

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

JOSHUA BOKELMAN and SUCHANDRA THAPA,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

FCH ENTERPRISES, INC.

Defendant.

Civil No. 18-00209 RJB-RLP (Class Action)

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED
SETTLEMENT AND HEARING**

THIS IS A COURT-AUTHORIZED NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT THAT MAY AFFECT YOUR RIGHTS. IT IS NOT A NOTICE OF A LAWSUIT AGAINST YOU OR A SOLICITATION FROM A LAWYER. PLEASE READ THIS NOTICE CAREFULLY.

To: U.S. residents who used a credit or debit card at Zippy’s Restaurant, Napoleon’s Bakery, Kahala Sushi, Pearl City Sushi, and Pomaika’i Ballrooms locations in Hawaii between November 23, 2017 and March 29, 2018.

A proposed Settlement has been reached in a class action lawsuit against FCH Enterprises, Inc. (“FCH”). FCH is the owner of Zippy’s Restaurant, Napoleon’s Bakery, Kahala Sushi, Pearl City Sushi, and Pomaika’i Ballrooms (collectively “FCH Restaurants”) in Hawaii. The lawsuit asserted claims against FCH related to a breach of FCH’s credit and debit card processing systems between November 23, 2017 and March 29, 2018 (the “Security Incident”). FCH denies all of the claims and denies that it did anything wrong.

The Settlement includes all U.S. residents who used a credit or debit card at FCH Restaurants between November 23, 2017 and March 29, 2018 (“Settlement Class Members”).

The Settlement provides payments to Settlement Class Members who were potentially affected by the Security Incident. The amount paid depends on whether Settlement Class Members suffered unauthorized charges on their credit or debit cards that were plausibly connected to the Security Incident and on how many people submit valid claims.

If you are a Settlement Class Member, your options are:

SUBMIT A CLAIM FORM DEADLINE: June 2, 2019	You must submit a valid claim form to receive a payment in the mail from this settlement.
DO NOTHING	You will receive no payment and will no longer be able to sue FCH over the claims resolved in the settlement.
EXCLUDE YOURSELF DEADLINE: April 3, 2019	Get out of the lawsuit. Get no payment. Keep your right to sue separately with your own lawyer. Exclusion instructions are provided in this notice.
OBJECT DEADLINE: April 3, 2019	You may write to the Court to comment on or detail why you do not like the settlement by following the instructions in this notice.
GO TO A COURT HEARING	The Final Settlement Hearing is on May 3, 2019 at 9:30 a.m. If you or your attorney go to the Hearing it will be at your own expense. You do not need to attend the hearing to receive payment.

The court must give final approval to the settlement before it takes effect, but has not yet done so. No payments will be made until after the court gives final approval and any appeals are resolved.

Please review this notice carefully. You can learn more about the settlement by visiting www.zippyssettlement.com or by calling 1-888-906-2033.

Further Information and this Notice and the Lawsuit

1. Why was this Notice issued?

You received this notice because you may be a Settlement Class Member able to receive payment from a proposed settlement of the class action lawsuit *Bokelman v. FCH Enterprises, Inc.*, U.S. District Court for the District of Hawaii, Case No. 18-cv-00209-RJB-RLP (the "Lawsuit"). The Court overseeing the Lawsuit authorized this Notice to advise Settlement Class Members about the proposed Settlement that will affect their legal rights. The Notice explains certain legal rights and options you have in connection with that Settlement.

2. What is the Lawsuit about?

The Lawsuit is a proposed class action lawsuit brought on behalf of U.S. residents who used a credit or debit card at FCH Restaurants between November 23, 2017 and March 29, 2018, during which time the Security Incident occurred. The Security Incident resulted in the potential exposure of payment card data from customers who used credit or debit cards at FCH Restaurants between November 23, 2017 and March 29, 2018. The potentially-exposed information included credit card numbers, expiration dates and magnetic stripe security codes. No cardholder names, addresses, printed security codes or other cardholder financial or personal information was exposed in the Security Incident. A list of the specific FCH Restaurants potentially affected by the Security Incident and dates each was potentially affected is available at www.zippyssettlement.com

The Lawsuit claims FCH is legally responsible for the Security Incident and asserts various legal claims, including negligence, unjust enrichment, and violations of the Hawaii Data Breach Notification Act and the Hawaii Unfair Competition Law. FCH denies these claims and denies it did anything wrong.

3. Why is the Lawsuit a class action?

In a class action, one or more representative plaintiffs bring a lawsuit on behalf of others who have similar claims. Together, all of these people are the "class" and each individually is a "class member." There are two Representative Plaintiffs in this case: Joshua Bokelman and Suchandra Thapa. The class in this case is referred to in this Notice as the "Settlement Class".

4. Why is there a Settlement?

The Representative Plaintiffs in the Lawsuit, through their attorneys, investigated the facts and law relating to the issues in the Lawsuit. The Representative Plaintiffs and Class Counsel believe that the settlement is fair, reasonable, and adequate and will provide substantial benefit to the Class. The Court has not decided whether the Representative Plaintiffs' claims or FCH's defenses have any merit, and it will not do so if the proposed settlement is approved. By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid claims will receive compensation. The Settlement does not mean that FCH did anything wrong, or that the Representative Plaintiffs and the Class would or would not win their case if it were to go to trial.

Terms of the Proposed Settlement

5. Who is in the Settlement Class?

The Settlement Class is defined by the Court as all residents of the United States who used a credit or debit card to make a purchase at any FCH Restaurant between November 23, 2017 and March 29, 2018.

Certain people are excluded from the Settlement Class: (i) FCH and its officers and directors; (ii) all Settlement Class Members who properly request exclusion from the Settlement Class (as described further below); (iii) the Judge and

Magistrate Judge to whom the action is assigned and any member of those Judges' staffs and immediate family members; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of causing, aiding or abetting the criminal activity involved in the Security Incident or who pleads *nolo contendere* to any such charge.

6. *What are the terms of the Settlement?*

The proposed Settlement would create a Settlement Fund of \$725,000, funded by FCH, that would be used to: (i) make payments to Settlement Class Members who submit valid claims, (ii) pay any attorney fees and costs awarded by the Court to Class Counsel, and (iii) pay any service award to the Representative Plaintiffs awarded by the Court. The Settlement Fund will be the sole source of payment for these amounts. FCH will separately pay the costs of administering the Settlement. The Settlement also releases all claims of any Settlement Class Members against FCH arising from or related to the Security Incident, as detailed in the Settlement Agreement.

7. *What claims are Settlement Class Members giving up under the Settlement?*

Settlement Class Members who do not validly exclude themselves from the Settlement will be bound by the Settlement Agreement and any final judgment entered by the Court, and will give up their right to sue FCH for the claims being resolved by the Settlement. The claims that Settlement Class Members are releasing are described in Section 1.30 of the Settlement Agreement and the persons and entities being released from those claims are described in Section 1.31 of the Settlement Agreement. Section VIII of the Settlement Agreement explains when such releases will occur.

Payments to Settlement Class Members

8. *What kind of payments can Settlement Class Members receive?*

Settlement Class Members who submit valid claims including all required documentation may receive one of three types of payments, to be paid from the Settlement Fund: (1) a "Basic Award," (2) an "Expense Reimbursement Award," or (3) an "Extraordinary Expense Award." Settlement Class Members may receive only one Award. Depending on how many valid claims are submitted, the amount of each Award may be adjusted upward or downward proportionally among Settlement Class Members submitting valid claims. Only one Settlement Claim may be submitted per Settlement Class Member, and only one Settlement Claim may be submitted per credit or debit card used at FCH Restaurants during the Class Period.

9. *What is a Basic Award?*

Every Settlement Class Member is eligible to receive a Basic Award of \$10, regardless of whether he or she experienced any unauthorized charges on a credit or debit card used to make purchases at FCH Restaurants during the Class Period. Settlement Class Members seeking a Basic Award must provide the information and documents required on the Claim Form. The amount paid as a Basic Award is subject to upward or downward adjustment as described below in Question 12.

10. *What is an Expense Reimbursement Award?*

Settlement Class Members who, any time between November 23, 2017 and September 25, 2018 experienced unauthorized charges on their credit or debit cards that were denied or reimbursed, which charges the Settlement Class Member believes in good faith were more likely than not caused by the Security Incident, are eligible to receive an Expense Reimbursement Award consisting of: (i) payment of \$30 as compensation for inconvenience and lost time, plus (ii) an additional payment of up to \$170 as reimbursement for the following types of out of pocket expenses related to the Security Incident:

- unreimbursed payment card fees or unreimbursed bank fees incurred as a result of the Security Incident, including bank fees, card reissuance fees, overdraft fees, charges related to unavailability of funds, late fees, over-limit fees and unreimbursed fees relating to an account being frozen or otherwise unavailable due to the Security Incident;

- cell, internet or text charges related to the Security Incident;
- costs or charges for obtaining credit reports or credit freezes as a result of the Security Incident; and
- postage costs incurred as a result of the Security Incident.

Settlement Class Members seeking an Expense Reimbursement Award must provide the information and documents required on the Claim Form. The amount paid as an Expense Reimbursement Award is subject to upward or downward adjustment as described below in Question 12.

11. What is an Extraordinary Expense Award?

Settlement Class Members who, at any time between November 23, 2017 and September 25, 2018 experienced unauthorized charges on their credit or debit cards that were not denied or reimbursed, which charges the Settlement Class Member believes in good faith were more likely than not caused by the Security Incident, are eligible to receive an Extraordinary Expense Reimbursement Award of up to \$7,500 as reimbursement for: (i) those unreimbursed, unauthorized charges, (ii) up to three hours of lost time spent dealing with unauthorized charges or the Security Incident, at a rate of \$20 per hour, and (iii) the same types of out of pocket expenses listed above in Question 10. Claimants must exhaust all available credit monitoring insurance and identity theft insurance before seeking an Extraordinary Expense Award.

Settlement Class Members seeking an Extraordinary Expense Award must provide the information and documents required on the Claim Form. The amount paid as an Extraordinary Expense Awards is subject to upward or downward adjustment as described below in Question 12.

12. When and how will the amount of Awards be adjusted?

The amounts paid for all Basic Awards, Expense Reimbursement Awards and Extraordinary Expense Awards will be adjusted upward or downward from the amounts listed in Questions 9-11 above depending on how many Settlement Class Members submit valid claims.

If the total dollar value of all valid claims is less than the amount of money available in the Settlement Fund for payment of Settlement Class Member claims at the rates listed above in response to Questions 9-11, the amount of payment for Basic Awards, Expense Reimbursement Awards and Extraordinary Expense Awards will be adjusted upward proportionally among all valid claims, up to a maximum of twice the dollar amounts listed in Questions 9-11 (e.g., Basic Awards may be adjusted up to \$20, etc.)

If the total dollar value of all valid claims is more than the amount of money available in the Settlement Fund for payment of Settlement Class Member claims at the amounts listed above in response to Questions 9-11, the amount of payment for Basic Awards, Expense Reimbursement Awards and Extraordinary Expense Awards will be adjusted downward proportionally among all valid claims.

13. What happens after all claims are processed and there are funds remaining?

If there are any funds remaining after all valid claims are processed and the time to cash any payment checks has passed, those funds shall be distributed to CyberHawaii. No remaining funds will be returned to FCH.

Your Options as a Settlement Class Member

14. If I am a Settlement Class Member, what options do I have?

If you are a Settlement Class Member, you do not have to do anything to remain in the Settlement. However, if you wish to seek an Award payment, you **must** complete and submit a Claim Form postmarked or submitted online by **June 2, 2019**. There is a claim form enclosed with this notice, or you may submit one online at **www.zippyssettlement.com**.

If you do not want to give up your right to sue FCH about the Security Incident or the issues raised in this case, you must exclude yourself (or “opt out”) from the Settlement Class.

If you object to the settlement, you must remain a Settlement Class Member (*i.e.*, you may not also exclude yourself from the Settlement Class by opting out) and file a written objection in this case with the Court at the address below.

15. *What happens if I do nothing?*

If you do nothing, you will get no payment from this Settlement. Unless you exclude yourself, after the Settlement is granted final approval and the judgment becomes final, you will be bound by the judgment and you will never be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against FCH involving the claims released by the Settlement.

Option 1: Submit a Claim for Payment

16. *How do I submit a claim?*

You may complete the Claim Form online at **www.zippyssettlement.com**. You may also obtain a paper Claim Form by downloading it at **www.zippyssettlement.com** or by calling the claims administrator at **1-888-906-2033**. If you choose to complete a Claim Form you may either submit the completed and signed Claim Form and any supporting materials electronically at **www.zippyssettlement.com** or mail them to: **FCH Enterprises Claims Administrator, CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606**.

17. *Who decides my Settlement claim and how do they do it?*

The Claims Administrator will initially decide whether a Claim Form is complete and valid and includes all required documentation. The Claims Administrator may require additional information from any claimant. Failure to timely provide all required information will invalidate a claim and it will not be paid. If a Claim Form is complete but the Claims Administrator denies the claim, the claimant will have an opportunity to have their claim reviewed by an impartial Claim Referee who has been appointed by the Court.

Option 2: Exclude Myself from the Settlement

18. *How do I exclude myself from the Settlement?*

You must make a signed written request that (i) says you wish to exclude yourself from the Settlement Class in this Lawsuit, and (ii) includes your name, address and phone number. You must deliver your request by **April 3, 2019** to this address:

**FCH Enterprises Claims Administrator
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606**

19. *If I exclude myself, can I receive any payment from this Settlement?*

No. If you exclude yourself, you will not be entitled to any Award payment or any other benefits of the Settlement. However, you will also not be bound by any judgment in this Lawsuit.

20. *If I do not exclude myself, can I sue FCH for the Security Incident later?*

No. Unless you exclude yourself, you give up any right to sue FCH for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form requesting a payment.

Option 3: Remain in the Settlement Class and Object to the Settlement

21. *How do I object to the settlement?*

All Settlement Class Members who do not request exclusion from the Settlement Class have the right to object to the settlement or any part of it. If you want to object, your objection must be in writing and filed with the Clerk of the Court for the United States District Court for the District of Hawaii, 300 Ala Moana Blvd. C-338, Honolulu, HI 96850, or mailed to the claims administrator at **FCH Enterprises Claims Administrator, CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606** and be postmarked no later than **April 3, 2019**. You must also mail a copy of your objection to both Class Counsel and FCH's Counsel at the same time you file it or mail it to the claims administrator (see addresses below).

To be considered by the Court, your objection must list the name of this Lawsuit, *Bokelman, et al. v. FCH Enterprises, Inc.*, and the case number, Case No. 18-cv-00209-RJB-RLP, and include all of the following information: (i) your name, address, phone number, and an email address (if you have one); (ii) a statement that you are a member of the Settlement Class and any proof of your membership (e.g., proof of purchase at FCH Restaurants using a credit or debit card during the Class Period); (iii) a detailed statement of the specific legal and factual bases for all of your objections, along with any applicable legal support; (iv) the identity of any lawyer representing you; (v) whether you intend to appear at the final settlement approval hearing and the identity of any lawyer(s) who will attend that hearing with you or on your behalf; (vi) a list of anyone you plan to have testify at the final approval hearing in support of your objections; and (vii) your signature and the signature of your attorney or other authorized representative.

Court Approval of the Settlement

22. *How, when and where will the Court decide whether to approve the Settlement?*

The Court will hold a Final Settlement Approval Hearing to decide whether to approve the Settlement. That hearing is scheduled for **May 3, 2019 at 9:30 a.m.** at the United States District Court for the District of Hawaii located at 300 Ala Moana Blvd. C-338, Honolulu, HI 96850. At the Final Settlement Approval Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have properly requested to speak at the hearing. The Court will also rule on Class Counsel's request for attorneys' fees and costs, and the request for a service award for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the Settlement.

It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check **www.zippyssettlement.com** to confirm the schedule if you wish to attend.

23. *Do I have to attend the hearing?*

No. You do not need to attend the hearing unless you object to the settlement and wish to appear in person. It is not necessary to appear in person in order to make an objection; the Court will consider any written objections properly submitted according to the instructions in Question 21. You or your own lawyer are welcome to attend the hearing at your expense, but are not required to do so.

24. *What happens if the Court approves the Settlement?*

If the Court approves the Settlement and no appeal is taken, FCH will fund the Settlement Fund. The Claims Administrator will pay any Attorney Fees' and Costs Award and Representative Plaintiffs Award from the Settlement Fund. Then, within the later of (1) 90 days after the Court enters its order approving the settlement or all appeals are resolved; and (2) 30 days after all disputed claims are resolved, the Claims Administrator will mail Award payment checks to Settlement Class Members who submitted timely and valid Settlement Claims.

If any appeal is taken, there will be a delay in payment while the Appeal is resolved. It is possible the Settlement could

be disapproved on appeal.

25. *What happens if the Court does not approve the Settlement?*

If the Court does not approve the Settlement, no Settlement Fund will be created, there will be no payments to Settlement Class Members, Class Counsel or the Representative Plaintiffs, and the case will proceed as if no Settlement had been attempted.

Lawyers for the Settlement Class and FCH

26. *Who represents the Settlement Class?*

The Court has appointed the following Class Counsel to represent the Settlement Class and Settlement Class Members in this Lawsuit:

Rachele R. Byrd
Wolf Haldenstein Adler Freeman & Herz LLP
750 B Street, Suite 2770
San Diego, CA 92101
619-239-4599

Michael Liskow
The Sultz Law Group P.C.
351 W. 54th St., Suite 1C New York, NY 10019
212-618-1938

James J. Bickerton
Bridget G. Morgan
Bickerton Dang, LLLP
745 Fort Street, Suite 801
Honolulu, HI 96813
808-599-3811

Settlement Class Members will not be charged for the services of Class Counsel; Class Counsel will be paid out of the Settlement Fund, subject to Court approval. However, you may hire your own attorney at your own cost to advise you in this matter or represent you in making an objection or appearing at the final settlement approval hearing.

27. *How will the lawyers for the Settlement Class be paid?*

Class Counsel will request the Court's approval of an award for attorneys' fees of up to 33% of the Settlement Fund (or \$241,667), plus reasonable costs and expenses, which shall be paid from the Settlement Fund. Class Counsel will also request approval of service awards of \$5,000 for each of the two Representative Plaintiffs, which shall also be paid from the Settlement Fund.

28. *Who represents FCH in the Lawsuit?*

FCH is represented by the following lawyers:

George Hetherington
Ronald I. Heller
Brian Tilker
Torkildson Katz Hetherington Harris & Knorek,
Attorneys at Law
700 Bishop Street, 15th Floor
Honolulu, Hawaii 96813
808-523-6000

Melissa K. Ventrone
Clark Hill PLC
130 E. Randolph St. Chicago, IL 60601
312-985-5900

Gavin W. Skok
Fox Rothschild LLP
1001 4th Ave., Suite 4500
Seattle, WA 98154
206-624-3600

For Further Information

29. *What if I want further information or have questions?*

You can find further information about the Lawsuit and this Settlement on the settlement website at **www.zippyssettlement.com** or by calling **1-888-906-2033**.

CPT Group, Inc. will act as the Claims Administrator for the Settlement. You can contact the Claims Administrator at:

**FCH Enterprises Claims Administrator
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Toll Free Number: 1-888-906-2033**

DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR FCH.