

JAN 19, 2021 10:38 AM

*Danielle F. Forté*  
Danielle F. Forté, Clerk  
Muscogee County, Georgia

IN THE STATE COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA

BRIAN NOWE and  
MARY ALLEN WILSON TONDEE, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

ESSEX TECHNOLOGY GROUP, LLC (d/b/a  
Bargain Hunt),

Defendants.

Civil Action No. SC 2020 CV 694

**PLAINTIFFS' UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES AND  
COSTS TO CLASS COUNSEL AND INCENTIVE PAYMENT TO THE CLASS  
REPRESENTATIVES AND SUPPORTING BRIEF**

Pursuant to O.C.G.A. § 9-11-23, plaintiff and class representatives Brian Nowe and Mary Allen Wilson Tondee ("Plaintiffs" or "Class Representatives") and their counsel ("Class Counsel"), and without opposition from Essex Technology Group, LLC d/b/a Bargain Hunt ("Bargain Hunt" or "Defendant"), hereby move the Court for an award of attorneys' fees and costs to Class Counsel and incentive payment to the Class Representatives as set forth in the Settlement Agreement entered by the parties on June 11, 2020 ("Agreement").<sup>1</sup>

<sup>1</sup> The Agreement is attached to this Motion as Exhibit A. The other exhibits attached to this Motion are as follows: Exhibit B – O'Hara Affidavit; Exhibit C – Yedalian Affidavit; Exhibit D – James Affidavit; and Exhibit E – [proposed] final approval order and judgment.

## I. INTRODUCTION

This is a class action case that, through the diligence of Class Counsel and the Class Representatives, has resulted in a cash fund in the amount of \$2,000,000 to compensate for class claims, Class Counsel's fees and expenses, notice and administration costs, and an enhancement award to the Class Representatives. Agreement ¶¶ 9.1-9.6.

Additionally, there are non-pecuniary benefits achieved by the settlement and the diligence of Class Counsel and the Class Representatives. Following and as a result of the claims asserted by the Settlement Class Representatives, all Bargain Hunt stores stopped printing more than the last five digits of the credit card or debit card number on printed receipts issued to its customers by approximately June 30, 2017. Agreement ¶ 11.1. In addition, Bargain Hunt will implement appropriate steps, practices, as well as a written company policy to ensure that all Bargain Hunt stores will remain in compliance with FACTA in the future. Agreement ¶ 11.2.

As is further explained below, courts consistently approve a percentage for attorney fee awards which are 33⅓% of the total settlement fund. Here, one-third of the \$2,000,000 fund equals \$666,667, which Class Counsel seek as attorneys' fees. Agreement ¶ 12.1. Class Counsel also seeks an award of litigation costs of \$6,112.80. *Ibid.*

Although not necessary given that Class Counsel seek one-third of the cash fund, the fact that non-pecuniary benefits were obtained is itself a basis for awarding attorneys' fees. *See, e.g., Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking into account fact that, in addition to monetary aspects, the defendant stopped the practices at issue). Thus, this too further supports the reasonableness of Class Counsel's fees request because, once the value of the non-pecuniary benefits is added to the cash benefits obtained by the settlement,

the amount in fees sought would represent less than one-third of the total benefits secured by the settlement.

In addition, and as also further explained below, each of the Class Representatives respectfully seeks an incentive award of \$5,000 (Agreement ¶ 12.2), which is a fair and reasonable amount and similar to awards in other FACTA cases.

## **II. USE OF THE PERCENTAGE METHOD IS WARRANTED**

### **A. The Law Encourages Awards To Class Counsel In A Matter Like This One**

Courts have long recognized that appropriate awards of attorneys' fees in class action cases such as this encourage attorneys to seek redress for wrongs caused to classes of persons and to discourage similar future misconduct:

"[C]ourts ... have acknowledged the economic reality that in order to encourage 'private attorney general' class actions brought to enforce ... laws on behalf of persons with small individual losses, a financial incentive is necessary to entice capable attorneys, who otherwise could be paid regularly by hourly-rate clients, to devote their time to complex, time-consuming cases for which they may never be paid."

*Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 679, 687 (M.D. Ala. 1988); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 348-49 (N.D. Ga. 1993); *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677-CIV., 2008 WL 649124 (S.D. Fla. Jan. 31, 2008); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1338-39 (S.D. Fla. 2007); *see also Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338-339 (1980).<sup>2</sup>

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<sup>2</sup> The Georgia Civil Practice Act's class action provisions are modeled on the Federal Rules of Civil Procedure ("FRCP"), and federal class-action decisions guide Georgia courts. *See Sta-Power Indus., Inc. v. Avant*, 134 Ga. App. 952, 953 (1975) ("Since there are only a few definitive holdings in Georgia on this particular section of the Civil Practice Act, we also look to federal cases to aid us."); *see also Stevens v. Thomas*, 257 Ga. 645, 648 (1987).

As a practical matter, the percentage of the fund method reflects the practical realities of the legal marketplace. Typically, consumer clients do not pay an hourly fee but instead enter into a contingency fee agreement whereby counsel's fee is based upon a percentage of any recovery. The percentage of the fund method reflects this aspect of the market, including the risks, burdens and uncertainties of contingent litigation. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 and n.6 (9<sup>th</sup> Cir. 2002).

Under Georgia law, where, as here, "a common fund is generated in a class action for the benefit of the class, a percentage of the fund goes to pay for reasonable attorney fees." *Teachers Ret. Sys. v. Plymel*, 296 Ga. App. 839, 846 (2009). *See Barnes v. City of Atlanta*, 281 Ga. 256, 260 (2006) ("With respect to attorney's fees, Georgia adheres to the common-fund doctrine"); *Friedrich v. Fidelity Nat. Bank*, 247 Ga. App. 704, 707 (2001) ("we find the percentage of the fund approach to be the most equitable, sensible, and fair. We therefore hold that when assessing attorney fees in a common fund case, a percentage of the fund analysis is the preferred method of determining these fees, unless unusual circumstances would make its use unfair or impractical.").

The percentage method is also supported by a long line of authorities that recognize that when counsel's efforts result in the recovery of benefits to unnamed class members, counsel have a right to be compensated for the value of those benefits recovered. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense"); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9<sup>th</sup> Cir. 1977) ("[A]

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private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees.... [T]he doctrine is designed to spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone and the 'stranger' beneficiaries do not receive their benefits at no cost to themselves.")

Likewise, in the Eleventh Circuit, class counsel is awarded a percentage of the fund generated through a class settlement. As the Eleventh Circuit held, "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774.

**B. Fee Awards Of 33⅓ Percent Of Settlement Benefits Are Routinely Awarded**

Courts have consistently approved fees in class action cases that equal one-third or a greater percentage of the settlement value. *See, e.g., See Barnes v. City of Atlanta*, 275 Ga. App. 385, 392 (2005) ("attorney fees of 33 1/3 percent of the common fund"); *In re Southeastern Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 WL 2155387, at \*3 (E.D. Tenn. May 17, 2013) (approving 33% attorneys' fees award [totaling \$52.9 million] in common fund settlement and noting that "the percentage requested is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Bessey v. Packerland Plainwell, Inc.*, No. 4:06-CV-95, 2007 WL 3173972, at \*4 (W.D. Mich. Oct. 26, 2007) (approving 31-32% attorneys' fees award and noting that "[e]mpirical studies show that...fee awards in class actions average around one-third of recovery") (citation omitted) (emphasis added); *Dallas v. Alcatel-Lucent USA, Inc.*, No. 09-14596, 2013 WL 2197624, at \*12 (E.D. Mich. May 20, 2013)

(preliminarily approving 33% attorneys' fees award in common fund settlement of collective action and noting that "[v]arious courts have expressed approval of attorney fees in common fund cases at similar or higher percentages"). *See, e.g., In re Clarus Corp. Sec. Litig.*, (N.D. Ga. Jan. 6, 2005) (33.33%); *In re Pediatrics Servs. of Am., Inc. Sec. Litig.*, 99-0670 (N.D. Ga. Mar. 15, 2002) (33.33%); *In re Profit Recovery Group Intl, Inc. Sec. Litig.*, Civil Action No. 1:00-CV-1416-CC (N.D. Ga. May 26, 2005) (33.33%); *In re Theragenics Corp. Sec. Litig.*, Civil Action No. 1:99-CV-0141-TWT (N.D. Ga. Sept. 29, 2004) (33.33%); *In re Harbinger Corp. Sec. Litig.*, Civil Action No. 1:99-CV-2353-MHS (N.D. Ga. Oct. 18, 2001) (33.33%); *In re The Maxim Group, Inc. Sec. Litig.*, Civil Action No. 1:99-CV-1280-CAP (N.D. Ga. July 20, 2004) (33.33%); *In re Medirisk, Inc. Sec. Litig.*, Civil Action No. 1:98-CV-1922-CAP (N.D. Ga. Mar. 22, 2004) (33.33%); *Zinman v. Avemco Corp.*, No. 75-1254, 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (50%); *Aamco Automatic Transmissions, Inc. v. Tayloe*, 82 F.R.D. 405 (E.D. Pa. 1979) (43.87%); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494 (D.D.C. 1981) (40.4%); *Howes v. Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987) (40%); *Meyer v. Citizens & S. Nat'l Bank*, 117 F.R.D. 180 (M.D. Ga. 1987) (33.3%).

Although not necessary given that Class Counsel seek one-third of the cash fund, the fact that non-pecuniary benefits were obtained is itself a basis for awarding attorneys' fees. *See, e.g., Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking into account fact that, in addition to monetary aspects, the defendant stopped the practices at issue).

As explained above, here there are non-pecuniary benefits achieved by the settlement and the diligence of Class Counsel and the Class Representatives. Following and as a result of the claims asserted by the Settlement Class Representatives, all Bargain Hunt stores stopped printing

more than the last five digits of the credit card or debit card number on printed receipts issued to its customers by approximately June 30, 2017. Agreement ¶ 11.1. In addition, Bargain Hunt will implement appropriate steps, practices, as well as a written company policy to ensure that all Bargain Hunt stores will remain in compliance with FACTA in the future. Agreement ¶ 11.2. These steps, practices, and written FACTA company compliance policy ensure that Bargain Hunt will not continue to violate the law, willfully, inadvertently or otherwise.

Thus, this too further supports the reasonableness of Class Counsel's fees request because, once the value of the non-pecuniary benefits is added to the cash benefits obtained by the settlement, the amount in fees sought would represent less than one-third of the total benefits secured by the settlement.

This is especially true with a consumer protection statute such as FACTA which serves both a compensatory and "deterrent purpose." *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708, 718 (9th Cir. 2010). "In fashioning FACTA, Congress aimed to 'restrict the amount of information available to identity thieves.'" *Ibid.*

"The mere fact that AMC changed the content of its receipts to comply with FACTA after the lawsuit was filed does not suggest that certification of the class would have limited deterrent effect. To the contrary, we are quite sure that certification of a class here would preserve, if not amplify, the deterrent effect of FACTA." *Bateman*, 623 F.3d at 723.

Thus, in addition to obtaining pecuniary relief for the Settlement Class, the Class Representatives and Class Counsel have also effectuated substantial change of conduct and policy, thereby accomplishing the "deterrent" objectives of FACTA.

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### **III. REIMBURSEMENT OF CLASS COUNSEL'S COSTS**

Class Counsel seek reimbursement of costs in the amount of \$6,112.80. Yedalian Affidavit ¶ 46; Agreement ¶ 12.1.

The FCRA's specific remedial provision at issue in this matter, 15 U.S.C. § 1681n(a)(3), authorizes an award of all non-taxable costs "when it is 'the prevailing practice in a given community' for lawyers to bill those costs separate from their hourly rates." *Grove v. Wells Fargo Financial California, Inc.*, 606 F.3d 577, 580-581 (9<sup>th</sup> Cir. 2010). All of the costs for which reimbursement is sought are costs that would be billed to a fee paying client separate from hourly rates, consistent with the prevailing practice.

### **IV. THE INCENTIVE AWARD REQUESTED FOR EACH OF THE CLASS REPRESENTATIVES IS REASONABLE AND CONSISTENT WITH AWARDS IN OTHER FACTA CASES**

Class Counsel respectfully request that the named Plaintiffs and Class Representatives, Brian Nowe and Mary Allen Wilson Tondee, each be awarded an incentive award in the amount of \$5,000. Agreement ¶ 12.2.

"Incentive awards are fairly typical in class action cases." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9<sup>th</sup> Cir. 2009). "[They] are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Ibid.*

In assessing incentive awards, courts may also apply the following guideposts articulated in *Staton v. Boeing Co.*, 327 F.3d 938 (9<sup>th</sup> Cir. 2003):



"[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments. The district court must evaluate their awards individually, using 'relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation.'" *Staton*, 327 F.3d at 977.

Each of these factors, as it applies to the Class Representatives in this case, is explained as follows:

First, were it not for the Class Representatives stepping forward and shouldering the duties of protecting and prosecuting the interests of other Settlement Class members, it is likely the interests of the Settlement Class would neither have been prosecuted, nor benefited. Yedalian Affidavit ¶ 37. Indeed, the parties have acknowledged that, to their knowledge, there is no other litigation, either pending or otherwise, on a class or individual basis, concerning the claims in this lawsuit other than those brought by the Class Representatives. *Ibid*.

Moreover, the Class Representatives have done all things reasonably expected of them in their capacity as Class Representatives. Yedalian Affidavit ¶ 38. They were subjected to liability for defense costs in the event litigation was unsuccessful. *Ibid*. By stepping forward to shoulder this matter on behalf of the class, they also took on other risks, including the risk of subjecting themselves to intrusive discovery. *Ibid*. They also regularly and consistently communicated with Class Counsel throughout the time this matter was pending. *Ibid*. They also reviewed relevant documents, provided their input, and otherwise kept apprised of litigation related events and developments. *Ibid*. They also provided their ideas and input to Class Counsel in the various rounds of settlement negotiations and exchanges. *Ibid*. In sum, they contributed as much of their valuable time as this matter demanded to ensure a vigilant

prosecution of and favorable outcome for the best interests of the class. *Ibid.* In addition to satisfying the first *Staton* factor, these facts further support an incentive award because they "recognize [a class representatives] willingness to act as a private attorney general." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9<sup>th</sup> Cir. 2009).

Many of the facts supporting the first factor also support the second *Staton* factor in so far as that the class has benefited from the Class Representatives' actions. It is fair to say that but for the Class Representatives' actions, there would be no resulting benefit to individual Settlement Class members or *cy pres* benefits. Yedalian Affidavit ¶ 39. Moreover, it is as a result of their diligence that Bargain Hunt ceased its conduct of printing prohibited information and will implement appropriate steps, practices, as well as a written company policy to ensure that all Bargain Hunt stores will remain in compliance with FACTA in the future. *Ibid.* Thus, the Class Representatives effectuated substantial change of conduct, thereby accomplishing the "deterrent" objectives of FACTA. They were also willing and stepped forward to act as a private attorney general where, to Class Counsels' knowledge, no other plaintiff has done so. *Ibid.*

The fact that the Court has already made a preliminary finding that the settlement is fair, adequate and reasonable, also supports the significance of the benefits achieved through the Class Representatives' initiative and perseverance. Yedalian Affidavit ¶ 40.

Third, it is estimated that each of the Class Representatives devoted more than 15 hours of their time to pursue this matter. Yedalian Affidavit ¶ 41. By definition, the time they devoted to this matter was time spent away from work and/or leisure in an effort to advance the interests of the entire class.

Although the fourth *Staton* factor (fear of workplace retaliation) is not applicable to this type of matter, a similar concern, the Class Representatives stepping forward and thereby taking on the risks of being subjected to intrusive discovery and defense costs in the event litigation was unsuccessful, are factors discussed in connection with the first factor, above.

Another factor properly considered by the Court in assessing an incentive award is the personal benefit, or lack thereof, enjoyed by the class representative as a result of the litigation. *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. January 17, 2014):

"An incentive award may be appropriate when a class representative will not gain any benefit beyond that he would receive as an ordinary class member. See *Razilov*, 2006 WL 3312024, at \*4 (approving the payment of an incentive award where the only benefit a class representative was going to receive from a settlement was the same statutory damages other class members would receive); *Van Vranken*, 901 F.Supp. at 299 (where a class representative's claim made up 'only a tiny fraction of the common fund,' a substantial incentive award was appropriate). The named plaintiffs in this action will receive no relief beyond that available to members of the class in general; absent an incentive award, they will each be eligible to submit a claim for a \$5, \$15, or \$30 voucher. This factor, therefore, also favors approval of an incentive award." *Ibid*.

The amount requested is also reasonable in relation to other cases. In *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001), the court approved incentive awards of \$300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process and taking the risk of stepping forward on behalf of the class. In *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 300 (N.D. Cal. 1995), a \$50,000 incentive award was approved for similar participation.

The amount requested is also similar to incentive awards in various other FACTA cases. Yedalian Affidavit ¶ 44. For example, in *McGee, et al. v. Ross Stores, Inc, et al.*, C06-7496

CRB (N.D. Cal. January 9, 2009), the court awarded each of the two class representatives a \$5,000 incentive payment. In *Tchoboian v. Parking Concepts, Inc., et al.*, SACV09-422 DMG (ANx) (C.D. Cal. November 12, 2010) the court awarded the class representative a \$5,000 incentive payment. In *Jarchaffian v. American Multi-Cinema, Inc., et al.*, CV09-03434 JHN (AJWx), 2011 U.S. Dist. LEXIS 158005 \*6 (C.D. Cal. October 6, 2011), the court awarded the class representative a \$5,000 incentive payment. In *Sakamoto v. One Parking, Inc. et al.*, SACV11-1249 MLG (C.D. Cal. June 21, 2012) the court awarded the class representative a \$5,000 incentive payment. In *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. January 17, 2014), the court awarded each of the three class representatives a \$5,000 incentive payment.

In sum, the requested incentive award of \$5,000 to each of the Class Representatives for the valuable time and resources they contributed to advance this matter is fair and reasonable, and it is respectfully requested that the Court approve and award this amount as the incentive award for each of them. Yedalian Affidavit ¶ 45.

## **V. CONCLUSION**

For all of the foregoing reasons, it is respectfully requested that the Court grant the Unopposed Motion For Award Of Attorneys' Fees And Costs To Class Counsel And Incentive Payment To The Class Representatives.

Respectfully submitted this 19<sup>th</sup> day of January, 2021.



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*Counsel for Plaintiffs Brian Nowe and Mary Allen  
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Similarly Situated*

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the agreement by the parties to accept service of the within and foregoing document by email, I have this day caused a copy of the within and foregoing **PLAINTIFFS' UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL AND INCENTIVE PAYMENT TO THE CLASS REPRESENTATIVES AND SUPPORTING BRIEF** to be served by email, addressed to the following attorneys of record for Defendant:

Kevin B. Huff, Esq.  
Email: khuff@kellogghansen.com  
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This 19<sup>th</sup> day of January, 2021.



Shaun Patrick O'Hara

# Exhibit A

## SETTLEMENT AGREEMENT

This Agreement is entered into by and between: (1) the proposed Settlement Class Representatives, for themselves and on behalf of the Settlement Class; and (2) Defendant. (All capitalized terms used herein are as defined in Section 2.)

### 1. RECITALS

**1.1** The Settlement Class Representatives believe that the Settled Claims have merit. However, the Settlement Class Representatives and Settlement Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the claims through trial, appeals, and ancillary actions. They also have taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in such litigation. They believe that the settlement set forth in this Agreement confers substantial benefits upon the Settlement Class. Based upon their evaluation, they have determined that the settlement set forth in this Agreement is in the best interest of the Settlement Class.

**1.2** Defendant has denied and continues to deny all liability with respect to any and all of the Settled Claims or the facts alleged in support thereof and has denied and continues to deny all charges of wrongdoing or liability against it arising out of or relating to any conduct, acts, or omissions alleged or that could have been alleged in the Action. Defendant's willingness to resolve the Settled Claims on the terms and conditions embodied in this Agreement is based on, among other things: (1) the time and expense associated with litigating the Settled Claims through trials and any appeals; (2) the benefits of resolving the Settled Claims, including limiting further expense, inconvenience, and distraction, disposing of burdensome litigation, and permitting Defendant to conduct its business unhampered by the distractions of continued litigation; and (3) the uncertainty and risks inherent in any litigation.

**1.3** This Agreement is the product of extensive, arm's-length, and vigorously-contested settlement discussions. Before and during these settlement discussions, the Parties had an arm's-length exchange of sufficient information to permit the Settlement Class Representatives and Settlement Class Counsel to evaluate the claims and potential defenses and to meaningfully conduct informed settlement discussions.



1           **1.4**     Based upon the discovery and investigation to date and an evaluation of the facts  
2 and law relating to the matters alleged in the pleadings, the Settlement Class Representatives and  
3 Settlement Class Counsel have agreed to settle, subject to court approval, the claims asserted in  
4 the Action pursuant to the provisions of this Agreement. In so doing, the Settlement Class  
5 Representatives and Settlement Class Counsel have considered the terms of this Agreement, the  
6 numerous risks of continued litigation and other factors, including but not limited to the following:  
7 (1) the expense and length of time necessary to prosecute the Action through trial; (2) the  
8 uncertainty of the outcome at trial and the possibility of an appeal by either side following the  
9 trial; (3) the possibility that a contested class might not be certified, and, if certified, the possibility  
10 that such certification would be reversed on appeal; (4) the fact that Defendant might prevail on  
11 some or all of the claims in the Action; and (5) the benefits being made available to the Settlement  
12 Class members under the terms of this Agreement.

13           **1.5**     **NOW THEREFORE**, subject to Court approval, as hereinafter provided, it is  
14 hereby stipulated and agreed by the Parties that, in consideration of the promises and covenants set  
15 forth in this Agreement, this Action shall be settled and compromised upon the terms and  
16 conditions contained herein.

17       **2.     DEFINITIONS**

18           The definitions contained herein shall apply only to this Agreement and shall not apply to  
19 any other agreement, including, without limitation, any other settlement agreement, nor shall they  
20 be used as evidence, except with respect to this Agreement, of the meaning of any term.  
21 Furthermore, each defined term stated in a singular form shall include the plural form, and each  
22 defined term stated in a plural form shall include the singular form. As used in this Agreement, in  
23 addition to any definitions elsewhere in this Agreement, the following terms shall have the  
24 meanings set forth below:

25           **2.1**     **“Action”** means and refers to the proposed class action lawsuit filed by Brian  
26 Nowe and Mary Allen Wilson Tondee against Essex Technology Group, LLC (dba Bargain Hunt)  
27 in Muscogee County State Court.

28           **2.2**     **“Agreement”** means and refers to this settlement agreement.

1           **2.3 “Claim Form”** means and refers to the claim form substantially in the form of  
2 Exhibit 1 hereto and approved by the Court.

3           **2.4 “Claims Period”** means and refers to the 90-day time period during which  
4 Settlement Class members may submit a completed Claim Form, which period shall be for 90  
5 consecutive days and conclude not more than 30 days after the final approval hearing. If the  
6 Claims Period ends on a weekend or holiday, the Claims Period shall extend to the next business  
7 day. The Claims Period shall be set forth in the Preliminary Approval Order.

8           **2.5 “Court”** means and refers to the Muscogee County State Court.

9           **2.6 “Defendant”** means and refers to Essex Technology Group, LLC (dba Bargain  
10 Hunt).

11           **2.7 “Email Notice”** means and refers to the email notice substantially in the form of  
12 Exhibit 2 hereto and approved by the Court.

13           **2.8 “Final Approval Order”** means and refers to the Court’s judgment and order(s)  
14 granting final approval of the settlement and awarding attorneys’ fees and costs/expenses. A  
15 proposed Final Approval Order is attached as Exhibit 5 hereto.

16           **2.9 “Final Effective Date”** means and refers to the latest of the following: (1) the date  
17 of final affirmance of the Final Approval Order following any and all appeals of such Order;  
18 (2) the date of final dismissal with prejudice of any and all appeals from the Final Approval Order;  
19 and (3) if no appeal is filed, the expiration date of the time for filing or noticing any valid appeal  
20 from the Final Approval Order.

21           **2.10 “Long Form Notice”** means and refers to the full notice substantially in the form  
22 of Exhibit 3 hereto and approved by the Court.

23           **2.11 “Mail Notice”** means and refers to the postcard notice approved by the Court.

24           **2.12 “Net Settlement Proceeds”** means and refers to the maximum settlement amount  
25 (\$2,000,000) less the following amounts: (1) the awarded Settlement Class Counsel attorneys’  
26 fees and costs/expenses; (2) the awarded Settlement Class Representatives’ incentive payments;  
27 and (3) the Settlement Administrator costs.

28           **2.13 “Notice Program”** means and refers to the notice procedures set forth in Section 6.

1           **2.14 “Opt Out Period”** means and refers to the 45-day period of time during which  
2 Settlement Class members may exercise the right to opt out of the Settlement Class pursuant to the  
3 provisions of Section 7. The Opt Out Period shall be set forth in the Preliminary Approval Order.

4           **2.15 “Participating Claimants”** means and refers to members of the Settlement Class  
5 who submit complete Claim Forms during the Claims Period and who are eligible for benefits  
6 under this Agreement.

7           **2.16 “Parties”** means and refers to Defendant and the Settlement Class.

8           **2.17 “Person”** means and refers to any individual, proprietorship, corporation,  
9 partnership, association, trustee, unincorporated association, or any other type of legal entity.

10           **2.18 “Preliminary Approval Order”** means and refers to the Court’s order granting  
11 preliminary approval of this Agreement following the motion referenced in Section 5.1. A  
12 proposed Preliminary Approval Order is attached as Exhibit 4 hereto.

13           **2.19 “Releasing Parties”** means and refers to the Settlement Class and its members,  
14 and any other Persons or entities claiming by or through the Settlement Class, including agents,  
15 attorneys, partners, joint venturers, affiliates, predecessors, successors, spouses, heirs, assigns,  
16 insurers, in their capacities as such.

17           **2.20 “Released Parties”** means and refers to Defendant and all other Persons.

18           **2.21 “Settlement Administrator(s)”** means and refers to the administrator approved by  
19 the Parties and the Court to implement the Notice Program and administer the settlement.

20           **2.22 “Settled Claims”** means and refers to any claim, liability, right, demand, suit,  
21 matter, obligation, lien, damage, punitive damage, exemplary damage, penalty, loss, cost, expense,  
22 debt, action, or cause of action, of every kind and/or nature whatsoever whether now known or  
23 unknown, suspected or unsuspected, asserted or unasserted, latent or patent, which any Releasing  
24 Party now has, or at any time ever had, regardless of legal theory or type or amount of relief or  
25 damages claimed, which: (1) in any way arises out of or is based on a Bargain Hunt store printing  
26 more than the last 5 digits of a credit card or debit card number upon any receipt provided to the  
27 cardholder at the point of sale or transaction between August 1, 2016 and June 30, 2017 and/or (2)  
28 is asserted in and based on the factual allegations in the Complaint filed in this Action.

1           **2.23 “Settlement Class”** means and refers to all consumers who, at any time between  
2 August 1, 2016 and June 30, 2017, were provided an electronically-printed receipt with more than  
3 the last 5 digits of a credit card or debit card number at the point of a sale or transaction at any  
4 Bargain Hunt store. Excluded from the Settlement Class are: (1) all Persons who properly and  
5 timely opt out pursuant to this Agreement; and (2) the judge to whom this Action is assigned and  
6 any member of his or her immediate family.

7           **2.24 “Settlement Class Counsel”** means and refers to Charles Austin Gower, Jr. and  
8 Shaun Patrick O’Hara of Charles A. Gower PC, Chant Yedalian of Chant & Company A  
9 Professional Law Corporation, and William Dixon James of Wm. Dixon James, P.C.

10           **2.25 “Settlement Class Representatives”** mean and refer to Brian Nowe and Mary  
11 Allen Wilson Tondee.

12           **2.26 “Settlement Fund”** means and refers to the proceeds that are provided to the  
13 Settlement Administrator to pay for the monetary obligations under this Agreement.

14           **2.27 “Settlement Orders”** mean and refer to the orders entered to implement the terms  
15 of this Agreement, including, but not limited to, the Preliminary Approval Order and the Final  
16 Approval Order.

17 **3. SETTLEMENT PURPOSES ONLY**

18           **3.1 General.** This Agreement is for settlement purposes only.

19           **3.2 No Admissions.** This Agreement, any negotiations, proceedings, documents, or  
20 anything else related to this Agreement, its implementation, or its judicial approval (as well as the  
21 fact of this settlement and any acts or documents related to the settlement or its implementation)  
22 shall not be construed as, or deemed to be evidence of, any admission or concession by any of the  
23 Parties regarding the claims in dispute. By entering into this Agreement, it is understood that the  
24 Released Persons do not admit and expressly deny that they have breached any duty, obligation, or  
25 agreement; deny that they have engaged in any illegal, tortious, or wrongful activity; deny that  
26 they are liable to any member of the Settlement Class or any other Person; and/or deny that any  
27 damages have been sustained by any member of the Settlement Class or by any other Person in  
28 any way arising out of or relating to Defendant’s conduct. Except as provided in this Agreement,

1 this Agreement, any negotiations, proceedings, documents, or anything else related to this  
2 Agreement, its implementation, or its judicial approval (as well as the fact of this settlement and  
3 any acts or documents related to the settlement or its implementation) shall not be construed as, or  
4 deemed to be evidence of, any admission or concession by any of the parties or any other Person  
5 regarding any matter, including, without limitation, the absence or presence of liability, the  
6 absence or presence of damage, or the propriety or impropriety of class treatment.

7 **3.3 Permissible Uses Of Settlement Agreement/Fact Of Settlement.** This  
8 Agreement, any negotiations, proceedings, or documents related to the Agreement, its  
9 implementation, or its judicial approval (as well as the fact of this Agreement and any acts or  
10 documents related to the Agreement or its implementation) cannot be asserted or used by any  
11 Person to support a contention that class certification is proper or improper or that liability does or  
12 does not exist, or for any other reason, in the Action or in any other proceedings; provided,  
13 however, that Settlement Class members, Settlement Class Counsel, Defendant, other Released  
14 Persons, and any Person who is the beneficiary of a release set forth herein, may reference and file  
15 this Agreement, and any resulting Order or Judgment, with the Court, or any other tribunal or  
16 proceeding, in connection with the implementation or enforcement of its terms (including but not  
17 limited to the releases granted therein, or any dispute related thereto).

#### 18 **4. JURISDICTION**

19 **4.1 Continuing Jurisdiction.** The Parties agree that the Court has, and shall continue  
20 to have, jurisdiction to make any orders as may be appropriate to effectuate, consummate, and  
21 enforce the terms of this Agreement, to approve awards of attorneys' fees and costs pursuant  
22 hereto, and to supervise the administration of this Agreement. Except for those matters  
23 specifically identified in this Agreement as being subjects for decision by the Settlement  
24 Administrator, and any other claims-related matters which Settlement Class Counsel and  
25 Defendant later agree in writing to refer to the Settlement Administrator, any dispute or question  
26 relating to or concerning the interpretation, enforcement, or application of this Agreement shall be  
27 presented to the Court for resolution.

1     **5. COURT APPROVAL OF SETTLEMENT**

2             **5.1 Preliminary Approval.** Promptly after the execution of this Agreement,  
3 Settlement Class Counsel shall move the Court for an order granting preliminary approval of this  
4 Agreement and approval of the Notice Program. In connection therewith, Settlement Class  
5 Counsel shall submit to the Court a mutually-acceptable proposed Preliminary Approval Order.

6             **5.2 Objection Period.** Subject to Court approval, Settlement Class members shall  
7 have 45 days following the commencement of the Notice Program to submit objections to this  
8 Agreement. Any Settlement Class member, on his or her own, or through an attorney hired at his  
9 or her own expense, may object to the terms of the settlement. To be effective, any such objection  
10 must be in writing, mailed to the Settlement Administrator with a timely postmark, and include:  
11 (1) a reference at the beginning to this matter, *Nowe, et al. v. Essex Technology Group, LLC*; (2)  
12 the objector's full name, address, and telephone number, and, if available, email address; (3) proof  
13 of Settlement Class membership consisting of the original or a copy of either (i) a customer receipt  
14 containing more than the last 5 digits of his or her credit or debit card showing that he or she made  
15 a transaction at a Bargain Hunt store between August 1, 2016 and June 30, 2017, or (ii) a credit or  
16 debit card statement showing that he or she made a transaction at a Bargain Hunt store between  
17 August 1, 2016 and June 30, 2017; (4) a written statement of all grounds for the objection,  
18 accompanied by any legal support for such objection; (5) copies of any papers, briefs, or other  
19 documents upon which the objection is based; (6) a list of all persons who will be called to testify  
20 in support of the objection; (7) a statement of whether the objector intends to appear at the fairness  
21 hearing; if the objector intends to appear at the fairness hearing through counsel, the objection  
22 must also state the identity of all attorneys representing the objector who will appear at the fairness  
23 hearing; (8) regarding any counsel who represents the objector or has a financial interest in the  
24 objection: (i) a list of cases in which the objector's counsel and/or counsel's law firm have  
25 objected to a class action settlement within the preceding five years, and (ii) a copy of any orders  
26 concerning a ruling upon counsel's or the firm's prior objections that were issued by the trial  
27 and/or appellate courts in each listed case; (9) a statement by the objector under oath that: (i) he or  
28 she has read the objection in its entirety, (ii) he or she is a member of the Settlement Class, (iii)

states the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector submitted the objection, (iv) identifies the caption of each case in which the objector has made such objection, and (v) authenticates any orders concerning a ruling upon the objector's prior such objections that were issued by the trial and/or appellate courts in each listed case, attaching such orders to the statement. Any Settlement Class member who fails to timely submit a written objection containing all of the information listed in the items (1) through (9) of this paragraph, including notice of his/her intent to appear at the Final Approval Hearing, shall not be permitted to object to the settlement and shall be foreclosed from seeking any review of the settlement or the terms of the Agreement by any means, including, but not limited to, an appeal. Any Settlement Class member who submits a timely written objection shall consent to deposition at the request of Settlement Class Counsel or Defendant's counsel, to occur at least 5 days prior to the Final Approval Hearing.

**5.3 Opt Out Period.** Subject to Court approval, Settlement Class members shall have 45 days following the commencement of the Notice Program to opt out of the Settlement Class and this Agreement. If a Settlement Class member submits both a Claim Form and an opt-out request, the Claim Form shall take precedence and shall be considered valid and binding, and the opt-out request shall be deemed to have been sent by mistake and rejected. So-called "mass" or "class" opt-outs shall not be allowed. The Class Representatives affirmatively support this settlement and agree not to opt-out of this Settlement. None of Settlement Class Counsel, Settlement Class Representatives, or Defendant shall in any way encourage any Settlement Class member to opt-out or discourage any Settlement Class member from participating in this Settlement.

**5.4 Final Approval.** After the expiration of the Opt Out Period, if the Agreement has not been terminated in accordance with Section 8, Settlement Class Counsel shall move the Court for final approval of this Agreement. In connection therewith, Settlement Class Counsel shall submit to the Court a mutually-acceptable proposed Final Approval Order.

**5.5 Intervening Changes.** The Parties agree that this Agreement is fair, adequate, and reasonable based on the status of the law as of the date of execution and that they will support

1 approval. The Parties agree that the validity, fairness, and enforceability this Agreement shall not  
2 be affected by any future change, modification, reversal, or clarification of the law or by any  
3 ruling in any other matter (including, but not limited to, any decision by the United States Court of  
4 Appeals for the Eleventh Circuit in *Muransky v. Godiva Chocolatier, Inc.*, No. 16-16486 (11th  
5 Cir.)), nor shall any such change, modification, reversal, clarification, or ruling provide either of  
6 the Parties with grounds to terminate this settlement or to oppose preliminary or final approval of  
7 the Settlement.

## 8 **6. CLASS NOTICE PROCEDURES**

9 **6.1 Long Form Notice.** The Long Form Notice shall: (1) inform the Settlement Class  
10 members that, if they do not opt out from the settlement, they may be eligible to receive a  
11 monetary benefit; (2) contain a short, plain statement of the background of this Action, the  
12 proposed settlement, and the certification of the Settlement Class for settlement purposes; (3)  
13 describe the proposed settlement relief outlined in this Agreement; (4) state that the proposed  
14 settlement benefits are contingent on the Court's entry of the Final Approval Order; (5) inform  
15 Settlement Class members that they may opt out or exclude themselves from the Settlement Class  
16 by submitting a written exclusion request no later than 45 days after the commencement of the  
17 Notice Program; (6) inform Settlement Class members that, if they do not opt out, they may, if  
18 they desire, object to the proposed settlement by filing and serving a written statement of  
19 objections no later than 45 days after the commencement of the Notice Program; (7) inform  
20 Settlement Class members that they may appear at the Final Approval Hearing; (8) inform  
21 Settlement Class members that any judgment entered in this Action, whether favorable or  
22 unfavorable to the Settlement Class, will be binding on all Settlement Class members who have  
23 not excluded themselves from the Settlement Class, even if they have objected to the proposed  
24 settlement and even if they have any other claim, lawsuit, or proceeding pending against any of the  
25 Released Parties; and (9) explain that Settlement Class members who have not timely submitted a  
26 written opt out request may submit a Claim Form seeking a monetary benefit during the Claims  
27 Period.



1           **6.2     Email And Postcard Notice.** Within 20 days after the entry of the Preliminary  
2 Approval Order, Defendant shall submit to the Settlement Administrator the name, email address,  
3 and mailing address of each known potential Settlement Class member. Within 10 days after  
4 receipt of this information, the Settlement Administrator and/or its designee shall run a national  
5 change of address update on the mailing addresses. The Settlement Administrator shall then send  
6 the Email Notice to each known potential Settlement Class member with an available email  
7 address. The Settlement Administrator shall send the Mail Notice to potential Settlement Class  
8 members whose Email address is unavailable or whose Email Notice is returned as undeliverable,  
9 but only if the Settlement Administrator is able to locate a current postal address for any such  
10 potential Settlement Class members.

11           **6.3     Publication Notice.** As close as reasonably practicable to the initiation of the  
12 Email Notice, the Settlement Administrator or its designee shall commence publishing a summary  
13 notice approved by the Court in one or more newspapers approved by the Court.

14           **6.4     Internet Notice.** As close as reasonably practicable to the initiation of the Email  
15 Notice, the Settlement Administrator will implement a digital notice campaign that is designed by  
16 the Settlement Administrator and approved by the Court.

17           **6.5     Settlement Website.** Prior to the commencement of the Email, Postcard,  
18 publication, and Internet Notice, the Settlement Administrator shall establish a settlement website  
19 capable of providing generalized information, including this Agreement, applicable deadlines, the  
20 identity of Settlement Class Counsel, the Long Form Notice, the Preliminary Approval Order,  
21 FAQs, and the Claim Form. The website shall be maintained by the Settlement Administrator  
22 until 60 days after the distribution of the monetary benefits to Participating Claimants.

23           **6.6     Settlement Hotline.** The Settlement Administrator shall maintain a call center  
24 with a voice recorded interactive voice response system providing straightforward and user-  
25 friendly answers to frequently asked questions about class action settlements generally and  
26 information about the Action, the settlement, and relevant documents. The hotline shall be  
27 maintained by the Settlement Administrator until 60 days after the distribution of the monetary  
28 benefits to Participating Claimants.

1           **6.7 Costs Of The Notice Program.** The cost of the Notice Program shall be paid from  
2 the settlement proceeds.

3           **6.8 Records Of The Notice Program.** The Settlement Administrator shall keep  
4 records of all notices and the costs thereof.

5       **7. RIGHT OF EXCLUSION**

6           **7.1 Procedure.** Settlement Class members may opt out of the Settlement Class at any  
7 time during the Opt Out Period. To exercise the opt out right set forth in this Section, a Settlement  
8 Class member must send to the Settlement Administrator a written request for exclusion, which  
9 request should contain the Settlement Class member's name, address, and telephone number.  
10 Such request for exclusion must be postmarked before the end of the Opt Out Period. All  
11 Settlement Class members who do not opt out in accordance with this Agreement during the Opt  
12 Out Period will be deemed Settlement Class members for all purposes under this Agreement. Any  
13 Person who timely opts out shall no longer be a Settlement Class member, is not entitled to object  
14 to the approval of this Agreement, and is not entitled to any relief under and is not affected by this  
15 Agreement.

16           **7.2 Withdrawal Of Election To Opt Out.** Prior to the entry of the Final Approval  
17 Order, any Person who has elected to opt out may withdraw that election by notifying the  
18 Settlement Administrator in writing that he/she/it wants to be a member of the Settlement Class.  
19 The Settlement Administrator shall maintain records of all withdrawn opt outs, and shall provide  
20 such information to the Parties and to the Court. At any time after the entry of the Final Approval  
21 Order, any Person who has elected to opt out of this Agreement may withdraw that election only  
22 upon receiving the written consent of Defendant and Court approval.

23       **8. SETTLEMENT TERMINATION**

24           **8.1 Prior To The Final Effective Date.** If any court does not approve and/or does not  
25 honor this Agreement and/or denies the Parties' motion to enter any or all of the Settlement Orders  
26 in a form that limits the release or increases the cost of the Settlement to Defendant, Settlement  
27 Class Counsel and/or Defendant shall have the right to terminate this Agreement as set forth in  
28 Section 8.4.

1           **8.2 Termination After Opt Out Period.** If the number of Persons who opt out of this  
2 Agreement is more than 3% of the total number of covered credit card and debit card transactions,  
3 Defendant shall have the right to terminate this Agreement as set forth in Section 8.4.

4           **8.3 Termination After Appeal.** If a court declares unenforceable, reverses, vacates,  
5 or modifies on appeal in a material way any aspect of this Agreement (other than the amount of  
6 Settlement Class Counsel attorneys' fees and/or costs/expenses or Settlement Class  
7 Representatives' incentive payments) Settlement Class Counsel and/or Defendant may terminate  
8 this Agreement as set forth in Section 8.4.

9           **8.4 Termination Procedure And Effect.** Any Party who seeks to terminate this  
10 Agreement pursuant to Sections 8.1, 8.2, or 8.3 shall give written notice of such intention to the  
11 other Party's counsel and to the Settlement Administrator. Notice of intent to terminate pursuant  
12 to Sections 8.1 or 8.3 must be given prior to the Final Effective Date. Notice of intent to terminate  
13 pursuant to Section 8.2 must be given within 60 days after the expiration of the Opt Out Period, or  
14 prior to the Final Approval hearing, whichever is earlier. Within 30 days after notice of an intent  
15 to terminate, the Parties' counsel shall confer in good faith to try to resolve the potential basis for  
16 termination. In the event that the good faith efforts are unsuccessful, the Party who received the  
17 notice of intent to terminate may provide written notice to the other Party within 45 days after  
18 receipt of such notice that it disputes whether there is a proper basis for termination. In the event  
19 that a written dispute is served, the Parties hereby agree that the Honorable Peter D. Lichtman  
20 (Ret.) shall mediate the dispute and, if necessary, shall resolve the dispute and issue a final,  
21 binding, and non-appealable decision as to whether any Party is entitled to terminate this  
22 Agreement. In the event that Judge Lichtman is unavailable, and the Parties are unable to agree on  
23 a substitute, a substitute neutral shall be selected using the then-applicable JAMS process for  
24 selecting a neutral. The neutral's fees shall be paid from the Settlement Fund. Settlement Class  
25 Counsel and Defendant may agree in writing to extend any of the foregoing deadlines. The  
26 termination of this Agreement for any of the foregoing reasons shall void all of the rights,  
27 obligations, and releases under this Agreement, except for Sections 3.1, 3.2, 3.3, and those  
28 provisions of this Agreement that are necessary to effectuate the termination. Within 30 days after

1 termination, the Settlement Administrator shall return any and all unexpended settlement  
2 payments made pursuant to this Agreement.

3 **9. SETTLEMENT FUNDING AND DISTRIBUTION**

4 **9.1 Funding For Initial Costs Of Notice And Administration Upon Preliminary**  
5 **Approval.** Within 20 calendar days after the entry of the Preliminary Approval Order, Defendant  
6 shall wire to the Settlement Administrator funds that are sufficient to cover the initial notice and  
7 administration expenses that are likely to be incurred. This deadline may be extended by mutual  
8 consent of the Parties.

9 **9.2 Funding For Payment Of Attorneys' Fees, Costs/Expenses, And Incentive**  
10 **Award.** Defendant shall wire to the Settlement Administrator the sums necessary to timely make  
11 the payments of attorneys' fees, costs/expenses, and incentive awards in accordance with Section  
12 12. The deadlines may be extended by mutual consent of the Parties.

13 **9.3 Funding For Distribution Of Class Benefits And Additional Administration**  
14 **Costs.** Within 20 days after the resolution of any objections pursuant to Section 10.11 Defendant  
15 shall wire to the Settlement Administrator the sum necessary to pay the class benefits pursuant to  
16 Section 10.12. Within 30 days after the receipt of an invoice from the Settlement Administrator  
17 for additional administration costs, Defendant shall wire to the Settlement Administrator the sum  
18 necessary to pay such invoice.

19 **9.4 Interest On The Settlement Fund.** All interest generated by the monies in the  
20 Settlement Fund shall be deemed and credited as a payment by Defendant.

21 **9.5 Maximum Funding.** The maximum funding obligation under this Agreement is  
22 \$2,000,000, and all payments made pursuant to this Agreement shall be deemed and credited as a  
23 payment by Defendant toward this maximum amount.

24 **9.6 Cy Pres.** In the event the total monetary benefits awarded to Participating  
25 Claimants is less than \$200,000, the remainder (less any amount of Settlement Administrator costs  
26 in excess of \$185,000) shall be distributed to one or more non-profit organizations approved by  
27 the Court. In the event that the total amount of the Settlement Administrator costs are less than  
28 \$185,000, the remainder shall be added to the \$200,000 floor referenced in this paragraph. For

illustration purposes, if \$180,000 is awarded to Participating Claimants and the total Settlement Administrator costs are \$190,000, then \$15,000 (i.e., \$20,000 remainder less \$5,000 excess) shall be distributed. If \$190,000 is awarded to Participating Claimants and the total Settlement Administrator costs are \$180,000, then \$15,000 shall be distributed.

## **10. MONETARY BENEFITS**

**10.1 Settlement Administrator.** Subject to Court approval, Heffler Claims Group shall be the Settlement Administrator. The Settlement Administrator shall have the sole authority to administer the settlement. The Settlement Administrator shall carry out its duties in strict accordance with the procedures set forth in this Agreement, and any Party may move the Court to compel such compliance.

**10.2 Maintenance Of Records.** The Settlement Administrator shall maintain complete, accurate, and detailed records regarding the administration of the Settlement Fund.

**10.3 Settlement Fund Costs.** All reasonable and necessary costs of administering the settlement shall be paid out of the Settlement Fund.

**10.4 Submission Of Claims.** At any time prior to the expiration of the Claims Period, members of the Settlement Class may submit a Claim Form to the Settlement Administrator by mail or online pursuant to the directions on the Claim Form.

**10.5 Collection Of Claims.** The Settlement Administrator shall collect and log the Claim Forms postmarked before expiration of the Claims Period.

**10.6 Evaluation Of Claims.** Within 20 days after the Final Effective Date, the Settlement Administrator shall determine whether each collected Claim Form submitted during the Claims Period is properly completed. If a Claim Form is not complete, the Settlement Administrator shall provide a written notice to the claimant. The Settlement 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.

**10.7** Any submission in response to a request from the Settlement Administrator shall be submitted within 30 calendar days of the date of the notice from the Settlement Administrator. To

1 avoid unreasonable delays for those who submit fully complete and valid Claim Forms with the  
2 required proof of eligibility, the Settlement Administrator shall deny any claims that are not fully  
3 cured during this 30-day period.

4 **10.8 Determination Of Benefits For Claims.** Promptly after the completion of the  
5 evaluation described in Section 10.6 (including evaluation of attempts to cure deficiencies), the  
6 Settlement Administrator shall determine the proposed monetary benefits as follows:

7 **10.8.1** A single benefit of \$100 (unless that amount is reduced pursuant to Section  
8 10.8.4) will be awarded to each Settlement Class member who submits a timely and complete  
9 Claim Form and either: (1) the original or copy of a qualifying receipt for a purchase from  
10 Bargain Hunt between August 1, 2016 and June 30, 2017 that shows more than the last 5 digits of  
11 his or her credit card or debit card; or (2) the original or copy of a credit card or debit card  
12 statement that shows the Participating Claimant's first and last name and a purchase from Bargain  
13 Hunt between August 1, 2016, and June 30, 2017.

14 **10.8.2** The maximum monetary benefit per Person is \$100, regardless of the  
15 number of Claim Forms submitted and regardless of the number of transactions during the class  
16 period.

17 **10.8.3** To prevent the payment of fraudulent claims and to pay only valid claims,  
18 the Settlement Administrator will use adequate and customary procedures and standards,  
19 including, without limitation: (1) tracking claim forms with unique security identifiers or control  
20 numbers issued to persons who seek to file a Claim Form; (2) screening that each Claim Form has  
21 a valid security code or control number; (3) screening for duplicate claims or Settlement Class  
22 members seeking more than one cash payment; (4) ensuring that each Settlement Class member  
23 has provided complete, truthful, and accurate information on the initial submission of the Claim  
24 Form; and (5) reviewing claims for evidence of fraud. Claim Forms must not be submitted en  
25 masse, by a third-party or with the Claim Forms of any other Settlement Class Member or other  
26 natural person or entity. The Settlement Administrator and the Parties shall have the right to audit  
27 claims and the Settlement Administrator may request additional information from claimants,  
28 including by cross-examination, necessary to validate claims and/or reject a Claim Form where—

1 in the Settlement Administrator's sole discretion and judgment—there is evidence or suspicion of  
2 fraud. If any fraud is detected or reasonably suspected, the Settlement Administrator and the  
3 Parties can require information from the Settlement Class Members (including by cross-  
4 examination) or deny claims, subject to the supervision of the Parties and ultimate oversight by the  
5 Court. The Settlement Administrator shall approve or deny all Claims, and its decision shall be  
6 final and binding, except that Plaintiffs' counsel and Defendants shall have the right to audit  
7 claims and to challenge the Settlement Administrator's decision by motion to the Court.  
8 Defendant's choice not to audit the validity of any one or more Claim Forms shall not constitute or  
9 be construed as a waiver or relinquishment of any audit or other rights as to any other Claim Form,  
10 individually or as a group, and similarly shall not be construed as a waiver or relinquishment by  
11 the Party as to any of its audit and other rights under this Agreement.

12 **10.8.4** In the event that the total monetary benefits determined under Section  
13 10.8.1 would exceed the Net Settlement Proceeds, the monetary benefit for each eligible  
14 Participating Claimant shall be reduced pro rata so that the total monetary benefits equals the Net  
15 Settlement Proceeds.

16 **10.8.5** Nothing in this Agreement or claims process creates a claim by any Person  
17 against Settlement Class Counsel, Settlement Class Representatives, Defendant, Defendant's  
18 counsel, the Settlement Administrator, or any other Person based on any determination of benefits,  
19 validity, eligibility, distributions, or awards made in accordance with this Agreement and the  
20 Exhibits hereto, and all relief shall be solely as provided in this Agreement and by its claims  
21 process. Neither Settlement Class Counsel, Settlement Class Representatives, Defendant,  
22 Defendant's counsel, nor any other Person shall have any liability whatsoever for any act or  
23 omission of the Settlement Administrator.

24 **10.9 Notification Of Proposed Benefits.** The Settlement Administrator shall promptly  
25 report its determination of the number of Participating Claimants and the calculation of the  
26 proposed monetary benefits pursuant to Section 10.8 to Settlement Class Counsel and to  
27 Defendant.

1           **10.10 Objections To The Proposed Benefits.** Settlement Class Counsel and Defendant  
2 shall have 15 calendar days from receipt of the report referenced in Section 10.9 to notify the  
3 Settlement Administrator in writing of any errors in the determination and/or calculation of the  
4 proposed benefits.

5           **10.11 Resolutions Of Objections.** If the Settlement Administrator receives timely  
6 objections to any proposed benefit, the Settlement Administrator shall consider the objections and  
7 attempt to resolve the objections between the Parties.

8           **10.12 Distribution Of Monetary Benefits To Participating Claimants.** If no  
9 objections are timely made, or when such objections are resolved, the Participating Claimants  
10 shall receive a check or digital payment from the Settlement Administrator. All benefit checks  
11 shall be subject to a 120-day void period, after which the checks shall no longer be negotiable. If a  
12 benefit check is not negotiated during this time period, the recipient shall not be entitled to any  
13 further payment under this Agreement. If the benefit check is returned as undeliverable, the  
14 Settlement Administrator shall send an email to the claimant, if an email address was provided on  
15 the Claim Form, to attempt to obtain a better address, and, if obtained, shall mail the benefit check  
16 to the new address, but shall have no other obligation to skip-trace or obtain an updated address.  
17 If such claimant did not provide an email address on the Claim Form, the Settlement  
18 Administrator shall perform skip-tracing and re-mail the benefit check to the best new address (in  
19 the Settlement Administrator's discretion) discovered through the skip-tracing process. The return  
20 or failure to cash checks or, for those Settlement Class Members that elected to receive electronic  
21 payment, to provide the information required to issue a payment, shall have no effect on a  
22 Settlement Class member's release of claims, obligations, representations, or warranties as  
23 provided herein, which shall remain in full effect.

24           **10.13 Maintenance Of Records.** The Settlement Administrator shall maintain complete,  
25 accurate, and detailed records regarding the administration of the Settlement Fund, including but  
26 not limited to: all Claim Forms submitted (including receipts and credit card/debit card  
27 statements); any objection to proposed benefits and the resolution thereof; and any and all receipts  
28 by and disbursements from the Settlement Fund. The Settlement Administrator shall make such



1 records available to counsel for the Parties or to their designee upon reasonable request and at  
2 reasonable times; provided, however, that Settlement Class Counsel shall not receive identifying  
3 information for any Settlement Class members (except those who opt out or object), without  
4 written consent of Defendant or an order of the Court.

5 **11. NON-MONETARY BENEFITS**

6 **11.1** Following and as a result of the claims asserted by the Settlement Class  
7 Representatives, all Bargain Hunt stores stopped printing more than the last five digits of the  
8 credit card or debit card number on printed receipts issued to its customers by approximately June  
9 30, 2017.

10 **11.2** Prior to the Final Effective Date, Defendant will implement appropriate steps,  
11 practices, and a written company policy to ensure that all Bargain Hunt stores will remain in  
12 compliance with the Fair and Accurate Credit Transactions Act in the future.

13 **12. ATTORNEYS' FEES AND INCENTIVE PAYMENTS**

14 **12.1 Attorneys' Fees, Costs, and Expenses.** In connection with the motion for final  
15 approval, and prior to the end of the Opt Out Period, Settlement Class Counsel shall submit a  
16 request for approval of an award of attorneys' fees of up to \$666,667 and an award of  
17 costs/expenses of up to \$15,000 in connection with their work on behalf of the Settlement Class.  
18 Settlement Class Counsel agree they will not seek (or accept) attorneys' fees and costs/expenses in  
19 excess of these sums. The Settlement Administrator shall wire to Settlement Class Counsel the  
20 amount awarded for attorneys' fees and costs/expenses (up to the aggregate amount set forth in  
21 this Section) 10 days after the Final Effective Date using the wire instructions provided by  
22 Settlement Class Counsel. Defendant will not oppose the appointment of Settlement Class  
23 Counsel for settlement purposes and will not oppose a request for attorneys' fees and costs that  
24 does not exceed the respective amounts set forth in this paragraph.

25 **12.2 Incentive Payment To Settlement Class Representatives.** In connection with the  
26 motion for final approval, Settlement Class Counsel shall submit a request to the Court seeking  
27 approval for an award of an incentive payment to the Settlement Class Representatives of up to  
28 \$5,000 each. The Settlement Administrator shall send to the Settlement Class Representatives the

1 amount awarded for their respective incentive payment 10 days after the Final Effective Date  
2 using the payment instructions provided by Settlement Class Counsel. Defendant will not oppose  
3 the appointment of Settlement Class Representatives for settlement purposes and will not oppose a  
4 request for incentive payments that does not exceed the amount set forth in this paragraph.

5 **12.3 Miscellaneous.** If the Court denies, in whole or part, the motion for an award of  
6 Settlement Class Counsel attorneys' fees and/or costs/expenses and/or Settlement Class  
7 Representatives' incentive payments, or if any such award is the subject of any appeal, the  
8 remainder of the terms of this Agreement shall remain in effect. In addition, no interest will  
9 accrue on such amounts at any time. Except as provided herein, each Settlement Class member  
10 shall bear his/her/its own attorneys' fees, costs, and expenses incurred in connection with any  
11 claim in the Action.

## 12 **13. RELEASE**

13 **13.1 Class Release.** Except for the obligations and rights created by this Agreement,  
14 the Releasing Parties hereby release and absolutely and forever discharge Defendant and all  
15 Released Parties from any and all Settled Claims. The Final Approval Order shall include this  
16 release.

17 **13.2 Release Of The Settlement Class And Settlement Class Counsel.** Except for the  
18 obligations and rights created by this Agreement, Defendant hereby releases and absolutely and  
19 forever discharges the members of the Settlement Class and Settlement Class Counsel of and from  
20 any and all claims relating to the commencement or prosecution of this Action.

## 21 **14. NOTICES**

22 **14.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to  
23 in writing by the party receiving such communication, all notices, requests, or other required  
24 communications hereunder shall be in writing and shall be sent by email with a request for  
25 acknowledgment of receipt. If the recipient does not acknowledge receipt within two business  
26 days, the communication shall then be sent using one of the following methods: (i) by registered  
27 or certified, first class mail, postage prepaid; or (ii) by personal delivery (including by Federal

Express or other courier service). All such communications shall be sent to the undersigned persons at their respective addresses as set forth herein.

Settlement Class Counsel:

Charles Austin Gower, Jr.  
Shaun Patrick O'Hara  
CHARLES A. GOWER PC  
1425 Wynnton Road  
P.O. Box 5509  
Columbus, GA 31906  
Email: shaun@cagower.com

Chant Yedalian  
CHANT & COMPANY  
A Professional Law Corporation  
1010 N. Central Avenue  
Glendale, CA 91202  
Email: chant@chant.mobi

Defendant:

Kevin B. Huff  
Jeremy S. B. Newman  
KELLOGG, HANSEN, TODD, FIGEL &  
FREDERICK, P.L.L.C.  
Sumner Square  
1615 M Street, N.W., Suite 400  
Washington D.C. 20036  
Email: khuff@kellogghansen.com

Jeffrey L. Richardson  
MITCHELL SILBERBERG & KNUPP LLP  
2049 Century Park East, 18<sup>th</sup> Floor  
Los Angeles, California 90067  
Email: jlr@msk.com

Bargain Hunt  
Attn: David Wachsman  
455 Industrial Blvd, Suite C  
La Vergne, TN 37086  
Email: dwachsman@bargainhunt.com

Notice shall be deemed effective when signed for or when delivery is refused.

**14.2 Changes In Designated Recipients.** Any Party may re-designate the Person to receive notices, requests, demands, or other communications required or permitted by this

Mitchell  
Silberberg &  
Knupp LLP

12222394.1

1 Agreement by providing written notice to the other Party, the Settlement Administrator, and the  
2 Court.

3 **15. MISCELLANEOUS**

4 **15.1 Entire Agreement.** This Agreement supersedes and replaces any and all other  
5 prior agreements and all negotiations leading up to the execution of this Agreement, whether oral  
6 or in writing, between the Parties with respect to the subject matter hereof. The Parties  
7 acknowledge that no representations, inducements, promises, or statements, oral or otherwise,  
8 have been made or relied upon by any of the Parties or by anyone acting on behalf of the Parties  
9 which are not embodied or incorporated by reference herein, and further agree that no other  
10 covenant, representation, inducement, promise, or statement not set forth in writing in this  
11 Agreement shall be valid or binding.

12 **15.2 Modification Or Amendment.** This Agreement may not be modified or amended  
13 except in a writing signed by the Settlement Class Representatives, Settlement Class Counsel and  
14 Defendant, and, if after the entry of the Preliminary Approval Order, the written modification must  
15 also be approved by the Court.

16 **15.3 Execution In Counterparts.** This Agreement may be executed in one or more  
17 counterparts, including by facsimile or PDF, any of which shall be deemed an original.

18 **15.4 Authority Of Counsel.** Settlement Class Counsel is authorized by the members of  
19 the Settlement Class, and by the Court, to take all appropriate action required and permitted to be  
20 taken by the Settlement Class pursuant to this Agreement to effectuate its terms.

21 **15.5 Headings.** The headings of the sections, paragraphs, and subparagraphs of this  
22 Agreement are included for convenience only and shall not be deemed to constitute part of this  
23 Agreement or to affect its construction.

24 **15.6 Liens.** The Released Parties shall have no obligation to pay or otherwise resolve  
25 any liens that are or may be asserted against settlement payments to Settlement Class members  
26 pursuant to the terms of this Agreement.

1           **15.7 Further Acts.** The Parties shall perform such further acts and execute such further  
2 documents as may be reasonably necessary or appropriate to effectuate the terms and purposes of  
3 this Agreement.

4           **15.8 Heirs, Successors, And Assignees.** This Agreement shall be binding upon and  
5 shall inure to the benefit of the Parties' heirs, successors, and assignees.

6           **15.9 Choice Of Law.** This Agreement in all respects shall be interpreted, enforced, and  
7 governed by and under the laws of the State of Georgia applicable to instruments, persons, and  
8 transactions which have legal connections and relationships solely within the State of Georgia.  
9 Any action pertaining to the terms of this Agreement shall be filed in the Muscogee County State  
10 Court.

11           **15.10 Stay Pending Court Approval.** After Settlement Class Counsel file the  
12 Complaint in this Action, Settlement Class Counsel and Defendants' counsel agree to stay all  
13 proceedings in the Action, other than those proceedings necessary to carry out or enforce the terms  
14 and conditions of this settlement, until the Final Effective Date. If, despite the Parties' best  
15 efforts, this Agreement should fail to become effective, the Parties will return to their prior  
16 positions in the Action, in accordance with Section 8.4. Defendant also agrees to use its best  
17 efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor  
18 of any Settlement Class member in, any other proceedings against any of the Released Parties that  
19 challenge the settlement or otherwise assert or involve, directly or indirectly, a Released Claim.

20           **15.11 Warranty Re Advice.** Settlement Class Counsel warrants that the Settlement  
21 Class Representatives have been fully advised of and agree to the terms of this Agreement. The  
22 Parties hereby acknowledge that they have been represented by independent legal counsel  
23 throughout all negotiations which preceded the execution of this Agreement, and that this  
24 Agreement has been executed with the consent and on the advice of said counsel.

25           **15.12 No Tax Advice.** The Parties do not purport to provide legal advice on tax matters  
26 to each other or Settlement Class members, and nothing in this Agreement consists of any tax  
27 advice, nor shall anything in this Agreement be construed as tax advice.

1 AGREED TO AND ACCEPTED.

2 Dated: 6.11.20

By: Brian Nowe  
Brian Nowe  
Settlement Class Representative

5 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mary Allen Wilson Tondee  
Settlement Class Representative

9 Dated: 6/10/2020

ESSEX TECHNOLOGY GROUP, LLC  
By: David Wachsman  
Name: David Wachsman  
Title: CEO

12 APPROVED AS TO FORM

13 Dated: \_\_\_\_\_

CHARLES A. GOWER PC  
By: \_\_\_\_\_  
Charles Austin Gower, Jr.  
Shaun Patrick O'Hara  
Attorneys For Settlement Class

CHANT & COMPANY  
A Professional Law Corporation

By: \_\_\_\_\_  
Chant Yedalian  
Attorneys For Settlement Class

22 Dated: 6/10/2020

MITCHELL SILBERBERG & KNUPP LLP

By: Jeffrey L. Richardson  
Jeffrey L. Richardson  
Attorneys for Defendant  
ESSEX TECHNOLOGY GROUP, LLC

28 Mitchell  
Silberberg &  
Knupp LLP

1 AGREED TO AND ACCEPTED.

2 Dated: \_\_\_\_\_

3 By: \_\_\_\_\_  
4 Brian Nowe  
5 Settlement Class Representative

6 Dated: 6/11/2020

7 By: Mary Allen Wilson Tondee  
8 Mary Allen Wilson Tondee  
9 Settlement Class Representative

10 Dated: 6/10/2020

11 ESSEX TECHNOLOGY GROUP, LLC  
12 By: David Wachsmen  
13 Name: DAVID wachsmen  
14 Title: CEO

15 APPROVED AS TO FORM

16 Dated: 6/11/2020

17 CHARLES A. GOWER PC  
18 By: Sh O'H  
19 Charles Austin Gower, Jr.  
20 Shaun Patrick O'Hara  
21 Attorneys For Settlement Class

22 CHANT & COMPANY  
23 A Professional Law Corporation

24 By: Chant Yedalian  
25 Chant Yedalian  
26 Attorneys For Settlement Class

27 Dated: 6/10/2020

28 MITCHELL SILBERBERG & KNUPP LLP

By: Jeffrey A. Richardson  
Jeffrey A. Richardson  
Attorneys for Defendant  
ESSEX TECHNOLOGY GROUP, LLC

# **EXHIBIT 1**



## CLAIM FORM

### GENERAL INSTRUCTIONS

To make a claim under the settlement, you must complete this form and submit it online or mail it to the address at the bottom of this form. Your Claim Form must be submitted online by 11:59 p.m. Central Time on [claims deadline date] or postmarked by [claims deadline date]. The information will not be disclosed to anyone other than the Court, the Settlement Administrator, and the Parties in this case, and will be used only for purposes of administering this settlement.

You can submit a Claim for a benefit under this settlement if you used your credit card or debit card to make a purchase or other transaction at any Bargain Hunt stores between August 1, 2016 and June 30, 2017 and you were provided an electronically-printed customer receipt with more than the last 5 digits of your credit card or debit card number.

You will need to establish Settlement Class membership, which you can do by either: (1) providing the original or copy of a customer receipt for your purchase from any Bargain Hunt store between August 1, 2016 and June 30, 2017 that shows more than the last 5 digits of your credit card or debit card; **OR** (2) providing the original or copy of a your credit card or debit card statement that shows your first and last name and a purchase from any Bargain Hunt store between August 1, 2016 and June 30, 2017.

**Participating Claimants who seek payment from the settlement must complete and return this Claim Form.** Completed Claim Forms must be mailed to the Settlement Administrator at \_\_\_\_\_ - or can be submitted via the Settlement Website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com). **Claim Forms must be POSTMARKED by [claims deadline date] or SUBMITTED ONLINE NO LATER THAN [claims deadline date] at 11:59 p.m., Central Time.**

If you fail to timely submit a Claim Form, you may be precluded from any recovery from the Settlement. If you are a member of the Settlement Class and you do not timely and validly seek to Opt-Out from the Settlement Class, you will be bound by any judgment entered by the Court approving the Settlement regardless of whether you submit a Claim Form. To receive the most current information, please submit your Claim Form on the Settlement Website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

### Participating Claimant Information

Claimant Name: \_\_\_\_\_  
First Name MI Last Name

Street Address: \_\_\_\_\_

Street Address2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Phone Number: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

Evening Phone Number: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Unique Class Member ID: [If You Did Not Receive an Email with a Unique ID. leave this blank]

### Proof of Settlement Class Membership

Please attach either (1) the original or copy of your customer receipt for a purchase from any Bargain Hunt store between August 1, 2016 and June 30, 2017 that shows more than the last 5 digits of your credit card or debit card; OR (2) the original or copy of your credit card or debit card statement that shows your first and last name and a purchase from any Bargain Hunt store between August 1, 2016 and June 30, 2017.

By signing below, you are submitting to the jurisdiction of the Muscogee County State Court, State of Georgia.

### Certification

I hereby certify that:

1. The information provided in this Claim Form is accurate and complete to the best of my knowledge, information, and belief;
2. I am a member of the Settlement Class and did not request to Opt-Out from the Settlement Class;
3. I have not already entered into a Settlement for any of the claims set forth in this Claim Form;
4. I have not submitted any other Claim for the same transaction and have not authorized any other Person or entity to do so, and know of no other Person or entity having done so on my behalf;
5. I understand that Claim Forms that are not valid and/or illegible can be rejected.

Signature: \_\_\_\_\_ Dated: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

# **EXHIBIT 2**

**If you received a receipt at a Bargain Hunt store with more than the last 5 digits of your card number between August 1, 2016 and June 30, 2017, a class action settlement may affect your rights.**

A proposed class action settlement has been reached concerning Fair and Accurate Credit Transactions Act claims against Defendant Essex Technology Group, LLC, d/b/a Bargain Hunt. The case is known as *Nowe, et al. v. Essex Technology Group, LLC*, Case No. \_\_\_\_\_, and it has been filed in the Muscogee County State Court, State of Georgia.

This is a summary notice only. More details are available in a Long Form Notice which you may view at [Settlement Website address [www.\[\]](#)]

**What is this about?**

The lawsuit alleges that customers who used a credit card or debit card to make a purchase or other transaction at Bargain Hunt stores were provided with electronically-printed customer receipts which had more than the last five digits of their credit card number or debit card number printed on the receipt.

**Am I a Settlement Class member?**

You may be an eligible Settlement Class member if, between August 1, 2016 and June 30, 2017, you were provided at the point of sale or transaction at any Bargain Hunt store an electronically-printed customer receipt with more than the last 5 digits of your credit card or debit card number.

**What are the Benefits?**

If you are a Settlement Class member and you submit a timely and complete Claim Form, you may receive up to \$100. The Claim Form must be accompanied by either: (1) the original or copy of a receipt for a purchase from any Bargain Hunt store between August 1, 2016 and June 30, 2017 that shows more than the last 5 digits of your credit card or debit card number; or (2) the original or copy of your credit card or debit card statement that shows your first and last name and a purchase from any Bargain Hunt store between August 1, 2016 and June 30, 2017.

Please refer to the Long Form Notice for a complete listing and explanation of benefits available through this settlement. Defendant denies any wrongdoing.

**Who represents me in the case?**

The Court has appointed Charles Austin Gower, Jr. and Shaun Patrick O'Hara of Charles A. Gower PC, Chant Yedalian of Chant & Company A Professional Law Corporation, and William Dixon James of Wm. Dixon James, P.C. as Settlement Class Counsel.

**What are my rights?**

You have a right to make a Claim, submit an objection to the settlement, Opt-Out from the Settlement, or do nothing.

To receive a payment, you must submit a Claim, either online or by mail to the Settlement Administrator by accessing the Claim Form by using your unique class member identifier, \_\_\_\_\_. The Claims Period will begin on \_\_\_\_\_ [] and will extend until \_\_\_\_\_, 2020.

You can also Opt-Out of or object to the settlement. If you Opt-Out of the settlement, you preserve your right to pursue a separate individual lawsuit against the Defendant about the claims released by this settlement, but you will receive no payment from this settlement. Your Opt-Out request must be received by [45 days after the notice commences], 2020. Unless you Opt-Out, you will be bound by the Final Approval Order and final judgment and enjoined from filing, commencing, prosecuting, or maintaining any other lawsuit concerning released claims.

Finally, you may file an Objection to the settlement. To object, you must submit an Objection in writing that complies with the requirements in the Settlement Notice available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). Your Objection must be mailed to the Settlement Administrator on or before [45 days after the notice commences], 2020.

The Court will hold a Fairness Hearing in the \_\_\_\_\_ before the Honorable Judge [ ] Courtroom [ ], [ ] Floor, on \_\_\_\_\_ at \_\_\_\_\_ [ ].m., to decide whether to approve the settlement and to award attorneys' fees and expenses, plus Settlement Class Representative incentive awards. Applicable pleadings will be posted on the website below after they are filed. You may attend this hearing, but you don't have to.

Benefit payments will be issued to Participating Claimants only if the Court approves the settlement, no appellate courts have modified or rejected the settlement and the time period for all appeals has expired. Please be patient and do not call the Court. If the settlement does not become final, the litigation will continue.

For more information, please visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or call the Settlement Administrator at (xxx) xxx-xxxx or write to \_\_\_\_\_. Please do not call the Court.

# **EXHIBIT 3**

MUSCOGEE COUNTY STATE COURT FOR THE STATE OF GEORGIA

**If you received a credit card or debit card receipt at a Bargain Hunt Store between August 1, 2016 and June 30, 2017, that included more than the last 5 digits of your card number, you could get up to \$100 from a class action settlement**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been reached in a class action lawsuit regarding credit card and debit card receipts provided to consumers.
- In the lawsuit, Plaintiffs alleged that Defendant, Essex Technology Group, LLC (dba Bargain Hunt) printed more than the last 5 digits on credit card and debit card receipts at Bargain Hunt stores. The parties reached an agreement in order to avoid the time and expense associated with litigation.
- The claims are strongly disputed. The Court has not ruled, one way or the other, on Plaintiffs' claims.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>SUBMIT A CLAIM FORM</b>	The only way to receive a monetary benefit of up to \$100.
<b>EXCLUDE YOURSELF</b>	Receive no monetary benefit. This is the only option that allows you to ever be part of any other lawsuit against the Defendant or anyone else about the legal claims in this case.
<b>OBJECT</b>	Write to the Court about why you do not like the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.
<b>DO NOTHING</b>	If you do nothing, you still benefit from the change in business practice, but you will not receive a monetary benefit.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Benefits will be awarded if the Court approves the settlement and after appeals are resolved. Please be patient.
- Any questions? Read on and visit [www.tbd.com](http://www.tbd.com).

QUESTIONS? VISIT [WWW.TBD.COM](http://WWW.TBD.COM)

## WHAT THIS NOTICE CONTAINS

<b>Basic Information.....</b>	<b>3</b>
1.    Why should I read this notice?.....	3
2.    What is this lawsuit about? .....	3
3.    Why is this a class action? .....	3
4.    Why is there a settlement? .....	3
<b>Who is in the Settlement.....</b>	<b>3</b>
5.    How do I know if I am part of the settlement? .....	3
<b>The Settlement Benefits – What You Get .....</b>	<b>4</b>
6.    What does the settlement provide? .....	4
<b>How You Get Benefits – Submitting a Claim Form .....</b>	<b>4</b>
7.    How can I get a payment?.....	4
8.    When will I receive my payment? .....	4
9.    What am I giving up if I stay in the Settlement Class?.....	4
<b>Excluding Yourself From The Settlement .....</b>	<b>6</b>
10.   How do I exclude myself from the settlement? .....	5
11.   If I do not exclude myself, can I sue the Defendant or anyone else for the same thing later?.....	5
12.   If I exclude myself, can I get benefits from this settlement? .....	5
<b>The Lawyers Representing You .....</b>	<b>5</b>
13.   Do I have a lawyer in this case?.....	5
14.   How will the lawyers be paid?.....	7
<b>Objecting To The Settlement .....</b>	<b>7</b>
15.   How do I tell the Court that I do not like the settlement?.....	7
16.   What is the difference between objecting and excluding?.....	6
<b>The Court’s Fairness Hearing .....</b>	<b>8</b>
17.   When and where will the Court decide whether to approve the settlement?.....	8
18.   Do I have to come to the hearing? .....	7
19.   May I speak at the hearing? .....	7
<b>If You Do Nothing .....</b>	<b>7</b>
20.   What happens if I do nothing at all? .....	7
<b>Getting More Information .....</b>	<b>9</b>
21.   Are there more details about the settlement?.....	9
22.   How do I get more information?.....	9

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QUESTIONS? VISIT [WWW.TBD.COM](http://WWW.TBD.COM)

## BASIC INFORMATION

### 1. Why should I read this notice?

If you received a credit card or debit card receipt from a Bargain Hunt Store between August 1, 2016 and June 30, 2017 that had more than the last 5 digits of your card number, you have a right to know about a proposed settlement of a class action lawsuit and your options. The Muscogee County State Court of the State of Georgia has preliminarily approved the proposed settlement.

If the Court grants final approval to the settlement, and after any appeals are resolved, an administrator appointed by the Court will determine the benefits under the settlement. The settlement website will provide updates regarding the progress of the settlement.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The case is known as *Nowe, et al. v. Essex Technology Group, LLC*, Case No. \_\_\_\_\_. The persons who sued, Brian Nowe and Mary Allen Wilson Tondee, are called the Plaintiffs, and the company they sued, Essex Technology Group, LLC (dba Bargain Hunt), is called the Defendant.

### 2. What is this lawsuit about?

This lawsuit alleges that customers who used a credit card or debit card to make a purchase or other transaction at Bargain Hunt stores were provided with electronically-printed customer receipts which had more than the last five digits of their credit card number or debit card number printed on the receipt. The parties reached an agreement to avoid the time and expense associated with further litigation.

### 3. Why is this a class action?

In a class action, one or more people called a class representative (in this case Brian Nowe and Mary Allen Wilson Tondee) sue on behalf of people who have similar claims. All of these people are a class or class members. One court resolves the issues for all class members, except for those who exclude themselves from the class. A judge in the Muscogee County State Court in Georgia is overseeing this class action.

### 4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the time and expense of going to trial. The settlement class representatives and their attorneys think the settlement is best for everyone because it provides an appropriate recovery now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

## WHO IS IN THE SETTLEMENT

### 5. How do I know if I am part of the settlement?

The Court preliminarily decided that everyone who fits the following description is a settlement class member:

All consumers who, at any time between August 1, 2016 and June 30, 2017, were provided an electronically-printed receipt with more than the last 5 digits of a credit card or debit card at the point of

QUESTIONS? VISIT [WWW.TBD.COM](http://WWW.TBD.COM)

a sale or transaction at any Bargain Hunt store. Excluded from the Settlement Class are: (1) all Persons who properly and timely opt out pursuant to the Settlement Agreement; and (2) the judge to whom this Action is assigned and any member of his or her immediate family.

## **THE SETTLEMENT BENEFITS – WHAT YOU GET**

### **6. What does the settlement provide?**

If approved, the proposed settlement will provide for a change of conduct by Defendant as well as up to \$2,000,000 for notice/administration costs, class representative payments, monetary benefits to settlement class members who submit a timely and valid claim, and fees and costs for the lawyers who represented the settlement class. More specifically:

- A Court-appointed administrator will receive compensation to implement a class notice program and to assist in the processing of claims submitted by class members.
- Class members who submit timely and complete claim forms will receive a monetary benefit of up to \$100 based on the number of approved claims.
- In the event the total monetary benefits awarded to class members who submit valid and timely claims is less than \$200,000, the remainder (less any amount of settlement administrator costs in excess of \$185,000) shall be distributed to one or more non-profit organizations approved by the Court. In the event that the total amount of the settlement administrator costs are less than \$185,000, the remainder shall be added to the \$200,000 floor referenced in this paragraph.
- Subject to Court approval, the class representatives may receive service payments of up to \$5,000 each for their time and effort acting as class representatives and for their willingness to bring this litigation on behalf of other consumers.
- Subject to Court approval, the Court may award fees and costs for the lawyers who represented the settlement class as explained further in response to question number 14, below. Defendant has stopped printing more than the last 5 digits of the credit card and debit card on receipts and has implemented or will implement appropriate steps, practices, and a written company policy to ensure that all Bargain Hunt stories will remain in compliance with the Fair and Accurate Credit Transactions Act in the future.

## **HOW YOU GET BENEFITS – SUBMITTING A CLAIM FORM**

### **7. How can I get a monetary benefit?**

To qualify for a monetary benefit of up to \$100 under the settlement, you must submit a claim form. You can obtain a claim form on the Internet at [www.tbd.com](http://www.tbd.com). Read the instructions carefully and submit the claim form no later than \_\_\_\_\_, 2020. Please check [www.tbd.com](http://www.tbd.com) for updates.

### **8. When will I receive my payment?**

The Court will hold a hearing on \_\_\_\_\_, 2020, to decide whether to approve the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take one year or more. The settlement website will keep you informed

**QUESTIONS? VISIT [WWW.TBD.COM](http://WWW.TBD.COM)**

of the progress of the settlement. Please be patient. If total costs of the settlement would exceed \$2,000,000, the monetary benefits to approved claimants shall be reduced pro rata.

**9. What am I giving up if I stay in the settlement class?**

Unless you exclude yourself, you will remain a class member. This means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendant (see question no. 11 below) or anyone else about the legal issues in this case. If you stay in the settlement class, all of the Court's orders will apply to you and legally bind you. The entirety of the release as set forth in the settlement agreement is as follows: Except for the obligations and rights created by the settlement agreement, the Releasing Parties hereby release and absolutely and forever discharge Defendant and all Released Parties from any and all Settled Claims. "Releasing Parties" means and refers to the Settlement Class and its members, and any other Persons or entities claiming by or through the Settlement Class, including agents, attorneys, partners, joint venturers, affiliates, predecessors, successors, spouses, heirs, assigns, insurers, in their capacities as such. "Released Parties" means and refers to Defendant and all other Persons. "Persons" means and refers to any individual, proprietorship, corporation, partnership, association, trustee, unincorporated association, or any other type of legal entity. "Settled Claims" means and refers to any claim, liability, right, demand, suit, matter, obligation, lien, damage, punitive damage, exemplary damage, penalty, loss, cost, expense, debt, action, or cause of action, of every kind and/or nature whatsoever whether now known or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, which any Releasing Party now has, or at any time ever had, regardless of legal theory or type or amount of relief or damages claimed, which: (1) in any way arises out of or is based on a Bargain Hunt store printing more than the last 5 digits of a credit card or debit card number upon any receipt provided to the cardholder at the point of sale or transaction between August 1, 2016 and June 30, 2017 and/or (2) is asserted in and based on the factual allegations in the Complaint filed in this Action.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want any benefits from this settlement, but you want keep the right to sue or continue to sue the Defendant or anyone else on your own about the legal issues in this case, then you must take steps to get out. This is called "excluding" yourself – or is sometimes referred to as "opting out" of the settlement class. Defendant may withdraw from and terminate the settlement if a certain number of putative class members exclude themselves.

**10. How do I exclude myself from the settlement?**

To exclude yourself from the settlement, you must submit a letter by mail saying that you want to be excluded from the settlement class in *Nowe, et al. v. Essex Technology Group, LLC* \_\_\_\_\_, –Case No. \_\_\_\_\_. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request so that it is postmarked no later than \_\_\_\_\_, 2020, to:

Nowe Settlement  
[Add Administrator Address]

You cannot exclude yourself by phone or by e-mail. If you mail an exclusion request by the deadline, you will not be able to request a settlement payment and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the Defendant in the future.

**QUESTIONS? VISIT [WWW.TBD.COM](http://WWW.TBD.COM)**

**11. If I do not exclude myself, can I sue the Defendant or anyone else for the same thing later?**

No. Unless you exclude yourself, you give up the right to sue the Defendant or anyone else for the claims resolved by this settlement.

You must exclude yourself from the settlement class to participate in any litigation against the Defendant or anyone else regarding the claims resolved by this settlement. Remember, the exclusion deadline is \_\_\_\_\_, 2020.

**12. If I exclude myself, can I get benefits from this settlement?**

No. If you exclude yourself, do not send in a claim form to ask for any benefits. But, you may sue, continue to sue, or be part of a different lawsuit.

**THE LAWYERS REPRESENTING YOU**

**13. Do I have a lawyer in this case?**

Charles Austin Gower, Jr. and Shaun Patrick O'Hara of Charles A. Gower PC, Chant Yedalian of Chant & Company A Professional Law Corporation, and William Dixon James of Wm. Dixon James, P.C. represent you and other class members. The lawyers are called "Settlement Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**14. How will the lawyers be paid?**

Settlement Class Counsel will ask the Court for an award of attorneys' fees of up to \$666,667 and costs up to \$15,000. The Court may award less than these amounts.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the settlement or some part of it.

**15. How do I tell the Court that I do not like the settlement?**

If you are a class member, you can object to the settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views.

To be effective, any such objection must be in writing, mailed to the settlement administrator with a timely postmark, and include: (1) a reference at the beginning to this matter, *Nowe, et al. v. Essex Technology Group, LLC*, Case No. \_\_\_\_\_; (2) the objector's full name, address, and telephone number, and, if available, email address; (3) proof of settlement class membership consisting of the original or a copy of either (i) a customer receipt containing more than the last 5 digits of his or her credit or debit card showing that he or she made a transaction at a Bargain Hunt store between August 1, 2016 and June 30, 2017, or (ii) a credit or debit card statement showing that he or she made a transaction at a Bargain Hunt store between August 1, 2016 and June 30, 2017; (4) a written statement of all grounds for the objection, accompanied by any legal support for such objection; (5) copies of any papers, briefs, or other documents upon which the objection is based; (6) a list of all persons who will be called to testify in support of the

QUESTIONS? VISIT [WWW.TBD.COM](http://WWW.TBD.COM)

objection; (7) a statement of whether the objector intends to appear at the fairness hearing; if the objector intends to appear at the fairness hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the fairness hearing; (8) regarding any counsel who represents the objector or has a financial interest in the objection: (i) a list of cases in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years, and (ii) a copy of any orders concerning a ruling upon counsel's or the firm's prior objections that were issued by the trial and/or appellate courts in each listed case; (9) a statement by the objector under oath that: (i) he or she has read the objection in its entirety, (ii) he or she is a member of the settlement class, (iii) states the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, (iv) identifies the caption of each case in which the objector has made such objection, and (v) authenticates any orders concerning a ruling upon the objector's prior such objections that were issued by the trial and/or appellate courts in each listed case, attaching such orders to the statement. Any class member who fails to timely file and serve a written objection containing all of the information listed in the items (1) through (9) of this paragraph, including notice of his/her intent to appear at the Final Approval Hearing (fairness hearing), shall not be permitted to object to the settlement and shall be foreclosed from seeking any review of the settlement or the terms of the settlement agreement by any means, including, but not limited to, an appeal. Any class member who submits a timely written objection shall consent to deposition at the request of Settlement Class Counsel or Defendant's counsel, to occur at least 5 days prior to the Final Approval Hearing (fairness hearing). To be timely, objections must be mailed to the settlement administrator by no later than \_\_\_\_\_, 2020, at the address provided in this notice.

**16. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the settlement class. Excluding yourself is telling the Court that you do not want to be part of the settlement class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to.

**17. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Final Approval Hearing (fairness hearing) at \_\_\_\_\_ a.m. on \_\_\_\_\_, 2020, in Department \_\_ at the Muscogee County State Court located at \_\_\_\_\_. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Settlement Class Counsel and the class representatives. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

**18. Do I have to come to the hearing?**

No. Settlement Class Counsel will answer any questions from the Court regarding the settlement. However, you are welcome to come at your own expense. If you send an objection, you do not have to

QUESTIONS? VISIT [WWW.TBD.COM](http://WWW.TBD.COM)

come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**19. May I speak at the hearing?**

You may ask the Court for permission for you or your lawyer to speak at the fairness hearing. To do so, you must send a letter saying that it is your “Notice of Intention to Appear in *Nowe, et al. v. Essex Technology Group, LLC*, Case No. \_\_\_\_\_.” Be sure to include your name, address, telephone number, and your signature. If your lawyer intends to speak at the fairness hearing, your letter must also include the name, address, and telephone number of your lawyer. Your Notice of Intention to Appear must be mailed to the Settlement Administrator and postmarked no later than \_\_\_\_\_, 2020 to:

Bargain Hunt Settlement  
[Add]

You cannot speak at the fairness hearing if you excluded yourself.

**IF YOU DO NOTHING**

**20. What happens if I do nothing at all?**

If you do nothing, you will not receive a monetary benefit from this settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the legal issues in this case for any of the released claims described above. You will also be bound by all of the Court’s orders and judgment in this lawsuit.

**GETTING MORE INFORMATION**

**21. Are there more details about the settlement?**

This notice summarizes the proposed settlement. More details are in the settlement agreement. You can get a copy of the settlement agreement from the settlement website or by writing to the settlement administrator at:

Bargain Hunt Settlement  
[Add]

**22. How do I get more information?**

You can visit the settlement website at [www.tbd.com](http://www.tbd.com), where you will find answers to common questions about the settlement, a claim form, plus other information. You may also call 1-800-XXX-XXXX or call or write Settlement Class Counsel at [add].

**QUESTIONS? VISIT [WWW.TBD.COM](http://WWW.TBD.COM)**

\_\_\_\_\_, 2020

The Honorable \_\_\_\_\_, Muscogee County State Court

**QUESTIONS? VISIT [WWW.TBD.COM](http://WWW.TBD.COM)**



# **EXHIBIT 4**

**IN THE STATE COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA**

BRIAN NOWE and  
MARY ALLEN WILSON TONDEE, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

ESSEX TECHNOLOGY GROUP, LLC (d/b/a  
Bargain Hunt),

Defendants.

Civil Action No.

**[PROPOSED] ORDER GRANTING SETTLEMENT CLASS REPRESENTATIVES'  
UNCONTESTED MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Settlement Class Representatives Brian Nowe and Mary Allen Wilson Tondee (“Settlement Class Representatives”) have moved the Court for preliminary approval of a proposed class action settlement with Essex Technology Group, LLC, d/b/a Bargain Hunt (“Essex” or “Defendant”), the terms and conditions of which are set forth in the Settlement Agreement filed with the Court (“Agreement”).

Settlement Class Representatives contend that, by providing electronically-printed receipts with more than the last five digits of a credit card number or debit card number at the point of a sale or transaction, Defendant committed violations of state and federal law, including but not limited to the Fair and Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. § 1681, *et seq.* Settlement Class Representatives seek to recover, on behalf of a class of all consumers who, at any time between August 1, 2016 and June 30, 2017, were provided an electronically-printed receipt

with more than the last 5 digits of a credit card or debit card number at the point of a sale or transaction at any Bargain Hunt store.

Defendant denies that there is any factual or legal basis for Settlement Class Representatives' allegations. Defendant denies any liability and that Settlement Class Representatives or any other members of the Settlement Class have suffered injury or are entitled to monetary or other relief. Defendant finally denies that this case should be certified as a class action, except for purposes of settlement. In that regard, Defendant specifically denies that there are questions of fact or law common to the class, that the Settlement Class Representatives are typical of consumers in the United States, and that a settlement class is an appropriate method for fairly and efficiently adjudicating the controversy; however, in the interest of settling, Defendant does not oppose Settlement Class Representatives' request to certify the Settlement Class.

Settlement Class Representatives have moved the Court for preliminary approval of a proposed class action settlement with Defendant, the terms and conditions of which are set forth in the Agreement.

The terms of the proposed notice program ("Notice Program") to Settlement Class members are outlined in the motion for preliminary approval.

As a result of the claims asserted by the Settlement Class Representatives, Defendant stopped printing more than the last five digits of the credit card or debit card number on receipts issued to customers and has taken steps to ensure all Bargain Hunt stores remain in compliance with FACTA.

In addition, Participating Claimants who submit a timely and complete Claim Form along with either: (1) the original or copy of a qualifying receipt for a purchase from Bargain Hunt during

the class period that shows more than the last 5 digits of his or her credit card or debit card number; or (2) the original or copy of a credit card or debit card statement that shows the Participating Claimant's first and last name and a purchase from Bargain Hunt during the class period, shall be awarded a single benefit of up to \$100. The maximum monetary benefit per Person is \$100, regardless of the number of Claim Forms submitted and regardless of the number of transactions during the class period.

If the total cost of the settlement would exceed the settlement cap of two million dollars and zero cents (\$2,000,000.00), then the benefit payable to each Participating Claimant shall be proportionately reduced, such that the total cost of the settlement would not exceed the settlement cap. In the event the total monetary benefits awarded to Participating Claimants is less than \$200,000, the remainder (less any amount of Settlement Administrator costs in excess of \$185,000) shall be distributed to one or more non-profit organizations approved by this Court. In the event that the total cost of notice and administration is less than \$185,000, the surplus shall be added to the \$200,000 floor referenced in this paragraph.

As part of the Agreement, Settlement Class Representatives' attorneys may apply to this Court to award them up to six-hundred-sixty-six-thousand-six-hundred-sixty-seven dollars and zero cents (\$666,667.00) to pay their attorneys' fees, and an award of costs (including court costs), expenses of up to fifteen-thousand dollars and zero cents (\$15,000). Settlement Class Representatives attorneys may also apply to this Court for payments to the Settlement Class Representatives for up to five-thousand dollars and zero cents (\$5,000.00) for each Settlement Class Representative. Such amounts must be approved by the Court, and the Court will defer any ruling on the appropriateness of such awards until the Final Approval Hearing.

Having considered all matters submitted to it at the hearing on the motion and otherwise,

including the complete record of this action, and good cause appearing therefore, the Court grants preliminary approval and hereby finds and concludes as follows:

1. The capitalized terms used in this Order shall have the same meaning as defined in the Agreement except as otherwise expressly provided.

2. The Court preliminarily approves the settlement as within the range of possible final approval and as meriting submission to the Settlement Class for its consideration. The Parties' Agreement was reached as a result of extensive arm's length negotiations between the Parties and their counsel. Thus, Settlement Class Representatives and their counsel had sufficient information to evaluate the strengths and weaknesses of the case and to conduct informed settlement discussions.

3. For purposes of the settlement only, the Court provisionally certifies the Settlement Class, which consists of all consumers who, at any time between August 1, 2016 and June 30, 2017, were provided an electronically-printed receipt with more than the last 5 digits of a credit card or debit card number at the point of a sale or transaction at any Bargain Hunt store. Excluded from the Settlement Class are: (1) all Persons who properly and timely opt out pursuant to the Agreement; and (2) the judge to whom this Action is assigned and any member of his or her immediate family.

4. The Court preliminarily finds and concludes, solely for purposes of considering this Agreement, that the requirements of O.C.G.A. § 9-11-23 are conditionally satisfied for certification of the Settlement Class. Solely for the purpose of considering this Agreement, the Court finds Settlement Class Representatives have met the requirements of O.C.G.A. § 9-11-23 for the reasons set forth in Settlement Class Representatives' Unopposed Motion for Preliminary Approval of Class Action Settlement, as well as for the reasons that follow.

- a. The Settlement Class members are too numerous to be joined in a single action;
- b. There are questions of fact or law common to the class, and the common questions predominate over any questions affecting only individual members;
- c. The Settlement Class Representatives are typical of consumers around the country in that they were all exposed to the identical risk, and, thus, their claims for violations of the FACTA statute are such that they will fairly and adequately protect the interests of the class; and
- d. A settlement class is an appropriate method for fairly and efficiently adjudicating the controversy and is superior to alternative means of resolving the claims and disputes at issue in this litigation.

5. The Court further notes that the complaint which the Settlement Class Representatives filed with this Court sets forth causes of action for a nationwide class; that Defendant does not oppose Settlement Class Representatives' request to certify a nationwide Settlement Class for the purpose of this settlement; and that, in the event final approval of the settlement is denied, or a mandate is issued reversing an award of final approval, or the settlement is otherwise terminated, the certification of the Settlement Class will be void; and that, in such event, Defendant does not waive, and instead expressly reserves, all rights to defend this Action and any other action and shall not be precluded from challenging class certification in further proceedings in the Action or in any other action.

6. The Court conditionally designates the law firms of Charles A. Gower PC, Chant & Company A Professional Law Corporation, and Wm. Dixon James, P.C. as Settlement Class Counsel and Brian Nowe and Mary Allen Wilson Tondee as Settlement Class Representatives for purposes of this settlement. The Court preliminarily finds that the Settlement Class Representatives and Settlement Class Counsel fairly and adequately represent and protect the interests of the absent Settlement Class members. The Court designates, and approves, Heffler Claims Group to serve as Settlement Administrator.

7. Because the settlement is within the range of reasonableness and possible final approval, notice shall be provided to the Settlement Class as described in Section 6 of the Agreement.

- a. The Notice Program consists of: (1) a Long Form Notice; (2) Email Notice; (3) Publication and Internet Notice; (4) Settlement Website; and a (5) Settlement Hotline.
- b. Prior to the date notice commences, the Settlement Administrator will establish the Settlement Website, which shall contain the Long Form Notice; answers to frequently asked questions; the address for the Settlement Administrator and addresses and telephone numbers for Settlement Class Counsel; the Settlement Agreement; the signed Preliminary Approval Order and publicly filed motion and accompanying papers; and a downloadable and online version of the Claim Form. The Settlement Administrator shall add to the Settlement Website other material filings by the parties or the Court regarding the settlement, including Settlement Class

Representatives' motion for attorneys' fees, costs, expenses, and/or payments to the Settlement Class Representatives, the motion for final approval, and any orders with respect to such motions.

- c. The Settlement Administrator shall cause the Publication Notice to be published in accordance with the Notice Program.
- d. The Settlement Administrator shall initiate the process of providing the online notices on websites as set forth in the Notice Program, so that overall notice of the settlement (including the Publication Notice) is reasonably calculated to apprise the Settlement Class members of the settlement.
- e. The Settlement Administrator also will receive and process Claim Forms.

8. The Court approves, as to form and content, the Claim Form and notices that are substantially similar to the forms attached as Exhibits 1-4 to the Agreement. The Claim Form and all notices are written in plain English and are easy to comprehend. The Parties shall have discretion to jointly make non-material minor revisions to the Claim Form and notices before they are made available to the Settlement Class. Responsibility for settlement administration, including, but not limited to, notice and related procedures, shall be performed by the Settlement Administrator, subject to the oversight of the Parties and this Court as described in the Agreement.

9. The Court finds that the Parties' program for providing notice to the Settlement Class is reasonably calculated to provide the best notice practicable under the circumstances to the Settlement Class, and is in full compliance with the United States Constitution, the requirements of due process, O.C.G.A. § 9-11-23, and any other applicable law. The Parties and the Settlement



Administrator shall comply with the Notice Program as set forth in the Agreement.

10. Any member of the Settlement Class who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Agreement, must submit a request to Opt-Out to the Settlement Administrator, pursuant to the instructions set forth in the Notice Program. The request must be postmarked by no later than 45 days after the commencement of Notice Program. No one shall be permitted to exercise any exclusion rights on behalf of any other Person, whether as an agent or representative of another or otherwise, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other legal authorization and no one may exclude other Persons within the Settlement Class as a group, class, or in the aggregate.

11. Any member of the Settlement Class who wants to make a claim must submit a valid Claim Form to the Settlement Administrator during the Claims Period pursuant to the instructions set forth in the Notice Program and on the Claim Form.

12. Any member of the Settlement Class who elects to be excluded shall not receive any benefits of the settlement, shall not be bound by the terms of the Settlement Agreement, and shall have no standing to object to the settlement or intervene in the Action. If the settlement is granted final approval, all Settlement Class members who do not timely submit a valid request for exclusion will be bound by the Final Approval Order and final judgment and enjoined from bringing or prosecuting any action against any of the Released Parties that challenge the settlement or otherwise assert or involve, directly or indirectly, a Released Claim.

13. Any Settlement Class member who does not submit a valid and timely request for exclusion may submit an objection to the Agreement. The written objection must satisfy the requirements described in the Notice Program. An objection must be received by the Settlement Administrator and postmarked no later than 45 days after the commencement of Notice Program

or it will be rejected.

14. Any Settlement Class member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class member's own expense. However, if the Settlement Class member wants to object to the settlement at the Final Approval Hearing (either personally or through counsel), the Settlement Class member must submit a written objection as set forth in the prior paragraph of this Order.

15. Settlement Class Representatives shall file their motion for final approval and class representative payments no later than [20 days prior to the Final Approval Hearing] and their motion for an award of attorneys' fees, costs, and expenses no later than [14 days prior to the Opt-Out Deadline]. Those motions and all supporting documentation shall simultaneously be posted to the Settlement Website.

16. This Court finds that the Settlement Class asserts both federal and state law claims alleging injury in fact caused by Defendant. This Court concludes that it has subject matter jurisdiction over the case and controversy and has the authority to enter a final judgment, following a hearing on final approval.

17. In the event that the proposed settlement is not finally approved by the Court, or in the event that the Agreement becomes null and void pursuant to its terms, this Preliminary Approval Order and all orders entered in connection herewith shall become null and void, shall be of no further force and effect.

18. This Order shall not be construed as an admission or concession by Defendant of the truth of any allegations made by the Settlement Class Representatives or of liability or fault of any kind.

19. A Final Approval Hearing shall be held before this Court at [ ] [ ].m. on [ ], 2020,

in the \_\_\_\_\_, to address: (a) whether the proposed settlement should be finally approved as fair, reasonable and adequate, and whether the Final Approval Order should be entered, and (b) whether Settlement Class Counsel's application for attorneys' fees, costs, and a payment to the Settlement Class Representatives should be approved.

20. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class members, be continued by Order of the Court.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
The Honorable ☐

# **EXHIBIT 5**

**IN THE STATE COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA**

BRIAN NOWE and  
MARY ALLEN WILSON TONDEE, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

ESSEX TECHNOLOGY GROUP, LLC (d/b/a  
Bargain Hunt),

Defendants.

Civil Action No.

**[PROPOSED] FINAL APPROVAL OF THE SETTLEMENT AGREEMENT; FINAL  
JUDGMENT; AWARD OF SETTLEMENT CLASS COUNSEL'S FEES, EXPENSES,  
AND SETTLEMENT CLASS REPRESENTATIVES' INCENTIVE AWARDS;**

**WHEREAS**, on \_\_\_\_\_, 2020, this Court entered a Preliminary Approval Order that conditionally certified pursuant to O.C.G.A. § 9-11-23, for settlement purposes only, a Settlement Class consisting of:

All consumers who, at any time between August 1, 2016 and June 30, 2017, were provided an electronically-printed receipt with more than the last 5 digits of a credit card or debit card at the point of a sale or transaction at any Bargain Hunt store. Excluded from the Settlement Class are: (1) all Persons who properly and timely opt out pursuant to the Agreement; and (2) the judge to whom this Action is assigned and any member of his or her immediate family.

**WHEREAS**, this Court finds that the papers presented in connection with the final approval hearing are detailed and sufficient to rule on final approval, attorneys' fees and expenses, and incentive awards; and

**WHEREAS**, this Court, having heard from Settlement Class Counsel on behalf of the Settlement Class, and from Defendant's counsel, and having reviewed all other arguments and submissions presented by all interested persons and entities with respect to the settlement and the Settlement Class Counsel's attorneys' fees and expenses and incentive awards to the Settlement Class Representatives;

**WHEREAS**, this Court, having previously determined that the Settlement Class asserts both federal and state law claims alleging injury in fact caused by Defendant; and

**WHEREAS**, unless specifically defined herein, all capitalized terms used herein have the meanings set forth and defined in the Settlement Agreement, it is hereby

**ORDERED, ADJUDGED, DECREED, AND FOUND THAT:**

1. This cause arises out of Settlement Class Representatives' allegations that Defendant committed violations of state and federal law, including but not limited to the Fair and Accurate Credit Transactions Act ("FACTA"), 15 U.S.C. § 1681, *et seq.*, by providing electronically-printed receipts with more than the last five digits of a credit card number or debit card number at the point of sale or transaction.

2. Defendant denies that there is any factual or legal basis for Settlement Class Representatives' allegations. Defendant denies any liability and that Settlement Class Representatives or any other members of the Settlement Class have suffered injury or are entitled to monetary or other relief. Defendant finally denies that this case should be certified as a class action, except for purposes of settlement.

3. After extensive arm's-length settlement negotiations, the Parties agreed to settle this matter.

4. The Settlement Agreement provides substantial and meaningful relief to the Settlement Class, including affirmative relief that requires Defendant to continue refraining from printing more than the last five digits of the credit card and debit card numbers on printed receipts issued to customers, as well as monetary benefits to the Settlement Class.

5. The Settlement Agreement provides for a settlement under which Participating Claimants can make claims to receive monetary benefits.

6. The Settlement Class as provided in the Preliminary Approval Order is unconditionally certified pursuant to O.C.G.A. § 9-11-23. The prerequisites for a class action under O.C.G.A. § 9-11-23 have been satisfied in that (a) the members of the Settlement Class are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class, and the common questions predominate over any questions affecting only individual members; (c) the claims of Settlement Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) Settlement Class Representatives have and will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

7. For purposes of the nonmonetary benefits specified in Section 11 of the Agreement, the prerequisites for a class action under O.C.G.A. § 9-11-23 have been satisfied in that (a) the members of the Settlement Class is so numerous that joinder of all member thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Settlement Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) Settlement Class Representatives have and will fairly and adequately represent the interests of the Settlement Class; and (e) Defendant has acted or refused to act on

grounds generally applicable to the class, thereby making appropriate final injunctive or declaratory relief with respect to the class as a whole.

8. This Court previously concluded, and again finds, that it has subject matter jurisdiction over the case and controversy and has the authority to enter this final judgment.

9. The following are appointed as Settlement Class Representatives of the Settlement Class: Brian Nowe and Mary Allen Wilson Tondee.

10. The Court confirms its appointment of the following as Settlement Class Counsel: Charles Austin Gower, Jr. and Shaun Patrick O'Hara of Charles A. Gower PC, Chant Yedalian of Chant & Company A Professional Law Corporation, and William Dixon James of Wm. Dixon James, P.C.

11. The settlement, as set forth in the Settlement Agreement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class members, and is approved in all respects in accordance with O.C.G.A. § 9-11-23.

12. The settlement was negotiated at arm's-length by experienced counsel who were fully informed of the facts and circumstances of the Action and of the strengths and weaknesses of their respective positions. The settlement was reached after the Parties engaged in extensive negotiations. Settlement Class Counsel and Defendant's counsel are therefore well positioned to evaluate the benefits of the settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

13. Notice to the members of the Settlement Class has been provided as directed by this Court in the Preliminary Approval Order, and such notice having constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and



providing notice to the members of the Settlement Class, has satisfied the requirements of due process, O.C.G.A. § 9-11-23, and all other applicable laws.

14. The settlement shall not be deemed to constitute an admission or finding of liability or wrongdoing on the part of Defendant, Settlement Class Representatives, or any of the Settlement Class members, Released Parties, or any additional Released Parties.

15. Upon the Final Effective Date, Settlement Class Representatives, each Settlement Class member, and each Releasing Party shall be deemed to have, and by operation of this Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Settled Claims against the Released Parties in the manner(s) set forth in Section 13 of the Settlement Agreement.

16. Upon the Final Effective Date, Settlement Class Representatives, each Settlement Class member, and each Releasing Party shall be permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Settled Claims.

17. Settlement Class Representative incentive awards are hereby awarded to the following Settlement Class Representatives in the amount of five-thousand dollars and zero cents (\$5,000.00) each: Brian Nowe and Mary Allen Wilson Tondee, paid pursuant to the terms of the Agreement, as compensation for their efforts in bringing the Action and achieving the benefits of the settlement on behalf of the Settlement Class.

18. Settlement Class Counsel are hereby awarded (a) attorneys' fees in the amount of six-hundred-sixty-six-thousand—six-hundred-sixty-seven dollars and zero cents (\$666,667.00) and (b) reimbursement of their reasonable expenses in the amount of fifteen-thousand dollars and zero cents (\$15,000). These fees and reimbursement of expenses shall be paid pursuant to the

terms of the Agreement, and are to be allocated among Class Counsel according to Class Counsel's existing agreement with one another.

19. The Court finds that the amounts of attorneys' fees and reimbursable expenses awarded to Settlement Class Counsel are fair and reasonable. In making its award of attorneys' fees and reimbursement of expenses, in the amounts described in paragraph 18 above, the court has considered and finds as follows:

- a. The settlement has provided significant relief to the Settlement Class.
- b. Defendant's implementation of a written company policy to ensure all Bargain Hunt stores remain in compliance with FACTA was a negotiated, material term of the settlement.
- c. The Notice Program constituted the best notice practicable to Settlement Class members consistent with the requirements of due process.
- d. The settlement provides a fair opportunity for all members of the Settlement Class to submit a Claim and be compensated. The Notice Program combined with the length of the Claims Period provides ample opportunity for any Settlement Class member who desires to submit a claim to do so.
- e. By providing this opportunity for compensation Settlement Class Counsel have demonstrated that they have represented the Settlement Class well. Settlement Class Counsel have conducted the litigation and achieved the settlement with skill, perseverance, and diligent advocacy on behalf of Settlement Class Representatives and the Settlement Class as a whole.

- f. This matter involves complex factual and legal issues and, in the absence of the settlement, would involve further lengthy proceedings and uncertain resolution of such issues.
- g. Had the settlement not been achieved, there would remain a significant risk that the Settlement Class may have recovered less or nothing from Defendant, and that any recovery would have been significantly delayed.
- h. Settlement Class counsel possess and successfully utilized the skills and expertise required to prosecute this matter and achieve settlement. The Court also considered and finds that the experience, reputation, and ability of Settlement Class Counsel contributed to the success of achieving settlement, and the benefits conferred as a result of the settlement, including the monetary benefits and the change of conduct and implementation of a FACTA compliance policy by Defendant. The Court also considered and finds that Settlement Class Counsel's fees were always contingent, and Settlement Class Counsel undertook substantial risk by prosecuting this matter, including the substantial risk of non-payment.

20. Defendant and additional Released Parties shall not be liable for any additional fees or expenses for Settlement Class Counsel or counsel of any Settlement Class Representatives in connection with the Action, beyond those expressly provided in the Settlement Agreement.

21. The Court hereby directs the Settlement Administrator, Defendant and Plaintiffs to effectuate all terms of the settlement and Agreement.

22. By reason of the settlement, and approval hereof, there is no just reason for delay and the Court hereby enters this Final Order and Judgment as a final judgment.

23. Jurisdiction is reserved by this Court, without affecting the finality of this Final Approval Order and Judgment, over:

- a. Effectuating the settlement and the terms of the Agreement, including the payment of Settlement Class Counsel's attorneys' fees and reimbursement of expenses, including any interest accrued thereon;
- b. Supervising any remaining aspects of the administration of the settlement;
- c. Determining whether, in the event an appeal is taken from any aspect of this Final Approval Order and Judgment, notice should be given at the appellant's expense to some or all Settlement Class members apprising of the pendency of the appeal and such other matters as the Court may order;
- d. Enforcing and administering the Settlement Agreement and the settlement, including the release executed in connection therewith, and the provisions of this Final Approval Order and Judgment;
- e. Adjudicating any disputes that arise under the Settlement Agreement; and
- f. Any other matters related or ancillary to the foregoing.

SO ORDERED, ADJUDGED, AND DECREED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable [ ]

# Exhibit B

**IN THE STATE COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA**

BRIAN NOWE and  
MARY ALLEN WILSON TONDEE, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

ESSEX TECHNOLOGY GROUP, LLC  
(d/b/a Bargain Hunt),

Defendants.

---

Civil Action No. SC 2020 CV 694

**AFFIDAVIT OF SHAUN PATRICK O'HARA**

State of GEORGIA

County of MUSCOGEE

1.

My name is Shaun P. O'Hara. I am over 18 years of age. I make this Affidavit  
in Muscogee County, Georgia.

2.

I am suffering under no disabilities and am legally competent to make this  
affidavit. This affidavit is based on my personal knowledge.

3.

I submit this Affidavit in support of Plaintiff's' Unopposed Motion For Award Of Attorneys' Fees And Costs To Class Counsel And Incentive Payment To The Class Representatives.

4.

Class Counsel has expended considerable time and resources in investigating and analyzing the issues, both legal and procedural, concerning this matter.

5.

This matter has been diligently litigated by both Class Counsel and ESSEX TECHNOLOGY GROUP, LLC (d/b/a Bargain Hunt). If the parties to this matter had not reached a settlement and if this settlement were not to be approved, the Class and Class Counsel would be subjected to enormous risks associated with discovery, motions, trial and appeals. In order to prosecute this matter and respond to a vigorous defense by ESSEX TECHNOLOGY GROUP, LLC, the Class and Class Counsel would have had to expend substantially greater costs in terms of time and expenses, including, but not limited to, expert witnesses, discovery, production, extensive motions practice, trial preparation and appeals.

6.

In conjunction with partners at Charles A. Gower, P.C., and in conjunction with co-counsel, Chant Yedalian, I have carefully assessed the strengths and

weaknesses of this matter, and I believe that Plaintiffs can prove their case at trial. However, the prosecution of this matter would be subject to a host of risks, including a substantial risk of no relief to the Class. The attorneys at Charles A. Gower, P.C., are experienced in this type of litigation and based upon our investigation of and the prosecution of this matter, believe that the settlement memorialized in the proposed Settlement Agreement is reasonable and adequate and in the best interests of the Class.

7.

Charles A. Gower, P.C., and I have been lead counsel and co-counsel in numerous class actions and complex cases. Charles A. Gower, P.C. has extensive experience regarding all types of class action procedural issues, including issues relating to removal, class and merits discovery, class certification hearings, class notice issues and settlement issues.

8.

Charles A. Gower, P.C., and I have extensive appellate experience in both class action and complex litigation.

9.

Charles A. Gower, P.C., though very experienced in complex and class action litigation, is numerically small. Charles A. Gower, P.C., exclusively represents plaintiffs in relatively complex litigation, and depends entirely upon contingent fee



work, a significant part of which contingent work is in consumer class actions and is dependent upon court-awarded attorneys' fees.

10.

These complex cases, particularly class actions, generally extend for protracted periods and involve substantial risks and burdens. The quid pro quo for the decision to undertake complex class action litigation like this matter is that other matters, which would have a much more assured remuneration, must be declined.

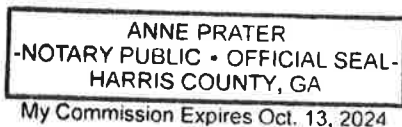
FURTHER AFFIANT SAYETH NOT.

  
Shaun P. O'Hara

Sworn to and subscribed  
Before me this 19<sup>th</sup> day of January, 2021.

  
Notary Public

My Commission Expires:



# Exhibit C

**IN THE STATE COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA**

BRIAN NOWE and  
MARY ALLEN WILSON TONDEE, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

ESSEX TECHNOLOGY GROUP, LLC  
(d/b/a Bargain Hunt),

Defendants.

Civil Action No. SC 2020 CV 694

**AFFIDAVIT OF CHANT YEDALIAN**

1. My name is Chant Yedalian. I am over 18 years of age.
2. I am legally competent to make this Affidavit. This Affidavit is based on my personal knowledge.
3. I submit this Affidavit in support of Plaintiff's' Unopposed Motion For Award Of Attorneys' Fees And Costs To Class Counsel And Incentive Payment To The Class Representatives.
4. Class Counsel has expended considerable time and resources in investigating and analyzing the issues, both legal and procedural, concerning this matter.

5. This matter has been diligently litigated by both Class Counsel and ESSEX TECHNOLOGY GROUP, LLC (d/b/a Bargain Hunt). If the parties to this matter had not reached a settlement and if this settlement were not to be approved, the Class and Class Counsel would be subjected to enormous risks associated with discovery, motions, trial and appeals. In order to prosecute this matter and respond to a vigorous defense by ESSEX TECHNOLOGY GROUP, LLC, the Class and Class Counsel would have had to expend substantially greater costs in terms of time and expenses, including, but not limited to, expert witnesses, discovery, production, extensive motions practice, trial preparation and appeals.

6. In conjunction with co-counsel at Charles A. Gower, P.C. and Wm. Dixon James, P.C., I have carefully assessed the strengths and weaknesses of this matter, and I believe that Plaintiffs can prove their case at trial. However, the prosecution of this matter would be subject to a host of risks, including a substantial risk of no relief to the Class. I am experienced in this type of litigation (as shown in paragraphs 8-24 below), and based upon my investigation of and the prosecution of this matter, believe that the settlement memorialized in the proposed Settlement Agreement is reasonable and adequate and in the best interests of the Class.

7. Complex cases, particularly class actions, generally extend for protracted periods and involve substantial risks and burdens. One such risk is the contingent fee nature of consumer class actions. My practice, which focuses on

representing plaintiffs, depends almost entirely upon contingent fee recoveries, including court-awarded attorney's fees. The consequence of the decision to undertake complex class action litigation like this matter is that other matters, which would have a much more assured remuneration, must be declined.

### **Qualifications of Counsel**

8. I am an attorney and a consumer activist. As an attorney, I am licensed to practice before all of the courts of the State of California. I am also admitted to the Second, Fifth, Sixth, Ninth, Eleventh, and District of Columbia federal Circuit Courts of Appeals, and the federal District Courts for the Central, Northern, Eastern and Southern Districts of California, the Eastern District of Wisconsin, and the Western District of Tennessee.

9. As an attorney, I have had extensive experience in consumer related lawsuits, including complex cases, coordinated matters, multidistrict litigations ("MDL") and class actions and other representative suits.

10. I have been appointed class counsel on several occasions in both state and federal courts.

11. I have extensive experience with cases, like the instant matter, which allege violations of the FACTA.

12. I was among one of the first attorneys in the nation to prosecute FACTA cases and have extensive experience prosecuting FACTA cases from

start to finish.

13. I have personally handled various aspects of FACTA litigation, including, but not limited to, class certification.

14. My efforts have resulted in the certification of several FACTA class actions where certification was contested by the defense. *See, e.g., In Re: Toys "R" Us – Delaware, Inc. – Fair And Accurate Credit Transactions Act (FACTA) Litigation*, MDL 08-01980 MMM (FMOx), 300 F.R.D. 347 (C.D. Cal. 2013); *Tchoboian v. Parking Concepts, Inc.*, SACV09-422 DMG (ANx), 2009 WL 2169883 (C.D. Cal. 2009) (C.D. Cal.); *McGee, et al. v. Ross Stores, Inc, et al.*, C06-7496 CRB (N.D. Cal.); *Klimp v. Rip Curl, Inc., et al.*, SACV07-1383 JVS (FFMx) (C.D. Cal.).

15. In addition to successfully certifying FACTA class actions on a contested basis, I have successfully prosecuted to conclusion many FACTA cases, including against some of the largest merchants in the United States (FedEx Office And Print Services, Toys "R" Us, AMC theatres, Ross Stores, Stein Mart, etc.). These facts not only demonstrate experience but they also provide specific examples of the fact that I have the wherewithal and resources necessary to take on and successfully prosecute FACTA class actions against the largest of merchants.

16. Of course, along the way to class-wide recoveries, I have had

extensive experience litigating many issues in FACTA class action cases.

17. For example, about 13 years ago, I successfully opposed a motion to dismiss in the seminal case of *Pirian v. In-N-Out Burgers*, SACV-06-1251 DOC-MLGx, 2007 WL 1040864 (C.D. Cal. 2007), which set favorable pleading standards for FACTA claims.

18. Throughout the years, I have opposed many motions to dismiss in FACTA cases and continued to secure favorable results in favor of consumers. See, as examples, *Deschaaf v. American Valet & Limousine, Inc.*, 234 F.Supp.3d 964 (D. Ariz. Feb. 15, 2017); *De Cesare, et al v. Lab. Corp. of Am. Holdings*, 2016 WL 3483205 \*3 (C.D. Cal. May 31, 2016).

19. I have conducted extensive discovery and investigations in FACTA cases, including extensive expert related work concerning various payment card processing issues, including payment platforms, equipment and software, intermediaries involved in payment card acquisition and processing, and related data and processes.

20. I have also fiercely and successfully pursued discovery through discovery motions, when necessary. See, e.g., *In Re Toys "R" Us-Delaware, Inc. Fair And Accurate Credit Transactions Act (FACTA) Litigation*, 2010 WL 4942645 (C.D. Cal. 2010).

21. I have successfully defeated motions for summary judgment in

FACTA cases. *E.g.*, *Edwards v. Toys “R” Us*, 527 F.Supp.2d 1197 (C.D. Cal. 2007); *Tchoboian v. Fedex Office & Print Services, Inc.*, 2011 WL 12842230 (C.D. Cal. 2011).

22. I have handled several putative class action cases before the Judicial Panel On Multidistrict Litigation. I have argued before the Judicial Panel On Multidistrict Litigation. I have also served as a lead counsel on behalf of plaintiffs in an MDL. *In Re: Toys “R” Us – Delaware, Inc. – Fair And Accurate Credit Transactions Act (FACTA) Litigation*, MDL 08-01980 MMM (FMOx) (C.D. Cal.); *In Re: The TJX Companies, Inc. Fair and Accurate Credit Transactions Act (FACTA) Litigation*, MDL Case No. 07-md-1853 (D. Kansas).

23. I have litigated (and continue to litigate) several appeals in FACTA cases. I have also argued before several courts of appeal in FACTA cases.

24. I have also persevered and litigated a FACTA case through bankruptcy, on a class-basis, resulting in a \$37 million dollar judgment. *Potikyan v. JS Dreams, Inc. (Johnny Rockets - Commons At Calabasas), et al.*, No. CV13-6237 JEM (C.D. Cal.) (judgment entered Nov. 17, 2016).

25. Although FACTA litigation is a relatively new area of the law (given the statute’s most recent effective date of December 4, 2006), I am no stranger to “cutting-edge” litigation involving consumer rights. I have been involved in various novel and “cutting edge” litigation involving the enforcement of



consumer rights, including statutory rights and constitutional rights. I am a sincere believer in protecting the rights of consumers and am committed to act in their best interests. For example, I have personally (as a party and lead attorney) filed lawsuits to help preserve access to the court and jury system. I filed *Yedalian v. Kaiser Foundation Health Plan, Inc., et al.* (Los Angeles Superior Court Case No. BC288469), which was a lawsuit against several of California's largest HMO's challenging the enforceability of their arbitration clauses and asserting that their representations to their patient members - that binding arbitration is a member's only means of legal recourse to resolve disputes with their HMO - are false and misleading and violate state consumer protection laws. *Yedalian* ultimately resulted in a landmark settlement with the Kaiser and PacifiCare groups of defendants (respectively the State's largest and fifth largest HMO's) requiring the HMO's to provide written notification to patient members concerning their rights when disputes arose.

26. My expertise in protecting consumer rights has been recognized and sought by various organizations. For example, when the late Peter Jennings decided to air a special, multiple-part series on consumer arbitration clauses on ABC World News Tonight with Peter Jennings, the producers of the show requested my services as a consultant, and I agreed to provide same, ultimately resulting in information and materials which were used in the series, including

an interview of one of my clients whose then pending case was featured on the series as a result of my consulting services. My work and experiences have been featured in multiple other venues including radio, television, newspapers, magazines, etc.

27. My work on behalf of consumers does not end with my legal efforts as an attorney. I believe I am specially well suited to represent consumers because, in addition to my legal experience, I am a consumer activist. I have worked hand-in-hand with various consumer protection organizations including the Foundation for Taxpayer and Consumer Rights ("FTCR"), Cal PIRG, AARP, Congress of California Seniors, Sierra Club and others to promote and preserve consumer rights. For example, I along with the FTCR and the California Nurses Association held the very first campaign in Oakland, California spearheading the movement to defeat Proposition 64 (which sought to amend California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.). This was followed by editorial board meetings and rallies and other grass-root type events throughout California to defeat Proposition 64, in which I actively participated. Several of the organizations I have worked with including the FTCR and AARP have written articles about my consumer related efforts.

28. In addition to working with consumer organizations, I have also worked with members of the community such as musicians and other artists to

create content to educate and galvanize the public on consumer related issues. An example of one such project, which I produced, directed, and co-wrote, is a video parody about the high-cost of prescription medications confronting seniors and other residents of the United States (viewable at [www.todaysspecial.org](http://www.todaysspecial.org)).

29. In sum, I believe my experience and expertise as a consumer attorney, my genuine interest in protecting consumer rights, and my work to date in FACTA litigation, including but not limited to this matter, adequately qualify me to serve as Class Counsel on behalf of the best interests of the consumer Class.

30. I do not know of any conflict of interest between myself or my company and any member of the proposed Class which should or would preclude me from representing the proposed Class.

### **Attorneys' Fees**

31. Pursuant to the Settlement Agreement entered by the parties on June 11, 2020 ("Agreement"), Class Counsel seek a total of \$666,667 in attorneys' fees. Agreement ¶ 12.1. This represents one-third of the \$2,000,000 cash fund.

32. In addition to the monetary benefits, there are non-pecuniary benefits achieved by the settlement and the diligence of Class Counsel and the Class Representatives. Following and as a result of the claims asserted by the Settlement Class Representatives, all Bargain Hunt stores stopped printing more than the last

five digits of the credit card or debit card number on printed receipts issued to its customers by approximately June 30, 2017. Agreement ¶ 11.1. In addition, Bargain Hunt will implement appropriate steps, practices, as well as a written company policy to ensure that all Bargain Hunt stories will remain in compliance with FACTA in the future. Agreement ¶ 11.2.

33. Although not necessary given that Class Counsel seek one-third of the cash fund, the fact that non-pecuniary benefits were obtained is itself a basis for awarding attorneys' fees. *See, e.g., Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking into account fact that, in addition to monetary aspects, the defendant stopped the practices at issue). Thus, this too further supports the reasonableness of Class Counsel's fees request because, once the value of the non-pecuniary benefits is added to the cash benefits obtained by the settlement, the amount in fees sought would represent less than one-third of the total benefits secured by the settlement.

34. It should also not be lost on the Court that I have borne, and continue to bear, the risk of litigation on a pure contingency basis, and that as a result of the time committed by me to this matter, I was precluded from taking on other matters which were available.

35. Additionally, this Court can appreciate that litigating a high-stakes and time-consuming class action case against a corporate defendant, with litigation

potentially lasting for several years, is not appealing to most lawyers. I undertook this matter without any guarantee of any payment, and with any fees that I may recover entirely contingent on obtaining recovery. Thus, I have borne, and continue to bear, the risk of obtaining a fee recovery in this matter.

### **The Incentive Award Requested For The Class Representatives**

36. I respectfully request that the named Plaintiffs and only Class representatives, Brian Nowe and Mary Allen Wilson Tondee, each be awarded an incentive award in the amount of \$5,000. Agreement ¶ 12.2.

37. Were it not for the Class Representatives stepping forward and shouldering the duties of protecting and prosecuting the interests of other Settlement Class members, I believe it is likely the interests of the Settlement Class would neither have been prosecuted, nor benefited. Indeed, the parties have acknowledged that, to their knowledge, there is no other litigation, either pending or otherwise, on a class or individual basis, concerning the claims in this lawsuit other than those brought by the Class Representatives.

38. Moreover, I believe the Class Representatives have done all things reasonably expected of them in their capacity as Class Representatives. They were subjected to liability for defense costs in the event litigation was unsuccessful. By stepping forward to shoulder this matter on behalf of the class, they also took on other risks, including the risk of subjecting themselves to intrusive discovery. They

also regularly and consistently communicated with Class Counsel throughout the time this matter was pending. They also reviewed relevant documents, provided their input, and otherwise kept apprised of litigation related events and developments. They also provided their ideas and input to Class Counsel in the various rounds of settlement negotiations and exchanges. In sum, they contributed as much of their valuable time as this matter demanded to ensure a vigilant prosecution of and favorable outcome for the best interests of the class. I believe these facts further support an incentive award because they “recognize [a class representatives] willingness to act as a private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9<sup>th</sup> Cir. 2009).

39. It is fair to say that but for the Class Representatives’ actions, there would be no resulting benefit to individual Settlement Class members or *cy pres* benefits. Moreover, it is as a result of their diligence that Bargain Hunt ceased its conduct of printing prohibited information and will implement appropriate steps, practices, as well as a written company policy to ensure that all Bargain Hunt stores will remain in compliance with FACTA in the future. Thus, the Class Representatives effectuated substantial change of conduct, thereby accomplishing the “deterrent” objectives of FACTA. They were also willing and stepped forward to act as a private attorney general where, to Class Counsels’ knowledge, no other plaintiff has done so.

40. The fact that the Court has already made a preliminary finding that the settlement is fair, adequate and reasonable, also supports the significance of the benefits achieved through the Class Representatives' initiative and perseverance.

41. Class Counsel estimate that each of the Class Representatives devoted more than 15 hours of their time to pursue this matter. By definition, the time they devoted to this matter was time spent away from work and/or leisure in an effort to advance the interests of the entire class.

42. Another factor properly considered by the Court in assessing an incentive award is the personal benefit, or lack thereof, enjoyed by the class representative as a result of the litigation. *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. January 17, 2014):

“An incentive award may be appropriate when a class representative will not gain any benefit beyond that he would receive as an ordinary class member. See *Razilov*, 2006 WL 3312024, at \*4 (approving the payment of an incentive award where the only benefit a class representative was going to receive from a settlement was the same statutory damages other class members would receive); *Van Vranken*, 901 F.Supp. at 299 (where a class representative's claim made up 'only a tiny fraction of the common fund,' a substantial incentive award was appropriate). The named plaintiffs in this action will receive no relief beyond that available to members of the class in general; absent an incentive award, they will each be eligible to submit a claim for a \$5, \$15, or \$30 voucher. This factor, therefore, also favors approval of an incentive award.”

43. I also believe that the amount requested is also reasonable in relation to other cases. In *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001), the court approved incentive awards of \$300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process and taking the risk of stepping forward on behalf of the class. In *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 300 (N.D. Cal. 1995), a \$50,000 incentive award was approved for similar participation.

44. The amount requested is also similar to incentive awards in various other FACTA cases. For example, in *McGee, et al. v. Ross Stores, Inc, et al.*, C06-7496 CRB (N.D. Cal. January 9, 2009), the court awarded each of the two class representatives a \$5,000 incentive payment. In *Tchoboian v. Parking Concepts, Inc., et al.*, SACV09-422 DMG (ANx) (C.D. Cal. November 12, 2010) the court awarded the class representative a \$5,000 incentive payment. In *Jarchaffian v. American Multi-Cinema, Inc., et al.*, CV09-03434 JHN (AJWx), 2011 U.S. Dist. LEXIS 158005 \*6 (C.D. Cal. October 6, 2011) the court awarded the class representative a \$5,000 incentive payment. In *Sakamoto v. One Parking, Inc. et al.*, SACV11-1249 MLG (C.D. Cal. June 21, 2012) the court awarded the class representative a \$5,000 incentive payment. In *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295



F.R.D. 438, 472 (C.D. Cal. January 17, 2014), the court awarded each of the three class representatives a \$5,000 incentive payment.

45. In sum, Class Counsel believe the requested incentive award of \$5,000 to each of the Class Representatives for the valuable time and resources they contributed to advance this matter is fair and reasonable, and it is respectfully requested that the Court approve and award this amount as the incentive award for each of them.

#### **Reimbursement Of Costs**

46. In connection with Plaintiffs' claims against Bargain Hunt, Class Counsel seek the reimbursement of costs in the amount of \$6,112.80 consisting of the following:

Filing, Pro Hac Vice, Service and Related Expenses:	2,609.95
Flights, Lodging and Other Travel Related Expenses:	1,908.81
Mail, Courier, Printing and Miscellaneous Expenses:	1,594.04
TOTAL:	\$6,112.80

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FURTHER AFFIANT SAYETH NOT.

  
Chant Yedalian

Sworn to and subscribed  
Before me this 16th day of January, 2021.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

SEE ATTACHED DOCUMENT


SEE ATTACHED DOCUMENT

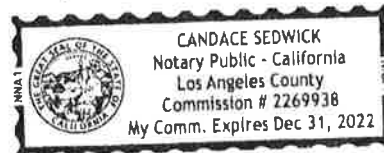
**CALIFORNIA JURAT**  
(CALIFORNIA GOVERNMENT CODE § 8202)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF Los Angeles

Subscribed and sworn to (or affirmed) before me on this 16 day of January, 2021  
by Chant Yedalian, proved to me on the basis of  
(Name of Signer(s))  
satisfactory evidence to be the person(s) who appeared before me.

  
Signature of Notary Public (Notary Seal)



**ADDITIONAL OPTIONAL INFORMATION**

**Description of Attached Document**

Title or Type of Document: Affidavit of Chant Yedalian Document Date: 01/16/2021  
Number of Pages: 16 Signer(s) Other Than Named Above: \_\_\_\_\_  
Additional Information: in the State Court of Muscogee County State of Georgia

# Exhibit D

**IN THE STATE COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA**

BRIAN NOWE and  
MARY ALLEN WILSON TONDEE, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

ESSEX TECHNOLOGY GROUP, LLC  
(d/b/a Bargain Hunt),

Defendants.

Civil Action No. SC 2020 CV 694

**AFFIDAVIT OF WILLIAM DIXON JAMES**

State of GEORGIA

County of DEKALB

1.

My name is William Dixon James. I am over 18 years of age. I make this  
Affidavit in DeKalb County, Georgia.

2.

I am suffering under no disabilities and am legally competent to make this  
affidavit. This affidavit is based on my personal knowledge.

3.

I submit this Affidavit in support of Plaintiff's' Unopposed Motion For Award Of Attorneys' Fees And Costs To Class Counsel And Incentive Payment To The Class Representatives.

4.

Class Counsel has expended considerable time and resources in investigating and analyzing the issues, both legal and procedural, concerning this matter.

5.

This matter has been diligently litigated by both Class Counsel and ESSEX TECHNOLOGY GROUP, LLC (d/b/a Bargain Hunt). If the parties to this matter had not reached a settlement and if this settlement were not to be approved, the Class and Class Counsel would be subjected to enormous risks associated with discovery, motions, trial and appeals. In order to prosecute this matter and respond to a vigorous defense by ESSEX TECHNOLOGY GROUP, LLC, the Class and Class Counsel would have had to expend substantially greater costs in terms of time and expenses, including, but not limited to, expert witnesses, discovery, production, extensive motions practice, trial preparation and appeals.

6.

In conjunction with co-counsel Chant Yedalian and Charles A. Gower, P.C., I have carefully assessed the strengths and weaknesses of this matter, and I believe

that Plaintiffs can prove their case at trial. However, the prosecution of this matter would be subject to a host of risks, including a substantial risk of no relief to the Class.

7.

Based upon investigation of and the prosecution of this matter, I believe that the settlement memorialized in the proposed Settlement Agreement is reasonable and adequate and in the best interests of the Class.

8.

I have been co-counsel and local counsel in numerous consumer matters, class actions, and complex cases.

9.

I am a sole practitioner and exclusively represent plaintiffs in various types of personal injury matters, consumer matters, and class action litigation. My firm's income is derived almost solely from contingent fee work, including court-awarded attorneys' fees.

10.

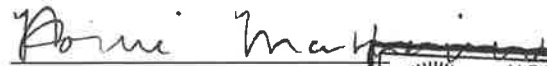
Complex cases, particularly class actions, generally extend for protracted periods and involve substantial risks and burdens. The quid pro quo for the decision to undertake complex class action litigation like this matter is that other cases, which would have a much more assured remuneration, must be declined.

FURTHER AFFIANT SAYETH NOT.

  
William Dixon James

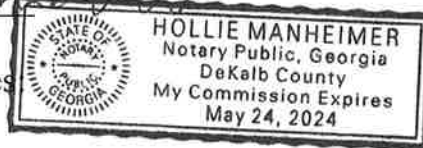
Sworn to and subscribed

Before me this 14 day of January, 2021.



Notary Public

My Commission Expires





# Exhibit E

IN THE STATE COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA

BRIAN NOWE and  
MARY ALLEN WILSON TONDEE, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

ESSEX TECHNOLOGY GROUP, LLC (d/b/a  
Bargain Hunt),

Defendants.

Civil Action No. SC 2020 CV 694

**[PROPOSED] FINAL APPROVAL OF THE SETTLEMENT AGREEMENT; FINAL  
JUDGMENT; AWARD OF SETTLEMENT CLASS COUNSEL'S FEES, EXPENSES,  
AND SETTLEMENT CLASS REPRESENTATIVES' INCENTIVE AWARDS;**

WHEREAS, on November 10, 2020, this Court entered a Preliminary Approval Order that conditionally certified pursuant to O.C.G.A. § 9-11-23, for settlement purposes only, a Settlement Class consisting of:

All consumers who, at any time between August 1, 2016 and June 30, 2017, were provided an electronically-printed receipt with more than the last 5 digits of a credit card or debit card at the point of a sale or transaction at any Bargain Hunt store. Excluded from the Settlement Class are: (1) all Persons who properly and timely opt out pursuant to the Agreement; and (2) the judge to whom this Action is assigned and any member of his or her immediate family.

WHEREAS, this Court finds that the papers presented in connection with the final approval hearing are detailed and sufficient to rule on final approval, attorneys' fees and expenses, and incentive awards; and

**WHEREAS**, this Court, having heard from Settlement Class Counsel on behalf of the Settlement Class, and from Defendant's counsel, and having reviewed all other arguments and submissions presented by all interested persons and entities with respect to the settlement and the Settlement Class Counsel's attorneys' fees and expenses and incentive awards to the Settlement Class Representatives;

**WHEREAS**, this Court, having previously determined that the Settlement Class asserts both federal and state law claims alleging injury in fact caused by Defendant; and

**WHEREAS**, unless specifically defined herein, all capitalized terms used herein have the meanings set forth and defined in the Settlement Agreement, it is hereby

**ORDERED, ADJUDGED, DECREED, AND FOUND THAT:**

1. This cause arises out of Settlement Class Representatives' allegations that Defendant committed violations of state and federal law, including but not limited to the Fair and Accurate Credit Transactions Act ("FACTA"), 15 U.S.C. § 1681, *et seq.*, by providing electronically-printed receipts with more than the last five digits of a credit card number or debit card number at the point of sale or transaction.

2. Defendant denies that there is any factual or legal basis for Settlement Class Representatives' allegations. Defendant denies any liability and that Settlement Class Representatives or any other members of the Settlement Class have suffered injury or are entitled to monetary or other relief. Defendant finally denies that this case should be certified as a class action, except for purposes of settlement.

3. After extensive arm's-length settlement negotiations, the Parties agreed to settle this matter.

4. The Settlement Agreement provides substantial and meaningful relief to the Settlement Class, including affirmative relief that requires Defendant to continue refraining from printing more than the last five digits of the credit card and debit card numbers on printed receipts issued to customers, as well as monetary benefits to the Settlement Class.

5. The Settlement Agreement provides for a settlement under which Participating Claimants can make claims to receive monetary benefits.

6. The Settlement Class as provided in the Preliminary Approval Order is unconditionally certified pursuant to O.C.G.A. § 9-11-23. The prerequisites for a class action under O.C.G.A. § 9-11-23 have been satisfied in that (a) the members of the Settlement Class are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class, and the common questions predominate over any questions affecting only individual members; (c) the claims of Settlement Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) Settlement Class Representatives have and will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

7. For purposes of the nonmonetary benefits specified in Section 11 of the Agreement, the prerequisites for a class action under O.C.G.A. § 9-11-23 have been satisfied in that (a) the members of the Settlement Class is so numerous that joinder of all member thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Settlement Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) Settlement Class Representatives have and will fairly and adequately represent the interests of the Settlement Class; and (e) Defendant has acted or refused to act on

grounds generally applicable to the class, thereby making appropriate final injunctive or declaratory relief with respect to the class as a whole.

8. This Court previously concluded, and again finds, that it has subject matter jurisdiction over the case and controversy and has the authority to enter this final judgment.

9. The following are appointed as Settlement Class Representatives of the Settlement Class: Brian Nowe and Mary Allen Wilson Tondée.

10. The Court confirms its appointment of the following as Settlement Class Counsel: Charles Austin Gower, Jr. and Shaun Patrick O'Hara of Charles A. Gower PC, Chant Yedalian of Chant & Company A Professional Law Corporation, and William Dixon James of Wm. Dixon James, P.C.

11. The settlement, as set forth in the Settlement Agreement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class members, and is approved in all respects in accordance with O.C.G.A. § 9-11-23.

12. The settlement was negotiated at arm's-length by experienced counsel who were fully informed of the facts and circumstances of the Action and of the strengths and weaknesses of their respective positions. The settlement was reached after the Parties engaged in extensive negotiations. Settlement Class Counsel and Defendant's counsel are therefore well positioned to evaluate the benefits of the settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

13. Notice to the members of the Settlement Class has been provided as directed by this Court in the Preliminary Approval Order, and such notice having constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and

providing notice to the members of the Settlement Class, has satisfied the requirements of due process, O.C.G.A. § 9-11-23, and all other applicable laws.

14. The settlement shall not be deemed to constitute an admission or finding of liability or wrongdoing on the part of Defendant, Settlement Class Representatives, or any of the Settlement Class members, Released Parties, or any additional Released Parties.

15. Upon the Final Effective Date, Settlement Class Representatives, each Settlement Class member, and each Releasing Party shall be deemed to have, and by operation of this Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Settled Claims against the Released Parties in the manner(s) set forth in Section 13 of the Settlement Agreement.

16. Upon the Final Effective Date, Settlement Class Representatives, each Settlement Class member, and each Releasing Party shall be permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Settled Claims.

17. Settlement Class Representative incentive awards are hereby awarded to the following Settlement Class Representatives in the amount of five-thousand dollars and zero cents (\$5,000.00) each: Brian Nowe and Mary Allen Wilson Tondee, paid pursuant to the terms of the Agreement, as compensation for their efforts in bringing the Action and achieving the benefits of the settlement on behalf of the Settlement Class.

18. Settlement Class Counsel are hereby awarded (a) attorneys' fees in the amount of six-hundred-sixty-six-thousand—six-hundred-sixty-seven dollars and zero cents (\$666,667.00) and (b) reimbursement of their reasonable expenses in the amount of six-thousand-one hundred-twelve dollars and eighty cents (\$6,112.80). These fees and reimbursement of expenses shall be

paid pursuant to the terms of the Agreement, and are to be allocated among Class Counsel according to Class Counsel's existing agreement with one another.

19. The Court finds that the amounts of attorneys' fees and reimbursable expenses awarded to Settlement Class Counsel are fair and reasonable. In making its award of attorneys' fees and reimbursement of expenses, in the amounts described in paragraph 18 above, the court has considered and finds as follows:

- a. The settlement has provided significant relief to the Settlement Class.
- b. Defendant's implementation of a written company policy to ensure all Bargain Hunt stores remain in compliance with FACTA was a negotiated, material term of the settlement.
- c. The Notice Program constituted the best notice practicable to Settlement Class members consistent with the requirements of due process.
- d. The settlement provides a fair opportunity for all members of the Settlement Class to submit a Claim and be compensated. The Notice Program combined with the length of the Claims Period provides ample opportunity for any Settlement Class member who desires to submit a claim to do so.
- e. By providing this opportunity for compensation Settlement Class Counsel have demonstrated that they have represented the Settlement Class well. Settlement Class Counsel have conducted the litigation and achieved the settlement with skill, perseverance, and diligent advocacy on behalf of Settlement Class Representatives and the Settlement Class as a whole.

- f. This matter involves complex factual and legal issues and, in the absence of the settlement, would involve further lengthy proceedings and uncertain resolution of such issues.
- g. Had the settlement not been achieved, there would remain a significant risk that the Settlement Class may have recovered less or nothing from Defendant, and that any recovery would have been significantly delayed.
- h. Settlement Class counsel possess and successfully utilized the skills and expertise required to prosecute this matter and achieve settlement. The Court also considered and finds that the experience, reputation, and ability of Settlement Class Counsel contributed to the success of achieving settlement, and the benefits conferred as a result of the settlement, including the monetary benefits and the change of conduct and implementation of a FACTA compliance policy by Defendant. The Court also considered and finds that Settlement Class Counsel's fees were always contingent, and Settlement Class Counsel undertook substantial risk by prosecuting this matter, including the substantial risk of non-payment.

20. Defendant and additional Released Parties shall not be liable for any additional fees or expenses for Settlement Class Counsel or counsel of any Settlement Class Representatives in connection with the Action, beyond those expressly provided in the Settlement Agreement.

21. The Court hereby directs the Settlement Administrator, Defendant and Plaintiffs to effectuate all terms of the settlement and Agreement.

22. By reason of the settlement, and approval hereof, there is no just reason for delay and the Court hereby enters this Final Order and Judgment as a final judgment.



23. Jurisdiction is reserved by this Court, without affecting the finality of this Final Approval Order and Judgment, over:

- a. Effectuating the settlement and the terms of the Agreement, including the payment of Settlement Class Counsel's attorneys' fees and reimbursement of expenses, including any interest accrued thereon;
- b. Supervising any remaining aspects of the administration of the settlement;
- c. Determining whether, in the event an appeal is taken from any aspect of this Final Approval Order and Judgment, notice should be given at the appellant's expense to some or all Settlement Class members apprising of the pendency of the appeal and such other matters as the Court may order;
- d. Enforcing and administering the Settlement Agreement and the settlement, including the release executed in connection therewith, and the provisions of this Final Approval Order and Judgment;
- e. Adjudicating any disputes that arise under the Settlement Agreement; and
- f. Any other matters related or ancillary to the foregoing.

SO ORDERED, ADJUDGED, AND DECREED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Andy Prather