IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HANCOCK FABRICS, INC., et al.,[1]	)	Case No. 07-10353 (BLS)
Debtors.	)	(Jointly Administered)
KATHY ALIANO, Plaintiff,	)	Adv. Proc. No. 08-_____ (BLS)
v.	)	Class Action
HANCOCK FABRICS, INC., et al., Defendants.	)	**Preliminary Approval Hearing: January 22, 2008 at 10:00 a.m. (ET)**
	)	**Final Approval Hearing: April 17, 2008 at 10:00 a.m. (ET)**

JOINT MOTION OF DEBTOR HANCOCK FABRICS, INC. AND PUTATIVE CLASS REPRESENTATIVE KATHY ALIANO FOR PRELIMINARY AND FINAL APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. BANKR. P. 7023 AND 9019

Hancock Fabrics, Inc. ("Hancock")[2] and Kathy Aliano (the "Settlement Class Representative"), on behalf of herself and all of the proposed Settlement Class Members and with the assistance and approval of proposed Settlement Class Counsel, hereby jointly move (the "Motion") this Court for the entry of orders pursuant to Rules 7023 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") granting (i) preliminary and final

[1] The Debtors are the following entities: Hancock Fabrics, Inc. (Tax ID No. XX-XXX0905), One Fashion Way, Baldwyn, Mississippi 38824; Hancock Fabrics of MI, Inc. (Tax ID No. XX-XXX5878), One Fashion Way, Baldwyn, Mississippi 38824; HF Resources, Inc. (Tax ID No. XX-XXX9563), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; Hancockfabrics.com, Inc. (Tax ID No. XX-XXX9698), One Fashion Way, Baldwyn, Mississippi 38824; HF Merchandising, Inc. (Tax ID No. XX-XXX8522), One Fashion Way, Baldwyn, Mississippi 38824; HF Enterprises, Inc. (Tax ID No. XX-XXX7249), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; and Hancock Fabrics, LLC (Tax ID No. XX-XXX9837), One Fashion Way, Baldwyn, Mississippi 38824.

[2] Capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in the Settlement Agreement.

approval of a proposed class action settlement set forth in the Class Action Settlement Agreement and Release (the "Settlement Agreement") attached hereto as **Exhibit A** and incorporated herein by reference and (ii) related relief. In support of this Motion, the Settling Parties submit (i) the Declaration of Thomas A. Zimmerman, Jr., in Support of the Joint Motion of Debtor Hancock Fabrics, Inc. and Putative Class Representative Kathy Aliano for Preliminary and Final Approval of Class Action Settlement Pursuant to Fed. R. Bankr. P. 7023 and 9019 (the "Zimmerman Declaration"), attached hereto as **Exhibit B** and incorporated herein by reference, and (ii) the Declaration of Jeff Nerland in Support of the Joint Motion of Debtor Hancock Fabrics, Inc. and Putative Class Representative Kathy Aliano for Preliminary and Final Approval of Class Action Settlement Pursuant to Fed. R. Bankr. P. 7023 and 9019 (the "Nerland Declaration"), attached hereto as **Exhibit C** and incorporated herein by reference, and respectfully state as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are Rule 23 of the Federal Rules of Civil Procedure (the "Rules"), made applicable to this proceeding by Bankruptcy Rule 7023, and Bankruptcy Rule 9019.

BACKGROUND

2. On March 21, 2007 (the "Petition Date"), Hancock, as well as Hancock Fabrics of MI, Inc., HF Resources, Inc., Hancockfabrics.com, Inc., HF Merchandising, Inc., HF Enterprises, Inc. and Hancock Fabrics, LLC (collectively, the "Affiliated Debtors" and, together with Hancock, the "Debtors") commenced their respective bankruptcy cases by filing voluntary

petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). *Nerland Declaration* at ¶ 4. No trustee or examiner has been appointed in the Debtors' jointly-administered chapter 11 cases (the "Chapter 11 Case"). *Id.* The Debtors are operating their respective business as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. *Id.*

3. On April 4, 2007, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors (D.I. 195) (the "Creditors' Committee"). *Id.* at ¶ 5. On May 22, 2007, the U.S. Trustee appointed an Official Committee of Equity Security Holders (D.I. 567) (the "Equity Committee" and, together with the Creditors' Committee, the "Committees"). *Id.*

A. The Debtors' Business and Operations

4. Founded in 1957 and headquartered in Baldwyn, Mississippi, Hancock is a fabric retailer, operating as of the Petition Date approximately 400 retail stores in approximately 40 states and an internet store under the domain name www.hancockfabrics.com. *Nerland Declaration* at ¶ 6. As of the Petition Date, Hancock employed approximately 7,500 people on a full- and part-time basis, most of whom work in its retail stores or in field management to support the retail stores. *Id.* Over 300 employees work in Hancock's Baldwyn, Mississippi headquarters and warehouse and distribution facilities, which support the retail stores with accounting, advertising, marketing, buying, management, distribution and other administrative functions. *Id.*

5. Hancock is a specialty retailer that sells a wide selection of apparel fabrics, home decorating products (which include drapery and upholstery fabrics and home accent pieces), quilting materials, and notions (which include sewing aids and accessories such

as zippers, buttons, threads, sewing machines and patterns). *Id.* at ¶ 7. In addition to basic fabrics and notions for apparel, quilting, and home decoration, Hancock provides a variety of fashion and seasonal merchandise for apparel, craft and home decorating projects. *Id.*

B. Reduction of Hancock's Retail Footprint through GOB Sales

6. As set forth previously in the record in the Chapter 11 Case, prior to the Petition Date and following close analysis of their retail store base and sales data, the Debtors determined to contract their retail chain in an effort to reduce certain losses and operational difficulties. *Nerland Declaration* at ¶ 8. As a result, in 2006, the Debtors closed approximately forty (40) underperforming retail stores and conducted going-out-of-business sales ("GOB Sales") therein. *Id.*

7. In early 2007, the Debtors elected to close another approximately thirty (30) underperforming retail stores and commenced GOB Sales therein in order to pay down certain debt and satisfy cash needs. *Id.* at ¶ 9. Leading up to the Petition Date, the Debtors decided to close and conduct GOB Sales at approximately 104 additional underperforming stores to further reduce corporate overhead and distribution costs. *Id.*

8. On April 5, 2007, the Court entered the Final Order under 11 U.S.C. §§ 105, 327, 328, 363, 365 and 554 (i) Authorizing Debtors to Conduct Going-out-of-Business Sales and to Close Certain Stores, (ii) Authorizing the Assumption of Consulting Agreement with and Retention of Consultant and (iii) Granting Related Relief (D.I. 208), which authorized, *inter alia*, the Debtors to continue and commence GOB Sales at certain specified locations. *Id.* at ¶ 10. This last round of GOB Sales was substantially completed by June 2007. *Id.*

9. As of the date hereof, the Debtors are currently operating approximately 270 retail store locations. *Id.* at ¶ 11.

C. **Bar Date for Filing Claims against the Debtors**

10. On June 8, 2007, the Court entered the Order (i) Establishing Bar Dates for Filing Proofs of Claim and Requests for Payment of Administrative Expenses, (ii) Approving Proof of Claim and Administrative Expense Payment Request Forms, Bar Date Notices and Mailing and Publication Procedures and (iii) Providing Certain Supplemental Relief (D.I. 655) (the "Bar Date Order"), which, *inter alia*, established August 9, 2007 (the "Bar Date"),[3] as the date by which all creditors and certain interest holders must file (a) proofs of claim for pre-Petition Date claims and (b) requests for payment of administrative expenses that accrued prior to June 4, 2007. *Nerland Declaration* at ¶ 12.

11. As set forth in more detail in the Proofs of Publication (D.I. 1107, 1108) filed in the Chapter 11 Case on July 6, 2007, on July 2, 2007, the Debtors caused notice of the Bar Date to be published in (a) *The Northeast Mississippi Daily Journal* and (b) *USA Today*. *Id.* at ¶ 13.

12. Neither the Settlement Class Representative, on behalf of herself or the proposed Settlement Class, nor any Settlement Class Member individually has filed a proof of claim or a request for payment of an administrative expense claim related to the Litigation or the Released Claims. *Id.* at ¶ 14.

D. **FACTA**

13. On December 4, 2003, Congress enacted the Fair and Accurate Credit Transactions Act ("FACTA") in an effort to address the issues of identity theft and credit card fraud. FACTA added sections to the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*,

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[3] As set forth in the Bar Date Order, the Bar Date for governmental units (as such term is defined in section 101(27) of the Bankruptcy Code) was September 17, 2007 at 4:00 p.m. (ET).

including: (a) a consumer's right to a free credit report each year; (b) an obligation for businesses to protect customer and employee "consumer information" and (c) the requirement that retailers no longer print receipts containing (i) all sixteen (16) digits of a customer's credit card or debit card number, but rather truncate the number to a maximum of five (5) digits, or (ii) the credit card expiration date.

14. Specifically, with regard to the credit card truncation requirement, FACTA provides:

> Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the card holder at the point of the sale or transaction.

15 U.S.C. § 1681c(g)(1).

15. This provision of FACTA became effective as follows:

> (a) 3 years after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and
>
> (b) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

15 U.S.C. § 1681c(g)(3).

16. As a penalty for "willful" non-compliance with the foregoing requirements, FACTA provides:

> Any person who *willfully* fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of – (1)(A) any actual damages sustained by the consumer as a result of the

> failure or *damages of not less than $100 and not more than $1,000*...(2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court."

15 U.S.C. § 1681n(a) (emphasis added). As a penalty for "negligent" non-compliance with the foregoing requirements, FACTA provides:

> Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of – (1) any actual damages sustained by the consumer as a result of the failure; and (2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

15 U.S.C. § 1681o(a). As enacted, FACTA provides no statutory limit on recoverable damages.

E. Hancock's Credit Card Security Compliance Consultant

17. In or about May 2005, Hancock engaged Quaterion Solutions LLC, a credit card security compliance consultant (the "Compliance Consultant"), to evaluate the risk of exposure of personal credit card data in Hancock's systems and consult with Hancock regarding compliance with legal and industry personal credit card data protection standards. *Nerland Declaration* at ¶ 15. As part of its engagement, the Compliance Consultant evaluated Hancock's credit card data security policies and procedures and provided recommendations with respect to improvement and compliance measures. *Id.*

18. Based on the study conducted by the Compliance Consultant, as early as 2005, Hancock adopted most or all of the recommended measures, including, but not limited to, the truncation of customers' credit card and debit card account numbers to four digits on electronically-printed receipts. *Id.* at ¶ 16. At no time was Hancock advised, nor did they receive any other actual notice, of FACTA or the specific requirement thereunder of removing

the expiration date of customers' credit cards and debit cards from electronically-printed receipts. *Id.*

F. **The FACTA Class Action Litigation**

19. On July 20, 2007, the Settlement Class Representative, on behalf of herself and all of the Settlement Class Members, commenced the Litigation by filing the Complaint in the United States District Court for the Northern District of Illinois, Eastern Division (the "Illinois District Court"), which Complaint the Settlement Class Representative subsequently amended on or about January 7, 2008. *Nerland Declaration* at ¶ 17. A copy of the Complaint is attached hereto as **Exhibit F**. The Settlement Class Representative names as defendants Hancock and "Does 1-10," which the Complaint states are individual officers, directors, employees and agents of Hancock who authorized, directed or participated in the alleged willful violations of FACTA. *Id.*

20. In the Complaint, the Settlement Class Representative alleges that Hancock and the other defendants willfully violated FACTA when, on May 22, 2007, she received an electronically-generated cash register receipt that, while only displaying the last four digits of her credit card account number, included the expiration date of her credit card from Hancock's retail store located at 441 East Roosevelt Road, Lombard, Illinois. *Id.* at ¶ 18. *The Settlement Class Representative alleges no actual damages*, and seeks statutory damages only. *Id.*

21. The Settlement Class Representative defines the class as: all persons to whom Hancock and the other defendants provided an electronically-printed receipt at the point of sale or transaction, in a transaction occurring nationwide on or after January 1, 2005, which

receipt displays either (a) more than the last five digits of the person's credit card or debit card number and/or (b) the expiration date of the person's credit card or debit card. *Id.* at ¶ 19.

22. For Hancock's alleged willful violation of FACTA, the Settlement Class Representative requests: (a) statutory damages of $100 to $1,000 per violation and (b) attorney's fees and costs. *Id.* at ¶ 20.

23. Soon after the filing of the Complaint, on or about August 8, 2007, Hancock retail store locations no longer printed the expiration dates of customers' credit cards and debit cards on electronically-generated receipts. *Id.* at ¶ 21.

24. On August 17, 2007, Hancock filed the notice of Suggestion of Bankruptcy and Applicability of the Automatic Stay under 11 U.S.C. § 362 in the Illinois District Court. *Id.* at ¶ 22.

25. On or about January 7, 2008, the Settling Parties filed a joint motion in the Illinois District Court requesting that the Litigation be transferred from the Illinois District Court to this Court for purposes of effectuating the settlement. *Id.* at ¶ 23.

G. Other FACTA Litigation

26. Similar FACTA litigation has been filed throughout the country and there are over 250 FACTA class action lawsuits pending in the U.S.[4] The Ninth Circuit, and the Central District of California in particular, has been a popular venue for FACTA litigation. Recently, this trend has tapered as the judges in at least thirteen (13) cases have denied class certification. These courts have held that the proposed classes have not met the superiority

[4] Well-known businesses that have been sued in putative class lawsuits for alleged willful violations of FACTA include: (a) Wendy's; (b) Bath & Body Works; (c) FedEx Kinko's; (d) Toys "R" Us; (e) Rite Aid; (f) Harry & David; (g) El Pollo Loco; (h) TGI Friday's; (i) Radisson Hotels; (j) Victoria's Secret; (k) Costco; (l) Avis Rent-a-Car; (m) IKEA; (n) The Limited; (o) In-N-Out Burger; (p) California Pizza Kitchen; (q) T.J. Maxx; and (r) Apple.

requirement of Rule 23 for certification for a variety of reasons including "the disproportionate consequences to [the defendant's] business and the lack of any actual harm suffered by members of the potential class." *Soualian v. Int'l Coffee & Tea LLC*, No. 07-502, 2007 U.S. Dist. LEXIS 44208, at *11 (C.D. Cal. June 11, 2007). Notwithstanding the cases denying class certification, the judges in two recent cases in the Central District of California have granted motions for class certification and several others have dismissed similar motions without prejudice pending the resolution of an early case that has reached the Ninth Circuit on appeal regarding this issue.

27. The Seventh Circuit, and specifically the Northern District of Illinois, has recently become a popular venue for FACTA litigation, partly due to the class certification issues that plaintiffs have been facing in the Ninth Circuit. One particular holding has made the Seventh Circuit a popular venue. In *Murray v. GMAC Mortgage Co.*, 434 F.3d 948 (7th Cir. 2006), the Seventh Circuit held that an argument that a class should not be certified because of the potential for an unconstitutionally large penalty was without merit. The court held that if the jury were to award an unconstitutionally large penalty, then such penalty could be reduced after the fact. Following the holding in *Murray*, the Illinois District Court has recently granted motions for class certification in two cases.

H. Recent Legislation to Modify FACTA

28. On October 30, 2007, Representative Tim Mahoney (D-FL) and nine other co-sponsors (as of the filing of this Motion, there are currently eighteen (18) co-sponsors) introduced a bi-partisan bill in the United States House of Representatives aimed to correct vague language in FACTA concerning whether the printing of a credit card's or debit card's expiration date is permitted. *See Credit and Debit Card Receipt Clarification Act of 2007*, H.R.

4008, 110th Cong. (2007) (the "FACTA Clarification Act"). As stated in the FACTA Clarification Act:

> (a) [FACTA] was enacted into law in 2003 and [one] of the purposes of such Act is to prevent criminals from obtaining access to consumers private financial and credit information in order to reduce identify theft and credit card fraud.
>
> (b) As part of that law, the Congress enacted a requirement, through an amendment to the Fair Credit Reporting Act, that no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the card holder at the point of the sale or transaction.
>
> (c) Many merchants understood that this requirement would be satisfied by truncating the account number down to the last 5 digits based in part on the language of the provision as well as the publicity in the aftermath of the passage of the law.
>
> (d) Almost immediately after the deadline for compliance passed, hundreds of lawsuits were filed alleging that the failure to remove the expiration date was a willful violation of the Fair Credit Reporting Act even where the account number was properly truncated.
>
> (e) None of these lawsuits contained an allegation of harm to any consumer's identity.
>
> (f) Experts in the field agree that proper truncation of the card number, by itself as required by the amendment made by the Fair and Accurate Credit Transactions Act, regardless of the inclusion of the expiration date, prevents a potential fraudster from perpetrating identify theft or credit card fraud.
>
> (g) Despite repeatedly being denied class certification, the continued appealing and filing of these lawsuits represents a significant burden on the hundreds of companies that have been sued and could well raise

> prices to consumers without corresponding consumer protection benefit.

Id. at § 2(a) (setting forth proposed findings with respect to FACTA). Accordingly, the purpose of the FACTA Clarification Act would be "to ensure that consumers suffering from any actual harm to their credit or identity are protected while simultaneously limiting abusive lawsuits that do not protect consumers but only result in increased cost to business and potentially increased prices to consumers." *Id.* at § 2(b).

29. The FACTA Clarification Act would amend FACTA by adding the following subsection (d):

> Clarification of Willful Noncompliance – For the purposes of this section, any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and the date of the enactment of this subsection but otherwise complied with the requirements of section 605(g) for such receipt shall not be in willful noncompliance with section 605(g) by reason of printing such expiration date on the receipt.

Id. at § 3(a).

30. The FACTA Clarification Act is currently pending before the House Financial Services and Judiciary committees.

I. The Settlement

31. Consistent with and in furtherance of their desire to settle the Litigation and following arm's-length negotiations, on or about January 7, 2008, the Settling Parties entered into the Settlement Agreement. *Nerland Declaration* at ¶ 24. The salient terms and conditions of the Settlement Agreement include the following:[5]

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[5] A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A.** This summary of the Settlement Agreement is qualified in its entirety by reference thereto and, in the event of a conflict between this summary and the terms and conditions

(a) Settlement Agreement is Conditional and Subject to Bankruptcy Court Approval. The Settlement Agreement is made for the sole purpose of attempting to consummate settlement of the Released Claims and the Litigation on a class-wide basis and is subject to Bankruptcy Court approval. Because the Litigation was pled as a class action, the settlement embodied in the Settlement Agreement must receive preliminary and final approval by the Bankruptcy Court under Bankruptcy Rules 7023 and 9019.

(b) Conditional Certification of the Settlement Class. For purposes of effectuating the Settlement Agreement only, the Settling Parties agree to request that the Bankruptcy Court conditionally certify the Settlement Class pursuant to Bankruptcy Rule 7023. The Settlement Class shall be represented by Settlement Class Counsel.

(c) Consideration to Settlement Class Members; the Sale Event. In full and final satisfaction, compromise, settlement and release of the Released Claims, Hancock, according to the terms, conditions and procedures set forth in the Settlement Agreement, shall conduct for the benefit of the Settlement Class Members the Sale Event. Hancock shall have no obligation to provide any other benefits or amounts to Settlement Class Members other than the Sale Event.

(d) Settlement Class Representative Incentive Award. Subject to Bankruptcy Court approval and the occurrence of the Effective Date, the Settlement Class Representative shall be entitled to receive an incentive award in the amount of $4,000 from Hancock in compensation and consideration of her efforts as the Settlement Class Representative in the Litigation. Subject to Bankruptcy Court approval and the occurrence of the Effective Date, Hancock shall forward a check for the incentive award in the amount of $4,000 payable to Kathy Aliano, in her personal capacity, to Settlement Class Counsel on or prior to thirty (30) days after the Effective Date.

(e) Payment of Fees and Costs to Settlement Class Counsel. Subject to Bankruptcy Court approval and the occurrence of the Effective Date, Settlement Class Counsel shall be entitled to recover appropriate fees and costs from Hancock pursuant to applicable law. Subject to Bankruptcy Court approval and the occurrence of the Effective Date, Hancock shall pay Settlement Class Counsel the amount of $75,000 for all allowable fees and up to a cap of $5,000 for all allowable costs in connection with the Litigation on

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of the Settlement Agreement, the terms and conditions of the Settlement Agreement shall control.

or prior to thirty (30) days after the later of (a) the Effective Date and (b) the date an order approving Settlement Class Counsel's fees and costs becomes Final.

(f) Release of Released Claims. Upon the Effective Date, The Settlement Class Representative and each of the Settlement Class Members (and only these persons) shall be deemed to have, and by operation of the Approval Order shall have, fully, finally, and forever released, dismissed with prejudice, relinquished and discharged all Released Claims, including the Unknown Claims.

(g) Settlement Class Publication Notice. By the Settlement Class Publication Notice Deadline and subject to Bankruptcy Court approval of the Settlement Class Publication Notice, Hancock shall cause the publication of the Settlement Class Publication Notice once in the national edition of *USA Today*. Hancock shall be responsible for paying all costs related to the publication of the Settlement Class Publication Notice.

(h) Internet Posting of Settlement Class Notice. In addition to publication of the Settlement Class Publication Notice, by the Settlement Class Publication Notice Deadline and subject to Bankruptcy Court approval of the Settlement Class Notice, the Settling Parties shall post the Settlement Class Notice on the following websites: (a) Hancock's website at www.hancockfabrics.com; (b) the website maintained by the Official Committee of Unsecured Creditors appointed in the Chapter 11 case at www.hancockcreditorscommittee.com; (c) the website of Donlin, Recano & Company, Inc., the noticing agent appointed in the Chapter 11 Case, at www.donlinrecano.com; and (d) Settlement Class Counsel's website at www.attorneyzim.com. The Settlement Class Publication Notice shall identify the foregoing websites.

(i) Rights of Exclusion. Settlement Class Members shall have until the Settlement Class Response Deadline to "opt out" of the Settlement Class. All Settlement Class Members who properly file a written request for exclusion from the Settlement Class as described in the Settlement Agreement shall: (i) be excluded from the Settlement Class, (ii) have no rights as Settlement Class Members pursuant to the Settlement Agreement and (iii) receive no benefits as provided herein. The Settlement Class Notice and the Settlement Class Publication Notice will advise Settlement Class Members of this option. Hancock shall have the option to withdraw from the Settlement Agreement if valid and timely requests for exclusion received from Settlement Class members seeking to opt out of the Settlement Class are received from twenty (20) or more persons.

(j) Objection Procedures. Settlement Class Members shall have until the Settlement Class Response Deadline to object to the settlement set forth in this Settlement Agreement. Any Settlement Class Member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any evidence or argument that may be proper or relevant. Any Settlement Class Member who fails to object in the manner prescribed in the Settlement Agreement shall be deemed to have waived his or her objection to entry of the Approval Order and forever be barred from making any such objections in the Litigation or in any other action or proceeding. The Settlement Class Notice will advise Settlement Class Members of this option.

(k) CAFA Notice. The Settling Parties agree to cooperate to cause service of the CAFA Notice. Hancock shall be responsible for paying all costs related to service of the CAFA Notice.

RELIEF REQUESTED

32. By this Motion, the Settling Parties jointly and respectfully request that this Court enter pursuant to Bankruptcy Rules 7023 and 9019:

(a) the Preliminary Approval Order, in substantially the form attached hereto as **Exhibit D**, (i) granting preliminary approval of the settlement set forth in the Settlement Agreement, (ii) certifying preliminarily the proposed Settlement Class, for settlement purposes only, subject to the Settlement Class Representative's obligation to

demonstrate that the Settlement Class satisfies all of the applicable requirements of Bankruptcy Rule 7023 prior to final approval of the proposed settlement, (iii) approving the forms of the Settlement Class Notice and the Settlement Class Publication Notice and the manner by which the Settling Parties propose to provide notice of the settlement, (iv) authorizing the Settling Parties to disseminate the Settlement Class Notice and the Settlement Class Publication Notice in the manner set forth in the Settlement Agreement, and (v) approving the CAFA Notice; and (vi) scheduling the Final Approval Hearing for a date not earlier than the Settlement Class Response Deadline and the CAFA Deadline; and

(b) the Final Approval Order, in substantially the form attached hereto as **Exhibit E**, (i) certifying the Settlement Class on a final basis for purposes of effectuating the settlement set forth in the Settlement Agreement; (ii) approving the settlement set forth in the Settlement Agreement on a final basis as fair, reasonable and adequate, (iii) dismissing the Litigation with prejudice, each party to bear its own costs, except as otherwise set forth in the Settlement Agreement, (iv) providing for payment of a reasonable amount of fees and expenses to Settlement Class Counsel and an incentive award to the Settlement Class Representative not to exceed the amounts set forth in the Settlement Agreement and (v) authorizing the Settlement Parties to take whatever actions necessary to fulfill their obligations under the Settlement Agreement.

BASIS FOR RELIEF REQUESTED

I. THE COURT SHOULD ENTER THE PRELIMINARY APPROVAL ORDER PRELIMINARILY APPROVING THE SETTLEMENT UNDER BANKRUPTCY RULE 7023

33. Review and approval of a proposed class action settlement generally occurs in two steps—preliminary and final. In the first instance, "[t]he judge should make a

preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)." *Manual for Complex Litig., Fourth*, § 21.632 (2004). Additionally, "[t]he judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." *Id.* If the proposed settlement falls "within the range of possible approval," the Court should grant preliminary approval and authorize the parties to give notice of the proposed settlement to the class members. *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). Stated another way, preliminary approval is a "determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Executive Ass'n-E. R.Rs.*, 627 F.2d 631, 634 (2d Cir. 1980).

34. The proposed settlement set forth in the Settlement Agreement falls well within the "range of possible approval," particularly in light of the substantial risks and costs associated with further litigation. Furthermore, the settlement is entitled to a presumption of fairness, since it was reached through arm's-length bargaining between experienced counsel after an exchange of relevant information. Accordingly, the proposed settlement merits preliminary approval and warrants the dissemination of the Class Settlement Notice and the Class Settlement Publication Notice apprising Settlement Class Members of their opportunity to participate in the settlement, or to opt-out from or object to the settlement.

A. Strong Judicial Policy Favors Preliminary Approval of the Proposed Settlement

35. A strong judicial policy favors resolution of litigation short of trial. *In re Gen. Motors Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("*GM Trucks*") ("The law favors settlement, particularly in class actions and other complex cases

where substantial judicial resources can be conserved by avoiding formal litigation."). When a settlement is reached on terms agreeable to all parties, it is to be encouraged. *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 n.16 (3d Cir. 1993). A federal district court within the Third Circuit has articulated the rationale for this policy as follows:

> [W]hen parties negotiate a settlement they have far greater control of their destiny than when a matter is submitted to a jury. Moreover, the time and expense that precedes the taking of such a risk can be staggering. This is especially true in complex commercial litigation.

Weiss v. Mercedes-Benz, 899 F.Supp.1297, 1300-01 (D.N.J. 1995), *aff'd*, 66 F.3d 314 (3d Cir. 1995).

36. The proposed settlement in this case enjoys a presumption of fairness because it is the product of arm's-length negotiations conducted by experienced counsel. *GM Trucks*, 55 F.3d at 785 (basing initial presumption of fairness on, among other things, "(1) the negotiations occurred at arm's length . . . (3) the proponents of the settlement are experienced in similar litigation . . . ."); *see also* 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11.41 (2002); *Manual for Complex Litig., Third*, § 30.42 (1995).

37. As set forth in detail in the Zimmerman Declaration, Settlement Class Counsel has significant experience in class action litigation, generally, and class-based consumer litigation, specifically. *Zimmerman Declaration* at ¶¶ 2-9.

38. In addition, the Settling Parties have exchanged relevant information, including, but not limited to, information regarding the Bar Date, the Compliance Consultant, the FACTA Clarification Bill and the Released Claims, and, after careful consideration of the facts and the potential costs and risks of proceeding with the Litigation, negotiated a fair and reasonable settlement that they respectfully submit warrants preliminary approval so that the

Settlement Class may be notified of the proposed settlement and provided with an opportunity to participate in, opt-out from or object to the proposed Settlement. *Nerland Declaration* at ¶ 26.

B. The Substantial Risks of Continued Litigation

39. While Settlement Class Counsel continues to believe that the Settlement Class Representative's claims, including the Released Claims, are meritorious, the Settlement Class Representative and the Settlement Class face real risks if the Litigation continues. *Zimmerman Declaration* at ¶ 10. First, in light of the Chapter 11 Case and the Bar Date which has already passed, Hancock believes that any claim filed by the Settlement Class Representative and/or any Settlement Class Member asserting the Released Claims against it is untimely and otherwise barred and would immediately object to any such claim on that basis. Further, Hancock would seek disallowance of any such claim as an impermissible penalty.

40. Next, based on the denial of class certification in certain similar putative class action FACTA litigation in the Ninth Circuit, Hancock would strongly contest class certification in this Litigation.

41. Hancock also vigorously disputes whether the alleged FACTA violation was willful[6] and, as there are no actual out of pocket damages alleged in the Litigation, the Settlement Class Representative's ability to prove willfulness is a prerequisite to the ability to

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[6] In June of 2007, the Supreme Court heard *Safeco Ins. Co. v. Burr*, __ U.S. __, 127 S. Ct. 2201 (2007), a case involving two defendant insurance companies. The companies were accused of willfully violating their obligations under the Fair Credit Reporting Act, specifically failing to provide notice to consumers after the companies had taken adverse actions regarding the consumers' information contained within their consumer reports. *Id.* at 2205-06. The court held that the term "willful", as found in 15 U.S.C. § 1681n(a), covers both reckless violations as well as willful violations of the Fair Credit Reporting Act and that a company is not acting recklessly "unless the action is not only a violation under a reasonable reading of the statute's terms, but shows that the company ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless." *Id.* at 2215.

recover statutory damages. As noted above, Hancock engaged the Compliance Consultant and, following an evaluation of its credit card data security policies and procedures, adopted most or all of the Compliance Consultant's recommendations, including, but not limited to, the truncation of credit card and debit card account digits on electronically-generated receipts. Hancock did not have knowledge nor was it advised regarding FACTA or the requirement to truncate credit card and debit card expiration dates. If Hancock had been so notified or advised, there would be no upside to failing to comply. In fact, soon after the filing of the Complaint, Hancock retail store locations no longer printed the expiration dates of customers' credit cards and debit cards on electronically-generated receipts.

42. Finally, as described in detail above, the FACTA Clarification Bill is now pending in Congress. Although it remains uncertain if and when the FACTA Clarification Bill will be enacted into law, the mere introduction of such a bill underscores the risk that the Litigation and the Released Claims may be entirely moot in the near term.

43. Notwithstanding the foregoing, Hancock also faces substantial risks if the Litigation were to continue.

44. The Settling Parties submit that the foregoing risks of continuing the Litigation faced by the Settling Parties support the propriety of preliminary approval of the proposed settlement.

C. The Proposed Notice to Putative Class Members Is Appropriate

45. The Settling Parties concur that the proposed Settlement Class Notice, Settlement Class Publication Notice and notice procedures set forth above and in the Settlement Agreement are appropriate. *Nerland Declaration* at ¶ 27. Under the circumstances, direct mail notice is untenable for two primary reasons. *Id.* First, it would be extraordinarily difficult to

identify each of the thousands of putative class members implicated by the proposed settlement and then obtain mailing addresses for such persons. *Id.* Specifically, the subject address data does not exist in any single depository. *Id.* Instead, the information is within the possession of a substantial number of issuing banks which issued credit cards and debit cards to the Settlement Class Representative and the Settlement Class Members. *Id.* It is unlikely that any of these institutions would divulge their credit card or debit card customers' personal information voluntarily, so it would be necessary to seek Court orders directed to all of these institutions—a costly and time-consuming endeavor. *Id.* In addition, the sheer magnitude of the cost of direct mail notice in this case, including, but not limited to, printing, copying, postage and other administrative expenses, would be extremely prohibitive and would greatly diminish any benefits obtained by the Settling Parties through the settlement. *Id.*

46. Accordingly, the Class Settlement Notice, the Class Settlement Publication Notice and the notice procedures set forth in the Settlement Agreement represent the best practicable notice in the context of this Litigation.

47. Bankruptcy Rule 7023(c)(2)(B) states, "[f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances... ." Bankruptcy Rule 7023(e)(1)(B) similarly requires, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise." As for the content of a notice, Bankruptcy Rule 7023(c)(2)(B) provides:

> The notice [to a Bankruptcy Rule 7023(b)(3) class] must concisely and clearly state in plain, easily understood language:
>
> - the nature of the action,
> - the definition of the class certified,

- the class claims, issues or defenses,
- that a class member may enter an appearance through counsel if the class member so desires,
- that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and
- the binding effect of a class judgment on class members under Rule 23(c)(3).

48. The proposed Settlement Class Notice describes the nature, history and status of the Litigation; sets forth the definition of the Settlement Class; states the Settlement Class claims and issues; discloses the right of Settlement Class Members to seek exclusion from the Settlement Class or to object to the proposed settlement, as well as the deadlines for doing so, and warns of the binding effect of the settlement approval proceedings on individuals who remain in the Settlement Class. In addition, the Settlement Class Notice describes the terms of the proposed settlement and provides contact information for Settlement Class Counsel, as well as identifying the fee that Settlement Class Counsel proposes to request from the Court. The Settlement Class Notice also discloses the time and place of the Final Approval Hearing and the procedures for commenting on the settlement and/or appearing at the hearing. In addition, the proposed Settlement Class Publication Notice provides a summary of the foregoing and indicates where Settlement Class Members may view and obtain the Settlement Class Notice, as well as other documents relevant to the Litigation. Accordingly, the proposed forms of notice satisfy all applicable requirements.

D. Entry of the Preliminary Approval Order Is Warranted

49. For all of the foregoing reasons, the Settling Parties respectfully request that the Court enter the Preliminary Approval Order: (a) granting preliminary approval of the

proposed settlement set forth in the Settlement Agreement; (b) certifying the proposed Settlement Class, for settlement purposes only, subject to the Settlement Class Representative's obligation to demonstrate that the Settlement Class satisfies all of the applicable requirements of Bankruptcy Rule 7023 prior to final approval of the proposed settlement; (c) authorizing the dissemination of the Class Settlement Notice and the Class Settlement Publication Notice as set forth in the Settlement Agreement; (d) approving the CAFA Notice; and (e) scheduling a final approval hearing approximately no earlier than the Settlement Class Response Deadline and the CAFA Deadline.

II. THE COURT SHOULD ENTER THE APPROVAL ORDER APPROVING THE SETTLEMENT ON A FINAL BASIS UNDER BANKRUPTCY RULE 7023

50. For the reasons set forth below, the Settling Parties believe that certification of the Settlement Class for the purposes described herein is appropriate and the proposed settlement exceeds the standards for approval by the Court.

A. Certification of the Settlement Class Is Appropriate

51. The benefits of the proposed settlement can be realized only through the certification of a settlement class. The Supreme Court of the United States has confirmed not only the viability, but the desirability, of such settlement classes. *See Amchem Prods. v. Windsor,* 521 U.S. 591 (1997). The federal courts have done so as well. *See generally Hanlon v. Chrysler Corp.,* 150 F.3d 1011 (9th Cir. 1998); *In re Prudential Ins. Co. Am. Sales Practices Litig. Agent Actions,* 148 F.3d 283, 316 (3d Cir. 1998) ("Prudential *II*"). In the Third Circuit, there is a preference for class certification: "the interests of justice require that in a doubtful case . . . any error, if there is to be one, should be committed in favor of allowing a class action." *Kahan v. Rosenstiel,* 424 F.2d 161, 169 (3d Cir. 1970) (quoting *Esplin v. Hirschi,* 402 F.2d 94, 101 (10th Cir. 1968)).

52. In cases such as this, involving issues of consumer protection, courts have consistently held that the use of the class action mechanism is "desirable and should be encouraged." *Watkins v. Simmons & Clark, Inc.*, 618 F.2d 398, 404 (6th Cir. 1980); *Wise v. Popoff*, 835 F.Supp. 977, 982 (E.D. Mich. 1993) (noting that "[i]n a large and impersonal society, class actions are often the last barricade of consumer protection" (citation omitted)).

1. The Rule 23(a) Prerequisites Are Satisfied

53. Under Bankruptcy Rule 7023(a), the four prerequisites to certification of a class are:

> (1) the class be so numerous that joinder of all members is impracticable;
>
> (2) there be questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties by typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

a. <u>Numerosity</u>

54. For a class action to be appropriate, the proposed class must be so numerous that "joinder of all members is impracticable." Fed. R. Bankr. P. 7023(a)(1). To meet this requirement, the class representative(s) need only show that "common sense" suggests that it would be difficult or inconvenient to join all the members of the class. *In re Bell Atl. Corp. Sec. Litig.*, No. 91-514, 1995 WL 733381, at *3 (E.D. Pa. Dec. 11, 1995); 1 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 3.5 (4th ed. 2002) ("In light of prevailing precedent, the difficulty inherent in joining as few as 40 class members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone."); *see also Welch v. Bd. of Dirs. of Wildwood Golf Club*,

146 F.R.D. 131, 135 (W.D. Pa. 1993) ("The Third Circuit has generally held that the numerosity requirement is met if the proposed class exceeds 100 members." (citation omitted)). Geographical dispersion of the class members is appropriately considered. *Eisenberg v. Gagnon,* 766 F.2d 770, 785-86 (3d Cir. 1985).

55. Here, the Settlement Class potentially consists of thousands of geographically dispersed members. Numerosity therefore is readily apparent.

b. Commonality

56. To maintain a class action, there must be "questions of law *or* fact common to the class." Fed. R. Bankr. P. 7023(a)(2) (emphasis added). "The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Baby Neal v. Carey,* 43 F.3d 48, 56 (3d Cir. 1994); *see also Prudential II,* 148 F.3d at 310; *Weiss v. York Hosp.,* 745 F.2d 786, 808-09 (3d Cir. 1983). Because this requirement will be satisfied by the presence of a single common issue, it is easily satisfied. *Prudential II,* 148 F.3d at 310. Here, the Complaint specifically lists the common issues implicated by the Class Representative's claims, including whether Hancock had a practice of providing its customers with a sales receipt on which Hancock printed more than the last five digits of the credit card or debit card number and/or the expiration date of the card, whether Hancock's conduct was willful, and whether Hancock thereby violated FACTA. *See* Complaint at ¶ 18(a)-(d). Thus, the common questions alleged in the Complaint easily satisfy the commonality requirement of Bankruptcy Rule 7023(a)(2).

c. Typicality

57. Bankruptcy Rule 7023(a) requires that the claims of the representative party be "typical" of those of the class. Typical, however, does not mean identical, and factual homogeneity between the representative plaintiff and all class members is not required.

Prudential II, 148 F.3d at 311; *see also In re Cmty. Bank of N. Virginia*, 418 F.3d 277, 303 (3d Cir. 2005); *In re Chambers Dev. Sec. Litig.*, 912 F.Supp. at 834 (stating that "'typical' does not mean identical" (citation omitted)).

58. Here, the Class Settlement Representative's claims are typical of those of the Settlement Class because they derive from an identical factual predicate and they are based upon the same legal theory—each of the Settlement Class Members received a Receipt from Hancock. Accordingly, the Class Settlement Representative's claims are typical of those of the Settlement Class Members.

d. Adequacy of Representation

59. The fourth and final prerequisite of Rule 7023(a) is that "the representative parties . . . fairly and adequately protect the interests of the class." The Third Circuit has confirmed that "[a]dequate representation depends on two factors: (a) the plaintiff's attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class." *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 247 (3d Cir. 1975) (citation omitted).

60. Here, Settlement Class Counsel has provided fair and vigorous representation for the Settlement Class. As previously noted, Settlement Class Counsel has substantial experience in similar consumer class action litigation and has been regularly deemed to be adequate class counsel. *Zimmerman Declaration* at ¶¶ 2-9.

61. In addition, there are no conflicts of interest or other antagonisms between the Settlement Class Representative on the one hand and the Settlement Class Members on the other. All are consumers with the mutual incentive to establish Hancock's alleged violation of FACTA. All Settlement Class Members were impacted by Hancock's alleged practices at issue in an identical manner.

62. Finally, as the court stated in *In re Chambers Development Securities Litigation,* the "proof is in the pudding." *Id.* at 836. The settlement in this case is wholly warranted and appropriate, which becomes more manifest in the discussion of the *Girsh* factors below. Thus, the adequacy requirement of Rule 23(a)(4) is readily satisfied.

2. The Requirements of Bankruptcy Rule 7023(b) Are Satisfied

63. Bankruptcy Rule 7023(b) provides in pertinent part:

> An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied and, in addition:
>
> *****
>
> (3) the court finds that the questions of law or fact common to the members of the class predominate over any issues affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Here, these requirements are satisfied for settlement purposes.

a. Common Questions of Law and Fact Predominate over Questions Affecting Only Individual Members of the Settlement Class

64. In *Amchem,* the Supreme Court noted that the Rule 23(b)(3) predominance inquiry tests whether a proposed class is "sufficiently cohesive to warrant adjudication by representation." 521 U.S. at 594. The Supreme Court then noted that the predominance requirement is easily met in cases, such as this one, alleging a uniform violation of a consumer protection statute. *Id.* at 625. The Third Circuit has indicated that claims alleging the violation of a consumer protection statute by way of standardized documents are appropriate for nationwide class action treatment. *See, e.g., Prudential II,* 148 F.3d 283. This case is no exception. *See Lerch v. Citizens First Bancorp, Inc.,* 144 F.R.D. 247, 252 (D.N.J. 1992); *see also*

Kirkpatrick v. J.C. Bradford & Co., 827 F.2d 718, 724-25 (11th Cir. 1987); *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975).

65. As described above, the Settlement Class Representative and the Settlement Class allege statutory injury by Hancock's common course of conduct. These allegations of a common course of conduct "provides the 'single central issue'" required to ensure predomination of common questions over individual issues. *In re Prudential Ins. Sales Practices Litig.*, 962 F.Supp. 450, 511-512, 512 n.45 *("Prudential I")*.

66. Similarly, the damage issues in this case are especially well suited for class-wide resolution because every Settlement Class Member seeks the same quantum of statutory damages which is dependent upon a unitary demonstration of Hancock's willful noncompliance with the truncation requirements of FACTA. *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 520-22 (S.D.N.Y. 1996); *see also Prudential I*, 962 F.Supp. at 516.

67. In short, this is a paradigmatic multi-state class settlement framed on federal statutory law and predominance is easily satisfied.

b. A Class Action Is the Superior Means to Adjudicate the Claims at Issue for Settlement Purposes

68. It is well-accepted that the class-action mechanism generally provides the superior approach to handling multi-state consumer protection claims. *See, e.g., Ingram v. Joe Conrad Chevrolet, Inc.*, 90 F.R.D. 129, 133 (E.D. Ky. 1981). Bankruptcy Rule 7023(b)(3) lists the factors pertinent to the superiority determination as follows:

> (A) the interest of the members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the

> claims in the particular forum; (D) the difficulties likely to be encountered in the management of the class action.

Here, all four of these factors support certification of the Settlement Class for settlement purposes.

i. Most Settlement Class Members Have an Insufficient Interest to Justify Individual Lawsuits

69. Certification permits a class-wide adjudication of the claims of similarly situated claimants when individual prosecution would not be cost-effective. The Supreme Court has frequently noted the need for aggregate representation through certification if such claims are to be addressed. *Deposit Guar. Nat'l Bank v. Roper,* 445 U.S. 326, 339 (1980); *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 809 (1985). This clear theme in Supreme Court jurisprudence was reiterated in *Amchem,* wherein the Court stated:

> The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.

521 U.S. at 617 (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)).

70. Effective private enforcement requires mechanisms to aggregate these relatively small but important claims lest the relatively small stake of each individual consumer present an insurmountable hurdle to recovery. Aggregate litigation is therefore indispensable if consumers are to play a role in deterring conduct identified by Congress as being generally harmful and therefore serves as an important compliment to public and quasi-public enforcement procedures.

71. This consumer action against Hancock on behalf of credit card and debit card users presents the paradigmatic case for class certification. The class action mechanism for

settlement is meant to afford remedies to claimants who cannot otherwise prosecute their claims in a cost-effective manner. *Gen. Tel. Co. of Sw. v. Falcon,* 457 U.S. 147, 155 (1982). The claims at issue here are such that class relief is the only realistic alternative to no relief at all, for the vast majority of Settlement Class Members. *Prudential I,* 962 F.Supp. at 522-23. This factor thus plainly supports certification of the Settlement Class for settlement purposes.

ii. The Extent and Nature of Other Pending Class Actions Does Not Present any Impediment to Certification of the Settlement Class

72. There are no other pending class actions against Hancock asserting the claims here in dispute. Therefore, this factor supports settlement class certification.

iii. This Court Is an Appropriate Forum for Resolution of the Claims in Dispute

73. There is no question that this Court has subject matter jurisdiction over the claims alleged in this case, personal jurisdiction over the Settling Parties and that personal jurisdiction extends to Settlement Class Members under the Due Process Clause of the United States Constitution because the notice provided in this case was constitutionally sufficient. *Shutts,* 472 U.S. at 811-12 (holding that there is no constitutional requirement that every member of a settlement class have "minimum contacts" with the forum state so long as the court provides "minimum procedural due process protection").

74. Here, all the conditions to jurisdiction over non-residents of Delaware are satisfied: the absent Settlement Class Members are adequately represented, they have been given adequate notice which is the "best notice reasonably practicable" under the circumstances of this case, and they have had an opportunity to object to the settlement or opt-out.

iv. Manageability

75. The Supreme Court confirmed in *Amchem* that the manageability of a class action at trial is an irrelevant consideration in the context of a proposed settlement class, because the proposal is that there be no trial. *Amchem,* 521 U.S. at 620; *Prudential II,* 148 F.3d at 316 n.57.

B. The Proposed Settlement Exceeds the Standards for Judicial Approval

1. Final Approval of the Settlement Is Within the Sound Discretion of the Court and Is Favored by Strong Judicial Policy

76. Even if the requirements for certification under Bankruptcy Rule 7023 are satisfied, a class action cannot be settled without judicial approval based upon a determination that the proposed settlement is "fair, reasonable and adequate." *Prudential II,* 148 F.3d at 316. "Rule 23(e) imposes on the trial judge the duty of protecting absentees, which is executed by the court's assuring the settlement represents adequate compensation for the release of the class claims." *Id.* (citation omitted). A number of well-settled factors guide a court's fairness review.

77. While the approval of a proposed class action settlement is a matter within the sound discretion of the court, *see Walsh v. Great Atl. & Pac. Tea Co.,* 726 F.2d 956, 965 (3d Cir. 1983); *Girsh v. Jepson,* 521 F.2d 153, 156 (3d Cir. 1975); *Ace Heating & Plumbing Co. v. Crane Co.,* 453 F.2d 30, 34 (3d Cir. 1971); *Weiss v. Mercedes-Benz,* 899 F.Supp. at 1300, as noted above, a strong judicial policy favors resolution of litigation short of trial. *GM Trucks,* 55 F.3d at 784, 805 ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."). When a settlement is reached on terms agreeable to all parties, it is to be

encouraged. *Bell Atl. Corp. v. Bolger,* 2 F.3d at 1314 n.16; *see also Eichenholtz v. Brennan,* 52 F.3d 478, 486 (3d Cir. 1995) (holding that "[i]n general, the settlement of complex litigation before trial is favored by the federal courts").

78. One court within the Third Circuit has articulated the rationale for this policy as follows:

> [W]hen parties negotiate a settlement they have far greater control of their destiny than when a matter is submitted to a jury. Moreover, the time and expense that precedes the taking of such a risk can be staggering. This is especially true in complex commercial litigation.

Weiss v. Mercedes-Benz, 899 F. Supp. at 1300-01.

79. As noted previously herein, the settlement at issue enjoys a presumption that it is fair and reasonable because it is the product of arm's-length negotiations conducted by experienced counsel. *GM Trucks,* 55 F.3d at 785; *see also Manual for Complex Litig., Third,* § 30.42 (1995). Although a court must independently evaluate a proposed settlement, the court should credit the judgment of experienced counsel in doing so. Conversely, the reviewing court must avoid substituting its image of an "ideal settlement" for the views of the "compromising parties," and must keep in mind the fact that a settlement is, after all, "a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *Prudential I,* 962 F. Supp. at 534 (citation omitted). As the District Court of Delaware framed the issue: "The test is whether the settlement is adequate and reasonable, and not whether a better settlement is conceivable." *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 258 (D. Del. 2002) (citation omitted). Another court has noted:

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,

> taken as a whole, is fair, reasonable and adequate to all concerned. . . . The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.
>
> *****
>
> Neither the district court nor this court is empowered to re-write the settlement agreed upon by the parties. We may not delete, modify, or substitute certain provisions of the consent decree. Of course, the district court may suggest modifications, but ultimately, it must consider the proposal as a whole and as submitted. Approval must be given or withheld . . . . In short, the settlement must stand or fall as a whole.

Officers for Justice v. Civil Serv. Comm'n of San Francisco, 688 F.2d 615, 625, 630 (9th Cir. 1982); *see also Lake v. First Nationwide Bank,* 900 F. Supp. 726, 732 (E.D. Pa. 1995) ("Significant weight should be attributed 'to the belief of experienced counsel that settlement is in the best interest of the class'" (citing *Austin v. Pennsylvania Dep't of Corrs.,* 876 F. Supp. 1437, 1472 (E.D. Pa. 1995))).

80. Here, Settlement Class Counsel is fully familiar with the facts and law applicable to the Litigation and is well-acquainted with the prosecution of class actions, generally, and with class-based consumer claims, in particular. *Zimmerman Declaration* at ¶¶ 2-9. Before entering into the Settlement Agreement, Settlement Class Counsel took into account, among other things, the nine factors that the Third Circuit has identified as being relevant to the determination of whether a class settlement is fair, reasonable and adequate. The evaluation of those factors resulted in Settlement Class Counsel's recommendation that the proposed settlement be accepted as fair, reasonable and adequate as is set forth below.

2. *The Settlement Is Fair, Reasonable and Adequate*

a. The *Girsh* Factors Support the Settlement

81. The Court of Appeals for the Third Circuit has adopted a set of nine primary factors to be considered in determining whether a proposed settlement is fair, reasonable and adequate: (a) the complexity and duration of the litigation; (b) the reaction of the class to the settlement; (c) the stage of the proceedings; (d) the risks of establishing liability; (e) the risks of establishing damages; (f) the risks of maintaining a class action; (g) the ability of the defendant to withstand a greater judgment; (h) the range of reasonableness of the settlement in light of the best recovery; (i) the range of reasonableness of the settlement in light of all the attendant risks of the litigation. *See Girsh,* 521 F.2d at 157; *Warfarin Sodium,* 212 F.R.D. at 254-58.

82. The following application of these factors to the proposed settlement demonstrates that the settlement is fair, reasonable and adequate and should be approved.

i. Continued Litigation Would Be Long, Complex and Expensive

83. The Third Circuit has consistently held that the expense and possible duration of litigation are factors to be considered in evaluating the reasonableness of a settlement. In *In re Warfarin Sodium Antitrust Litig.,* the court stated:

> Settlement is particularly favored in a complex class action such as this. Although significant discovery has already taken place, to continue this litigation through trial would require additional discovery, extensive pretrial motions addressing complex factual and legal questions, and a complicated, lengthy trial. The costs would significantly increase the substantial costs already incurred. In addition, any judgment would likely be the subject of posttrial motions and appeals, further prolonging the litigation and reducing the value of any recovery to the class.
>
> In sum, this factor strongly supports settlement.

212 F.R.D. at 254; *see also GM Trucks*, 55 F.3d at 812.

84. Here, the claims at issue are, by definition, complex, and they implicate unsettled areas of applicable law, i.e., FACTA. Moreover, the Chapter 11 Case and the applicability of the Bankruptcy Code to certain potential claims and defenses of Hancock add another significant layer of complexity. While the Settlement Class Representative and Settlement Class Counsel would not have asserted the claims if they were not confident that they could make persuasive arguments in favor of both liability and class certification, they acknowledge that if the claims were fully litigated, the Settlement Class Representative would have to navigate significant obstacles under both FACTA, as well as the Bankruptcy Code.

85. In addition, the Settlement Class Representative must demonstrate a willful violation of FACTA's truncation requirements as a prerequisite to statutory damages. As set forth previously in greater detail, Hancock vigorously disputes whether the alleged FACTA violation was willful. The law in this context is evolving and the issue of willfulness would likely be a jury question.

86. The settlement, on the other hand, permits a prompt resolution of the claims at issue—none of which are claims for actual damages—in a manner that is fair, reasonable and adequate to the Settlement Class, while at the same serving the Congressional purpose of causing the truncation of personal consumer credit data on receipts provided to consumers at the point of sale. This result will be accomplished at least months, and perhaps years, earlier than otherwise might be possible absent a settlement. Standing alone, the relatively expeditious resolution of the claims in dispute benefits the Settlement Class, specifically, and consumers, generally.

87. Courts have consistently held that, unless the proposed settlement is clearly inadequate, its acceptance and approval are preferable to the continuation of lengthy and

expensive litigation with uncertain results. *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. at 837; 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11.50 (2002); *see also TBK Partners, Ltd. v. W. Union Corp.*, 517 F. Supp. 380, 389 (S.D.N.Y. 1981), *aff'd*, 675 F.2d 456 (2d Cir. 1982). Given the prospects for significant discovery, abundant motion practice, a jury trial and probable appeal process, as well as the substantial risks involved, a settlement at this time is beneficial to the Settlement Class. *In re First Commodity Corp. of Boston Customer Accounts Litig.*, 119 F.R.D. 301, 314 (D. Mass. 1987).

88. This factor thus plainly weighs in favor of approval of the proposed settlement.

ii. The Reaction of the Class to the Settlement Has Been Favorable

89. The Third Circuit has held that the response of the class to notice of a proposed settlement can be a significant factor under the *Girsh* paradigm: "In an effort to measure the reaction of the class to the settlement's terms, courts look to the number and tone of the objections." *GM Trucks, 55* F.3d at 812. "The reaction of the class 'is perhaps the most significant factor to be weighed in considering its [the settlement's] adequacy.'" *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 294 (E.D. Pa. 2003) (quoting *Sala v. Nat'l R.R. Passenger Corp.*, 721 F.Supp. 80, 83 (E.D. Pa. 1989)). As of the date of this Motion, the Settling Parties obviously cannot offer the Court evidence on this factor but intend to report to the Court on the reaction of the Settlement Class, *i.e.*, objections and/or opt-outs, prior to and/or at the Final Approval Hearing. In light of the potential benefits of the proposed settlement to Settlement Class Members and Settlement Class Counsel's recommendation thereof, the Settling Parties anticipate that this factor will weigh in favor of final approval of the settlement.

iii. Plaintiff Is Able to Make an Informed Evaluation of the Merit of the Proposed Settlement

90. The stage of the proceedings and the amount of investigation and/or discovery completed is another factor considered in determining the fairness, reasonableness and adequacy of the settlement. *GM Trucks, 55* F.3d at 813. This factor "captures the degree of case development that class counsel have accomplished prior to the settlement." *Id.* "Through this lens," the Court of Appeals for the Third Circuit has written, "courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *Id.*

91. In this Litigation, the Settlement Class Representative did not need to pursue extensive formal discovery to be in a position to evaluate the merit of the proposed settlement. In fact, it is well-settled that so-called formal discovery does not warrant talismanic significance. Courts evaluating the fairness and reasonableness of class settlements have routinely held that effective litigation that yields an expeditious and favorable result for the class should be encouraged. In some circumstances, courts have encouraged class settlements prior to full-blown discovery. The Third Circuit has commented on this factor as follows:

> The objectors are correct that the Settlement was reached early in the litigation, with discovery itself at an early stage. However, the merits of the liability case against Cendant were fairly clear.
>
> *****
>
> Given the foregoing, it is unclear what depositions and interrogatories (with the requisite motions to compel) would have added to the liability considerations. . . .
>
> *****
>
> Therefore, although this litigation was settled at an early stage, because of the nature of the case Lead Plaintiff had an excellent

> idea of the merits of its case against Cendant insofar as liability was concerned at the time of settlement.

In re Cendant Corp. Litig., 264 F.3d 201, 236; *see also In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981) ("[W]e are not compelled to hold that formal discovery was a necessary ticket to the bargaining table. Because the plaintiffs did have access to information, this case cannot be characterized as an instance of the unscrupulous leading the blind."); *Bowling v. Pfizer*, 143 F.R.D. 141, 161 (S.D. Ohio 1992) ("We can imagine an inadequate settlement with much discovery done; similarly, we can envision an outstanding settlement with little discovery done."); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155 (4th Cir. 1991) (finding that plaintiffs were sufficiently informed about the strength of the case as a result of information obtained through informal discovery); *Cotton v. Hinton,* 559 F.2d 1326, 1332 (5th Cir. 1977) (approving settlement over objection that not enough discovery had occurred because plaintiffs were adequately informed despite fact that "very little formal discovery was conducted and that there is no voluminous record in this case").

92. Here, the Settlement Class Representative and Settlement Class Counsel possessed sufficient information to make an appropriate and informed evaluation of the proposed settlement. Specifically, Settlement Class Counsel was aware of the following information:

(a) Soon after the filing of the Complaint, on or about August 8, 2007, Hancock retail store locations no longer printed the expiration dates of customers' credit cards and debit cards on electronically-generated receipts;

(b) Based on information provided by Hancock, the frequency of credit card and debit card transactions at retail store locations;

(c) The passage of the Bar Date and the possible bases for objections by Hancock to any claims, including the Released Claims, asserted against it by the Settlement Class Representative and/or any Settlement Class Members;

(d) The significant, albeit non-binding, authority both in favor of and adverse to class certification in the FACTA context;

(e) Hancock's prior engagement of the Compliance Consultant and adoption of certain recommendations, including, but not limited to, the truncation of credit card and debit card account numbers on electronically-generated receipts as early as 2005;

(f) Hancock's unfamiliarity with FACTA prior to the Complaint;

(g) One of Hancock's primary liability defenses is likely a lack of willfulness based upon the facts set forth herein;

(h) Without evidence of malice or other indicia of malfeasance, a jury is unlikely to impose potentially annihilating damages upon a business in bankruptcy under chapter 11 of the Bankruptcy Code that is generally an upstanding corporate citizen—particularly where there is no evidence that the Class Representative or any Settlement Class Member has sustained any actual monetary injury;

(i) If the full measure of statutory damages was actually imposed upon Hancock by a jury, there is some risk that said damages may violate Hancock's constitutional due process rights; and

(j) The Sale Event will provide real and substantial value to the Settlement Class Members.

93. In short, the Settlement Class Representative and Settlement Class Counsel possessed sufficient information to conclude that not only is the proposed settlement fair, reasonable and adequate, it serves the Congressional purposes reflected in FACTA. At the same time, the proposed settlement represents a responsible resolution of this litigation in that it does not seek to destroy a business already facing the challenges of a chapter 11 bankruptcy case.

94. This factor weighs in favor of approval of the proposed settlement set forth in the Settlement Agreement.

iv. Plaintiff Faces Risk in Establishing Liability

95. In assessing the fairness, reasonableness and adequacy of the settlement, a court should balance the risks of establishing liability against the benefits afforded by the settlement, and the immediacy and certainty of an adequate recovery against the risks of continuing litigation. *Girsh,* 521 F.2d at 157; *In re Warner Commc'ns Sec. Litig.*, 618 F.

Supp. 735, 741 (S.D.N.Y. 1985), *aff'd,* 789 F.2d 35 (2d Cir. 1986). As the court noted in *In re Chambers Development Securities Litigation*: "risks and uncertainties attend any complex litigation such as this, making it difficult, if not impossible, to accurately predict the outcome of either trial or the inevitable appeal." 912 F. Supp. at 838.

96. As another court has noted, "no matter how confident one may be of the outcome of litigation, such confidence is often misplaced." *West Virginia v. Chas. Pfizer & Co.,* 314 F.Supp. 710, 743-44 (S.D.N.Y. 1970), *aff'd,* 440 F.2d 1079 (2d Cir.); *see also Bell Atl. Corp. v. Bolger,* 2 F.3d at 1313 ("Even if plaintiffs hoped to secure a large damage award, this would have to be drastically discounted by the improbability of their success on the merits given the individual defendants' strong defenses."). As already described, in the context of this Litigation and the Chapter 11 Case, the risks that the Settlement Class Representative faces in prevailing on any objection by Hancock to her claims and establishing liability under FACTA are manifest and, accordingly, this factor favors approval of the proposed settlement.

v. Plaintiff Faces Risk in Establishing a Sustainable Statutory Damage Award

97. As noted, the Settlement Class Representative's ability to prevail on potential claims objections and then prove a "willful" violation of FACTA is a prerequisite to *any* statutory damage award and there are no guarantees that the Settlement Class Representative would be able to sustain this burden. *Perry v. Fleet Boston,* 299 F.R.D. at 115-116. If the Settlement Class Representative succeeded in establishing liability, risks would still remain with respect to her ability to prove a *sustainable* class-based damage award. Specifically, statutory damages in this case range from $100 to $1,000 per transaction. If liable, Hancock could face potentially devastating class-wide statutory damage exposure. In light of the statutory violation at issue, the Settlement Class Representative questions whether

damages of this magnitude against Hancock could withstand an almost certain constitutional due process challenge by Hancock. *State Farm Mut. Ins. Co. v. Campbell,* 538 U.S. 408 (2003).

98. This factor favors approval of the proposed settlement set forth in the Settlement Agreement.

vi. The Risks of Maintaining a Certified Class Through Trial

99. The Settlement Class Representative also faces the risk that the Court might perceive insurmountable difficulties in managing this case as a class action at trial. As required by *Amchem*, this Court must fully analyze whether Bankruptcy Rule 7023 has been satisfied in this case, with the exception of the manageability inquiry, which *Amchem* holds is irrelevant because the proposal is that there be no trial. 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial.").

100. Hancock would aggressively challenge certification if the case were to be litigated, and likely would appeal certification, should it be granted. That collateral challenge would prolong the Litigation, increase the costs of adjudication and further burden the judicial system. Moreover, under Bankruptcy Rule 7023, a class may be decertified at any time during the litigation. As one court has observed in approving a class action settlement:

> Indeed, the Court recognized that its class certification order was subject to alteration or amendment before the decision on the merits. "To paraphrase Benjamin Franklin, plaintiffs now have their class action, the question is can they keep it."

In re Domestic Air Transp. Antitrust Litig., 148 F.R.D. 297, 317 (N.D. Ga. 1993) (citation omitted); *see also Perry v. Fleet Boston,* 229 F.R.D. at 116 ("What the district court giveth, the

district court may take away: the court may decertify or modify a class at any time during the litigation should the class prove to be unmanageable." (citation omitted)).

101. In short, the Settlement Class Representative recognizes the risks of maintaining a certified class through trial, and this factor thus weighs in favor of the proposed settlement.

vii. Defendant's Ability to Withstand a Greater Judgment

102. Hancock is a retail business in chapter 11 bankruptcy. It does not require a forensic accounting analysis to determine that the potential damage exposure in this Litigation would seriously impact Hancock's business viability and reorganization objectives. This factor strongly favors the proposed settlement

viii. Reasonableness of the Settlement in Light of the Best Possible Recovery and All Attendant Risks of Litigation

103. The last two *Girsh* factors are the reasonableness of the settlement in light of (a) the best recovery, and (b) all the attendant risks of the litigation. The Third Circuit has held:

> [I]n cases primarily seeking monetary relief, the present value of the damages Plaintiff would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement. . . . The evaluating court must, of course, guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.

GM Trucks, 55 F.3d at 806 (citations omitted). As a court sitting in the Eastern District of Pennsylvania noted in evaluating a settlement wherein the relief being offered to the class

represented a significant discount from the low end of Fair Credit Reporting Act's statutory damages provisions (i.e. $100 per transaction):

> The risks of litigation are particularly weighty here, on the issues of both liability and damages. Further complicating matters is the fact that "no reported class action cases have ever been brought or classes certified under the theory [used by Plaintiffs in this case]." (citation omitted) The Court concludes that, given the circumstances, the settlement is within the range of reasonableness in light of the attendant risks of litigation.

Perry v. Fleet Boston, 229 F.R.D. at 117.

104. The Settlement Class Representative respectfully submits that the risks that attended in *Perry* are multiplied exponentially in this case. Unlike *Perry,* where the defendant was one of the largest bank holding companies in the country and therefore possessed sufficient assets to withstand a very substantial judgment, Hancock is a retail business currently in chapter 11 bankruptcy with finite assets.

105. The Settling Parties agree that the discount to be made available at the Sale Event provides real and substantial value to the Settlement Class Members. In addition, Hancock has agreed to pay the costs of publishing the Class Publication Notice to provide notice to the Settlement Class and of service of the CAFA Notice. Finally, Hancock has agreed to continue to remain in compliance with FACTA's truncation requirements.

106. The Settling Parties respectfully submit that, particularly in the somewhat unique circumstances of this Litigation, the proposed settlement is fair, reasonable and adequate. Indeed, it represents a responsible and appropriate compromise of the Litigation and the Released Claims.

III. THE COURT SHOULD ENTER THE APPROVAL ORDER APPROVING THE SETTLEMENT UNDER BANKRUPTCY RULE 9019

107. The decision to approve a settlement or compromise lies within the discretion of the Court and is warranted when the settlement is found to be reasonable and fair in light of the particular circumstances of the case. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 424-25 (1968); *In re Marvel Entm't Group*, 222 B.R. 243, 249 (D. Del. 1998) ("This court has described the ultimate inquiry to be whether the compromise is fair, reasonable, and in the interest of the estate."); *In re Louise's, Inc.*, 211 B.R. 798, 301 (D. Del. 1997) (holding that "the decision whether to approve a compromise under Rule 9019 is committed to the sound discretion of the Court, which must determine if the compromise is fair, reasonable, and in the interest of the estate"); *Key3Media Group, Inc. v. Pulver.com, Inc. (In re Key3Media Group, Inc.)*, 336 B.R. 87, 92 (Bankr. D. Del. 2004) (same).

108. "Compromises are generally favored in bankruptcy" because "[t]he consensual resolution of claims minimizes litigation and expedites the administration of a bankruptcy estate." *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004). *See Key3Media Group*, 336 B.R. at 93 (holding that "the Court should consider the proposition that to minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy" (citations and quotations omitted)).

109. In determining whether a settlement is reasonable and fair, courts generally consider the following factors:

(a) The probability of success in litigation;

(b) The difficulty in collecting any judgment which may be obtained;

(c) The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attendant to it; and

(d) The paramount interest of creditors and a proper deference to their reasonable views of the settlement.

Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996). *See Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644-45 (3d Cir. 2006) (applying *Martin* factors and stating that "[u]nder the 'fair and equitable' standard, we look to the fairness of the settlement to other persons, i.e., the parties who did not settle."); *Fry's Metals, Inc. v. Gibbons (In re RFE Indus., Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002) (applying *Martin* factors); *Law Debenture Trust Co. v. Kaiser Aluminum Corp. (In re Kaiser Aluminum Corp.)*, 339 B.R. 91, 95-96 (D. Del. 2006) ("the Bankruptcy Court must determine whether a proposed settlement is in the best interest of the debtor's estate before such a settlement is approved" and that "[i]n exercising its discretion to approve a settlement, the Bankruptcy Court must also assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal in light of [the *Martin* factors]" (citations and quotations omitted)); *Key3Media Group*, 336 B.R. at 93 (applying *Martin* factors); *Coram Healthcare*, 315 B.R. at 330-31 (same).

110. In short, if a proposed settlement is above the lowest point in the range of reasonableness, the Court should approve it. *See In re Penn Cent. Transp. Co.*, 596 F. 2d 1102, 1114 (3d Cir. 1979) ("We conclude that the reorganization court properly held that the test was whether the terms of the proposed compromise fall within the reasonable range of litigation possibilities." (citation and quotations omitted)); *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) ("[T]he court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities." (citations and quotations omitted)); *Key3Media Group*, 336 B.R. at 92-93 ("Nor is the court required to make a determination that the settlement

is the best possible compromise. In determining whether to approve a settlement, the court is not supposed to have a mini-trial on the merits, but should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness." (citations and quotations omitted)); *Coram Healthcare*, 315 B.R. at 330-31 ("In approving a settlement, the court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must only conclude that the compromise or settlement falls within the reasonable range of litigation possibilities. That is, the settlement need only be above the lowest point in the range of reasonableness." (citations and quotations omitted)); *In re Int'l Wireless Commc'ns. Holdings, Inc.*, 1999 Bankr. LEXIS 1853, at *15 (Bankr. D. Del. Mar. 26, 1999) ("The settlement need only be above the lowest point in the range of reasonableness." (citation and quotations omitted)).

111. In determining reasonableness, the Court may and should give weight to the opinion of the parties and their professional advisors that the factors outlined above have been explored and that the compromise is fair and reasonable. *Key3Media Group*, 336 B.R. at 97 ("[T]he court may give weight to the opinions of the trustees, the parties, and their counsel, in determining the reasonableness of the proposed settlement."); *Coram Healthcare*, 315 B.R. at 330 ("[T]he court should defer to a trustee's judgment so long as there is a legitimate business justification for his action."); *In re Exide Techs.*, 303 B.R. 48, 67-68 (Bankr. D. Del. 2003) (recognizing that a court may give weight to the trustee's informed judgment that a compromise is fair and equitable and also consider the competency and experience of counsel who support the compromise). Indeed, all that the parties must do is "establish...that, all things considered, it is prudent to eliminate the risks of litigation to achieve specific certainty though admittedly it might be considerably less (or more) than were the case fought to the bitter end." *In re Golden*

Mane Acquisitions, Inc., 221 B.R. 963, 966 (Bankr. N.D. Ala. 1997) (quoting *Florida Trailer & Equip. Co. v. Deal*, 284 F. 2d 564, 573 (5th Cir. 1960)).

112. Hancock believes that the settlement is a reasonable compromise of the Litigation and Released Claims. In particular, while Hancock is confident in the merits of its claims objections and defenses to liability under FACTA, it faces the risk that claims asserted by the Settlement Class Representative and/or the Settlement Class Members may ultimately not be disallowed in their entirety on the bases discussed above. If such claims are not disallowed, there is the further risk attendant to litigating the "willfulness" issue under FACTA—a still-evolving area of the law. As already noted, there is a high degree of complexity in the issues to be litigated if the Litigation were to proceed, which continued Litigation, even if Hancock were to prevail, would undoubtedly involve great expense to the estates and delay to the reorganization thereof. *Nerland Declaration* at ¶ 28.

113. As such, the cost to Hancock of the proposed settlement is justified by the certainty and benefits to Hancock and its estate afforded thereby, which are in the best interests of Hancock, its estate, its creditors and other stakeholders. *Id.* Accordingly, Hancock respectfully submits that the settlement embodied in the Settlement Agreement should be approved under Bankruptcy Rule 9019.

114. Moreover, counsel for Hancock has consulted extensively with counsel for the Committees regarding the proposed settlement set forth in the Settlement Agreement, including the payment of the incentive award to the Settlement Class Representative and fees and costs to Settlement Class Counsel, and the relief requested in this Motion and the Committees have no objection thereto.

115. Additionally, Settlement Class Counsel is of the opinion that the proposed settlement is fair and reasonable and that the Settlement Agreement should be approved. In light of the risks and expenses of litigation, the potential defenses of Hancock and the present lack of any evidence that any Class Member suffered actual harm, Settlement Class Counsel believes it is in the best interests of the Settlement Class that the case be settled and that the settlement terms are fair and reasonable. *Zimmerman Declaration* at ¶ 10.

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WHEREFORE, the Settling Parties respectfully request that the Court: (i) enter the Preliminary Approval Order, in substantially the form attached hereto as **Exhibit D**; (ii) following the Final Approval Hearing, enter the Approval Order, in substantially the form attached hereto as **Exhibit E**; and (iii) grant any other such relief as the Court deems appropriate.

Dated: January 7, 2008

SETTLEMENT CLASS REPRESENTATIVE

Kathy Aliano

Dated: January 7, 2008

HANCOCK FABRICS, INC.

By: Jeff Nerland
Title: Interim Chief Financial Officer

Dated: January 7, 2008

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Counsel for Settlement Class Representative and the Settlement Class

Dated: January 7, 2008

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(302) 658-9200

Counsel for Hancock Fabrics, Inc.

1308310

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Wilmington, Delaware 19899-1347
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Counsel for Hancock Fabrics, Inc.

1308310

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
HANCOCK FABRICS, INC., et al.,	)	Case No. 07-10353 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
KATHY ALIANO,	)	Adv. Proc. No. 08-_____ (BLS)
Plaintiff,	)	
	)	Class Action
v.	)	
	)	
HANCOCK FABRICS, INC., et al.,	)	
Defendants.	)	
	)	

EXHIBITS

to

JOINT MOTION OF DEBTOR HANCOCK FABRICS, INC. AND PUTATIVE CLASS REPRESENTATIVE KATHY ALIANO FOR PRELIMINARY AND FINAL APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. BANKR. P. 7023 AND 9019

Exhibit A	Class Action Settlement Agreement and Release
Exhibit B	Declaration of Thomas A. Zimmerman, Jr.
Exhibit C	Declaration of Jeff Nerland
Exhibit D	Preliminary Approval Order
Exhibit E	Final Approval Order
Exhibit F	Amended Complaint filed in the United States District Court for the Northern District of Illinois, in the matter of *Aliano v. Hancock Fabrics, Inc., No. 07 C 4109*

EXHIBIT A

Settlement Agreement

EXECUTION COPY

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
HANCOCK FABRICS, INC., et al.,[1]	)	Case No. 07-10353 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	
KATHY ALIANO,	)	Adv. Proc. No. 08-_____ (BLS)
Plaintiff,	)	
	)	Class Action
v.	)	
	)	
HANCOCK FABRICS, INC., et al.,	)	
Defendants.	)	
	)	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This class action settlement agreement and release is made and entered into this 7th day of January, 2008, by and between Kathy Aliano, on behalf of herself and all of the Settlement Class Members and with the assistance and approval of Thomas A. Zimmerman, Jr., Esq. of Zimmerman and Associates, P.C., on the one hand, and Hancock Fabrics, Inc., on the other hand. The Settlement Agreement is intended by the Settling Parties to fully, finally and

---

[1] The Debtors are the following entities: Hancock Fabrics, Inc. (Tax ID No. XX-XXX0905), One Fashion Way, Baldwyn, Mississippi 38824; Hancock Fabrics of MI, Inc. (Tax ID No. XX-XXX5878), One Fashion Way, Baldwyn, Mississippi 38824; HF Resources, Inc. (Tax ID No. XX-XXX9563), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; Hancockfabrics.com, Inc. (Tax ID No. XX-XXX9698), One Fashion Way, Baldwyn, Mississippi 38824; HF Merchandising, Inc. (Tax ID No. XX-XXX8522), One Fashion Way, Baldwyn, Mississippi 38824; HF Enterprises, Inc. (Tax ID No. XX-XXX7249), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; and Hancock Fabrics, LLC (Tax ID No. XX-XXX9837), One Fashion Way, Baldwyn, Mississippi 38824.

forever resolve, discharge and settle the Released Claims upon and subject to the terms and conditions hereof.

I. DEFINITIONS

As used in all parts of this Settlement Agreement, the following terms shall have the meanings set forth in this Section I of the Settlement Agreement:

"Affiliated Debtors" means Hancock's affiliated debtors and debtors-in-possession, Hancock Fabrics of MI, Inc., HF Resources, Inc., Hancockfabrics.com, Inc., HF Merchandising, Inc., HF Enterprises, Inc., and Hancock Fabrics, LLC, which Affiliated Debtors also commenced their respective bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code, which bankruptcy cases are being jointly administered as the Chapter 11 Case in the Bankruptcy Court before the Honorable Brendan L. Shannon, United States Bankruptcy Judge.

"Approval Order" means the order described further herein to be entered and filed by the Court granting final approval of the terms and conditions of the settlement set forth in the Settlement Agreement pursuant to Bankruptcy Rules 7023 and 9019 and in a form mutually agreeable to the Settling Parties.

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure.

"CAFA Notice" means the notice of the proposed settlement set forth in the Settlement Agreement provided to appropriate federal and state officials under 28 U.S.C. § 1715.

"CAFA Deadline" means the date that is ninety (90) days after the date of service of the CAFA Notice.

"Chapter 11 Case" means the Debtors' respective bankruptcy cases, which are being jointly administered in the lead case styled *In re Hancock Fabrics, Inc., et al.*, Case No. 07-10353 (BLS), in the Bankruptcy Court before the Honorable Brendan L. Shannon, United States Bankruptcy Judge.

"Complaint" means the Class Action Complaint filed on July 20, 2007, by the Settlement Class Representative in the District Court to commence the Litigation, as amended by the Amended Class Action Complaint filed by the Settlement Class Representative in the District Court on or about January 7, 2008.

"Debtors" means, collectively, Hancock and the Affiliated Debtors.

"District Court" means the United States District Court for the Northern District of Illinois, Eastern Division.

"Effective Date" means the date on which the Approval Order becomes Final.

"FACTA" means the Fair and Accurate Credit Transaction Act, 15 U.S.C. § 1681 *et seq.*

"Final" with respect to an order or judgment described herein means an order or judgment of the Bankruptcy Court, as entered on the docket of the Bankruptcy Court, that has not been reversed, stayed, modified, or amended, and as to which: (i) the time to appeal, seek review or rehearing or petition for certiorari has expired and no timely filed appeal or petition for review, rehearing, remand or certiorari is pending or (ii) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought, provided, however, that the possibility that a

motion under Rule 59 or Rule 60, or any analogous Bankruptcy Rule or other rules governing procedure in cases before the Bankruptcy Court, may be filed with respect to such order shall not cause such order not to be a Final order. Notwithstanding the foregoing, any proceeding or order, or any appeal or petition for a writ, pertaining solely to the award of attorneys' fees shall not, by itself, in any way delay or preclude the Approval Order from becoming Final.

"Final Approval Hearing" means a hearing set by the Bankruptcy Court to take place after the Settlement Class Response Deadline and the CAFA Deadline for the purpose of (i) determining the fairness, adequacy and reasonableness of the settlement set forth in the Settlement Agreement under Bankruptcy Rules 7023 and 9019 and (ii) entering the Approval Order.

"Hancock" means Hancock Fabrics, Inc., a Delaware corporation and the named defendant in the Litigation.

"Hancock Releasees" means Hancock and the Affiliated Debtors and each of their past or present directors, officers, employees, partners, members, principals, agents, representatives, underwriters, insurers, co-insurers, re-insurers, shareholders, attorneys, accountants, auditors, banks, investment banks, predecessors and successors in interest, and permitted assigns.

"Litigation" means the putative class action lawsuit entitled KATHY ALIANO v. HANCOCK FABRICS, INC., a Delaware corporation, individually, and d/b/a HANCOCK FABRICS; and DOES 1-10, United States District Court for the Northern District of Illinois, Eastern Division, Civil Action No. 07-C-4109, commenced on July 20, 2007 upon the filing of the Complaint by the Settlement Class Representative.

"Preliminary Approval Date" means the date on which the Bankruptcy Court enters the Preliminary Approval Order.

"Preliminary Approval Order" means the order further described herein to be entered and filed by the Court granting preliminary approval of the terms and conditions of the settlement set forth in the Settlement Agreement pursuant to Bankruptcy Rules 7023 and 9019 and in a form mutually agreeable to the Settling Parties.

"Receipt" means an electronically printed receipt received from Hancock at the point of sale or transaction, in a transaction occurring on or after January 1, 2005 through August 8, 2007, and wherein the receipt displayed (i) more than the last five digits of the person's credit card or debit card number and/or (ii) the expiration date of the person's credit card or debit card number.

"Released Claims" means, collectively, any and all claims, including Unknown Claims as defined herein, demands, rights, liabilities and causes of action of every nature and description whatsoever including, without limitation, statutory, constitutional, contractual or common law claims, under FACTA or any other applicable law, whether or not set forth in the Complaint, whether known or unknown, whether or not concealed or hidden, against the Hancock Releasees, or any of them, that accrued at any time on or prior to the Preliminary Approval Date for any type of relief, including, without limitation, damages, statutory damages, liquidated damages, punitive damages, unpaid costs, penalties, interest, attorney's fees, litigation costs, restitution or equitable relief, based on any and all claims in any way related to the publication of a person's credit card or debit card account information, including but not limited to more than the last five digits of the person's credit card or debit card account number and/or the credit card's or debit card's expiration date, upon an electronic receipt provided to the person, at the point of sale or transaction.

"Sale Event" means the sale event to be held by Hancock at all of its regularly operating retail store locations on a date to be mutually agreed upon by the Settling Parties and identified in the Settlement Class Notice and the Settlement Class Publication Notice, for the benefit of the Settlement Class Members, at which any person (except employees of Hancock) making a purchase transaction shall receive an automatic discount of ten percent (10%) from the total purchase price.

"Settlement Agreement" means this settlement agreement and release and all of its attachments and exhibits, which the Settling Parties understand and agree sets forth all material terms and conditions of the settlement between them and which is subject to Bankruptcy Court approval. It is understood and agreed that Hancock's obligations under this Settlement Agreement are conditioned on, among other things, the occurrence of the Effective Date.

"Settlement Class" means the conditional nationwide settlement class for purposes of effectuating this Settlement Agreement only, which shall be comprised of the collective group of those individuals defined as follows:

> All persons who received electronically printed receipts from Hancock at the point of sale or transaction, in a transaction occurring on or after January 1, 2005 through August 8, 2007, and wherein the receipt displayed (i) more than the last five digits of the person's credit card or debit card number, and/or (ii) the expiration date of the person's credit card or debit card.

"Settlement Class Counsel" means for purposes of effectuating this Settlement Agreement only Thomas A. Zimmerman, Jr. of the law firm of Zimmerman and Associates, P.C.

"Settlement Class Member" or "Member of the Settlement Class" means a person who is a member of the Settlement Class and who does not properly opt-out of the Settlement Class pursuant to the opt-out procedures set forth in the Settlement Agreement.

"Settlement Class Notice" means the notice described herein to be approved by the Bankruptcy Court substantially in the form attached hereto as **Exhibit 1.**

"Settlement Class Publication Notice" means the notice described herein to be approved by the Bankruptcy Court substantially in the form attached hereto as **Exhibit 2.**

"Settlement Class Publication Notice Deadline" means the deadline for publication of the Settlement Class Publication Notice, which deadline shall be on or prior to ten (10) business days after the Preliminary Approval Date or such other date set by the Bankruptcy Court.

"Settlement Class Representative" means Kathy Aliano for purposes of effectuating this Settlement Agreement only.

"Settlement Class Response Deadline" means a date at least forty-five (45) days after the date of publication of the Settlement Class Publication Notice or such other date set by the Bankruptcy Court.

"Settling Parties" means Hancock and the Settlement Class Representative on behalf of herself and all Settlement Class Members.

"Unknown Claims" means any Released Claims which the Settlement Class Representative or any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the Effective Date, and which, if known by him, her or it, might have affected his, her or its settlement with and release of the Hancock Releasees.

II. RECITALS

A. The Chapter 11 Case

WHEREAS, on March 21, 2007, the Debtors commenced their respective bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code, which bankruptcy cases are being jointly administered as the Chapter 11 Case in the

Bankruptcy Court before the Honorable Brendan L. Shannon, United States Bankruptcy Judge; and

WHEREAS, no trustee or examiner has been appointed in the Chapter 11 Case and the Debtors are operating their respective business as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code; and

B. The Litigation

WHEREAS, on July 20, 2007, the Settlement Class Representative commenced the Litigation by filing the Complaint in the District Court, which Complaint the Settlement Class Representative subsequently amended on or about January 7, 2008; and

WHEREAS, by the Complaint, the Settlement Class Representative, on behalf of herself and other putative class members, alleges that Hancock and "Does 1 – 10" violated Section 1681c(g)(1) of FACTA and seeks, *inter alia*, statutory damages, attorneys' fees, litigation expenses and costs; and

WHEREAS, on or about August 17, 2007, Hancock filed the Notice of Suggestion of Bankruptcy and Applicability of the Automatic Stay under 11 U.S.C. § 362 in the District Court with respect to the Litigation; and

WHEREAS, the Litigation is currently stayed by operation of the automatic stay under section 362 of the Bankruptcy Code; and

WHEREAS, Hancock and the Hancock Releasees deny all of the claims and contentions alleged by the Settlement Class Representative in the Complaint and the Litigation; and

WHEREAS, in order to avoid the cost and risk inherent in any litigation, after arm's-length negotiations, the Settling Parties have agreed, under the terms and conditions set

forth herein and subject to Bankruptcy Court approval, to compromise, settle and release fully and finally the Released Claims and the Litigation for the mutual promises and undertakings set forth in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

III. THE SETTLEMENT

NOW, THEREFORE, after arm's-length negotiations and in consideration of the foregoing, as well as the terms, conditions and mutual agreements set forth herein, IT IS HEREBY AGREED by and between the Settlement Class Representative (for herself and the Settlement Class Members and upon the advice and approval of Settlement Class Counsel) and Hancock that, as among the Settling Parties, including all Settlement Class Members, the Released Claims and the Litigation shall be fully and finally compromised, settled and released, and the Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions set forth in the Settlement Agreement.

1. Recitals. The recitals set forth above are expressly incorporated herein and are made an integral part of this Settlement Agreement.

2. Jurisdiction of the Bankruptcy Court. Solely for purposes of this Settlement Agreement and seeking final approval thereof, the Settling Parties hereby agree to cooperate to effectuate the transfer of the Litigation from the District Court to the Bankruptcy Court and stipulate that the Bankruptcy Court shall have jurisdiction to consider and grant preliminary and final approval of the Settlement Agreement.

3. Settlement Agreement Is Conditional and Subject to Bankruptcy Court Approval. This Settlement Agreement is made for the sole purpose of attempting to consummate settlement of the Released Claims and the Litigation on a class-wide basis and is

subject to Bankruptcy Court approval. Because the Litigation was pled as a class action, the settlement embodied in this Settlement Agreement must receive preliminary and final approval by the Bankruptcy Court under Bankruptcy Rules 7023 and 9019. Accordingly, the Settling Parties enter into this Settlement Agreement on a conditional basis. In the event that the transfer of the Litigation from the District Court to the Bankruptcy Court does not occur or the Bankruptcy Court does not execute and enter the Approval Order or that such order does not become Final for any reason or the Effective Date does not occur for any reason, (a) this Settlement Agreement, with the exception of Paragraph 4 hereof, shall (i) be deemed null and void *ab initio,* (ii) be of no force or effect whatsoever and (iii) not be referred to or utilized for any purpose whatsoever, and (b) the negotiation and terms of and entry into the Settlement Agreement shall remain subject to the provisions of Federal Rule of Evidence 408 and any otherwise applicable law.

4. No Waiver by Hancock or the Settlement Class Representative. To the extent this Settlement Agreement is deemed void or the Effective Date does not occur:

(a) Hancock does not waive, but rather expressly reserves, all rights to challenge any and all claims and allegations in the Litigation upon all procedural and factual grounds, including, without limitation, the ability to object to any claim filed or asserted in the Chapter 11 Case by or on behalf of the Settlement Class Representative and the Settlement Class Members and/or challenge class action treatment on any grounds or assert any and all defenses or privileges under the Bankruptcy Code, FACTA or any other applicable law. The Settlement Class Representative and Settlement Class Counsel agree that Hancock retains and reserves these rights, and agree not to take a position to the contrary, and the Settlement Class Representative and Settlement Class Counsel agree not to argue or present any argument, and

hereby waive any argument, that Hancock could not contest any claim asserted by the Settlement Class Representative and the Settlement Class Members in the Chapter 11 Case or class certification on any grounds if this Litigation were to proceed.

(b) The Settlement Class Representative does not waive, but rather expressly reserves, all rights, claims and defenses in the Litigation under the Bankruptcy Code, FACTA or any other applicable law. Hancock agrees that the Settlement Class Representative retains and reserves these rights, and agrees not to take a position to the contrary, and Hancock agrees not to argue or present any argument, and hereby waives any argument, that the Settlement Class Representative could not assert any such right, claim or defense if this Litigation were to proceed.

A. Proposed Class for Settlement Purposes

5. Conditional Certification of the Settlement Class. The Settling Parties agree to request that the Bankruptcy Court conditionally certify, for purposes of effectuating this Settlement Agreement only, the Settlement Class pursuant to Bankruptcy Rule 7023. The Settlement Class shall be represented by Settlement Class Counsel.

6. Settlement Purposes Only. Hancock agrees to certification of the Settlement Class as described herein for purposes of effectuating this Settlement Agreement only and reserves all rights to object to the propriety of class certification in the Litigation in all other contexts and on any and all grounds, including, but not limited to, objections concerning the manageability or superiority of any putative class and the propriety of the legal basis for any putative class proceeding and the relief sought with respect thereto.

7. Vacating Certification of Settlement Class and Reservation of Rights. The certification of the Settlement Class shall be binding only with respect to the settlement of the

Litigation as contemplated herein. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved in all material respects by the Bankruptcy Court, or is reversed, vacated or modified in any material respect by the Bankruptcy Court or any other court, the certification of the Settlement Class shall be deemed to be vacated, the Litigation shall proceed as though the Settlement Class had never been certified, and no reference to the prior Settlement Class or any documents related thereto shall be made for any purpose.

B. Benefits to the Settlement Class

8. Consideration to Settlement Class Members; the Sale Event. In full and final satisfaction, compromise, settlement and release of the Released Claims, Hancock, according to the terms, conditions and procedures set forth in this Settlement Agreement, shall conduct for the benefit of the Settlement Class Members the Sale Event. Hancock shall have no obligation to provide any other benefits or amounts to Settlement Class Members other than the Sale Event.

9. Continued Compliance with FACTA. Hancock agrees to continue to abide by the credit and debit card digit and expiration date truncation requirements of FACTA.

10. Settlement Class Representative Incentive Award. Subject to Bankruptcy Court approval and the occurrence of the Effective Date, the Settlement Class Representative shall be entitled to receive an incentive award in the amount of $4,000 from Hancock in compensation and consideration of her efforts as the Settlement Class Representative in the Litigation. Subject to Bankruptcy Court approval and the occurrence of the Effective Date, Hancock shall forward a check for the incentive award in the amount of $4,000 payable to Kathy Aliano, in her personal capacity, to Settlement Class Counsel on or prior to thirty (30) days after the Effective Date.

11. Payment of Fees and Costs to Settlement Class Counsel. Subject to

Bankruptcy Court approval and the occurrence of the Effective Date, Settlement Class Counsel shall be entitled to recover appropriate fees and costs from Hancock pursuant to applicable law. Settlement Class Counsel agrees to make, and Hancock agrees not to oppose, a fee application not to exceed $75,000 for allowable fees and $5,000 for allowable costs, and, subject to Bankruptcy Court approval and the occurrence of the Effective Date, Hancock shall pay Settlement Class Counsel such amounts as are approved by the Bankruptcy Court on or prior to thirty (30) days after the later of (a) the Effective Date and (b) the date an order approving Settlement Class Counsel's fees and costs becomes Final. Payments made by Hancock pursuant to Paragraphs 10 and 11 shall constitute full and final satisfaction of any claim for fees and/or costs in connection with the Litigation and the Settlement Class Representative and Settlement Class Counsel, on behalf of themselves and all Settlement Class Members, agree that they shall not seek nor be entitled to any additional fees or costs under any theory of recovery. The Settlement Class Representative and Settlement Class Counsel further agree that they shall be responsible for justifying the amount of this payment to the Bankruptcy Court and submitting the necessary materials to the Bankruptcy Court to justify this payment. Hancock agrees that it will not object to Settlement Class Counsels' submission regarding, or request for approval of, this payment of fees and costs provided any submission or request is consistent with this Settlement Agreement. Hancock shall make this payment pursuant to this Paragraph to Settlement Class Counsel directly and Settlement Class Counsel shall provide counsel for Hancock with the pertinent taxpayer identification number and a Form W-9 for reporting purposes. Other than any reporting of this payment as required by this Settlement Agreement or law, which Hancock shall make, Settlement Class Counsel and the Settlement Class Representative shall alone be responsible for the reporting and payment of any federal, state and/or local income or other form of

tax on any payment made pursuant to this Paragraph.

C. **Release and Waiver**

12. Release of Released Claims. Upon the Effective Date, the Settlement Class Representative and each of the Settlement Class Members (and only these persons) shall be deemed to have, and by operation of the Approval Order shall have, fully, finally, and forever released, dismissed with prejudice, relinquished and discharged all Released Claims, including the Unknown Claims.

13. Waiver. Without admitting that California law is in any way applicable to this Settlement Agreement, in whole or in part, the Settling Parties stipulate and agree that, upon the Effective Date, the Settlement Class Representative and each Settlement Class Member shall be deemed to have, and by operation of the Approval Order shall have, expressly waived the provisions, rights and benefits of California Civil Code § 1542, 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.

The Settlement Class Representative and each Settlement Class Member shall be deemed to have, and by operation of the Approval Order shall have, expressly waived any and all provisions, rights and benefits conferred by any Federal law, any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. The Settlement Class Representative and/or any Settlement Class Member may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective Date, the Settlement Class Representative and the Settlement Class Members shall

be deemed to have, and by operation of the Approval Order, shall have fully, finally and forever settled and released any and all Released Claims, including the Unknown Claims, without regard to the subsequent discovery or existence of such different or additional facts.

14. Key Element. The Settlement Class Representative and each Settlement Class Member shall be deemed by operation of the Approval Order to have acknowledged that the foregoing release of the Released Claims, including the Unknown Claims, and waiver were separately bargained for and are a key element of the settlement embodied in this Settlement Agreement.

D. Settlement Class Notice

15. Publication and Internet Notice. The Settling Parties do not possess the names or addresses of the Settlement Class Members and have no means of identifying them through reasonable effort. Accordingly, the Settling Parties believe that the best notice practicable under the circumstances is by publication and internet posting.

16. Settlement Class Publication Notice. By the Settlement Class Publication Notice Deadline and subject to Bankruptcy Court approval of the Settlement Class Publication Notice, Hancock shall cause the publication of the Settlement Class Publication Notice once in the national edition of *USA Today*. Hancock shall be responsible for paying all costs related to the publication of the Settlement Class Publication Notice.

17. Internet Posting of Settlement Class Notice. In addition to publication of the Settlement Class Publication Notice, by the Settlement Class Publication Notice Deadline and subject to Bankruptcy Court approval of the Settlement Class Notice, the Settling Parties shall post the Settlement Class Notice on the following websites: (a) Hancock's website at www.hancockfabrics.com; (b) the website maintained by the Official Committee of Unsecured

Creditors appointed in the Chapter 11 case at www.hancockcreditorscommittee.com; (c) the website of Donlin, Recano & Company, Inc., the noticing agent appointed in the Chapter 11 Case, at www.donlinrecano.com; and (d) Settlement Class Counsel's website at www.attorneyzim.com. The Settlement Class Publication Notice shall identify the foregoing websites.

18. CAFA Notice. The Settling Parties agree to cooperate to cause service of the CAFA Notice. Hancock shall be responsible for paying all costs related to service of the CAFA Notice.

E. Settlement Approval Process

19. Transfer of the Litigation to the Bankruptcy Court. After execution of this Settlement Agreement, the Settling Parties shall jointly seek the transfer of the Litigation from the District Court to the Bankruptcy Court.

20. Preliminary Approval Order. After execution of this Settlement Agreement, the Settling Parties shall jointly seek the entry of the Preliminary Approval Order by the Bankruptcy Court. The Preliminary Approval Order shall provide, *inter alia*, that:

(a) the settlement proposed in the Settlement Agreement has been negotiated at arm's-length and is preliminarily determined to be fair, reasonable, adequate and in the best interests of the Settlement Class Representative, the Settlement Class, the Debtors and the Debtors' estates, creditors and other stakeholders pursuant to Bankruptcy Rules 7023 and 9019;

(b) the Settlement Class Notice, the Settlement Class Publication Notice and the notice procedures set forth herein comply fully with the requirements of Bankruptcy Rule 7023 and constitutional due process, constitute the best notice practicable under

the circumstances and is due and sufficient notice to all persons entitled to notice of the settlement of the Litigation;

(c) the CAFA Notice is sufficient and satisfies the requirements of 28 U.S.C. § 1715;

(d) the Settlement Class be certified and the Settlement Class Representative and Settlement Class Counsel be appointed subject to the terms and conditions set forth herein;

(e) the Final Approval Hearing be held before the Bankruptcy Court to determine whether the proposed settlement is fair, reasonable and adequate and should be approved by the Bankruptcy Court pursuant to Bankruptcy Rules 7023 and 9019; and

(f) in aid of the Bankruptcy Court's jurisdiction to implement and enforce the proposed settlement set forth in this Settlement Agreement, the Settlement Class Representative and the Settlement Class Members shall be preliminarily enjoined and barred from commencing or prosecuting any action or filing any claim in the Chapter 11 Case asserting any of the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a proof of claim, motion, complaint, counterclaim, defense or otherwise, in any local, state or Federal court, or in any agency or other authority or forum wherever located; and any person or entity who knowingly violates such injunction shall pay the fees and costs incurred by the Settling Parties as a result of any violation of the foregoing; provided that the foregoing shall not be construed to prevent a Settlement Class Member from filing an objection to the settlement with the Bankruptcy Court as set forth herein.

21. Rights of Exclusion. Settlement Class Members shall have until the Settlement Class Response Deadline to "opt out" of the Settlement Class. All Settlement Class Members who properly file a written request for exclusion from the Settlement Class as described below shall: (a) be excluded from the Settlement Class, (b) have no rights as Settlement Class Members pursuant to this Settlement Agreement and (c) receive no benefits as provided herein. The Settlement Class Notice and the Settlement Class Publication Notice will advise Settlement Class Members of this option.

22. Opt-Out Procedures. Settlement Class Members who wish to opt out of the settlement set forth in this Settlement Agreement must submit a written request for exclusion that: (a) states the name, address and phone number of the person(s) seeking exclusion; (b) includes a copy of a Receipt attributable to the credit card(s) or debit card(s) of that person(s) or other documentation evidencing the receipt of a Receipt by such person(s); and (c) contains a signed statement that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the Hancock Fabrics, Inc. FACTA Litigation." The request for exclusion must be mailed to Settlement Class Counsel and Hancock Counsel at the addresses provided in the Settlement Class Publication Notice and the Settlement Class Notice and must be received on or by the Settlement Class Response Deadline. No Settlement Class Member may opt-out through an actual or purported agent or attorney acting on behalf of the Settlement Class Member unless a fully lawful power of attorney, letters testamentary or other comparable documentation or court order accompanies the request. Requests for exclusion will not be accepted if sent by electronic mail, facsimile or other electronic means.

23. Failure to Comply with Opt-Out Procedures. A request for exclusion that (a) does not include all of the foregoing information, (b) is sent to any address other than the

ones designated in the Settlement Class Publication Notice and the Settlement Class Notice, (c) is sent by electronic means rather than by mail, (d) is not received on or by the Settlement Class Response Deadline or (e) fails to comply in some other way with the opt-out procedures set forth herein, shall be invalid and the person(s) serving such a request shall be a Member(s) of the Settlement Class and shall be bound as a Settlement Class Member(s) by the settlement set forth in this Settlement Agreement if approved by the Bankruptcy Court.

24. Objection Procedures. Settlement Class Members shall have until the Settlement Class Response Deadline to object to the settlement set forth in this Settlement Agreement. Any Settlement Class Member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any evidence or argument that may be proper or relevant. No Settlement Class Member shall be heard and no papers, briefs, pleadings or other documents submitted by any Settlement Class Member shall be received and considered by the Bankruptcy Court unless, prior to the Settlement Class Response Deadline, the Settlement Class Member files with the Bankruptcy Court and serves upon Settlement Class Counsel and counsel for Hancock, a written objection that includes: (a) a notice of intention to appear at the Final Approval Hearing; (b) a statement of membership in the Settlement Class; (c) a copy of a Receipt attributable to the credit card or debit card of the objecting Settlement Class Member or other documentation evidencing the receipt of a Receipt by such objecting Settlement Class Member; (d) the specific legal and/or factual grounds for the objection; and (e) all documents or writings that such Settlement Class Member intends to rely upon at the Final Approval Hearing and/or submit to the Bankruptcy Court for consideration. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objection to entry of the Approval

Order and forever be barred from making any such objections in the Litigation or in any other action or proceeding. The Settlement Class Notice and the Settlement Class Publication Notice will advise Settlement Class Members of this option.

25. Final Approval Hearing. At or prior to the Final Approval Hearing, the Settling Parties shall jointly request that the Bankruptcy Court enter the Approval Order. The Approval Order shall provide, *inter alia*, that:

(a) the settlement set forth in the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class, the Debtors and the Debtors' estates, creditors and other stakeholders pursuant to Bankruptcy Rules 7023 and 9019;

(b) the Settlement Class meets the requirements for certification under Bankruptcy Rule 7023 in that: (i) the proposed Settlement Class is ascertainable and so numerous that joinder of all members of the class is impracticable; (ii) there are questions of law or fact common to the proposed Settlement Class and there is a well-defined community of interest among Settlement Class Members with respect to the subject matter of the Litigation; (iii) the claims of the Settlement Class Representative are typical of the claims of the members of the proposed Settlement Class; (iv) the Settlement Class Representative has fairly and adequately protected the interests of the Settlement Class Members; (v) a class action is superior to other available methods for an efficient adjudication of this controversy; (vi) the proposed Settlement Class Counsel is qualified to serve as counsel for the Settlement Class Representative and has fairly and adequately represented the Settlement Class; and (vii) common issues predominate over individual issues;

(c) the Settlement Class Notice, the Settlement Class Publication Notice and the notice procedures set forth herein comply fully with the requirements of

Bankruptcy Rule 7023 and due process, constitute the best notice practicable under the circumstances and is due and sufficient notice to all persons entitled to notice of the settlement of the Litigation;

(d) the Litigation be dismissed with prejudice, without fees or costs except as provided for in this Settlement Agreement;

(e) The Settlement Class Representative and all Settlement Class Members (other than those persons who opt out of the settlement as provided for in this Settlement Agreement) are permanently enjoined and barred from commencing or prosecuting any action or filing any claim in the Chapter 11 Case asserting any of the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a proof of claim, motion, complaint, counterclaim, defense or otherwise, in any local, state or Federal court, or in any agency or other authority or forum wherever located; and any person or entity who knowingly violates such injunction shall pay the fees and costs incurred by the Settling Parties as a result of any violation of the foregoing; and

(f) for a reasonable amount of legal fees and expenses for Settlement Class Counsel and an incentive payment to the Settlement Class Representative in accordance with the terms and conditions set forth herein;

(g) the Bankruptcy Court shall retain continuing jurisdiction over the Litigation, the Settling Parties and all Settlement Class Members to determine all matters relating in any way to the Settlement Agreement, the Preliminary Approval Order and the Approval Order, including, but not limited to, their administration, implementation, interpretation or enforcement.

26. Settling Party's Option to Withdraw. A Settling Party shall have the

option to withdraw from the Settlement Agreement, and thereby render this settlement void, if: (a) the other Settlement Party breaches any provision of the Settlement Agreement or the Preliminary Approval Order, or fails to fulfill any material obligation hereunder or thereunder; or (b) the attorney general or other authorized officer of the United States or any state, or any representative of any local, state, or federal agency or branch of government, intervenes in the Litigation, or advises the Court in writing of opposition to the terms of the Settlement Agreement, and in the good-faith view of either of the Settling Parties, renders the Settlement Agreement ineffective as a practical matter to conclude all significant controversy against the Hancock Releasees. Hancock shall also have the option to withdraw from the Settlement Agreement, and thereby render this settlement void, if valid and timely requests for exclusion received from Settlement Class members seeking to opt out of the Settlement Class are received from twenty (20) or more persons.

27. Effect of Withdrawal or Non-approval. In the event that (a) either of the Settling Parties withdraws from the Settlement Agreement, (b) the Settlement Agreement, the Preliminary Approval Order and/or the Approval Order are not approved in all material respects by the Bankruptcy Court, (c) the Settlement Agreement, the Preliminary Approval Order and/or the Approval Order are reversed, vacated or modified in any material respect by the Bankruptcy Court or any other court or (d) the Effective Date does not occur for any reason, then (x) the Settlement Agreement, with the exception of Paragraph 4 hereof, shall be void and the terms and provisions thereof shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, (y) the Settling Parties shall resume the Litigation as if no Settlement Agreement had been entered and (z) any and all orders entered pursuant to the Settlement Agreement shall be deemed vacated, including,

without limitation, any order certifying or approving certification of a class for settlement purposes; provided, however, that, if the Settling Parties agree to jointly appeal an adverse ruling and the Settlement Agreement and the Approval Order are upheld on appeal, then the Settlement Agreement and Approval Order shall be given full force and effect according to their terms. Notwithstanding the foregoing or any other provisions of the Settlement Agreement, an award to Settlement Class Counsel of fees and costs by the Bankruptcy Court in an amount less than $75,000 and $5,000, respectively, shall not be ground for a withdrawal from the Settlement Agreement by any of the Settling Parties and any appeal from such award shall not constitute an appeal of the settlement approved by the Bankruptcy Court.

F. **Miscellaneous Provisions**

28. Intent. The Settling Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement and (b) agree to cooperate to the extent reasonably necessary to obtain Bankruptcy Court approval and implement all terms and conditions of the Settlement Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement.

29. Complete Defense. This Settlement Agreement may be plead as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of or contrary to this Settlement Agreement.

30. No Admission. Neither the Settlement Agreement, nor any act performed or document executed pursuant to, or in furtherance of, the Settlement Agreement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Hancock Releasees, or any of

them; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Hancock Releasees, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

31. Limited Modification of the Automatic Stay. The automatic stay under section 362 of the Bankruptcy Code shall be modified only to the extent necessary to effectuate the terms of this Settlement Agreement.

32. Entire Agreement. The Settlement Agreement constitutes the entire agreement among the Settling Parties hereto and supersedes any prior negotiations, agreements or understandings among them. No representations, warranties or inducements have been made to any party concerning the Settlement Agreement or its exhibits other than as set forth herein.

33. Integration of Exhibits. All of the exhibits to the Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

34. Headings. The headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement

35. Amendment. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

36. Jointly Drafted. This Settlement Agreement shall be deemed to have been jointly drafted by the Settling Parties, and in construing and interpreting this Settlement Agreement, no provision shall be construed and interpreted for or against any of the Settling Parties because such provision or any other provision of the Settlement Agreement as a whole is purportedly prepared or requested by such Settling Party.

37. Governing Law. This Settlement Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby. The Settling Parties irrevocably consent to the jurisdiction of the courts of the State of Delaware and of any federal court located within the State of Delaware for all purposes in connection with any action or proceeding that arises out of or relates to this Settlement Agreement.

38. Jurisdiction. The Bankruptcy Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all Settling Parties submit to the jurisdiction of the Bankruptcy Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

39. Notices. Except as otherwise provided herein, notice to the Settlement Class Representative, Settlement Class Counsel, Hancock and counsel for Hancock under this Settlement Agreement shall be sent to the following addresses:

Notice to Settlement Class Representative and Settlement Class Counsel:

Thomas A. Zimmerman, Jr., Esq.
ZIMMERMAN AND ASSOCIATES, P.C.
100 W. Monroe Street
Suite 1300
Chicago, IL 60603
(312) 440-4180 (facsimile)

Notice to Hancock and counsel for Hancock:

Robert J. Dehney, Esq.
Gregory T. Donilon, Esq.
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
(302) 658-3989 (facsimile)

40. Benefit of Agreement. The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties; provided, however, that this Settlement Agreement is not intended to and does not create any type of third-party beneficiaries.

41. Acknowledgement. Each of the Settling Parties acknowledges that it has read all of the terms of this Settlement Agreement, has had an opportunity to consult with counsel of its own choosing or voluntarily waived such right and enters into those terms voluntarily and without duress.

42. Authorization. Settlement Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Settlement Class Representative to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effect its terms, and also is expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which he deems appropriate. Each counsel or other person executing the Settlement Agreement or any of its exhibits on behalf of any Settling Party hereby warrants that such person has the full authority to do so.

43. Counterparts; Facsimile. The Settlement Agreement may be executed in one or more counterparts and by facsimile or electronic mail, all of which shall be deemed to be one and the same agreement.

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IN WITNESS WHEREOF, the Settling Parties, intending to be legally bound hereby, have cause the Settlement Agreement to be executed as set forth below:

Dated: January 7, 2008

SETTLEMENT CLASS REPRESENTATIVE

Kathy Aliano

Kathy Aliano

Dated: January 7, 2008

HANCOCK FABRICS, INC.

By: Jeff Nerland
Title: Interim Chief Financial Officer

ZIMMERMAN AND ASSOCIATES, P.C.

Thomas A. Zimmerman, Jr., Esq.
100 W. Monroe Street
Suite 1300
Chicago, Illinois 60603
(312) 440-0020

Counsel for Settlement Class Representative and the Settlement Class

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

Robert J. Dehney (No. 3578)
Gregory T. Donilon (No. 4244)
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347
(302) 658-9200

Counsel for Hancock Fabrics, Inc.

1302857

IN WITNESS WHEREOF, the Settling Parties, intending to be legally bound hereby, have cause the Settlement Agreement to be executed as set forth below:

Dated: January 7, 2008

SETTLEMENT CLASS REPRESENTATIVE

Kathy Aliano

Dated: January 7, 2008

HANCOCK FABRICS, INC.

By: Jeff Neiland
Title: Interim Chief Financial Officer

ZIMMERMAN AND ASSOCIATES, P.C.

Thomas A. Zimmerman, Jr., Esq.
100 W. Monroe Street
Suite 1300
Chicago, Illinois 60603
(312) 440-0020

Counsel for Settlement Class Representative and the Settlement Class

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

Robert J. Dehney (No. 3578)
Gregory T. Donilon (No. 4244)
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347
(302) 658-9200

Counsel for Hancock Fabrics, Inc.

1302857

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
HANCOCK FABRICS, INC., et al.,	)	Case No. 07-10353 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	
KATHY ALIANO,	)	Adv. Proc. No. 08-_____ (BLS)
Plaintiff,	)	
	)	Class Action
v.	)	
	)	
HANCOCK FABRICS, INC., et al.,	)	
Defendants.	)	
	)	

EXHIBITS

to

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Exhibit 1 Settlement Class Notice

Exhibit 2 Settlement Class Publication Notice

EXHIBIT 1

Settlement Class Notice

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

IN RE: KATHY ALIANO V. HANCOCK FABRICS, INC., et al., CASE NO.: 08-_____

NOTICE OF CERTIFIED CLASS ACTION SETTLEMENT

To: All persons who received electronically printed receipts from Hancock Fabrics, Inc. at the point of sale or transaction, in a transaction occurring on or after January 1, 2005 through August 8, 2007, wherein the receipt displayed (i) more than the last five digits of the person's credit card or debit card number, and/or (ii) the expiration date of the person's credit or debit card.

This notice is intended to inform you about litigation that may affect your legal rights. Please read it carefully.

On behalf of the named plaintiff and all members of the class, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has preliminarily approved a settlement. This notice is not to be construed as an expression of any opinion by the Bankruptcy Court with respect to the merits of the respective claims or defenses of the parties. Rather, this notice is being posted merely to inform you of legal rights you may have with respect to the settlement. Capitalized terms used, but not defined herein, shall have the meanings set forth in the Settlement Agreement.

I. BACKGROUND OF THE LITIGATION

Kathy Aliano, as the named plaintiff and class representative on behalf of all members of the class, has asserted that **HANCOCK FABRICS, INC.** violated certain requirements imposed by the Fair and Accurate Credit Transactions Act ("FACTA"). Specifically, Plaintiff claims that Hancock printed more than the last five digits of its customers' credit or debit card numbers and/or the expiration date of its customers' credit or debit cards on receipts presented to them at its retail stores, in violation of FACTA, as specifically set forth in the Complaint filed on July 20, 2007, as subsequently amended on or about January 7, 2008.

NEITHER PLAINTIFF NOR HANCOCK IS PRESENTLY AWARE OF ANY CLASS MEMBER WHO HAS SUSTAINED ANY ACTUAL MONETARY INJURY AS A RESULT OF THE ISSUES IN DISPUTE IN THIS LITIGATION. HOWEVER, FACTA REQUIRES THAT MERCHANTS PRINT NO MORE THAN THE LAST FIVE DIGITS OF CREDIT AND DEBIT CARD NUMBERS AND DELETE THE CARD EXPIRATION DATE WITH RESPECT TO CREDIT AND DEBIT CARD RECEIPTS PRESENTED TO CUSTOMERS AT THE POINT OF SALE.

Hancock is currently a debtor and debtor-in-possession under Chapter 11 of Title 11 of the United States Code. The bankruptcy case of HANCOCK FABRICS, INC. and its affiliated debtors and debtors-in-possession is currently pending before the Bankruptcy Court. For purposes of this settlement, the parties have submitted to the jurisdiction of the Bankruptcy Court.

II. CURRENT STATUS

On January ___, 2008, the Bankruptcy Court preliminarily approved the settlement for the class as fair, adequate and reasonable. If finally approved, the settlement will certify a class that will bind plaintiff and all class members who do not exclude themselves from the class.

Under the terms of the settlement, Hancock will hold a Sale Event at all of its regularly operating retail store locations on May ___, 2008, for the benefit of class members, at which any person making a purchase transaction will receive an automatic discount of ten percent (10%) off the total purchase price. The settlement also imposes certain other requirements, which are set forth in detail in the Settlement Agreement.

Pursuant to the Settlement Agreement Hancock also agrees to abide by the truncation requirements of FACTA and, if approved, pay to Plaintiff's counsel fees not to exceed $75,000

and costs not to exceed $5,000 and also pay an incentive award to the class representative in the amount of $4,000.

This settlement reflects an evaluation of the claims and potential recovery, considering the facts as known to counsel after investigation, the likelihood of prevailing at trial, and the likelihood that this litigation, if not settled now, would be further protracted and involve complex issues of fact and law. The settlement is also based upon an evaluation of the potential recovery available under FACTA. Class counsel believes that the settlement is fair and reasonable and that the class members should accept this settlement. In light of the risks and expenses of litigation and Hancock's potential defenses, class counsel believes it is in the best interests of the class that the case be settled and that the settlement terms are fair and reasonable.

III. EFFECT OF SETTLEMENT ON CLASS MEMBERS

If you elect to be excluded from the class, you will not be bound by the terms and releases of the settlement or judgments of dismissal and orders in this action, but you will not be entitled to share in the benefits or receive any relief from this settlement. Any class member who does not request to be excluded will automatically be included in this action as members of the class represented by the named plaintiff, will be subject to and deemed to consent to the jurisdiction of the Bankruptcy Court and its orders, and will be deemed to have released and thereafter be forever barred from asserting any claims against the released parties with respect to any credit card or debit card account information that was printed on a receipt presented to such class member at the point of sale during the class period. A complete description of the released claims is contained in the Settlement Agreement.

More specifically, "Released Claims" means, collectively, any and all claims, including Unknown Claims as defined in the Settlement Agreement, demands, rights, liabilities and causes of action of every nature and description whatsoever including, without limitation, statutory, constitutional, contractual or common law claims, under FACTA or any other applicable law, whether or not set forth in the Complaint, whether known or unknown, whether or not concealed or hidden, against the Hancock Releasees, or any of them, that accrued at any time on or prior to the Preliminary Approval Date for any type of relief, including, without limitation, damages, statutory damages, liquidated damages, punitive damages, unpaid costs, penalties, interest, attorney's fees, litigation costs, restitution or equitable relief, based on any and all claims in any way related to the publication of a person's credit card or debit card account information, including but not limited to more than the last five digits of the person's credit card or debit card account number and/or the expiration date, upon an electronic receipt provided to the person, at the point of sale of the transaction.

IV. EXCLUSION FROM THE CLASS

If you do not wish to participate in this settlement, you must notify class counsel and counsel for Hancock in writing of your intention to be excluded. In order to opt out of the class, you must submit a written request for exclusion that: (i) states your name, address and phone number; (ii) includes a copy of an electronically printed receipt attributable to your credit card or debit card that was received from Hancock at the point of sale or transaction, in a transaction occurring between January 1, 2005 and August 8, 2008, and wherein the receipt displayed more than the last five digits of your credit card or debit card number and/or the expiration date of your credit card or debit card or other documentation evidencing that you received such a receipt; and (iii) contains a signed statement that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the Hancock Fabrics, Inc. FACTA Litigation." The request for exclusion must be mailed to class counsel (Thomas A. Zimmerman, Jr., Esq., Zimmerman and Associates, P.C., 100 W. Monroe Street, Suite 1300, Chicago, IL 60603) and Hancock Counsel (Robert J. Dehney, Esq. and Gregory T. Donilon, Esq., Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, DE 19899-1347) and **must be received on or by the Settlement Class Response Deadline of _____, 2008.**

No class member may opt-out through an actual or purported agent or attorney acting on behalf of the class member unless a fully lawful power of attorney, letters testamentary or other comparable documentation or court order accompanies the request. Requests for exclusion will not be accepted if sent by electronic mail, facsimile or other electronic means. Failure to

opt-out by the deadline, or to follow the above procedures, will result in a class member being bound by any judgments and orders in this case.

A claims bar date has been established in Hancock's bankruptcy case. Should you choose to exclude yourself from the class, any claim you may have against Hancock under FACTA may be barred by such claims bar date. You should consult the docket of the bankruptcy case for further information regarding the bar date. The docket can be found at the following websites: (i) www.donlinrecano.com and (ii) www.deb.uscourts.gov.

V. OBJECTIONS TO THE SETTLEMENT AND RIGHT TO INTERVENE

Only class members may object to the settlement, and persons who opt-out of the class may not object to the settlement agreement. You may also seek to intervene (provided you do not opt out) if at any time you believe your interests are not being fairly and adequately represented by the class representative and class counsel.

Class members shall have until the Settlement Class Response Deadline of _____, 2008, to object to the settlement. Any class member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any evidence or argument that may be proper or relevant.

No class member shall be heard and no papers, briefs, pleadings or other documents submitted by any class member shall be received and considered by the Bankruptcy Court unless, prior to the Settlement Class Response Deadline of _____, 2008, the class member files with the Clerk of the Bankruptcy Court (United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Third Floor, Wilmington, DE 19801) and serves upon class counsel (Thomas A. Zimmerman, Jr., Esq., Zimmerman and Associates, P.C., 100 W. Monroe, Suite 1300, Chicago, IL 60603) and Hancock Counsel (Robert J. Dehney, Esq. and Gregory T. Donilon, Esq., Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, P.O. Box 1347, Wilmington, DE 19899-1347), so that it is received by the Settlement Class Response Deadline, a written objection that includes: (i) a notice of intention to appear at the Final Approval Hearing; (ii) a statement of membership in the class; (iii) a copy of a receipt or other documentation as described in Section IV above; (iv) the specific legal and/or factual grounds for the objection; and (v) all documents or writings that such class member intends to rely upon at the Final Approval Hearing and/or submit to the Bankruptcy Court for consideration. Any class member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objection to entry of an order granting final approval of the settlement and forever be barred from making any such objections in this action or in any other action or proceeding.

VI. FINAL APPROVAL HEARING

The Bankruptcy Court will hold a Final Approval Hearing to decide whether to approve the settlement. You may attend and you may be able to speak, but it is not required. The Final Approval Hearing will be held on **April 17, 2008 at 10:00 a.m. (ET)** at the United States Bankruptcy Court, 824 N. Market Street, Sixth Floor, Courtroom 2, Wilmington, Delaware 19801. At the Final Approval Hearing, the Bankruptcy Court will consider whether the settlement is fair, reasonable and adequate. If there are objections or requests to be heard, the Bankruptcy Court may consider them at the hearing. The Bankruptcy Court may also decide the amount of fees and costs to be paid to class counsel and the incentive award to be paid to the class representative.

QUESTIONS AND ANSWERS

1. WHAT DO I NEED TO DO TO PARTICIPATE IN THE ACTION?

If you believe you are a member of the class and desire to participate in this settlement, you are not required to do anything. If the settlement is approved by the Bankruptcy Court at the Final Approval Hearing, the Sale Event will be held at all of Hancock's regularly operating retail store locations on May __, 2008, for the benefit of class members, at which any person making a purchase transaction will receive an automatic discount of ten percent (10%) off the total purchase price.

2. **WHO REPRESENTS THE CLASS?**

(a) **Class Representative:** Kathy Aliano, the named plaintiff, is a class representative and is a person who received a receipt from Hancock at the point of sale which displayed the expiration date of her credit or debit card. The class representative has assisted class counsel in coordinating the prosecution of this action and in providing information needed to pursue the claims of all class members. The class representative will be applying for an incentive award of $4,000, which will be paid by Hancock.

(b) **Class Counsel:** In its order granting preliminary approval of the settlement and certifying the class for settlement, the Bankruptcy Court appointed Thomas A Zimmerman, Jr., Esq. as class counsel to represent the named plaintiff and to represent the interests of the absent class members.

3. **WHERE DO I GET ADDITIONAL INFORMATION?**

The foregoing is only a summary of the circumstances surrounding the litigation, the claims asserted, the class, the settlement, and related matters. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire. For more detailed information, you may review the pleadings, records, and other papers on file in this litigation, including copies of the Complaint, the Settlement Agreement, the motion for preliminary and final approval of the settlement and the preliminary approval order, which may be inspected on the following websites: (a) Hancock's website at www.hancockfabrics.com; (b) the website maintained by the Official Committee of Unsecured Creditors appointed in the Chapter 11 case at www.hancockcreditorscommittee.com; (c) the website of Donlin, Recano & Company, Inc., the noticing agent appointed in the Chapter 11 Case, at www.donlinrecano.com; and (d) Settlement Class Counsel's website at www.attorneyzim.com. If you wish to communicate with class counsel identified above, you may do so by writing to Thomas A. Zimmerman, Jr., Esq., Zimmerman and Associates, P.C., 100 W. Monroe Street, Suite 1300, Chicago, IL 60603. Alternatively, you may call the offices of the firm at: (312) 440-0020.

BY ORDER OF
THE HONORABLE BRENDAN L. SHANNON,
UNITED STATES BANKRUPTCY JUDGE

January ___, 2008

IF YOU HAVE ANY QUESTIONS OR CONCERNS, ADDRESS ALL INQUIRIES TO CLASS COUNSEL IN THE MANNER SET FORTH ABOVE. THE BANKRUPTCY COURT AND THE CLERK WILL NOT ANSWER LEGAL QUESTIONS FROM INDIVIDUAL CLAIMANTS. BY ISSUING THIS NOTICE, THE BANKRUPTCY COURT EXPRESSES NO OPINION AS TO THE MERITS OF ANY CLAIMS OR DEFENSES ASSERTED IN THIS ACTION. **PLEASE DO NOT CONTACT THE BANKRUPTCY COURT.**

1308288.5

EXHIBIT 2

Settlement Class Publication Notice

EXHIBIT 2

[PUBLISHED NOTICE OF CLASS ACTION SETTLEMENT]

This notice may affect your rights. Please read carefully.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

IN RE: KATHY ALIANO V. HANCOCK FABRICS, INC., et al., CASE NO.: 08-_____

SUMMARY NOTICE OF CERTIFIED CLASS ACTION SETTLEMENT

To: All persons who used a credit or debit card at any **HANCOCK FABRICS, INC.** location on or after January 1, 2005 through August 8, 2007.

Your rights may be affected by the settlement of the above-captioned class action lawsuit. Kathy Aliano, as the named plaintiff and class representative on behalf of all members of the class, has asserted that **HANCOCK FABRICS, INC.** violated certain requirements imposed by the Fair and Accurate Credit Transactions Act ("FACTA"). Specifically, plaintiff claims that Hancock printed more than the last five digits of its customers' credit or debit card numbers and/or the expiration date of its customers' credit or debit cards on receipts presented to them at its retail stores in violation of FACTA, as specifically set forth in the Complaint filed on July 20, 2007, as subsequently amended on or about January 7, 2008.

NEITHER PLAINTIFF NOR HANCOCK IS PRESENTLY AWARE OF ANY CLASS MEMBER WHO HAS SUSTAINED ANY ACTUAL MONETARY INJURY AS A RESULT OF THE ISSUES IN DISPUTE IN THIS LITIGATION. HOWEVER, FACTA REQUIRES THAT MERCHANTS PRINT NO MORE THAN THE LAST FIVE DIGITS OF CREDIT AND DEBIT CARD NUMBERS AND DELETE THE CARD EXPIRATION DATE WITH RESPECT TO CREDIT AND DEBIT CARD RECEIPTS PRESENTED TO CUSTOMERS AT THE POINT OF SALE.

Hancock is currently a debtor and debtor-in-possession under Chapter 11 of Title 11 of the United States Code. The bankruptcy case of HANCOCK FABRICS, INC. and its affiliated debtors and debtors-in-possession is currently pending before the United States Bankruptcy Court for the District of Delaware. For purposes of this settlement, the parties have submitted to the jurisdiction of the Bankruptcy Court.

Under the terms of the settlement, Hancock will hold a Sale Event at all of its regularly operating retail store locations on May ___, 2008, for the benefit of class members, at which any person making a purchase transaction will receive an automatic discount of ten percent (10%) off the total purchase price. The settlement also imposes certain other requirements, which are set forth in detail in the Settlement Agreement. The Bankruptcy Court has appointed Thomas A. Zimmerman, Jr., Esq. as class counsel to represent the named plaintiff and the interests of the absent class members. **The Bankruptcy Court will hold a final approval hearing in this case on April 17, 2008 at 10:00 a.m. (ET)** at the United States Bankruptcy Court for the District of Delaware, 824 N. Market St., Sixth Floor, Courtroom 2, Wilmington, DE 19801 to consider whether to approve the settlement and a request by class counsel for fees not to exceed $75,000 and costs not to exceed $5,000 and a $4,000 incentive award for the class representative.

This is only a summary of the circumstances surrounding the litigation, the claims asserted, the class, the settlement and related matters. A full notice describing the settlement in more detail, the Complaint, the Settlement Agreement, the motion for preliminary and final approval of the settlement and the preliminary approval order are available online at (a) www.hancockfabrics.com; (b) www.hancockcreditorscommittee.com; (c) www.donlinrecano.com; and (d) www.attorneyzim.com. The full notice contains important information regarding the rights, obligations, requirements, and deadlines for class members to exclude themselves from the settlement or to object. Should you choose to exclude yourself from the class, any claim you assert against Hancock under FACTA may be barred by the claims bar date established in the bankruptcy case.

If you believe you are a member of the class, you may view these documents online at the addresses listed above, or you can request copies by sending a written request to class counsel at the following address: Thomas A. Zimmerman, Jr., Esq., Zimmerman and Associates, P.C., 100 W. Monroe St., Suite 1300, Chicago, IL 60603. Include your name and current address. You may also request copies by calling Class Counsel at (312) 440-0020.

IF YOU WOULD LIKE TO PARTICIPATE IN THE SETTLEMENT, YOU ARE NOT REQUIRED TO DO ANYTHING. If you wish to exclude yourself from or object to this settlement, you must file your written submission with the Bankruptcy Court and serve it on counsel to the parties by _____ ___, 2008.

For more detailed information, you may review the pleadings, records, and other papers on file in this litigation, which may be inspected during regular business hours at the Court or online at the website addresses above.

This notice is not to be construed as an expression of any opinion by the Bankruptcy Court with respect to the merits of the respective claims or defenses of the parties.

BY ORDER OF THE HONORABLE BRENDAN L. SHANNON, UNITED STATES BANKRUPTCY JUDGE

IF YOU HAVE ANY QUESTIONS OR CONCERNS, ADDRESS ALL INQUIRIES IN THE MANNER SET FORTH ABOVE. THE BANKRUPTCY COURT AND THE CLERK WILL NOT ANSWER LEGAL QUESTIONS FROM INDIVIDUAL CLAIMANTS. BY ISSUING THIS NOTICE, THE BANKRUPTCY COURT EXPRESSES NO OPINION AS TO THE MERITS OF ANY CLAIMS OR DEFENSES ASSERTED IN THIS ACTION. **PLEASE DO NOT CONTACT THE BANKRUPTCY COURT.**

EXHIBIT B

Zimmerman Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
HANCOCK FABRICS, INC., et al.,	)	Case No. 07-10353 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	
KATHY ALIANO,	)	Adv. Proc. No. 08-_____ (BLS)
Plaintiff,	)	
	)	Class Action
v.	)	
	)	
HANCOCK FABRICS, INC., et al.,	)	
Defendants.	)	
	)	

**DECLARATION OF THOMAS A. ZIMMERMAN, JR.
IN SUPPORT OF THE
JOINT MOTION OF DEBTOR HANCOCK FABRICS, INC. AND
PUTATIVE CLASS REPRESENTATIVE KATHY ALIANO FOR
PRELIMINARY AND FINAL APPROVAL OF CLASS ACTION
SETTLEMENT PURSUANT TO FED. R. BANKR. P. 7023 AND 9019**

I, THOMAS A. ZIMMERMAN, JR., hereby certify and state as follows:

1. I am a shareholder of the firm of Zimmerman and Associates, P.C., counsel for the Plaintiff and the Settlement Class in this matter. I submit this affidavit in support of the Parties' joint motion for preliminary and final approval of the class action settlement in this matter.

2. I have significant experience in class action litigation, generally, and class-based consumer litigation, specifically. For the past 10 years, I have practiced extensively in class action, corporate, commercial, consumer fraud, product liability, and other complex litigation where I have obtained multi-million dollar jury verdicts. I represent both plaintiffs and defendants in state and federal trial and appellate courts in various states nationwide.

3. In 2000, I was voted one of the *Top 40 Illinois Attorneys Under the Age of 40.* This is especially notable, as there are approximately 60,000 attorneys under the age of forty in Illinois.

4. In 2003, the Illinois Supreme Court appointed me to the Review Board of the Attorney Registration and Disciplinary Commission. In that capacity, I preside over appeals by attorneys who have been found to have committed misconduct, and impose discipline for their ethical violations.

5. Additionally, Governor Rod Blagojevich appointed me to the Illinois Courts Commission. A Commission member presides over proceedings wherein judges are charged with committing ethical violations, and imposes discipline on judges who are found to have engaged in misconduct.

6. I am admitted to practice law in Illinois, and other states on a case-by-case basis, and I am admitted to practice before the U.S. Supreme Court, federal district courts and federal court of appeals. Based on my demonstrated experience and ability, I was appointed to the federal court trial bar.

7. I have been lead counsel in national and state-wide class action litigation, and have handled other multi-party litigation involving such companies as DaimlerChrysler, Commonwealth Edison, Mead Johnson, RC2 Brands, PrimeCo Communications, the Chicago Sun-Times, Random House, Liberty Mutual Insurance Co., as well as others.

8. For example, I was lead counsel or co-class counsel in such class action cases, as follows:

(a) **Class Action to Recover Cellular Phone Fee — $48 million** recovery for a statewide Illinois class of businesses and individuals who paid a municipal infrastructure

maintenance fee on their cellular phone bills. Through litigation, the Illinois Supreme Court declared the fee to be unconstitutional, and we obtained refunds for cell phone customers from the Illinois municipalities that imposed the fee. In addition to having a plaintiff's class of cell phone customers certified by the court, we also convinced the court to certify a defendant's class of Illinois municipalities, which is notable as it is very difficult and uncommon for a court to certify a defendant's class.

(b) **Class Action from Inflated Newspaper Circulation — $31 million** recovery for a nationwide class of businesses and individuals who placed advertisements in a newspaper. The publisher charged advertisers a rate that was based upon and related to the publisher's representations as to the newspaper's circulation. However, the publisher significantly overstated the newspaper's circulation for several years, which caused the advertisers to overpay to advertise in the newspaper. Cash refunds were paid to the advertisers to reflect the amount of their overpayment, and $5 million was donated to charities.

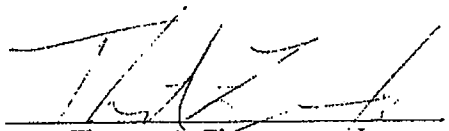
(c) **Class Action for Power Outages — $7.75 million** recovery for a statewide Illinois class of businesses and individuals who sustained financial damages due to widespread and prolonged power outages. The outages resulted from the power company neglecting to maintain its transmission and distribution systems, and from placing electric loads on its cables that exceeded the cable's ratings. Thereafter, the company made improvements to its power facilities and distribution systems.

(d) **Class Action for Defective Baby Formula — $3.5 million** recovery for a nationwide class of Spanish speaking purchasers of baby formula. The instructions for preparation and use printed in Spanish on the product's labeling were incorrect, as they instructed the user to mix two scoops of powder formula with water, rather than correctly using

only one scoop of powder. As a result, class members purchased and used twice as many cans of formula as they otherwise should have, and some children experienced vomiting and diarrhea. We included in the class recovery a $100,000 donation to a local charity that focuses on serving the nutritional and educational needs of Hispanic children.

9. I am currently representing plaintiffs in nineteen (19) nationwide class action lawsuits – including the instant matter against Hancock – alleging violations of the Fair and Accurate Credit Transactions Act ("FACTA"), arising out of the defendants' alleged printing of (a) more than the last five digits of the person's credit card or debit card number and/or (b) the expiration date of the person's credit card or debit card on a cash register receipt. These cases are pending in various courts across the country. Some of these FACTA cases have settled, and some are in the process of settling.

10. I believe that the instant settlement is fair and reasonable and that the Class Members should accept this settlement. In light of the risks and expenses of litigation, and the potential defenses of Hancock, I believe it is in the best interest of the class that the case be settled and that the settlement terms are fair and reasonable.



Thomas A. Zimmerman, Jr.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on January 7, 2008.

EXHIBIT C

Nerland Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
HANCOCK FABRICS, INC., et al.,[1]	)	Case No. 07-10353 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
KATHY ALIANO,	)	Adv. Proc. No. 08-_____ (BLS)
Plaintiff,	)	
	)	Class Action
v.	)	
	)	
HANCOCK FABRICS, INC., et al.,	)	
Defendants.	)	

DECLARATION OF JEFF NERLAND IN SUPPORT OF JOINT MOTION OF DEBTOR HANCOCK FABRICS, INC. AND PUTATIVE CLASS REPRESENTATIVE KATHY ALIANO FOR PRELIMINARY AND FINAL APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. BANKR. P. 7023 AND 9019

I, Jeff Nerland, hereby declare under penalty of perjury:

1. I am a partner in CRG Partners Group, LLC (f/k/a Corporate Revitalization Partners, LLC) and am employed by Hancock Fabrics, Inc. as the Chief Financial Officer pursuant to the Order, under 11 U.S.C. § 363, (i) Authorizing the Employment of Corporate Revitalization Partners, LLC to Provide Temporary Staff to the Debtor, Hancock Fabrics, Inc., (ii) Approving the Agreement to Provide Temporary Staff and (iii) Designating

[1] The Debtors are the following entities: Hancock Fabrics, Inc. (Tax ID No. XX-XXX0905), One Fashion Way, Baldwyn, Mississippi 38824; Hancock Fabrics of MI, Inc. (Tax ID No. XX-XXX5878), One Fashion Way, Baldwyn, Mississippi 38824; HF Resources, Inc. (Tax ID No. XX-XXX9563), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; Hancockfabrics.com, Inc. (Tax ID No. XX-XXX9698), One Fashion Way, Baldwyn, Mississippi 38824; HF Merchandising, Inc. (Tax ID No. XX-XXX8522), One Fashion Way, Baldwyn, Mississippi 38824; HF Enterprises, Inc. (Tax ID No. XX-XXX7249), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; and Hancock Fabrics, LLC (Tax ID No. XX-XXX9837), One Fashion Way, Baldwyn, Mississippi 38824.

Certain Personnel as Interim Officers, *nunc pro tunc* to the Petition Date (D.I. 404). I am authorized to make this declaration on behalf of the Debtors.

2. I make this declaration in support of the Joint Motion of Debtor Hancock Fabrics, Inc. and Putative Class Representative Kathy Aliano for Preliminary and Final Approval of Class Action Settlement Pursuant to Fed. R. Bankr. P. 7023 and 9019 (the "Motion"). Capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in the Motion.

3. I am familiar with the Debtors' day-to-day operations and business affairs, including the subject matter set forth in the Motion. All facts set forth herein are based on my personal knowledge, my review of relevant documents or information provided to me by Hancock's employees and advisors and/or communications with Hancock's employees and advisors. If I were called upon to testify, I could and would testify to each of the facts set forth herein.

I. Hancock and the Chapter 11 Case

4. On March 21, 2007 (the "Petition Date"), Hancock, as well as Hancock Fabrics of MI, Inc., HF Resources, Inc., Hancockfabrics.com, Inc., HF Merchandising, Inc., HF Enterprises, Inc. and Hancock Fabrics, LLC (collectively, the "Affiliated Debtors" and, together with Hancock, the "Debtors") commenced their respective bankruptcy cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). No trustee or examiner has been appointed in the Debtors' jointly-administered chapter 11 cases (the "Chapter 11 Case"). The Debtors are operating their respective business as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. On April 4, 2007, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors (D.I. 195) (the "Creditors' Committee"). On May 22, 2007, the U.S. Trustee appointed an Official Committee of Equity Security Holders (D.I. 567) (the "Equity Committee" and, together with the Creditors' Committee, the "Committees").

II. The Debtors' Business and Operations

6. Founded in 1957 and headquartered in Baldwyn, Mississippi, Hancock is a fabric retailer, operating as of the Petition Date approximately 400 retail stores in approximately 40 states and an internet store under the domain name www.hancockfabrics.com. As of the Petition Date, Hancock employed approximately 7,500 people on a full- and part-time basis, most of whom work in its retail stores or in field management to support the retail stores. Over 300 employees work in Hancock's Baldwyn, Mississippi headquarters and warehouse and distribution facilities, which support the retail stores with accounting, advertising, marketing, buying, management, distribution and other administrative functions.

7. Hancock is a specialty retailer that sells a wide selection of apparel fabrics, home decorating products (which include drapery and upholstery fabrics and home accent pieces), quilting materials, and notions (which include sewing aids and accessories such as zippers, buttons, threads, sewing machines and patterns). In addition to basic fabrics and notions for apparel, quilting, and home decoration, Hancock provides a variety of fashion and seasonal merchandise for apparel, craft and home decorating projects.

III. Reduction of Hancock's Retail Footprint through GOB Sales

8. As set forth previously in the record in the Chapter 11 Case, prior to the Petition Date and following close analysis of their retail store base and sales data, the Debtors

determined to contract their retail chain in an effort reduce certain losses and operational difficulties. As a result, in 2006, the Debtors closed approximately forty (40) underperforming retail stores and conducted going-out-of-business sales ("GOB Sales") therein.

9. In early 2007, the Debtors elected to close another approximately thirty (30) underperforming retail stores and commenced GOB Sales therein in order to pay down certain debt and satisfy cash needs. Leading up to the Petition Date, the Debtors decided to close and conduct GOB Sales at approximately 104 additional underperforming stores to further reduce corporate overhead and distribution costs.

10. On April 5, 2007, the Court entered the Final Order under 11 U.S.C. §§ 105, 327, 328, 363, 365 and 554 (i) Authorizing Debtors to Conduct Going-out-of-Business Sales and to Close Certain Stores, (ii) Authorizing the Assumption of Consulting Agreement with and Retention of Consultant and (iii) Granting Related Relief (D.I. 208), which authorized, *inter alia*, the Debtors to continue and commence GOB Sales at certain specified locations. This last round of GOB Sales was substantially completed by June 2007.

11. As of the date hereof, the Debtors are currently operating approximately 270 retail store locations.

IV. Bar Date for Filing Claims against the Debtors

12. On June 8, 2007, the Court entered the Order (i) Establishing Bar Dates for Filing Proofs of Claim and Requests for Payment of Administrative Expenses, (ii) Approving Proof of Claim and Administrative Expense Payment Request Forms, Bar Date Notices and Mailing and Publication Procedures and (iii) Providing Certain Supplemental Relief (D.I. 655)

(the "Bar Date Order"), which, *inter alia*, established August 9, 2007 (the "Bar Date"),[2] as the date by which all creditors and certain interest holders must file (a) proofs of claim for pre-Petition Date claims and (b) requests for payment of administrative expenses that accrued prior to June 4, 2007.

13. As set forth in more detail in the Proofs of Publication (D.I. 1107, 1108) filed in the Chapter 11 Case on July 6, 2007, on July 2, 2007, the Debtors caused notice of the Bar Date to be published in (a) *The Northeast Mississippi Daily Journal* and (b) *USA Today*.

14. Neither the Settlement Class Representative, on behalf of herself or the proposed Settlement Class, nor any Settlement Class Member individually has filed a proof of claim or a request for payment of an administrative expense claim related to the Litigation or the Released Claims.

V. Hancock's Credit Card Security Compliance Consultant

15. In or about May 2005, Hancock engaged Quaterion Solutions LLC, a credit card security compliance consultant (the "Compliance Consultant"), to evaluate the risk of exposure of personal credit card data in Hancock's systems and consult with Hancock regarding compliance with legal and industry personal credit card data protection standards. As part of its engagement, the Compliance Consultant evaluated Hancock's credit card data security policies and procedures and provided recommendations with respect to improvement and compliance measures.

16. Based on the study conducted by the Compliance Consultant, as early as 2005, Hancock adopted most or all of the recommended measures, including, but not limited to,

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[2] As set forth in the Bar Date Order, the Bar Date for governmental units (as such term is defined in section 101(27) of the Bankruptcy Code) was September 17, 2007 at 4:00 p.m. (ET).

the truncation of customers' credit card and debit card account numbers to four digits on electronically-printed receipts. At no time was Hancock advised, nor did they receive any other actual notice, of FACTA or the specific requirement thereunder of removing the expiration date of customers' credit cards and debit cards from electronically-printed receipts.

VI. The FACTA Class Action Litigation

17. On July 20, 2007, the Settlement Class Representative, on behalf of herself and all of the Settlement Class Members, commenced the Litigation by filing the Complaint in the United States District Court for the Northern District of Illinois, Eastern Division (the "Illinois District Court"), which Complaint the Settlement Class Representative subsequently amended on or about January 7, 2008. The Settlement Class Representative names as defendants Hancock and "Does 1-10," which the Complaint states are individual officers, directors, employees and agents of Hancock who authorized, directed or participated in the alleged willful violations of FACTA.

18. In the Complaint, the Settlement Class Representative alleges that Hancock and the other defendants willfully violated FACTA when, on May 22, 2007, she received an electronically-generated cash register receipt that, while only displaying the last four digits of her credit card account number, included the expiration date of her credit card from Hancock's retail store located at 441 East Roosevelt Road, Lombard, Illinois. The Settlement Class Representative alleges no actual damages, and seeks statutory damages only.

19. The Settlement Class Representative defines the class as: all persons to whom Hancock and the other defendants provided an electronically-printed receipt at the point of sale or transaction, in a transaction occurring nationwide on or after January 1, 2005, which

receipt displays either (a) more than the last five digits of the person's credit card or debit card number and/or (b) the expiration date of the person's credit card or debit card.

20. For Hancock's alleged willful violation of FACTA, the Settlement Class Representative requests: (a) statutory damages of $100 to $1,000 per violation and (b) attorney's fees and costs.

21. Soon after the filing of the Complaint, on or about August 8, 2007, Hancock retail store locations no longer printed the expiration dates of customers' credit cards and debit cards on electronically-generated receipts.

22. On August 17, 2007, Hancock filed the notice of Suggestion of Bankruptcy and Applicability of the Automatic Stay under 11 U.S.C. § 362 in the Illinois District Court.

23. On or about January 7, 2008, the Settling Parties filed a joint motion in the Illinois District Court requesting that the Litigation be transferred from the Illinois District Court to this Court for purposes of effectuating the settlement.

VII. The Settlement

24. Consistent with and in furtherance of their desire to settle the litigation and following arm's-length negotiations, on or about January 7, 2008, the settling parties entered into the settlement agreement. The salient terms and conditions of the settlement agreement are set forth in the motion.[3]

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[3] A true and correct copy of the Settlement Agreement is attached to the Motion as Exhibit A. Reference to the Settlement Agreement herein and the summary of the Settlement Agreement set forth in the Motion are qualified in their entirety by reference thereto and, in the event of a conflict between this reference or the summary and the terms and conditions of the Settlement Agreement, the terms and conditions of the Settlement Agreement shall control.

VIII. Approval of the Settlement Is Warranted

25. To the best of my knowledge and belief, the proposed settlement set forth in the Settlement Agreement falls well within the range of possible approval, particularly in light of the substantial risks and costs associated with further litigation. Furthermore, the settlement is entitled to a presumption of fairness, since it was reached through arm's-length bargaining between experienced counsel after an exchange of relevant information.

26. The Settling Parties have exchanged relevant information, including, but not limited to, information regarding the Bar Date, the Compliance Consultant, the FACTA Clarification Bill and the Released Claims, and, after careful consideration of the facts and the potential costs and risks of proceeding with the Litigation, negotiated a fair and reasonable settlement that they respectfully submit warrants (a) preliminary approval so that the Settlement Class may be notified of the proposed settlement and provided with an opportunity to participate in, opt-out from or object to the proposed Settlement and (b) final approval.

27. The Settling Parties also concur that the proposed Settlement Class Notice, Settlement Class Publication Notice and notice procedures set forth in the Motion and in the Settlement Agreement are appropriate. Under the circumstances, direct mail notice is untenable for two primary reasons. First, it would be extraordinarily difficult to identify each of the thousands of putative class members implicated by the proposed settlement and then obtain mailing addresses for such persons. Specifically, the subject address data does not exist in any single depository. Instead, the information is within the possession of a substantial number of issuing banks which issued credit cards and debit cards to the Settlement Class Representative and the Settlement Class Members. It is unlikely that any of these institutions would divulge

their credit card or debit card customers' personal information voluntarily. In addition, the sheer magnitude of the cost of direct mail notice in this case, including, but not limited to, printing, copying, postage and other administrative expenses, would be extremely prohibitive and would greatly diminish any benefits obtained by the Settling Parties through the settlement.

28. I believe that the settlement is a reasonable compromise of the Litigation and Released Claims. In particular, while Hancock is confident in the merits of its claims objections and defenses to liability under FACTA, it faces the risk that claims asserted by the Settlement Class Representative and/or the Settlement Class Members may ultimately not be disallowed in their entirety. If such claims are not disallowed, there is the further risk attendant to litigating the "willfulness" issue under FACTA. There is a high degree of complexity in the issues to be litigated if the Litigation were to proceed, which continued Litigation, even if Hancock were to prevail, would undoubtedly involve great expense to the estates and delay to the reorganization thereof. As such, the cost to Hancock of the proposed settlement is justified by the certainty and benefits to Hancock and its estate afforded thereby, which are in the best interests of Hancock, its estate, its creditors and other stakeholders.

29. Accordingly, I respectfully submit that the settlement embodied in the Settlement Agreement should be approved.

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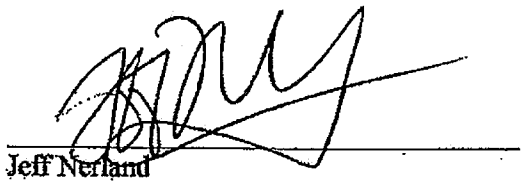
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on January 7, 2008.



Jeff Nerland

1318803

EXHIBIT D

Preliminary Approval Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
HANCOCK FABRICS, INC., et al.,[1]	)	Case No. 07-10353 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	
KATHY ALIANO,	)	Adv. Proc. No. 08-_____ (BLS)
Plaintiff,	)	
	)	Class Action
v.	)	
	)	**RE: Docket Item _____**
HANCOCK FABRICS, INC., et al.,	)	**Adv. Proc. Docket Item _____**
Defendants.	)	
	)	

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. BANKR. P. 7023 AND 9019

Upon the Joint Motion of Debtor Hancock Fabrics, Inc. and Putative Class Representative Kathy Aliano for Preliminary and Final Approval of Class Action Settlement Pursuant to Fed. R. Bankr. P. 7023 and 9019 (D.I. _____, Adv. Proc. D.I. ____) (the "Motion")[2], filed on January 7, 2008, by Hancock Fabrics, Inc. ("Hancock") and Kathy Aliano (the "Settlement Class Representative"), on behalf of herself and all of the proposed Settlement Class Members and with the assistance and approval of proposed Settlement Class Counsel; and upon

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1 The Debtors are the following entities: Hancock Fabrics, Inc. (Tax ID No. XX-XXX0905), One Fashion Way, Baldwyn, Mississippi 38824; Hancock Fabrics of MI, Inc. (Tax ID No. XX-XXX5878), One Fashion Way, Baldwyn, Mississippi 38824; HF Resources, Inc. (Tax ID No. XX-XXX9563), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; Hancockfabrics.com, Inc. (Tax ID No. XX-XXX9698), One Fashion Way, Baldwyn, Mississippi 38824; HF Merchandising, Inc. (Tax ID No. XX-XXX8522), One Fashion Way, Baldwyn, Mississippi 38824; HF Enterprises, Inc. (Tax ID No. XX-XXX7249), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; and Hancock Fabrics, LLC (Tax ID No. XX-XXX9837), One Fashion Way, Baldwyn, Mississippi 38824.

2 Capitalized terms used, but not defined, herein shall have the meanings set forth in the Settlement Agreement or the Motion, as appropriate.

(i) the Declaration of Thomas A. Zimmerman, Jr., in Support of the Joint Motion of Debtor Hancock Fabrics, Inc. and Putative Class Representative Kathy Aliano for Preliminary and Final Approval of Class Action Settlement Pursuant to Fed. R. Bankr. P. 7023 and 9019, attached to the Motion as Exhibit B, and (ii) the Declaration of Jeff Nerland in Support of the Joint Motion of Debtor Hancock Fabrics, Inc. and Putative Class Representative Kathy Aliano for Preliminary and Final Approval of Class Action Settlement Pursuant to Fed. R. Bankr. P. 7023 and 9019, attached to the Motion as Exhibit C; and due and sufficient notice of the Motion and the Preliminary Approval Hearing having been given and no other or further notice need be provided of the Preliminary Approval Hearing; and good cause appearing therefore; it is hereby

FOUND, CONCLUDED AND DECLARED THAT:[3]

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334.

B. In order to avoid the cost and risk inherent in any litigation, after arm's-length negotiations, the Settling Parties agreed to compromise, settle and release fully and finally the Released Claims and the Litigation for the mutual promises and undertakings set forth in the Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Settling Parties.

C. Consistent with and in furtherance of their desire to settle the Litigation and following arm's-length negotiations, on or about January 7, 2008, the Settling Parties entered into the Settlement Agreement, attached to the Motion as Exhibit A, which sets forth the terms and conditions of the Settling Parties' proposed settlement.

D. For the purpose of approving the proposed settlement set forth in the Settlement Agreement only and for no other purpose and with no other effect on the Litigation

[3] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

should the proposed settlement not ultimately be approved or should the Effective Date not occur, the proposed Settlement Class likely meets the requirements for certification under Bankruptcy Rule 7023 in that: (i) the proposed Settlement Class is ascertainable and so numerous that joinder of all members of the class is impracticable; (ii) there are questions of law or fact common to the proposed Settlement Class and there is a well-defined community of interest among Settlement Class Members with respect to the subject matter of the Litigation; (iii) the claims of the Settlement Class Representative are typical of the claims of the members of the proposed Settlement Class; (iv) the Settlement Class Representative will fairly and adequately protect the interests of the Settlement Class Members; (v) a class action is superior to other available methods for an efficient adjudication of this controversy; (vi) the proposed Settlement Class Counsel is qualified to serve as counsel for the Settlement Class; and (vii) common issues will likely predominate over individual issues.

E. The settlement proposed in the Settlement Agreement has been negotiated at arm's-length and is preliminarily determined to be fair, reasonable, adequate and in the best interests of the Settlement Class Representative, the Settlement Class, the Debtors and the Debtors' estates, creditors and other stakeholders pursuant to Bankruptcy Rules 7023 and 9019.

F. The Settlement Class Notice, the Settlement Class Publication Notice and the notice procedures set forth in the Settlement Agreement and the Motion comply fully with the requirements of Bankruptcy Rule 7023 and constitutional due process, constitute the best notice practicable under the circumstances and is due and sufficient notice to all persons entitled to notice of the settlement of the Litigation.

IT IS HEREBY ORDERED that:

1. Preliminary Approval. The relief requested in the Motion with respect to preliminary approval of the settlement set forth in the Settlement Agreement is granted and the

proposed settlement and the Settlement Agreement are preliminarily approved pursuant to Bankruptcy Rules 7023 and 9019.

2. Preliminary Certification and Appointment. For purposes of effectuating the Settlement Agreement only, (a) the Settlement Class is certified preliminarily and (b) the Settlement Class Representative and the Settlement Class Counsel are appointed subject to the terms and conditions set forth in the Settlement Agreement. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved in all material respects by the Court, or is reversed, vacated or modified in any material respect by this Court or any other court, the certification of the Settlement Class shall be deemed to be vacated, the Litigation shall proceed as though the Settlement Class had never been certified, and no reference to the prior Settlement Class or any documents related thereto shall be made for any purpose.

3. Approval of Notice. The Settlement Class Notice and the Settlement Class Publication Notice in substantially the forms attached to the Motion and the notice procedures set forth in the Settlement Agreement are approved. By the Settlement Class Publication Deadline of _____ ___, **2008**, (a) Hancock shall cause the publication of the Settlement Class Publication Notice once in the national edition of *USA Today* and shall be responsible for paying all costs related to the publication of the Settlement Class Publication Notice and (b) the Settling Parties shall post the Settlement Class Notice on the following websites: (i) Hancock's website at www.hancockfabrics.com; (ii) the website maintained by the Official Committee of Unsecured Creditors appointed in the Chapter 11 case at www.hancockcreditorscommittee.com; (iii) the website of Donlin, Recano & Company, Inc., the noticing agent appointed in the Chapter 11 Case, at www.donlinrecano.com; and (iv) Settlement Class Counsel's website at www.attorneyzim.com, which websites shall be identified in the Settlement Class Publication Notice.

4. Rights of Exclusion. Settlement Class Members shall have until the Settlement Class Response Deadline of _____ ___, **2008** to "opt out" of the Settlement Class. All Settlement Class Members who properly file a written request for exclusion from the Settlement Class as described below shall: (a) be excluded from the Settlement Class, (b) have no rights as Settlement Class Members pursuant to the Settlement Agreement and (c) receive no benefits as provided therein. The Settlement Class Notice and the Settlement Class Publication Notice will advise Settlement Class Members of this option.

5. Opt-Out Procedures. Settlement Class Members who wish to opt out of the settlement set forth in the Settlement Agreement must submit a written request for exclusion that: (a) states the name, address and phone number of the person(s) seeking exclusion; (b) includes a copy of a Receipt attributable to the credit card(s) or debit card(s) of that person(s) or other documentation evidencing the receipt of a Receipt by such person(s); and (c) contains a signed statement that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the Hancock Fabrics, Inc. FACTA Litigation." The request for exclusion must be mailed to Settlement Class Counsel and Hancock Counsel at the addresses provided in the Settlement Class Publication Notice and the Settlement Class Notice and must be received on or by the Settlement Class Response Deadline of _____ ___, **2008.** No Settlement Class Member may opt-out through an actual or purported agent or attorney acting on behalf of the Settlement Class Member unless a fully lawful power of attorney, letters testamentary or other comparable documentation or court order accompanies the request. Requests for exclusion will not be accepted if sent by electronic mail, facsimile or other electronic means.

6. Failure to Comply with Opt-Out Procedures. A request for exclusion that (a) does not include all of the foregoing information, (b) is sent to any address other than the ones designated in the Settlement Class Publication Notice and the Settlement Class Notice, (c)

is sent by electronic means rather than by mail, (d) is not received on or by the Settlement Class Response Deadline or (e) fails to comply in some other way with the opt-out procedures set forth herein, shall be invalid and the person(s) serving such a request shall be a Member(s) of the Settlement Class and shall be bound as a Settlement Class Member(s) by the settlement set forth in the Settlement Agreement if approved by this Court.

7. Objection Procedures. Settlement Class Members shall have until the Settlement Class Response Deadline of _____ ___, **2008**, to object to the settlement set forth in the Settlement Agreement. Any Settlement Class Member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any evidence or argument that may be proper or relevant. No Settlement Class Member shall be heard and no papers, briefs, pleadings or other documents submitted by any Settlement Class Member shall be received and considered by the Bankruptcy Court unless, prior to the Settlement Class Response Deadline, the Settlement Class Member files with the Bankruptcy Court and serves upon Settlement Class Counsel and counsel for Hancock, a written objection that includes: (a) a notice of intention to appear at the Final Approval Hearing; (b) a statement of membership in the Settlement Class; (c) a copy of a Receipt attributable to the credit card or debit card of the objecting Settlement Class Member or other documentation evidencing the receipt of a Receipt by such objecting Settlement Class Member; (d) the specific legal and/or factual grounds for the objection; and (e) all documents or writings that such Settlement Class Member intends to rely upon at the Final Approval Hearing and/or submit to the Bankruptcy Court for consideration. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objection to entry of the Approval Order and forever be barred from making any such objections in the Litigation or in any other

action or proceeding. The Settlement Class Notice and the Settlement Class Publication Notice will advise Settlement Class Members of this option.

8. Final Approval Hearing. The Final Approval Hearing shall be held before this Court on **April 17, 2008, at 10:00 a.m. (ET)** to consider whether the settlement should be given final approval by the Court.

9. Release of Released Claims. Upon the Effective Date, the Settlement Class Representative and each of the Settlement Class Members (and only these persons) shall be deemed to have, and by operation of the Approval Order shall have, fully, finally, and forever released, dismissed with prejudice, relinquished and discharged all Released Claims, including the Unknown Claims.

10. Settlement Agreement Is Conditional and Subject to Bankruptcy Court Approval. In the event that the Court does not execute and enter the Approval Order or that such order does not become Final for any reason or the Effective Date does not occur for any reason, the Settlement Agreement shall (a) be deemed null and void *ab initio,* (b) be of no force or effect whatsoever and (c) not be referred to or utilized for any purpose whatsoever.

11. No Waiver by Hancock or the Settlement Class Representative. To the extent the Settlement Agreement is deemed void or the Effective Date does not occur:

(a) Hancock does not waive, but rather expressly reserves, all rights to challenge any and all claims and allegations in the Litigation upon all procedural and factual grounds, including, without limitation, the ability to object to any claim filed or asserted in the Chapter 11 Case by or on behalf of the Settlement Class Representative and the Settlement Class Members and/or challenge class action treatment on any grounds or assert any and all defenses or privileges under the Bankruptcy Code, FACTA or any other applicable law.

(b) The Settlement Class Representative does not waive, but rather expressly reserves, all rights, claims and defenses in the Litigation under the Bankruptcy Code, FACTA or any other applicable law.

12. Limited Modification of the Automatic Stay. The automatic stay under section 362 of the Bankruptcy Code is modified only to the extent necessary to effectuate the terms of the Settlement Agreement.

13. CAFA Notice. By causing service of the CAFA Notice on or by January ____, 2008, the Settling Parties have complied fully with the requirements of 28 U.S.C. § 1715(b).

14. Injunction. The Settlement Class Representative and the Settlement Class Members shall be preliminarily enjoined and barred from commencing or prosecuting any action or filing any claim in the Chapter 11 Case asserting any of the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a proof of claim, motion, complaint, counterclaim, defense or otherwise, in any local, state or Federal court, or in any agency or other authority or forum wherever located; and any person or entity who knowingly violates such injunction shall pay the fees and costs incurred by the Settling Parties as a result of any violation of the foregoing; provided that the foregoing shall not be construed to prevent a Settlement Class Member from filing an objection to the settlement with the Court as set forth herein.

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15. This Court shall retain jurisdiction over any matters related to or arising from the implementation or interpretation of the Settlement Agreement or this Preliminary Approval Order.

Dated: January ____, 2008
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

1308293.4

EXHIBIT E

Approval Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
HANCOCK FABRICS, INC., et al.,[1]	)	Case No. 07-10353 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	
KATHY ALIANO,	)	Adv. Proc. No. 08-_____ (BLS)
Plaintiff,	)	
	)	Class Action
v.	)	
	)	**RE: Docket Items _____**
HANCOCK FABRICS, INC., et al.,	)	**Adv. Proc. Docket Items _____**
Defendants.	)	
	)	

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. BANKR. P. 7023 AND 9019

Upon the Joint Motion of Debtor Hancock Fabrics, Inc. and Putative Class Representative Kathy Aliano for Preliminary and Final Approval of Class Action Settlement Pursuant to Fed. R. Bankr. P. 7023 and 9019 (D.I. _____, Adv. Proc. D.I. ____) (the "Motion")[2], filed on January 7, 2008, by Hancock Fabrics, Inc. ("Hancock") and Kathy Aliano (the "Settlement Class Representative"), on behalf of herself and all of the proposed Settlement Class Members and with the assistance and approval of proposed Settlement Class Counsel; and upon

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1 The Debtors are the following entities: Hancock Fabrics, Inc. (Tax ID No. XX-XXX0905), One Fashion Way, Baldwyn, Mississippi 38824; Hancock Fabrics of MI, Inc. (Tax ID No. XX-XXX5878), One Fashion Way, Baldwyn, Mississippi 38824; HF Resources, Inc. (Tax ID No. XX-XXX9563), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; Hancockfabrics.com, Inc. (Tax ID No. XX-XXX9698), One Fashion Way, Baldwyn, Mississippi 38824; HF Merchandising, Inc. (Tax ID No. XX-XXX8522), One Fashion Way, Baldwyn, Mississippi 38824; HF Enterprises, Inc. (Tax ID No. XX-XXX7249), 103 Foulk Road, Suite 202, Wilmington, Delaware 19803-3742; and Hancock Fabrics, LLC (Tax ID No. XX-XXX9837), One Fashion Way, Baldwyn, Mississippi 38824.

2 Capitalized terms used, but not defined, herein shall have the meanings set forth in the Settlement Agreement or the Motion, as appropriate.

(i) the Declaration of Thomas A. Zimmerman, Jr., in Support of the Joint Motion of Debtor Hancock Fabrics, Inc. and Putative Class Representative Kathy Aliano for Preliminary and Final Approval of Class Action Settlement Pursuant to Fed. R. Bankr. P. 7023 and 9019, attached to the Motion as Exhibit B, and (ii) the Declaration of Jeff Nerland in Support of the Joint Motion of Debtor Hancock Fabrics, Inc. and Putative Class Representative Kathy Aliano for Preliminary and Final Approval of Class Action Settlement Pursuant to Fed. R. Bankr. P. 7023 and 9019, attached to the Motion as Exhibit C; and upon the findings of fact and conclusions of law set forth in the Preliminary Approval Order (D.I. ___, Adv. Proc. D.I. ___) entered by the Court following the Preliminary Approval Hearing held on January 22, 2008; and upon the representations of counsel and any other documents filed in support of approval of the proposed settlement set forth in the Settlement Agreement up to and at the Final Approval Hearing held on April 17, 2008; and due and sufficient notice of the Motion and the Final Approval Hearing having been given and no other or further notice need be provided of the Final Approval Hearing; and good cause appearing therefore; it is hereby

FOUND, CONCLUDED AND DECLARED THAT:[3]

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334.

B. In order to avoid the cost and risk inherent in any litigation, after arm's-length negotiations, the Settling Parties agreed to compromise, settle and release fully and finally the Released Claims and the Litigation for the mutual promises and undertakings set forth in the Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Settling Parties.

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[3] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

C. Consistent with and in furtherance of their desire to settle the Litigation and following arm's-length negotiations, on or about January 7, 2008, the Settling Parties entered into the Settlement Agreement, attached to the Motion as Exhibit A, which sets forth the terms and conditions of the Settling Parties' proposed settlement.

D. On January _____, 2008, the Court entered the Preliminary Approval Order (D.I. _____, Adv. Proc. D.I. ____) granting the relief requested in the Motion with respect to preliminary approval of the settlement set forth in the Settlement Agreement and preliminarily approved the proposed settlement and the Settlement Agreement pursuant to Bankruptcy Rules 7023 and 9019. By the Preliminary Approval Order and for purposes of effectuating the Settlement Agreement only, the Court (i) certified the Settlement Class preliminarily; (ii) appointed the Settlement Class Representative and the Settlement Class Counsel subject to the terms and conditions set forth in the Settlement Agreement; and (iii) approved the Settlement Class Notice and the Settlement Class Publication Notice in substantially the forms attached to the Motion and the notice procedures set forth in the Settlement Agreement.

E. By the Settlement Class Publication Deadline, on _____, 2008, (i) Hancock caused the publication of the Settlement Class Publication Notice once in the national edition of *USA Today* and paid all costs related to the publication of the Settlement Class Publication Notice and (ii) the Settling Parties posted the Settlement Class Notice on the following websites: (a) Hancock's website at www.hancockfabrics.com; (b) the website maintained by the Official Committee of Unsecured Creditors appointed in the Chapter 11 case at www.hancockcreditorscommittee.com; (c) the website of Donlin, Recano & Company, Inc., the noticing agent appointed in the Chapter 11 Case, at www.donlinrecano.com; and (d) Settlement Class Counsel's website at www.attorneyzim.com, which websites were identified in the Settlement Class Publication Notice.

F. Settlement Class Members had until the Settlement Class Response Deadline of _____, 2008 to "opt out" of the Settlement Class. As of the Settlement Class Response Deadline, ___ (__) Settlement Class Members properly filed a written request for exclusion from the Settlement Class pursuant to the opt-out procedures set forth in the Settlement Agreement.

G. Settlement Class Members had until the Settlement Class Response Deadline of _____, 2008, to object to the settlement set forth in the Settlement Agreement. As of the Settlement Class Response Deadline, _____ (__) Settlement Class Members properly filed an objection to the proposed settlement pursuant to the objection procedures set forth in the Settlement Agreement.

H. For the purpose of approving the proposed settlement set forth in the Settlement Agreement on a final basis only and for no other purpose and with no other effect on the Litigation should the Effective Date not occur, the Settlement Class meets the requirements for certification under Bankruptcy Rule 7023 in that: (i) the proposed Settlement Class is ascertainable and so numerous that joinder of all members of the class is impracticable; (ii) there are questions of law or fact common to the proposed Settlement Class and there is a well-defined community of interest among Settlement Class Members with respect to the subject matter of the Litigation; (iii) the claims of the Settlement Class Representative are typical of the claims of the members of the proposed Settlement Class; (iv) the Settlement Class Representative has fairly and adequately protected the interests of the Settlement Class Members; (v) a class action is superior to other available methods for an efficient adjudication of this controversy; (vi) the Settlement Class Counsel is qualified to serve as counsel for the Settlement Class and has fairly and adequately represented the Settlement Class; and (vii) common issues predominate over individual issues.

I. The settlement proposed in the Settlement Agreement has been negotiated at arm's-length and is determined on a final basis to exceed the standards for judicial approval and to be fair, reasonable, adequate and in the best interests of the Settlement Class Representative, the Settlement Class, the Debtors and the Debtors' estates, creditors and other stakeholders pursuant to Bankruptcy Rules 7023 and 9019.

J. The Settlement Class Notice, the Settlement Class Publication Notice, the notice procedures set forth in the Settlement Agreement and the Motion, and the notice provided to Settlement Class Members pursuant thereto complied fully with the requirements of Bankruptcy Rule 7023 and constitutional due process, constituted the best notice practicable under the circumstances and was and is due and sufficient notice to all persons entitled to notice of the settlement of the Litigation.

K. In accordance with the terms and conditions set forth in the Settlement Agreement, Settlement Class Counsel is entitled to a reasonable amount of fees and expenses and the Settlement Class Representative is entitled to an incentive payment.

IT IS HEREBY ORDERED that:

1. Final Approval. The relief requested in the Motion with respect to final approval of the settlement set forth in the Settlement Agreement is granted and the proposed settlement and the Settlement Agreement are approved on a final basis pursuant to Bankruptcy Rules 7023 and 9019.

2. Objections. Any and all objections to the settlement set forth in the Settlement Agreement are overruled or deemed withdrawn.

3. Final Certification and Appointment. For purposes of effectuating the Settlement Agreement only, (a) the Settlement Class is certified on a final basis and (b) the Settlement Class Representative and the Settlement Class Counsel are appointed subject to the

terms and conditions set forth in the Settlement Agreement. In the event that the Settlement Agreement is terminated pursuant to its terms or is reversed, vacated or modified in any material respect by this Court or any other court, the certification of the Settlement Class shall be deemed to be vacated, the Litigation shall proceed as though the Settlement Class had never been certified, and no reference to the prior Settlement Class or any documents related thereto shall be made for any purpose.

4. Rights of Exclusion. All Settlement Class Members who properly filed a written request for exclusion from the Settlement Class: (a) are excluded from the Settlement Class, (b) have no rights as Settlement Class Members pursuant to the Settlement Agreement and (c) will receive no benefits as provided therein. A request for exclusion that (a) did not include all of the information required by the opt-out procedures, (b) was sent to any address other than the ones designated in the Settlement Class Publication Notice and the Settlement Class Notice, (c) was sent by electronic means rather than by mail, (d) was not received on or by the Settlement Class Response Deadline or (e) failed to comply in some other way with the opt-out procedures, is and has been deemed invalid and the person who served such an invalid request is a Member of the Settlement Class and is bound as a Settlement Class Member by the settlement set forth in the Settlement Agreement and approved hereby.

5. Release of Released Claims. Upon the Effective Date, the Settlement Class Representative and each of the Settlement Class Members (and only these persons) shall be deemed to have, and by operation of this Approval Order shall have, fully, finally, and forever released, dismissed with prejudice, relinquished and discharged all Released Claims, including the Unknown Claims.

6. Dismissal of the Litigation with Prejudice. The Litigation is hereby dismissed with prejudice, each of the Settling Parties to bear its, his or her own costs except as provided for in the Settlement Agreement.

7. Settlement Class Representative Incentive Award. Subject to the occurrence of the Effective Date, Hancock shall forward a check for the incentive award in the amount of $4,000 payable to Kathy Aliano, in her personal capacity, to Settlement Class Counsel on or prior to thirty (30) days after the Effective Date.

8. Payment of Fees and Costs to Settlement Class Counsel. Subject to the occurrence of the Effective Date, Hancock shall pay Settlement Class Counsel the amount of $75,000 for all allowable fees and up to a cap of $5,000 for all allowable costs in connection with the Litigation on or prior to thirty (30) days after the later of (a) the Effective Date and (b) the date an order approving Settlement Class Counsel's fees and costs becomes Final. Payments made by Hancock pursuant to Paragraphs 7 and 8 shall constitute full and final satisfaction of any claim for fees and/or costs in connection with the Litigation and the Settlement Class Representative and Settlement Class Counsel, on behalf of themselves and all Settlement Class Members, shall not seek nor be entitled to any additional fees or costs under any theory of recovery. Hancock shall make this payment to Settlement Class Counsel directly and Settlement Class Counsel shall provide counsel for Hancock with the pertinent taxpayer identification number and a Form W-9 for reporting purposes. Other than any reporting of this payment as required by the Settlement Agreement or law, which Hancock shall make, Settlement Class Counsel and the Settlement Class Representative shall alone be responsible for the reporting and payment of any federal, state and/or local income or other form of tax on any payment made pursuant to this Paragraph.

9. Non-Occurrence of Effective Date. In the event that the Approval Order does not become Final for any reason or the Effective Date does not occur for any reason, the Settlement Agreement shall (a) be deemed null and void *ab initio,* (b) be of no force or effect whatsoever and (c) not be referred to or utilized for any purpose whatsoever.

10. No Waiver by Hancock or the Settlement Class Representative. To the extent the Settlement Agreement is deemed void or the Effective Date does not occur:

(a) Hancock does not waive, but rather expressly reserves, all rights to challenge any and all claims and allegations in the Litigation upon all procedural and factual grounds, including, without limitation, the ability to object to any claim filed or asserted in the Chapter 11 Case by or on behalf of the Settlement Class Representative and the Settlement Class Members and/or challenge class action treatment on any grounds or assert any and all defenses or privileges under the Bankruptcy Code, FACTA or any other applicable law.

(b) The Settlement Class Representative does not waive, but rather expressly reserves, all rights, claims and defenses in the Litigation under the Bankruptcy Code, FACTA or any other applicable law.

11. Limited Modification of the Automatic Stay. The automatic stay under section 362 of the Bankruptcy Code is modified only to the extent necessary to effectuate the terms of the Settlement Agreement and this Approval Order.

12. Injunction. The Settlement Class Representative and the Settlement Class Members (and only those persons) are permanently enjoined and barred from commencing or prosecuting any action or filing any claim in the Chapter 11 Case asserting any of the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a proof of claim, motion, complaint, counterclaim, defense or otherwise, in any local, state or

Federal court, or in any agency or other authority or forum wherever located; and any person or entity who knowingly violates such injunction shall pay the fees and costs incurred by the Settling Parties as a result of any violation of the foregoing.

13. Hancock, the Settlement Class Representative and Settlement Class Counsel are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of the Settlement Agreement and this Approval Order.

14. This Court shall retain jurisdiction over any matters related to or arising from the implementation or interpretation of the Settlement Agreement or this Preliminary Approval Order.

Dated: April ___, 2008
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

1319277.4

EXHIBIT F

Complaint

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KATHY ALIANO,	)	
	)	
Plaintiff,	)	
v.	)	
	)	No. 07 C 4109
HANCOCK FABRICS, INC., a Delaware corporation, individually, and d/b/a HANCOCK FABRICS; and DOES 1-10,	)	
	)	
Defendants.	)	

FIRST AMENDED CLASS ACTION COMPLAINT

INTRODUCTION

1. Plaintiff brings this action to secure redress for the violation by Defendants of the Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act ("FCRA").

2. One provision of FACTA, codified as 15 U.S.C. §1681c(g)(1), provides that:

> **. . . no person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.**
> 15 U.S.C. §1681c(g)(1).

3. The law gave merchants who accept credit cards and/or debit cards up to three years to comply with its requirements, requiring full compliance with its provisions no later than December 4, 2006. Defendants have willfully violated this law and failed to protect Plaintiff, and others similarly situated, against identity theft and credit card and debit card fraud by continuing to print more than the last five digits of the card number and/or the expiration date on receipts provided to debit card and credit card cardholders transacting business with Defendants.

4. Plaintiff brings this action against Defendants based on Defendants' violation of 15 U.S.C. § 1681, *et seq*. Plaintiff seeks statutory damages, attorney's fees, and costs.

PARTIES

5. At all relevant times, Plaintiff KATHY ALIANO was a resident of Illinois.

6. At all relevant times, Defendant HANCOCK FABRICS, INC. ("HANCOCK") was a Delaware corporation that upon information and belief owned, controlled, operated, managed and did business as "Hancock Fabrics," located at various places nationwide, including at 441 East Roosevelt Road, Lombard, Illinois.

7. At all relevant times, Defendant HANCOCK was a person that accepts credit cards or debit cards for the transaction of business within the meaning of FACTA.

8. Defendants Does 1-10 are individual officers, directors, employees and agents of HANCOCK who authorized, directed or participated in the violations of law complained of. Plaintiff does not know who they are.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (general federal question), and 15 U.S.C. §1681p (FCRA).

10. Venue in this District is proper because Defendants transact business in the District and are deemed to reside here.

FACTS

11. On May 22, 2007, Plaintiff received from Defendants at their establishment located at 441 East Roosevelt Road, Lombard, Illinois, a computer-generated cash register receipt which displayed Plaintiff's credit card expiration date.

12. On information and belief, it is possible for thieves to replicate a credit card number using the expiration date and the last four digits of the card number.

CLASS ALLEGATIONS

13. Plaintiff brings this action on behalf of a class pursuant to Fed.R.Civ.P. Rule 23(a) and (b)(3).

14. The class is defined as all persons to whom the Defendants provided an electronically printed receipt at the point of sale or transaction, in a transaction occurring nationwide on or after January 1, 2005 through August 8, 2007, and wherein the receipt displayed (a) more than the last five digits of the person's credit card or debit card number, and/or (b) the expiration date of the person's credit card or debit card.

15. The class is so numerous that joinder of all individual members in one action would be impracticable.

16. Upon information and belief, there are over 100 persons to whom the Defendants provided an electronically printed receipt at the point of sale or transaction, in a transaction occurring nationwide after January 1, 2005, which receipt displayed (a) more than the last five digits of the person's credit card or debit card number, and/or (b) the expiration date of the person's credit card or debit card.

17. Plaintiff's claims are typical of the claims of the class members. All are based on the same legal theories and arise from the same unlawful and willful conduct.

18. There are common questions of fact and law affecting members of the class, which common questions predominate over questions which may affect individual members. These include the following:

a. Whether Defendants had a practice of providing customers with a sales or transaction receipt on which Defendants printed more than the last five digits of the credit card or debit card and/or the expiration date of the credit card or debit card;

b. Whether Defendants thereby violated FACTA;

c. Whether Defendants' conduct was willful;

d. Identification and involvement of the Doe Defendants.

19. Plaintiff will fairly and adequately represent the class members. Plaintiff has no interests that conflict with the interests of the class members. Plaintiff has retained experienced counsel.

20. A class action is superior to other available means for the fair and efficient adjudication of the claims of the class members. Individual actions are not economically feasible.

VIOLATION ALLEGED

21. Defendants violated 15 U.S.C. §1681c(g)(1), which provides, in relevant part, that:

> **. . . no person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.**
> 15 U.S.C. §1681c(g)(1).

22. With respect to machines that were first put into use after January 1, 2005, 15 U.S.C. §1681c(g)(3)(B) required immediate compliance with the provisions of 15 U.S.C. §1681c(g)(1).

23. With respect to machines that were in use before January 1, 2005, 15 U.S.C. §1681c(g)(3)(A) required compliance with the provisions of 15 U.S.C. §1681c(g)(1) on or after December 4, 2006.

24. Defendants accept credit cards and/or debit cards in the course of transacting business with persons such as Plaintiff and the class members. In transacting such business, Defendants use cash registers and/or other machines or devices that electronically print receipts for credit card

and/or debit card transactions.

25. After the effective date of the statute, Defendants, at the point of sale or transaction, provided Plaintiff and each class member with one or more electronically printed receipts on each of which Defendants printed more than the last five digits of the credit card or debit card number and/or printed the expiration date of the credit card or debit card.

26. FACTA was enacted in 2003 and gave merchants who accept credit card and/or debit cards up to three years to comply with its requirements, requiring compliance for all machines no later than December 4, 2006.

27. On information and belief, Defendants knew of the requirement concerning the truncation of credit and debit card numbers and prohibition on printing of expiration dates.

28. On information and belief, VISA, MasterCard, the PCI Security Standards Council — a consortium founded by VISA, MasterCard, Discover, American Express and JCB — companies that sell cash registers and other devices for the processing of credit or debit card payments, and other entities informed Defendants about FACTA, including its specific requirements concerning the truncation of credit card and debit card numbers and prohibition on the printing of expiration dates, and Defendants need to comply with the same.

29. The requirement was widely publicized among retailers.

30. Most of Defendants' business peers and competitors readily brought their credit card and debit card receipt printing process into compliance with FACTA by, for example, programming their card machines and devices to prevent them from printing more than the last five digits of the card number and/or the expiration date upon the receipts provided to the cardholders. Defendants could have readily done the same.

31. Defendants willfully disregarded FACTA's requirements and continued to use cash registers or other machines or devices that print receipts in violation of FACTA.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the class members and against Defendants as follows:

a. For statutory damages of $100 to $1,000 per violation;

b. For attorney's fees, litigation expenses and costs;

c. For such other and further relief as the Court may deem proper.

JURY DEMAND

Plaintiff demands trial by jury.

Plaintiff KATHY ALIANO, individually, and on behalf of all others similarly situated,

By: Thomas A. Zimmerman, Jr.

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