

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE :

VISA CHECK/MASTERMONEY ANTITRUST :
LITIGATION :

: Case No. 96 cv 5238 (JG)

: **AFFIDAVIT OF DAVID WEITMAN**
: **IN FURTHER SUPPORT OF ORDER**
: **TO SHOW CAUSE TO PARTICIPATE IN**
: **THE CLASS ACTION SETTLEMENT AS A**
: **TIMELY FILER AND DIRECTING LEAD**
: **COUNSEL TO PROVIDE ALL NECESSARY**
: **CLAIMS PROCESSING INFORMATION**
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STATE OF TEXAS }
 } ss.:
COUNTY OF DALLAS }

DAVID WEITMAN, being duly sworn, states, under penalty of perjury, as follows:

1. I am a partner at the law firm of K&L Gates LLP, counsel for movant Wells Fargo Retail Finance II, LLC ("WFRF"). I submit this affidavit, upon personal knowledge, in further support of WFRF's Order to Show Cause to Participate in the Class Action Settlement as a Timely Filer.

2. In 2005, I and my firm, Hughes & Luce, LLP (later K&L Gates LLP), were retained by WFRF in connection with the bankruptcy proceedings of Clothestime Stores, Inc. ("Clothestime"). In such bankruptcy proceedings, the interests of Clothestime's bankruptcy estate were represented by a Chapter 7 trustee (the "Chapter 7 Trustee").

3. Based upon information and my belief, the Chapter 7 Trustee received notice of the MasterCard/Visa settlement and the deadline for filing claims to the settlement proceeds with respect thereto. As the Chapter 7 Trustee was charged with liquidating and winding up the

affairs of Clothestime, it is my understanding that the mail of Clothestime was forwarded to the address of the Chapter 7 Trustee.

4. As part of my representation of WFRF in connection with the Clothestime bankruptcy proceedings, I worked with counsel for the Chapter 7 Trustee to ensure the collection of WFRF's collateral, which included my working to ensure the timely filing of claims, and which resulted in my staying abreast of distributions of proceeds from the litigation trust (the "Litigation Trust") made by the claims administrator (the "Claims Administrator") for the Litigation Trust to the Chapter 7 Trustee and thereafter remitted to WFRF. In that regard, I was copied on certain correspondence between the Chapter 7 Trustee and the Claims Administrator, including, Exhibits A and B appended to the Declaration of Perry Carbone.

5. Neither I, nor K&L Gates LLP (or my predecessor law firm), were ever retained by WFRF (or any of its predecessor entities) with respect to any other merchant claims against the Litigation Trust. My work on WFRF's Clothestime matter relating to claims with respect to proceeds from the Litigation Trust consisted of (a) monitoring the website maintained by the Claims Administrator and (b) ensuring that all distributions of the proceeds from the Litigation Trust to which Clothestime was entitled were received by the Chapter 7 Trustee and subsequently remitted to WFRF. In connection with the matters described above, I worked with Eileen Quinn of WFRF; I did not work with any of Patrick Norton, Michele Ayou or Lynn Whitmore in any matters relating to the Litigation Trust until March, 2009.

6. While I learned of the MasterCard/Visa litigation in 2005, I did not know until March, 2009, that additional retail borrowers of WFRF had claims to proceeds from the Litigation Trust.

7. In March, 2009, I was contacted by Mr. Norton, who initially asked me to help WFRF evaluate an offer made to WFRF in February, 2009, by a claims trader, for the acquisition of the claims of Wickes Furniture Company, Inc. ("Wickes") to the settlement proceeds from the MasterCard/Visa litigation trust.

8. Later that month, WFRF identified six (6) other merchants (together with Wickes, the "Retail Borrowers"), each of whom (a) had granted a security interest in all of their respective assets, to WFRF, (b) had gone into bankruptcy, (c) had, at the time of their respective bankruptcies, substantial outstanding indebtedness still owing to WFRF, and (d) were potentially entitled to settlement proceeds from the Litigation Trust.

9. In connection with the foregoing discoveries by WFRF, in late March, 2009, Mr. Norton expanded my law firm's representation of WFRF to include the pursuit, on behalf of WFRF, of the claims to the proceeds from the Litigation Trust owed to the Retail Borrowers, and we have diligently pursued such claims since that time.

10. My law firm is not (and my predecessor law firm was not) general counsel to WFRF (or its predecessors-in-interest). My law firm is (and my predecessor law firm was) hired from time to time on select matters for several different offices of Wells Fargo Bank, N.A., and its affiliates and divisions, including WFRF.

11. Prior to March, 2009, I was never retained by WFRF to help WFRF realize, on behalf of any of the Retail Borrowers, any settlement proceeds from the Litigation Trust to which such Retail Borrowers might otherwise be entitled, nor did I inquire about any matters relating to the Litigation Trust other than with respect to matters arising during my representation of WFRF in the Clothestime matter.



DAVID WEISMAN

Sworn to before me
this 6th day of November, 2009

Charlotte Greguski
Notary Public

