**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE**
**TWENTIETH JUDICIAL DISTRICT at NASHVILLE**

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| | ) | Lead Case No. 05-1250-III |
| IN re iPAYMENT, INC. | ) | |
| SHAREHOLDERS LITIGATION | ) | Chancellor Lyle |
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## NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION

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TO: ALL PERSONS OR ENTITIES WHO, DURING THE PERIOD FROM MARCH 29, 2006 THROUGH MAY 5, 2006, INCLUSIVE, HELD OR BENEFICIALLY OWNED, DIRECTLY OR INDIRECTLY, COMMON STOCK OR OTHER EQUITY SECURITIES OF iPAYMENT, INC.

**PLEASE READ THIS NOTICE CAREFULLY.** THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THIS CLASS ACTION LAWSUIT. IF YOU ARE A CLASS MEMBER, THIS NOTICE CONTAINS IMPORTANT INFORMATION AS TO YOUR RIGHTS CONCERNING THE SETTLEMENT. IF YOU ARE A MEMBER OF THE CLASS AND DO NOT SUBMIT A TIMELY REQUEST FOR EXCLUSION, YOU WILL BE BOUND BY THE RELEASE INCLUDED IN THIS NOTICE, REGARDLESS OF WHETHER YOU SUBMIT A CLAIM.

YOU ARE HEREBY NOTIFIED, the above-captioned action (the "Action"), a class action lawsuit, is currently pending in the Chancery Court, Twentieth Judicial District at Nashville, for the State of Tennessee (the "Court"). The Action alleges various fiduciary duty violations, as further described in Section II below, against iPayment Inc. ("iPayment") and certain of its officers and directors. The Action seeks various forms of declaratory, injunctive and equitable relief and damages on behalf of all persons or entities who held or beneficially

owned, directly or indirectly, common stock or other equity securities of iPayment at any time during the period of March 29, 2006 through May 5, 2006, inclusive (the "Class Period"). This Notice is published pursuant to an Order of the Court and Tennessee Rule of Civil Procedure 23 to notify you that, subject to Court approval, the parties have reached settlement of the Action. The proposed settlement provides the Class with, among other benefits, protections in certain terms in the Merger Agreement, enhanced disclosure in the Proxy delivered by iPayment in connection with the Merger and protection against loss of potential transaction value arising from a short-term resale of iPayment by the Acquiring Parties at a significant premium.

Defendants emphatically deny any and all claims of wrongdoing, and any and all liability alleged in connection with such claims. Lead Plaintiffs believe that the proposed settlement is fair, reasonable and the best that could be obtained and is in the best interests of the Class. There are significant risks associated with continuing to litigate and proceeding to trial. In addition, there is a danger that the Class would not prevail on their claims against the Defendants even if those claims went to trial. Further, had the case proceeded to trial and assuming Lead Plaintiffs established liability of the Defendants, the amount of damages, if any, recoverable by Class Members would have been subject to rigorous attack by the Defendants. The proposed settlement eliminates these risks and provides immediate protection and benefits for Class Members.

Plaintiffs' Counsel have not yet received any payment for their services in prosecuting this Action on behalf of the Lead Plaintiffs and the Members of the Class. Defendants have agreed to pay Lead Plaintiffs' Counsel fees and expenses in the amount of $1.3 million as a unitary part of the settlement.

This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have expressly denied any and all wrongdoing and/or liability. This Notice is to advise you of the proposed settlement and of your rights in connection therewith.

If you have any questions about the settlement, you may contact the following Lead Plaintiffs' Counsel:

Darren J. Robbins
Randall J. Baron
Ellen Gusikoff Stewart
A. Rick Atwood, Jr.
Lerach Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-3301
Facsimile: (619) 231-7423

## I. DEFINITIONS

The following terms have the meanings specified below:

1. "Acquiring Parties" means iPayment, MergerCo, Holdings, Gregory S. Daily, and Carl A. Grimstad, collectively.

2. "Board" means the Board of Directors of iPayment.

3. "Class" means all individuals or entities who held or beneficially owned, directly or indirectly, common stock or other equity securities of iPayment at any time during the period of March 29, 2006 through and including May 5, 2006. Excluded from the Class are any such persons or entities who submit valid and timely requests for exclusion from the Class pursuant to this Notice. Also excluded are any such persons or entities who are Defendants or any person, firm, trust, corporation or other entity related to or affiliated with any Defendant.

4. "Class Member" or "Member of the Class" means a Person who falls within the definition of the Class.

5. "Class Period" means the period commencing on March 29, 2006 and ending on May 5, 2006, inclusive.

6. "Consolidated Action" or "Action" means the lawsuit captioned *In re iPayment, Inc. Shareholder Litigation,* Lead Case No. 05-1250-III (Chancery Court for Davidson County, 20th Judicial District, Tennessee)

7. "Consolidated Complaint" means the Consolidated Complaint filed in the Consolidated Action by Lead Plaintiffs on or about January 3, 2006.

8. "Court" means the Chancery Court for Davidson County, Twentieth Judicial District in the State of Tennessee.

9. "Defendants" means iPayment and the Individual Defendants.

10. "Defendants' Counsel" means the law firms of Debevoise & Plimpton LLP; Bass Berry & Sims, PLC; White & Case LLP; Waller Landsden Dortch & Davis, PLLC; Akin Gump Strauss Hauer & Feld LLP; and Neal and Harwell PLC.

11. "Holdings" means iPayment Holdings, Inc., a Delaware corporation formed by Gregory A. Daily and Carl A. Grimstad and certain parties related to them.

12. "Individual Defendants" means Gregory S. Daily, Carl A. Grimstad, Clay M. Whitson, Peter Y. Chung, J. Donald McLemore, Jr., Jennie Carter Thomas, David T. Vandewater, and David M. Wilds.

13. "iPayment Securities" means any common stock or other equity securities of iPayment held or beneficially owned, directly or indirectly.

14. "Lead Plaintiffs" means Charter Township of Clinton Police and Fire Retirement System, Teresita Fay, and Seth Blumenfeld.

15. "Lead Plaintiffs' Counsel" means the law firms of Lerach Coughlin Stoia Geller Rudman & Robbins LLP; Faruqi & Faruqi, LLP; and Branstetter, Kilgore, Stranch & Jennings.

16. "Merger" means the transaction contemplated in the Merger Agreement.

17. "Merger Agreement" means the Agreement and Plan of Merger dated as of December 27, 2005 between iPayment, Holdings, and MergerCo.

18. "MergerCo" means iPayment MergerCo, Inc., a wholly-owned subsidiary of Holdings formed for the purpose of effecting the merger with iPayment.

19. "Original Actions" means the following actions filed in the Chancery Court for the State of Tennessee in the Twentieth Judicial District: *Teresita Fay, on behalf of herself and all others similarly situated v. Gregory S. Daily, et al.*, Case No. 05-1250-I (Davidson County); *Charter Township of Clinton Police and Fire Retirement System, Individually and On Behalf Of All Others Similarly Situated v. iPayment Inc., et al.*, Case No. 05-1258-I (Davidson County); *Seth Blumenfeld, Individually and On Behalf Of All Others Similarly Situated v. iPayment, Inc., et al.*, Case No. 05-1495-II (Davidson County).

20. "Parties" means Plaintiffs, iPayment, and the Individual Defendants, collectively, and, where applicable, their respective counsel.

21. "Person" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

22. "Plaintiffs' Counsel" means all counsel who have appeared for any of the plaintiffs in the Action.

23. "Settlement Agreement" means the First Amended Stipulation of Settlement memorializing the proposed settlement of the Action, which is on file with the Court.

## II. THE LITIGATION AND RELATED PROCEEDINGS

1. On May 13, 2005, the Board received a non-binding proposal from an entity newly formed by Gregory S. Daily, iPayment's Chairman and Chief Executive Officer, to acquire all of the outstanding shares of iPayment's common stock for $38.00 per share in cash. The Board of Directors, a majority of whom were outside and independent directors, immediately formed a Special Committee of non-employee, independent directors to evaluate and act with the full authority of the Board with respect to Mr. Daily's proposal and any alternative proposals or strategic alternatives.

2. Between May 17, 2005 and June 10, 2005, immediately following the formation of the Special Committee on May 13, 2005, three complaints were filed in the Chancery Court for the State of Tennessee in the Twentieth Judicial District challenging Mr. Daily's original proposal:

a. *Teresita Fay, on behalf of herself and all others similarly situated v. Gregory S. Daily*, et al., Case No. 05-1250-I (Davidson County)

b. *Charter Township of Clinton Police and Fire Retirement System, Individually and On Behalf Of All Others Similarly Situated v. iPayment Inc.*, et al., Case No. 05-1258-I (Davidson County)

c. *Seth Blumenfeld, Individually and On Behalf Of All Others Similarly Situated v. iPayment, Inc., et al.*, Case No. 05-1495-II (Davidson County).

3. Plaintiffs brought these actions as putative class actions on behalf of themselves and the other stockholders of iPayment (other than Defendants and their affiliates), and alleged, among other things, that the Individual Defendants breached their fiduciary duties of care, loyalty, candor and independence in connection with their future evaluation of the merger proposal. Plaintiffs further alleged that iPayment aided and abetted such purported future breaches of fiduciary duty. Plaintiffs sought various forms of declaratory, injunctive and equitable relief.

4. On July 22, 2005, iPayment issued a press release reporting that the Special Committee had determined not to recommend proceeding with the transaction proposed by Mr. Daily and that the Special Committee had determined to "explore alternatives that will enhance stockholder value, including, without limitation, the sale of the Company with potentially interested purchasers and a recapitalization transaction, as well as remaining independent and not undertaking any such transactions." Defendants contend that the Special Committee's determinations were made following due diligence by and consultations with its independent legal and financial advisors and involved the Special Committee's consideration of a number of factors, including the pendency of the Original Actions.

5. By agreed order entered on August 11, 2005, the Original Actions were consolidated under the caption *In re iPayment, Inc. Shareholder Litigation*, Civil Action No. 05-1250-III, pending in the Chancery Court for the State of Tennessee, Twentieth Judicial District. The Court appointed the law firms of Faruqi & Faruqi, LLP and Lerach Coughlin Stoia Geller Rudman & Robbins LLP to the Executive Committee, with Lerach Coughlin Stoia Geller Rudman & Robbins LLP as the Chair of the Executive Committee. The Court appointed the law firm of Branstetter, Kilgore, Stranch & Jennings as Liaison Counsel.

6. Between August and October 2005, consistent with the statements in the July 22 press release, Defendants assert that the Special Committee and its legal and financial advisors contacted and discussed a proposed transaction with a number of other potential purchasers. The discussions ultimately led to preliminary and – following iPayment's provision of information and additional due diligence by the potential purchasers – revised indications of value, subject to a variety of contingencies, assumptions and conditions, from several potential purchasers that were in excess of Mr. Daily's original proposal of $38.00 per share.

7. Defendants further contend that, on October 12, 2005, the Special Committee determined that the valuations submitted by all but one of the potential purchasers were not sufficient and that it would cease discussions with all but the potential purchaser with the highest valuation, a range of $42.00 to $44.00 per share that remained subject to a number of contingencies, including additional due diligence, financing and the commitment of Mr. Daily and other members of management to roll over a significant percentage of their equity ownership in iPayment into the potential purchaser's acquisition vehicle.

8. Defendants state that, in light of the extensive bidding process undertaken by its independent financial advisor and the results of that process, the Special Committee further determined that it was unlikely that any potential purchaser would offer in excess of $44.00 per share and that there were risks that the remaining potential purchaser's contingencies and conditions would not be met or would cause the purchaser to reduce its valuation (as others had done following due diligence). In view of these factors, the Special Committee decided that the best way to obtain the highest price for the sale of iPayment with the greatest certainty of completion would be to try to induce Mr. Daily to make a proposal to acquire iPayment at the highest end of the valuation ranges received from the other potential purchaser, $44.00 per share.

Accordingly, while continuing discussions with the remaining potential purchaser, the Special Committee informed Mr. Daily that it would likely support a proposal from him at $44.00 per share.

9. On November 1, 2005, Mr. Daily submitted a revised proposal to acquire the outstanding shares of iPayment at a price of $43.00 per share. Mr. Daily also informed the Special Committee that, while he was in principle willing to remain as a senior executive in the event that iPayment was acquired by a third party, at the price levels being sought by iPayment he was not prepared to "roll-over" his shares into a transaction led by another party. Following additional discussions and negotiations with the Special Committee and its independent financial advisor, Mr. Daily subsequently informed the Special Committee that he would be willing to increase his bid to $43.50 per share as a last and final offer.

10. Defendants assert that, following additional discussions, on November 11, 2005, the Special Committee determined that it was in the best interest of the stockholders to seek to negotiate a merger transaction with Mr. Daily at the $43.50 per share level he had communicated to the Special Committee. After significant additional negotiations between the Special Committee and its legal and financial advisors and Mr. Daily (and, subsequently, with Mr. Grimstad and the other Acquiring Parties) on the terms and conditions of the merger transaction, including – as described in more detail below – consultations with counsel for Plaintiffs in connection with initial settlement discussions – on December 27, 2005, iPayment, Holdings, and MergerCo entered into a Merger Agreement pursuant to which Holdings will acquire all of the outstanding shares of iPayment common stock for $43.50 in cash per share and MergerCo will be merged with and into iPayment, with iPayment remaining as the surviving corporation.

11. Defendants further assert that, on December 27, 2005, after having (*i*) met in person 11 times and held an additional 16 formal meetings by telephone, (*ii*) considered and evaluated the May 13, 2005 Daily merger proposal, several third party preliminary proposals, and the revised merger proposal submitted by Mr. Daily on November 1, 2005, and (*iii*) received and considered the advice and counsel of its independent legal and financial advisors, including a December 27, 2005 fairness opinion from its financial advisors that the merger consideration to be paid to stockholders was fair, from a financial point of view, the Special Committee unanimously determined that the revised Daily merger proposal was advisable, fair to and in the best interests of iPayment and its stockholders (other than Holdings and its affiliates) and that the consideration to be paid for each share of iPayment's common stock in connection with the merger is fair to iPayment's stockholders (other than Holdings and its affiliates). Accordingly, the Special Committee recommended to the Board that the Board (*i*) approve and adopt the Merger Agreement and (*ii*) recommend that stockholders approve and adopt the Merger Agreement at a Special Meeting of Shareholders.

12. Plaintiffs filed their Consolidated Complaint in the Consolidated Action on or about January 3, 2006. The Consolidated Complaint alleges that the revised Daily merger proposal resulted from an unfair process, the merger consideration of $43.50 constitutes an unfair price, and the Individual Defendants breached fiduciary duties of care, loyalty, good faith, candor and independence in connection with the proposed merger, allegedly aided and abetted by iPayment. The Consolidated Complaint seeks: (*i*) certification as a class action, (*ii*) a declaration that the proposed merger is in breach of Defendants' fiduciary duties and, thus unenforceable, (*iii*) an injunction against consummation of the merger or, in the alternative, rescission of the transaction and imposition of a constructive trust, (*iv*) a direction that Individual

Defendants comply with their fiduciary duties, and (*v*) an award of Plaintiffs' attorneys' fees and costs.

13. Although iPayment and the Individual Defendants believe that the Consolidated Action is without merit, they recognize that the litigation would cause distraction and diversion of resources and that a successful outcome could not be guaranteed. Accordingly, following the entry of the order consolidating the actions and appointing an executive committee of Plaintiffs' Counsel, representatives of Plaintiffs' Counsel and Defendants' Counsel periodically engaged in discussions concerning the potential for settlement of the litigation. In connection with these discussions and in response to Plaintiffs' requests for the production of documents, the Special Committee, iPayment, and Mr. Daily produced documents and provided other information to Plaintiffs' Counsel concerning the proposed transaction and related matters.

14. In addition, in connection with the Parties' good faith efforts to resolve the Consolidated Action through settlement, Plaintiffs' Counsel participated in, and contributed to, negotiations between representatives of the Special Committee and representatives of Mr. Daily that resulted in the inclusion of several favorable provisions in the Merger Agreement, including: (*i*) a requirement that the transaction be approved by a majority of the shares other than those held by Mr. Daily and the other stockholders participating in the acquisition; (*ii*) a reduction of the break-up fee initially proposed by Mr. Daily (from $25 million, inclusive of expense reimbursement, down to $15 million, plus reimbursement of Holdings' actual out-of-pocket expenses up to a cap of $3 million); and (*iii*) a provision giving iPayment the right to terminate the Merger Agreement, without being obligated to submit the revised Daily merger proposal to a vote of iPayment's stockholders but subject to the payment of a termination fee, if iPayment receives a superior proposal from a third party and the Special Committee and/or Board

determines to change their recommendation and no longer recommend that the stockholders approve the revised Daily merger proposal.

15. On March 24, 2006, the Parties agreed in principle to a framework for the potential compromise and settlement of the litigation. The framework included benefits to the alleged Class in the form of: (*i*) protection against loss of potential transaction value arising from a short-term resale of iPayment by the Acquiring Parties at a significant premium; (*ii*) agreement by iPayment to permit Plaintiffs' Counsel to comment on a draft of the Proxy Statement to be filed with the SEC; (*iii*) commitment by iPayment to consider any proposed comments in good faith, and (*iv*) agreement by Defendants to pay Plaintiffs' attorneys' fees and expenses in the amount of $1.3 million as a unitary part of the settlement.

16. In accordance with the terms of the agreement in principle, Plaintiffs' Counsel provided iPayment with certain proposed revisions and comments on the draft proxy statement for iPayment's consideration. Following additional communications between the Parties, Plaintiffs' Counsel's comments were incorporated into the final Proxy Statement filed with the United States Securities and Exchange Commission on April 4, 2006.

17. On April 24, 2006, the parties entered into a Settlement Agreement to settle the Action, subject to the approval of the Court. Following completion of confirmatory discovery, the parties entered into an amended Settlement Agreement on August 9, 2006.

## III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

Defendants have expressly and emphatically denied and continue to deny each and all of the claims and contentions alleged by the Lead Plaintiffs. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendants also have denied and continue to deny, *inter alia*, the allegations that the Lead

Plaintiffs or the Class (as defined above) have suffered damage or that the Lead Plaintiffs or the Class were harmed by the alleged conduct. Neither the Settlement Agreement nor the settlement shall be construed, whether in whole or in part, as evidence, or an admission or concession on the part of Defendants, of any fault or liability, nor shall the Settlement Agreement or the settlement be considered an admission by Defendants that Lead Plaintiffs have satisfied the requirements for class certification under Tennessee Rule of Civil Procedure 23. In the event that the Settlement Agreement is terminated for any reason, any and all defenses shall remain available to Defendants (including any objections to class certification). Without conceding any infirmity in any defenses they have asserted or intend to assert in the Action, Defendants consider it desirable and in their best interests that this Action be dismissed on the terms set forth herein in order to avoid further expense and protracted litigation.

## IV. CLAIMS OF THE LEAD PLAINTIFFS AND BENEFITS OF SETTLEMENT

The Lead Plaintiffs believe that the claims asserted in the Action have merit. However, Lead Plaintiffs' Counsel recognize and acknowledge Defendants' denial of wrongdoing and liability, as well as the expense and length of continued proceedings necessary to prosecute the Action through trial and through appeals. Lead Plaintiffs' Counsel also have taken into account the uncertain outcome and risk of continued litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Lead Plaintiffs' Counsel considered the inherent problems of proving, and possible defenses to, the allegations asserted in the Action. Lead Plaintiffs' Counsel have further taken into account the favorable changes made to the Merger Agreement as the result of Lead Plaintiffs' Counsel's participation in the Merger Agreement negotiation process and have taken into account the modifications made to the final Proxy Statement at Lead Plaintiffs' Counsel's request. Based on their evaluation, Lead Plaintiffs' Counsel believe that the settlement set forth in the Settlement Agreement confers

substantial benefits upon the Class and protects the best interests of the Lead Plaintiffs and the Class.

## V. THE RIGHTS OF THE CLASS MEMBERS

If you are a Class Member, you may receive the benefit of and you will be bound by the terms of the proposed settlement described in this Notice, upon the Court's approval of such terms.

If you are a Class Member, you have the following options:

1. **Requesting Exclusion.** If you do not wish to be included in the Class and you do not wish to participate in the proposed settlement described in this Notice, you may request to be excluded. To do so, you must submit a written exclusion request, so that it is postmarked or received no later than November 16, 2006 to the following address:

If by first-class mail:
Clerk and Master
Room #2
Metro Courthouse
Nashville TN 37201

If by overnight mail or hand delivery:
Clerk and Master
First Image Building, 2nd Floor
501 Great Circle Road
Nashville TN 37228

Your exclusion request must set forth:

(a) the name of this Action (*In re iPayment, Inc. Shareholders Litigation*, Lead Case No. 05-1250-III);

(b) your name, address, telephone number, and number(s) and type(s) of iPayment equity securities held or beneficially owned during the class period of March 29, 2006 through May 5, 2006 (inclusive);

(c) that you wish to be excluded from the Class.

NO REQUEST FOR EXCLUSION WILL BE CONSIDERED VALID UNLESS ALL OF THE INFORMATION DESCRIBED ABOVE IS INCLUDED IN ANY SUCH REQUEST.

2. If you timely and validly request exclusion from the Class: (a) you will be excluded from the Class; (b) you will not be bound by any judgment entered in the Action; and (c) you will not be precluded from otherwise prosecuting an individual claim, if timely, against Defendants based on the matters complained of in the Action.

3. If you do not timely and validly request exclusion from the Class, you will be bound by any and all determinations or judgments in the Action in connection with the proposed settlement, whether favorable or unfavorable to the Class, including, without limitation, the Judgment described below, and you shall be deemed to have, and by operation of the Judgment shall have, fully released all of the "Released Claims" against the "Releasees" (as defined in Exhibit 1 to this Notice). Even if you have a pending litigation, arbitration or other proceeding against any of the "Releasees" relating to any of the "Released Claims," or want to start such a proceeding later, you must exclude yourself from the Class if you want to continue or bring the proceeding. If you have a pending lawsuit, speak to your lawyer in that case immediately.

4. **Objecting to the Settlement.** If you do not request exclusion from the Class, you may object to any aspect of the proposed settlement. Your objection must be in writing, explain why you are objecting, and include any materials that you believe support your objection. To be considered, any objection and supporting materials must be filed with the Court no later than November 16, 2006 at the address provided above for the Clerk and Master.

You must also serve copies of your objection and any supporting materials on Lead Counsel and Defendants' Counsel, at the following addresses:

Lead Plaintiffs' Counsel:

Darren J. Robbins
Randall J. Baron
Ellen Gusikoff Stewart
A. Rick Atwood, Jr.
Lerach Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-3301
Facsimile: (619) 231-7423

Defendants' Counsel:

Jonathan R. Tuttle
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Facsimile: (212) 354-8113

Andrew J. Rossman
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Facsimile: (212) 872-1002

Overton Thompson, III
Bass Berry & Sims, PLC
315 Deadrick Street, Suite 2700
Nashville, TN 37238-3001
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Robert E. Boston
Ames Davis
Waller Landsden Dortch Davis, PLLC
Nashville City Center
511 Union Street, Suite 2700
Nashville, TN 37219-1760
Facsimile: (615) 244-6804

Aubrey B. Harwell, Jr.
Aubrey B. Harwell, III
Neal and Harwell, PLC
Suite 2000, One Nashville Place
150 4th Avenue North
Nashville, TN 37219-2498
Facsimile: (615) 726-0573

5. Unless otherwise ordered by the Court, any Member of the Class who does not submit an objection in the manner set forth above shall be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the proposed settlement, including an award of $1.3 million to Lead Plaintiffs' Counsel for attorneys' fees and expenses.

6. **Doing Nothing.** You may do nothing at all. If you choose this option, you will be bound by any judgment entered by the Court, and you shall be deemed to have, and by operation of the Judgment shall have, fully released all of the "Released Claims" against the "Releasees" (as defined in Exhibit 1 to this Notice).

7. **Your Lawyers in the Action.** Under the Agreed Order entered on August 11, 2005, the Court appointed the law firms of Faruqi & Faruqi, LLP and Lerach Coughlin Stoia Geller Rudman & Robbins LLP to the Executive Committee, with Lerach Coughlin Stoia Geller Rudman & Robbins LLP as the Chair of the Executive Committee. The Court appointed the law firm of Branstetter, Kilgore, Stranch & Jennings as Liaison Counsel. However, if you are a Class Member, you may, but are not required to, enter an appearance through counsel of your own choosing at your own expense. If you wish to do so, your attorney must file a notice of appearance with the Court, and serve copies on Lead Plaintiffs' Counsel and Defendants' Counsel at the addresses listed above, no later than November 16, 2006. If you do not hire your own attorney, your interests will be represented by Lead Plaintiffs' Counsel.

8. **Obtaining Access to Discovery.** Class Members and any attorneys hired at their expense may obtain access to the discovery materials in the Action for the sole purpose of

assessing the Settlement Agreement, but must first agree in writing to be bound by the Stipulation and Order of Confidentiality attached as an exhibit to the Findings and Order Preliminarily Approving Class Action Settlement. Contact Lead Counsel for more details.

## VI. THE PROPOSED SETTLEMENT

Lead Plaintiffs and the Defendants have reached a proposed settlement in the Action, embodied in the Settlement Agreement on file with the Court. Lead Plaintiffs' Counsel, on the basis of, among other things, a thorough investigation of the facts and the law relating to the acts, events, and conduct complained of and the subject matter of the Action, have concluded that the proposed settlement is fair to and in the best interests of the Class.

The following description of the proposed settlement of the Action is only a summary, and reference is made to the text of the Settlement Agreement on file with the Court for a full statement of its provisions:

1. As described above, the pendency of the Original Actions was a factor considered by the Special Committee, as advised by its independent legal and financial advisors, in its initial review and determination not to recommend approval of Mr. Daily's May 13, 2005 proposal.

2. As described above, during the negotiations between the Parties and following the agreement in principle on the framework for the settlement of the Consolidated Action, Lead Plaintiffs' Counsel reviewed and provided substantive comments on the Merger Agreement and a draft of the Proxy Statement.

3. As additional consideration of the settlement and release of claims on behalf of the Class, Defendants Daily and Grimstad agreed to the following Protective Measure for the benefit of the Class:

If within 9 months of the closing of the merger:

(a) the Acquiring Parties (i) sell or cause to be sold 50% or more of the outstanding equity or assets of Holdings or iPayment to a person or entity other than an affiliate of Holdings, or (ii) cause Holdings or iPayment to merge with any person or entity other than an affiliate of Holdings and receive either cash or other compensation; and

(b) the net consideration received by the Acquiring Parties, measured at the time of the completion of the sale or merger, is greater than an amount (the "Threshold Amount") equal to (i) in the case of a merger or sale of all of the outstanding equity or assets, $1 billion or (ii) in the case of a sale of 50% or more of the outstanding equity or assets, $1 billion multiplied by the percentage of the outstanding shares or fair market value of assets of Holdings or iPayment, as the case may be, that were sold or caused to be sold by the Acquiring Parties; then

the Acquiring Parties will cause Holdings or iPayment to pay into a fund for the benefit of those Class Members an amount equal to 50% of the amount by which such net consideration exceeds the Threshold Amount, up to a maximum aggregate payment of $69,377,365. For example, if 50% of the equity or assets of iPayment were sold or otherwise divested within 9 months of the consummation of the merger for $600 million, then $50 million would be payable to the Class ($600 million minus the Threshold Amount of $500 million (50% of $1 billion), which equals $100 million, times 50%, which equals $50 million).

The parties expressly agree and acknowledge that the provision shall not be triggered and no payment will be required to Class Members as a result of any write-down of goodwill or intangible assets associated with iPayment.

Rights to participate in any proceeds under the Protective Measure and the interests in any fund created will be evidenced by non-certificated, non-transferable (except by ordinary successorship upon death or dissolution) contractual obligations that shall be owed solely to each member of the Class.

The proceeds of any such payment to the Class pursuant to the Protective Measure, subject to 23.5% thereof being paid to plaintiffs' counsel for attorneys' fees and expenses, shall promptly be distributed to the Class under the direction of Plaintiffs' Counsel. Any administration or distribution costs will be paid exclusively from the proceeds to be distributed to the Class.

## VII. CONDITIONS FOR SETTLEMENT

The settlement is conditioned upon the occurrence of certain events described in the Settlement Agreement on file with the Court. Those events include, among other things: (a) entry of the Judgment by the Court, as provided for in the Settlement Agreement; and (b) expiration of the time to appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described in the Settlement Agreement is not met, the Settlement Agreement might be terminated. If the Settlement Agreement is terminated, it will become null and void, and the parties to the Settlement Agreement will be restored to their respective positions in the Action.

## VIII. INJUNCTION AGAINST OTHER PROCEEDINGS

1. The Court has entered an Order that preliminarily enjoins all Class Members who have not validly and timely excluded themselves from the Class from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding or order in any jurisdiction, based on or relating in any way to the claims and causes

of action, or the facts and circumstances relating thereto, in this Action and/or the "Released Claims" (as defined in Exhibit 1 to this Notice).

2. The Court's Order also preliminarily enjoins all Persons from filing, commencing or prosecuting any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Class Members who have not timely excluded themselves from the Class, if such other lawsuit is based on or relates in any way to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the "Released Claims" (as defined in Exhibit 1 to this Notice).

3. Under the Settlement Agreement, the Court's final order and Judgment approving the proposed settlement will make these injunctions permanent.

## IX. DISMISSAL AND RELEASES

1. If the Court approves the proposed settlement, the Court will enter a Judgment that will dismiss the Action against Defendants with prejudice, and bar and permanently enjoin Lead Plaintiffs and each Class Member from prosecuting the "Released Claims" against the "Releasees" (as defined in Exhibit 1 to this Notice). The Court shall retain jurisdiction over implementation of the settlement and determining Lead Plaintiffs' Counsel's application for attorneys' fees, costs, interest, and expenses (including fees and costs of experts), and enforcing and administering the Settlement Agreement, including any releases executed in connection therewith.

2. Under the terms of the Judgment described above, on and after the "Final Settlement Date," each Class Member shall be conclusively deemed to have released any and all "Released Claims" against each "Releasee," as set forth below (all capitalized terms are defined above, or in Exhibit 1 to this Notice):

Lead Plaintiffs and any and all Class Members, on behalf of themselves, their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates and assigns, and any person or entity claiming by or through any of the Class Members, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged:

a. all Released Claims against each and every one of the Releasees, including such Released Claims as already have been, could have been or could be asserted in any pending litigation, arbitration, or other proceeding, and whether or not a Proof of Claim has been executed and/or delivered by, or on behalf of, such any Class Member;

b. all claims, damages and liability as to any or all of Lead Plaintiffs, Lead Counsel, Defendants' Counsel, and each and every one of the Releasees that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the initiation, prosecution, defense or settlement of the Action or to the Settlement Agreement; and

c. any and all claims against any of the Releasees for attorneys' fees, costs or disbursements incurred by Lead Counsel or other counsel representing Lead Plaintiffs, or other Class Members, or any of them, in connection with or related in any manner to the Action, the settlement of the Action, or administration of the Action, except to the extent specified in the Settlement Agreement.

With respect to any and all Released Claims, by the terms of the Final Judgment, the Lead Plaintiffs shall expressly, and each Class Member shall be deemed to have and by operation of the Final Judgment shall have expressly, waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code or any federal, state, or foreign law, rule, regulation or common law doctrine that is similar, comparable, equivalent, or identical to, or which has the effect of, Section 1542 of the California Civil Code, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Notwithstanding the provisions of Section 1542 and any similar provisions, rights and benefits conferred by any law, rule, regulation or common law doctrine of California or in any federal, state or foreign jurisdiction, each and every Class Member understands that he, she or it may hereafter discover facts in addition to or different from those he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims. Nevertheless, each and every Class Member hereby stipulates and agrees that, pursuant to the Final Judgment, he, she or it shall have and be deemed to have, on or after the Final Settlement Date, fully, finally and forever settled and released any and all

Released Claims, whether or not they are Unknown Claims, and without regard to the subsequent discovery or existence of different or additional facts. Lead Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key and fundamental element of the Settlement Agreement of which this Release is a part. The Releasees hereby release Lead Plaintiffs and Lead Counsel from any claims of liabilities arising out of this action**.**

## X. NOTICE TO BANKS, BROKERS, AND OTHER NOMINEES

Banks, brokerage firms, institutions, and other Persons who are nominees, and who purchased or otherwise acquired iPayment Securities between March 29, 2006 and May 5, 2006, inclusive, for the beneficial interest of another Person are requested within ten (10) days of receipt of this Notice to: (1) provide Georgeson Shareholder with the names and addresses of such Person, or (2) forward a copy of this Notice to each such Person and provide Defendants' Counsel with written confirmation of doing so. Georgeson Shareholder offers to prepay your reasonable costs and expenses of complying with this provision upon submission of appropriate documentation. Additional postage pre-paid copies of the Notice may be obtained from Georgeson Shareholder for forwarding to such beneficial owners. All such correspondence to Georgeson Shareholder should be addressed as follows:

Georgeson Shareholder
17 State Street, 28th Floor
New York NY 10004

## XI. FEES, COSTS, AND EXPENSES OF PLAINTIFFS' COUNSEL

To date, Plaintiffs' Counsel have not received any payment for their services in conducting this Action on behalf of Lead Plaintiffs and the Members of the Class, nor have counsel been reimbursed for their out-of-pocket expenses. Defendants have agreed to pay Lead Plaintiffs' attorneys' fees and expenses in the amount of $1.3 million as a unitary part of the settlement. Class Members are not personally liable for any fees or expenses awarded by the Court.

The fee requested will compensate Lead Plaintiffs' Counsel for their efforts in a settlement for the benefit of the Class, and for their risk in undertaking this case on a contingent basis.

## XII. THE HEARING ON PROPOSED SETTLEMENT

A hearing (the "Hearing") will take place before the Honorable Chancellor Lyle, at the Chancery Court, Twentieth Judicial District at Nashville, for the State of Tennessee on November 30, 2006, at 10:00 a.m. Central time, for the purpose of determining whether: (a) the proposed settlement and Settlement Agreement should be approved by the Court as fair, reasonable and adequate; and (b) the Court should enter Judgment dismissing the Action with prejudice as against the Defendants. The Court may reschedule the Hearing without further notice to Class Members.

Any Member of the Class who has not requested exclusion may appear at the Hearing to show cause why the proposed settlement should not be approved. However, any Person wishing to be heard at the Hearing must first file and serve a timely written objection, as described above.

## XIII. OBTAINING ADDITIONAL INFORMATION

This Notice contains only a summary of the terms of the proposed settlement. For a more detailed statement of the matters involved in the Action, reference is made to the pleadings, to the Settlement Agreement, and to other papers filed in this action, which may be inspected at the office of the Clerk and Master, First Image Building, 2nd Floor, 501 Great Neck Circle Road, Nashville, TN 37228, during business hours of each business day.

**DO NOT CONTACT THE COURT REGARDING THIS NOTICE.**

If you have any questions about the proposed settlement, you may contact the following Lead Plaintiffs' Counsel:

Darren J. Robbins
Randall J. Baron
Ellen Gusikoff Stewart
A. Rick Atwood, Jr.
Lerach Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-3301
Facsimile: (619) 231-7423

DATED: October 6, 2006

BY ORDER OF THE COURT
Chancellor Lyle

## EXHIBIT 1: TERMS USED IN THE RELEASE

1. "Claim" means any and all actions, causes of action, proceedings, adjustments, executions, offsets, contracts, judgments, obligations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, damages, demands (whether written or oral), agreements, promises, liabilities, controversies, costs, expenses, attorneys' fees and losses whatsoever, whether in law, in admiralty or in equity and whether based on any federal law, state law, foreign law or common law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, suspected or unsuspected, hidden or concealed, accrued or not accrued.

2. "Final Judgment and Order Approving Settlement" means the judgment to be entered by the Court approving the Settlement Agreement and dismissing the Action with prejudice as to all Class Members who have not timely and validly requested exclusion from the Class.

3. "Final Settlement Date" means the date on which the Final Judgment and Order Approving Settlement become final. For purposes of this definition, the Final Judgment and Order Approving Settlement shall become final:

   (1) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any potential extension of time) has expired; or

   (2) if any appeal is taken therefrom, on the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en banc* and petitions for *certiorari* or any other form of review, have been finally disposed of, such that the time to appeal therefrom (including any potential extension of time) has expired, in a manner resulting in an affirmance of the Final Judgment and Order Approving Settlement.

4. "Released Claims" means each and every Claim or Unknown Claim including, without limitation, claims relating to rescission, restitution, unjust enrichment or all damages of any kind, including those in excess of actual damages, whether based on federal, state or local law, statute, ordinance, regulation, contract, common law, or any other source, that have been, could have been or might hereafter be alleged or asserted by any Class Member against the Releasees or any of them in this Consolidated Action, the Original Actions or in any other court action or before any administrative body, tribunal, arbitration panel, or other adjudicatory body that relate in any way, directly or indirectly, to the allegations contained in the Consolidated Complaint or the Original Actions, including, without limitation:

   a) any or all of the acts, omissions, nondisclosures, facts, matters, transactions, occurrences, or oral or written statements or representations that have been, may be or could be directly or indirectly alleged, asserted, described, set forth or referred to in this Consolidated Action or the Original Actions;

b) any alleged breaches of fiduciary duty, self-dealing or lack of good faith (or other duty placed upon corporate directors and officers by common law or statute) and/or obligations under federal or state law, including the United States securities laws;

c) any filing made with the United States Securities and Exchange Commission by any of the Releasees in connection with the Merger Agreement, the transaction contemplated in the Merger Agreement and/or any alternate merger proposals or strategic alternatives, expressly including but not limited to the Proxy Statement;

d) any disclosures of any sort made by any of the Releasees in connection with the Merger Agreement, the transaction contemplated in the Merger Agreement and/or the consideration of alternate merger proposals or strategic alternatives, expressly including but not limited to the Proxy Statement;

e) the Board's and/or the Special Committee's actions taken in connection with the Merger Agreement, the transaction contemplated in the Merger Agreement and/or the consideration of alternate merger proposals or strategic alternatives;

f) all claims relating in any way, directly or indirectly, to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with the Settlement Agreement or the settlement of this Consolidated Action (including, without limitation, all claims respecting the negotiation and execution of this Agreement); and/or

g) except as expressly provided in this Agreement, any and all claims for attorneys' fees, expert witness fees and/or other costs or disbursements incurred by Plaintiffs' Counsel or any other counsel representing Plaintiffs or any Class Member in this Consolidated Action, or by Plaintiffs or any Class Member in this Consolidated Action, or any of them, in connection with or in any way related to this Consolidated Action and/or the settlement of this Consolidated Action.

5. "Releasees" means (*i*) the Individual Defendants and each of their heirs, executors, agents, administrators and assigns, (*ii*) Holdings and MergerCo and each of their affiliates, and (*iii*) iPayment and each of its past, present and future parents, subsidiaries, predecessors, successors and assigns and affiliates, and each of their respective past, present and future officers, directors, employees, agents, representatives, attorneys, financial advisors, heirs, administrators, executors, predecessors, successors, and assigns, or any of them, including any person or entity controlled by, controlling or under common control with any of them.

6. "Unknown Claim" means any Released Claim that any Class Member does not know or suspect to exist in his, her or its favor at any time on or before the date that such Class Member's release becomes effective, and that, if known by him, her, or it, might have affected his, her or its settlement with the Releasees or might have affected his, her, or its decision not to request exclusion from the Class or not to object to the Settlement Agreement.