

**Hearing Date and Time: January 16, 2008 at 9:45 a.m.**  
**Objection Deadline: January 11, 2008 at 4:00 p.m.**

Jeff J. Friedman (JF-7661)  
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*Attorneys for The Consumers Trust, as Debtor and Debtor-in-Possession*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: Chapter 11  
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THE CONSUMERS TRUST, Case No. 05 – 60155 (REG)  
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Debtor. :  
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**NOTICE OF DEBTOR’S THIRD OMNIBUS OBJECTION TO PROOFS OF  
CLAIM PURSUANT TO 11 U.S.C. §§ 105(a) AND 502 AND FED. R. BANKR. P. 3007  
(CASHABLE VOUCHER CLAIMS)**

**PLEASE TAKE NOTICE** that a hearing will be held on January 16, 2008 at 9:45 a.m.  
or as soon thereafter as counsel can be heard before the Honorable Robert E. Gerber, United  
States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New  
York, One Bowling Green, New York, New York 10004, to consider the annexed Debtor’s Third  
Omnibus Objection to Proofs of Claim Pursuant to 11 U.S.C. §§ 105 and 502 and Fed. R. Bankr.  
P. 3007 (Cashable Voucher Claims) (the “Third Omnibus Objection”).

**PLEASE TAKE FURTHER NOTICE** that the hearing to consider the Third Omnibus  
Objection and any response thereto may be adjourned from time to time without notice to any

creditor or other party-in-interest, other than the announcement of the adjourned date at such hearing.

**PLEASE TAKE FURTHER NOTICE** that responses to the Third Omnibus Objection, if any, must be filed with the Court, together with a copy for the chambers of Judge Gerber, and served upon (i) counsel for The Consumers Trust, Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (Attn: Jeff J. Friedman, Esq.); (ii) counsel for the Official Committee of Unsecured Creditors, Fulbright and Jaworski LLP, 666 Fifth Avenue, New York, New York 10103 (Attn: David L. Barrack, Esq.); and (iii) the Office of the United States Trustee, 33 Whitehall Street, New York, New York, 11201 (Attn: Brian Masumoto, Esq.) so as to be received no later than January 11, 2008 at 4:00 p.m.

Dated: New York, New York  
December 5, 2007

KATTEN MUCHIN ROSENMAN LLP  
*Attorneys for The Consumers Trust, as Debtor and Debtor-in-Possession*

By: /s/ Jeff J. Friedman  
Jeff J. Friedman (JF-7661)  
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UNITED STATES BANKRUPTCY COURT  
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**DEBTOR’S THIRD OMNIBUS OBJECTION TO PROOFS OF CLAIM PURSUANT TO  
11 U.S.C. §§ 105(a) AND 502 AND FED. R. BANKR. P. 3007  
(CASHABLE VOUCHER CLAIMS)**

TO: THE HONORABLE ROBERT E. GERBER,  
UNITED STATES BANKRUPTCY JUDGE:

The Consumers Trust, the above-captioned debtor and debtor-in-possession (the  
“Debtor”), hereby files its Third Omnibus Objection to Proofs of Claim Pursuant 11 U.S.C. §§  
105(a), 502 and Fed. R. Bankr. P. 3007 (Cashable Voucher Claims) (the “Third Omnibus  
Objection”), and in support thereof, respectfully represents as follows:

## **JURISDICTION**

1. The Court has jurisdiction over this application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105(a) and 502 (as amended, the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”).

## **INTRODUCTION**

2. On December 5, 2005 (the “Petition Date”), the Debtor filed with the Court a petition for relief under chapter 11 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in this chapter 11 case. On December 29, 2005, the United States Trustee for the Southern District of New York appointed the eleven-member Official Committee of Unsecured Creditors of The Consumers Trust (the “Committee”) pursuant to sections 1102(a) and 1102(b) of the Bankruptcy Code.

4. On or about October 5, 2007, this Court entered an order establishing procedures for filing objections to proofs of claim (“Proofs of Claim”) which approved the mailing of a two-page notice summarizing the basis or bases for the Debtor’s objection and procedures for filing responses by claimants whose claims are the subject of the Debtor’s objection(s). The Debtor’s Third Omnibus Objection will be prosecuted in accordance with those approved procedures.

5. On October 22, 2007, the Debtor and Committee filed the Second Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code (the “Plan”). On October 24, 2007, the Court entered its Findings of Fact, Conclusions of Law, and Order Under 11 U.S.C. §

1129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming the Second Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code, confirming the Plan.

6. The effective date of the Plan occurred on November 30, 2007.

7. This is the Debtor's third omnibus objection to the allowance of certain claims that have been filed against the Debtor.

### **RELIEF REQUESTED**

8. As part of the claims reconciliation process, the Debtor is carefully reviewing all of the Proofs of Claim filed in this case against the Debtor, its books and records, and its schedules. The Debtor has identified particular Proofs of Claim that should be disallowed and expunged, fixed, or reduced, as applicable. Additionally, the Debtor has requested additional information, including copies of the claimants' cashable vouchers ("Cashable Voucher") to support the asserted claims and disallowing those claims to which the Debtor has requested additional information and no such information or response is provided prior to the response due date.

### **The Duplicate Claims**

9. During the reconciliation process, the Debtor determined that certain Proofs of Claim filed against the Debtor are asserting duplicate claims for a single liability in connection the issuance of Cashable Vouchers. Certain Cashable Voucher holders filed identical Proofs of Claim asserting claims against the Debtor on account of the same Cashable Voucher. It is axiomatic that creditors are not entitled to multiple recoveries for a single liability against a debtor. The Debtor objects to the claims listed on Exhibit "A" annexed hereto because each

claim duplicates another claim filed by the same claimant against the Debtor. The Debtor proposes that the claims set forth under the “Claim Number Expunged” column on Exhibit A should be disallowed and expunged and the surviving claims noted under the “Surviving Claim Number” column on Exhibit A be allowed as general unsecured claims in the amounts set forth under the “Surviving Claim Amount” column on Exhibit A.

### **The Amended Claims**

10. The Debtor objects to the claims listed on Exhibit “B” annexed hereto because these claims have been amended and superseded by later filed claims relating to the same Cashable Vouchers. Therefore, the amended and superseded claims are duplicate claims. If the superseded claims are not disallowed and expunged, these Cashable Voucher holder claimants will be paid on their claim twice to the detriment of the other Cashable Voucher holders. The debtor proposes that the later-filed claims under the “Surviving Claim Number” column on Exhibit B replace the claims listed under the “Claim Number Expunged” column on Exhibit B. Accordingly, the superseded claims as set forth under the “Claim Number Expunged” column on Exhibit B should be disallowed and expunged for all purposes and the claims listed under the “Surviving Claim Number” column be allowed as general unsecured claims in the amounts set forth under the “Surviving Claim Amount” column on Exhibit B.

### **The Fixed/Reduced Claims**

11. The Debtor objects to the claims listed on Exhibit “C” annexed hereto as these Cashable Voucher holder claimants have either failed to state the amount of their claims or filed their claims seeking wholly or partially unliquidated amounts. The Debtor believes that these claims are for damages based upon the Debtor’s breach of contract with respect to unmatured

Cashable Vouchers or the failure of the Debtor to make payments in accordance with the terms of the Cashable Vouchers. It is the Debtor's position that each Cashable Voucher holder claimant is only entitled to a claim in the face amount of the Cashable Voucher. Accordingly, the Debtor requests that the claims identified on Exhibit C be fixed and allowed as general unsecured claims in the amounts equal to the face value of the Cashable Vouchers based on information within the Debtor's books and records, which amounts are set forth under the "Adjusted/Fixed Claim Amount" column on Exhibit C.

### **The Reduced Claims**

12. The Debtor has concluded that the claims listed on Exhibit "D" annexed hereto are asserted in amounts in excess of the amounts reflected in the Debtor's books and records. As stated in the preceding paragraph, each Cashable Voucher holder claimant is only entitled to a claim in the face amount of the Cashable Voucher. The maximum amount of any Cashable Voucher issued by the Debtor in the United States and Canada is \$20,000.00 or CDN \$30,000.00, respectively. Accordingly, the Debtor requests that the claims listed on Exhibit D be reduced and allowed as general unsecured claims in the amounts listed in the "Reduced Claim Amount" column on Exhibit D which represent the face amount of the Cashable Vouchers based on information within the Debtor's books and records.

### **Additional Information Needed**

13. The Debtor does not have a record of any obligation to the claimants listed on Exhibit "E" annexed hereto. The Debtor has examined its books and records utilizing various searching strategies, including searching variations of the names and/or address in an attempt to uncover information concerning those Proofs of Claim. Accordingly, the Debtor seeks

additional information and documentation in support of the claims listed on Exhibit E. Assuming additional information is timely provided to the Debtor showing that each of the claimants possesses a Cashable Voucher, then the Debtor will seek to allow the claim as a general, unsecured, nonpriority claim in the amount of the Cashable Voucher. The Debtor will seek to disallow in the entirety any claim with respect to which it does not receive supporting documentation by the response deadline.

14. The Debtor expressly reserves the right to amend, modify or supplement the objections asserted herein and file additional objections to the claims or any other claims (filed or not filed) asserted against the Debtor on any other grounds that the Debtor identifies.

#### **LEGAL AUTHORITY**

15. Section 502(a) of the Bankruptcy Code provides that “a claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Section 502(b) of the Bankruptcy Code, in relevant part, provides that “if such objection to a claim is made, the court shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount . . . .” 11 U.S.C. § 502(b). Pursuant to Bankruptcy Rule 3001, a timely-filed proof of claim constitutes prima facie evidence of the validity and amount of the claim. See Fed. R. Bankr. P. 3001. A debtor may rebut a proof of claim by filing an objection in accordance with Bankruptcy Rule 3007. See Fed. R. Bankr. P. 3001(f); Liddle v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.), 159 B.R. 420, 424 (S.D.N.Y. 1993); In re Chateaugay Corp., 104 B.R. 622, 625 (S.D.N.Y. 1989). Once a debtor has rebutted the proof of claim, the burden shifts to the claimant to satisfy the ultimate burden of

persuasion with respect to the validity of the claim. See In re Jorczak, 314 B.R. 474, 481 (Bankr. D. Conn. 2004); In re Rockefeller Ctr. Props. & RCP Assocs., 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000); In re St. Johnsbury Trucking Co., 206 B.R. 318, 323 (Bankr. S.D.N.Y. 1997).

### **NOTICE**

16. Notice of the Third Omnibus Objection has been given to the United States Trustee, counsel for the Committee, the affected claimants, and those persons who filed a notice of appearance in these cases in accordance with this Court's order establishing procedures for objecting to Proofs of Claim entered on October 5, 2007. The Debtor submits that such notice is sufficient under the circumstances and request that the Bankruptcy Court find that no other or further notice of the relief requested herein is required.

### **MEMORANDUM OF LAW**

17. Because the relevant authorities in support of the relief requested herein are cited in this Third Omnibus Objection, the Debtor requests that the requirement of the service and filing of a separate memorandum of law under Local Bankruptcy Rule 9013-1(b) be deemed satisfied by this Third Omnibus Objection.

WHEREFORE the Debtor respectfully requests that the Court enter an order substantially similar to the proposed order that accompanies this Third Omnibus Objection disallowing, expunging, fixing, or reducing, as applicable, each of the claims as more fully described herein

and listed on the exhibits attached hereto and granting the Debtor such other and further relief as is just and proper.

Dated: New York, New York  
December 5, 2007

KATTEN MUCHIN ROSENMAN LLP  
Attorneys for Debtors and Debtors-In-  
Possession

By: /s/ Jeff J. Friedman  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
THE CONSUMERS TRUST, : Case No. 05 – 60155 (REG)  
Debtor. :  
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**ORDER GRANTING DEBTOR’S THIRD OMNIBUS OBJECTION PURSUANT  
TO 11 U.S.C. §§ 105(a) AND 502 AND FED. R. BANKR. P. 3007  
(CASHABLE VOUCHER CLAIMS)**

Upon the Debtor’s Third omnibus objection to claims pursuant to 11 U.S.C. §§ 105(a), and 502 and Fed. R. Bankr. P. 3007 (Cashable Voucher Claims) (the “Third Omnibus Objection”); and the Court having jurisdiction to consider the Third Omnibus Objection and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Third Omnibus Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and proper notice of the Third Omnibus Objection and relief requested therein having been provided and it appearing that no other or further notice need be provided; and the relief requested in the Third Omnibus Objection being in the best interests of the Debtor, its estate and creditors; and the Court having determined that the legal and factual bases set forth in the Third Omnibus Objection establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the duplicate claims listed under the “Claim Number Expunged” column on Exhibit “A” to this Order are disallowed and expunged for all purposes and the surviving

claims under the “Surviving Claim Number” column are allowed as general unsecured claims in the amounts set forth under the “Surviving Claim Amount” column; and it is further

ORDERED that the superseded claims listed under the “Claim Number Expunged” column on Exhibit “B” to this Order are disallowed and expunged for all purposes and the surviving claims under the “Surviving Claim Number” column are allowed as general unsecured claims in the amounts set forth under the “Surviving Claim Amount” column; and it is further

ORDERED that the claims listed on Exhibit “C” to this Order are fixed and allowed as general unsecured claims in the amounts set forth under the “Fixed/Adjusted Claim Amount” column; and it is further

ORDERED that the claims listed on Exhibit “D” to this Order are reduced and allowed as general unsecured claims in the amounts set forth under the “Reduced Claim Amount” column; and it is further

ORDERED that the claims listed on Exhibit “E” to this Order are allowed as general unsecured claims in the amounts set forth under the “Total Claim Amount” column; and it is further

ORDERED that the claimants listed on Exhibit “E1” to this Order have not provided the Debtor with satisfactory proof of their claims prior to the deadline to respond to the Third Omnibus Objection and accordingly the claims listed on Exhibit E1 are hereby disallowed and expunged; and it is further

ORDERED that the Debtor’s claims and noticing agent is directed to make such entries or notations as are appropriate to the claims register in this case to reflect the relief granted in the preceding paragraphs; and it is further

ORDERED that nothing herein shall prejudice the rights of the Debtor to file additional objections to claims of voucher holders identified in the Third Omnibus Objection as well as well as any other claims asserted against the Debtor; and it is further

ORDERED that the requirement of Local Bankruptcy Rule 9013-1(b) for the filing of a separate memorandum of law is hereby waived with respect to the Third Omnibus Objection.

Dated: New York, New York  
January \_\_, 2008

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UNITED STATES BANKRUPTCY JUDGE