IN THE CIRCUIT COURT OF BARBOUR COUNTY, ALABAMA

LAKESHA CLIATT and MARKETHA HILL, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**CASE NO.: CV-2022-90008**
v.	)	**JURY TRIAL DEMANDED**
HIBBETT RETAIL, INC. and CITY GEAR, LLC,	)	
Defendants.	)	

FINAL JUDGMENT AND ORDER CERTIFYING SETTLEMENT CLASS, APPROVING CLASS ACTION SETTLEMENT AND AWARDING INCENTIVE AWARD TO CLASS REPRESENTATIVE AND ATTORNEYS' FEES AND EXPENSES TO CLASS COUNSEL

The Court has for consideration Plaintiffs' Motion for Award of Attorneys' Fees and Expenses Related to Class Settlement filed on December 12, 2022 and Plaintiffs' Motion for Final Approval of Proposed Settlement, Final Certification of the Class, an Incentive Award to the Class Representatives and an Award of Attorneys' Fees And Expenses, Certification of a Settlement Class and for Final Approval of Settlement, for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses and a Class Representative Service Award filed on January 5, 2023.

After careful consideration of the Motions, the materials submitted in support of the Motions, and the positions of the Parties expressed in writing and at the Final Approval Hearing held on January 9, 2023, the Court grants Plaintiffs' Motions.

On February 25, 2022, Plaintiff Cliatt initiated this class action lawsuit against Hibbett Retail, Inc. and City Gear, LLC ("Defendants"). Plaintiffs Cliatt and Hill filed an Amended Complaint on April 22, 2022. Plaintiffs assert two (2) causes of action for negligence and

violations of 15 U.S.C. § 1681c(g) and seek damages arising from Defendants' alleged unauthorized disclosure of Plaintiffs' personal and confidential information by printing the first six digits and last four digits of their credit cards on their receipts. According to Plaintiffs, such conduct resulted in the unauthorized disclosure of customer credit or debit card magnetic strip information that was in the care, custody or control of Defendants and violates the Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq*., as amended, a statute which requires merchants to truncate certain credit card and debit card information on printed receipts provided to consumers.

Plaintiffs allege, *inter alia,* that they suffered a substantial and heightened risk of identity theft, that Defendants invaded their legally protected privacy interest and they have had to spent time and effort mitigating the risk of harm from the alleged conduct.

Defendants vigorously deny each and every one of Plaintiffs' allegations of wrongful conduct, injury and damages, and would vigorously defend against the merits of the lawsuit. Defendants have further denied that this case could be tried as a class action under Rule 23 if it were to be litigated to conclusion.

During the litigation and through extensive settlement discussions and mediation, Plaintiffs received information regarding Defendants' practices and defenses, including information specifically relating to the nature, scope, and extent of the alleged FACTA violations at issue, as well as information regarding the number and scope of affected transactions and consumers. Plaintiffs also received information regarding Defendants' remedial efforts and knowledge of the alleged statutory violations.

Ultimately, the Parties agreed to mediate this class action lawsuit. As a result of the mediation process conducted by former Alabama State Bar President Lee Copeland of Copeland,

Franco, Screws & Gill in Montgomery, Alabama, which covered four in-person sessions and numerous conference calls over a four-month period, Plaintiffs and Defendants reached a settlement agreement ("Settlement Agreement") to settle this litigation on a class-wide basis, subject to the Court's approval. According to Mr. Copeland, "[t]he mediation in this matter was lengthy, contentious, hard-fought but, ultimately, a successful one. Each segment of the mediation – from the definition of the class, class period notice (all types of notice), class award, class deadlines, language in the class documents and finally, the attorney fees provision were negotiated over a period of months." (Copeland Affidavit, ¶ 6). Mr. Copeland further noted that he could only recall one successful mediation that was as difficult to resolve as this one. (Copeland Affidavit, ¶ 13).

After a thorough review of the materials presented in the motion, pleadings and other papers, on October 31, 2022 this Court entered an Order, *inter alia*, preliminarily approving of the parties' class-wide Settlement and granting conditional certification of a Settlement Class. ("Preliminary Approval Order"). The Court's Preliminary Approval Order specifically approved of the Notice Plan submitted by the Parties and directed that notice be issued by the approved Settlement Administrator to the members of the Settlement Class. That Order also established various deadlines for potential class members to object or to exclude themselves from the Settlement and established the date for the Final Approval Hearing on January 9, 2023. As described below, that Notice Plan has now been successfully implemented.

The Court has considered the evidence submitted in connection with the Plaintiffs' Motions for Entry of Final Judgment and at the Final Approval Hearing, and having provided the members of the Settlement Class the opportunity to object and be heard, or to exclude themselves

from the Settlement Class, the Court now makes the following findings of fact and conclusions of law and provides the following relief:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Where certification of a Settlement Class is sought simultaneously with the approval of a Class Settlement, the Court must scrutinize the proposed settlement to ensure that the interests of the absent class members are protected. The Court has done so in this case. To approve a proposed class settlement, the Court must find that the settlement is fair, adequate, and reasonable. *Adams v. Robertson*, 676 So. 2d 1265, 1272 (Ala. 1995) (citing *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1147 (11th Cir. 1983).

The Requirements for a Settlement Class Are Satisfied

2. In order to certify a class under Ala. R. Civ. P. 23, the Court must find that the elements of Rule 23(a) have been met, as well as the requirements of either Rule 23(b)(1), (2) or (3). *See Reynolds Metals Co. v. Hill*, 825 So. 2d 100, 103 (Ala. 2002); *Compass Bank v. Snow*, 823 So. 2d 667, 671 (Ala. 2001). In determining whether these requirements are met, the Court must conduct a "rigorous analysis." Ala. Code § 6-5-641(e); *see also Disch v. Hicks*, 900 So. 2d 399, 407 (Ala. 2004).

3. This Court finds that the Settlement Class as proposed in the Settlement Agreement meets all the requirements for certification of a Settlement Class under Rule 23(b)(3) of the Alabama Rules of Civil Procedure. Accordingly, the Court certifies the following Settlement Class:

> All persons in the United States (i) who, when making payment at a Hibbett, City Gear or Sports Additions retail store located in the United States, (ii) made such payment using a credit or debit card (iii) and for whom Hibbett, City Gear or Sports Additions printed a point-of-sale receipt (iv) which displayed more than the last 5 digits of the credit or debit card (v) between December 15, 2020 and February 23, 2022.

> Notwithstanding the foregoing, this class specifically excludes persons in the following categories: (A) The judge presiding over this case and the judges of the appellate court; (B) the spouses of those in category (A); (C) any person within the third degree of relationship of those in categories (A) or (B); (D) the spouses of those within category (C) and (E) any person whose claim is subject to discharge in a pending bankruptcy proceeding or has been discharged as part of a closed bankruptcy proceeding.

4. The Court makes the following findings of fact and conclusions of law with respect to the satisfaction of the elements of Ala. R. Civ. P. 23.

5. **Numerosity:** The Settlement Class is estimated to include more than 1,000,000 members. The Court concludes that the Settlement Class satisfies the numerosity requirement of Ala. R. Civ. P. 23(a)(1).

6. **Commonality**: Ala. R. Civ. P. 23(a)(2) requires that there be questions of law and fact common to the class. Commonality does not require that the Class Members' claims be identical, only that the claims arise from the same practice or course of conduct and be based on the same legal theory. The commonality requirement of Rule 23(a)(2) is met for settlement purposes because Plaintiffs and Class Members allege that they entered into substantially similar payment card transactions with Defendants. Given Plaintiffs' allegations with respect to Defendants' alleged violations of FACTA, common questions of law or fact will apply to the disputes addressed in this case. These common questions of law and fact predominate over questions affecting only individual members of the Settlement Class.

7. **Typicality:** "[T]he test for typicality, like commonality, is not demanding." *See, e.g., Forbush v. J.C. Penney*, 994 F.2d 1101, 1106 (5th Cir. 1993); *Shipes v. Trinity Indus.*, 987 F.2d 311, 316 (5th Cir. 1993). Typicality does not require that the Class Representative's claims be identical to those of the Class Members. *See Ex parte Gov't Employees Ins.* Co., 729 So. 2d 299, 304 (Ala. 1999) ("This [typicality] requirement focuses on the interests of the class

representative."). Instead, "a plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." Newberg & Conte, *Newberg on Class Actions* § 3.5 (4th ed. 2002), § 3.13. The Court concludes that the typicality requirement of Rule 23(a)(3) is met in this case. The typicality requirement of Rule 23(a)(3) is met for settlement purposes because for this Settlement Class, Plaintiffs' claims are typical of the claims of the members of the Settlement Class. Plaintiffs allege that Defendants engaged in a uniform course of conduct and violated FACTA. The alleged injuries suffered by Plaintiffs as a result of the alleged FACTA violations are typical to those alleged to be suffered by Class Members. Consequently, Plaintiffs' claims satisfy the typicality requirement of Rule 23(a).

8. **Adequacy**: Rule 23(a)(4) requires that the class representatives and class counsel fairly and adequately protect the interests of the class. The adequacy requirement encompasses two inquiries: (1) the attorneys representing the class must be qualified, experienced, and generally able to conduct the litigation and (2) the class representatives must not have interests antagonistic to those of the class. *See Ex parte Russell Corp.*, 703 So. 2d 953, 963 (Ala. 1997) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997)). The Court finds that the Class Representatives and Class Counsel are adequate representatives of the Settlement Class and fairly represented the interests of each member of the class under Rule 23(a)(4). In reaching this determination, the Court considered: (1) Class Counsel's qualifications, experience, and conduct of the proposed litigation and (2) the absence of any interests antagonistic to those of the rest of the class. The Court also considered the results of the settlement achieved by the Class Representative and Class Counsel for the benefit of the Class.

9. **Predominance:** The Court also finds that the requirements for certification under Rule 23(b)(3), that common issues of law or fact predominate over individual questions and that

the class action is superior to other methods of adjudication, are satisfied with respect to the Settlement Class. As noted above, the claims of the Plaintiffs and members of the Settlement Class arose from Defendants' purported failure to properly truncate Plaintiffs and Class Members' credit card numbers as required under FACTA. *See Avis Rent-A-Car Sys. v. Heilman*, 876 So. 2d 1111, 1120-22 (Ala. 2003) (affirming certification under Rule 23(b)(3) of class claiming money damages for breach of contract). Accordingly, the Court finds that the claims of the Class Members arise out of a nucleus of common facts and involve common questions of law applicable to all.

10. Moreover, because this case is being settled, the Court does not "need to inquire whether the case, if tried, would present intractable management problems. . . for the proposal is that there be no trial." *Amchem Products Inc. v. Windsor*, 521 U.S. 591, 620 (1997).[1]

11. In the context of this settlement, the Parties have agreed to provide uniform compensation to Settlement Class Members. As a result of this uniform benefit to all members of the Settlement Class, the proposed Settlement Class is ascertainable from Defendants' business records.

12. **Superiority:** In the context of this settlement, given the likely costs and expenses associated with individual claims when weighed against the potential recoveries, and the potential waste of judicial resources, the Court finds that the superiority requirement of Rule 23(b)(3) is also satisfied.

The Notice Provided Complied with Alabama Law and Due Process

13. Upon conditional certification of class, Rule 23(d)(2) requires that "notice be given in such manner as the court may direct to some or all of the members of any step in the action, or

[1] This Order addresses only certification of a Settlement Class. As such, this Order shall not constitute nor be construed as a determination by this Court that in the absence of a settlement, a class action in this matter could be sustained under the Alabama Rules of Civil Procedure.

of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action. . ." Ala. R. Civ. P. 23(d)(2).

14. The Class was provided with adequate notice of the Court's Preliminary Approval Order and the proposed Settlement Agreement, including complete disclosure of the requested attorneys' fees and expenses and incentive award. Rule 23(e) specifies that "notice of the proposed dismissal or compromise shall be given to all members of the class as the court directs." Ala. R. Civ. P. 23(e). This Court previously reviewed the proposed Notice procedures and claims administration process and approved them as adequate under Rule 23(e).

15. The Notice Plan set forth in the Settlement Agreement approved by this Court, and as described in the Affidavits of Brian S. Devery and David M. Benck, has now been implemented and completed, and claims administration is being performed on an ongoing basis. As previously found by this Court, the Notice was written in plain English and includes: (1) a description of the class; (2) a description of the proposed settlement; (3) the identity of Class Counsel; (4) the date and time of the Final Approval Hearing; (5) a statement of the procedures and deadlines for filing objections to the proposed settlement; (6) a statement of the procedures and deadlines for submitting an opt-out request; (7) the consequences of opting out; (8) the consequences of remaining in the Class; (9) a statement of Defendants' responsibility for Class Counsel's fees and expenses; (10) how to obtain further information about this case; and (11) how to submit a claim for settlement benefits.

16. The Notice was emailed or mailed via First Class U.S. Mail to most Class Members. The Settlement Administrator also established a toll-free number to handle inquiries by potential Class Members, as well as a website explaining the nature of the lawsuit, providing information on opting out or objecting, and providing ready access to all relevant pleadings and Orders. Notice

was also provided via internet banners, the Defendants' website, social media postings on the Hibbett Retail and City Gear Facebook pages and additional emails sent to more than 4,000,000 email addresses on four separate occasions.

17. In accordance with the deadline established in the Court's Preliminary Approval Order, only 35 Class Members have requested to opt out of the settlement and only one objection was filed. As discussed below, the sole objection was withdrawn on January 9, 2023.

18. The Court finds that any additional or supplemental notice to the Settlement Class is unwarranted and unnecessary under the particular facts of this action and settlement.

19. The Court finds that the Notice Plan implemented in this matter constitutes reasonable notice as required under Rule 23(d)(2) and satisfies due process.

The Settlement Is Fair, Reasonable and Adequate

20. Approval of a class-action settlement is a two-step process. Rule 23 of the Alabama Rules of Civil Procedure is based on Federal Rule of Civil Procedure 23 and Alabama courts may look to federal cases as persuasive authority. *See, e.g., Ex Parte American Bankers Life Assur. Co.*, 715 So. 2d 186 (Ala. 1997); *Adams v. Robertson*, 676 So. 2d 1265 (Ala. 1995); *First Baptist Church of Citronelle v. Citronelle-Mobile Gathering, Inc.*, 409 So. 2d 727, 729 (Ala. 1981).

21. In the first step, the Court determines whether the proposed settlement should be preliminarily approved. *See* David F. Herr, ANNOTATED MANUAL FOR COMPLEX LITIGATION 21.632 (4th ed. 2004). At the preliminary-approval stage in the process, the Court is required to "make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." *Id.* 21.632. The primary question is whether the proposed settlement "falls within the range of possible approval." *In re Motor Fuel Temperature Sales Practices Litig.*, 258 F.R.D. 671, 675 (D. Kan. 2009). Courts "will ordinarily grant preliminary approval where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no

obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval." *Id.* (internal citations omitted). The Court found that the proposed Settlement met this standard in its Preliminary Order.

22. In the second stage, following appropriate notice to the class and after hearing from any potential objectors, the Court makes a final decision whether to approve the proposed settlement. *See* ANNOTATED MANUAL FOR COMPLEX LITIGATION 21.633-35.

23. It is well settled that judicial policy favors settlements of class actions. *See Cotton v. Hinton*, 559 F.2d at 1331 (5th Cir. 1977); *see also Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 538 (S.D. Fla. 1988) (citations omitted). "Settlement has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice. . . ." *Behrens*, 118 F.R.D. at 538. "Litigants should be encouraged to determine their respective rights between themselves." *Id.* (*quoting Cotton*, 559 F.2d at 1331) (citation omitted). "Moreover, where, as here, the [settlement] previously has been preliminarily approved, the [settlement] is presumptively reasonable." *Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457 (S.D. Fla. 2002) (citations omitted).

24. In making the overall determination of whether a settlement is fair, reasonable and adequate, the Court recognizes that it must not try the case on the merits. *Amoco*, 211 F.R.D. at 467 (citation omitted). "Rather, the Court must rely upon the judgment of experienced counsel and, absent fraud, 'should be hesitant to substitute its own judgment for that of counsel.'" *Id.* (citation omitted).

25. Also, "[i]n evaluating a settlement's fairness, 'it should not be forgotten that compromise is the essence of a settlement. The trial court should not make a proponent of a proposed settlement 'justify each term of settlement against a hypothetical or speculative measure

of what concessions might [be] gained.'" *Amoco*, 211 F.R.D. at 468 (citing *Cotton*, 559 F.2d at 1330. "Above all, the court must be mindful that 'inherent in compromise is a yielding of absolutes and an abandoning of highest hopes.'" *Amoco*, 211 F.R.D. at 468 (citation omitted).

26. With these principles in mind, the Court must consider several components of a settlement agreement, including "1) the likelihood of success at trial; 2) the range of possible recovery; 3) the point over or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; 4) the complexity, expense, and duration of the litigation; 5) the substance and amount of opposition to the settlement; and 6) the stage of the proceedings at which the settlement was achieved." *Id.; see Myers*, 866 So.2d at 104 (*citing Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)). "The trial court must also consider the reasonableness of attorneys' fees and costs and the adequacy of notice to the class." *Id.; see Piambino v. Bailey*, 610 F.2d 1306, 1328 (5th Cir.1980); *Hoffmann–La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989).

27. Turning to the specific terms of the Settlement Agreement, Defendants have agreed to provide compensatory relief in the following form: A single payment of twenty dollars ($20.00) will be made to settlement class members who submit a timely, authentic and complete Claim Form, with Hibbett having the right to make the payment to the eligible settlement class members' Hibbett | City Gear Rewards account. Defendants have also agreed to the following nonmonetary relief: Prior to the final effective date of this settlement, Defendants will implement appropriate steps, practices and a written company policy to help ensure that Defendants' stores are in compliance and remain in compliance, with FACTA on a going forward basis.

28. The Court finds that given the multiple mediations conducted by former Alabama Bar President Lee Copeland and months of negotiations, there is no evidence of collusion in this proposed settlement. The parties vigorously and professionally represented the interests of their respective clients throughout this litigation.

29. The Court finds that both Parties face significant risks from continued litigation, which also favors final approval of the settlement. Plaintiffs have not yet established any violation of FACTA, and Defendants have denied any such violations. Further, the class certification issue has not yet been litigated and the Parties have opposing positions with respect to potential certification of a class for litigation purposes. For example, Plaintiffs contend that certification of a class would be appropriate, in part, due to the uniformity of the federal statute to be applied. On the other hand, and without limiting Defendants' objections under Rule 23, Defendants have at all times maintained that their practices were proper and in accordance with federal law and any regulatory requirements. In addition, Defendants steadfastly contend this case is wholly unsuitable for class treatment and could never be tried as a class action. In particular, Defendants argue a class cannot be certified due to: (a) differing facts and differing evidence that could come into play for each putative class member; (b) differing evidence applicable to each putative class member's damages claim; and (c) the existence of individualized evidence necessary to determine the outcome of Defendants' defenses. Obviously, there is a risk that if the issues were to be litigated, the Court could find that the Plaintiffs' proposed class could or could not be certified for trial purposes, or that only a class smaller than the Settlement Class could be certified. Defendants also face the costs and risks of continued litigation if the Class were to be certified for trial purposes. The Court also finds the complexity of this litigation weighs in favor of final approval of the proposed Settlement Agreement as fair, reasonable and adequate. Were this matter to continue, numerous, complex issues of law would have to be resolved at the cost of considerable time and expense to the parties and the Court.

30. The Court also finds the complexity, expense, and duration of this litigation favors final approval of the proposed Settlement Agreement. Were this matter to continue, numerous,

complex issues of law would have to be resolved at the cost of considerable time and expense to the parties and the Court. This factor also favors final approval by this Court.

31. The stage of the litigation and the judgment of experienced counsel for the Parties is a factor in favor of final approval. The Parties have engaged in substantial investigation, exchange of information and legal positions, and debated the strengths and weaknesses of their merits and class certification claims and defenses, including with the help of a respected mediator with significant experience in class action litigation. Therefore, the Parties were well placed to assess the strength of this case and the comparative benefits of the proposed settlement. Moreover, this proposed settlement is supported by experienced counsel for the Parties. Plaintiffs are represented by highly respected attorneys with significant experience in other class actions. Defendants are also represented by attorneys from a respected law firm experienced in class action litigation. The unanimous support of counsel for this settlement weighs in favor of its final approval.

32. The reaction of the class is another important factor. Here the reaction has been overwhelmingly positive. Over 850,000 Hibbett customers were sent first-class or email notices of the settlement, in addition to the supplemental indirect notice via internet banners, emails and postings on the Defendants' website and Facebook pages. "A small number of objectors from a plaintiff class of many thousand is strong evidence of a settlement's fairness and reasonableness." *Amoco*, 211 F.R.D. at 476; *see also Lipima v. American Express Co.*, 406 F.Supp.2d 1298 (S.D. Fla. 2005) (finding that 41 objections constituted an "infinitesimal" number (.0005%) when compared to the number of class members).

33. The Court finds that the overwhelming support of class members reflects the fairness, adequacy, and reasonableness of the Settlement and weighs in support of this Court's final approval of the Settlement.

34. Finally, the Court finds that substantial benefits for Class Members under the Settlement Agreement are well within the range of reasonableness for resolution of this case. The Settlement is fair, adequate and reasonable.

Award of Attorneys' Fees, Expenses and Class Representative Incentive Award

35. As part of the final settlement approval process, the Court "must also consider the reasonableness of attorneys' fees and costs . . . ." *Id.; see Piambino,* 610 F.2d at 1328.

36. Often in class action cases, plaintiffs' counsel is entitled to a fee ranging from twenty percent to fifty percent of the recovery. *See Edelman & Combs v. Law*, 663 So.2d 957, 960 (Ala. 1995).

37. In addition, other factors unique to class actions should be considered when deciding on a reasonable fee to award. A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are high. *Pinto v. Princess Cruise Lines, Ltd.*, 513 F.Supp.2d 1334 (S.D. Fla. 2007) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000); *accord Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981) ("Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result.").

38. Class counsel undertook this case on a contingent basis, and ultimately achieved a resolution that will provide substantial relief to Class Members. Class Counsel submitted evidence of the nature and amount of the work performed. The Court has previously noted the successful outcome and benefits achieved on behalf of the Settlement Class.

39. As part of the Settlement, Class Counsel agreed to accept, and Defendants agreed not to oppose, a total award of attorneys' fees and reimbursement of litigation and notice

administration expenses not to exceed $1,925,000.00 and a service award to of $5,000.00 each to Ms. Cliatt and Ms. Hill.

40. Under Alabama law, the Court finds that Class Counsel's fee and expense request is fair and reasonable. There is no question of the skill and expertise of Class Counsel. They undertook representation of Plaintiffs with the full understanding that in the absence of settlement or prevailing at trial, they would not receive a fee. Significant risk was involved. The results Class Counsel obtained are exemplary, and Class Counsel's requested fees and expenses are adequately supported. Accordingly, Class Counsel are hereby awarded attorneys' fees and expenses of $1,925,000.00.

41. This amount satisfies all claims for attorneys' fees and expenses incurred by any and all counsel for Plaintiffs and the Class in connection with the Action, including the Settlement. This payment will be provided by Defendants to Class Counsel in accordance with the terms of the Settlement Agreement.

42. The Court further awards Ms. Cliatt and Ms. Hill $5,000.00 each as a service award for their participation as the class representative in the action. The requested award is fair and reasonable. The award recognizes the time spent by Plaintiffs in prosecuting this action, the risk they undertook in bringing this action, the outstanding relief provided to the Class, the fact that Defendants agreed to pay the requested award and the fact that an infinitesimal percentage of Class Members objected to the requested award. This award is in addition to any benefits that Plaintiffs are entitled to receive as a Class Member.

CONCLUSION and ORDER

Based upon the foregoing findings of fact and conclusions of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. This Settlement Class is certified as a final and permanent class for purposes of this action. The Settlement Class is defined to include:

> All persons in the United States (i) who, when making payment at a Hibbett, City Gear or Sports Additions retail store located in the United States, (ii) made such payment using a credit or debit card (iii) and for whom Hibbett, City Gear or Sports Additions printed a point-of-sale receipt (iv) which displayed more than the last 5 digits of the credit or debit card (v) between December 15, 2020 and February 23, 2022.
>
> Notwithstanding the foregoing, this class specifically excludes persons in the following categories: (A) The judge presiding over this case and the judges of the appellate court; (B) the spouses of those in category (A); (C) any person within the third degree of relationship of those in categories (A) or (B); (D) the spouses of those within category (C) and (E) any person whose claim is subject to discharge in a pending bankruptcy proceeding or has been discharged as part of a closed bankruptcy proceeding.

2. The Settlement Class meets all of the requirements of Alabama Rule 23(a) and (b)(3). The class claims are as described in the Complaint, the release contained in the Settlement Agreement and as referenced in this Court's Preliminary Approval Order and this Final Judgment.

3. The final certification of the Settlement Class is for settlement purposes only and shall not constitute, nor be construed as, evidence or an admission on the part of Defendants that this Action, or any other proposed or certified class action is appropriate for class treatment pursuant to the Alabama Rules of Civil Procedure or any other class action statute or rule. The provisions and findings in this Final Judgment are limited to the specific facts and circumstances of this case, including issues resolved by settlement.

4. If any appeal is taken from this Final Judgment and the approval of the Settlement Agreement is not upheld on appeal, the Settlement Class shall be decertified, the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection with the Settlement shall be without prejudice to any party and shall not be deemed or construed to be an admission or confession by any party of any fact, matter, issue or proposition

of law; and all parties shall stand in the same procedural posture as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

5. R. Brent Irby, Esq., Wm. Eric Colley, Esq., Christy D. Crow, Esq. and Christopher W. Legg, are finally appointed as Class Counsel for the Settlement Class.

6. The Plaintiffs, Lakesha Cliatt and Marketha Hill, are designated as Class Representatives.

7. The Settlement Agreement is fair, adequate, and reasonable and in the best interest of the Settlement Class, and Defendants are hereby Ordered and Directed to comply with all of the terms of the Settlement Agreement. Accordingly, Defendants shall:

A. Within 10 days after Final Effective Date[2], pay to Class Counsel the amount of $1,925,000 representing full and final payment of attorneys' fees and reimbursement of litigation and notice administration expenses and $10,000 in the class representative service award payments awarded by this Court as provided in the Settlement Agreement. Said payment to be made payable to Irby Law, LLC and Wm. Eric Colley, Attorney at Law, LLC.

B. Within 30 days after the Final Effective Date, the Claims Administrator shall determine whether each collected Claim Form submitted during the Claims Period is properly completed. If a Claim Form is not complete, the Claims Administrator shall provide a written notice to the claimant by email if available and by USPS if no email is available. The Claims Administrator may request additional information from the claimant to validate the claim, including, but not limited to, questions regarding the validity or legitimacy of the physical or e-signature or the proof of eligibility. Any submission in

[2] As set forth in the Settlement Agreement and Release ("Settlement Agreement"), "Final Effective Date" means the later of the date that (i) the time has run for any appeals from the Order of Final Approval or (ii) any such appeals have been resolved in favor of approving, and/or affirming the approval of, this Agreement.

response to a request from the Claims Administrator shall be submitted within 21 calendar days of the date of the notice from the Claims Administrator. To avoid unreasonable delays for those who submit fully complete and valid Claim Forms with the required proof of eligibility, the Claims Administrator shall deny any claims that are not fully cured during this 21-day period.

C. The Claims Administrator shall promptly report its determination of the number of Participating Claimants and the calculation of the proposed monetary benefits. Class Counsel and Hibbett shall have 15 calendar days from receipt of the report to notify the Claims Administrator in writing of any errors in the determination and/or calculation of the proposed benefits. If the Claims Administrator receives timely objections to any proposed benefit, the Claims Administrator shall consider the objections and attempt to resolve the objections between the Parties.

D. If no objections are timely made, or when such objections are resolved, the Participating Claimants shall receive payment to the Participating Claimants' Hibbett Rewards Account. To the extent a Participating Claimant does not have an existing Hibbett | City Gear Rewards Account, one will be established using the information provided to the Claims Administrator by the Participating Claimant. By submitting a Claim Form, the Participating Claimant agrees to participate in the Hibbett | City Gear Rewards Program, including agreeing to the terms and conditions found at https://www.hibbett.com/hibbett-rewards-terms-conditions.html.

8. If logistical problems arise from implementation of this Order, then the Parties shall bring them to the attention of this Court for resolution by subsequent Order of this Court.

9. The sole objection in this case was filed by Luis Rivera on December 23, 2022. The objection was signed by Florida attorneys Scott Owens and Christopher Legg and California

attorney John Habashy. Defendants filed a Motion to Strike the Objection on the grounds that Owens, Legg and Habashy are not licensed Alabama attorneys and had not been admitted *pro hac vice* at the time of the filing. *See Black v. Baptist Med. Ctr.*, 575 So.2d 1087 (Ala. 1991); *Tucker v. Morgan*, 833 So.2d 68 (Ala. Civ. App. 2002). The Court heard oral argument on the issue on January 9, 2023.

10. On January 9, 2023, Mr. Rivera, through counsel, formally withdrew his objection. Accordingly, there are no objections to the settlement and Defendants' Motion to Strike the Objection is hereby deemed **MOOT**.

11. To the extent objections are later raised, they are rejected both for the reasons set forth above and as untimely under this Court's Preliminary Approval Order.

12. All Settlement Class Members who did not timely and properly exclude itself, himself or herself, from the Settlement Class, all those who claim through them or who assert claims (or could assert claims) on their behalf, have fully, finally and forever released, settled, compromised, relinquished, and discharged the Hibbett Releasees from any and all claims, actions, demands, rights, suits, promises, obligations, damages, penalties, attorneys' fees, costs, judgments, liabilities or causes of action of every nature and description whatsoever that each and every member of the Settlement Class may have or may have had in the past, whether in arbitration, administrative or judicial proceedings, whether as individual claims or as claims asserted on a class basis, whether past or present, mature or not yet mature, known or unknown, suspected or unsuspected, whether based on federal, state or local law, statute, ordinance, regulation, contract, common law, or any other source, including, without limitation, that any of the Hibbett Releasees are liable for allowing or making unauthorized disclosure of customer credit or debit card magnetic strip information that was in the care, custody or control of the Hibbett Releasees, that too much information was printed on any receipts from a Hibbett retail location, that any member of the Settlement Class suffered a heightened risk identity theft, that a Settlement Class Members' personal financial information was disclosed to Hibbett Releasees' employees who handled the

receipts or other third-parties, that the Hibbett Releasees invaded a Settlement Class Member's legally protected privacy interest and breached its privacy policy, that any Hibbett Releasee forced a Settlement Class Member to take action to prevent further disclosure of the private information displayed on the receipts, as well as statutory claims (including but not limited to claims arising under the Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq.*, as amended by the Fair and Accurate Credit Transactions Act, Pub. L. 108-159, and 15 U.S.C. § 1681c(g)) for a violation of any consumer protection statutes, or claims regarding identity theft or the risk of identity theft, including but not limited to, the Song-Beverly Credit Card Act or any state law similar to FACTA, that the Settlement Class Members have or may have against the Hibbett Releasees, or any of them, for any type of relief, including, without limitation, actual damages, statutory damages, punitive damages, interest, attorneys' fees, costs, expenses, restitution, or equitable relief, that arise or could arise, or were asserted or could have been asserted, based on, arising from or in any way relating to the facts alleged in the Amended Complaint.

13. All Settlement Class Members who did not timely and properly exclude itself, himself or herself, from the Settlement Class, all those who claim through them or who assert claims (or could assert claims) on their behalf are forever barred and enjoined from instituting or further prosecuting, in any forum whatsoever, including but not limited to any state, federal, or foreign court, each and every Released Claim against each and every Hibbett Releasee.

14. Notice of the entry of this Final Judgment shall be included on the Claims Administration website. It shall not be necessary to send notice of entry of this Order or the Final Judgment to individual members of the Settlement Class.

15. Neither this Final Order and Judgment nor the Settlement Agreement (nor any document referred to in this Order or any action taken to carry out this Final Judgment), may be construed as, or may be used as an admission or concession by or against Defendants of the validity of any claim or any actual or potential fault, wrongdoing, or liability whatsoever. Entering into or carrying out the Settlement Agreement (including the exhibits thereto), and any negotiations or

proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendants, and shall not be offered or received in evidence in any action or proceeding against any Party in any court, administrative agency, or other tribunal for any purpose whatsoever, other than as evidence of the settlement or to enforce the provisions of this Final Judgment and the Settlement Agreement; provided, however, this Final Judgment and the Settlement Agreement (including the exhibits thereto) may be filed in any action against or by Defendants or Hibbett Releasees (as that term is defined in the Settlement Agreement) to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. The Court retains jurisdiction over the interpretation, implementation, and enforcement of the Settlement Agreement and of this Final Judgment, to hear and resolve any contested challenge to a claim for benefits, and to supervise and adjudicate any dispute arising in connection with its implementation. All Settlement Class Members and persons in privity with them, including all persons represented by them, are barred and enjoined from commencing or continuing any suit, action, proceeding, case, controversy, or dispute relating to: (1) the claims alleged herein and as discussed in the Settlement Agreement; (2) the Settlement Agreement; and (3) performance or breach of same. Such Persons are further barred and enjoined from seeking to raise any objections or challenges to the Settlement, in any state or federal court or other body other than the Circuit Court of Barbour County, Alabama (Eufaula Division).

17. The Class Members who excluded themselves from the Settlement are identified in Exhibit A, attached hereto. Class Members that properly excluded themselves from the Settlement are not bound by the terms of the Settlement Agreement, the related release or the entry of this Final Judgment.

Accordingly, the Plaintiffs' Motion for Final Approval of Proposed Settlement, Final Certification of the Class, and an Incentive Award to the Class Representatives and an Award of

Attorneys' fees and Expenses and separately filed Motion for Award of Attorneys' Fees and Expenses Related to Class Settlement are **GRANTED and FINAL JUDGMENT ENTERED**, and the clerk is directed to enter this Final Judgment and close the case.

Any pending motion not otherwise addressed in this Final Order and Judgment is hereby **DENIED.**

This Litigation is hereby dismissed on the merits and with prejudice and against Class Representatives and all other Settlement Class Members, without fees or costs to any party except as otherwise provided herein.

DONE AND ORDERED in Barbour County, Alabama, on this day of 27th day of January, 2023.

Honorable L. Bernard Smithart
Circuit Court Judge