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Yarborough Koby, Michael Koby, Mark
Taylor, and all others similarly situated

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SILVANA SERAJI, an individual; APRIL
YARBOROUGH KOBY, an individual;
MICHAEL P. KOBY, an individual; and
MARK TAYLOR; on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

CAPITAL MANAGEMENT SERVICES, LP, a
Delaware Limited Partnership; and JOHN AND
JANE DOES NUMBERS 1 THROUGH 25,

Defendants.

Case 3:09-cv-03465-FLW-DEA

**NOTICE OF MOTION FOR AN ORDER
CONDITIONALLY CERTIFYING
CLASS ACTION, APPROVING NOTICE
TO THE CLASS, GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, AND SETTING
DATES FOR OBJECTIONS, OPTING
OUT, AND FOR FINAL FAIRNESS
HEARING**

TO: Richard J. Perr, Esq.
FINEMAN KREKSTEIN & HARRIS, P.C.
Attorneys for Defendant, Capital Management Services, LP
1735 Market Street Suite 600
Philadelphia, PA 19103-5413

PLEASE TAKE NOTICE that, on August 16, 2010 at 10:00 a.m., or as soon thereafter as
counsel may be heard, the undersigned attorney for Plaintiffs, SILVANA SERAJI, APRIL
YARBOROUGH KOBY, MICHAEL P. KOBY, and MARK TAYLOR, on behalf of themselves
and all others similarly situated, will and hereby move this Court pursuant to Fed. R. Civ. P.
23(b)(1)(B) and 23(b)(2) for an order: (1) certifying the Settlement Class; (2) preliminarily

approving the attached proposed Stipulation of settlement; (3) directing notice to the class; and (4) setting dates for objections and a Final Fairness Hearing.

In support of this Motion, Plaintiffs will rely on the accompanying Memorandum of Law with attached Exhibits A, B, C and D, respectively, consisting of a Stipulation of Settlement, proposed Summary Notice, Full Notice to Class, and Letter Concerning Notice.

A proposed form of Order is submitted with this Motion.

PHILIP D. STERN & ASSOCIATES, LLC
Attorneys for Plaintiffs, Silvana Seraji, April
Yarborough Koby, Michael Koby, Mark
Taylor, and all others similarly situated
s/Philip D. Stern

Dated: July 22, 2010

Philip D. Stern

LAW OFFICE OF ROBERT L. ARLEO
Attorneys for Plaintiffs, Silvana Seraji, April
Yarborough Koby, Michael Koby, Mark
Taylor, and all others similarly situated
s/Robert L. Arleo

Dated: July 22, 2010

Robert L. Arleo

PHILIP D. STERN & ASSOCIATES, LLC
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SILVANA SERAJI, an individual; APRIL
YARBOROUGH KOBY, an individual;
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MARK TAYLOR; on behalf of themselves and
all others similarly situated,

Plaintiffs,

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CAPITAL MANAGEMENT SERVICES, LP, a
Delaware Limited Partnership; and JOHN AND
JANE DOES NUMBERS 1 THROUGH 25,

Defendants.

Case 3:09-cv-03465-FLW-DEA

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR AN ORDER
CONDITIONALLY CERTIFYING
CLASS AND GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
INJUNCTIVE RELIEF**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiffs SILVANA SERAJI, APRIL YARBOROUGH KOBY, MICHAEL P. KOBY, and MARK TAYLOR, on behalf of themselves and all others similarly situated, hereby request pursuant to Fed. R. Civ. P. 23(b)(1)(B) and 23(b)(2) that the Court enter an order: (1) certifying the Settlement Class; (2) preliminarily approving the attached proposed Stipulation of settlement; (3) directing notice to the class; and (4) setting dates for objections and a Final Fairness Hearing.¹ In support of their motion, the Plaintiffs respectfully show the following:

¹ As used in this Motion, all capitalized terms have the meanings and definitions set forth in Section 1 of the Stipulation of Settlement, which is attached hereto as *Exhibit A*.

A. MOTION TO CERTIFY ACTION AS CLASS ACTION

1. NATURE OF THE CASE

1.01. Plaintiffs filed this lawsuit on July 14, 2009. [Doc. 1]. The Plaintiffs are consumers from New Jersey, Texas, and Missouri who each allegedly became delinquent on a consumer debt. Defendant, CAPITAL MANAGEMENT SERVICES, LP, is debt collector, who is organized as a Delaware Limited Partnership, and who attempted to collect these alleged debts from each of the respective Plaintiffs. The Plaintiffs contend that, in attempting to collect these alleged consumer debt from them, and other debts from the Settlement Class they seek to represent, Defendant left telephone voice messages for them that violated the federal Fair Debt Collection Practices Act, 15 U.S.C. §§1692, *et seq.* (“FDCPA”).

1.02. The Plaintiffs allege that the Defendant’s telephone messages failed to provide meaningful identification of the caller in violation of 15 U.S.C. §1692d(6), and that the messages also failed to give the disclosures required by 15 U.S.C. §1692e(11).

1.03. In its Answer to Plaintiffs’ Complaint [Doc. 5], Defendant denies the Plaintiffs’ allegations and asserts, *inter alia*, that any alleged violation, if it was a violation, was unintentional and resulted from a *bona fide* error, notwithstanding the maintenance of procedures reasonably adapted to avoid the violation.

1.04. Over the course of several months, counsel for the Plaintiffs and Defendant have reviewed and analyzed the complex legal and factual issues present in this Action, the risks and expense involved in pursuing the litigation to conclusion, the likelihood of recovering damages in excess of those obtained through this settlement from Defendant, the protracted nature of the litigation and the likelihood, costs and possible outcomes of one or more appeals of procedural and substantive issues.

1.05. Based upon these reviews and analyses, the Plaintiffs and Defendant embarked upon and concluded comprehensive settlement discussions, with the assistance of this Court, which ultimately resulted in their execution of the Stipulation of Settlement, a copy of which is attached hereto as *Exhibit A*.

1.06. As a compromise of their claims, the Settling Parties have agreed to jointly seek class certification for those claims pursuant to the FDCPA as described, *supra* (“Settlement Class”). Defendant has made certain admissions during discovery the discovery phase of this Action to Settlement Class Counsel concerning the number of class members; specifically, there exists a pool of potential Settlement Class Members which exceeds 1,000,000 people. Defendant has further confirmed in discovery that its net worth is approximately \$3,600,000.00 thereby making \$36,000.00 the maximum amount of statutory damages that could be recovered if a litigation class were to be certified and the Settlement Class Representative Plaintiffs were to prevail on the merits at trial and on appeal.

1.07. Pursuant to the Stipulation of Settlement, Defendant joins in this request for class certification solely for settlement purposes. If the Settlement is not approved or as may otherwise be provided in the Stipulation of Settlement, Plaintiffs stipulate that the certification order will be set aside and neither this motion nor the Stipulation of Settlement will in any way prejudice Defendant’s right to contest class certification on any legal or equitable grounds.

2. ELEMENTS FOR CLASS CERTIFICATION

2.01. Rule 23 of the Federal Rules of Civil Procedure governs the certification of class actions. One or more members of a class may sue or be sued as representative on behalf of a class if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the class representatives are typical of the claims or defenses of the class; and (4) the class representative

will fairly and adequately protect the interests of the class. To obtain class certification, Plaintiffs must demonstrate that the proposed Settlement Class satisfies the general class certification requirements of: (1) numerosity; (2) commonality; (3) typicality; (4) adequacy of representation under Rule 23(a); and (5) some section pursuant to Fed. R. Civ. P. 23(b). *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Beck v. Maximus*, 457 F.3d 291, 297 (3d Cir. 2006) quoting *Gen. Tel. Co. Sw. v. Falcon*, 457 U.S. 147, 161, (1982).

2.02. Accordingly, in support of their contention that proper and sufficient grounds for class certification exist under Fed. R. Civ. P. 23, the Settling Parties would show the following:

Numerosity

2.03. Based upon information received from Defendant, there are over 1,000,000 members of the Settlement Class. This is sufficient for numerosity. The Third Circuit generally approves classes of forty or more, reserving lower number of litigants for joinder actions. See, *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001); *Jones v. Corzine*, 2010 U.S. Dist. LEXIS 47665, *20 (D.N.J. May 13, 2010) (putative class of 317 satisfied numerosity requirement); see also, *Weiss v. York Hospital*, 745 F.2d 786, 808 (3d Cir. 1984) (clarifying that classes that include hundreds of members suffice for purposes of this prerequisite); *McMahon Books, Inc. v. Willow Grove Assocs.*, 108 F.R.D. 32, 35 (E.D. Pa. 1985) (joinder impracticable in class of between 30 and 50 members).

Commonality

2.04. A common nucleus of operative fact is usually sufficient to satisfy the commonality requirement of Rule 23(a)(2). *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) (commonality found because all class members were subject to same harm); see also, *Keele v. Wexler*, 149 F.3d 589 (7th Cir. 1998) citing *Rosario v. Livaditis*, 963 F.2d 1013,

1018 (7th Cir. 1992). Plaintiffs contend that there are common questions of law or fact affecting the Settlement Class, and that these questions include but are not limited to:

- (a) whether the Defendant's telephone messages left for consumers violate 15 U.S.C. §1692d(6);
- (b) whether the Defendant's telephone messages left for consumers violate 15 U.S.C. §1692e(11);
- (c) whether Plaintiffs and the Settlement Class Members are entitled to injunctive relief;
- (d) whether Plaintiffs and the Settlement Class Members are entitled to recover statutory damages and, if so, in what amount; and
- (e) whether Plaintiffs and the Settlement Class Members are entitled to recover attorney's fees and costs and, if so, in what amount.

Under the definition of the Settlement Class as agreed by the Settling Parties, and set forth in *Exhibit A*, commonality is established by the Defendant's business practice of leaving the same type of uniform telephone message for Plaintiffs and the Settlement Class Members.

Typicality

2.05. A class representative's claim is typical if it "arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998); see also, *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir. 1992) (typicality is satisfied if each class member's claims arise from same course of conduct and present similar legal theories). The typicality prong is analyzed by asking whether the named plaintiff has incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented. *Baby Neal v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994), citing 3B Moore & Kennedy, P 23.06-02; 1 Newberg & Conte, § 3.13. See also, *Beck v. Maximus*, 457 F.3d 291, 295-96 (3d Cir. 2006).

2.06. Plaintiffs contend that their claims are typical of the claims of the Settlement Class. Specifically, Plaintiffs allege that the Defendant left them and the Settlement Class Members at least one telephone voice message, which uniformly failed to provide meaningful disclosure of the caller's identity in violation of 15 U.S.C. § 1692d(6) and which did not contain the disclosures required by 15 U.S.C. § 1692e(11).

Adequacy of Representation

2.07. In order for Plaintiffs to be considered fair and adequate representatives of the Settlement Class, three requirements must be met: (1) counsel must be qualified, experienced, and generally able to conduct the proposed litigation; (2) the class representative must have sufficient interest in the outcome to ensure vigorous advocacy; and (3) the class representative must not have antagonistic or conflicting interests with other members of the proposed class. *Amchem Products, Inc., supra*, 521 U.S. at 625. "The adequacy inquiry serves to uncover conflicts of interest between named class representatives and the class they seek to represent." *Id.* Plaintiffs assert that they will fairly and adequately represent the interests of the Settlement Class. Through their attorneys of record, Plaintiffs have been willing to pay the costs of notice and litigation associated with the Action. Plaintiffs further state that they have no interests adverse to the Settlement Class Members.

2.08. Plaintiffs have hired the undersigned attorneys to represent them in this matter. Plaintiffs' attorneys have significant experience in the handling of both consumer protection class action and other types of complex litigation.

3. OTHER CONSIDERATIONS

3.01. Pursuant to Fed. R. Civ. P. 23 an action may be maintained as a class action if the four elements described above are satisfied, and in addition, certain other conditions exist as enumerated under Fed. R. Civ. P. 23(b). These certain other conditions are:

- 1) The prosecution of separate actions by or against individual members of the class would create a risk of:
 - (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
 - (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
- 2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole;
or
- 3) The Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The Plaintiffs respectfully submit that the Court should certify the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(2). Certification is appropriate under Fed. R. Civ. P. 23(b)(2) when “the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” *Parker v. Time Warner Entertainment Co., L.P.*, 331 F.3d 13, 23 (2d Cir. 2003). Generally, courts certify classes under Rule 23(b)(2) when a plaintiff seeks both injunctive relief and monetary damages if the monetary damages are secondary or “incidental” to the injunctive relief. *Id.* “Incidental” damages are found when the determination

of damages do not require an inquiry into the circumstances of each individual class member but, instead, flow directly from the Defendant's conduct generally applicable to the class, *Hunt v. Check Recovery*, 241 F.R.D. 505, 513 (N.D. Cal. 2007), which is precisely the type of damages sought for the class in this action. Under circumstances not existing in this action, class certification under Rule 23(b)(2) is not appropriate if the damage claims "predominate" over the Plaintiffs' request for injunctive relief. *Id.*; see also, 5 Moore's Federal Practice § 23.43[3][a]; *In re School Asbestos Litigation*, 789 F.2d 996, 1008 (3d Cir. 1986) (Rule 23(b)(2) certification inappropriate where requested relief relates exclusively to money damages).

The FDCPA Class Claims

With respect to the Settlement Class, FDCPA class actions have been certified under Fed. R. Civ. P. 23(b)(2) even though injunctive relief is not available as a matter of right to private litigants under the FDCPA. See e.g., *Foti v. NCO Financial Systems, Inc.*, 2008 U.S. Dist. LEXIS 16511, at *12 (approving FDCPA settlement awarding injunctive relief, attorneys' fees, and incentive payments under Fed. R. Civ. P. 23(b)(2), in part because "[t]he monetary damages would be so *de minimis* that the value of the injunction to the plaintiffs clearly outweighs any potential financial recompense"); see also, *Gravina v. Client Servs.*, 2009 U.S. Dist. LEXIS 78204 (E.D.N.Y. Aug. 25, 2009); *Anderson v. Nationwide Credit, Inc.*, 2009 U.S. Dist. LEXIS 57157 (E.D.N.Y. June 25, 2009); *Drinkman v. Encore Receivable Mgmt.*, 2007 U.S. Dist. LEXIS 89514, (E.D. Wis. 2007). Settlement Class Counsel, Robert L. Arleo and Philip D. Stern, were appointed to serve as class counsel in the *Gravina* and *Anderson* and Mr. Arleo was appointed class counsel in *Foti*.

Courts have likewise approved class settlements which included statutory damage awards as incidental to stipulated injunctions under Fed. R. Civ. P. 23(b)(2). See e.g., *Drinkman v. Encore Receivable Mgmt.*, *supra* at *14-16 (plaintiff's request that the proposed class receive

statutory damages under 15 U.S.C. § 1692k(2)(B) is a request for “incidental” damages that flow directly from the main relief sought for the class (i.e., declaratory relief) because such damages require a mere mechanical computation without any need for individual calculation (i.e., divide the lesser of \$500,000 or 1 per cent of defendant’s net worth by the number of class members), and because defendant acted on grounds generally applicable to the class by using substantially the same pre-recorded messages to contact class members); *Gammon v. GC Servs. Ltd. Partnership*, 162 F.R.D. 313, 321 (N.D.Ill. 1995) (certifying class seeking declaratory judgment and statutory damages pursuant to FDCPA as a Fed. R. Civ. P. 23(b)(2) class because “in light of the *de minimis* amount of statutory damages that each class member would potentially receive, the fact that the damages flow from the declaratory judgment, and the readiness with which the statutory damages can be calculated....the request for non-monetary relief predominates over the request for damages.”); *Hunt v. Check Recovery Sys.*, 241 F.R.D. 505, 513 (N.D.Cal. 2007) (certifying FDCPA class seeking statutory damages and declaratory relief under Rule 23(b)(2) in part because “plaintiffs’ monetary damages, and those of the putative class, all flow directly from the demand letters sent by Defendant and are therefore secondary to the claim for declaratory relief”); *Gonzalez v. Arrow Fin. Services, LLC*, 233 F.R.D. 577 (S.D.Cal. 2006) (certifying FDCPA class under Rule 23(b)(2) where plaintiffs received standardized demand letters and sought declaratory relief and statutory damages); *Swanson v. Mid Am, Inc.*, 186 F.R.D. 665 (M.D. Fla. 1999) (certifying class under 23(b)(2) for FDCPA claims seeking declaratory relief and statutory damages); *Ballard v. Equifax Check Services, Inc.*, 186 F.R.D. 589, 596-97 (E.D. Cal. 1999) (certifying FDCPA class under Rule 23(b)(2) on the issues of liability, declaratory relief, and statutory damages but reserving certification of actual damages for certification under Rule 23(b)(3)).

Various District Courts have ruled that granting injunctive relief as part of a settlement in an FDCPA case supports the reasonableness of the proposed settlement. *See, Reade-Alvarez v. Eltman, Eltman, & Cooper, P.C.*, 2006 U.S. Dist. LEXIS 89226, *22-23, fn 8 (E.D.N.Y. 2006); *see also, Hunt v. Check Recovery Systems, Inc.*, *supra* at 512-513; *Gonzales*, *supra* at 582-583; *Tyrell v. Robert Kaye & Associates, P.A.*, 223 F.R.D. 686, 690 (S.D. Fla. 2004); *Evans v. American Credit Systems, Inc.*, 222 F.R.D. 388, 396-97 (D. Neb. 2004); *Swanson v. Mid Am, Inc.*, *supra* at 669; *Ballard*, *supra* at 596-597; *Borcherding-Dittloff v. Transworld Systems, Inc.*, 185 F.R.D. 558, 565-566 (W.D. Wis. 1999); *Young v. Meyer & Njus, P.A.*, 183 F.R.D. 231, 234 (N.D. Ill. 1998); *Gammon v. GC Services Ltd. Partnership*, *supra* at 319-320. Importantly, Settlement Class Counsel, Robert L. Arleo was appointed to serve as class counsel in the *Reade-Alvarez* case cited, *supra*.

In many of the cases, District Courts have certified a Rule 23(b)(2) class even though the class members were not provided notice, an opportunity to opt-out, or the right to subsequently file an individual lawsuit for money damages. *See e.g., Drinkman v. Encore Receivable Mgmt.*, *supra* at *4-5, 14-16 (“classes certified under Rule 23(b)(2) do not require personal notice and an opportunity to opt out of the class action”) citing *In re Allstate Ins. Co.*, 400 F.3d 505, 506 (7th Cir. 2005); *Lemon v. Int’l Union of Operating Eng’r, Local No. 139, AFL-CIO*, 216 F.3d 577, 580 (7th Cir. 2000); *See also, Gammon v. GC Services Ltd. Partnership*, *supra* at 321-22 (“Rule 23(b)(2) is a no-notice, non opt-out provision....We see no reason to decline to certify the class in the instant case merely because of the defendant’s mere speculation that some class members might prefer to bring individual actions for statutory damages. The Court is mindful of the practical reality that few individuals will pursue the filing of a federal lawsuit, with its attendant costs, when their statutory damage recovery is capped at \$1,000.00. Class certification is not

barred simply because some class members may recover lesser statutory damages than they would have had they brought their claims individually.”).

Relief for the Settlement Class

Injunctive Relief

Here, Defendant has consented to the entry of a stipulated injunction mandating that:

- (a) Defendant use its ‘best efforts’ to ensure that it identifies itself by its legal name in all telephone messages left for consumers, and that it further discloses the call is from a debt collector and concerns the collection of a debt.
- (b) Defendant will send Settlement Class Counsel written reports of all lawsuits filed, or informal complaints it receives in writing, against Defendant that involve the identical factual and legal claims at issue in this lawsuit. Defendant shall issue these written reports to Settlement Class Counsel, such that they are received by the 10th day of each month, beginning on the first month following Ultimate Approval, and continuing thereafter each month for the next 12 months.

[See, ***Exhibit A***, ¶2.3(c)]. Injunctive relief is not available to private litigants under the FDCPA. That said, such an injunction would subject the Defendant to civil sanctions in an amount to be determined by the Court if Defendant violated the terms of the injunction. Such a civil sanction could even be in excess of the Defendant’s liability under 15 U.S.C. § 1692k(a)(2)(B). Consequently, this type of injunctive relief is an extraordinary benefit for the Settlement Class Members, and a prospective benefit consumers at-large, which benefits would not otherwise be available in the absence of this Settlement.

Statutory Damages

The Defendant has also agreed to pay statutory damages to the class. The statutory class damages available under the FDCPA are *mechanical and readily determined* by statute. See, 15 U.S.C. § 1692k(a)(2)(B). Subject to the maximum, the amount of statutory damages are determined by five factors under 15 U.S.C. § 1692k(b)(2); namely, “the frequency and

persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional." The Defendant has agreed to pay \$20,000.00, which represents 56% of the maximum statutory class damages permitted under the FDCPA. See, 15 U.S.C. § 1692k(a)(2)(B). The class damages of \$20,000.00 is *de minimis* in light of the fact that each member of the more than 1,000,000 Settlement Class stands to receive less than 2 cent per class member.

Opt-Out & Other Rights

Settlement Class Members have the ability to opt out of, or object to, the Settlement. [See, **Exhibit A**, Recital ¶J] Although neither notice nor opting out are required when a class is certified under Rule 23(b)(2), the Settlement Class Members will be permitted to opt-out of the Stipulation of Settlement. Additionally, Class Members will also retain the right to bring individual actions for actual damages.

In light of the above facts, the Plaintiffs' request for statutory class damages are "incidental" and flow directly from the injunctive relief agreed to by the Defendant for five reasons: (1) the injunctive relief will affect more persons and have far reaching consequences over a greater period of time than the monetary damages; (2) Plaintiffs' request for statutory damages and injunctive relief arise from Defendant's repeated and uniform violations of the FDCPA (i.e., identical telephone messages that all violate the FDCPA in the same manner), such that the resulting statutory class damages flow directly from Defendant's underlying FDCPA liability; (3) the calculation of statutory damages is a mechanical task pursuant to 15 U.S.C. §1692k(a)(2)(B) and is, therefore, readily calculable for the entire class; (4) the statutory damages for each class member is *de minimis* (i.e. less than 2 cents *per capita*); and (5)

Settlement Class Members may opt-out of the Settlement and pursue individual damages and claims for attorneys fees.

3.02. Plaintiffs also allege that the causes of action forming the basis of the Settlement Class claims in this Action are such that the prosecution of separate actions by individual members of the Settlement Class would create the risk of establishing incompatible standards of conduct for the Defendant.

3.03. Solely for the purposes of this motion and to effectuate the proposed Settlement, Defendant does not dispute that the Settlement Class should be certified. Indeed, Defendant acknowledges the doctrine that “federal courts naturally favor the settlement of class action litigation.” *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); see also, *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 330 (W.D. Pa. 1997).

4. CLASS TYPE

4.01. As indicated, Plaintiffs and Defendant ask the Court to certify the Settlement Class pursuant to Fed R. Civ. P. 23(b)(2), which would permit injunctive relief and recovery of monetary damages.

4.02. Fed. R. Civ. P. 23(b)(2) does not require that the Settlement Class to receive notice, an opportunity to opt-out, or the right to subsequently file an individual lawsuit for money damages; however, as indicated, the Settling Parties have agreed to provide notice and opt-out rights for the benefit of the Settlement Class Members. [See, *Exhibit A*, Recital ¶J]. Regarding notice, Defendant has agreed to place a summary advertisement notifying Settlement Class Members of the Settlement in a Saturday edition of *USA Today* at least two weeks before the Court’s hearing to determine that the Settlement is fair, reasonable, and adequate. [See, *Exhibit A*, Recital ¶J; ¶6(e)] Settlement Class Members will then have an opportunity to opt-out of, or object to, the Settlement. *Id.*

5. MOTION

5.01. In light of, and subject to the approval of the Stipulation of Settlement attached hereto as *Exhibit A*, Plaintiffs move that the Court certify Plaintiffs as Settlement Class Representative Plaintiffs for the Settlement Class and that attorneys, Robert L. Arleo and Philip D. Stern, be certified as Settlement Class Counsel. If the proposed class settlement is not approved, however, Plaintiffs agree that the Court will decertify the Settlement Class and take up the issue of certification as a contested matter.

5.02. The Settling Parties have stipulated that any failure of the Court to approve the Stipulation of Settlement shall not operate as a waiver of the claims or defenses of any of the Settlement Parties on the issue of certification at any such contested hearing. [See, *Exhibit A*, ¶5].

5.03. Settling Parties have further stipulated that certification of the Settlement Class is conditioned upon:

- (a) the accuracy of the representations and warranties contained in the Stipulation of Settlement;
- (b) the performance by the Settling Parties of their respective obligations under the Stipulation of Settlement in all material respects prior to the date the Stipulation was signed by the Settling Parties;
- (c) the entry of a final order releasing on behalf of Plaintiffs and the Settlement Class, all of the Released Claims as defined in the Stipulation of Settlement;
- (d) the receipt by the Settling Parties of all documents reasonably required to implement the Stipulation of Settlement; and
- (e) no other class actions being certified against the Defendant asserting causes of action substantially identical to those asserted by Plaintiffs in the present case.

5.04. If any one of the foregoing conditions is not met as required by the Stipulation of Settlement, Settling Parties agree that upon motion to the Court, the Court will then decertify the class and take up the issue of certification as a contested matter. [See, *Exhibit A*, ¶5]

B. MOTION TO PRELIMINARILY APPROVE SETTLEMENT

6. NATURE OF SETTLEMENT

6.01. The Settlement Parties have agreed in principle to a settlement of this Action on a class-wide basis. The essential terms of the Settlement are set forth in the Stipulation of Settlement attached hereto as *Exhibit A*. The Stipulation of Settlement provides that the Court will certify Plaintiffs as the class representatives for the Settlement Class, and certify Plaintiffs' attorneys, Robert L. Arleo and Philip D. Stern, as Settlement Class Counsel. As discussed above, the Stipulation of Settlement provides substantial benefits to the Settlement Class, and is fair, reasonable, and adequate in light of the relevant facts, applicable law, and potential value of the Settlement.

6.02. Subject to the terms of the Stipulation of Settlement, Defendant agrees to provide the following relief to Plaintiffs and the Settlement Class:

Settlement Fund. Defendant shall pay the total sum \$114,250.00 as provided herein:

- (a) **Individual Relief.** Each Settlement Class Representative Plaintiff shall receive \$1,000.00 as statutory damages under 15 U.S.C. §1692k(a)(2)(B)(i), and an additional \$1,500.00 in recognition for their respective services as a Settlement Class Representative Plaintiff;
- (b) **Class Relief.** Defendant shall pay \$20,000.00, which represents 56% of the maximum class recovery permitted under the FDCPA [See, 15 U.S.C. §1692k(a)(2)(B)(ii)], as a *cy pres* payment to one or more charitable organizations without any religious or political affiliations. The Settling Parties propose that the recipient(s) of the *cy pres* payment will be the Legal Services of New Jersey, Inc., which is an organization that provides assistance to low-income and vulnerable consumers on issues involving, *inter alia*, consumer fraud, debt collection, consumer finance, predatory lending, and sustainable home ownership programs. The Settling Parties'

foregoing choice of *cy pres* recipient is, however, subject to the Court's final approval.

- (c) ***Injunctive Relief.*** Defendant shall consent to entry of a stipulated injunction mandating that Defendant use its "best efforts" to ensure that it identifies itself by its legal name in all telephone messages left for consumers, and that it further discloses the call is from a debt collector and concerns the collection of a debt. As part of the injunction, counsel for Defendant will send written reports of all lawsuits filed, or informal complaints it receives in writing, against Defendant that involve the identical factual and legal claims at issue in this lawsuit. Defendant shall issue these written reports to Settlement Class Counsel, such that they are received by the 10th day of each month, beginning on the first month following Ultimate Approval, and continuing thereafter each month for the next 12 months. Settlement Class Counsel shall be entitled to recover their reasonable attorney fees and costs if they are required to pursue any action necessary to enforce the terms of the stipulated injunction. The Court shall decide the final terms of the stipulated injunction at the Final Fairness Hearing.

- (d) ***Counsel Fees and Costs.*** Settlement Class Counsel shall be entitled to receive \$84,250.00 from the Settlement Fund, which is intended to cover all fees and all expenses arising out of this lawsuit. Class counsel will accept the amount of fees and expenses awarded by the Court in full satisfaction of reasonable attorney's fees and costs and will not request additional fees from Defendant, Settlement Class Representative Plaintiffs, or any Settlement Class Member. Defendant will not oppose or cause to be opposed an attorney fee application, so long as such application does not exceed \$84,250.00.

Counsel for Settlement Class Representative Plaintiffs represent to the Court that the proposed Stipulation of Settlement was reached through extensive and protracted arms-length negotiations between the Settling Parties and that Settlement Class Counsel are able and experienced attorneys who are well-qualified to evaluate the proposed Stipulation of Settlement on behalf of the Settlement Class Members. Settlement Class Representative Plaintiffs assert, and Defendant does not dispute for settlement purposes, that the Settlement Class meets the requirements for class certification under Fed. R. Civ. P. 23(b)(2) as discussed, *supra*.

6.03. Upon confirmation of the Stipulation of Settlement at the Final Fairness Hearing the Final Approval Order will release Defendant of all liability to the Settlement Class from any

and all claims, including Unknown Claims, which involve the identical factual predicate alleged in the Action arising out of state or federal law except that any member of the Settlement Class may bring an action seeking actual damages. The Final Approval Order will enjoin Settlement Class Members from pursuing or filing suit upon any of the foregoing claims.

C. MOTION TO APPROVE NOTICE TO CLASS

7. NOTICE

7.01. A class action certified under Fed.R.Civ.P. 23(b)(2) requires “appropriate notice to the class” and, under Fed.R.Civ.P. 23(c)(2)(A), the settlement of a certified class action requires “notice in a reasonable manner.”

7.02. By way of *Exhibit D*, Plaintiffs have provided to the Court authority for notice by publication.

7.03. The proposed summary notice to be published in *USA Today* appears as *Exhibit B*. That notice provides the reader with sufficient information to determine whether he or she is a member of the class. It then provides five methods by which that person can obtain a full notice, the proposed form appears as *Exhibit C*. Those five methods include downloading from the internet, a hyperlink on a website, sending an email to Plaintiffs’ counsel, calling a toll-free number, and writing to Plaintiffs’ counsel. Plaintiffs’ counsel represent that they will have those methods set up prior to the publication of the summary notice and will maintain those methods through the date which the Court sets to permit a class member to opt-out or file an objection.

7.04. Plaintiffs request approval of the summary notice and full notice, *Exhibits B and C*, respectively.

8. FINAL ORDER

8.01. At the Final Fairness Hearing, the Settling Parties anticipate presenting a final order giving effect to the Stipulation of Settlement and dismissing with prejudice all claims of

any purported Settlement Class Members, which involve the identical factual predicate alleged in the Action, who did not opt-out of the class settlement within the time prescribed by the Court.

8.02. Pursuant to 28 U.S.C. §1715(b) of the Class Action Fairness Act (CAFA), within 10 days after the filing of this motion, Defendant must notify “the appropriate State official of each State in which a class member resides and the appropriate Federal official” of certain information regarding the proposed settlement.

8.03. Under 28 U.S.C. §1715(d), final approval of the settlement may not be issued prior to 90 days after the last notice is served. Thus, while the fairness hearing can be set at any time, the issuance of the order giving final approval to the settlement cannot issue until after the expiration of the 90 day period.

WHEREFORE, PREMISES CONSIDERED, Settlement Class Representative Plaintiffs pray that the Court:

1. Preliminarily certify the Settlement Class for settlement purposes as set forth in the proposed Stipulation of Settlement;
2. Order that Plaintiffs may act as the Settlement Class Representative Plaintiffs on behalf of the Settlement Class and that their attorneys may act as Settlement Class Counsel;
3. Set a Final Fairness Hearing to determine whether the Stipulation of Settlement is fair, adequate, and reasonable;
4. Approve the form and method of notice to the Settlement Class; and
4. At such Final Fairness Hearing approve the Stipulation of Settlement and grant Final Approval.

Settlement Class Representative Plaintiffs further pray for all such other and further relief, both at law and in equity, as to which they may be justly entitled.

Respectfully submitted,

PHILIP D. STERN & ASSOCIATES, LLC
Attorneys for Plaintiffs, Silvana Seraji, April
Yarborough Koby, Michael Koby, Mark
Taylor, and all others similarly situated

s/Philip D. Stern

Philip D. Stern

Dated: July 22, 2010

LAW OFFICE OF ROBERT L. ARLEO
Attorneys for Plaintiffs, Silvana Seraji, April
Yarborough Koby, Michael Koby, Mark
Taylor, and all others similarly situated

s/Robert L. Arleo

Robert L. Arleo

Dated: July 22, 2010

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SILVANA SERAJI, an individual; APRIL
YARBOROUGH KOBY, an individual;
MICHAEL P. KOBY, an individual; and
MARK TAYLOR; on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

CAPITAL MANAGEMENT SERVICES, LP,
a Delaware Limited Partnership; and JOHN
AND JANE DOES NUMBERS 1 THROUGH
25,

Defendants.

Civil Action No.:
3:09-cv-03465-FLW-DEA

STIPULATION OF SETTLEMENT

This Stipulation of Settlement dated as of June 22, 2010 ("Stipulation"), is made and entered into by and among the following Settling Parties to the Action, as those terms are defined herein:¹ (i) Settlement Class Representative Plaintiffs, on behalf of themselves and each of the Settlement Class Members, by and through Settlement Class Counsel; and (ii) the Defendant, by and through its counsel of record in this Action. This Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle all released rights and claims, as set forth below, subject to the terms and conditions set forth herein.

RECITALS

A. **Parties.** The parties to this Stipulation are, on the one hand, the Defendant, CAPITAL MANAGEMENT SERVICES, LP ("Defendant"), and, on the other hand, the

¹ As used in this Stipulation, capitalized terms shall have the meanings and definitions set forth in Section 1 hereof.

Settlement Class Representative Plaintiffs, SILVANA SERAJI, APRIL YARBOROUGH KOBY, MICHAEL P. KOBY, and MARK TAYLOR, and a Settlement Class, as defined herein.

B. Nature of Litigation. Settlement Class Representative Plaintiffs filed the above-captioned Action asserting claims under the federal Fair Debt Collection Practices Act, 15 U.S.C. §§1692, *et seq.* (“FDCPA”) on behalf of a proposed class consisting of all residents of the United States who received a message left by Defendant on a telephone answering device that did not identify the Defendant by name as the caller, state the purpose or nature of the communication, or did not disclose that the message was left by a debt collector within one year of the date the action was filed and up through and including the date of preliminary certification of the proposed settlement class. Settlement Class Representative Plaintiffs contend that Defendant violated the FDCPA by using the above-described messages in connection with its attempt to collect alleged debts.

C. Defendant’s Denial of Wrongdoing and Desire to Settle Claims. Defendant has denied, and continues to deny, each and every claim and allegation of wrongdoing that has been alleged by Settlement Class Representative Plaintiffs in the Action. Defendant also has denied, and continues to deny, *inter alia*, any allegations that Settlement Class Representative Plaintiffs or Settlement Class Members have suffered any damage whatsoever, have been harmed in any way, or are entitled to any relief as a result of any conduct on the part of Defendant as alleged by Settlement Class Representative Plaintiffs in the Action.

Nevertheless, Defendant has concluded that further litigation will entail risks, will likely be protracted and expensive with uncertain results, that settlement of the Action is, therefore, advisable to permit the operation of the Defendant’s business without further litigation expenses and the distraction of executive personnel, and that it is, therefore, desirable and prudent that the

Action between Settlement Class Representative Plaintiff, Settlement Class Members, and Defendant be fully and finally resolved and settled in the manner and upon the terms and conditions set forth in this Stipulation.

D. Settlement Class Representative Plaintiffs' Desire to Settle Claims. With the assistance of legal counsel and after considering the risks, delay, and difficulties involved in establishing a right to recovery in excess of that offered by this Settlement and the likelihood that the litigation will be further protracted and expensive, Settlement Class Representative Plaintiffs desire to settle this Action in accordance with this Stipulation of Settlement.

Settlement Class Representative Plaintiffs believe that the claims asserted in the Action have merit and that there is substantial evidence to support their claims. Settlement Class Representative Plaintiffs, however, recognize and acknowledge the expense and length of continued litigation and legal proceedings necessary to prosecute the Action against Defendant through trial and through any appeals. Settlement Class Representative Plaintiffs also recognize and have taken into account the uncertain outcome and risks associated with litigation in general, and the Action in particular, as well as the difficulties and delays inherent in any such litigation. Settlement Class Representative Plaintiff are also mindful of the potential problems of proof and the possible defenses to the unlawful conduct alleged by Settlement Class Representative Plaintiffs in the Action, as well as the remedies they seek. As a result, Settlement Class Representative Plaintiffs believe that the Settlement set forth in this Stipulation provides substantial benefits to Settlement Class Members, secures certain consideration and retains important individual rights for Settlement Class Members. Settlement Class Representative Plaintiffs and Settlement Class Counsel have, therefore, determined that the Settlement, as set

forth in this Stipulation, is fair, reasonable, adequate, and in the best interests of the Settlement Class.

E. Class Size. Defendant has made certain admissions during discovery to Settlement Class Counsel concerning the number of class members; specifically, that it is impractical to calculate the number of Settlement Class Members. However, there exists a pool of potential members of the Class which exceeds 1,000,000 people.

F. Net Worth. The Settling Parties acknowledge that the FDCPA limits class recovery of statutory damages to the lesser of \$500,000.00 or 1% of the Defendant's net worth. Defendant has made certain admissions to Settlement Class Counsel concerning Defendant's net worth. Specifically, Defendant has confirmed in discovery that its net worth is approximately, \$3,600,000.00 making \$36,000.00 the maximum amount of statutory damages that could be recovered if a litigation class were to be certified and the Settlement Class Representative Plaintiffs were to prevail on the merits at trial and on appeal.

G. De Minimis Class Recovery. Based on the size of the Settlement Class and the maximum class recovery of statutory damages permitted by law, payment to each Settlement Class Member of his or her *pro rata* share of statutory damages would be *de minimis* and, therefore, impractical.

H. Investigation by Counsel. Settlement Class Counsel have investigated the facts available to them and have researched the relevant law applicable to their claims.

I. Recommendation of Counsel. Based upon the foregoing, and upon a rigorous analysis of the benefits which this Agreement affords to Settlement Class Members, Settlement Class Counsel considers it to be in the best interest of the Settlement Class to enter into this Stipulation of Settlement.

J. Court Approval. The Settling Parties acknowledge that Court approval is necessary. Pursuant to Rules 23(b)(1)(B) and 23(b)(2) of the Federal Rules of Civil Procedure, no notice of the Settlement; however, Settlement Class Members and Defendant have agreed to place a summary advertisement notifying Settlement Class Members of the Settlement in a weekday edition of *USA Today* at least two weeks before the Court's hearing to determine that the Settlement is fair, reasonable, and adequate. Settlement Class Members will have an opportunity to opt-out of, or object to, the Settlement. In addition, after affording the opportunity for making any objections, the Court will hold a hearing to determine that the Settlement is fair, reasonable, and adequate. The Settling Parties acknowledge that this Agreement will be Exhibit A to the Settlement Class Representative Plaintiffs' Motion For Preliminary Approval of Class Settlement Agreement.

TERMS

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED to, by and among the Settlement Class Representative Plaintiffs (for themselves and all Settlement Class Members) and the Defendant, for themselves, and through their respective counsel, that the Action shall be finally and fully compromised, settled, and released, the Action shall be dismissed as to all parties, and the claims of the Settling Parties shall be released, subject to the terms and conditions of this Stipulation, and subject to the Final Approval Order approving the Stipulation as "Final" as defined herein.

1. DEFINITIONS

As used in this Stipulation, the following terms shall have the following definitions and meanings:

1.1 “Action” means the lawsuit captioned as *SILVANA SERAJI, an individual; APRIL YARBOROUGH KOBY, an individual; MICHAEL P. KOBY, an individual; and MARK TAYLOR; on behalf of themselves and all others similarly situated vs. CAPITAL MANAGEMENT SERVICES, LP, a Delaware Limited Partnership; and JOHN AND JANE DOES NUMBERS 1 THROUGH 25*, which is currently pending in the District of New Jersey and bearing Case Number 3:09-cv-03465-FLW-DEA.

1.2 “Court” means the United States District Court for the District of New Jersey.

1.3 “Defendant” means CAPITAL MANAGEMENT SERVICES, LP and each of Defendant’s past or present officers, directors, partners, agents, employees, attorneys, accountants or auditors, consultants, legal representatives, predecessors, successors, assigns, parents, subsidiaries, divisions, and any entity that controls the Defendant.

1.4 “Defendant’s Counsel” means counsel of record for the Defendant.

1.5 “FDCPA” means the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*

1.6 “Final” means when the last of the following with respect to the Final Approval Order approving the Stipulation has occurred: (i) the expiration of three business days after the time to file a motion to alter or amend the Final Approval Order under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of three business days after the time in which to appeal the Final Approval Order has passed without any appeal having been filed (which date shall be deemed to be 33 days following the entry of the Final Approval Order, unless the date to take such an appeal shall have been extended by Court order or otherwise, or unless the 33rd day falls on a weekend or a Court holiday, in which case the date for purposes of this Stipulation shall be deemed to be the next

business day after such 33rd day); and (iii) if such motion to alter or amend is filed, or if an appeal is taken, three business days after a determination of any such motion or appeal that permits the consummation of the Settlement in substantial accordance with the terms and conditions of this Stipulation.

1.7 “Final Approval” means the approval of the Stipulation and the Settlement by the Court at or after the Final Fairness Hearing, and entry of the Final Approval Order.

1.8 “Final Approval Order” means the order entered by the Court giving Final Approval of the Stipulation and dismissing all claims.

1.9 “Final Fairness Hearing” means the hearing at which the Stipulation and the Final Approval Order are presented by the Settling Parties for Final Approval and entry by the Court.

1.10 “Preliminary Approval” means the preliminary approval of the Stipulation by the Court and conditional certification of the Plaintiff Settlement Class.

1.11 “Settlement” means the settlement entered into by the Settling Parties as set forth and embodied by this Stipulation.

1.12 “Settlement Class” means all persons with addresses in the United States of America who received a message left by Defendant on a telephone answering device which did not identify Defendant by name as the caller, state the purpose or nature of the communication, or disclose that the communication was from a debt collector and which message was left after one-year immediately preceding the filing of the initial complaint up through and including the date of order granting preliminary certification of the Settlement Class.

1.13 “Settlement Class Counsel” means counsel of record for the Settlement Class Representative Plaintiffs.

1.14 “Settlement Class Member” means a person who falls within the definition of the Settlement Class as defined in Paragraph 1.12 of the Stipulation.

1.15 “Settlement Class Period” means the period extending from one year immediately prior to the filing of the initial complaint in this Action up through and including the date of Final Approval.

1.16 “Settlement Class Representative Plaintiffs” means Silvana Seraji, April Yarborough Koby, Michael P. Koby, and Mark Taylor.

1.17 “Settlement Fund” means the amount paid by Defendant pursuant to Paragraph 2.3 herein.

1.18 “Settling Parties” means, collectively, the Defendant, as defined herein, by and through its counsel of record, and the Settlement Class Representative Plaintiffs on behalf of themselves and all Settlement Class Members, by and through Settlement Class Counsel.

1.19 “Stipulation” means this Stipulation of Settlement.

1.20 “Ultimate Approval” means that the Final Approval Order has become Final, as defined herein.

1.21 “Unknown Claims” means all claims, demands, rights, liabilities, and causes of action for damages arising out of, or relating to, claims involving the identical factual predicate alleged in the Action, which any person does not know or suspect to exist in his, her, or its favor at the time of the release of claims which, if known by him, her, or it, might have affected his, her, or its settlement and release of claims for damages. With respect to any and all claims for damages, the Settling Parties stipulate and agree that, upon Ultimate Approval, all Settling Parties will have expressly waived and, by operation of the Final Approval Order, each of the

Settlement Class Members will be deemed to have waived the provisions, rights and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Approval Order to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

2. TERMS OF THE SETTLEMENT

In consideration of the foregoing and the mutual promises and obligations under this Stipulation, it is stipulated and agreed by and between Settlement Class Representative Plaintiffs, Settlement Class Counsel, Defendant, and counsel for the Defendant that, subject to the approval of the Court, the Action be and hereby is settled upon the following terms and conditions:

2.1 Effective Date. This Settlement will be effective upon the Effective Date, which is the date the settlement becomes Final as defined in Paragraph 1.7 above.

2.2 Certification of Settlement Class. Defendant stipulates to the certification of a Settlement Class as defined in Paragraph 1.12 under Rules 23(b)(1)(B) and 23(b)(2) of the Federal Rules of Civil Procedure.

2.3 Settlement Fund. Defendant shall pay the total sum \$114,250.00 to be allocated as follows:

(a) *Settlement Class Representative Plaintiffs' Individual Relief.* Settlement Class Representative Plaintiff shall each receive \$1,000.00, to be paid from the Settlement Fund, as statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i). Settlement Class Representative Plaintiffs shall also each receive \$1,500.00, to be paid

from the Settlement Fund, in recognition for their services to the Settlement Class Members.

(b) *Class Relief.* \$20,000.00, which represents fifty-six percent (56%) of the maximum class recovery permitted under the FDCPA (i.e. 1% of Defendant's net worth), shall be paid from the Settlement Fund as a *cy pres* payment to one or more charitable organizations without any religious or political affiliations. The Settling Parties propose that the recipient(s) of the *cy pres* payment will be the Legal Services of New Jersey, Inc., which is a national organization that provides assistance to low-income and vulnerable consumers on issues involving, *inter alia*, consumer fraud, debt collection, consumer finance, predatory lending, and sustainable home ownership programs. The Settling Parties' foregoing choice of *cy pres* recipient is, however, subject to the Court's final approval.

(c) *Injunctive Relief.* Defendant shall consent to entry of a stipulated injunction mandating that Defendant use its "best efforts" to ensure that it identifies itself by its legal name in all telephone messages left for consumers, and that it further discloses the call is from a debt collector and concerns the collection of a debt. As part of the injunction, counsel for Defendant will send written reports of all lawsuits filed, or informal complaints it receives in writing, against Defendant that involve the identical factual and legal claims at issue in this lawsuit. Defendant shall issue these written reports to Settlement Class Counsel, such that they are received by the 10th day of each month, beginning on the first month following Ultimate Approval, and continuing thereafter each month for the next 12 months. Settlement Class Counsel shall be entitled to recover their reasonable attorney fees and costs if they are required to pursue any

action necessary to enforce the terms of the stipulated injunction. The Court shall decide the final terms of the stipulated injunction at the Final Fairness Hearing.

(d) *Counsel Fees.* Settlement Class Counsel shall be entitled to receive up to \$84,250.00 from the Settlement Fund, which is intended to cover all fees and all expenses arising out of this lawsuit. Class counsel will accept the amount of fees and expenses awarded by the Court in full satisfaction of reasonable attorney's fees and costs and will not request additional fees from Defendant, Settlement Class Representative Plaintiff, or any Settlement Class Member. Defendant will not oppose or cause to be opposed an attorney fee application, so long as such application does not exceed \$84,250.00.

Any fee and expense application, any fee and expense award, and any and all matters related thereto, shall not be considered part of the Stipulation, and shall be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and shall not operate to terminate or cancel the Stipulation or Settlement, and shall not affect or delay the finality of any Final Approval Order approving the Stipulation and the Settlement of the Action.

2.4 **Payment.** Within ten calendar days after Final Approval, Defendant will deliver the sum of \$114,250.00 to Philip D. Stern & Associates, LLC, payable to "Philip D. Stern, Attorney Trust Account". Upon delivery of these funds, class counsel agrees to indemnify and hold Defendant, its agents, servants, employees, officers, directors, attorneys, and insurers harmless with respect to Defendant's payment obligations under this Agreement. Upon delivery of the funds, no person shall have a claim against Defendant based on, arising from, or relating to the distribution of benefits from the Settlement Fund. Class Counsel shall hold all Settlement Funds in trust and make no disbursements until three calendar days after Ultimate Approval.

Thereafter, Class Counsel shall have twenty-one calendar days to disburse the Settlement Funds in accordance with this Stipulation and will provide Defendant's counsel with proof of distribution of the *cy pres* settlement funds.

3. RELEASE AND RETENTION OF CERTAIN RIGHTS AND CLAIMS. All releases set forth below are void if the Settlement does not receive Ultimate Approval. The releases under this Paragraph are conditioned upon Defendant's full performance of all of its obligations under this Stipulation of Settlement, including confirmatory discovery.

3.1 Settlement Class Representative Plaintiffs: Upon Final Approval of the Settlement, Settlement Class Representative Plaintiffs will be deemed to have released, and by operation of the Final Approval Order shall have fully, finally, and forever released, relinquished and discharged Defendant and Defendant's Related Parties from any and all claims, including Unknown Claims, arising out of or relating to the allegations and/or claims asserted in the Action arising out of state or federal law, including any and all such claims relating to Defendant's use of messages on telephone answering devices.

3.2 Other Settlement Class Members. Pursuant to Rules 23(b)(1)(B) and 23(b)(2) of the Federal Rules of Civil Procedure, upon Final Approval of the Settlement, all Plaintiff Settlement Class Members will be deemed to have released, and by operation of the Final Approval Order shall have fully, finally, and forever released, relinquished, and discharged Defendant and Defendant's Related Parties from any and all claims for damages or injunctive relief, including Unknown Claims for such relief, arising out of, or related to, claims involving the identical factual predicate asserted in the Action arising out of state or federal law, including any and all such claims relating to Defendant's use of messages on telephone answering devices, however, Plaintiff Settlement Class Members retain the right to bring claims for actual damages.

4. RELEASE OF ATTORNEY'S LIEN.

In consideration of the Settlement, Settlement Class Counsel hereby waives, discharges and releases Defendant, its officers, directors, shareholders, agents, employees, attorneys, successors, beneficiaries, parents, subsidiaries, representatives, divisions, affiliates, customers, clients, and assigns of and from any and all claims for attorneys' fees, by lien or otherwise, for legal services rendered by Settlement Class Counsel in connection with the Action. Settlement Class Counsel further represents and certifies that no other person is entitled to any sum for attorney's fees in connection with the Action, and the undersigned attorneys agrees to indemnify, defend, and save harmless Defendant and its officers, directors, shareholders, agents, employees, attorneys, successors, beneficiaries, parents, subsidiaries, representatives, divisions, affiliates, clients, customers, and assigns, from any claim for attorney's fees in connection with this action.

5. EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

5.1 If the Settlement does not receive Ultimate Approval, then the Settlement and any Stipulation shall become null and void; the effects of such event include, without limitation, that the Defendant shall not be prejudiced in any way from opposing the certification of a class or classes in the Action or in any other litigation, and Class Counsel will return the Settlement Funds to Defendant. The Defendant expressly states that they would oppose class certification were the matter not to be settled. The Settling Parties acknowledge that the possibility of a grant or denial of class certification is one of the risks being compromised as part of the Settlement. Further, the Settlement Fund shall be returned to the Defendant if an Order of the Court granting Final Approval to the Settlement is overturned after exhaustion of all appeals, and a revised settlement is not submitted to the Court within 180 days following the exhaustion of such appeals.

5.2 In the event that the Settlement does not receive Ultimate Approval, or the Stipulation is terminated, or fails to become effective in accordance with its terms, the Settling Parties and the Settlement Class Members shall be restored to their respective positions in the Action as of the business day immediately preceding the signing of this Stipulation.

6. PRELIMINARY APPROVAL.

As soon as practical after the execution of this Agreement, Class Counsel will file a Motion For Class Certification and Preliminary Approval of Class Settlement Agreement (“Motion”), which will include a copy of this Agreement attached to the Motion as Exhibit A, a proposed Preliminary Approval Order in the form attached to the Motion as Exhibit B, a proposed Final Order in the form attached to the Motion as Exhibit C, and will seek entry of the Preliminary Approval Order including:

- (a) Defining the Settlement Class;
- (b) Defining the Settlement Class Claims;
- (c) Appointing Class Counsel;
- (d) Preliminarily approval of this Settlement;
- (e) Directing notice to the Class as set forth in this Agreement; and
- (f) Setting a date for a hearing pursuant Rule 23(e)(1)(C) of the Federal Rules of Civil Procedure to determine whether the settlement is fair, reasonable, and adequate.

7. MISCELLANEOUS PROVISIONS

7.1 The Settling Parties acknowledge that it is their intent to consummate this Settlement, and agree to cooperate fully with one another in taking whatever steps are necessary and appropriate to complete the Settlement, including seeking both Preliminary, Final, and

Ultimate Approval of the Settlement, and to use their best efforts to effectuate the full performance of the terms of the Settlement, and to protect the Settlement by applying for appropriate orders enjoining others from initiating or prosecuting any action arising out of or related to the facts or claims alleged in the Action, if so required.

7.2 To the extent that any disputes or issues arise with respect to documenting the Settlement, the Settling Parties agree to use their best efforts to informally resolve any such disputes or issues; but, in the event any such dispute or issue cannot be resolved informally, to bring any such dispute or issue to the Court for resolution.

7.3 The Settling Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Action, except as specifically provided for herein. The Settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement were negotiated at all times at arm's length and in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent and experienced legal counsel.

7.4 Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:

(a) is, or may be deemed to be, or may be used as an admission or evidence of, the validity of any claims asserted in the Action, or of any wrongdoing or liability on the part of Defendant; or

(b) is, or may be deemed to be, or may be used as an admission or evidence of any fault or omission of the Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendant may file the

Stipulation and/or the Final Approval Order in any action that has been or may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, reduction, or any other theory of claim preclusion or issue preclusion, or any similar defense or counterclaim.

7.5 No person shall have any claim against Settlement Class Counsel based on distribution of benefits made substantially in accordance with this Stipulation or any Settlement-related order(s) of the Court.

7.6 This Stipulation may be amended or modified only by a written instrument signed by Defendant's Counsel and Settlement Class Counsel, or their respective successors-in-interest.

7.7 The Stipulation constitutes the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any Settling Party concerning the Stipulation, other than those contained here. The Stipulation replaces and voids any and all previous agreements concerning the settlement of the Action. Except as provided for with respect to Settlement Class Counsels' Fees, each Settling Party bears its own costs.

7.8 Settlement Class Counsel, on behalf of the Settlement Class, are expressly authorized by Settlement Class Representative Plaintiffs to take all appropriate action required or permitted to be taken by the Plaintiff Settlement Class pursuant to the Stipulation to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the Settlement Class that they deem necessary or appropriate.

7.9 Each attorney executing the Stipulation on behalf of any Settling Party warrants that such attorney has the full authority to do so. Settlement Class Counsel shall obtain the original signature of Settlement Class Representative Plaintiffs.

7.10 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Facsimile signatures shall be deemed originals. A complete set of executed counterparts shall be filed with the Court.

7.11 This Stipulation is binding upon, and inures to the benefit of, the successors and assigns of the Settling Parties.

7.12 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and the Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation. The Settling Parties shall present the Court with proposed Orders that allow for such retention of jurisdiction, in accordance with applicable law.

7.13 The Stipulation shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New Jersey, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by the internal, substantive, laws of the State of New Jersey without giving effect to that State's choice-of-law principles.

7.14 Settlement Class Counsel represent that they have no other individual clients who have currently engaged them to pursue claims brought in the Action against Defendant.

7.15 If any Settling Party commences any action arising out of this Stipulation, including, without limitation, any action to enforce or interpret this Stipulation, the prevailing party or parties in such action shall be entitled to recover its reasonable attorneys' fees and other expenses incurred in such action. Any award of attorneys' fees hereunder shall not be computed according to any court schedule, but, instead, shall be in such amount as to fully reimburse all

attorneys' fees actually incurred in good faith, regardless of the size of the judgment, since it is the intention of all Settling Parties to compensate fully the prevailing party for all attorneys' fees paid or incurred in good faith.

IN WITNESS WHEREOF, the Settling Parties hereto, acting by and through their respective counsel of record, have so agreed.

Defendant:
CAPITAL MANAGEMENT SERVICES, LP

Plaintiffs:

By: 
Its, _____
Dated: June 22, 2010

SILVANA SERAJI
Dated: June 22, 2010

APRIL YARBOROUGH KOBY
Dated: June 22, 2010

MICHAEL P. KOBY
Dated: June 22, 2010

MARK TAYLOR
Dated: June 22, 2010

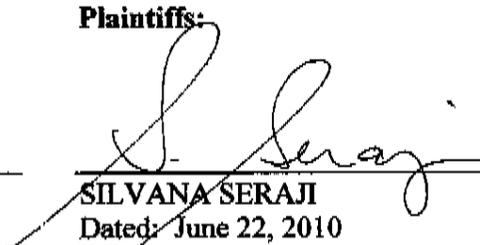
attorneys' fees actually incurred in good faith, regardless of the size of the judgment, since it is the intention of all Settling Parties to compensate fully the prevailing party for all attorneys' fees paid or incurred in good faith.

IN WITNESS WHEREOF, the Settling Parties hereto, acting by and through their respective counsel of record, have so agreed.

Defendant:
CAPITAL MANAGEMENT SERVICES, LP

Plaintiffs:

By: _____
Its,
Dated: June __, 2010



SILVANA SERAJI
Dated: June 22, 2010

APRIL YARBOROUGH KOBY
Dated: June 22, 2010

MICHAEL P. KOBY
Dated: June 22, 2010

MARK TAYLOR
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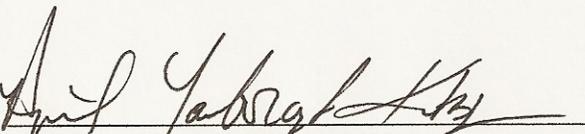
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Defendant:
CAPITAL MANAGEMENT SERVICES, LP

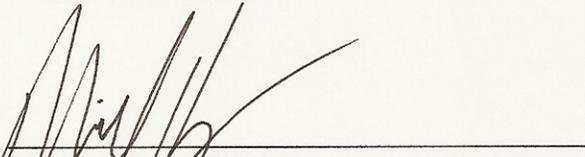
Plaintiffs:

By: _____
Its,
Dated: June __, 2010

SILVANA SERAJI
Dated: June 22, 2010



APRIL YARBOROUGH KOBY
Dated: June 22, 2010



MICHAEL P. KOBY
Dated: June 22, 2010

MARK TAYLOR
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CAPITAL MANAGEMENT SERVICES, LP

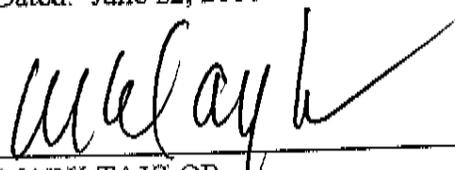
Plaintiffs:

By: _____
Its,
Dated: June __, 2010

SILVANA SERAJI
Dated: June 22, 2010

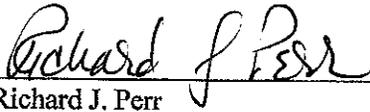
APRIL YARBOROUGH KOBY
Dated: June 22, 2010

MICHAEL P. KOBY
Dated: June 22, 2010



MARK TAYLOR
Dated: June 22, 2010

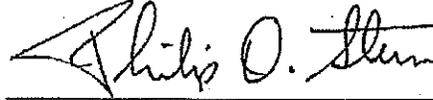
Attorneys for Defendant:
FINEMAN KREKSTEIN & HARRIS, P.C.



Richard J. Perr
1735 Market Street Suite 600
Philadelphia, PA 19103-5413
Telephone: (215) 893-8724
Facsimile: (215) 893-8719
Dated: June ~~22~~, 2010

July 1, 2010

Attorneys for Plaintiffs:
PHILIP D. STERN & ASSOCIATES, LLC



Philip D. Stern
697 Valley Street, Suite 2D
Maplewood, NJ 07040-2642
Telephone: (973) 379-7500
Facsimile: (973) 532-0866
Dated: June 22, 2010

LAW OFFICE OF ROBERT L. ARLEO



Robert L. Arleo
164 Sunset Park Road
Haines Falls, New York 12436
Telephone: (518) 589-5264
Facsimile: (518) 751-1801
Dated: June 22, 2010

Exhibit B

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

| | |
|--|--|
| <p>SILVANA SERAJI, an individual; et al. Plaintiffs,</p> <p>vs.</p> <p>CAPITAL MANAGEMENT SERVICES, LP, a Delaware Limited Partnership; et al. Defendants.</p> | <p>Case 3:09-cv-03465-FLW-DEA</p> <p>SUMMARY NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT</p> |
|--|--|

TO: All persons with addresses in the United States of America who received a message left by Capital Management Services, LP on a telephone answering device, which message failed to (a) meaningfully identify Capital Management Services, LP by name as the caller, (b) state the purpose or nature of the communication, or (c) disclose that the communication was from a debt collector, and which message was left after December 2, 2008 up through and including [SUBSTITUTE DATE OF PRELIMINARY APPROVAL ORDER].

YOU MAY BENEFIT FROM READING THIS NOTICE.

Certain individuals (“Plaintiffs”) filed a lawsuit against Capital Management Services, LP (“Defendant”) claiming that the Defendant violated the Fair Debt Collection Practices Act when it left messages on consumers’ telephone answering devices. Defendant denied liability and raised a number of defenses. *The Court has not made any decision concerning the merits of the lawsuit.*

The Plaintiffs and Defendant have negotiated a proposed settlement of the lawsuit.

The Court has determined that this action should proceed as a class action, appointed the Plaintiffs as Class Representatives and preliminarily approved the settlement subject to a fairness hearing which will take place on [SUBSTITUTE DATE AND TIME OF FAIRNESS HEARING] at the United States District Court, District of New Jersey, located at 402 East State Street, Trenton, NJ 08608.

You have the right to appear and be heard at the fairness hearing.

You also have the right to a copy of the full Notice approved by the Court which gives a more complete explanation of this lawsuit, the settlement terms, and the legal rights and obligations you may have. Those rights may include your right to opt-out of the settlement to pursue your own individual claim or to object to the settlement’s final approval. The Court recommends that you obtain and read a copy of the full Notice from the Plaintiffs’ attorneys. **DO NOT CONTACT THE COURT OR THE COURT CLERK.** You may obtain a copy of the full Notice by requesting it anytime on or before [SUBSTITUTE LAST DAY TO OPT-OUT OR OBJECT] using any one of these five methods:

1. Point your internet browser to:
www.PhilipStern.com/files/CaptialManagementFullNotice.pdf
2. 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 name of this action.
3. Send a request by email to: CaptialManagementFullNotice@PhilipStern.com
4. Call Plaintiffs’ attorneys toll-free [SUBSTITUTE TOLL FREE NUMBER] and leave a message clearly stating your name and either your email address or your mailing address. Be certain to speak clearly and spell any unusual names or words.
5. Write to one of Plaintiffs’ attorneys:

Philip D. Stern, Esq.

Philip D. Stern & Associates, LLC

697 Valley Street, Suite 2D

Maplewood, NJ 07040-2642

Robert L. Arleo, Esq.

Law Office of Robert L. Arleo

164 Sunset Park Road

Haines Falls, New York 12436

Plaintiffs’ attorneys must promptly respond to all requests received on or before [SUBSTITUTE LAST DAY TO OPT-OUT OR OBJECT].

THIS NOTICE WAS APPROVED BY THE COURT

Exhibit C

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SILVANA SERAJI, an individual; APRIL
YARBOROUGH KOBY, an individual;
MICHAEL P. KOBY, an individual; and
MARK TAYLOR; on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

CAPITAL MANAGEMENT SERVICES, LP, a
Delaware Limited Partnership; and JOHN AND
JANE DOES NUMBERS 1 THROUGH 25,

Defendants.

Case 3:09-cv-03465-FLW-DEA

**NOTICE OF CLASS ACTION AND
PROPOSED SETTLEMENT**

TO: All persons with addresses in the United States of America who received a message left by Capital Management Services, LP on a telephone answering device, which message failed to (a) meaningfully identify Capital Management Services, LP by name as the caller, (b) state the purpose or nature of the communication, or (c) disclose that the communication was from a debt collector, and which message was left after December 2, 2008, up through and including June 23, 2010

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

WHAT THIS LAWSUIT IS ABOUT

Silvana Seraji, April Yarborough Koby, Michael P. Koby, and Mark Taylor (“Plaintiffs”) filed an action in the United States District Court for the District of New Jersey alleging class action claims against Defendant, Capital Management Services, LP (“Defendant”). On behalf of a class, Plaintiffs alleged that Defendant, while attempting to collect alleged personal debts used false, deceptive and misleading means while attempting to collect that debt in violation of the Fair Debt Collection Practices Act (“FDCPA”).

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

On _____, 2010 United States Magistrate Judge Douglas E. Arpert (i) determined that this action should proceed as a class action with respect to the claims of the

class described above against Defendant, 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 _____, 2010 at _____m. at the United States District Court, District of New Jersey, located at 402 East State Street. Trenton, NJ 08608.

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, Defendant does not admit that it did anything wrong. Defendant denies any wrongdoing.

THE PROPOSED SETTLEMENT

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

1. **Payment to each class member.** 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. The Court could award less than 1%. Defendant has agreed to pay \$20,000.00, which is 56% 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 \$20,000.00 among more than 1,000,000 total class members. Instead, the Defendant will provide a "*cy pres*" payment to one or more charitable organizations. The Defendant and Plaintiffs have agreed that the \$20,000.00 will be given to Legal Services of New Jersey, Inc., subject to the Court's approval. In addition, the Plaintiffs will each receive \$1,000.00 in statutory damages for their individual claims against Defendant, 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 Defendant and Defendant’s successors, predecessors, assignees, and current and former officers, directors, shareholders, and employees.
- (d) This release is conditioned upon the performance by Defendant of its obligations toward the Class as set forth in the Agreement on file with the Court.

3. **Attorney’s Fees and Expenses.** Subject to approval by the Court, Defendant will pay counsel for the class the sum of \$84,250.00 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 set forth above.

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) a penalty, in such amount as the Court shall assess, based upon the culpability of the defendant’s conduct and the amount of harm caused by the defendant. The penalty cannot in any event exceed 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 a penalty in an amount up to \$1,000.00, as determined by the court, and any actual damages. Of course, you would only have these rights if you prevail, 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. In addition, Defendant has denied that they have violated the FDCPA, and the Court has not ruled on the merits of the lawsuit. A person that 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 _____, 2010 at _____.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 Magistrate Judge Douglas E. Arpert at the United States District Court, District of New Jersey, located at 402 East State Street. Trenton, NJ 08608.**

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** _____, **2010**, file that written request with the Clerk of the United States District Court for the District of New Jersey located at 402 East State Street. Trenton, NJ 08608,
- (c) **no later than** _____, **2010**, serve a copy of that written request upon either Robert L. Arleo, Esq. at his law office address listed below or upon Philip D. Stern, Esq. at his law office address listed below, and
- (d) **no later than** _____, **2010**, serve a copy of that written request upon Defendant's attorney, Richard J. Perr, 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** _____, **2010**, file that written objection with the Clerk of the United States District Court for the District of New Jersey located at 402 East State Street. Trenton, NJ 08608,
- (c) **no later than** _____, **2010**, serve a copy of that written objection upon either Robert L. Arleo, Esq. at his law office address listed below or upon Philip D. Stern, Esq. at his law office address listed below, and
- (d) **no later than** _____, **2010**, serve a copy of that written request upon Defendant's attorney, Richard J. Perr, 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 you do not 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 _____, 2010. 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

Robert L. Arleo, Esq.
Law Office of Robert L. Arleo
164 Sunset Park Road
Haines Falls, New York 12436

ATTORNEYS FOR THE DEFENDANT

Richard J. Perr, Esq.
Fineman, Krekstein & Harris, P.C.
1735 Market Street Suite 600
Philadelphia, PA 19103-5413

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 if you wish.

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 Clerk of Court for the District of New Jersey.

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 Clerk of the United States District Court, District of New Jersey, 402 East State Street, Trenton, NJ 08608. The Clerk will make the files relating to this lawsuit available to you for inspection and copying at your own expense.

THIS NOTICE WAS APPROVED BY THE COURT

Exhibit D

ROBERT L. ARLEO, ESQ.
164 Sunset Park Road
Haines Falls, New York 12436

Telephone: (518) 589-5264
Email: r.arleo@verizon.net

Fax: (518) 751-1801

July 22, 2010

Douglas E. Arpert, U.S.M.J.
United States District Court
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Room 2020
Trenton, New Jersey 08608

Re: Seraji et al. v. Capital Management Services, L.P.
3:09-cv-03465

Dear Judge Arpert:

I am co-counsel for the Plaintiff named in the above-entitled action.

I am corresponding herein pursuant to the request by Your Honor for case authority supporting newspaper publication notice of the class settlement agreement negotiated in regard to the above-entitled action. Please note that the following is a listing of FDCPA cases wherein I served as counsel/co-counsel to the plaintiff(s) wherein newspaper publication notice to the respective classes therein was approved by the respective court therein: Labbate-D'Alauro v. GC Services (E.D.N.Y.); Blouin v. Transworld Systems, Inc. (D. Mass.); Leventhal v. Advanced Healthcare Systems (E.D.N.Y.); Smith v. Scripps Health, Inc. (S.D. Ca.); Gravina v. Client Services (E.D.N.Y.) and Anderson v. Nationwide Credit (E.D.N.Y.). Importantly, each of the class settlements received an order of final approval.

In addition to the foregoing FDCPA class actions, newspaper notice was recently given in the matter of Harrigan v. Receivables Performance Management, LLC, 09-cv-01351, an FDCPA class action wherein I am co-counsel for the Plaintiff which has obtained preliminary approval of the class settlement agreement negotiated therein.

Of course, I remain available should Your Honor have any questions or comments regarding the foregoing.

Thank you for your attention herein.

Respectfully submitted,
/ s /
Robert L. Arleo

RLA:gra
cc: Silvana Seraji
Philip Stern, Esq.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SILVANA SERAJI, an individual; APRIL YARBOROUGH KOBY, an individual; MICHAEL P. KOBY, an individual; and MARK TAYLOR; on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CAPITAL MANAGEMENT SERVICES, LP, a Delaware Limited Partnership; and JOHN AND JANE DOES NUMBERS 1 THROUGH 25,

Defendants.

Case 3:09-cv-03465-FLW-DEA

**ORDER CERTIFYING SETTLEMENT
CLASS AND PRELIMINARY
APPROVAL OF SETTLEMENT**

This matter having coming before the Court on the motion by Plaintiffs, SILVANA SERAJI, APRIL YARBOROUGH KOBY, MICHAEL P. KOBY, and MARK TAYLOR, for preliminary approval of a class-wide settlement agreement including certification of a settlement class and approval of class counsel, and the Court having reviewed the papers submitted; and

With respect to certifying this action as a class action for settlement purposes, the Court finds:

- A. The Settlement Class is so numerous that joinder of all members is impracticable;
- B. There are questions of law and fact common to the proposed Settlement Class, namely, whether Defendant left messages on consumers' telephone answering devices that failed to meaningfully identify Defendant, failed to state the purpose or nature of the communication, and failed to indicate that the caller is a debt collector;
- C. The individual claims of Plaintiffs are typical of the claims of the Settlement Class;

- D. Plaintiffs are an appropriate and adequate representative for the Settlement Class;
- E. The settlement includes, among other things, Defendant's consent to an injunction and final injunctive relief is appropriate respecting the class as a whole.
- F. With respect to the appointment of Settlement Class Counsel under Fed.R.Civ.P. 23(g), the Court finds, after consideration of the factors described in Fed.R.Civ.P. 23(g)(1)(A), Plaintiffs' counsel, Robert L. Arleo and Philip D. Stern, will fairly and adequately represent the interests of the Settlement Class;
- G. With respect to the proposed Stipulation of Settlement, after consideration of the Stipulation attached as *Exhibit A* to the Memorandum filed in support of this Motion, the Court makes the preliminary finding, subject to a final hearing, that the proposed settlement is fair, reasonable, and adequate;
- H. and the Court being duly advised in the premises,

IT IS HEREBY ORDERED:

- 1. Pursuant to Fed.R.Civ.P. 23(c)(1), the Court certifies this action as a class action under Fed.R.Civ.P. 23(b)(2) and, in accordance with Fed.R.Civ.P. 23(c)(1)(B):
 - (a) defines the "Settlement Class" as all persons with addresses in the United States of America who received a message left by Defendant on a telephone answering device which did not identify Defendant itself by name as the caller, state the purpose or nature of the communication, or disclose that the communication was from a debt collector and which message was left after one-year immediately preceding the filing of the initial complaint up through and including the date of this Order;
 - (b) defines the "Class Claims" as those claims arising from messages left by Defendant for Class members on telephone answering devices which messages

failed to meaningfully identify the Defendant by name as the caller, state the purpose or nature of the communication, or disclose that the communication was from a debt collector; and

(c) appoints Plaintiffs' counsel, Robert L. Arleo and Philip D. Stern, as Settlement Class Counsel.

2. A Final Fairness Hearing, pursuant to Fed. R. Civ. P. 23(e)(2), as to whether the proposed Stipulation of Settlement is fair, reasonable, and adequate, and the request for fees and expenses by Settlement Class Counsel will be held before this Court on _____, 2010, at _____.
3. Notice to the Settlement Class, in form appearing as *Exhibits B and C* to the Memorandum filed in support of the Motion, is approved. Within ten calendar days after the date of this Order, Class counsel will cause the notice (after substituting the correct information indicated in that Exhibit) in the form of *Exhibit B* to be published in the weekday edition of *U.S.A. Today*, which is a newspaper with national distribution. The Court finds that such notice satisfies the requirements of due process and Fed.R.Civ.P. 23(c)(2)(A) and 23(e)(1). Defendant will pay all costs of publication associated with notice to the Settlement Class. Plaintiffs' counsel is directed to setup and maintain the methods described in *Exhibit B* prior to the publication of that notice and maintain those methods through the last day for Settlement Class Members to opt out or file objections under Paragraphs 4 and 5 of this Order.
4. Settlement Class Members will be permitted to opt out of the Stipulation of Settlement. As such, any Settlement Class Members shall have 45 days after the date of this Order to opt out of the Stipulation of Settlement. Settlement Class Members who choose to opt-out of the Stipulation of Settlement must submit their opt-out request in writing to the Clerk

of the District Court for the District of New Jersey and serve a copy of the request on counsel for Plaintiffs and counsel for Defendant within 45 days after the date of this Order. Any opt-out request must include the name and number of this case and a statement that the Settlement Class Member desires to opt-out of the Stipulation of Settlement.

5. Settlement Class Members who do not choose to opt of the Stipulation of Settlement will be permitted to object to the fairness of the Stipulation of Settlement. As such, any Settlement Class Members shall have 45 days after the date of this Order to object to the Stipulation of Settlement. Settlement Class Members that wish to object to the Stipulation of Settlement must submit an objection in writing to the Clerk of the District Court for the District of New Jersey and serve a copy of the objection on counsel for Plaintiffs and counsel for Defendant within 45 days after the date of this Order. Any objection must include the name and number of this case and a statement of the reasons why the objector believes that the Court should find that the proposed Stipulation of Settlement is not in the best interests of the Class. Objectors may appear at the hearing on the fairness of the Stipulation of Settlement.
6. If, after the hearing, the Court does not approve the Stipulation of Settlement, then this Order will be vacated.

SO ORDERED:

HONORABLE DOUGLAS E. ARPERT
Magistrate Judge, United States District Court

Dated: