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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: EASYSAYER REWARDS  
LITIGATION

Case No. 09-CV-2094-AJB (WVG)

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT  
AND PROVISIONAL CLASS  
CERTIFICATION**

**[Doc. No. 248]**

This Court considered plaintiffs Josue Romero, Gina Bailey, Jennifer Lawler, John Walters, Daniel Cox, Christopher Dickey, Grant Jenkins, and Bradley Berentson's (collectively "Plaintiffs") unopposed motion for preliminary approval of class settlement and provisional class certification under Rule 23 of the Federal Rules of Civil Procedure. This Court reviewed the motion, including the Settlement Agreement and Release ("Settlement Agreement"), and finds that the matter can be decided without hearing. Therefore, the hearing set for July 13, 2012 is vacated.. Based on this review and the findings below, the Court finds good cause to grant the motion.

**FINDINGS:**

1. The Settlement Agreement was the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to the proposed class representatives or segments of the class, and falls within the range of possible

1 approval;

2 2. The Full Notice, Summary Notice, and Claim Form (attached to the Settlement  
3 Agreement) comply with due process because the notices and forms are reasonably calculated to  
4 adequately apprise class members of (i) the pending lawsuit, (ii) the proposed settlement, and  
5 (iii) their rights, including the right to either participate in the settlement, exclude themselves  
6 from the settlement, or object to the settlement;

7 3. The Class is so numerous that joinder of all Class Members is impracticable;

8 4. Plaintiffs' claims are typical of the Class's claims;

9 5. There are questions of law and fact common to the Class, which predominate over  
10 any questions affecting only individual Class Members; and

11 6. Class Certification is superior to other available methods for the fair and efficient  
12 adjudication of the controversy.

13 7. Defendants Provide Commerce, Inc. ("Provide Commerce") and Regent Group,  
14 Inc. dba Encore Marketing International, Inc. ("RGI") (Provide Commerce and RGI collectively,  
15 "Defendants") gave notice pursuant to 28 U.S.C. § 1715(b) on [insert: date].

16 **IT IS ORDERED THAT:**

17 1. **Settlement Approval.** The Settlement Agreement, including the Full Notice,  
18 Summary Notice, and Claim Form, attached to the Settlement Agreement as Exhibits B-D are  
19 preliminarily approved.

20 2. **Provision of Class Notice.** Defendants will notify Class Members of the  
21 settlement in the manner specified under Section 3.3 of the Settlement Agreement with all costs  
22 associated with claims administration and providing notice to Class Members being paid from  
23 the Gross Cash Fund pursuant to Section 2.1(a) of the Settlement Agreement.

24 3. **Claim for Settlement Payment.** Class Members who are eligible and want to  
25 receive a Settlement Payment under Section 2.1(d) of the Settlement Agreement must accurately  
26 completely and deliver a Claim Form to the Claims Administrator no later than  
27 one-hundred-and-thirty-five (135) calendar days after entry of this Preliminary Approval Order.

28 4. **Objection to Settlement.** Class Members who have not submitted a timely

1 written exclusion request pursuant to paragraph 6 below and who want to object to the  
2 Settlement Agreement must deliver a written objection to Class Counsel and Provide  
3 Commerce's Counsel, and RGI's Counsel, and must file such objection with the Court, no later  
4 than one hundred and thirty-five (135) calendar days from when the Court enters this  
5 Preliminary Approval Order. The delivery date is deemed to be the date the objection is  
6 deposited in the U.S. Mail as evidenced by the postmark. The objection must include: (1) a  
7 heading containing the name and case number of the Action: In re EasySaver Rewards  
8 Litigation, Case No. 3:09-cv-02094-AJB (WVG); (2) the Class Member's name, email address,  
9 postal address, and telephone number; (3) a detailed statement of each objection and the factual  
10 and legal basis for each objection, and the relief that the Class Member is requesting; (4) a list of  
11 and copies of all documents or other exhibits which the Class Member may seek to use at the  
12 Fairness Hearing; and (5) a statement of whether the Class Member intends to appear, either in  
13 person or through counsel, at the Fairness Hearing. The objection will not be valid if it only  
14 objects to the lawsuit's appropriateness or merits.

15       **5. Failure to Object to Settlement.** Class Members who fail to object to the  
16 Settlement Agreement in the manner specified above will: (1) be deemed to have waived their  
17 right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a  
18 subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement;  
19 and (3) not be entitled to speak at the Fairness Hearing.

20       **6. Requesting Exclusion.** Class Members who want to be excluded from the  
21 settlement must send a letter or postcard to the Claims Administrator postmarked no later than  
22 one hundred and thirty-five (135) calendar days from when the Court enters this Order stating:  
23 (a) the name of the Action, "In re EasySaver Rewards Litigation"; (b) the full name, address, and  
24 telephone number of the person requesting exclusion; and (c) a statement that he/she does not  
25 wish to participate in the Settlement.

26       **7. Provisional Certification.** The Class is provisionally certified as a class of all  
27 persons who, between August 19, 2005 and the date of entry of the preliminary approval order,  
28 placed an order with a website operated by Provide Commerce, Inc. and were subsequently

1 enrolled by Regent Group Inc. dba Encore Marketing International, Inc. in one or more of the  
2 following membership programs: EasySaver Rewards, RedEnvelope Rewards, or Preferred  
3 Buyers Pass. Excluded from the Class are (a) Provide Commerce and RGI, (b) any entities in  
4 which Provide Commerce or RGI have a controlling interest or which have a controlling interest  
5 in Provide Commerce or RGI, (c) the officers, directors, employees, subsidiaries, affiliates, and  
6 attorneys of Provide Commerce or RGI, and (d) the Judges presiding over the Lawsuit and any  
7 of their employees or immediate family members.

8       **8. Appointment of Class Representative and Class Counsel.** Plaintiffs are each  
9 conditionally certified as Class Representatives to implement the Parties' proposed Settlement in  
10 accordance with the Settlement Agreement. The law firms of Patterson Law Group, APC  
11 (through attorney James R. Patterson), Baron & Budd, P.C. (through attorney Bruce W.  
12 Steckler), Andrus Anderson LLP (through attorney Jennie Lee Anderson), and Cohelan Khoury  
13 & Singer (through attorney Michael D. Singer) are appointed as Class Counsel. Plaintiffs and  
14 Class Counsel must fairly and adequately protect the Class's interests.

15       **9. Termination.** If the Settlement Agreement terminates by its terms for any  
16 reason, including, but not limited to, if Court does not approve the Settlement or enter the Final  
17 Order and Judgment, if the Final Settlement Date under the Settlement Agreement does not  
18 occur for any reason, or the total amount of \$12.5 million is not contributed to the Gross Cash  
19 Fund from Defendants collectively, the following will occur: (a) this Order will be vacated; (b)  
20 class certification will automatically be vacated, and therefore Plaintiffs will stop functioning as  
21 class representatives and Class Counsel will revert to their prior status as interim class counsel;  
22 and (c) this Action will revert to its previous status in all respects as it existed immediately  
23 before the Parties executed the Settlement Agreement, including no class certification and  
24 Defendants shall retain all their rights to proceed with their pending motions to dismiss. This  
25 Order will not waive or otherwise impact the Parties' rights or arguments.

26       **10. No Admissions.** Nothing in this Order is, or may be construed as, an admission  
27 or concession on any point of fact or law by or against any Party.


28       **11. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and

1 deadlines, are stayed and suspended until further notice from the Court, except for such actions  
2 as are necessary to implement the Settlement Agreement and this Order.

3 12. **CAFA Notice.** Defendants have complied with 28 U.S.C. § 1715(b).

4 13. **Fairness Hearing.** On December 21,2012, at 1:30 p.m., this Court will hold a  
5 Fairness Hearing to determine whether the Settlement Agreement should be finally approved as  
6 fair, reasonable, and adequate. All papers supporting Plaintiffs' request for attorneys' fees and  
7 costs must be filed no later than fourteen (14) calendar days before the deadline for Class  
8 Members to object to the settlement. All other papers supporting Final Approval of the  
9 Settlement Agreement must be filed no later than seven (7) calendar days before the Fairness  
10 Hearing. This Court may order the Fairness Hearing to be postponed, adjourned, or continued.  
11 If that occurs, Defendants will not be required to provide additional notice to class members.

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13 DATED: June 26, 2012

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16 Hon. Anthony J. Battaglia  
17 U.S. District Judge  
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