

<p>CHRISTINE M. NICHOLAS, an individual; on behalf of herself and all others similarly situated, Plaintiff,</p> <p>vs.</p> <p>CMRE FINANCIAL SERVICES, INC., a California Corporation, Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION BERGEN COUNTY</p> <p>Civil Action Docket No. BER-L-4336-11</p> <p>ORDER CONDITIONALLY CERTIFYING CLASS AND GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT</p>
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THIS MATTER HAVING been opened to the Court by Philip D. Stern, Esquire, of Philip D. Stern & Associates, LLC, attorneys for Plaintiff, on Notice of Motion to Conditionally Certify a Class and Granting Preliminary Approval of the Settlement pursuant to R. 4:32-2, and Virginia Pallotto, Esquire, of Budd Lerner, P.C., attorneys for Defendant, having joined in the Motion, and the Court having reviewed the moving papers, and having heard the arguments of counsel on August 19, 2011,

AND THE COURT having made the following facts and conclusions in connection with this matter:

- A. The parties submitted a proposed Class Action Settlement Agreement (“Agreement”) which has been filed with the motion papers in this matter in accordance with Court Rule;
- B. The parties request:
 - i. conditionally certifying, for settlement purposes only, that this action may be maintained as a class action, and defining the class and the class claims;

- ii. appointment of the class representatives and class counsel;
- iii. approval of the form and manner of notice to the class;
- iv. preliminarily approving the terms of the proposed Agreement; and
- v. setting dates for notice, opt-out, objections, and the hearing for final approval.

C. After consideration of the papers filed in this action and the arguments of counsel including representations made on the record, the Court has made a preliminary determination that:

- (i) the proposed settlement class is certified under *R. 4:32-1(a)* and *4:32-1(b)(3)*;
- (ii) the proposed settlement of the claims of the Class against Defendant appears to be fair, adequate, and reasonable, and therefore, within the range of approval; and
- (iii) the proposed settlement appears to satisfy the requirements of *R. 4:32-1(a)*, as it will provide the maximum benefit that Plaintiff and the Class could hope to achieve if this case were tried on the merits. The Court further finds that in light of the large class size, the cap on liability to the class provided for in 15 U.S.C. § 1692k(a)(2)(B), and the costs of direct mail notice, that the best notice that is practicable under the circumstances and consistent with due process is publication notice. Requiring Defendant to mail notice to each of the class members would frustrate the Congressional purpose in setting a cap on Defendant's class liability, as the cost of postage alone would be in excess of ten times Defendant's maximum class liability to the class. Furthermore, the combination of a publication notice and a web site notice is reasonably

calculated to give notice of the proposed settlement to any class member.

D. The Court also finds that the proposed form of notice is adequate and will give all Class Members sufficient information to enable them to make intelligent decisions as to whether to remain Class Members, opt out or object to the proposed settlement and its terms.

E. The Court also finds that Plaintiff is an adequate class representative and that Plaintiff's attorney meets the qualifications for approval as class counsel;

and for good cause shown;

IT IS ON THIS 19th DAY OF AUGUST, 2011, ORDERED:

1. Pursuant to *R. 4:32-2(a)*, the Court certifies that this action is maintainable as a class action for settlement purposes pursuant to *R. 4:32-1(b)(3)* and designates Plaintiff, Christine M. Nicholas, as the class representatives.

2. Pursuant to *R. 4:32-2(a)*, the Court defines the class as:

All natural persons in the United States and Puerto Rico whom, during the Class Period, received from Defendant at least one voice message on the person's telephone answering device or automated telephone call which message or call either failed to identify Defendant as the caller, state the purpose or nature of the call, or disclose that the call was from a debt collector, excluding those persons who:

- A. filed for bankruptcy protection since the start of the Class Period;
- B. entered into any general release with Defendant;
- C. are deceased; or
- D. filed a claim arising under the FDCPA against Defendant in any action commenced prior to the last day of the Class Period.

3. Pursuant to *R. 4:32-2(a)*, the Court defines the Class Claims as any and all claims and causes of action arising from Defendant's voice message left on a person's telephone answering device or defendant's automated telephone calls which message or call failed to identify Defendant as the caller, state the purpose or nature of the call, or disclose that it was

from a debt collector and was left during the Class Period.

4. The Class Period is defined as the continuous period beginning on September 30, 2007 and continuing through and including the date of this Order.

5. Pursuant to R. 4:32-2(a) and (g), the Court appoints Plaintiff's attorney, PHILIP D. STERN, ESQ., as class counsel.

6. On November 10, 2011, at 3:00 p.m. (a date which is 42 days or more after the entry of this Order), the Court will hold a hearing ("Final Hearing"), pursuant to R. 4:32-2(e)(1)(C), for the purpose of determining: (i) whether the preliminarily certified settlement class meets the requirements for class certification under R. 4:32-1; (ii) whether the proposed settlement is fair, reasonable and adequate, and should, therefore, be granted final approval; and (iii) the amount of attorney's fees and expenses that should be awarded to Class Counsel.

7. The Final Hearing will be held before the undersigned at the Superior Court of New Jersey, Justice Center, 10 Main St., Hackensack, NJ 07601.

8. Pursuant to R. 4:32-2(e)(1)(B), notice to the Class shall be given to the Settlement Class: (a) by publication once, in a newspaper or magazine with a national distribution of the publication Class Notice, appearing at least 21 days before the Final Hearing and substantially in the form of the attached as Exhibit A-1; and (b) by posting on Class Counsel's web site a notice substantially in the form of the attached Exhibit A-2.

9. In accordance with and within the time set forth in the Court-approved Class notices, a Class Member may exercise his or her election to opt out of the Class by written notice to Class Counsel and Defendant's Counsel to be received by Class Counsel and Defendant's Counsel not later than seven calendar days prior to the Final Hearing.

10. In accordance with and within the time set forth in the Court-approved Class notices, a Class Member who has not elected to opt out of the Class shall not be heard at the Final Hearing unless he or she files with the Court and serves on both Class Counsel and Defendant's counsel not later than seven calendar days prior to the Final Hearing written notice of objection including: (a) a statement of each objection being made; (b) a detailed description of the facts underlying each objection; (c) a detailed description of the legal authorities underlying each objection; (d) a statement of whether the objector intends to appear at the Final Hearing; (e) a list of witnesses whom the objector may call by live testimony, oral deposition testimony or affidavit during the Final Hearing; and (f) a list of exhibits which the objector may offer during the Final Hearing, along with copies of all of the exhibits.

11. At the Final hearing, the Court will hear and determine Class Counsel's application for an award of \$76,727.00 for attorney's fees and expenses of litigation which the Plaintiff and Defendant, by stipulation in the Settlement Agreement, have deemed to be fair and reasonable. Seven days prior to the Final Hearing, Class Counsel shall file and serve any additional papers in support of that application.

12. This Order shall not be construed or deemed to be a finding of this Court or evidence of a presumption, implication, concession, or admission by Defendant concerning (1) any alleged liability, fault, or wrongdoing by Defendant; (2) the appropriateness of any measure of alleged loss or damages; or (3) the appropriateness of class certification for any purposes other than Settlement. If the Agreement is terminated pursuant to its terms, or if the settlement is not approved or consummated for any reason whatsoever, the Agreement and all proceedings had in connection therewith shall be without prejudice to the *status quo ante* rights of the parties to this action.

13. It is further Ordered that a copy of this Order be served on all counsel of record within 7 days hereof.

Opposed: NO

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HONORABLE JOHN J. LANGAN, J.S.C.

EXHIBIT A-1

EXHIBIT A-1 TO SETTLEMENT AGREEMENT

**CLASS ACTION SETTLEMENT NOTICE
(THIS NOTICE WAS APPROVED BY THE COURT)**

TO: All persons in the United States and Puerto Rico who received from CMRE FINANCIAL SERVICES, INC. a telephonic voice message or automated call from September 30, 2007 to _____ [CLASS CERT ORDER DATE] _____:

YOU ARE HEREBY NOTIFIED that a proposed class action settlement has been preliminarily approved by the Court in Christine M. Nicholas v. CMRE Financial Services, Inc. Docket No. BER-L-4336-11 (Superior Court of New Jersey, Law Division, Bergen County). The plaintiffs claim that defendant violated consumers' rights under the Fair Debt Collection Practices Act when leaving messages on consumers' telephone answering devices or making automated telephone calls. Defendant denies liability and asserted defenses. The Court has not made any decision concerning the merits of the lawsuit.

Subject to Court approval at a Final Hearing scheduled for _____, 2011, the settlement includes a payment of \$66,773.00 to a charitable institution, \$1,500.00 to the named plaintiff, and attorney's fees and costs not to exceed \$76,727.00. The rights of class members will be affected by the settlement.

For further information regarding the settlement and your rights, including information on how to exclude yourself from the Class by the opt-out deadline of [insert date] _____ or object to the terms of the settlement agreement prior to the Final Hearing, please do one of the following:

1. Using an internet browser, navigate to www.PhilipStern.com and click on the "Class Actions" tab. Then, click on the link for the "Notice to Class Members" under the "Focus Receivables Management" heading.
2. Send a request by email to: FRMFullNotice@PhilipStern.com and include your full name, email address and your postal address.
3. Call toll-free (888) 609-3859 and follow the instructions to leave a message with either your email address or your postal mailing address.
4. Write to Class Counsel in sufficient time to be received by [DATE WHICH IS 7 CALENDAR DAYS BEFORE OPT-OUT DEADLINE]:

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

DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE
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EXHIBIT A-2

EXHIBIT A-2

CHRISTINE M. NICHOLAS, an individual; on behalf of herself and all others similarly situated,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION BERGEN COUNTY
Plaintiff,	Civil Action Docket No. BER-L-4336-11
vs.	
CMRE FINANCIAL SERVICES, INC., a California Corporation,	
Defendant.	

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

**TO: ALL INDIVIDUALS IN THE UNITED STATES AND PUERTO RICO WHO
RECEIVED TELEPHONIC MESSAGES OR AUTOMATED TELEPHONE
CALLS FROM CMRE FINANCIAL SERVICES, INC., BETWEEN ~~OCTOBER 1,~~
2007 AND _____, 2011** *SEPTEMBER 30,*

NOTICE IS HEREBY GIVEN THAT, pursuant to the Order of the Superior Court of New Jersey, Bergen County (the "Court"), dated _____, 2011, it was determined that the above-captioned Fair Debt Collections Practices Act ("FDCPA") lawsuit may be settled on behalf of a Class of natural persons (the "Class") pursuant to N.J. Court Rule 4:32-1(b)(1) and defined as follows:

All natural persons in the United States and Puerto Rico whom, during the "Class Period", received from Defendant, CMRE Financial Services, Inc., at least one voice message on the person's telephone answering device, or automated telephone call, which message or call either failed to identify the Defendant as the caller, state the purpose or nature of the call, or disclose that the call was from a debt collector, excluding those persons who:

- A. filed for bankruptcy protection since the start of the Class Period;
- B. entered into any general release with Defendant;
- C. are deceased; or
- D. filed a claim arising under the FDCPA against Defendant in any action commenced prior to the last day of the Class Period.

"Class Period" means the continuous period beginning on September 30, 2007 and continuing through and including _____, 2011.

A. Summary of the Litigation

Plaintiff, Christine M. Nicholas ("Plaintiff") alleges that she, along with other consumers, received telephonic voice messages left on answering devices or voice mail or automated telephone calls by the Defendant, CMRE Financial Services, Inc., ("Defendant") that failed to provide meaningful disclosure of Defendant's identity, which failed to disclose that the message

or call was from a debt collector and/or failed to disclose the purpose or nature of the message or call was an attempt to collect a debt, in violation of the FDCPA, 15 U.S.C. § 1692 *et seq.*, including but not limited to §§ 1692d(6) and 1692e(11). It is not alleged that such alleged failure caused or was capable of causing any actual damages to the Plaintiffs or any other person.

Defendant denies that it has any liability to Plaintiff or to the Class, but has agreed to settle this case based on the likely high cost of protracted litigation. The FDCPA provides for the recovery of actual damages, if any, statutory damages, costs and reasonable attorneys' fees to a successful plaintiff. This lawsuit seeks only statutory damages for both the individual Plaintiff and the class members ("Class"). The maximum amount recoverable for this Class under the FDCPA is the lesser of one percent of the Defendant's net worth or \$500,000. Here, one percent of Defendant's net worth, as established through confirmatory discovery, is \$66,773.00 and, as a practical matter, that amount is incapable of being distributed to the Class, given that it would, at most, be less than two cents per Class Member. As such, the settlement provides for a *cy pres* distribution as explained more fully below.

For a complete statement of all for the contentions and proceedings in this case, you should consult the Court file relating to this lawsuit, a copy of which is available for inspection on the website of Class Counsel:

<http://www.philipstern.com/ClassActions.html>

or in the Superior Court of New Jersey, Deputy Clerk of the Superior Court, Civil Division, Room 115, Justice Center, 10 Main St., Hackensack, NJ 07601. This case was originally filed in the United States District Court for the District of New Jersey, under Civil Action No. 2:08-cv-04857-JLL-CCC, but the parties agreed to dismiss that federal action, without prejudice, for the purpose of re-filing the action in state court in the above-captioned action. A copy of the prior federal court proceedings is available for inspection the website of Class Counsel

<http://www.philipstern.com/ClassActions.html>

or at the Clerk of the United States District Court for the District of New Jersey, M.L. King, Jr. Federal Bldg. & US Courthouse, 50 Walnut St., Newark, NJ 07102 or through the internet: pacer.njd.uscourts.gov.

B. Certification of the Class

On _____, 2011, the Class was conditionally certified pursuant to Rule 4:32-1(b)(1) of the New Jersey Court Rules as a class action. The Court appointed the Plaintiff, Christine M. Nicholas as the representative of the Class, and her attorney, Philip D. Stern, of the Philip D. Stern & Associates, LLC, as Class Counsel. The Court certified the Class Claims as any and all claims and causes of action arising from Defendant's voice message left on a person's telephone answering device or Defendant's automated telephone calls which failed to identify Defendant as the caller, state the purpose or nature of the call, or disclose that it was from a debt collector and was left during the Class Period.

C. Settlement of the Litigation

A proposed settlement has been preliminarily approved by the Court. Under the terms of the proposed settlement, Defendant has agreed to provide the following relief to the Plaintiff and the Class:

- A. Defendant shall pay \$66,773.00 to one or more charitable organizations to be later appointed by the Court that is not affiliated with any religious, political organization, Party or Counsel, as a *cy pres* distribution on behalf of the Class, which sum represents one percent of Defendant's net worth and is the maximum amount of statutory damages available to the Class under the Fair Debt Collection Practices Act ("FDCPA").
- B. Defendant will also pay to the Plaintiff for her individual statutory damage claims the total amount of \$1,000, as provided for in 15 U.S.C. § 1692k, and in consideration of her service to the Class, Defendant will pay to the Plaintiff an additional \$500.
- C. Defendant shall bear the costs of class administration, with the exception of publication of this notice on Class Counsel's website and class counsel's toll free number, and (subject to Court approval) pay the reasonable attorneys' fees and expenses of Plaintiffs' attorneys in an amount not to exceed \$76,727.00.

The Court will hold a Final Hearing as describe in Section F., below, which will include consideration of final approval of the settlement. Upon final approval of the settlement, the Court will enter a judgment which will include releasing Defendant of all liability to Plaintiff for all claims and of all liability to the Class for the Class Claims, and enjoining prosecution of the released claims.

Class Counsel believes that the proposed settlement is fair, reasonable, adequate, and in the best interests of the Class. This settlement represents the maximum recoverable for a Class under the FDCPA. Because the potential Class is conservatively estimated to be over 1,140,000 persons for just a one-year period from September 30, 2007 through September 30, 2008, any Class member would receive less than three cents and it has been determined that distribution to the Class would not be economical or practical to administer. Accordingly, the settlement provides only for a *cy pres* payment to one or more non-profit charities to be approved by the Court at the Final Hearing. It has been agreed that the *cy pres* recipient must be a non-profit, charitable organization that is not affiliated with any religious or political organization or any Party or their Counsel. There is no distribution to any Class members, other than to the Plaintiff as Class Representative as set forth above. While a person could possibly recover more if he or she filed an individual lawsuit and were successful, individual suits under the FDCPA are sometimes not economical. In addition, Defendant has denied that it violated the FDCPA. An individual who elects to opt out of the Class might recover nothing.

If the settlement is not approved, the case will proceed as if no settlement has been attempted. Defendant retains its rights to contest whether this case should be maintained as a class action and the merits of the suit.

This notice contains only a general description of the terms of the settlement. You may inspect the entire settlement agreement, a copy of which is available on the website of Class Counsel,

<http://www.philipstern.com/ClassActions.html>, in the Court's file, or by contacting Class Counsel and requesting a copy of it at your own expense.

A member of the Class may elect to opt out of the Class or file objections to the settlement as set forth below or a member may do nothing and accept the terms of the settlement.

D. Opting Out

A member of the Class may opt out of the Class at any time prior to the expiration of the Opt-Out Period, which will expire Seven Calendar Days before the Final Hearing, scheduled for [insert hearing date]_, or by _[insert opt-out date]_____.

To opt out of the Class, a class member must notify Class Counsel and Defendant's counsel in writing requesting exclusion from the Class and must be received by Class Counsel and Defendant's counsel Seven Calendar Days before the Final Hearing scheduled for [insert hearing date], or by [insert opt-out date]. The written request may be sent to Class Counsel by mail or hand-delivery (including a commercial courier such as Federal Express). To insure timely delivery of a written request sent by regular mail, it should be postmarked no later than ten calendar days prior to the Final Hearing.

Except for those persons who have properly and timely opted out, each member of the Class will be deemed a Class Member for purposes of the settlement Agreement. Any person who opts out of the Class shall not be entitled to relief under nor be affected by the settlement Agreement, nor shall such person be entitled to object to the settlement.

E. Objections

You have the right to object to the proposed settlement by filing and serving a written objection. Your objection must state your name, address, the case name and number, and the information described below. You or your attorney must sign your objection personally. You must FILE and SERVE your objection on or before _____, 2011. You file your objection with the Court, at the following address:

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main St.
Hackensack, NJ 07601

You serve (service is complete on receipt) a copy of your objection on Class Counsel and Counsel for Defendant at the following addresses:

Philip D. Stern, Esq.
Philip D. Stern & Associates, LLC
697 Valley Street, Suite 2-D
Maplewood, New Jersey 07040
(973)379-7500

Class Counsel

and:

Virginia A. Pallotto, Esq.
BUDD LARNER, P.C.
150 John F. Kennedy Parkway, CN 1000
Short Hills, NJ 07078-2703
(973) 379-4800, Ext. 4450
Attorney for Defendant

Service shall be made in one of the following manners authorized under New Jersey Court Rule 1:5-2: "mailing a copy to the attorney at his or her office by ordinary mail, by handing it to the attorney, or by leaving it at the office with a person in the attorney's employ."

No member of the Class, or any other person, will be heard at the Final Hearing in opposition to class certification, the Class Settlement, Class Counsel's proposed attorneys' fees and expenses, or the proposed payments to Class Representative unless his or her objection contains the following: (i) a statement of each objection being made; (ii) a detailed description of the facts underlying each objection; (iii) a detailed description of the legal authorities underlying each objection; (iv) a statement of whether the objector intends to appear at the Final Hearing; (v) a list of witnesses whom the objector may call by live testimony, oral deposition testimony or affidavit during the Final Hearing, together with a summary of each witness' anticipated testimony; and (vi) a list of exhibits which the objector may offer during the Final Hearing, together with true copies of all of the exhibits.

Class Members and any other persons who fail to file or serve their objections properly or timely will not be heard during the Final Hearing and the Court will not consider their objections.

If you do not want to exclude yourself from the Class and you do not object to the settlement, it is not necessary for you to take any action.

F. Final Hearing

NOTICE IS HEREBY GIVEN THAT a hearing will be held before the Honorable _____, Superior Court Judge for the Superior Court of New Jersey, on _____ 2011, at _____ .m., at the Bergen County Courthouse, 10 Main Street, Hackensack, NJ 07601. This hearing will be held to determine if the proposed settlement is fair, reasonable, and adequate and should be approved, and to determine Class Counsel's petition for fees and costs in the amount of \$76,727.00. If the proposed settlement is approved, it will be binding and will release Defendant from the Class Claims.

Questions concerning this class action litigation should be directed to Class Counsel at the address above.

PLEASE DO NOT CALL THE JUDGE OR THE COURT CLERK.

THIS NOTICE WAS APPROVED BY THE COURT.

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