less than fourteen (14) business days before the Fairness Hearing.

15. “Final Approval” – The Court shall conduct a hearing (Fairness Hearing) on December 20, 2017 at 10:00 a.m. in Courtroom 14B to review and rule upon the following issues:

A. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes under Fed. R. Civ. P. 23;

B. Whether the proposed settlement is fundamentally fair,

reasonable, adequate, and in the best interests of the members of the Settlement Class and California Sub-Class, and should be approved by the Court;

C. Whether the Final Order, as provided under the Agreement, should be entered, dismissing the Lawsuit with prejudice, and implementing the releases set forth in the Agreement;

D. To discuss and review Named Plaintiffs' Case Contribution Award; and

E. To discuss and review Settlement Class Counsel's fees and expenses and any other issues as the Court deems appropriate.

16. Attendance of the Settlement Class Members at the Fairness Hearing is not necessary. Members of either the Settlement Class and California Sub-Class need not appear at the hearing or take any other action to indicate their approval of the proposed class action settlement. Settlement Class Members or California Sub-Class members wishing to be heard, however, are required to indicate in any written objection whether or not they intend to appear at the Fairness Hearing. The Fairness Hearing may be postponed, adjourned, transferred or continued without further notice to the Settlement Class Members (except those who have filed timely objections or entered appearances).

17. "Supporting Memoranda" - Submissions by the Parties, including memoranda in support of the proposed settlement and responses to any objections, shall be filed with the Court no later than 14 business days prior to the Fairness Hearing. At least fourteen (14) days before the Fairness Hearing, the Claims Administrator will provide a declaration to Class Counsel, who shall file it with the Court, detailing any written requests to be excluded from the Class Payment from California Settlement Fund to Eligible Claimants. In addition, the Claims Administrator shall provide copies of the Opt-Out



Statements to Class Counsel and Coinstar's counsel who shall file the Opt-Out Statements not later than fourteen (14) days prior to the date set for the Fairness Hearing.

18. "Attorneys' Fees, Costs and Expenses" -No later than 14 business days prior to the Fairness Hearing, *i.e.*, by December 6, 2017, Settlement Class Counsel shall file an application for attorney's fees, costs and expenses, as set forth in the Agreement. The Claims Administrator shall post this motion for reasonable fees and costs, and any exhibits thereto, to the Settlement Website.

19. The Court will thereafter make a determination on Settlement Class Counsel's reasonable attorney's fees, costs and expenses to be paid by Coinstar, which shall not exceed \$210,000.00, pursuant to the Agreement at Section 14.

20. The Agreement and this Order shall be null and void if any of the following occur:

A. ~~If any specified condition to the settlement set forth in the Agreement is not satisfied and the satisfaction of such condition is not waived in writing by the Parties;~~

B. The Court rejects, in any material respect, the Final Order substantially in the form and content attached to the Agreement and/or the Parties fail to consent to the entry of another form of Order in lieu thereof;

C. The Court rejects any component of the Agreement, including any amendments thereto approved by the Parties; or

D. The Court approves the Agreement, including any amendments thereto approved by the Parties, but such approval is reversed on appeal and such reversal becomes final by lapse of time or otherwise.

21. If the Agreement and/or this Order are voided per ¶ 20 of this Order, then the

Agreement shall be of no force and effect and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if the Agreement had never been executed and this Order never entered.

22. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Agreement which are not materially inconsistent with either this Order or the terms of the Agreement.

23. The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Agreement.

**IT IS SO ORDERED:**

 7/14/17  
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LAWRENCE F. STENGEL, U.S.D.J.