

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

RUTHA SMITH, EXECUTRIX OF THE
ESTATE OF FRANKLIN SMITH, on behalf of
herself and all others similarly situated,

Civil Case No: 2:10-cv-03922SDW

Plaintiff(s),

v.

HERITAGE FINANCIAL RECOVERY
SERVICES; and NNJCAB, INC.; and JOHN
DOES 1-25,

Defendants.

**SETTLEMENT AGREEMENT AND STIPULATION OF SETTLEMENT
BETWEEN PLAINTIFF, THE CLASS AND DEFENDANT**

This Settlement Agreement is entered into between Plaintiff, on behalf of herself and the class of persons defined below (hereinafter referred to as “Plaintiff”), and Defendant. Defendant and Plaintiff will be referred to as “the parties.”

RECITALS

1. Plaintiff filed this Class Action (“the Action”) on behalf of Plaintiff’s decedent and others similarly situated.
2. In the Complaint, Plaintiff alleged claims against Defendant under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692a *et seq.* (“FDCPA”).
3. Defendant vigorously denies the claims and allegations and defended the Action.
4. In the interest of providing non-monetary relief to the class and furthering the objectives as well as the policy goals behind the FDCPA, and in an effort to avoid the expense, delay, inconvenience, and risk of further litigation, the parties desire to resolve the dispute and to fully and finally settle all claims and allegations alleged in the Complaint. The parties and their

counsel recognize the risks and expenses inherent in litigation and that without this Agreement, the class members might never recover against Defendant and even if they do, that recovery may be delayed for years by trials and appeals. The parties and their counsel have investigated and litigated the matter through written discovery. To resolve the matter, the parties engaged in a arms-length discussion through counsel. This Agreement is based on the representations, mutual promises, obligations, and good and valuable consideration set forth in this Agreement.

5. As a result, the parties intend to seek an order from the Court approving this Agreement and providing that a hearing be held to determine whether the settlement is adequate, proper, fair, and reasonable (the “Preliminary Order”).

6. Plaintiffs and Defendant therefore have resolved to enter into this Settlement as a full and final resolution of all claims which were brought and which could have been brought in the Action.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, subject to Court approval pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, that this case has been settled upon and subject to the following terms:

TERMS

7. ***Effective Date.*** The “effective date” shall be the date 33 days after final approval by the Court, if no appeal has been filed. If any appeal is filed, the effective date shall be 14 days after the final action by the Appellate or District Court.

8. ***Certification of Class.*** The parties stipulate to the certification of a class, for settlement purposes only, consisting of the following class members meeting the respective class criteria and definitions:

(a) All New Jersey consumers who received (after August 1, 2009) collection letters and/or notices from the Defendants that contained the following phrase (or a substantially similar phrase):

“If you have filed for bankruptcy please provide us with your Attorney’s name and number so that we can close our files and return them to your creditor so that they may do the same.”

9. *Relief to Class Members.* Within fourteen (14) days after the Effective Date of this Agreement, Defendant shall cease using the following language in its first written communication to consumers:

“If you have filed for bankruptcy please provide us with your Attorney’s name and number so that we can close our files and return them to your creditor so that they may do the same.”

10. *Relief to Plaintiff.* Within Thirty-three (33) days following Final Approval, Defendant agrees to pay \$1,000.00 to Plaintiff in satisfaction of all damages, expenses, costs, and claims in this Action.

11. *Cy Pres Distribution.* Within Forty-five (45) days following Final Approval, Plaintiff’s counsel shall forward \$3,000.00 (from the Class relief in paragraph 10) to be distributed to a non-profit organization designed to assist New Jersey Consumers as a *cy pres* award for the benefit of the settlement class, subject to approval of the Court in the Final Order.

12. *Release.* Plaintiffs and members of the Class will be bound by the following release:

Plaintiff, as of the Effective Date of the Settlement Agreement, does hereby release and forever discharge Defendants and their representatives, employees, agents, attorneys and insurers (“Released Parties”) of and from all causes of action, suits, claims and demands, in law or in equity, for damages, costs and fees related to this action. This release is conditioned upon the final approval of the Settlement Agreement by the Court.

Each class member, as of the Effective Date of the Settlement Agreement, does hereby release and forever discharge Defendants from class liability in a future action. The class members in this action do not hereby release individual claims for damages against the Released Parties. This release is conditioned upon the final approval of the Settlement Agreement by the Court.

13. *Non-approval of Agreement.* In the event this Settlement Agreement is not approved by the Court, it shall be rescinded and deemed void and of no effect, and the parties to this Agreement shall be deemed to have reverted to their respective status in the consumer class action as it existed before this settlement in principal, and they shall proceed in all respects as if this Class Action Settlement Agreement had not been executed.

14. *Attorney's Fees and Costs.* Class Counsel shall be entitled, subject to Court approval and the occurrence of the Effective Date, to recover appropriate costs and attorney fees from Defendant pursuant to applicable law. In no event will Class Counsel seeks fees and costs totaling more than \$13,000.00. The fee and cost award ultimately approved by the Court shall be paid to Class Counsel within twenty (20) days of the Effective Date. Payments made pursuant to this Paragraph shall constitute full satisfaction of any claim for fees and/or costs, and the Class Representative and Class Counsel, on behalf of themselves and all Class Members, agree that they shall not seek nor be entitled to any additional attorney fees or costs under any theory. The Class Representative and Class Counsel agree that they shall be responsible for justifying the amount of this cost and fee payment to the Court, and they agree to submit the necessary materials to justify this payment along with the Settling Parties' joint motion for final approval of the Settlement Agreement.

15. *Notice.* No notice shall be provided to the class as the class members are not releasing claims for individual damages.

16. *Preliminary approval.* After execution of this Agreement, the parties shall jointly request preliminary approval of the settlement from the Court.

17. *Final approval.* The Parties shall request that the Court enter a Final Order approving the terms of this Agreement as fair, reasonable and adequate, providing for the implementation of those terms and provisions pursuant Fed. R. Civ. P. 23(b)(2), approving Class Counsel fees and costs, and dismissing the claims of the named Plaintiffs and the Class with prejudice.

18. *Miscellaneous provisions.* Whether or not this Agreement and the settlement contemplated hereunder are consummated, this Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of Plaintiffs or Defendant concerning liability or damages.

19. *Entire Agreement.* The foregoing constitutes the entire agreement between the parties with regard to the subject matter hereof and may not be modified or amended except in writing, signed by all parties hereto, and approved by the Court.

20. *Counterparts.* This Settlement Agreement may be executed in counterparts, in which case the various counterparts shall be said to constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies or facsimiles of executed copies of this Settlement Agreement may be treated as originals.

21. *Binding Agreement.* Each and every term of this Settlement Agreement shall be binding upon and inure to the benefit of Plaintiffs and the members of the Class, and any of their successors and personal representatives, and shall bind and shall inure to the benefit of the

Released Parties, all of which persons and entities are intended to be beneficiaries of this Settlement Agreement.

22. *Choice of Law.* This Settlement Agreement shall be governed by and interpreted in accordance with New Jersey law.

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective counsel of record, have so agreed, on the date(s) set forth below.

Dated: August 12, 2011

Respectfully submitted,

/s/Joseph K. Jones, Esq.
Law Offices of Joseph K. Jones, LLC
375 Passaic Avenue, Suite 100
Fairfield, NJ 07004
Attorneys for Plaintiffs

/s/David M. Blackwell, Esq.
Graham Curtin
A Professional Association
4 Headquarters Plaza
P.O. Box 1991
Morristown NJ 07962-1991
Attorneys for Defendants
