

COPY

IN THE IOWA DISTRICT COURT IN AND FOR LEE COUNTY  
AT FORT MADISON

BRIAN HAMMOND, et al.

Plaintiffs,

vs.

NORTHEAST NAT'L BANK,  
CAVALRY INVESTMENTS, LLC. et al.

Defendant.

Law No. LALA04645

FILED  
06 NOV 17 PM 2:47  
CLERK OF DISTRICT COURT  
LEE COUNTY IOWA

**JOINT MOTION FOR CONDITIONAL APPROVAL OF SETTLEMENT WITH  
CAVALRY INVESTMENTS, LLC,  
CONDITIONAL CLASS CERTIFICATION  
AND APPROVAL OF NOTICE TO THE CLASS**

COME NOW THE Plaintiffs and Defendant, Cavalry Investments, LLC and hereby request that the Court grant conditional approval of a proposed settlement between Brian Hammond, individually and on behalf of the class of members, and Cavalry Investments, LLC (“Cavalry”). A copy of said proposed settlement is attached as Exhibit A. In support of this motion, the Plaintiffs state:

1. The plaintiff class claims that Cavalry is liable for amounts paid by the class of members pursuant to retail installment contract executed by the members to finance the purchase of their campground membership.
2. It is alleged that a number of the retail installment contracts were hypothecated, pledged,

- sold or assigned to Cavalry who collected payments from various members.
3. Cavalry has identified retail installment contracts that have been assigned to Cavalry with unpaid balances. Cavalry denies any liability for the payment of any amounts to the Members.
  4. The parties propose that the class be defined as follows: “All persons who 1) are, or have been members of Thousand Adventures, Inc. or any of its subsidiaries or affiliates (collectively ”TAI”) and 2) who executed a retail installment sales contract in connection with the purchase of a campground membership in TAI, including, but not limited to those members whose retail installment contracts were assigned, hypothecated, or pledged to Cavalry or predecessors in interest or whose retail installment contract payments, in whole or in part, were used to pay Thousand Adventures’ indebtedness to Cavalry.”
  5. Cavalry has agree not to pursue collection of these accounts and has agreed to forgive the balance of any notes that are still in the possession of Cavalry.
  6. Plaintiffs state that counsel for the plaintiffs has pursued claims against Cavalry, its predecessors in interest, and others, and has negotiated the attached settlement in good faith and without collusion, threat or undue influence. Counsel for the plaintiffs believes the settlement is fair and adequate given the uncertainty of success and the expense of protracted litigation.
  7. The central element of the settlement provides for the forgiveness of the class members’ remaining indebtedness to Cavalry, and its predecessors in interest, and a cash contribution of \$35,000 exclusive of the costs of notice, but inclusive of fees allocated to

class counsel.

8. In connection with the settlement, the parties will work jointly to provide notice to the class members and have agreed to the allocation of all expenses associated therewith. The parties agree that attorney fees to class counsel in the amount of \$11,667.00 shall be paid by Cavalry upon conditional approval of the attached settlement by the Court.
9. The Plaintiffs believe that the settlement is a fair resolution of outstanding claims by the class of members against Cavalry, and will avoid the uncertainty and delay of further litigation.
10. The Plaintiffs seek the Court's conditional approval of the settlement and conditional certification of the class, subject to reasonable notice to the class members giving them an opportunity to object or opt out of the class. A copy of the proposed Notice to class members is attached as Exhibit B. Plaintiff proposes that notice to the class of members be accomplished by posting on the website of the National Association of Members. This website is managed by a non-profit organization, headed by Thousand Adventures members, and has been approved by various United States Bankruptcy Courts as the provider of sufficient notice to the class members. The website is located at [www.natlassoc.com](http://www.natlassoc.com). The parties believe that the above proposed notice will provide the greatest amount of notice to the members and will provide the court with a sufficient sampling a members to enter a final order in this matter.
11. To the extent the Settlement Agreement attached as Exhibit A conflicts with this motion or the description in any actual or proposed Notice, the Settlement Agreement evidenced by Exhibit A hereto shall control.

12. This settlement shall also be conditioned upon a final hearing as set out in the Notice to Members who shall be given an opportunity to object in writing, attend the final hearing, or opt out of the settlement class.

WHEREFORE, the Parties pray that the court conditionally approve the settlement with Cavalry, conditionally certify the class, the class representative, and class counsel, subject to the prescribed notice and pending final hearing, and that the court approve the notice provisions to the class of members and set the date of final hearing.

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ATTORNEY FOR PLAINTIFF

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Thomas D. Hanson  
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405 Sixth Avenue, Suite 1300  
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(515) 244-0177 Telephone

ATTORNEY FOR CAVALRY



1 III. History -

2 A. The members of the class purchased campground memberships from Thousand  
3 Adventures, Inc., or one of its several subsidiaries (collectively referred to as  
4 “TAI”) and financed the purchase in part by executing a retail installment  
5 contract (“Consumer Notes”) which required the member to make periodic  
6 payments.  
7

8 B. These Consumer Notes were assigned, sold, hypothecated or otherwise  
9 transferred to various third parties, such as Cavalry. Cavalry is currently holding  
10 the Consumer Notes of approximately 110 members (as identified on Exhibit A)  
11 and has collected undetermined sums of money from TAI members. There  
12 remains unpaid principal and accrued interest on these Notes.  
13

14 C. Each Consumer Notes bore the following language: “NOTICE: ANY HOLDER  
15 OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS  
16 AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE  
17 SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR  
18 WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE  
19 DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR  
20 HEREUNDER.”  
21

22 D. TAI is no longer in business and can no longer provide the membership services  
23 which the members purchased.  
24

25 E. The class of members have asserted various claims against Cavalry, its  
26 predecessors in interest, and other third-parties to recover amounts paid by the  
27 class members.  
28

Terms and Conditions

IV. Provisions - The parties agree as follows:

A. In exchange for the considerations outlined herein and the promises made by each party, the parties agree to settle all outstanding claims for an aggregate amount of \$35,000 (thirty-five thousand) as broken down below:

1. Cavalry shall forgive all remaining principal balances owed on Consumer Notes held by Cavalry and shall be permanently enjoined from collecting any further amounts on these notes, or from transferring such notes to any third party.
2. \$23,333.00 shall be paid into the "Thousand Adventures Trust Fund" which is a common fund established for the benefit of all TAI members regardless of whether Cavalry ever held their Consumer Note or not.
3. \$11,667.00 shall be paid to the class attorneys as attorneys fees, subject to approval by the Court.
4. Upon Conditional Approval by the court of this settlement, Cavalry agrees to escrow \$35,000 to secure the payment of settlement amounts. Upon Final Approval by the court of this Agreement, Cavalry shall pay the amounts referenced above within 14 days to the Trust Fund. If this settlement is not submitted to the court and approved within 45 days from the date it is executed, Cavalry will pay accrued interest from the date of execution to the date of payment at the rate of 18% per annum, compounded daily.
5. Cavalry agrees to pay the cost of posting notice of this settlement on the website of the National Association of Members ([www.natlassoc.com](http://www.natlassoc.com)) in

1 the amount of \$500 and pay the expense of any additional notice  
2 requested by Cavalry or required by the Court.

3  
4 B. The parties will prepare and file a Joint Motion for Conditional Approval which  
5 shall incorporate this settlement agreement and shall seek:

- 6 1. Approval of this Agreement;  
7 2. Certification of the class of members, the class representative and class  
8 counsel for purposes of settlement;  
9 3. Approval of Notice procedures; and  
10 4. Approval of the settlement amounts and distribution.

11  
12 C. Following Final Approval of this Settlement Agreement (the "Settlement  
13 Agreement") by order of the Iowa District Court, Cavalry shall pay the  
14 amounts set out above. Such completion of payments shall constitute the full and  
15 final settlement, satisfaction and release of any and all claims and demands  
16 whatsoever and rights of action, at law or in equity, of every kind and description,  
17 known or unknown, which (a) the Members of the Class Action lawsuit; (b)  
18 Brian Hammond or any other named class representatives; now has or ever has  
19 had against Cavalry, including but not limited to officers, directors, employees,  
20 agents or advisors, and predecessors in interest of Cavalry arising out of or  
21 otherwise relating to any transaction of any nature with the Thousand Adventures,  
22 Inc. ("TAI") any TAI affiliate including specifically, but not limited to those  
23 claims described by the Class Representatives in their petition. However,  
24 payment of the outlined sums does not relieve Cavalry from performing the other  
25 provisions of this agreement.  
26  
27  
28

1 D. The Class Representative and Cavalry shall make joint application in the Iowa  
2 District Court in and for Lee County (“Iowa District Court”) for an order (the  
3 “Conditional Approval of Settlement and Notice Procedures”) approving  
4 procedures providing for good and sufficient notice of this Settlement Agreement,  
5 and the binding nature thereof, on all members of the Member Class. Notice of  
6 the approval of this Settlement Agreement shall be made in accordance with the  
7 terms of the Conditional Approval Order, but shall include at a minimum  
8 publication on the internet on the website of the National Association of Members  
9 ([www.natlassoc.com](http://www.natlassoc.com)). The order approving this Settlement Agreement shall  
10 provide (a) that the release, discharge and satisfaction of claims provided for  
11 herein is binding on all members not opting out of the Member Class.  
12

13  
14  
15 E. In conjunction with approval of the Settlement Agreement, and upon completion  
16 of the payments set out herein, the class representative shall execute a Dismissal  
17 With Prejudice in Iowa District Court. The Class Representative or the Class  
18 Counsel shall execute a General Release, permanently releasing any and all  
19 claims against Cavalry and predecessors in interest of any claims that could be  
20 made by or on behalf of the Class Members.  
21

22 F. Cavalry will release any and all retail installment contracts held by Cavalry or  
23 any of its affiliates, assigns, predecessors, or successors and will disavow any  
24 right of entitlement to receive any proceeds thereof. To the extent any proceeds  
25 of any retail installment contract comes into the possession of Cavalry after the  
26 date of this settlement, Cavalry shall turnover such payments to the attorney for  
27 the Members and such payments shall either be refunded to the member or  
28

1 deposited into the TAI Common trust fund, or disposed of in accordance with any  
2 applicable court order.

3  
4 G. In the event that the Iowa District court fails to approve this Settlement  
5 Agreement, then it shall be without force and effect and none of its provisions  
6 shall be deemed to prejudice or impair any of the rights or remedies of the parties.  
7 The parties may, by mutual written agreement, reform this agreement to address  
8 any particular objections of the court(s) and shall make a good faith effort to  
9 effectuate the terms of this settlement.  
10

11 H. All matters relating to the interpretation or enforcement of this agreement and  
12 relating to the Class of Members shall be determined by the Iowa District Court  
13 in and for Lee County.  
14

15 I. The parties represent that this constitutes the entire agreement among them in this  
16 matter. This Settlement Agreement may not be changed, modified or altered in  
17 any way or manner except in writing, signed by the respective parties or their  
18 attorneys. This Settlement Agreement shall be binding upon and inure to the  
19 benefit of the parties and their respective heirs, executors, administrators,  
20 predecessors in interest, successors and assigns.  
21

22 J. This Settlement Agreement shall be deemed to be a contract made under the laws  
23 of the State of Iowa and shall be governed in accordance with the laws of said  
24 State.  
25

26 K. This Settlement Agreement may be executed in one or more counterparts, each  
27 which shall be deemed an original but all of which together shall constitute one  
28 and the same instrument.

1 L. This settlement is intended to inure to the benefit of the parties identified herein  
2 and no part of this settlement is intended to release or reduce the liability of any  
3 other defendant or third party for similar claims. For purposes of any court  
4 review, this agreement shall be treated as a “covenant not to sue” or a  
5 “forbearance agreement” so as to not prevent the members from obtaining  
6 judgment from other parties for similar or identical claims. The parties  
7 specifically acknowledge that some of the members’ retail installment contracts  
8 may have been held or owned by multiple parties during the term of the note and  
9 this agreement applies only to the limited liability of Cavalry for sums collected  
10 by Cavalry or its predecessors in interest who assigned such claims to Cavalry.  
11 The parties agree that if any court should determine that the language of this  
12 agreement shall have the affect of eliminating or reducing the liability of any third  
13 party, the language of this settlement shall be amended to avoid such a result.  
14 Any such amendment made will not affect the amounts paid herein by Cavalry.  
15  
16  
17  
18  
19

20 Dated this \_\_\_\_ of November, 2006.

Dated this \_\_\_\_ of November, 2006.

21 Cavalry Investments, LLC

Brian Hammond, for himself and the Class  
22 of Members.

23  
24  
25 By: \_\_\_\_\_

\_\_\_\_\_

26 Its: \_\_\_\_\_

By: Douglas H. Napier, Attorney for the  
27 Class  
28

## Notice of Proposed Settlement

To: ALL PERSONS (AND THEIR HEIRS, SUCCESSORS, AND/OR ASSIGNS) WHO PURCHASED A MEMBERSHIP FROM THOUSAND ADVENTURES, INC. OR ONE OF ITS SUBSIDIARIES

READ THIS MESSAGE CAREFULLY, YOUR LEGAL RIGHTS MAY BE AFFECTED

Please be advised that there is pending before the Iowa District Court in and for Lee County a Motion to Approve a Settlement with Cavalry Investments, LLC in a class action filed on behalf of persons who purchased campground memberships from Thousand Adventures. The settlement provides for the payment of \$35,000 into a fund for the benefit of the class and for the payment of class counsel, the release of any interest Cavalry Investments, LLC (and its predecessors, including Zirmak Investments LP) has in any retail installment notes which it may currently hold as well as other non-cash consideration.

You have received this notice because you have been identified as a potential Member of the settlement class. The class is defined as all current or former Members (and their heirs, representatives or agents) of TAI, or any of its affiliates, subsidiaries, assignees or successors.

A hearing on this proposed settlement is scheduled for **December 8, 2006** at \_\_\_\_\_ a.m. CST at the Lee County Courthouse in Fort Madison, Iowa. ***You do not need to attend unless you wish to object to the settlement. If you approve of the proposed settlement, you do not need to do anything.***

If you wish to object to this settlement, you must file a written objection with the Court by November 28, 2006 (10 days before the hearing) and attend the hearing. Copies of any objections shall be served on Class Counsel and legal counsel for Cavalry at the addresses below.

If you wish to opt out of this class you must notify Class Counsel in writing by November 28, 2006. If you opt out, you will not receive any part of the settlement proceeds or any of the benefits included in the settlement.

This is only an incomplete summary of the proposed settlement. For more information about the settlement, go to [www.natlassoc.com](http://www.natlassoc.com) or email class counsel at [napierwolf@aol.com](mailto:napierwolf@aol.com) or write to Class Counsel at: Napier, Wolf & Napier, TAI Settlement, 607 Eighth Street, Suite One, Fort Madison, IA 52627. Legal counsel for Cavalry is Thomas Hanson; Hanson, Bjork & Russell LLP; 405 6<sup>th</sup> Ave Suite 1300; Des Moines, IA 50312.

**EXHIBIT B**