

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

In re LVNV Funding LLC Fair Debt  
Collection Practices Act Litigation

**Civil Action No. 2:16-cv-01117-SDW-SCM**

(and consolidated cases

2:16-cv-01235-JLL-JAD (D.N.J.)

2:17-cv-00390-JMV-JBC (D.N.J.)

2:17-cv-02833-WJM-MF (D.N.J.)

BER-L-003515-17 (N.J. Super. Ct. Law Div.)

2:17-cv-04567-MCA-LDW (D.N.J.)

3:17-cv-6121-PGS-TJB (D.N.J.)

2:17-cv-6122-JMV-JBC (D.N.J.)

2:17-cv-6204-SDW-LDW (D.N.J.)

2:17-cv-6250-SDW-LDW (D.N.J.)

3:17-cv-06251-MAS-TJB (D.N.J.)

2:17-cv-6278-JLL-JAD (D.N.J.)

2:17-cv-6279-JLL-JAD (D.N.J.)

2:17-cv-07842-JMV-SCM (D.N.J.)

2:17-cv-07891-MCA-SCM (D.N.J.)

2:18-cv-01521-KM-JBC (D.N.J.)

**AMENDED CLASS ACTION  
SETTLEMENT AGREEMENT**

**THIS AMENDED CONSOLIDATED CLASS ACTION SETTLEMENT AGREEMENT** (hereinafter referred to as the “Settlement Agreement” or “Agreement”) memorializes the settlement negotiated between, and entered into, by Plaintiffs Victoria Lopez, Irina Chernyakhovskaya, Rubier Betancourt, Gladys Espinal, Luisa A. Martinez, Luis A. Rodriguez-Ocasio, Sammy Burgos, Joseph Henriquez, Wendy Lugo, Yensy Orbea, David Uriarte, Jader Ferreira, Francisco Gomez, Robert Little, Yolanda Jackson, and Melizza Delgado, each individually and on behalf of their respective classes of all persons defined in this Settlement Agreement (hereinafter referred to as “Plaintiffs”) and Defendants First National Collection Bureau, Inc., Allied Interstate LLC, Capital Management Services, L.P., Dynamic Recovery Solutions, LLC, Stenger & Stenger, P.C., Frontline Asset Strategies, LLC, Nations Recovery, Inc., LVNV Funding LLC; Resurgent Capital Services, L.P.; Alegis Group, LLC; Credit Control, LLC; Pinnacle Credit Services, LLC; J.C. Christensen & Associates, Inc.; and Alltran Financial, LP (hereinafter collectively referred to as “Defendants”). Plaintiffs and Defendants should together be referred to as the “Settling Parties”.

**RECITALS**

WHEREAS, the Plaintiffs’ various complaints (the “Complaints”) allege that the Defendants transmitted communications to various Persons violating the Fair Debt Collection Practices Act; and

WHEREAS, the Complaints seek money damages, attorneys' fees and other relief; and

WHEREAS, Class Counsel believe that they would ultimately prevail on claims asserted in the Complaint but deem the proposed settlement with Defendants as set forth herein to be in the best interests of the Class.

WHEREAS, Defendants have denied liability, raised defenses to the allegations in the Complaint and maintain that they would ultimately prevail in this action, but also agree that settlement set forth below is in its best interests as well; and

WHEREAS, no parties to this Agreement make any admissions or concessions on these substantive issues.

WHEREAS, the Settling Parties have concluded that it is desirable for all of these Class Actions to be consolidated into one and settled to avoid further inconvenience, delay, and to dispose of potentially burdensome and protracted litigation and to put to rest all claims that have been or might be asserted by the various Class Members arising out of or related to the subject matter of the Complaints; and

WHEREAS, the Settling Parties have engaged in extensive arms-length settlement negotiations, and have determined that the terms of this Settlement Agreement constitute a fair and reasonable compromise of the claims and defenses of all Settling Parties; and

WHEREAS, the Class Actions, as defined below, were consolidated on November 19, 2018 (ECF No. 78); and

WHEREAS, the initial class action settlement agreement was fully executed on November 20, 2018; and

WHEREAS, the Court granted preliminary approval of the class action settlement agreement on September 3, 2019 (ECF No. 96), which Order was subsequently amended on September 23, 2019 (ECF No. 98); and

WHEREAS, in consideration of the foregoing and other good and valuable consideration, it is stipulated and agreed by and between Plaintiffs, in each of their respective individual and representative capacities, and Defendants that the claims for relief against Defendants shall be settled and compromised through a single Order entered by the Court which incorporates and references the following provisions:

## **I. SETTLEMENT AGREEMENT DEFINITIONS AND TERMS**

1. **The Class Actions.** Plaintiffs originally filed these cases as class actions against Defendants as follows:

- *Lopez v. Faloni & Associates, L.L.C., 2:16-cv-01117-SDW-SCM (D.N.J.)*—filed on February 26, 2016;
- *Chernyakhovskaya v. Resurgent Capital Services L.P., 2:16-cv-01235-JLL-JAD (D.N.J.)*—filed on March 3, 2016;

- ***Betancourt v. LVNV Funding LLC*, 2:17-cv-00390-JMV-JBC (D.N.J.)**—filed on January 19, 2017;
- ***Espinal v. First National Collection Bureau Inc.*, 2:17-cv-02833-WJM-MF (D.N.J.)**—filed on April 16, 2017;
- ***Martinez v. LVNV Funding LLC*, BER-L-003515-17 (N.J. Super. Ct. Law Div.)**—filed on May 12, 2017;
- ***Rodriguez-Ocasio v. LVNV Funding LLC*, 2:17-cv-04567-MCA-LDW (D.N.J.)**—filed on June 21, 2017;
- ***Burgos v. Resurgent Capital Services, L.P.*, 3:17-cv-6121-PGS-TJB (D.N.J.)**—filed on August 14, 2017;
- ***Henriquez v. Allied Interstate LLC*, 2:17-cv-6122-JMV-JBC (D.N.J.)**—filed on August 14, 2017;
- ***Lugo v. Capital Management Services, L.P.*, 2:17-cv-6204-SDW-LDW (D.N.J.)**—filed on August 16, 2017;
- ***Orbea v. Dynamic Recovery Solutions, LLC*, 2:17-cv-6250-SDW-LDW (D.N.J.)**—filed on August 18, 2017;
- ***Uriarte v. Stenger & Stenger, P.C.*, 3:17-cv-06251-MAS-TJB (D.N.J.)**—filed on August 18, 2017;
- ***Ferreira v. Frontline Asset Strategies, LLC*, 2:17-cv-6278-JLL-JAD (D.N.J.)**—filed on August 20, 2017;
- ***Gomez v. Nations Recovery Center, Inc.*, 2:17-cv-6279-JLL-JAD (D.N.J.)**—filed on August 21, 2017;
- ***Little v. LVNV Funding LLC*, 2:17-cv-07842-JMV-SCM (D.N.J.)**—filed on October 3, 2017;
- ***Jackson v. First National Collection Bureau, Inc.*, 2:17-cv-07891-MCA-SCM (D.N.J.)**—filed on October 4, 2017; and
- ***Delgado v. LVNV Funding, LLC*, 2:18-cv-01521-KM-JBC (D.N.J.)**—filed on February 2, 2018.

2. **Consolidation.** For settlement purposes only the Parties agree that each of the above Class Actions should be consolidated by motion on consent with the first filed ***Lopez v. Faloni & Associates, L.L.C.*, 2:16-cv-01117-SDW-SCM (D.N.J.)**. The Court has consolidated the Class Actions on November 19, 2018 (ECF No. 78).

3. **Class Counsels.** For settlement purposes only, the Parties stipulate to the appointment of, and the Court has appointed, Yongmoon Kim of Kim Law Firm LLC; Joseph K. Jones of Jones, Wolf & Kapasi, LLC; Lawrence C. Hersh; Eileen L. Linarducci of the Law Office of Ronald I. LeVine; and Ryan Gentile of the Law Offices of Gus Michael Farinella, PC, being appointed as class counsel. (hereinafter referred to as “Class Counsel”) for the Settlement Class.
4. **Class Representatives.** For settlement purposes only, the Parties stipulate to the appointment of, and the Court has appointed, each of the Plaintiffs below as the Class Representative (hereinafter referred to as the “Class Representative”) for each of the respective Settlement Classes.

- Victoria Lopez
- Irina Chernyakhovskaya
- Rubier Betancourt
- Gladys Espinal
- Luisa A. Martinez
- Luis A. Rodriguez-Ocasio
- Sammy Burgos
- Joseph Henriquez
- Wendy Lugo
- Yensy Orbea
- David Uriarte
- Jader Ferreira
- Francisco Gomez
- Robert Little
- Yolanda Jackson
- Melizza B. Delgado

5. **Settlement Classes.** For settlement purposes only, the Parties agree to, and the Court has approved, a Settlement Class (and individually “Settlement Class Members”) for monetary relief pursuant to Fed. R. Civ. P. 23(b)(3). The Settlement Class Definitions are as follows:

**Class One.** *Lopez v. Faloni & Associates, L.L.C., 2:16-cv-01117-SDW-SCM (D.N.J.)*—All natural persons with addresses in the State of New Jersey against whom, beginning February 26, 2015 through April 5, 2017, Faloni & Associates, L.L.C., attempted to collect on behalf of LVNV Funding LLC.

**Class Two.** *Chernyakhovskaya v. Resurgent Capital Services L.P., 2:16-cv-01235-JLL-JAD (D.N.J.)*—All natural persons with addresses in the State of New Jersey to whom, beginning March 3, 2015 through April 5, 2017, Resurgent Capital Services, L.P., sent one or more letters on behalf of LVNV Funding LLC concerning a debt originally owed to Citibank (South Dakota), N.A.

**Class Three.** *Betancourt v. LVNV Funding LLC, 2:17-cv-00390-JMV-JBC (D.N.J.)*—All natural persons with addresses in the State of New Jersey against whom,

beginning January 19, 2016 through April 5, 2017, J.C. Christensen & Associates, Inc. sent one or more letters in an attempt to collect a debt on behalf of LVNV Funding LLC.

**Class Four.** *Espinal v. First National Collection Bureau Inc., 2:17-cv-02833-WJM-MF (D.N.J.)*—All natural persons with addresses in the State of New Jersey to whom, beginning April 16, 2016 through April 5, 2017, First National Collection Bureau, Inc., sent one or more letters on behalf of LVNV Funding LLC concerning a debt originally owed to Credit One Bank, N.A.

**Class Five.** *Martinez v. LVNV Funding LLC, BER-L-003515-17 (N.J. Super. Ct. Law Div.)*—All natural persons with addresses in the State of New Jersey against whom, beginning May 12, 2016 through April 5, 2017, First National Collection Bureau, Inc. attempted to collect a consumer debt on behalf of LVNV Funding LLC.

**Class Six.** *Rodriguez-Ocasio v. LVNV Funding LLC, 2:17-cv-04567-MCA-LDW (D.N.J.)*—All natural persons with addresses in the State of New Jersey against whom, beginning June 21, 2016 through April 5, 2017, Global Credit & Collection Corp. attempted to collect a consumer debt on behalf of LVNV Funding LLC.

**Class Seven.** *Burgos v. Resurgent Capital Services, L.P., et al., 3:17-cv-6121-PGS-TJB (D.N.J.)*—All natural persons with addresses in the State of New Jersey to whom, beginning August 14, 2016 through April 5, 2017, Resurgent Capital Services, L.P., sent one or more letters on behalf of LVNV Funding LLC concerning a debt originally owed to Chase Bank USA, N.A.

**Class Eight.** *Henriquez v. Allied Interstate LLC, et al., 2:17-cv-6122-JMV-JBC (D.N.J.)*—All natural persons with addresses in the State of New Jersey to whom, beginning August 14, 2016 through April 5, 2017, Allied Interstate LLC, sent one or more letters on behalf of LVNV Funding LLC concerning a debt originally owed to Sears National Bank.

**Class Nine.** *Lugo v. Capital Management Services, L.P., et al., 2:17-cv-6204-SDW-LDW (D.N.J.)*—All natural persons with addresses in the State of New Jersey to whom, beginning August 16, 2016 through April 5, 2017, Capital Management Services, LP, sent one or more letters on behalf of LVNV Funding LLC concerning a debt originally owed to First Premier Bank.

**Class Ten.** *Orbea v. Dynamic Recovery Solutions, LLC, et al., 2:17-cv-6250-SDW-LDW (D.N.J.)*—All natural persons with addresses in the State of New Jersey to whom, beginning August 18, 2016 through April 5, 2017, Dynamic Recovery Solutions, LLC, sent one or more letters on behalf of LVNV Funding LLC concerning a debt originally owed to World Financial Network National Bank.

**Class Eleven.** *Uriarte v. Stenger & Stenger, P.C., 3:17-cv-06251-MAS-TJB (D.N.J.)*—All natural persons with addresses in New Jersey to whom, beginning August

18, 2016 through April 5, 2017, Stenger & Stenger, P.C., sent one or more letters on behalf of LVNV Funding LLC concerning a debt.

**Class Twelve.** *Ferreira v. Frontline Asset Strategies, LLC, et al., 2:17-cv-6278-JLL-JAD (D.N.J.)*—All natural persons with addresses in the State of New Jersey to whom, beginning August 20, 2016 through April 5, 2017, Frontline Asset Strategies, LLC, sent one or more letters on behalf of LVNV Funding LLC concerning a debt originally owed to Credit One Bank, N.A.

**Class Thirteen.** *Gomez v. Nations Recovery Center, Inc., et al., 2:17-cv-6279-JLL-JAD (D.N.J.)*—All natural persons with addresses in the State of New Jersey to whom, beginning August 21, 2016 through April 5, 2017, Nations Recovery Center, Inc., sent one or more letters on behalf of LVNV Funding LLC concerning a debt originally owed to Citibank (South Dakota), N.A.

**Class Fourteen.** *Little v. LVNV Funding LLC, 2:17-cv-07842-JMV-SCM (D.N.J.)*—All natural persons with addresses in the State of New Jersey against whom, beginning October 3, 2016 through April 5, 2017, Alltran Financial, LP attempted to collect a consumer debt on behalf of LVNV Funding LLC.

**Class Fifteen.** *Jackson v. First National Collection Bureau, Inc., 2:17-cv-07891-MCA-SCM (D.N.J.)*—All natural persons with addresses in the State of New Jersey to whom, beginning October 4, 2016 through April 5, 2017, First National Collection Bureau, Inc., sent one or more letters on behalf of Pinnacle Credit Services, LLC, concerning a debt originally owed to Verizon Wireless.

**Class Sixteen.** *Delgado v. LVNV Funding, LLC, 2:18-cv-01521-KM-JBC (D.N.J.)*—All natural persons with addresses in the State of New Jersey against whom, beginning February 2, 2017 through April 5, 2017, Credit Control, LLC, attempted to collect a consumer debt on behalf of LVNV Funding, LLC.

6. **Final Approval Date:** The “Final Approval Date” for the purposes of this Settlement Agreement shall mean the later of: (a) the date the Final Order is entered if no objection is filed; (b) if a timely objection has been filed with no appeal taken, 45 days after the date that the Court has entered the Final Order and Judgment; or, (c) if a timely objection has been filed and an appeal is taken, the day of final dismissal of the appeal or affirmance of the Final Order which is not subject to further review by any court with appellate jurisdiction over the litigation.

## **II. DEFENDANTS’ REPRESENTATION ON CLASS SIZE AND NET WORTH**

7. Defendants have represented that LVNV’s net worth is approximately \$10,489,014.00. Plaintiffs have relied on Defendants’ representation as to LVNV’s net worth, and considers same to be a material term in negotiating the terms of this Settlement Agreement.
8. Defendants have represented that RCS’s net worth is approximately \$1,517,265.00. Plaintiffs have relied on Defendants’ representation as to RCS’s net worth, and considers same to be a material term in negotiating the terms of this Settlement Agreement.

9. Defendants have represented that it has conducted a review of its files and determined that there are approximately 470,000 persons who meet the Settlement Class Definitions, not including the Plaintiffs. Plaintiffs have relied on Defendants' representation as to the number of persons who meet the Settlement Class Definitions, and considers same to be a material term in negotiating the terms of this Settlement Agreement.

### **III. PLAN OF ALLOCATION**

10. **Relief to Class Members.** Defendants agree to provide the following relief:

- a. ***Account Credits.*** Defendants will establish an account consisting of cash and credits totaling 20% of LVNV's and RCS's combined net worth, i.e., \$2,401,255.80. \$2,401,255.80 shall be divided on a *pro rata* basis among those Settlement Class Members, who choose not to opt-out in the manner set forth in the Notice ("Eligible Class Members") as a credit to each open account ("Credit"). Thus, assuming 20% of LVNV's and RCS's net worth is \$2,401,255.80 and assuming there are approximately 470,000 Eligible Class Members, each Eligible Class Member will receive a credit in the amount of \$5.11.<sup>1</sup> The Credits represent deductions in interest, costs and fees portion on the account balances of the Eligible Class Members. Thus, Defendants agree not to issue any Eligible Class member a 1099C with respect to the Credits. Under no circumstances will any Eligible Class Member receive more than a single credit.
- b. ***Cash Payments.*** To the extent there is an insufficient balance for a credit to be applied, Defendants will pay to such Eligible Class Member ("Payment Class Members") his/her equal pro-rata share of the Credit. For the avoidance of doubt, for example, if the account balance was \$3, there would be an account credit of \$3 and then a payment of \$2.11. The total value of the Credits and Cash Payments are \$2,401,255.80.
- c. ***Establishment and Funding of Escrow Account.*** Within seven (7) days of the Final Approval Date, the Settlement Administrator shall establish an escrow account for Cash Payments to the Settlement Class. The account shall be established in a bank that has a minimum of 20 branches within the State of New Jersey. Within seven (7) days of the establishment of the escrow account, Defendants shall fund the escrow account with the entire amount of Cash Payments.
- d. ***Time-frame for Payments to the Payment Class Members.*** No later than twenty-one (21) days after the Final Approval Date, the Settlement Administrator shall mail checks (hereinafter referred to as "Class Relief Checks") to all Payment Class Members. The Class Relief Checks will include the issue date and also display the expiration date in 16-point or greater font type. The expiration date shall be 125 days from the date the Class Relief Check is mailed. If a Class Relief Check is reissued and re-mailed to a Payment Class Member, the new check shall have an expiration

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<sup>1</sup> \$2,401,255.80 divided by 470,000 equals \$5.10905489, which was rounded up to the nearest whole one cent.

date of no less than 65 days from the date of re-mailing.

- e. ***Undeliverable Checks.*** The Settlement Administrator shall update the addresses of any Settlement Class Members as necessary after receipt of any mailed Class Relief Checks that are returned as undeliverable. Class Relief Checks that are returned “undeliverable as addressed” (UAA) shall be re-issued and re-mailed one additional time if a new address is found. No later than fifteen (15) days after the initial check expiration date, the Settlement Administrator shall provide Class Counsel and Defendants’ counsel with a report that shows the number of Class Relief Checks that were returned as undeliverable. The report shall include information as to whether a new address was found, and if so the date the check was re-mailed and the date the check was negotiated, or the date it was returned UAA again.
  
- f. ***Cy Pres Award of Funds from Uncashed Checks.*** No later than forty-five (45) days after the last expiration date of the delivered Class Relief Checks, the Settlement Administrator shall mail to Class Counsel a check in the amount of the sum of (a) all Class Relief Checks that were twice returned as undeliverable and not resent and (b) all uncashed checks that were not returned as undeliverable. The check shall be made payable to National Consumer Law Center, as a *cy pres* payment, with no restrictions on its use. Class Counsel shall deliver the *cy pres* check to National Consumer Law Center, within ten (10) days of receipt, and shall provide Defendants’ counsel with a copy of the transmittal document for the *cy pres* check. No later than thirty (30) days after the last check expiration date, the Settlement Administrator shall provide Class Counsel and Defendants’ counsel with a report of the number of Class Relief Checks cashed, which shall include the number of checks cashed together with the names of the persons who either cashed or did not cash their respective check or if the check was undeliverable and the amount of the *cy pres* check. The final report shall also include verification and a detailed certification confirming that the requirements of the Settlement Agreement have been complied with.

**11. Individual Relief and Service Payments.** Defendants agree to make payments in the amount of \$4,500.00 to Victoria Lopez, \$4,500.00 to Irina Chernyakhovskaya, \$3,000.00 to Rubier Betancourt, \$3,000.00 to Gladys Espinal, \$3,000.00 to Luisa A. Martinez, \$3,000.00 to Luis A. Rodriguez-Ocasio, \$3,000.00 to Sammy Burgos, \$3,000.00 to Joseph Henriquez, \$3,000.00 to Wendy Lugo, \$3,000.00 to Yensy Orbea, \$3,000.00 to David Uriarte, \$3,000.00 to Jader Ferreira, \$3,000.00 to Francisco Gomez, \$3,000.00 to Robert Little, \$3,000.00 to Yolanda Jackson, and \$3,000.00 to Melizza B. Delgado, which shall be as settlement for the their FDCPA statutory damages and as service awards in recognition of their efforts on behalf of the Settlement Class. The checks shall be delivered to Yongmoon Kim at Kim Law Firm LLC’s office located at 411 Hackensack Avenue, Suite 701, New Jersey, 07601, by no later than seven (7) days after the Final Approval Date.

**12. Settlement Administration Costs and Expenses.** Defendants will pay the costs for sending Postcard Notice to the Class, implementing and hosting the website for Online Notice, and distributing Class Relief Checks to Payment Class Members and any other costs reasonably and necessarily incurred by the Settlement Administrator associated with this action.



#### IV. RELEASE OF CLAIMS

13. Upon final approval of the settlement, the Court will enter a final judgment that will include the dismissal of each Plaintiffs' complaints with prejudice. The final judgment will provide for the Release of Claims as defined below relating to the collection of debts on behalf of LVNV or Pinnacle when neither LVNV nor Pinnacle was licensed under N.J.S.A. 17:11C-1 *et seq.* The release shall cover Plaintiffs and all Settlement Class Members who have not timely opted out.
14. The following release language ("Release of Claims") shall appear in the final judgment:

"As a result of the settlement that has been approved in this matter, when this judgment becomes effective upon the final approval date, Plaintiffs and each Settlement Class Member, for themselves, their heirs, successors and assigns shall have jointly and severally remised, released, acquitted and forever discharged the Released Parties from the Released Claims.

'Released Claims' shall mean any and all actions, causes of action, suits, claims, defenses, covenants, controversies, agreements, promises, damages, judgments, demands, liabilities and obligations in law or in equity relating solely to claims of statutory damages under the federal Fair Debt Collection Practices Act ("FDCPA"), that Plaintiffs and the Settlement Class Members, as defined herein, asserted or could have asserted as a result of, arising out of, or in connection with the collection of a debt on behalf of LVNV Funding LLC and on behalf of Pinnacle Credit Services, LLC when they were not licensed under New Jersey Consumer Finance Licensing Act ("NJCFLA"), N.J.S.A. 17:11C 1 *et seq.*, from the beginning of time to the date of this Agreement.

Notwithstanding the foregoing, the Plaintiffs and Settlement Class Members specifically reserve the right to sue for actual damages and to dispute the amount of the alleged debts that they may owe to LVNV Funding LLC or Pinnacle Credit Services, LLC. Additionally, The Released Claims specifically do not include any claims that Plaintiffs and Settlement Class Members may have against any of the Released Parties for any causes of action other than arising from LVNV Funding LLC's or Pinnacle Credit Services LLC's failure to be licensed under the NJCLFA.

'Released Parties' shall mean LVNV Funding LLC, Resurgent Capital Services, L.P.; Pinnacle Credit Services, LLC; First National Collection Bureau, Inc.; Allied Interstate LLC, Capital Management Services, L.P.; Dynamic Recovery Solutions, LLC; Stenger & Stenger, P.C.; Frontline Asset Strategies, LLC; Nations Recovery, Inc.; Alegis Group, LLC; Credit Control, LLC; J.C. Christensen & Associates, Inc.; and Alltran Financial, LP and their past or present partners, members, officers, directors, shareholders, employees, successors and assigns."

15. For the avoidance of doubt, the Released Claims only include claims arising out of the failure of LVNV Funding LLC and Pinnacle Credit Services, LLC, to be licensed under the NJCFLA. The Released Claims does not include any other theories of liability or any other act, including the case styled *Greene v. J.C. Christensen & Associates, Inc.*, 2:17-cv-01700-MCA-SCM (D.N.J.).
16. The final judgment will enjoin prosecution by Plaintiffs and Settlement Class Members who have not timely opted out of any of the Released Claims.
17. **The Defendants agree that the Release of Claims do not affect any Settlement Class Member who paid money to Defendants solely to the extent that anyone who paid money maintains its right to bring claims for alleged actual damages in a subsequent action, both individually and on behalf of a class.**
18. The Settling Parties understand and agree that this Settlement Agreement does not affect the validity of any debt owed by either the Plaintiffs or any of the other Settlement Class Members to the Defendants or their clients, and the provisions of the Release of Claims shall be construed to exclude, and shall not impair or limit, any right or cause of action or right to enforce or otherwise collect any underlying debt or amount owed to the Defendants or its clients, nor impair or limit any right or cause of action by the Plaintiffs or the other Settlement Class Members to dispute the underlying debt or amount owed to the Defendants or its clients.

**V. INFORMATION TO BE PRODUCED BY DEFENDANTS**

19. Defendants have represented that they possess the information necessary to identify the Settlement Class Members. Defendants have agreed to provide, the name, last known address, and other information as described below, for each such Settlement Class Member.
20. By no later than seven (7) days following the execution of this Settlement Agreement, Defendants shall provide Class Counsel with an electronic compilation (Excel spreadsheet or other easily usable database in CSV format) that includes at a minimum: (a) the name and last known address of each Settlement Class Member, (b) the telephone number and (c) email address of each Settlement Class Member. The version of the electronic list that is provided to the Settlement Administrator shall include each Settlement Class Member's Social Security number (SSN).
21. Along with the list, Defendants shall submit to Class Counsel a Certification of Due Diligence, describing in detail how the Settlement Class Members were identified, what records were reviewed to make this determination, how the list was prepared, the individuals involved in identifying the Settlement Class Members and in compiling the list or database. The Certification of Due Diligence shall also include a statement by a person with personal knowledge that the list includes all persons who meet the Settlement Class Definition and that the list does not include anyone who does not meet the Settlement Class Definition.
22. No later than seven (7) days after the date of the execution of this Agreement, the Defendants shall also provide Class Counsel one or more certifications attesting to the accuracy of the

representation concerning the Defendants' net worth attaching the most recent audited financial statement. The certification shall be from a CPA or other qualified representative of the Defendants with personal knowledge attesting to the accuracy of the net worth representation and setting forth the manner by which the estimate was calculated and describing the materials utilized to create the estimate.

23. If Class Counsel deems either certification to be unacceptable, incomplete or inaccurate, the Parties shall cooperate to correct any issues. After such good faith attempts, Defendants agree that Class Counsel may depose person(s) involved in the preparation of the information contained and/or either affiant. All depositions shall be completed within ten (10) days of the request to take the depositions. Any disputes regarding the confirmatory discovery provided for herein shall be submitted to the Court for immediate resolution. The Parties agree to abide by the Court's rulings as to such disputes.

## **VI. RECOMMENDED PROCESS FOR OPTING OUT AND OBJECTIONS**

24. The parties shall recommend to the Court the following procedures for opting out and objecting.

- a. Settlement Class Members who wish to opt out of this settlement must mail to the Settlement Administrator a written statement opting out of this settlement which must include: (1) the Settlement Class Member's name and address, and (2) a statement that the Settlement Class Member wishes to be excluded from the Settlement Class in the consolidated Settlement Agreement. Such notice must be received by the Settlement Administrator no later than the date set forth in the Preliminary Approval Order and in the Class Notice. The opt-out date shall be set by the Court. The Parties will suggest that the opt-out date be set thirty-five (35) days after the Class Notice is mailed or the next business day thereafter if that day is on a weekend or holiday (hereinafter the "Objection/Exclusion Deadline Date"). Any such individual who timely provides notice of their desire to opt out of the settlement will receive no compensation pursuant to this Agreement and shall not release any claims. Every Settlement Class Member who does not timely opt out shall be deemed a Settlement Class Member.
- b. Any person seeking to object to the settlement must be a Settlement Class Member, and therefore cannot opt-out of the settlement. Any objector shall notify the Court, Class Counsel and counsel for Defendants, in writing, of their intent to object to one or more of the terms of this Settlement Agreement or the Final Approval Order. Such written statement or notice must be filed with the Court and served on Class Counsel and Defendants' counsel no later than the same Objection/Exclusion Deadline Date applicable to the opt-out deadline. Any such notice of objections shall include: (a) a statement of each objection being made; (b) a description of the facts and legal basis for each objection; (c) a statement of whether the objector intends to appear at the Fairness Hearing; (d) a list of witnesses whom the objector may call by live testimony, oral deposition testimony or affidavit during the Fairness Hearing; and (e) a list of exhibits which the objector may offer during the Fairness Hearing, along with copies of all of the exhibits.

25. Individuals who fall within the Settlement Class Definition may choose to opt out of the

Settlement Class under such procedures as may be adopted by the Court, which shall be reflected in the Preliminary Approval Order and the Class Notice. Individuals who fall within the Settlement Class Definition may alternatively choose to object to (but not opt-out of) the settlement.

26. Settlement Class Members who fail to file and serve timely written objections or notice of intention to appear and object in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to this settlement.
27. Within 10 days of the filing of the motion for Preliminary Approval, Defendants shall serve the Notifications to appropriate officials as required by the Class Action Fairness Act (“CAFA”) (28 U.S.C. §1332(d), §1715), and simultaneously copy Class Counsel on that communication. This requirement shall be clearly articulated in the Preliminary Approval Order. Pursuant to CAFA, Defendants will be responsible for the delivery of the Notifications and any associated costs of providing the Notifications.
28. The Parties shall request that the Court set the date for the Fairness Hearing to be approximately 45 days following the Objection/Exclusion Deadline Date but no sooner than 105 days from the date of the Preliminary Approval Order.

## **VII. CLASS NOTICE AND SETTLEMENT ADMINISTRATION**

29. **Notice to the Settlement Class:** The agreed-upon form of Class Notice is attached as **Exhibit 1**. This form of Notice will be presented to the Court for approval.

### **30. Settlement Administrator**

- a. **Selection of Settlement Administrator:** The Parties have mutually agreed on Heffler Claims as the Class Action Settlement Administrator (the “Settlement Administrator”).
- b. **Defendants Shall Retain and Pay Fees and Expenses of Settlement Administration:** Defendants shall pay any and all fees and costs of the Settlement Administration and Settlement Administrator. Defendants shall retain the services of the mutually selected Settlement Administrator no later than seven days (7) after the selection.
- c. **Mailing of Class Notice:** The Settlement Administrator shall format, address, print and mail the Class Notice, by first class U.S. mail, postage prepaid, to the last known address of each Settlement Class Member. The Settlement Administrator will update the addresses of the Settlement Class members by means of the National Change of Address Databank (NCOA) maintained by the U.S. Postal Service prior to the initial mailing of the Class Notice and shall update the addresses by other reasonable methods available to the Administrator after receipt of returned undeliverable mailed Class Notices. Reasonable methods may include the use of Social Security numbers, email addresses, telephone numbers, and databases such as Accurant, Westlaw, and LexisNexis, and the Preliminary Approval Order shall expressly permit the use of

such databases. The Settlement Administrator shall provide to Class Counsel and Defendants' counsel one or more certifications or affidavits stating that the Class Notice was deposited in the U.S. mail in accordance with the terms of the Preliminary Approval Order and as required by this Settlement Agreement, along with statistics on how many Class Notices were:

- mailed successfully;
- returned as undeliverable; and
- re-mailed successfully.

- d. **Processing of Requests for Exclusion:** The Settlement Administrator shall receive and track all requests for exclusion and shall provide to Class Counsel and Defendants' Counsel (a) a true and exact copy of any and all Requests for Exclusion that have been received by the Settlement Administrator; and (b) the Settlement Administrator's determination as to whether each Request for Exclusion was timely received. The Settlement Administrator shall also (a) remove from the electronic list or database of Settlement Class Member any Settlement Class Members who the Court determines to have timely excluded themselves from the settlement; and (b) notify in writing any Settlement Class Member whom the Settlement Administrator determines that the Request For Exclusion was not timely received. By no later than seven (7) days after the Objection/Exclusion deadline, the Settlement Administrator shall provide all counsel with a certification to be filed with the Court setting forth the information in this paragraph, along with the information concerning the mailing of the Class Notices set forth in the preceding paragraph.

## **VIII. ATTORNEYS' FEES AND COSTS**

31. **Attorneys' Fees and Costs:** Defendants agree Plaintiffs are the prevailing party as contemplated by 15 U.S.C. § 1692k(a)(3). Defendants agree to pay reasonable attorney's fees and costs in an amount awarded by the Court pursuant to the Fair Debt Collection Practices Act. Class Counsel will file an initial fee application prior to the date scheduled for the Fairness Hearing seeking reasonable attorney's fees and costs for the time spent and costs incurred by Class Counsel through the date of the Fairness Hearing. Class Counsel will file supplemental fee application(s) for any further reasonable amounts of time spent and costs incurred beyond that date. Class Counsel's fee application(s) shall be made pursuant to relevant cases. Defendants shall be given proper notice of such applications and afforded the opportunity to file its objection to the amount of the reasonable attorney's fees and costs sought by Class Counsel; however, Defendants agree and shall not object to Class Counsel's entitlement to reasonable attorney's fees and costs. The award of attorney's fees and costs referred to in this paragraph does not include any time that may be spent enforcing any breach of this Settlement Agreement.
32. The Parties agree to engage in good faith attempts to resolve the quantum of attorney's fees to be paid to Class Counsel after the other terms of this Settlement Agreement are agreed upon. If the parties reach an agreement as to the amount of attorney's fees and costs after the other terms of this Settlement are agreed upon, an amendment to this agreement will be executed concerning the amount of attorney's fees and costs. The parties agree that

attorney's fees are in addition to and separate from the settlement benefits that Plaintiffs and each Settlement Class Member will receive and are the sole property of Class Counsel, and are not the property of Plaintiffs or the Settlement Class.

33. By no later than seven (7) days following the entry of an Order awarding attorney's fees and/or costs to Class Counsel and subject to any party's right to appeal same, Defendants will pay the full amount of attorney's fees and costs awarded by the Court. Defendants shall issue and deliver a check—made payable to the “Kim Law Firm LLC”—in the full amount of the attorney's fees and costs awarded by the Court to Class Counsel. The check shall be delivered to Yongmoon at Kim Law Firm LLC offices located at 411 Hackensack Avenue, Suite 701, Hackensack, New Jersey, 07601.
34. The Parties agree that the amount of the attorney's fees and costs award is not part of the substantive terms of this Settlement and will be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement benefits provided to Settlement Class members under this Settlement Agreement.

#### **IX. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, RESCISSION OR TERMINATION**

35. This Settlement Agreement, including the releases herein, shall be null and void, and the provisions of paragraph “35” below shall apply, if each of the following conditions fail to occur or be satisfied prior to the Effective Date (the date the Final Judgment becomes Final):
  - a. All non-Settlement related activities regarding the Class Action Complaint shall be, and shall remain, stayed by the Court pending Final Judgment approving this Settlement Agreement; and
  - b. All Settling Parties shall approve and execute all such acts or obligations that are required by this Settlement Agreement to be performed prior to the Effective Date; and
  - c. At or prior to the Fairness Hearing, no objections to this Settlement Agreement have been received, or if any such objections have been received, all such objections have been considered and denied by the Court; and
  - d. Subject to the reservation of jurisdiction, the Action must be dismissed with prejudice.
36. In the event that this Settlement Agreement is finally rejected upon the Fairness Hearing, or in the event a Final Judgment is not entered, or does not become final, or in the event that the Settlement Agreement is rejected by the mandate of an appellate court, then the terms of this Agreement shall be null and void:
  - a. The terms of this Agreement shall have no further force and effect with respect to the Settling Parties.
  - b. This Agreement shall not be used in litigation for any purpose; provided, however, this Agreement may be used for bringing an action for failure of a Settling Party to take steps required by this Agreement;

- c. The Settling Parties shall be restored to their respective positions in the litigation as of the date of the Settlement Agreement; and
- d. Any Judgment or orders entered by the Court in accordance with this Settlement Agreement shall be treated as vacated.

**X. MISCELLANEOUS**

37. **No Admission of Liability:** Defendants deny any violation and any liability, and this Settlement Agreement is not an admission of liability as to any claim or of any fact alleged by Plaintiffs. The Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to this Action and the Released Claims. The Settlement Agreement compromises claims that are contested and shall not be deemed an admission by any Party as to the merits of any claim. The final judgment submitted by the Parties shall expressly state that no finding of liability or wrongdoing has been made against Defendant.

38. **Effect of Settlement:** Any debt that a Settlement Class Member may have with LVNV Funding LLC on whose behalf Resurgent Capital Services, L.P. sent the initial collection letters will not be affected by this Settlement except as otherwise provided by this Settlement. This Settlement has nothing whatsoever to do with any issues between a Settlement Class Member and the alleged creditor.

39. **Cooperation:** The Parties will cooperate in seeking certification of the Settlement Class for settlement purposes under Fed. R. Civ. P. 23 and will cooperate in seeking both Preliminary Approval and Final Approval of the settlement consistent with the terms and provisions of this Settlement Agreement.

40. Class Counsel will file the applications for preliminary and final approval. The parties have consented to the form of Class Notice (Exhibit 1), Preliminary Approval Order (Exhibit 2) and Final Approval Order (Exhibit 3) to be filed with the Court.

41. **Changes Required by the Court:** If the Court indicates, prior to making a final ruling on the settlement, that the Settlement Agreement will not be approved unless certain changes are made, the Parties will attempt in good faith to reach agreement to those changes prior to withdrawing from the settlement. However, if no such agreement can be reached within sixty (60) days then either Plaintiffs or Defendants may terminate this Settlement Agreement. If this Settlement Agreement is terminated under such circumstances, Plaintiffs, Defendants, and each of the Settlement Class Members shall be deemed to be in the same position as existed prior to its execution, with the same *status quo ante* rights and interests as they may have had absent the entry by Plaintiffs and Defendants into this Settlement Agreement and all other understandings and agreements between the Parties and their respective counsel relating to the settlement shall be deemed to be null and void and of no force and effect. Upon termination of the Settlement Agreement under this paragraph, the Parties will jointly notify the Court of the need to decide class certification as a contested motion.

42. **Amendment/Modification:** The terms and provisions of this Settlement Agreement may only be amended or modified by a written instrument executed by all Parties and/or their respective successors-in-interest. No oral amendment or modification shall be effective unless

the amendment or modification is committed to a written instrument executed by all Parties and/or their respective successors-in-interest.

43. **Waiver:** No terms or provisions or breach of the terms and provisions of this Settlement Agreement may be waived except by a written instrument executed by all Parties and/or their respective successors-in-interest. A waiver by a Party of any breach of the terms and provisions of this Settlement Agreement shall not be deemed a waiver of any other prior or subsequent breach of the terms and provisions of this Settlement Agreement.

44. **Jurisdiction:** The United States District Court – District of New Jersey shall retain jurisdiction to implement and enforce the Settlement Agreement and its terms, and the Parties and the Settlement Class members submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

45. **Good Faith.** Defendants specifically represent that it is entering into this Settlement Agreement in good faith, that it presently has the financial ability to comply with all of the payment terms of this Settlement Agreement, including the payments to Plaintiffs and the Settlement Class Members, the costs of administering the Settlement, and the payment of attorney's fees and costs to Class Counsel, and that Defendants do not know of or anticipate any event which will prevent it from complying with the terms of the Settlement.

46. **Interpretation of Disputed Terms and Provisions:** In any dispute between the Parties regarding the terms of this Settlement, all terms and provisions shall be governed and interpreted according to the substantive laws of the State of New Jersey, without reference to its conflict of law principles. This Settlement Agreement shall be deemed to have been drafted equally by the Parties and shall not be construed strictly against Plaintiffs or Defendants.

47. **Execution in Counterparts:** This Settlement Agreement may be executed in counterparts and/or by facsimile or electronically-scanned signatures with the same force and effect as if executed in one complete document with the original signature of all Parties.

48. **Exclusive Jurisdiction and Venue for Enforcement.** Any dispute relating to this Agreement and/or Final Judgment shall be resolved exclusively in the U.S. District Court for the District of New Jersey, which Court shall retain exclusive jurisdiction and venue with respect to the consummation, implementation, enforcement, construction, interpretation, performance, and administration of the Agreement and/or Final Judgment. The Settling Parties agree to submit to the Court's exclusive jurisdiction and venue for the purposes described above.

49. **Authorization:** Any person signing this Settlement Agreement represents that he or she is authorized to enter into this Agreement with full knowledge and authority of the Party or Parties on whose behalf he or she is signing.

By the signature appearing below, the Parties agree that this Settlement Agreement be and hereby shall be effective as of this 1<sup>st</sup> day of November, 2019 by:



  
\_\_\_\_\_  
Youngmoon Kim  
KIM LAW FIRM LLC

*Lead Class Counsel*  
*Attorneys for Plaintiffs Victoria Lopez, Rubier*  
*Betancourt, Luisa A. Martinez, Luis A.*  
*Rodriguez-Ocasio, Robert Little, and Melizza*  
*B. Delgado*

Date: November 14, 2019

  
\_\_\_\_\_  
Michael A. Iannucci

Jonathan M. Robbin  
BLANK ROME LLP  
*On behalf of Defendants*

Date: November 14, 2019

\_\_\_\_\_  
Joseph K. Jones, Esq.  
JONES, WOLF & KAPASI, LLC  
*Additional Class Counsel*  
*Attorneys for Plaintiffs Sammy Burgos,*  
*Joseph Henriquez, Wendy Lugo, Yensy*  
*Orbea, David Uriarte, Jader Ferreira, and*  
*Francisco Gomez*

Date: \_\_\_\_\_, 2019

\_\_\_\_\_  
LAWRENCE C. HERSH  
*Additional Class Counsel*  
*Attorneys for Plaintiffs Irina*  
*Chernyakhovskaya and Gladys Espinal*

Date: \_\_\_\_\_, 2019

\_\_\_\_\_  
Ryan Gentile  
LAW OFFICES OF GUS MICHAEL FARINELLA  
PC  
*Additional Class Counsel*  
*Attorneys for Plaintiff Yolanda Jackson*

Date: \_\_\_\_\_, 2019

  
\_\_\_\_\_  
Youngmoon Kim  
KIM LAW FIRM LLC

*Lead Class Counsel*  
*Attorneys for Plaintiffs Victoria Lopez, Rubier*  
*Betancourt, Luisa A. Martinez, Luis A.*  
*Rodriguez-Ocasio, Robert Little, and Melizza*  
*B. Delgado*

\_\_\_\_\_  
Michael A. Iannucci  
Jonathan M. Robbin  
BLANK ROME LLP

*On behalf of Defendants*

Date: \_\_\_\_\_, 2019

Date: November 14, 2019

**Joseph K. Jones**

Digitally signed by Joseph K.  
Jones  
Date: 2019.11.14 12:19:28 -05'00'


\_\_\_\_\_  
Joseph K. Jones, Esq.  
JONES, WOLF & KAPASI, LLC  
*Additional Class Counsel*  
*Attorneys for Plaintiffs Sammy Burgos,*  
*Joseph Henriquez, Wendy Lugo, Yensy*  
*Orbea, David Uriarte, Jader Ferreira, and*  
*Francisco Gomez*

Date: \_\_\_\_\_, 2019

/s/ Lawrence Hersh

\_\_\_\_\_  
LAWRENCE C. HERSH  
*Additional Class Counsel*  
*Attorneys for Plaintiffs Irina*  
*Chernyakhovskaya and Gladys Espinal*

Date: Nov 18, 2019

  
\_\_\_\_\_  
Ryan Gentile

LAW OFFICES OF GUS MICHAEL FARINELLA  
PC  
*Additional Class Counsel*  
*Attorneys for Plaintiff Yolanda Jackson*

Date: Nov. 18, 2019



Eileen L. Linarducci

THE LAW OFFICE OF RONALD I. LEVINE

*Additional Class Counsel*

*Attorneys for Plaintiffs Rubier Betancourt,*

*Luisa A. Martinez, and Robert Little*

Date: 11/18, 2019