

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

MONIQUE OUTZEN individually and on behalf of all others similarly situated,
ROBERT ARDAIOLO individually and on behalf of all others similarly situated,
MELISSA BARKER, an individual, on behalf of herself and all others similarly situated,

Plaintiff,

v.

KAPSCH TRAFFICCOM USA, INC., and
GILA, LLC,

Defendants.

Case No. 1:20-cv-01286-TWP-MJD

PRELIMINARY APPROVAL ORDER

WHEREAS, the Court has been advised that Plaintiffs and Defendant Gila, LLC (the “Parties”), through their respective counsel, have agreed, subject to Court approval following notice to the Settlement Class Members and a hearing, to settle the claims raised in the above-captioned consolidated lawsuit (the “Action”) against Defendant Gila, LLC (“Gila”). The Parties have agreed to resolve the Action upon the terms and conditions set forth in the Settlement Agreement. The Settlement Agreement has been filed with the Court and the definitions set forth in the Settlement Agreement are incorporated by reference herein.

Based upon the Settlement Agreement and all of the files, records, and proceedings herein, it appears to the Court that, upon preliminary examination, the proposed settlement is fair, reasonable, and adequate. A hearing will be held on **June 22, 2022 at 11:00 a.m.** **in Courtroom 344** after notice to the proposed Settlement Class Members, to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a Final Approval Order should be entered in the Action.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter of the Action and over the Parties.

2. Settlement Class: Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and 23(b)(3), the matter is hereby preliminarily certified, for settlement purposes only, as a class action on behalf of the following Settlement Classes:

- A. The Late Invoice Settlement Class, including any UVA user of the Riverlink Bridges who paid a \$5 fee assessed for failure to timely pay a 1st Toll Notice issued pursuant to the LSIORB Business Rules.
- B. The Missing Invoice Settlement Subclass, including any UVA user of the Riverlink Bridges who paid any/all fee(s) or penalty(ies) assessed after the UVA user failed to pay a 1st Toll Notice, 2nd Toll and/or Violation Notice that was not printed and mailed and where such user was not refunded or credited the fee(s) and/or penalty(ies) prior to the Execution Date of the Settlement Agreement.

Excluded from both the Late Invoice Settlement Class and the Missing Invoice Settlement Subclass are Defendants, the officers, directors and employees of any Defendant, the parent companies, subsidiaries and affiliates of any Defendant, the legal representatives and heirs or assigns of any Defendant, any federal governmental entities and instrumentalities of the federal government, any judicial officer presiding over the Action, and any member of his or her immediate family and judicial staff.

Members of the Settlement Class and Subclass are hereafter referred to respectively as “Late Invoice Settlement Class Members” and “Missing Invoice Settlement Subclass Members” and together as the “Settlement Class and Subclass Members.”

The Late Invoice Settlement Class is certified pursuant to Federal Rules of Civil Procedure 23(b)(2) and is receiving injunctive/declaratory relief. The Missing Invoice Settlement Subclass is being certified pursuant to Federal Rules of Civil Procedure 23(b)(3) and is receiving additional monetary relief as set forth below.

3. Class Counsel Appointment: Having considered the work that Class Counsel has done in investigating and prosecuting the potential claims in this action, counsel's experience in handling class actions and other complex litigation, counsel's experience in handling claims of the type asserted in this action, counsel's knowledge of the applicable law, and the resources counsel will commit to representing the class, the following attorneys are preliminarily appointed as class counsel: Cox Law Office and Wilson Kehoe & Winingham, LLC.

4. Preliminary Certification of the Class – The Court preliminarily finds that the Action and the Settlement Class and Subclass satisfy the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a), 23(b)(2) and 23(b)(3). Namely, the Court preliminarily finds that:

- a. The Late Invoice Settlement Class Members and Missing Invoice Settlement Subclass Members are so numerous that joinder of all of them in the lawsuit is impracticable;
- b. There are questions of law and fact common to the Late Invoice Settlement Class Members and Missing Invoice Settlement Subclass Members, which predominate over any individual questions;
- c. The Named Plaintiffs' claims are typical of the claims of the Settlement Class and Subclass;
- d. The Named Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of all of the Late Invoice Settlement Class Members and Missing Invoice Settlement Subclass Members;
- e. Final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; and
- f. As to the Settlement Class and Subclass, a class action is a superior method for the fair and efficient adjudication of this controversy.

5. Class Action Administration: Class Counsel will engage KCC LLC as the Settlement Administrator and Escrow Agent. The Settlement Administrator shall oversee the administration of the Settlement, the notification to the proposed Settlement Class as directed in the Settlement Agreement, and the administration of the Escrow Account. Notice and administration expenses shall be paid in accordance with the Settlement Agreement.

6. Class Notice: The Court finds that no notice will be required for the Late Invoice Settlement Class, which is obtaining injunctive/declaratory relief pursuant to Fed. R. Civ. P. 23(b)(2); however, notice must be provided to the Missing Invoice Settlement Subclass, which is obtaining additional monetary relief and is certified pursuant to Fed. R. Civ. P. 23(b)(3). The Court approves the form and content of the Missing Invoice Settlement Subclass Notice and the long form style subclass notice which the Settlement Administrator will publish on the website identified in the Notices attached as Exhibits 1 and 2 to this Order, respectively. The proposed notice constitutes the best notice that is practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to notice. The form and manner of notice proposed in the Settlement Agreement comply with Rules 23(c) and (e) and the requirements of Due Process. The plan for distribution of the notice by direct mail is designed for notice to reach a significant number of class members and is otherwise proper under applicable law.

Based on the foregoing, the Court hereby approves the plan for distributing notice developed by the Parties and directs that the plan be implemented according to the Settlement Agreement.

7. Exclusions from the Settlement Class: All Missing Invoice Settlement Subclass Members shall be given the opportunity to opt out of the Settlement Subclass by mailing to the Settlement Administrator a written request for exclusion that is postmarked no later than 90 days after the date of this Preliminary Approval Order. Members of the Missing Invoice Settlement

Subclass who do not timely and validly opt out of the Class in accordance with the Notice shall be bound by all determinations and judgments in the Action concerning the Settlement.

8. Objections: Any Missing Invoice Settlement Subclass Member who has not previously opted-out in accordance with the terms of Paragraph 7 above shall be afforded an opportunity to object to the terms of the Settlement. Any objection must: (i) contain the full name and address of the person objecting; (ii) contain the title of the Action: *Outzen v. Kapsch Trafficcom USA, Inc.*, No. 1:20-cv-01286-TWP-MJD (iii) state the reasons for the Class Member's objection; (iv) be accompanied by any evidence, briefs, motions, or other materials the Class Member intends to offer in support of the objection; (v) be signed by the Class member; and (vi) be sent by U.S. mail, first class and postage prepaid, with a postmark no later than ninety (90) days after the date of this Preliminary Approval Order (the "Objection Deadline"), to the Clerk of the Court.

Missing Invoice Settlement Subclass Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement. Missing Invoice Settlement Subclass Members who file exclusions, if applicable, may not object to the Settlement.

9. Final Approval: The Court shall conduct a Final Approval Hearing on June 22, 2022 (at least 100 days after the date of this Order) at Courtroom 344 of the Birch Bayh Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204, commencing at 11:00 A.M., to review and rule upon the following issues:

- a. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interests of the Settlement Class and Subclass Members and should be approved by the Court;
- b. Whether the Final Approval Order should be entered, dismissing the Action against

Gila with prejudice and releasing the Released Claims against the Released Parties; and

c. To discuss and review other issues as the Court deems appropriate.

10. Settlement Class and Subclass Members need not appear at the Final Approval Hearing or take any other action to indicate their approval of the proposed class action settlement. Settlement Class and Subclass Members wishing to be heard regarding their objection are, however, required to indicate in their written objection whether or not they intend to appear at the Final Approval Hearing. The Final Approval Hearing may be postponed, adjourned, transferred, or continued without further notice to the Settlement Class Members.

11. An application or applications for attorneys' fees and reimbursement of costs and expenses by Class Counsel, as well as applications for class representative service awards, shall be made in accordance with the Settlement Agreement and shall be filed with the Court no later than seventy-five (75) days after the date of this Preliminary Approval Order.

12. All proceedings in the Action as it relates to Gila are stayed pending final approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Agreement. The stay entered herein has no effect on the remaining claims between Plaintiffs and Defendant Kapsch TrafficComm USA, Inc.

13. Pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Gila is ordered to prepare and provide to the appropriate officials any notices required by CAFA, as specified by 28 U.S.C. § 1715, within ten (10) calendar days of the filing of the Settlement Agreement.

14. If the Settlement Agreement and/or this Order are voided in accordance with the Settlement Agreement:

a. The Settlement Agreement shall have no further force and effect and shall not be offered in evidence or used in the Action or in any other proceeding.

b. Counsel for the Parties shall seek to have any Court orders, filings, or other entries in

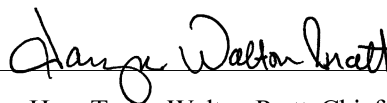
the Court's file that result from the Settlement Agreement set aside, withdrawn, and stricken from the record;

- c. The Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection with either of them, shall be without prejudice to any party and shall not be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law; and
- d. The Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

15. 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 Settlement Agreement.

IT IS SO ORDERED.

Date: 2/22/2022

A handwritten signature in black ink, reading "Tanya Walton Pratt", written over a horizontal line.

Hon. Tanya Walton Pratt, Chief Judge
United States District Court
Southern District of Indiana

Distribution To: Counsel of Record (via ECF/CM)