

DOLORES M. KRUG, an individual; MARK A. CASTELLANO, an individual; DIANE L. HORSTMAN, an individual; JAMES J. HORSTMAN, an individual; DANE T. WOOD an individual; and LISA A. WOOD, an individual; on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

ERICA L. BRACHFELD, A PROFESSIONAL CORPORATION doing business as LAW OFFICES OF BRACHFELD & ASSOCIATES, a California Corporation; and ERICA L. BRACHFELD also known as ERICA L. SHUBIN, individually and in her official capacity,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY**

Civil Action

Docket No. GLO-L-000419-11

**NOTICE OF CLASS ACTION
AND
PROPOSED SETTLEMENT**

TO: All persons who received from BRACHFELD & ASSOCIATES a telephonic voice message from February 21, 2008 to April 15, 2011:

**THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.
YOU MAY BENEFIT FROM READING THIS NOTICE.**

WHAT THIS LAWSUIT IS ABOUT

DOLORES M. KRUG, an individual, MARK A. CASTELLANO, an individual, DIANE L. HORSTMAN, an individual, JAMES J. HORSTMAN, an individual, DANE T. WOOD an individual, and LISA A. WOOD, an individual (“Plaintiffs”) filed an action in the Superior Court of New Jersey, Law Division, Gloucester County alleging class action claims against ERICA L. BRACHFELD, A PROFESSIONAL CORPORATION doing business as LAW OFFICES OF BRACHFELD & ASSOCIATES, a California Corporation, and ERICA L. BRACHFELD also known as ERICA L. SHUBIN, individually and in her official capacity (“Defendants”). On behalf of a class, Plaintiffs alleged that Defendants used false, deceptive and misleading means while attempting to collect alleged personal debts in violation of the Fair Debt Collection Practices Act (“FDCPA”).

Defendants denied liability and have raised a number of defenses. The Court has not made any decision concerning the merits of the lawsuit. The Defendants have negotiated a proposed settlement agreement (“Agreement”).

On April 15, 2011 the Honorable Eugene J. McCaffrey, Jr., J.S.C. (i) determined that this action should proceed as a class action with respect to the claims of the class described above against Defendants, with Plaintiffs acting as the representative of the class, and (ii) granted preliminary approval of the settlement, subject to a Fairness Hearing which will take place on

August 25, 2011 at 1:30 p.m. at the Gloucester County Courthouse, 70 Hunter Street, Courtroom 304 Woodbury, New Jersey 08096.

This notice explains the nature of the lawsuit and the terms of the settlement, and informs you of your legal rights and obligations.

NO ADMISSION OF LIABILITY

By settling this lawsuit, Defendants do not admit that they did anything wrong. Defendants deny any wrongdoing.

THE PROPOSED SETTLEMENT

The attorneys for the class believe that this settlement is fair, reasonable, adequate and in the best interests of the class members. A summary of the terms of the settlement are as follows:

1. **Payment to each class member and each Plaintiff.** No direct payment will be tendered to any individual class member. Based upon limitations set forth in the FDCPA, the Court may not award more than 1% of Defendant's net worth to the class. Defendant has provided information reflecting a negative net worth which would limit the award to zero. Nevertheless, Defendants agreed to pay \$25,000.00, which in excess of the maximum damages recoverable under the FDCPA. There are over 1,000,000 members of the class. Therefore, it is not economical or feasible to divide and distribute \$25,000.00 among more than 1,000,000 total class members. Instead, the Defendant will provide a "*cy pres*" payment to one or more charitable organizations to be approved by the Court at the Fairness Hearing. In addition, the Plaintiffs will each receive \$1,000.00 in statutory damages for their individual claims against Defendants, and \$1,500.00 in recognition for their services as class representatives.

2. **Release.**

- (a) On the Effective Date of the Agreement, Plaintiffs will be deemed to release and forever discharge the Released Parties from all causes of action, controversies, actions, demands, torts, damages, costs, attorneys' fees, moneys due on account, obligations, judgments, alleged violations of the FDCPA and liabilities of any kind whatsoever in law or equity, arising out of the Agreement or imposed by federal or state statute, common law or otherwise, from the beginning of time to the date the Agreement is signed, whether or not known now, anticipated, unanticipated, suspected or claimed, fixed or contingent, whether yet accrued or not and whether damage has resulted from such or not.
- (b) On the Effective Date of the Agreement, each member of the Class including the Plaintiffs, but excluding those who timely filed with the Clerk of this Court a request to be excluded from the Class, is deemed to release and forever discharge the Released Parties from the Class Claims from the beginning of time to the date of the Preliminary Approval Order except that each member of the Class may bring any action against Defendant to recover any actual damages which the member may have suffered.
- (c) "Released Parties" means Defendants and Defendants' successors, predecessors, assignees, and current and former officers, directors, shareholders, and

employees.

3. **Injunction.** Under current interpretation of the FDCPA, the FDCPA does not authorize the imposition of an injunction against Defendants. Nevertheless, Defendants have consented to the imposition of an injunction. Specifically, Defendants consent to the entry of a stipulated injunction mandating that Defendants use their “best efforts” to ensure that they identify themselves by their legal name in all telephone messages left for consumers, and that they further disclose the call is from a non-attorney debt collector (unless a licensed attorney has left the message) and that the call concerns the collection of a debt. To ensure compliance with the injunction, counsel for Defendants will send written reports of all lawsuits filed and informal complaints any Defendant receives in writing which allege any Defendant’s failure to either (a) properly identify themselves by their legal name in all telephone messages left for consumers, (b) disclose that the call is from a non-attorney debt collector (unless a licensed attorney left the message), or (c) disclose that the call concerns the collection of a debt. These written reports will be sent quarterly to Class Counsel to be received by the 10th day after the conclusion of each quarter for the year immediately following Ultimate Approval.

4. **Attorney’s Fees and Expenses.** Subject to approval by the Court, Defendants will pay counsel for the class the sum of \$85,000.00 for their fees and expenses. None of the fees or expenses will come out of the *cy pres* payment or payment to the named Plaintiffs.

**OPINION OF CLASS COUNSEL CONCERNING THE
VALUE OF THE SETTLEMENT**

The complaint in this lawsuit alleged that the Defendant used false, deceptive and misleading means when attempting to collect consumer debts in violation of the FDCPA.

In an FDCPA class action, the maximum possible recovery is (i) any actual damages suffered by the class members and (ii) an amount as the Court shall assess, based upon the culpability of the defendant’s conduct and the amount of harm caused by the defendant, not exceeding the lesser of \$500,000.00 or 1% of the defendant’s net worth.

If the alleged violations were established in an individual action, the Plaintiffs would have a right to recover (i) any actual damages suffered and (ii) an amount as the Court shall assess, based upon the culpability of the defendant’s conduct and the amount of harm caused by the defendant, not exceeding \$1,000.00. Of course, Plaintiffs would only have these rights if they prevailed, which cannot be assured.

Class counsel believes that the payment provided for by this settlement is fair and reasonable and that the class members should accept this settlement. While it is possible that someone could recover more in an individual case if it is brought and is successful, individual suits under the FDCPA are sometimes not economical and, therefore, difficult to find competent legal counsel to prosecute the claim. In addition, Defendants have denied that they have violated the FDCPA, and the Court has not ruled on the merits of the lawsuit. Therefore, a person who elects to opt out of the action might recover nothing.

You do not have to do anything further if you do not wish to object to this settlement or if you do not wish to opt out of this settlement. If you have any questions regarding this settlement please contact the class counsel listed below.

FAIRNESS HEARING

On August 25, 2011 (“Fairness Hearing Date”) at 1:30 p.m., a hearing will be held on the fairness of the proposed settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement. **The hearing will take place before the Honorable Eugene J. McCaffrey, Jr., J.S.C., Gloucester County Courthouse, 70 Hunter Street, Courtroom 304, Woodbury, New Jersey 08096.** The Court may adjourn the Fairness Hearing to a later date but no additional notice will be provided to the Class however Class Counsel will give notice by regular mail to all class members who timely filed a written objection.

WHAT CAN YOU DO

You have three choices:

1. **Opt Out.** You have the right to exclude yourself from both the class action and the settlement. If you choose to do this, you **must** do four things:

- (a) put your request in writing,
- (b) **no later than August 23, 2011**, file that written request with the Deputy Clerk of the Superior Court of New Jersey, Gloucester County Civil Division, 70 Hunter Street, Woodbury, NJ 08096,
- (c) **no later than August 23, 2011**, serve a copy of that written request upon Philip D. Stern, Esq. at his law office address listed below, and
- (d) **no later than August 23, 2011**, serve a copy of that written request upon Defendants’ attorney, Matthew O’Malley, Esq. at his law office listed below.

Note: Unless you intend to pursue your claim on an individual basis, there is no benefit to excluding yourself. If you exclude yourself from the class, you will have no right to object to the settlement because the settlement will not be binding on you.

2. **Object.** If you object to the settlement, you **must** do four things:

- (a) put your objection in writing including a statement of the reasons why you believe that the Court should find that the proposed settlement is not in the best interests of the class,
- (b) **no later than August 23, 2011**, file that written objection with the Deputy Clerk of the Superior Court of New Jersey, Gloucester County Civil Division, 70 Hunter Street, Woodbury, NJ 08096,
- (c) **no later than August 23, 2011**, serve a copy of that written objection upon Philip D. Stern, Esq. at his law office address listed below, and
- (d) **no later than August 23, 2011**, serve a copy of that written request upon Defendant’s attorney, Matthew O’Malley, Esq. at his law office listed below.

Note: If you object, you should plan to appear at the Fairness Hearing so that your objection can be properly considered by the Court.

2. Do Nothing. If you do not want to exclude yourself and do not want to object to the settlement, it is not necessary for you to take any action.

IMPORTANT: THE COURT REQUIRES THAT ANY REQUESTS FOR EXCLUSION OR OBJECTIONS BE RECEIVED BY THE CLERK NO LATER THAN AUGUST 23, 2011. IF YOU MAIL A REQUEST FOR EXCLUSION OR OBJECTION, YOU BEAR THE RISK OF ANY PROBLEM WITH THE MAILS.

ATTORNEYS

ATTORNEYS FOR THE PLAINTIFFS AND THE CLASS

Philip D. Stern, Esq.
Philip D. Stern & Associates, LLC
697 Valley Street, Suite 2d
Maplewood, NJ 07040-2642

ATTORNEYS FOR THE DEFENDANTS

Matthew O'Malley, Esq.
Tompkins, McGuire, Wachenfeld & Barry, LLP
Four Gateway Center
100 Mulberry Street, Suite 5
Newark, NJ 07102

WHAT YOU SHOULD KNOW

If you wish, you may consult with an attorney (at your expense), exclude yourself from the case, or file objections, as described above. You also have the right to file an appearance in the case.

This notice is only a summary of the terms of the settlement. You may inspect the entire settlement agreement, which is on file with the Deputy Clerk of the Superior Court of New Jersey, Gloucester County.

IF YOU RECEIVED A DISCHARGE OF YOUR DEBT IN CHAPTER 7 BANKRUPTCY, this notice does not affect your discharge. IF YOU ARE CURRENTLY A DEBTOR IN CHAPTER 13 BANKRUPTCY, send a copy of this notice to your bankruptcy attorney.

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

If the settlement is not approved, the case will proceed as if no settlement had been reached. Defendant will retain its rights to contest whether this case should be maintained as a class action and the merits. **There can be no assurance that if the settlement is not approved, the class will recover more than is provided in this settlement.**

This description of the case is general and does not cover all of the issues and proceedings thus far. In order to see the complete file, you should visit the office of the Deputy Clerk of the Superior Court of New Jersey, Gloucester County Civil Division, 70 Hunter Street, Woodbury, NJ 08096. The Clerk will make the files relating to this lawsuit available to you for inspection and copying at your own expense. You may also obtain a copy online at <http://www.philipstern.com/ClassActions.html>.

THIS NOTICE WAS APPROVED BY THE COURT