**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| **EDWARD T. ESSLINGER, GLORIA GLOVER, ARDATH ROGERS, MARILYN RIVERA, DWIGHT C. SAMUELS, CYLINDA MCALISTER, PEGGY COLTON, CONSTANTINE YIANNACOPOULOS, DESHEA HEAD, JAMES W. MCKINNEY, NANCY JANOWSKI, and MARGARET REENER, Individually and On Behalf of All Others Similarly Situated,** | : | **CIVIL ACTION NO: 2:10-cv-03213-BMS** |
| **Plaintiffs,** | : | |
| **v.** | : | |
| **HSBC BANK NEVADA, N.A.; HSBC USA, INC.; HSBC FINANCE CORPORATION; HSBC BANK USA, N.A.; and HSBC CARD SERVICES, INC.** | : | |
| **Defendants.** | : | |

**SECOND AMENDED AND CONSOLIDATED CLASS ACTION COMPLAINT**

Plaintiffs EDWARD T. ESSLINGER, GLORIA GLOVER, ARDATH ROGERS, MARILYN RIVERA, DWIGHT C. SAMUELS, CYLINDA MCALISTER, PEGGY COLTON, CONSTANTINE YIANNACOPOULOS, DESHEA HEAD, JAMES W. MCKINNEY, NANCY JANOWSKI, and MARGARET REENER, individually ("Plaintiffs" or "Class Representatives") and on behalf of all others similarly situated (the "Class" or the "Putative Class"), bring this class action against Defendants, HSBC BANK NEVADA, N.A., HSBC USA, INC., HSBC FINANCE CORPORATION, HSBC BANK USA, N.A., and HSBC CARD SERVICES, INC. (collectively "Defendants" or "HSBC"). Plaintiffs seek certification of this matter as a class action.

Plaintiffs, individually and on behalf of the Class, by and through their attorneys, submit this Second Amended and Consolidated Class Action Complaint (the "SACC") against the Defendants named herein and allege as follows:

## I. NATURE OF THE ACTION

1. This proposed or putative class action stems from the illicit activities undertaken by HSBC while marketing and selling products known as "Personal Account Protection," "Personal Account Protection Elite," "Account Benefits," "Account Secure Plus" and other monikers that all offer similar coverage (hereinafter collectively referred to as "Payment Protection" or the "Plan").

2. Payment Protection carries none of the regulatory protections and satisfies none of the actuarial requirements typically applicable to insurance contracts.

3. HSBC violated the law (a) by enrolling Card Holders into Payment Protection without their consent and charging a recurring fee for the same; (b) by offering Payment Protection to Card Holders in an unfair, deceptive, unlawful, and/or misleading manner; and (c) by administering claims for Payment Protection benefits in an unfair, deceptive, unlawful, and/or misleading manner.

4. HSBC markets Payment Protection through direct mail and telemarketing. However, HSBC misrepresents and/or fails to disclose the real nature of Payment Protection. It represents Payment Protection as a service that suspends or cancels the required minimum monthly payment due on the credit card holder's (hereinafter "Card Holder") account and excuses the Card Holder from paying the monthly interest charge and the Payment Protection Plan fee for a limited period of time, preventing the account from becoming delinquent. HSBC's

marketing for this product claims that "[i]n good times and bad, we've got you covered."[1]

5. However, HSBC enrolls Card Holders without their consent or authorization in to Payment Protection. Because these customers do not know this "coverage" has been imposed on them and that they were enrolled without their consent.

6. Despite its simple explanation for marketing purposes, HSBC's Payment Protection is a dense maze of limitations, exclusions, and restrictions, making it impossible for customers to determine what Payment Protection covers and whether it is a sound financial choice and makes it difficult or impossible for consumers to get benefits even if they are eligible for them.

7. Additionally, HSBC makes no effort to determine whether a Card Holder is eligible for Payment Protection benefits at the time of sale and actively pushes the product on persons likely to be excluded. As a consequence, HSBC bills thousands of retired persons (many of whom are senior citizens), along with the unemployed, self-employed, part-time, or seasonal employees, as well as disabled individuals, for Payment Protection coverage - even though their employment or health status prevents them from receiving material benefits under the Plan. In other words, HSBC engages in a common scheme of misrepresenting material information about Plan benefits, Plan limitations, Plan exclusions, and Plan requirements.

8. Days or weeks after the sale of Payment Protection, HSBC may in some instances mail written material to the Card Holder. Given the confusing way the written materials present the terms and conditions of Payment Protection, it would be extremely difficult for a Card Holder to decipher those provisions.

9. In fact, HSBC includes in its marketing campaign the following: "[w]hen you

[1] http://www.personalaccountprotection.com/1/2/3/product_details_howitworks, last viewed on June 1, 2010.

need this coverage, confusing paperwork is the last thing you need." Instead, it promotes the use of its online and phone services to file claims.

10. However, HSBC has established its "customer service" support in such a way that Card Holders cannot easily cancel the Plan or receive answers to benefit questions. It has established its "claim filing" system such that Card Holders cannot easily file claims or receive benefits for filed claims.

11. HSBC also deters individuals who have been paying for Payment Protection month in and month out from filing claims.

12. For those who do file claims, HSBC does not refund Payment Protection premiums even after it has denied Card Holders' claims for Payment Protection benefits, nor does it address Card Holders' continued obligations to pay the monthly fee for Payment Protection after a claim has been denied.

13. Payment Protection is so confusing as to when coverage is triggered, so restricted in terms of the benefits it provides to Card Holders, and is so difficult to activate benefits that the product is essentially worthless.

14. HSBC knows that for those Card Holders who voluntarily enroll in Payment Protection, few will ever receive benefits under the Plan and, to the extent that benefits are paid, the amounts paid in "premiums" will usually exceed any benefits paid out.

15. As a result of Defendants' fraudulent, unfair, and/or unlawful practice of imposing Payment Protection on some Card Holders, enrolling other Card Holders who are not eligible for benefits or who Defendants prevent from receiving benefits with their ever-increasing restrictions and qualifications, and fraudulently, unfairly, and/or unlawfully denying claims for benefits, HSBC has increased its profits by many millions of dollars, all thanks to a

product which provides no benefits to thousands of HSBC Card Holders who are nevertheless charged for the product month in and month out.

## II. JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this matter pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d) in that:

(a) This is a nationwide class action involving 100 or more class members;

(b) At least one member of the Plaintiff Class is a citizen of a State different from any Defendant; and

(c) The amount in controversy exceeds five million dollars ($5,000,000.00), exclusive of interest and costs.

17. This Court has personal jurisdiction over HSBC, which has at least minimum contacts with the Commonwealth of Pennsylvania, because it has conducted business there and has availed itself of Pennsylvania's markets through its promotion, marketing, sales, and administration of Payment Protection.

18. This Court is a proper venue in which to bring this action, pursuant to 28 U.S.C. § 1391, inasmuch as a substantial part of the events or omissions giving rise to the claims occurred within the district in which this Court sits, Defendants do business in this District, and Plaintiffs Esslinger, Glover, and Rogers, and a portion of the Putative Class reside in this District.

19. To the extent there is any contractual or other impediment to pursuit of these claims on a class action basis, Plaintiffs specifically allege, and will prove, if necessary, that any bar to class action proceedings is unconscionable, unfair and against public policy.

## III. PARTIES

20. Plaintiff Edward T. Esslinger (herinafter referred to as "Plaintiff Esslinger" or "Plaintiff") is an individual and a citizen of the State of Pennsylvania, residing in Philadelphia,

Pennsylvania. Since 2009, Plaintiff Esslinger has been an HSBC Card Holder enrolled in HSBC Payment Protection.

21. Plaintiff Gloria Glover (hereinafter referred to as "Plaintiff Glover" or "Plaintiff") is an individual and a citizen of the State of Pennsylvania, residing in Philadelphia, Pennsylvania. Since 2007, Plaintiff Glover has been an HSBC Card Holder enrolled in HSBC Payment Protection.

22. Plaintiff Ardath Rogers (hereinafter referred to as "Plaintiff Rogers" or "Plaintiff") is an individual and a citizen of the State of Pennsylvania, residing in Philadelphia, Pennsylvania. Since 2009, Plaintiff Rogers has been an HSBC Card Holder enrolled in HSBC Payment Protection..

23. Plaintiff Marilyn Rivera (hereinafter referred to as "Plaintiff Rivera" or "Plaintiff") is an individual and a citizen of the State of New Jersey, residing in Magnolia, New Jersey. Since 2009, Plaintiff Rivera been an HSBC Card Holder enrolled in HSBC Payment Protection.

24. Plaintiff Dwight C. Samuels (hereinafter referred to as "Plaintiff Samuels" or "Plaintiff") is an individual and a citizen of the State of Illinois. At all relevant times, Plaintiff Samuels been an HSBC Card Holder enrolled in HSBC Payment Protection, namely AccountSecure Plus.

25. Plaintiff Cylinda McAlister (hereinafter referred to as "Plaintiff McAlister" or "Plaintiff") is an individual and a citizen of the State of Washington, residing in Sequim, Washington. From 2005 to 2010, Plaintiff McAlister was an HSBC Orchard Bank Card Holder. For at least three of the years that she held this card, Plaintiff McAlister was enrolled in HSBC Payment Protection.

26. Plaintiff Peggy Colton (hereinafter referred to as "Plaintiff Colton" or "Plaintiff") is an individual and citizen of the State of California, residing in Los Angeles, California. At all relevant times, Plaintiff Colton has been an HSBC Card Holder enrolled in HSBC Payment Protection, namely AccountSecure Plus.

27. Plaintiff Constantine Yiannacopoulos (hereinafter referred to as "Plaintiff Yiannacopoulos" or "Plaintiff") is an individual and a citizen of the State of California, residing in Glendale, California. At all relevant times, Plaintiff Yiannacopoulos has been an HSBC Card Holder enrolled in HSBC Payment Protection, namely AccountSecure Plus.

28. Plaintiff DeShea Head (hereinafter referred to as "Plaintiff Head" or "Plaintiff") is an individual and citizen of the State of California, residing in Los Angeles, California. At all relevant times, Plaintiff Head was an HSBC Card Holder enrolled in HSBC Payment Protection, namely AccountSecure Plus.

29. Plaintiff James W. McKinney (hereinafter referred to as "Plaintiff McKinney" or "Plaintiff") is an individual and a citizen of the State of Illinois, residing in the city of Benton, Illinois. At all relevant times, Plaintiff McKinney was an HSBC Card Holder enrolled in HSBC Payment Protection, namely Personal Account Protection Elite.

30. Plaintiff Nancy Janowski (hereinafter referred to as "Plaintiff Janowski" or "Plaintiff") is an individual and a citizen of the State of Illinois, residing in the city of Ashley, Illinois. At all relevant times, Plaintiff Janowksi was an HSBC Card Holder and was enrolled in and billed for HSBC Payment Protection, namely AccountSecure Plus, without her knowledge or consent.

31. Plaintiff Margaret Reener (hereinafter referred to as "Plaintiff Reener" or "Plaintiff") is an individual and a citizen of the State of Wisconsin, residing in the city of

Kenosha, Wisconsin. At all relevant times, Plaintiff Reener was an HSBC Card Holder enrolled in AccountSecure Plus.

32. Defendant HSBC BANK NEVADA, N.A. is a federally chartered credit card banking subsidiary of Defendant HSBC FINANCE CORPORATION with its main office located in Las Vegas, Nevada. At all times relevant hereto, HSBC BANK NEVADA, N.A. knew or should have known about the unfair and deceptive business practices complained of herein. At all times relevant hereto, HSBC BANK NEVADA, N.A. participated, directly or indirectly, in the unfair and deceptive business practices complained of herein. At all times relevant hereto, Defendant HSBC BANK NEVADA, N.A. conspired with, or otherwise worked in concert with, the affiliated or related corporate Defendants named herein to defraud the Plaintiffs and the putative class. HSBC BANK NEVADA, N.A. has transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, in the Commonwealth of Pennsylvania such that it reasonably anticipated being subject to personal jurisdiction before the courts of this State. Defendant HSBC BANK NEVADA , N.A. has also transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, outside of the Commonwealth of Pennsylvania whereby it should reasonably have anticipated that injury would result and has, in fact, resulted upon persons within the Commonwealth of Pennsylvania and the other 50 states.

33. Defendant HSBC USA INC., an indirect wholly owned subsidiary of HSBC North America Holdings Inc., is a corporation existing under the laws of the State of Maryland with its principal place of business at 452 Fifth Avenue in New York, New York 10018. At all times relevant hereto, HSBC USA INC. knew or should have known about the unfair and deceptive business practices complained of herein. At all times relevant hereto, HSBC USA INC

participated, directly or indirectly, in the unfair and deceptive business practices complained of herein. At all times relevant hereto, Defendant HSBC USA INC. conspired with, or otherwise worked in concert with, the affiliated or related corporate Defendants named herein to defraud the Plaintiffs and the putative class. In addition, at all relevant times hereto, HSBC USA INC. was the parent corporation of HSBC BANK USA, N.A. HSBC USA INC. had knowledge of and is responsible for the actions and wrongdoings of HSBC BANK USA, N.A. HSBC USA INC. is responsible for Plaintiffs' damages and the damages of the putative class because, at all relevant times: (1) they were responsible for the violations described herein by their own actions; (2) their agents committed these violations within the scope of their authority; (3) they are co-conspirators or co-participants in the deceptive scheme complained of herein; and/or (4) they or their agents actively participated in such scheme. At all relevant times hereto, HSBC USA INC. maintained control over its subsidiary and agents and had knowledge of the violations alleged herein and HSBC BANK USA, N.A.'s direct involvement or complicity in these violations. In particular, HSBC USA INC. maintained such control over the actions of its subsidiary that it should be considered as alter egos, joint enterprises and/or as jointly controlled, and it would be unfair to recognize their separate corporate existence vis-à-vis the claims made by Plaintiffs and the putative class in this complaint. As alleged more fully herein, HSBC USA INC. has transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, in the Commonwealth of Pennsylvania such that it reasonably anticipated being subject to personal jurisdiction before the courts of this State. Defendant HSBC USA INC. has also transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, outside of the Commonwealth of Pennsylvania whereby it should reasonably have anticipated that injury would result and has, in fact, resulted upon persons within the

Commonwealth of Pennsylvania. Defendant HSBC USA INC. may be served at the following address: Office of the General Counsel, One HSBC Center Buffalo, New York, 14203.

34. Defendant HSBC FINANCE CORPORATION is a corporation existing under the laws of the State of Delaware, with its principal place of business at 26525 North Riverwoods Boulevard in Mettawa, Illinois. Defendant HSBC FINANCE CORPORATION, through its subsidiaries, provides credit cards and private label credit cards, taxpayer financial services and specialty insurance products. Defendant HSBC FINANCE CORPORATION is the principal fund raising vehicle for the operations of its subsidiaries. Defendant HSBC FINANCE CORPORATION generates income through a number of revenue streams, including, without limitation, "enhancement revenue services," which include the Payment Protection Plans. At all times relevant hereto, Defendant HSBC FINANCE CORPORATION knew or should have known about the unfair and deceptive business practices complained of herein. At all times relevant hereto, Defendant HSBC FINANCE CORPORATION participated, directly or indirectly, in the unfair and deceptive business practices complained of herein. At all times relevant hereto, Defendant HSBC FINANCE CORPORATION conspired with, or otherwise worked in concert with, the affiliated or related corporate Defendants named herein to defraud the Plaintiffs and the putative class. In addition, at all relevant times hereto, HSBC FINANCE CORPORATION was the parent corporation of HSBC BANK NEVADA, N.A. HSBC FINANCE CORPORATION had knowledge of and is responsible for the actions and wrongdoings of HSBC BANK NEVADA, N.A. HSBC FINANCE CORPORATION is responsible for Plaintiffs' damages and the damages of the putative class because, at all relevant times: (1) they were responsible for the violations described herein by their own actions; (2) their agents committed these violations within the scope of their authority; (3) they are co-conspirators

or co-participants in the deceptive scheme complained of herein; and/or (4) they or their agents actively participated in such scheme. At all relevant times hereto, HSBC FINANCE CORPORATION maintained control over its subsidiary and agents and had knowledge of the violations alleged herein and HSBC BANK NEVADA, N.A.'s direct involvement or complicity in these violations. In particular, HSBC FINANCE CORPORATION maintained such control over the actions of its subsidiary that it should be considered as alter egos, joint enterprises and/or as jointly controlled, and it would be unfair to recognize their separate corporate existence vis-à-vis the claims made by Plaintiffs and the putative class in this complaint. As alleged more fully herein, Defendant HSBC FINANCE CORPORATION has transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, in the Commonwealth of Pennsylvania such that it reasonably anticipated being subject to personal jurisdiction before the courts of this State. Defendant HSBC FINANCE CORPORATION has also transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, outside of the Commonwealth of Pennsylvania whereby it should reasonably have anticipated that injury would result and has, in fact, resulted upon persons within the Commonwealth of Pennsylvania. Defendant HSBC FINANCE CORPORATION can be served through their registered agent, , CT Corporation System at 208 So. LaSalle St., Suite 814, Chicago, Illinois 60604.

35. Defendant HSBC BANK USA, N.A. is a national banking association organized under federal law, with its main office located at 1800 Tysons Boulevard in McLean, Virginia 22102. HSBC BANK USA, N.A., is the holding company for HSBC's operations in the United States and Canada. At all times relevant hereto, Defendant HSBC BANK USA, N.A. knew or should have known about the unfair and deceptive business practices complained of herein. At all times relevant hereto, Defendant HSBC BANK USA N.A. participated, directly or indirectly,

in the unfair and deceptive business practices complained of herein. At all times relevant hereto, Defendant HSBC BANK USA, N.A. conspired with, or otherwise worked in concert with, the affiliated or related corporate Defendants named herein to defraud the Plaintiffs and the putative class. As alleged more fully herein, Defendant HSBC BANK USA, N.A. has transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, in the Commonwealth of Pennsylvania such that it reasonably anticipated being subject to personal jurisdiction before the courts of this State. Defendant HSBC BANK USA, N.A. has also transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, outside of the Commonwealth of Pennsylvania whereby it should reasonably have anticipated that injury would result and has, in fact, resulted upon persons within the Commonwealth of Pennsylvania. Defendant HSBC BANK USA, N.A. is a subsidiary of HSBC USA INC. Defendant HSBC BANK USA, N.A. can be served at 1800 Tysons Blvd. in McLean, Virginia 22102.

36. Defendant HSBC CARD SERVICES INC. is the U.S. consumer credit card segment of HSBC Holdings. HSBC Card Services offers HSBC and Household Bank branded credit cards from Visa, MasterCard, and American Express with a variety of annual percentage rates and rewards programs. Defendant HSBC CARD SERVICES INC. is a corporation existing under the laws of the State of Delaware with its principal place of business at 2700 Sanders Road in Prospect Heights, Illinois 60070. At all times relevant hereto, Defendant HSBC CARD SERVICES INC. knew or should have known about the deceptive business practices complained of herein. At all times relevant hereto Defendant HSBC CARD SERVICES INC. participated directly or indirectly in the deceptive business practices complained of herein. At all times relevant hereto, Defendant HSBC CARD SERVICES INC. conspired with, or otherwise worked

in concert with, the affiliated or related corporate Defendants named herein to defraud the Plaintiffs and the putative class. As alleged more fully herein, Defendant HSBC CARD SERVICES INC. has transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, in the Commonwealth of Pennsylvania such that it reasonably anticipated being subject to personal jurisdiction before the courts of this State. Defendant HSBC CARD SERVICES INC. has also transacted business and engaged in tortious and fraudulent conduct, by affirmative act or omission, outside of the Commonwealth of Pennsylvania whereby it should reasonably have anticipated that injury would result and has, in fact, resulted upon persons within the Commonwealth of Pennsylvania. Defendant HSBC CARD SERVICES INC. can be served through their registered agent, CT Corporation System at 208 So. LaSalle St., Suite 814, Chicago, Illinois 60604.

37. HSBC markets itself as "the world's local bank." HSBC serves over 100 million personal customers and over three million commercial customers across its Customer Groups and Global Businesses. It has around 8,000 offices in 88 countries and territories. Shares in HSBC Holdings PLC are held by over 220,000 shareholders in 119 countries and territories.[2]

## IV. STATEMENT OF FACTS

38. Upon information and belief, HSBC offers Payment Protection to all its credit card customers, but aggressively markets this product to vulnerable consumers who fall into the subprime credit category, or customers who have low credit limits because of impaired credit ratings. Specifically, HSBC's Orchard Bank unit issues cards to consumers looking to establish or re-establish their credit.

39. HSBC markets Payment Protection as a service that will safeguard Card Holders'

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[2] *See* http://www.hsbc.com/1/2/investor-relations/overview/fast-facts, last viewed on June 1, 2010.

credit card accounts when a Card Holder experiences a qualifying event by cancelling one minimum payment, temporarily suspending payments due, or permanently canceling accounts. In such circumstances, the Card Holders are also not required to pay the monthly interest charges or the Payment Protection Plan fee for the month in question.

40. HSBC imposes Payment Protection on Card Holders through direct mail marketing or through phone calls by asking them to sign up and then enrolling them in Payment Protection even if they do not consent to enroll or ask to see more information before deciding to enroll.

41. It is virtually impossible for the Card Holder to determine all of the exclusions and limitations of Payment Protection, or the value of the product, based on what is provided by Defendants.

42. In some instances, Payment Protection has been unilaterally imposed upon Card Holders. Additionally, in some instances, no written materials explaining the terms and conditions are ever provided to Card Holders. If Payment Protection is imposed and no written materials are provided, the only way Card Holders could ever know they have been enrolled in Payment Protection and are being charged for this product is from noticing a line item fee listed on their monthly credit card statements.

43. Payment Protection provides for some form of debt suspension upon the occurrence of the following events:

*a.* *Unemployment;*

b. *Leave of Absence*;

c. *Temporary Disability;*

d. *Permanent Disability; and*

e. a *Life Event*, including marriage, child birth, adoption, college, a home move, and other closely defined events.

44. Additionally, Payment Protection provides debt cancellation in the event of *Loss of Life*.

45. The restrictions, limitations, and exclusions associated with these events that trigger Payment Protection are expansive, complicated, and constantly evolving.

46. The telephone marketing scripts and the written materials provided by HSBC are incomplete, indecipherable, misleading, and obfuscatory.

47. According to the written materials, which are only provided (if at all) <u>after</u> the Card Holder has already been enrolled in the Plan, the following restrictions on Payment Protection are imposed, in small print and in incomplete, indecipherable, misleading, and obfuscatory language, not readily comprehensible to Card Holders:

a. Payment Protection job loss benefits do not apply to persons self-employed or not employed;

b. Payment Protection job loss benefits do not apply to persons employed part time or seasonally;

c. Payment Protection job loss benefits do not apply to retired persons;

d. Payment Protection job loss benefits do not apply for the first 30 days of unemployment or disability;

e. Payment Protection job loss benefits do not apply unless you initially qualify for state unemployment benefits or have received an employer severance agreement;

f. Payment Protection job loss benefits are limited to 9 months for "unemployment;"

g. Payment Protection job loss benefits do not apply unless you notify HSBC within 180 days of the Event and provide Verification within 90 days of notification.

h. Payment Protection disability benefits require monthly certification by a physician for the duration of the injury or illness;

i. Payment Protection temporary disability benefits are available only for 18 months;

j. Card Holders can not use their credit card for new purchases while Payment Protection benefits are being provided; and

k. Payment Protection coverage is limited to one benefit approval per calendar year.

48. Upon information and belief, HSBC is in possession of information, such as date of birth and name of last employer, which would assist it in knowing whether a particular Card Holder is eligible for Payment Protection.

49. However, HSBC makes no reasonable effort and undertakes no investigation, including review of information in its possession regarding the Card Holder, to determine if Payment Protection coverage would apply to the Card Holder. Accordingly, HSBC engages in marketing to enroll individuals in Payment Protection even when it has information in its possession indicating that the product may have limited or no value to the Card Holder.

50. HSBC acknowledges that some Card Holders are *per se* ineligible to receive Payment Protection benefits:

> There are eligibility requirements, conditions and exclusions that could prevent you from receiving benefits under [the Plan]. You should read the terms and conditions for a full explanation of [the Plan].[3]

Nevertheless, HSBC still sells these products to its customers.

51. For instance, retired persons, many of whom are senior citizens, are charged for this product even though they are categorically excluded from receiving most or all of the material benefits under the Plan. In fact, HSBC does not even ask customers whether they are retired.

52. Similarly, the benefits offered to self-employed persons are limited, but HSBC

[3] http://www.personalaccountprotection.com/1/2/, last viewed on June 1, 2010.

nevertheless fails to affirmatively inform self-employed persons of the limitations in benefits when they are enrolled. In fact, HSBC does not even ask customers whether they are self-employed.

53. Further, part-time or seasonal workers are also limited or categorically excluded from receiving benefits. To qualify for benefits, one needs to work at least 30 hours a week in employment to be considered permanent. However, HSBC makes no effort to investigate whether any of the Card Holders that pay for Payment Protection are part-time or seasonal. These terms are not adequately communicated or defined in any HSBC materials.

54. Finally, benefits are unavailable or limited for disabled persons, but HSBC nevertheless fails to affirmatively inform these individuals of the limitations in benefits when they are enrolled. In fact, HSBC does not even ask customers whether they are disabled.

55. The cost of Payment Protection is a monthly charge of $1.35 per $100 of a Card Holder's month-ending credit card balance.[4] For example, if a HSBC credit card customer has a balance on a covered account of $10,000, as a Payment Protection Card Holder, the customer owes HSBC $135.00 that month just for Payment Protection coverage.

56. Payment Protection also provides the added benefit to HSBC of lowering available credit to its Card Holders through the imposition of this additional fee. Further, the imposition of the fee creates a cycle of profitability for HSBC, in that the fee itself increases Card Holders' monthly credit balances, which in turn increases Payment Protection fees in upcoming months.

57. "Customer service" is available for HSBC's Payment Protection Card Holders. To access customer service, Card Holders can call a toll free number or send mail to a P.O. Box

[4] This is the cost for the "Personal Account Protection Elite" Payment Protection Plan. The cost of other HSBC Payment Protection Plans differs.

in Bridgewater, New Jersey. According to HSBC marketing, "[w]hen you need this coverage, confusing paperwork is the last thing you need."

58. Upon information and belief, employees at HSBC's Payment Protection call center are trained to assist Card Holders with all questions, including inquiries concerning canceling memberships, Plan benefits, and filing claims.

59. HSBC has established its customer service system in such a way that it is difficult for Card Holders (a) to cancel Payment Protection, (b) to get detailed information about claim benefits or restrictions, or (c) to file claims.

60. For example, upon information and belief, employees at HSBC's call center are given authority to deny claims immediately over the phone, but do not have authority to approve claimants to receive benefits in the same manner.

61. Further, when claims for Payment Protection benefits are denied, HSBC has not implemented a process through which Card Holders' Payment Protection fees are refunded, even if the Card Holders are deemed to be *per se* ineligible for Payment Protection benefits. In fact, if Card Holders are denied Payment Protection benefits, HSBC neither affirmatively removes Card Holders from Payment Protection enrollment going forward, nor is it HSBC's policy to inform Card Holders of their continued obligations pay for Payment Protection even though they have been deemed to be ineligible for benefits.

62. Payment Protection is a profit center for HSBC and serves the Company's interest in generating fee income, to the detriment of its most vulnerable customers.

63. Although heralded as coverage designed for a Card Holder's peace of mind and for use when times get tough, the Payment Protection device is designed to prey on the financially insecure and is virtually worthless because of (a) the numerous restrictions that are

imposed, because of the exclusions of benefits and (b) the administrative and bureaucratic hurdles that are placed in the way of Card Holders who attempt to secure payments from HSBC under Payment Protection coverage.

## V. STATEMENT OF FACTS SPECIFIC TO PROPOSED CLASS REPRESENTATIVES

### A. EDWARD T. ESSLINGER

64. In approximately 2006, Plaintiff Edward T. Esslinger became a HSBC credit card holder. In 2009, he received unsolicited advertisements through direct mailers promoting HSBC's Payment Protection Plan designed specifically for Union Members. Since Plaintiff Esslinger is and has been a Teamster's Union Member throughout his career, he signed up for HSBC's Payment Protection services believing they endorsed this program.[5]

65. Plaintiff relied on Defendants' misleading and incomplete statements concerning Payment Protection in deciding to "enroll" in the Plan. Plaintiff paid exorbitantly high fees for the Plan.

66. Plaintiff relied upon the deceptive and misleading statements of HSBC when she agreed to purchase and pay for Payment Protection. Plaintiff's reliance was reasonable under the circumstances.

67. Plaintiff was charged a monthly fee for the Plan and, in fact, paid those fees.

68. Plaintiff Esslinger became disabled as a result of a motor vehicle accident approximately ten (10) years ago. He is retired and has been receiving Social Security Disability Benefits for approximately the last seven (7) years. At the time he enrolled in HSBC's Payment Protection, he was retired and disabled. However, no one from HSBC ever asked Plaintiff

[5] Mr. Esslinger later checked with members of the Teamsters Union who informed him that it is not involved with HSBC's Payment Protection Plan in any way.

Esslinger about his employment or disability status before enrolling him in Payment Protection.

69. Shortly after signing up for Payment Protection, Plaintiff Esslinger realized that because he is retired and disabled, he is ineligible to receive benefits from Payment Protection. When he called to cancel Payment Protection, he was informed by an HSBC customer service representative that Payment Protection was mandatory and his enrollment could not be cancelled.

70. Had HSBC fully disclosed to Plaintiff all of the material terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits, Plaintiff would not have "enrolled" in the program and paid the fees.

71. Later in 2009, Plaintiff Esslinger tried to close his credit card account. He was told that he could not close his account until it had reached a $0 balance, but HSBC would list his account as "designated closed."

72. Meanwhile, at or around this time, Plaintiff Esslinger called Payment Protection customer service for a second time and asked to cancel Payment Protection. He was informed by customer service for a second time that Payment Protection was mandatory and could not be cancelled.

73. Ever since his account has been "designated closed," Plaintiff Esslinger has not used his HSBC credit card for new purchases. Nevertheless, HSBC continues to charge Plaintiff Esslinger for Payment Protection, and Plaintiff Esslinger continues to pay for Payment Protection, every month, a service he neither wants nor is eligible to receive benefits under.

74. Plaintiff suffered economic injury as a direct and proximate result of relying upon the deceptive and misleading statements of HSBC when purchasing the Plan.

**B. GLORIA GLOVER**

75. Plaintiff Glover, a 68 year old, became a HSBC credit card holder in 2007.

76. Several months after becoming a Card Holder, she enrolled in HSBC's Payment Protection Plan.

77. Plaintiff relied on Defendants' misleading and incomplete statements concerning Payment Protection in deciding to "enroll" in the Plan. Plaintiff paid exorbitantly high fees for the Plan.

78. Plaintiff relied upon the deceptive and misleading statements of HSBC when she agreed to purchase and pay for Payment Protection. Plaintiff's reliance was reasonable under the circumstances.

79. Plaintiff was charged a monthly fee for the Plan and, in fact, paid those fees.

80. At the time of enrollment, Plaintiff Glover was retired and receiving Social Security Income. No one from HSBC ever asked Plaintiff Glover about her employment status before enrolling her in Payment Protection.

81. Plaintiff Glover is still enrolled in HSBC's Payment Protection Plan. Her credit card account is charged a fee every month for Payment Protection, even though she is virtually ineligible for Payment Protection benefits.

82. Had HSBC fully disclosed to Plaintiff all of the material terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits, Plaintiff would not have "enrolled" in the program and paid the fees.

83. Plaintiff suffered economic injury as a direct and proximate result of relying upon the deceptive and misleading statements of HSBC when purchasing the Plan.

### C. ARDATH ROGERS

84. Plaintiff Rogers, a 75 year old, became a HSBC Direct Rewards Platinum credit card holder on or about July 22, 2009. On or around the same date, Plaintiff Rogers became enrolled in HSBC's Payment Protection Plan.

85. At the time of enrollment in the Payment Protection Plan, Plaintiff Rogers was working approximately 12 hours a week and receiving Social Security Income. HSBC never inquired into her employment status prior to enrolling her in the Payment Protection Plan.

86. Plaintiff relied on Defendants' misleading and incomplete statements concerning Payment Protection in deciding to "enroll" in the Plan. Plaintiff paid exorbitantly high fees for the Plan.

87. Plaintiff relied upon the deceptive and misleading statements of HSBC when she agreed to purchase and pay for Payment Protection. Plaintiff's reliance was reasonable under the circumstances.

88. Plaintiff was charged a monthly fee for the Plan and, in fact, paid those fees.

89. Plaintiff Rogers is still enrolled in HSBC's Payment Protection Plan. Her credit card account is charged a fee every month for Payment Protection, even though she is virtually ineligible for Payment Protection benefits.

90. Had HSBC fully disclosed to Plaintiff all of the material terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits, Plaintiff would not have "enrolled" in the program and paid the fees.

91. Plaintiff suffered economic injury as a direct and proximate result of relying upon the deceptive and misleading statements of HSBC when purchasing the Plan.

**D. MARILYN RIVERA**

92. Plaintiff Rivera, a 54 year old with a disability, became a Boscov's HSBC credit card holder on January 18, 2009. At or around the same time, Plaintiff Rivera became enrolled in Payment Protection .

93. From the time Plaintiff Rivera enrolled in Payment Protection, up to and through the date of filing of the Complaint, Plaintiff Rivera has never held a job and she received Social Security Disability Income (SSDI). HSBC never inquired into Plaintiff Rivera's employment or disability status prior to enrolling her in Payment Protection or any time thereafter.

94. Plaintiff relied on Defendants' misleading and incomplete statements concerning Payment Protection in deciding to "enroll" in the Plan. Plaintiff paid exorbitantly high fees for the Plan.

95. Plaintiff relied upon the deceptive and misleading statements of HSBC when she agreed to purchase and pay for Payment Protection. Plaintiff's reliance was reasonable under the circumstances.

96. Plaintiff was charged a monthly fee for the Plan and, in fact, paid those fees.

97. Plaintiff Rivera is still enrolled in Payment Protection. Her credit card account is still charged for Payment Protection every month even though she is virtually ineligible to collect Payment Protection benefits.

98. Had HSBC fully disclosed to Plaintiff all of the material terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits, Plaintiff would not have "enrolled" in the program and paid the fees.

99. Plaintiff suffered economic injury as a direct and proximate result of relying upon

the deceptive and misleading statements of HSBC when purchasing the Plan.

**E. DWIGHT C. SAMUELS**

100. Since 2002, Plaintiff Dwight C. Samuels has had a Household Bank Mastercard credit card.

101. From January through June 2010, Samuels paid for Payment Protection, an amount in the sum of $78.24. In early 2010, Samuels, while unemployed, continue to pay for credit protection. He made a claim for benefits but the claim was denied as untimely. Samuels then phoned defendant's offices on several occasions and canceled the Account Secure Plus protection coverage. However, from June 25, 2010 through October 2010, Defendants unilaterally charged Samuels for Account Secure Plus and continued to charge Samuels for Account Secure Plus without any prior authorization, agreement or consent, from Samuels.

102. Samuels complained about the charge for Account Secure Plus protection coverage, terminated it and requested that the charges be reversed. Although the Account Secure Plus protection coverage has stopped, all of the prior unauthorized charges were not reversed and credited to Samuel's account. He was charged a total of $52.57 from June through October 2010. Then, on the November 2010 statement, Defendants reversed a $22.78 charge which had been made on the October 2010 statement.

103. Plaintiff suffered economic injury as a direct and proximate result of relying upon the deceptive and misleading statements of HSBC when purchasing the Plan.

**F. CYLINDA MCALISTER**

104. In 2005, Plaintiff McAlister became a HSBC credit card holder. Approximately two years later, she became enrolled in HSBC's Payment Protection.

105. Plaintiff McAlister is ineligible for Payment Protection. From the time she

enrolled in Payment Protection, up to and through the date of filing of the SACC, Plaintiff McAlister has been employed only on a part time basis. HSBC never inquired into Plaintiff McAlister's employment status prior to enrolling her in Payment Protection or any time thereafter.

106. Plaintiff relied on Defendants' misleading and incomplete statements concerning Payment Protection in deciding to "enroll" in the Plan. Plaintiff paid exorbitantly high fees for the Plan.

107. Plaintiff relied upon the deceptive and misleading statements of HSBC when she agreed to purchase and pay for Payment Protection. Plaintiff's reliance was reasonable under the circumstances.

108. Plaintiff was charged a monthly fee for the Plan and, in fact, paid those fees.

109. Had HSBC fully disclosed to Plaintiff all of the material terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits, Plaintiff would not have "enrolled" in the program and paid the fees.

110. Plaintiff suffered economic injury as a direct and proximate result of relying upon the deceptive and misleading statements of HSBC when purchasing the Plan.

**G. PEGGY COLTON**

111. Plaintiff Peggy Colton received her Account Secure Plus from HSBC beginning in approximately 2006. Plaintiff Colton is holder of two HSBC credit cards and has been paying the charges and fees for Payment Protection, namely Account Secure Plus, for more than five years on each card.

112. HSBC made misleading statements to Plaintiff Colton (a) when soliciting her by

phone and mail and in the post-sale documents provided to Colton that set out the terms and conditions of Payment Protection.

113. Plaintiff relied on Defendants' misleading and incomplete statements concerning Payment Protection in deciding to "enroll" in the Plan. Plaintiff paid exorbitantly high fees for the Plan.

114. Plaintiff relied upon the deceptive and misleading statements of HSBC when she agreed to purchase and pay for Payment Protection. Plaintiff's reliance was reasonable under the circumstances.

115. Plaintiff was charged a monthly fee for the Plan and, in fact, paid those fees.

116. Had HSBC fully disclosed to Plaintiff Colton all of the material terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits., Plaintiff would not have "enrolled" in the program and paid the fees.

117. Plaintiff suffered economic injury as a direct and proximate result of relying upon the deceptive and misleading statements of HSBC when purchasing Payment Protection.

### H. CONSTANTINE YIANNACOPOULOS

118. Plaintiff Constantine Yiannacopoulos received his Account Secure Plus from HSBC in approximately 2007. Plaintiff Yiannacopoulos is an HSBC Card Holder who is a senior citizen, seventy two (72) years of age, and has been paying the charges and fees for Payment Protection, namely AccountSecure Plus, for approximately four years.

119. Defendants made misleading statements to Plaintiff when soliciting him by phone and mail, and in the post-sale documents provided to Plaintiff Yiannacopoulous that set out the terms and conditions of the Plan.

120. Plaintiff relied on Defendants' misleading and incomplete statements concerning Account Secure Plus when he decided to "enroll" in the Plan. Plaintiff paid exorbitantly high fees for the Plan.

121. Plaintiff submitted a claim for Payment Protection benefits after suffering a back injury while he was employed. When Plaintiff called to activate those benefits, Defendants initiated a series of actions designed to prevent the Plaintiff from collecting the benefits for which he had been paying. In fact, by giving Plaintiff the "run around" in numerous telephone conversations and making a series of requests to provide a mountain of paperwork, Defendants were successful in their efforts to not pay Plaintiff's claim.

122. HSBC never refunded the premiums that Plaintiff paid for Account Secure Plus.

123. HSBC continues to charge Plaintiff Yiannacopoulous for the Account Secure Plus product.

124. Plaintiff relied upon the deceptive and misleading statements of HSBC when he agreed to purchase and pay for Account Secure Plus. Plaintiff's reliance was reasonable under the circumstances.

125. Plaintiff was charged a monthly fee for Account Secure Plus and paid those fees.

126. Had HSBC fully disclosed to Plaintiff Yiannacopoulous all the terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits, Plaintiff would not have "enrolled" in the Plan and paid the fees.

127. Plaintiff suffered economic injury as a direct and proximate result of relying upon the deceptive and misleading statements of HSBC when purchasing the Plan.

### I. DESHEA HEAD

128. Plaintiff DeShea Head enrolled in Payment Protection, namely AccountSecure Plus from HSBC in approximately 2008 and has been paying the attendant Plan charges and fees since that time.

129. Defendants made misleading statements to Plaintiff (a) when soliciting her by phone and mail and (b) in the post-sale documents provided to Plaintiff Head that set out the terms and conditions of Account Secure Plus.

130. Plaintiff relied on Defendants' misleading and incomplete statements concerning Account Secure Plus when she decided to "enroll" in the Plan. Plaintiff's reliance was reasonable under the circumstances. Plaintiff was charged and paid the monthly fee for the Plan.

131. Plaintiff was laid off from her job as a part-time actress and subsequently filed a claim under the Plan for which she had been paying. Her claim was denied because she held a part-time job, but she was never told of this requirement when she was enrolled or before she began paying the premiums.

132. HSBC never refunded the premiums that Plaintiff paid for the Plan, despite the fact that HSBC denied her claim because it found she was categorically ineligible for benefits.

133. HSBC continues to charge Plaintiff Head for the Plan, despite the fact that HSBC determined that she was not eligible for benefits.

134. Had HSBC fully disclosed to Plaintiff Head all the terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits, in other words, if Plaintiff had known the truth about Account Secure Plus, she would not have "enrolled" in the program and paid the fees.

135. Plaintiff suffered economic injury as a direct and proximate result of relying upon

the deceptive and misleading statements of HSBC when purchasing Account Secure Plus.

**J. JAMES W. MCKINNEY**

136. Plaintiff James W. McKinney ("Plaintiff McKinney") has been an HSBC Platinum MasterCard Card Holder since August of 2008.

137. HSBC enrolled Plaintiff McKinney in the Payment Protection, namely Personal Account Protection Elite, on or before February 2010, even though he was not eligible for all or some of the benefits at the time of enrollment.

138. Plaintiff relied on Defendants' misleading and incomplete statements concerning Payment Protection in deciding to "enroll" in the Plan. Plaintiff paid exorbitantly high fees for the Plan.

139. Plaintiff relied upon the deceptive and misleading statements of HSBC when she agreed to purchase and pay for Payment Protection. Plaintiff's reliance was reasonable under the circumstances.

140. Plaintiff McKinney is a war veteran and cancer survivor who was rendered permanently disabled as a result of a faulty blood transfusion.

141. At the time HSBC enrolled Plaintiff McKinney in the Plan, he was disabled, unemployed and/or retired.

142. At the time HSBC enrolled Plaintiff McKinney in the Plan, they intentionally failed to screen him to determine if he was eligible for all or some of the benefits purportedly available under the Plan.

143. At the time HSBC enrolled Plaintiff McKinney in the Plan, they intentionally failed to disclose the eligibility criteria required to participate in all or some of the benefits purportedly available under the Plan.

144. Had HSBC properly screened Plaintiff McKinney and made the appropriate disclosures during his enrollment, he would have known that he was ineligible for all or some of the benefits purportedly available under the Plan.

145. Had Plaintiff McKinney known that at the time of enrollment he was not eligible to receive all or some of the benefits purportedly available under the Plan, he would not have enrolled in the Plan.

146. Despite his ineligibility, Plaintiff McKinney was unfairly and deceptive enrolled in the Plan and has been caused to pay the attendant fees.

147. Plaintiff was charged a monthly fee for the Plan and, in fact, paid those fees.

148. Had HSBC fully disclosed to Plaintiff all of the material terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits, Plaintiff would not have "enrolled" in the program and paid the fees.

149. Plaintiff suffered economic injury as a direct and proximate result of relying upon the deceptive and misleading statements of HSBC when purchasing the Plan.

**K. NANCY JANOWSKI**

150. Plaintiff Nancy Janowski ("Plaintiff Janowski") has been an HSBC Household Bank Platinum MasterCard Card Holder since November of 2007.

151. Defendants unfairly and deceptively enrolled Plaintiff Janowski in Payment Protection, namely AccountSecure Plus, without her authorization or consent.

152. When Plaintiff Janowski first learned she was being billed for fees related to the Plan, Plaintiff Janowski called Defendants to inquire about the charges.

153. Defendants' Customer Service representative told Plaintiff Janowski that she was

automatically enrolled in the Plan when she opened her credit card in November of 2007.

154. During the same call, Plaintiff Janowski requested that the Defendants cancel her enrollment in the Plan and cease charging her account for the related fees.

155. Despite never consenting to or authorizing enrollment, Janowski was unfairly, deceptively, and involuntarily enrolled in the Plan and caused to pay the attendant fees.

### L. MARGARET REENER

156. Plaintiff Margaret Reener ("Plaintiff Reener") has been an HSBC Orchard Bank Gold MasterCard Card Holder since 2007.

157. Plaintiff Reener enrolled in HSBC Payment Protection, namely AccountSecure Plus, on or about November 12, 2007.

158. Plaintiff relied on Defendants' misleading and incomplete statements concerning Payment Protection in deciding to "enroll" in the Plan. Plaintiff paid exorbitantly high fees for the Plan.

159. Plaintiff relied upon the deceptive and misleading statements of HSBC when she agreed to purchase and pay for Payment Protection. Plaintiff's reliance was reasonable under the circumstances.

160. Plaintiff was charged a monthly fee for the Plan and, in fact, paid those fees.

161. In March 2009, while enrolled in the Plan, Plaintiff Reener became disabled and was laid off from her job.

162. Plaintiff Reener has not been employed since that time.

163. Plaintiff Reener continued to pay the attendant Plan fee after she stopped working.

164. Plaintiff Reener submitted a claim for benefits under the Plan in September of

2010, while she was still disabled and unemployed.

165. Defendants denied Plaintiff Reener's claim for benefits because she had not filed a claim within 120 days of the event in question.

166. Defendants told Plaintiff Reener that the time limitation was a term located in the terms and conditions of the Plan.

167. Plaintiff Reener was not aware of any such time limitation, as it was never disclosed to her, and it was buried inconspicuously within the confusing and indecipherable terms and conditions.

168. Had HSBC fully disclosed to Plaintiff all of the material terms, conditions, restrictions, documentation of claims for benefits and other obstructive and bureaucratic hurdles and preconditions to receiving benefits, Plaintiff would not have "enrolled" in the program and paid the fees.

169. Despite rejecting her claim, Defendants continued to bill Plaintiff Reener even though she would not be eligible to receive benefits under the Plan.

170. Plaintiff suffered economic injury as a direct and proximate result of relying upon the deceptive and misleading statements of HSBC when purchasing the Plan.

## VI. CLASS ACTION ALLEGATIONS

171. Plaintiffs bring this action individually and on behalf of all others similarly situated (the "Class"), pursuant to Rule 23 of the Federal Rules of Civil Procedure.

172. Plaintiffs bring this action as class representatives to recover damages and/or refunds from HSBC for violating states' consumer protection laws, injunctive relief, declaratory judgment, and unjust enrichment.

173. This action satisfies the numerosity, commonality, typicality, adequacy,

predominance, and superiority requirements of the Federal Rules of Civil Procedure Rule 23(a) and (b).

174. Plaintiffs seek certification of a class comprised of the following United States citizens:

> All persons in the United States who were enrolled in or billed for HSBC debt cancellation and debt suspension products ("Payment Protection") between July 2, 2004 and ________ [*the date of preliminary approval of the settlement*].

175. Plaintiffs reserve the right to modify or amend the definition of the Putative Class before the Court determines whether certification is appropriate.

176. Excluded from the Class are:

a. Defendants and any entities in which Defendants have a controlling interest;

b. Any entities in which Defendants' officers, directors, or employees are employed and any of the legal representatives, heirs, successors, or assigns of Defendants;

c. The Judge(s) to whom this case or any transferred case is assigned and any member of the Judges' immediate family and any other judicial officer assigned to this case or any transferred case;

d. Persons or entities with claims for personal injury, wrongful death, and/or emotional distress;

e. All persons or entities that properly execute and timely file a request for exclusion from the Class;

f. Any attorneys representing Plaintiffs or the Class; and

g. All governmental entities.

177. <u>Numerosity – Fed. R. Civ. P. 23(a)(1)</u>. As Defendants records will confirm, the Class size is in the millions. The location and identity of Class Members is in Defendants' records and is ascertainable.

178. <u>Predominance of Common Questions – Fed. R. Civ. P. 23(a)(2), 23(b)(3)</u>. The

questions of law and fact common to the Class predominate over questions affecting only individual Class members, and include, but are not limited to, the following:

a) Whether HSBC's sales, billing, and marketing scheme, as alleged in this SACC, is fraudulent, deceptive, unlawful, and/or unfair in violation of states' consumer protection laws;

b) Whether HSBC's common and uniform sales, billing, and marketing schemes (including imposing Payment Protection on Cardholders without consent, enrolling Cardholders who are ineligible for benefits, and improperly denying claims) related to Payment Protection as alleged in this SACC constitutes a deceptive trade practice as under states' consumer protection laws;

c) Whether Plaintiffs and the Class members are entitled to restitution of all amounts acquired by HSBC through its common and uniform scheme;

d) Whether Plaintiffs and the Class members are entitled to injunctive relief requiring the disgorgement of all wrongfully collected fees by HSBC;

e) Whether Plaintiffs and the Class members are entitled to prospective injunctive relief enjoining HSBC from continuing to engage in the fraudulent, deceitful, unlawful, and/or unfair common scheme as alleged in this SACC; and

f) Whether Plaintiffs and the Class members are entitled to recover compensatory and punitive damages as a result of HSBC's wrongful scheme.

179. Typicality – Fed. R. Civ. P. 23(a)(3). Plaintiffs assert claims that are typical of the entire Class, having all been targeted by HSBC as consumers who were improperly assessed charges for Payment Protection, and/or having paid for this product despite its being imposed on them, fraudulently marketed to them, and/or having benefits improperly denied. Plaintiffs and the Putative Class have similarly suffered harm arising from HSBC's violations of the law as alleged in this SACC.

180. Adequacy – Fed. R. Civ. P. 23(a)(4); 23(g)(1). Plaintiffs are adequate representatives of the Class because they fit within the class definition and their interests do not

conflict with the interests of the Members of the Class they seek to represent. Plaintiffs are passionate about this litigation personally and will prosecute this action vigorously for the benefit of the entire Class. Plaintiffs are represented by experienced and able attorneys from coordinated law firms that will collectively and jointly serve as class counsel. Class counsel has litigated numerous class actions, and Plaintiffs' counsel intends to prosecute this action vigorously for the benefit of the entire Class. Plaintiffs and class counsel can fairly and adequately protect the interests of all Class Members.

181. Superiority – Fed. R. Civ. P. 23(b)(3). The class action is the best available method for the efficient adjudication of this litigation because individual litigation of Class Members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Plaintiffs and members of the Class have suffered irreparable harm as a result of HSBC's fraudulent, deceitful, unlawful, and unfair conduct. Because of the size of the individual Class members' claims, no Class members could afford to seek legal redress for the wrongs identified in this Complaint. Without the class action vehicle, the Class would have no reasonable remedy and would continue to suffer losses, as HSBC continues to engage in the unlawful, unfair, and/or unconscionable conduct that is the subject of this Complaint, and HSBC would be permitted to retain the proceeds of their violations of law. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

## VII. TOLLING THE STATUTE OF LIMITATIONS

182. Any applicable statutes of limitation have been tolled by HSBC's knowing and active concealment of the facts as alleged herein. Plaintiffs and the Putative Class have been

kept ignorant of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Plaintiffs and the Putative Class could not reasonably have discovered the true nature of Payment Protection.

183. Defendants are and have been under a continuing duty to disclose to the Plaintiffs and the Putative Class the true character, quality, and nature of Payment Protection. Because of its knowing, affirmative, and/or active concealment of the true character, quality and nature of the Plan, HSBC is estopped from relying on any statutes of limitation in its defense of this action.

## VIII. CAUSES OF ACTION

184. Plaintiffs Esslinger, Glover, Rogers, Rivera, Colton, McAllister, Samuels, Yiannacopoulos, Head, McKinney, and Reener, individually and on behalf of all others similarly situated, shall hereinafter collectively be referred to as "Efficacy Plaintiffs."

185. Plaintiff Janowski, individually and on behalf of all others similarly situated, shall hereinafter collectively be referred to as "Slamming Plaintiffs."

186. Slamming Plaintiffs and Efficacy Plaintiffs shall hereinafter collectively be referred to as "All Plaintiffs" or "Plaintiffs".

### COUNT I - BREACH OF CONTRACT AND FRAUDULENT INDUCEMENT (Only as to Efficacy Plaintiffs)

187. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this SACC as if fully set forth herein.

188. Efficacy Plaintiffs entered into contractual relationships with HSBC governing the terms and conditions of Payment Protection.

189. The essential elements of a cause of action for breach of contract are: (1) a legal obligation of a defendant to a plaintiff, (2) a violation or breach of that right or duty, and (3)

consequential injury or damage to the plaintiff.

190. In order to state a cause of action for fraud in the inducement of a contract, a party must allege that the misrepresentations were positive statements of fact, made for the purpose of procuring the contract; that they are untrue; that they are material; and that the party to whom they were made relied upon them, and was induced by them to enter into the contract.

191. Under contract law recognized in all fifty states, one cannot, by fraud and deceit, induce another to enter into a contract to his disadvantage, then escape liability by saying that the party to whom the misrepresentation was made was negligent in failing to learn the truth.

192. The doctrine of caveat emptor affords no protection to a seller who makes false representations of a material fact, constituting an inducement to the contract, on which a buyer had a right to rely. A buyer can show that a contract of sale was induced by the seller's fraud, notwithstanding the fact that the sale was made “as is.”

193. Allegations of fraud in the inducement of a contract do not convert a contract action into one based on tort.

194. The statements made to the Efficacy Plaintiffs regarding Payment Protection were positive statements that Payment Protection would provide certain benefits in the event of specified losses, these statements were made by HSBC for the purpose of procuring the Card Holder’s Agreement to accept and pay for Payment Protection, the statements constituted misrepresentations of material fact, upon which the Card Holders reasonably relied and which induced the Card Holders to enter into the contractual agreement to pay for Payment Protection.

**COUNT TWO - BREACH OF CONTRACT: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING[6]**
**(Only as to Efficacy Plaintiffs)**

195. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this SACC as if fully set forth herein.

196. Upon information and belief, Efficacy Plaintiffs who voluntarily enrolled for Payment Protections contract with HSBC for Payment Protection benefits.

197. Upon information and belief, the terms and conditions of these agreements are embodied in written materials in the possession of HSBC.

198. In many states, including Pennsylvania, a covenant of good faith and fair dealing is implied in every contract. Many states, including Pennsylvania, have adopted the concepts of general duties of good faith and fair dealing in the performance of a contract as advanced in the Restatement (Second) of Contracts § 205.

199. Whether by common law or statute, all contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

200. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. Bad faith may be overt or may consist of

[6] A number of states, including Pennsylvania, treat the breach of the covenant of good faith and fair dealing as a species of a breach of contract claim. Accordingly, Plaintiffs plead these claims together, in a single count.

inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain; willful rendering of imperfect performance; abuse of a power to specify terms; and interference with or failure to cooperate in the other party's performance.

201. HSBC has breached the covenant of good faith and fair dealing inherent in the Payment Protection agreement.

202. Efficacy Plaintiffs and all others similarly situated have performed all, or substantially all, of the obligations imposed on them in the Payment Protection agreement and/or the underlying credit card agreements.

203. Efficacy Plaintiffs and all others similarly situated have sustained damages as a result of HSBC's breach of contract and/or the covenant of good faith and fair dealing in that HSBC has imposed Payment Protection without consent (thus violating the credit card agreements), improperly denied benefits, and misrepresented the product.

**COUNT THREE – UNCONSCIONABILITY**
**(As to All Plaintiffs)**

204. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this SACC as if fully set forth herein.

205. HSBC's Payment Protection policies and practices are substantively and procedurally unconscionable in the following material respects, among others:

a. HSBC unilaterally imposes Payment Protection upon its customers' credit card accounts, thereby failing to disclose to customers that Payment Protection is an optional Plan and that they have the option to "opt out" of Payment Protection;

b. HSBC did not obtain affirmative consent from Card Holders prior to enrolling them in Payment Protection;

c. The written documents that HSBC does eventually provide to Card Holders, referred to by HSBC as a Welcome Kit, does not provide Card Holders with sufficient information to understand the terms and conditions of Payment Protection;

d. The "congratulations" letter and brochure, along with other written materials in the possession of HSBC, are contracts of adhesion in that they are standardized forms, imposed and drafted by HSBC, which is a party of vastly superior bargaining strength, and only relegates to the Card Holder the opportunity to adhere to them or reject the agreement in its entirety;

e. These documents provided to customers are ineffective, ambiguous, deceptive, unfair, misleading, and/or do not unambiguously state that certain customers are *per se* ineligible to receive benefits, even though HSBC had the information and means of determining eligibility prior to enrolling these customers in Payment Protection;

f. The formula HSBC uses to compute Payment Protection fees is misleading such that Card Holders are unable to budget for this product or understand its overall cost in order to determine its value to Card Holders; and

g. In order for HSBC to maximize the number of Payment Protection Card Holders and minimize the amount of benefits it pays to these Card Holders, HSBC operates its customer service centers in such a way as to make it difficult for Card Holders to cancel enrollment, obtain information about the terms and conditions of Payment Protection coverage, and file claims.

206. Considering the great business acumen and experience of HSBC in relation to Plaintiffs and the Putative Class, the great disparity in the parties' relative bargaining power, the inconspicuousness and incomprehensibility of the contract language at issue, the oppressiveness of the terms, the commercial unreasonableness of the contract terms, the purpose and effect of the terms, the allocation of the risks between the parties, and/or similar public policy concerns, these provisions are unconscionable and, therefore, unenforceable as a matter of law.

207. The imposition of Payment Protection fees which excessively exceed the amount of claims paid is itself unconscionable. Such fees are not reasonably related to HSBC's costs of administering the Plan and providing the benefits offered.

208. Plaintiffs and members of the Putative Class have sustained damages as a result of HSBC's unconscionable policies and practices as alleged herein.

**COUNT FOUR - VIOLATIONS OF THE**
**TRUTH IN LENDING ACT - 15 U.S.C. §1601 ET SEQ.**
**(As to All Plaintiffs)**

209. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this SACC as if fully set forth herein.

210. During the relevant time period, HSBC sold the Payment Protection in this lawsuit to Plaintiffs and the Putative Class, engaging in significant interstate commerce.

211. The purpose of the Truth in Lending Act of 1968, as amended, 15 U.S.C. §1601, 1666j and Regulation Z, 12 CFR part 226 ("TILA" and "Regulation Z") is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices. 15 U.S.C. §1601(a); 12 C.F.R. 226.1(b).

212. TILA requires all solicitations for the extension of credit to clearly, conspicuously and in readily understood language disclose the terms of the commitment that the offeror is extending to the consumer.

213. Congress delegated authority for the implementation of the Truth-in-Lending Act to the Federal Reserve Board ("Board"). 15 U.S.C. §1604. The Board promulgated Regulation Z, which is the Truth In Lending Act's implementing regulation. 12 C.F.R. §§226 et seq.

214. HSBC's failure to disclose in its applications, solicitations, billing statements, or otherwise that the premium charged for Payment Protection is a finance charge, that the minimum payment does not include all fees imposed, and that the interest is charged on penalty fees and costs in connection with Payment Protection, which violates sections 1605 and 1637(a)(3), (a)(4) and (b)(4) of the Truth in Lending Act.

215. As a result of HSBC's violations of the Truth in Lending Act and Regulation Z, HSBC is liable to Plaintiffs and the Putative Class, who seek damages, pursuant to 15 U.S.C. §1640, including actual damages resulting from HSBC's improper and illegal practices, the lesser of $500,000 or 1% of the net worth of HSBC, and costs and reasonable attorney fees.

**COUNT FIVE – VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES OF STATE STATUTES PROHIBITING UNFAIR AND DECEPTIVE ACTS AND PRACTICES (As to All Plaintiffs)**

216. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this SACC as if fully set forth herein.

217. The state deceptive trade practices acts were enacted by the various states following the passage of the Federal Trade Commission Act ("FTC Act"), which prohibits deceptive acts and practices in the sale of products to consumers. In this regard, the state laws in this area are modeled on the FTC Act, and, therefore, are highly similar in content.

218. Defendants had a statutory duty to refrain from unfair and/or deceptive trade acts or practices in the promotion, marketing, and sale of the Plans or practices in how fees for the Plans were assessed to Plaintiffs and Putative Class.

219. The actions and failures to act of Defendants constitute acts, uses, or employment by defendants of unconscionable and/or unfair practices, deception, fraud, false pretenses, false promises, misrepresentations, or the concealment, suppression, and/or omission of material fact in connection with the promotion and sale of the Plans to the Plaintiffs and the Putative Class within the meaning of various state consumer protection acts.

220. The actions and failures to act of Defendants constitute acts, uses, or employment by defendants of unconscionable and/or unfair practices, deception, fraud, false pretenses, false promises, misrepresentations, and/or the concealment, suppression, or omission of material fact

in connection with the assessment of fees associated with the Plans, to Plaintiffs and Putative Class within the meaning of various state consumer protection acts.

221. Defendants have engaged in deceptive practices by representing that services have characteristics and benefits that they do not have; representing that services are of a particular standard, quality, or grade when they are of another; advertising services with intent not to sell them as advertised; making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and engaging in other conduct which similarly creates a likelihood of confusion or of misunderstanding.

222. The conduct described in the statement of facts constitutes unfair or deceptive trade practices predominantly and substantially affecting the conduct of trade or commerce throughout the United States in violation of the state deceptive trade practices acts and other similar state statutes prohibiting unfair and deceptive acts and practices. The deceptive trade practices acts violated by HSBC are set forth in more fully below.

223. Each violation of the various state consumer protection acts (Alabama: the Alabama Deceptive Trade Practices Act (Ala. Code §8-19-1 *et seq*.); Alaska: Alaska Unfair Trade Practices and Consumer Protection Act (Alaska Stat. §45.50.471 *et seq*.); Arizona: the Arizona Consumer Fraud Statute (Ariz. Rev. Stat. Ann. §44-1521 *et seq*.); Arkansas: the Arkansas Deceptive Trade Practices Act (Ark. Code Ann. §4-88-101 *et seq*.); California: the California Consumers Legal Remedies Act (Cal. Civ. Code §1750 *et seq*. (West)) and the Unfair Competition and False Advertising Statutes (Cal. Bus. & Prof. Code §§17200, 17500) (West)); Colorado: the Colorado Consumer Protection Act (Colo. Rev. Stat. §6-1-101 *et seq*.); Connecticut: the Connecticut Unfair Trade Practices Act (Conn. Gen. Stat. §42-110a *et seq*.); Washington, D.C. the Consumer Protection Procedures Act (D.C. Code Ann. §28-3901 *et seq*.);

Florida: the Florida Deceptive and Unfair Trade Practices Act (Fla. Stat. Ann. §501.201 *et seq*. (West)) and the Florida False Advertising Statutes (Fla. Stat. Ann. §817.40 *et seq*. (West)); Georgia: Uniform Deceptive Trade Practices Act (Ga. Code Ann. §10-1-370 *et seq*.); the Fair Business Practices Act (Ga. Code Ann. §10-1-390 *et seq*.); and the False Advertising Statute (Ga. Code Ann. §10-1-420 *et seq*.); Hawaii: The Hawaii Federal Trade Commission Act (Hawaii Rev. Stat. §480 *et seq*.) and the Uniform Deceptive Trade Practice Act (Hawaii Rev. Stat. §481A *et seq*.); Idaho: the Idaho Consumer Protection Act (Idaho Code §48-601 *et seq*.); Illinois: the Illinois Consumer Fraud and Deceptive Business Practices Act (815 Ill. Comp. Stat. Ann. §505/1 *et seq*. (Smith Hurd)) and the Uniform Deceptive Trade Practices Act (815 Ill. Comp. Stat. Ann. 510/1 *et seq*. (Smith Hurd)); Indiana: the Deceptive Consumer Sales Act (Ind. Code Ann. §24-5-0.5-1 *et seq*. (Burns)); Iowa: the Iowa Consumer Fraud Act (Iowa Code Ann. §714.16 (West)); Kansas: the Kansas Consumer Protection Act (Kan. Stat. Ann. §50-623 *et seq*.); Kentucky: the Consumer Protection Act (Ky. Rev. Stat. §367.110 *et seq*.); Louisiana: the Unfair Trade Practices and Consumer Protection Law (La. Rev. Stat. Ann. §51:1401 (West)); Maine: the Maine Unfair Trade Practices Act (Me. Rev. Stat. Ann. Tit. 5 §206 *et seq*.) and the Uniform Deceptive Trade Practices Act (Me. Rev. Stat. Ann. Tit. 10 §1211 *et seq*.); Maryland: the Maryland Consumer Protection Act (Md. Com. Law Code Ann. §§13-101 *et seq*., 14-101 *et seq*.); Massachusetts: the Consumer Protection Act (Mass. Gen. Laws Ann. Ch. 93A); Michigan: the Michigan Consumer Protection Act (Mich. Comp. Laws Ann. §445.901 *et seq*.) and the Michigan Pricing and Advertising Act (Mich. Comp. Laws Ann. §445.351 *et seq*.); Minnesota: the Consumer Fraud Act (Minn. Stat. Ann. §325 F. 69); the False Statement in Advertisement Statute (Minn. Stat. Ann. §325 F. 67); the Uniform Deceptive Trade Practices Act (Minn. Stat. Ann. §325D.44); and the Unlawful Trade Practices Act (Minn. Stat. Ann. §325D.13);

Mississippi: the Consumer Protection Act (Miss. Code Ann. §75-24-1 *et seq*.) and the False Advertising Statutes (Miss. Code Ann. §97-23-3); Missouri: the Missouri Merchandising Practices Act (Mo. Rev. Stat. §407.010 *et seq*.); Montana: the Montana Unfair Trade Practices and Consumer Protection Act (Mont. Code Ann. §30-14-101 *et seq*.); and the Statutory Deceit Statute (Mont. Code Ann. §27-1-712); Nebraska: the Nebraska Consumer Protection Act (Neb. Rev. Stat. §59-1601 *et seq*.) and the Nebraska Uniform Deceptive Trade Practices Act (Neb. Rev. Stat. §87-301 *et seq*.); Nevada: the Deceptive Trade Statutes (Nev. Rev. Stat. §§598.0903 *et seq*., 41.600 *et seq*.); New Hampshire: the Regulation of Business Practices for Consumer Protection Act (N.H. Rev. Stat. Ann. §358-A:1 *et seq*.); New Jersey: the New Jersey Consumer Fraud Act (N.J. Stat. Ann. §56:8-1 *et seq*. (West)); New Mexico: New Mexico Unfair Practices Act (N.M. Stat. Ann. §57-12-1 *et seq*.); New York: New York Consumer Protection Act (N.Y. Gen. Bus. Law §§349, 350 (Consol.)); North Carolina: North Carolina Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. §75-1.1 *et seq*.); North Dakota: Deceptive Act or Practice Statutes (N.D. Gen. Stat. §51-15-01 *et. seq*.); Ohio: Ohio Consumer Sales Practices Act (Ohio Rev. Code Ann. §1345.01 *et seq*. (Baldwin)); Oklahoma: Oklahoma Consumer Protection Act (Okla. Stat. Ann. Tit. 15, §751 *et seq*. (West)) and the Oklahoma Deceptive Trade Practices Act (Okla. Stat. Ann. Tit. 78, §51 *et seq*. (West)); Oregon: the Unlawful Trade Practices Act (Or. Rev. Stat. § 646.605 *et seq*.) and the Oregon Food and Other Commodities Act (Or. Rev. Stat. §616.005 *et seq*.); Pennsylvania: Unfair Trade Practices Act and Consumer Protection Law (Pa. Stat. Ann. Tit. 73 §201-1 *et seq*. (Purdon); Rhode Island: Consumer Protection Act (R.I. Gen. Law §6-13.1-1 *et seq*.); South Carolina: South Carolina Unfair Trade Practices Act (S.C. Code Ann. §39-5-10 *et seq*.); South Dakota: South Dakota Deceptive Trade Practices and Consumer Protection Law (S.D. Codified Laws Ann. §37-24-1 *et seq*.); Tennessee: Tennessee Consumer

Protection Act (Tenn. Code Ann. §47-18-101 *et seq*.); Texas: Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code Ann. §17.41 *et seq*. (Vernon)); Utah: Utah Consumer Sales Practices Act (Utah Code Ann. §13-11-1 *et seq*.) and the Utah Truth in Advertising Act (Utah Code Ann. §13-11a-1 *et seq*.); Vermont: Vermont Consumer Fraud Statute (Vt. Stat. Ann. Tit. 9, §2451 *et seq*.); Virginia: Virginia Consumer Protection Act (Va. Code 59.1-196 *et seq*.); Washington: Washington Consumer Protection Act (Wash. Rev. Code Ann. §19.86 *et seq*.); West Virginia: West Virginia Consumer Credit and Protection Act (W. Va. Code §46A-6-101 *et seq*.); Wisconsin: Wisconsin Fraudulent Representations Act (Wis. Stat. Ann. §100.18 *et seq*. (West)); Wyoming: Consumer Protection Act (Wyo. Stat. §40-12-101 *et seq*.)) has directly, foreseeably, and proximately caused damages to Plaintiffs and Putative Class in amounts to be proven at trial.

224. More specifically, HSBC's unfair or deceptive and, thus, unlawful conduct consisted of at least the following:

a. HSBC unilaterally imposes Payment Protection upon its customers' credit card accounts, thereby failing to disclose to customers that Payment Protection is an optional Plan and that they can "opt out" of Payment Protection;

b. HSBC did not obtain affirmative consent from Card Holders prior to enrolling them in Payment Protection;

c. The written documents that HSBC does eventually provide to Card Holders, referred to by HSBC as a Welcome Kit, does not provide Card Holders with sufficient information to understand the terms and conditions of Payment Protection;

d. The Welcome Kit and related documents provided to customers are ineffective, ambiguous, deceptive, unfair, misleading, and/or do not unambiguously state that certain customers are *per se* ineligible to receive benefits, even though HSBC had the information and means of determining eligibility prior to enrolling these customers in Payment Protection;

e. HSBC does not alert customers that certain individuals are *per se* ineligible for Payment Protection benefits, including but not limited to retired persons, unemployed persons, persons employed by family members, persons employed on a part-time or seasonal basis, and those that are disabled;

f. The formula HSBC uses to compute Payment Protection fees is misleading such that Card Holders are unable to budget for this product or understand its overall cost in order to determine its value to Card Holders;

g. In order for HSBC to maximize the number of Payment Protection Card Holders and minimize the amount of benefits it pays to these Card Holders, HSBC operates its customer service centers in such a way as to make it difficult for Card Holders to cancel enrollment, obtain information about the terms and conditions of Payment Protection coverage, and file claims; and

h. HSBC uses other means to make it excessively difficult for Card Holders to file claims and obtain Payment Protection benefits, thus rendering worthless or virtually worthless the Payment Protection program for which Class members are paying substantial fees to HSBC.

225. Defendants' actions are outrageous due to their reckless indifference to the rights of Plaintiffs and the Putative Class.

226. HSBC's unlawful conduct as described herein caused injury to Plaintiffs and the Putative Class in the form of the fees they paid to HSBC for enrollment in HSBC's Payment Protection program, which was worthless or virtually worthless. Alternatively, Plaintiffs and the Putative Class paid fees for enrollment in HSBC's Payment Protection program that were far in excess of the value of enrollment in that program.

227. The unfair or deceptive acts or practices of HSBC as alleged herein were willful or knowing violations of the laws set forth herein.

228. Plaintiffs and the Putative Class have been injured by HSBC's unfair or deceptive acts or practices.

229. Plaintiffs and the Putative Class are also entitled to injunctive and declaratory relief including, without limitation, orders declaring HSBC's practices as alleged herein to be

unlawful, unfair, unconscionable and/or deceptive, and enjoining HSBC from undertaking any further unlawful, unfair, unconscionable, and/or deceptive acts or omissions.

230. Plaintiffs and the Putative Class are also entitled to disgorgement and restitution of HSBC's ill-gotten gains in the form of unlawful profits obtained from the conduct described in detail herein, plus interest on damages at the legal rate, as well as three times the amount of their damages caused by HSBC's violations of law.

231. Because Plaintiffs seek to enforce an important right affecting the public interest, Plaintiffs request an award of attorneys' fees and costs on behalf of themselves and the Putative Class.

232. Due to HSBC's violations of consumer protection law prohibiting unfair and deceptive acts and practices, Plaintiffs and the Putative Class have suffered actual monetary damages for which HSBC is liable.

**COUNT SIX – COMMON LAW FRAUD**
**(As to All Plaintiffs)**

233. Plaintiffs repeat and reallege all preceding paragraphs of this amended complaint as if fully set forth herein.

234. HSBC has engaged in a common scheme of fraud, through which they unlawfully enroll Card Holders in Payment Protection without obtaining the Card Members' consent or authorization.

235. HSBC perpetrates the common scheme of fraud complained of herein by omitting, or failing to disclose to Card Holders, that they are unilaterally enrolling said Card Holders in Payment Protection.

236. HSBC knowingly and willfully enrolls Card Holders in Payment Protection without obtaining the Card Members' consent or authorization.

237. HSBC intentionally perpetrates the common scheme of fraud complained of herein as an unlawful means to cause Card Holders to pay additional fees.

238. Plaintiffs, and the proposed class, are presumed to have justifiably relied on Defendants' omissions and failures to disclose.

239. As a direct and proximate result of Defendants' common scheme of fraud, Plaintiffs were caused to sustain damages in the form of the unauthorized fees paid in connection with Payment Protection.

## COUNT SEVEN – INJUNCTIVE RELIEF PAYMENT PROTECTION RESTITUTION (As to All Plaintiffs)

240. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this SACC as if fully set forth herein.

241. Plaintiffs ask the Court to grant the remedy of restitution to themselves and to all Putative Class Members who made payments to HSBC for Payment Protection without authorizing it, based on being misled, and/or who had benefits improperly denied. Specifically, the Plaintiffs ask the Court to grant the following relief:

a. a refund of all Payment Protection payments made to HSBC;

b. a refund to any Card Holder who was retired at the time they were sold Payment Protection by HSBC;

c. a refund to any Card Holder who was a senior citizen at the time they were sold Payment Protection by HSBC;

d. a full refund to any Card Holder who was otherwise not eligible for Payment Protection due to the restrictions in the coverage at the time the product was sold to the Card Holder and who paid for the product; and

e. a full refund to any Card Holder who did not consent to enrollment in Payment Protection and who paid for the product(s).

242. Plaintiffs seek injunctive relief enjoining HSBC from continuing to engage in the

fraudulent, deceitful, unlawful, and unfair common scheme described in this SACC.

**COUNT EIGHT – DECLARATORY RELIEF**
**(As to All Plaintiffs)**

243. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this SACC as if fully set forth herein.

244. Plaintiffs seek a Declaratory Judgment (a) finding that the conduct of HSBC is in violation of consumer protection laws and (b) enjoining it from continuing in such conduct.

**COUNT NINE – UNJUST ENRICHMENT**
**(Only As to Slamming Plaintiffs)**

245. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this SACC as if fully set forth herein.

246. In seeking to increase its fee revenue, HSBC enrolled Slamming Plaintiffs and the Putative Class into Payment Protection without their consent or authorization.

247. By unknowingly paying unauthorized or otherwise fraudulent charges to HSBC for Payment Protection, members of the proposed class conferred a benefit on HSBC, which HSBC knowingly accepted despite the fact that it was not entitled to such benefit. Such acts were, and are, unconscionable.

248. HSBC was unjustly enriched by charging the Slamming Plaintiffs and the Putative Class members for illusory benefits, which Slamming Plaintiffs and the Putative Class never requested or authorized.

249. HSBC was unjustly enriched by charging Slamming Plaintiffs and the Putative Class multiple Payment Protection charges if the cardholder had multiple HSBC cards.

250. HSBC was unjustly enriched by forcibly enrolling and charging Slamming Plaintiffs and the Putative Class who were retired or who were senior citizens for Payment

Protection even though they were ineligible to receive benefits by the terms of the Payment Protection documents.

251. As a result of HSBC's actions which constitute unjust enrichment, Slamming Plaintiffs and the Putative Class suffered actual damages for which HSBC is liable. HSBC's liability for such damages should be measured by the extent of Defendants' unjust enrichment.

**COUNT TEN – UNJUST ENRICHMENT**
**(Only as to Efficacy Plaintiffs)**

252. In seeking to sell credit cards to Efficacy Plaintiffs and all others similarly situated, HSBC misled customers about and/or withheld material terms from Card Holders prior to charging Payment Protection fees, including the express benefits, limitations, restrictions, and exclusions associated with the product.

253. HSBC was unjustly enriched by charging Efficacy Plaintiffs and the Putative Class sums for Payment Protection coverage that were in excess of amounts which would have been permissible had HSBC properly disclosed the nature of its product.

254. HSBC was unjustly enriched by the practice of signing people up for Payment Protection that never agreed to be Plan members.

255. HSBC was unjustly enriched by the practice of withholding material terms of Payment Protection until after the product was charged to Card Holders' accounts.

256. HSBC was unjustly enriched by their business practice of making it so impermissibly difficult for Card Holders to actually receive coverage under Payment Protection that the service was virtually worthless. Such unconscionable acts include, but are not limited to:

a. Denying claims over the phone without written explanation;

b. Denying claims without sufficient investigation;

c. Requiring claimants to submit excessive and duplicate documentation, and/or;

d. Establishing a telephone number that does not allow for claimants to speak to a live person, a person in a timely manner, or a person who is properly trained to handle Payment Protection claims, in order for the Card Holder to successfully file a claim.

257. HSBC was unjustly enriched by charging Efficacy Plaintiffs and the Putative Class members for illusory benefits.

258. HSBC was unjustly enriched by charging Efficacy Plaintiffs and the Putative Class members who were retired or were otherwise not eligible to receive payments by the terms of the Payment Protection Plan.

259. As a result of HSBC's actions which constitute unjust enrichment, Efficacy Plaintiffs and the Putative Class suffered actual damages for which HSBC is liable. HSBC's liability for those damages should be measured by the extent of its unjust enrichment.

## IX. PRAYER FOR RELIEF

260. WHEREFORE, as to each of the foregoing Counts, Plaintiffs, individually and on behalf of all others similarly situated, seek the following relief against each Defendant jointly and severally:

a. An Order determining that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, that Plaintiffs are proper class representatives, and that Plaintiffs' counsel be appointed as Class Counsel;

b. An Order rescinding the enrollments of each and every Plaintiff and member of the Class into the Plans based on Defendants' deceptive misconduct as complained of herein, or, alternatively, damages for said fraud;

c. An Order issuing a preliminary injunction enjoining Defendants and all others, known and unknown, from continuing to take illegal action as set forth in this SACC;

d. An Order issuing a permanent injunction enjoining Defendants and all others, known and unknown, from continuing to take illegal action as set forth in this SACC;

e. A Judgment against Defendants and in favor of Plaintiffs and the Class for compensatory, consequential, and statutory damages in an amount to be determined at trial, including, without limitation, the loss of monies paid to Defendants as fees derived from enrollment in the Plan, pre-judgment interest, and post-judgment interest;

f. A Judgment awarding Plaintiffs and the Class restitution of all fees paid in connection with the Plan;

g. A Judgment awarding Plaintiffs and the Class exemplary, treble, and punitive damages;

h. A Judgment awarding Plaintiffs and the Class reasonable attorneys' fees and costs of this action permitted by applicable law; and

i. Such other and further relief as this Honorable Court finds just and proper under the circumstances.

**JURY DEMAND**

Plaintiffs demand a trial by jury consisting of twelve persons on all issues so triable.

Respectfully submitted,

**GOLOMB & HONIK, P.C.**

/s/KJG2445

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**DATED:** **January 27, 2012**

## CERTIFICATE OF SERVICE

I, KENNETH J. GRUNFELD, ESQUIRE, do hereby certify that a true and correct copy of the foregoing **Second Amended and Consolidated Class Action Complaint** was served on all counsel of record on the date shown below via CM/ECF Court Filing System:

**GOLOMB & HONIK, P.C.**

/s/KJG2445

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**DATED: January 27, 2012**