

## **Notice of Proposed Settlement of Class Action**

TO: All persons whose address and/or telephone number was entered into an electronic customer database at Home Consignment Center's Danville, Roseville, or Folsom, California retail stores, at any time prior to August 30, 2008.

**READ THIS NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR RIGHTS.**

### **PURPOSE OF THIS NOTICE**

This notice informs you about a pending class action and a proposed Settlement on behalf of a certain class of persons. This notice advises you of the benefits that may be available to you under the proposed Settlement and your rights and options as a class member, and notifies you that court hearings will be held to approve the Settlement.

There is currently pending in the California Superior Court for the County of Sacramento an action entitled *Smith v. Home Consignment Center*, Civil Action No. 34-2008-00013649-CU-BT-GDS (the "Action").

### **WHAT THE ACTION IS ABOUT**

A class action lawsuit has been filed against Home Consignment Center, on behalf of those persons described above. The law firms who represent Plaintiff and the Class Members in the Action are Lindsay & Stonebarger, A Professional Corporation, and Harrison, Patterson & O'Connor LLP ("Class Counsel").

The Action alleges that Home Consignment Center violated California Civil Code §1747.08 by requesting customers to provide address and/or telephone number information in connection with credit card purchase transactions at its retail stores located in Danville, Roseville, and Folsom, California. Home Consignment Center denies all allegations of wrongdoing and contends that the information entered in its customer database was requested lawfully, was never sold or provided to any third party, and was obtained and used only for lawful business purposes. However, to avoid the time, cost and rigors of continued formal litigation, Home Consignment Center has agreed to settle the Action on the terms summarized in this Notice.

### **THE COURT HAS NOT MADE ANY DECISION AS TO THE MERITS OF ANY CLAIMS OR DEFENSES OF EITHER SIDE IN THE ACTION.**

The settlement was reached through extensive arms-length negotiations between the parties and with the assistance of a neutral mediator, John B. Bates, Jr. of JAMS.

The Honorable Raymond Cadei of the Sacramento County Superior Court has determined that the Action should proceed as a Class Action, for purposes of settlement only, with Plaintiff as the representative of the Class, and granted preliminary approval of the settlement, subject to a Final Settlement Approval hearing discussed below.

### **THE PROPOSED SETTLEMENT**

THE PARTIES HAVE AGREED TO THE SETTLEMENT GENERALLY DESCRIBED BELOW:

You are a member of the Settlement Class if your personal identification information was entered into an electronic customer database at Home Consignment Center's Danville, Roseville, or Folsom retail stores at any time prior to August 30, 2008. Your settlement benefit is a Merchandise Certificate that is valid for a fifty (50%) percent discount on any single item priced at twenty (\$20) dollars or less, a thirty (30%) percent discount on any single item priced at one-hundred (\$100) dollars or less, or a twenty (20%) percent discount on any single item irrespective of price. You will be responsible for paying all applicable sales taxes on the full, undiscounted price of the discounted item. The Merchandise Certificate may be used at Home Consignment Center's Danville, Roseville, or Folsom retail store locations. There is no minimum or maximum purchase amount. The Merchandise Certificates have been issued and included with the Summary Class Notice mailed to each Class Member's address.

The Parties agreed that the named Plaintiff in the Action shall be entitled to an incentive award of \$5,000 in recognition of the risk to Plaintiff as the Class representative in commencing the lawsuit, both financial and otherwise and the amount of time and effort spent by Plaintiff as the Class representative. The Parties also agreed that Class Counsel shall be entitled to an award of attorneys' fees and costs of \$132,500, which the Parties agreed represents a fair and commensurate amount in view of the nature of the Action and the results achieved for the benefit of California consumers. Payment of the incentive award and attorneys' fees will not affect the benefits provided to the Settlement Class.

### RELEASE OF CLAIMS

If the settlement is granted final approval by the Court, Plaintiff and each member of the Settlement Class who has not timely requested exclusion from the Settlement Class will be deemed to have released Home Consignment Center, and each of its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and each of their company-sponsored employee benefit plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents from all claims that were alleged or that could have arisen out of HCC's requesting and recording customer's addresses and/or telephone numbers, in conjunction with a credit card purchase transaction, into an electronic customer database at Defendant's Danville, Roseville, or Folsom retail stores at any time prior to August 30, 2008.

### FINAL FAIRNESS HEARING

A final hearing will be held before the Honorable Raymond Cadei on May 21, 2010 at 1:30 p.m. to determine whether the proposed Settlement is fair, reasonable and adequate and should be finally approved by the Court. The hearing will take place in Department 13 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, California, 95814. **You are not required to attend the hearing in order to participate in the settlement.**

### WHAT YOU CAN DO

- 1. To Receive A Merchandise Certificate.** If you received the notice by mail, you have already received a Merchandise Certificate with that Notice. You may utilize the Merchandise Certificate immediately if you do not exclude yourself from the settlement.
- 2. To Have Personal Information Removed From Home Consignment Center's Customer Database.** If you wish, you may request Home Consignment Center to remove your personal information (i.e. address and/or telephone number) from its customer database by sending a written request to *Smith v. Home Consignment Center Administrator*, c/o Gilardi & Co. LLC, PO Box 8060, San Rafael, CA 94912-8060 or directly to Home Consignment Center at the following address: 319 Diablo Road, Suite 218, Danville, CA 94256.
- 3. To Exclude Yourself From The Settlement.** You have the right to exclude yourself from the Action and the settlement. If you do not wish to be included in the Class and receive settlement benefits, you must mail or deliver a written request for exclusion to the Clerk of the Court, care of *Smith v. Home Consignment Center Administrator*, c/o Gilardi & Co. LLC, PO Box 8090, San Rafael, CA 94912-8090. Your written request to be excluded must be postmarked by May 6, 2010. Your letter must state "I wish to be Excluded from the Class Settlement in this Action" and must be signed by you. You must also include your name, address and telephone number. **TO BE CONSIDERED VALID, A REQUEST FOR EXCLUSION MUST SET FORTH ALL OF THIS INFORMATION AND MUST BE TIMELY RECEIVED.** Furthermore, because the Merchandise Certificates have been immediately activated, the correspondence requesting exclusion must contain the Merchandise Certificate in order to be valid.
- 4. To Object To The Settlement.** If you do object to the settlement, but do not wish to exclude yourself from the Class Action, you may intervene in the Action and/or object to the terms of the settlement under the procedures set forth below. If your objection is rejected, you will be bound by the final judgment just as if you had not objected.

If you have not timely and validly requested exclusion, you may appear at the hearing scheduled on May 21, 2010, to show cause why the settlement should not be approved by the Court, provided that you have filed with the Court a written notice of your intention to appear, all supporting papers, and a statement under penalty of perjury that you are in fact a member of the Class.

If you decide to appear and object, you (or your attorney if you retain one at your own cost), must file and serve your appearance and/or objection at least fifteen (15) calendar days prior to the fairness hearing with the Court, and upon Counsel for all of the parties, all of which must be postmarked by May 6, 2010. If you intend to appear in person or by your counsel at the fairness hearing, you must provide the Court and all attorneys with written notice postmarked by May 6, 2010. If you intend to present evidence at the hearing, you must include with your notification a list identifying the witnesses who you may call to testify and true copies of any exhibits you intend to offer. You must serve all such notice and papers upon Class Counsel and Defendant's counsel at the following addresses:

James M. Lindsay, Esq.  
Lindsay & Stonebarger, APC  
21 Natoma Street, Suite 160  
Folsom, CA 95630  
(Class Counsel)

Jordan S. Altura, Esq.  
Gordon & Rees  
275 Battery Street, Suite 2000  
San Francisco, CA 94111  
(Defendant's Counsel)

The mailing address for the Superior Court of California, County of Sacramento is:

Superior Court of California, Sacramento County  
720 9th Street  
Sacramento, CA, 95814

**CLASS MEMBERS WHO DO NOT TIMELY MAKE THEIR OBJECTIONS IN THIS MANNER WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND SHALL NOT BE ENTITLED TO BE HEARD AT THE SETTLEMENT APPROVAL HEARINGS.** You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your personal attorneys' fees and costs.

This description of the Action is general and does not cover all of the issues and proceedings thus far. In order to see the complete file including the individual terms of the settlement, you should visit the office of the Clerk of the Court in Department 13 of the Sacramento County Superior Court. The Clerk will make the file relating to this lawsuit available to you for inspection and copying at your own expense.

**If you have further questions regarding this lawsuit you may write to Class Counsel at the following address: Home Consignment Center Class Action, Lindsay & Stonebarger, APC, 21 Natoma Street, Suite 160, Folsom, CA 95630.**

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT, TO THE JUDGE, OR TO COUNSEL FOR DEFENDANT. They are not permitted to answer your questions.**